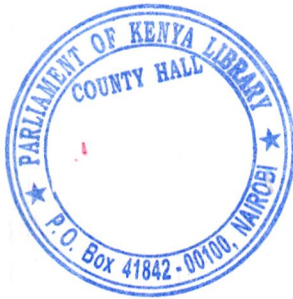


REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – THIRD SESSION - 2009

**REPORT OF THE COMMITTEE ON
ADMINISTRATION AND NATIONAL
SECURITY ON THE CHIEFS' (AMENDMENT)
BILL, 2009**

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

JULY, 2009

PREFACE

Mr. Speaker, Sir,

The Parliamentary Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 198 of the New Standing Orders of the National Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 198 (3), which, inter-alia, mandates the Committee to;

- (i) study and review all legislation referred to it;*
- (ii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

Mr. Speaker, Sir,

The Committee deals with the following subjects:

- i) Public Administration
- ii) National security
- iii) Internal Security
- iv) Immigration
- v) National Youth Service, and;
- vi) Natural disasters

The Committee examines the policy framework and the performance of the following Ministries:

- (i) Office of the President
- (ii) Ministry of Provincial Administration & Internal Security
- (iii) Office of the Prime Minister
- (iv) Ministry of State for Public Service
- (v) Ministry of State for Immigration & Registration of Persons

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. John Ngata Kariuki, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP
The Hon. Mohammed Hussein Ali, MP
The Hon. Lankas Ole Nkoidila, MP
The Hon. Cyprian Omollo, MP
The Hon. Pollyins Ochieng', MP
The Hon. Maison Leshoomo, MP
The Hon. Clement Kungu Waibara, MP

Mr. Speaker, Sir,

The Bill strives to reward the village elders for the services rendered. However, there are some glaring missing gaps that the Bill does not address. Some of the issues that the Bill does not take into consideration are how the proposals made will fit in with the envisaged constitutional dispensation that is bound to usher in a whole new political order. The Bill also involves financial implications thus burdening further the already overstretched tax payers. In addition, empowering the Chiefs and in extension the elders by amending section seven of Cap. 128 of the Chiefs' Act would in essence bring back the contentious Chiefs' Authority Act which was repealed because of its very repressive and dictatorial nature.

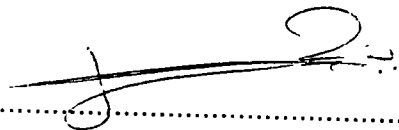
Mr. Speaker, Sir,

The Committee feels that the Bill will heighten tension between the elected leaders and the administrative arm of the Government. The immense powers to be wielded by the Chiefs' and the village elders will enhance friction between the administration and the elected leaders. It should not be lost that not so long ago, the Chiefs' could walk into a household and easily confiscate private property with impunity. The Committee urges the House to objectively consider the far

reaching negative implications of the proposed amendments, and recommends that the Bill be withdrawn.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 111 (2), it is my pleasant duty to lay on the table of the House the Report of the Committee on Administration and National Security on the Chiefs' (Amendment) Bill, 2009.

Signed  Date 29/07/09

Hon. Fred Kapondi Chesebe, MP
Chairman, Departmental Committee on Administration and National Security

COMMITTEE'S DELIBERATIONS AND OBSERVATIONS ON THE BILL

The Committee deliberated on the bill at length and made the following observations;

1. That the essence of the bill is to remunerate the village headpersons who are currently not paid for the services rendered. This is clearly spelt out in the Bill's Memorandum of Objects and Reasons on page 412, hence the financial obligations are implied and that the taxpayer will have to bear the extra cost. As a matter of fact, paying the village elders will cost the taxpayer in excess of Kshs. 100 million every month!
2. That constitutionally, the matter of remunerating village elders, which has financial implications, should be introduced as a Cabinet paper which ought to get the approval of the President for such policy to become entrenched into law.
3. That it is not clear how the Bill will be compliant with the envisaged constitutional dispensation where for instance, many constitutional office bearers could be subjected to elective posts.
4. It should not be lost that section seven of Cap. 128 of the Chiefs' Act was not meant to create permanent employment for village elders but it was meant to engage such services of the village headmen only when the need arose. Amending section seven of the Act can be construed to imply that we are reverting to the Chiefs' Authority Act which was colonialist, dictatorial and repressive. The immense powers that the Chiefs, and in extension the village elders, wielded should not be brought back by way of amending section seven of the Chiefs' Act.
5. That Clause 4 of the Bill as explained in the Memorandum of Objects and Reasons proposes that the "Act shall not be construed as imposing any financial obligations to the Government..." yet in the same vein, clause 3 sub clause 3 proposes that "remuneration and terms of service of a person employed under this section shall be from public funds as determined by the Minister in consultation with the Treasury". The Committee considers the above proposals as contradictory.

