



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION – 2016

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON CONSIDERATION OF THE NATIONAL POLICE SERVICE
(AMENDMENT) BILL, 2014 (SENATE BILL NO.29 OF 2014).

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

FEBRUARY, 2016

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1.0 PREFACE

On behalf of the Departmental Committee on Administration and National Security and pursuant to the provisions of Standing Order No. 199 (6), it is my pleasant privilege and honour to present to the House the Report of the Committee on its consideration of the National Police Service (Amendment) Bill, 2014 (Senate Bill No. 29 of 2014). The Bill was committed to the Committee on 10th March, 2015 and it is on the basis of this that the Committee makes this report pursuant to Standing Order No. 127(4)

1.2 Mandate of the Committee

The Committee is established pursuant to the provisions of Standing Order No. 216 with the following terms of reference:-

- (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;*
- (iii) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (iv) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- (v) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (vi) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;*

1.2 Committee Membership

The Committee comprises the following Members:-

1. The Hon. Asman Kamama, MGH, OGW, MP - **Chairperson**
2. The Hon. Alois M. Lentoimaga, MP- **Vice Chairperson**
3. The Hon. Ababu Namwamba, EGH, MP
4. The Hon. Joseph Lekuton, MP
5. The Hon. Alice Wahome, MP
6. The Hon. Zakayo K. Cheruiyot, MP
7. The Hon. Timothy W. Wetangula, MP
8. The Hon. Patrick Ole Ntutu, MP
9. The Hon. Ali Isaack Shaaban, MP

10. The Hon. Samuel Moroto, MP
11. The Hon. Humphrey Njuguna, MP
12. The Hon. Francis K. Mwangangi, MP
13. The Hon. Rashid J. Bedzimba, MP
14. The Hon. David Gikaria, MP
15. The Hon. Mohamed Shidiye, MP
16. The Hon. Jane Machira, MP
17. The Hon. Ibrahim Abdi Saney, MP
18. The Hon. Joseph O. Ndiege, MP
19. The Hon. (Maj. Rtd.) John K. Waluke, MP
20. The Hon. Wanjiku Muhia, MP
21. The Hon. Akuja Protus Ewesit, MP
22. The Hon. Joseph M. Kahangara, MP
23. The Hon. Ahmed Abdikadir Ore, MP
24. The Hon. Grace Kiptui, MP
25. The Hon. George Theuri, MP
26. The