COMMITTEE'S RECOMMENDATION ON THE BILL

Based on the above observations, the Committee strongly recommends that:

The Chiefs' (Amendment) Bill, 2009, which is a very noble undertaking, is not practical to implement in its current form. The bill lacks sufficient information regarding its compatibility with the forthcoming new constitutional order. The Bill, once enacted into law, will bear an extra cost to the exchequer and therefore have grave financial burden on the taxpayer.

From the afore-going, the Committee recommends that the Bill be forthwith withdrawn.



**MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY
27TH JULY 2009 AT 10.00 A.M. IN THE COMMITTEE ROOM, 5TH FLOOR,
CONTINENTAL HOUSE , PARLIAMENT BUILDINGS**

PRESENT

The following Members of the Committee were present:

The Hon. Fred Kapondi Chesebe, MP (**Chairman**)

The Hon. Peter Kiilu, MP (**Vice-Chairman**)

The Hon. Raphael Lakalei Letimalo, MP

The Hon. Danson Mungatana, MP

The Hon. Mohammed Hussein Ali, MP

The Hon. Maison Leshoomo, MP

ABSENT WITH APOLOGIES

The Hon. Cyprian Omollo, MP

The Hon. John Ngata Kariuki, MP

The Hon. Pollyins Ochieng', MP

The Hon. Lankas Ole Nkoidila, MP

ABSENT

The Hon. Clement Kungu Waibara, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Clerk Assistant

Ms. Edelquinn Achieng' - Parliamentary Intern

PRELIMINARY

The meeting started with a word of prayer and the Chairman welcomed the Members to the meeting.

MIN. NO.29/2009: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

Minutes of the Committee's first sitting held on Tuesday 23rd June, 2009 were proposed by Hon. Peter Kiilu, and seconded by Hon. Raphael Letimalo and were confirmed as the true proceedings of the meeting.

Minutes of the Committee's second sitting held on Tuesday 6th July, 2009 were proposed by Hon. Raphael Letimalo and seconded by Hon. Peter Kiilu and were confirmed as the true proceedings of the meeting.

Confirmation of Minutes of the Committee's third sitting held on Tuesday 7th July, 2009 was proposed by Hon. Raphael Letimalo, and seconded by Hon. Peter Kiilu and were confirmed as the true proceedings of the meeting.

On minutes of the Committee's fourth sitting held on Thursday 9th July, 2009, the Committee noted that the proposal to the Ministry that the Vehicle Inspection Unit should be opened up to cater for other stake holders so as to allow the unit to generate funds was not minuted. The correction was done and the information captured accordingly. Confirmation of the minutes was proposed by Hon. Raphael Letimalo and seconded by Hon. Danson Mungatana and were confirmed as the true proceedings of the meeting.

Minutes of the Committee's fifth sitting held on Monday 13th July, 2009 were read out. The Committee noted that under Min No 14 (i) it was not minuted as to reflect how much money was allocated towards the refurbishment of the Prime Minister's Residence. The Chairman directed that the figures to be reflected on the report clearly. The figure for the rehabilitation of the Prime Minister's Office was given as Kshs. 33,400,000 for 2009/2010 f/y. The Committee Members also brainstormed on the possibility of having all Constitutional office holders to occupy official residences where they stay in those residences on a term basis, and sign bills and accounts for all the expenses incurred at the expiry of their

terms. The Committee felt that the President can have a maximum of three State Houses/Lodges that is in Nairobi, Mombasa and Kisumu. The unused State Lodges can be converted into Government Training Institutes.

Confirmation of the minutes was proposed by Hon. Raphael Letimalo and seconded by Hon. Peter Kiilu and was confirmed as the true proceedings of the meeting.

Minutes of the Committee's sixth sitting held on Tuesday 14th July 2009 were read and the Committee noted that under Min No.17 there was need to specify the media house indebted to PSC as "Nation Media Group". Confirmation of the Minutes was proposed by Hon. Peter Kiilu and seconded by Hon. Raphael Letimalo. The Minutes were confirmed as the true proceedings of the meeting.

Minutes of the Committee's seventh sitting held on Tuesday 14th July 2009 were read and the Committee noted that under Min No.20, the GTI in Nyanza is not yet established and that what the Minister presented was a feasibility study/proposal. The Committee also raised concern about what became of Ahero Multipurpose Training Institute. Confirmation of Minutes was proposed by Hon. Letimalo, seconded by Hon. Peter Kiilu and were confirmed as the true proceedings of the meeting.

Confirmation of Minutes of 8th and 9th sitting was deferred to the next meeting.

**MIN.30/2009: DELIBERATION ON THE CHIEFS' (AMENDMENT) BILL,
2009**

The Committee deliberated on the bill at length and made the following observations:

1. That the essence of the bill is to remunerate the village headpersons who are currently not paid for the services rendered. This is clearly spelt out in the Bill's Memorandum of Objects and Reasons on page 412, hence the financial obligations are implied and that the taxpayer will have to bear

the extra cost. As a matter of fact, paying the village elders will cost the taxpayer in excess of Kshs. 100 million every month!

2. That constitutionally, the matter of remunerating village elders, which has financial implications, should be introduced as a Cabinet paper which ought to get the approval of the President for such policy to become entrenched into law.
3. That it is not clear how the Bill will be compliant with the envisaged constitutional dispensation where for instance, many constitutional office bearers could be subjected to elective posts.
4. It should not be lost that section seven of Cap. 128 of the Chiefs' Act was not meant to create permanent employment for village elders but it was meant to engage such services of the village headmen only when the need arose. Amending section seven of the Act can be construed to imply that we are reverting to the Chiefs' Authority Act which was colonialist, dictatorial and repressive. The immense powers that the Chiefs, and in extension the village elders, wielded should not be brought back by way of amending section seven of the Chiefs' Act.
5. That Clause 4 of the Bill as explained in the Memorandum of Objects and Reasons proposes that the "Act shall not be construed as imposing any financial obligations to the Government..." yet in the same vein, clause 3 sub clause 3 proposes that "remuneration and terms of service of a person employed under this section shall be from public funds as determined by the Minister in consultation with the Treasury".
The Committee considers the above proposals as contradictory.

MIN NO. 31/2009: COMMITTEE'S RECOMMENDATIONS

Based on the above observations, the Committee strongly recommended that:

The Chiefs' (Amendment) Bill, 2009, which is a very noble undertaking, is not practical to implement in its current form. The bill lacks sufficient information regarding its compatibility with the forthcoming new constitutional order. The Bill, once enacted into to law, will bear an extra cost to the exchequer and therefore have grave financial burden on the taxpayer.

The Committee recommended that the Bill be withdrawn.

MIN NO.32/2009 COMMITTEE'S DELIBERATION ON OFFICES OF MINISTER BILL 2009

The Committee deliberated on the Bill as follows;

Clause 1	-	Agreed to
Clause 2	-	Proposed amendment
Clause 3	-	Agreed to
Clause 4	-	Proposed amendment
Clause 5	-	Proposed amendment
Clause 6	-	Proposed amendment
Clause 7	-	Proposed amendment
Clause 8	-	Agreed to

PROPOSED AMENDMENTS

The Committee proposed the following amendments to the Bill;

PART I – PRELIMINARY

1. Clause 2

That Clause 2 be amended by inserting thereof the words "**or Minister of State**" immediately after the word Kenya in line 3 of the clause, to read as follows;

2. In this Act, unless the context otherwise requires-

"Minister" means a person holding the office of a Minister of the Government of Kenya or Minister of State established under section 16 of the Constitution.

PART II – ESTABLISHMENT OF OFFICES

2. Clause 4

That Clause 4(1) be amended by inserting thereof a new sub section (d) to read as follows;

4(1)(d) has not been adversely mentioned in any previous Government reports or been imprisoned in a court of law in matters related to misappropriation of public resources.

PART III – RESPONSIBILITIES OF MINISTERS

3. Clause 5

That Clause 5 be amended as follows;

That a new sub clause (e) be inserted to read as follows;

5. A Minister shall be responsible for -

(e) all matters, administrative or financial, pertaining to the Ministry, and shall cede office in the event of any financial mismanagement of public funds in the Ministry or Parastatal, during their tenure.

4. Clause 6

That sub clause (1) be amended as follows;

That sub clause (1) be amended by deleting the words "**particular Minister**" and replacing thereof the words "**Minister of State**", and deleting the word "**another**" on the second line of the sub clause, to appear as follows;

6. (1) The President may, by notice in the Gazette, transfer to a Minister of State all or any of the functions of the Minister who is absent from office or who is otherwise unable to perform that function.

That sub clause (2) be renumbered as sub clause (3), and that a new sub clause (2) be inserted thereof, to read as follows;

6. (2) Notwithstanding the above, the Minister of State within the Ministry shall be deemed to automatically assume full powers of the Minister should the Minister be absent from office for a period exceeding two consecutive weeks.

That sub clause (3) be amended as follows;

That Sub clause (3) be amended by inserting the following words; "**provided the temporary transfer of the functions lapses automatically upon the return of the Minister**" at the end of line 2 of the sub clause, to read as follows;

6. (3) A transfer made under this section shall be for a period not exceeding ninety consecutive days, provided the temporary transfer of the functions lapses automatically upon the return of the Minister.

5. Clause 7

That clause 7(1) be amended as follows;

That words "**Assistant Ministers**" at the end of line 3 of sub clause (1) be deleted and the words "**Ministers of State**" be inserted thereof.

SCHEDULE

That the schedule be amended as follows;

- (i) That **no. 3** on the Schedule be deleted so as to remove the office of **one** Deputy Prime Minister and that the subsequent renumbering be done accordingly.
- (ii) That no. **23** of the amended Schedule be amended by deleting the word "**one**" at the beginning of the line and replacing it by the word "**two**" and adding an "**s**" on office to make it "**offices**", to read thus;

23. Two other offices of Minister, as the President may consider appropriate.

MIN NO.33/2009 ADJOURNMENT

There being no other business the Chairman adjourned the meeting at eighteen minutes after 1 o'clock. The next meeting would be held on Tuesday 28th, July 2009.

Signed: 

Chairman.....

Hon Fred Kapundi, MP

Date.....

29/07/09

**MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY
28TH JULY 2009 AT 9.00 A.M. IN THE SMALL DINING ROOM,
PARLIAMENT BUILDINGS**

PRESENT

The following Members of the Committee were present:

The Hon. Fred Kapondi Chesebe, MP (**Chairman**)

The Hon. Peter Kiilu, MP (**Vice-Chairman**)

The Hon. Mohammed Hussein Ali, MP

The Hon. Pollyins Ochieng', MP

The Hon. John Ngata Kariuki, MP

The Hon. Danson Mungatana, MP

The Hon. Raphael Lakalei Letimalo, MP

The Hon. Maison Leshoomo, MP

ABSENT WITH APOLOGIES

The Hon. Cyprian Omollo, MP

The Hon. Lankas Ole Nkoidila, MP

ABSENT

The Hon. Clement Kungu Waibara, MP

IN ATTENDANCE

Mr. Daniel Mutunga

-

Ms. Edelquinn Achieng'

-

KENYA NATIONAL ASSEMBLY

Clerk Assistant

Parliamentary Intern

PRELIMINARY

The meeting started with a word of prayer. The Chairman welcomed the Members to the Meeting.

MIN NO.34/2009: DELIBERATION AND ADOPTION OF THE COMMITTEE'S REPORT ON THE CHIEFS' (AMENDMENT) BILL, 2009 AND THE OFFICES OF MINISTER BILL, 2009

The Chiefs' (Amendment) Bill, 2009

The Committee deliberated on the draft report and proposed that under the observations, point four to be moved to be number two. The report was adopted subject to the amendments.

The Offices of Minister Bill, 2009

The Committee discussed the draft report at length and made the following further amendments:

- **Part II Clause 4(1)** the insertion **(d)** to read **"has not been adversely mentioned in any previous Government reports or been imprisoned in a court of law in matters related to misappropriation of public resources"**.
- **Part III Clause 6 (1)** that the word **"particular Minister"** be deleted and replaced with the word **"Minister of State"** and also delete the word **"another"** to read **"the President may, by notice in the Gazette, transfer to a Minister of state all or any of the functions of the Minister who is absent from office or who is otherwise unable to perform that function"**.

The Committee further made amendment to the clause by renumbering sub clause (2) as (3) and a new sub clause (2) to be inserted to read **"Notwithstanding the above, the Minister of State within the Ministry shall be deemed to automatically assume full powers of the Minister should the Minister be absent from office for a period exceeding two consecutive weeks."**

Sub clause (3) was also amended by inserting the following words
"provided the temporary transfer of the functions lapses upon
the return of the Minister".

The Committee adopted the report subject to the above amendments.

MIN NO.34/2009 CONFIRMATION OF MINUTES

The Minutes of the 8th and 9th sittings held on Monday 16th were confirmed as true proceedings of the Meetings. The proposals to confirm and second were made by Hon. Mohammed Hussein Ali and Hon. Pollyins Ochieng', and Hon. Maison Leshoomo and Hon. Pollyins Ochieng' respectively.

MIN NO.35/2009 ANY OTHER BUSINESS

The Chairman informed the Committee that the Committees' Report on 2009/2010 Annual estimates will be tabled on Tuesday 4th August, 2009. The draft report should be circulated for consideration and adoption by the Committee in the course of the week. He also informed the Committee Members that the Committee's budget/work plan should be prepared and presented to Liaison Committee by next week.

MIN NO.36/2009 ADJOURNMENT

The Chairman adjourned the meeting at thirty minutes after ten o'clock. The next meeting would be held on Monday 3rd August, 2009 at 10.00 am.

Signed:

Chairman.....*Hon Fred Kapendi, MP*.....

Date.....*29/07/09*.....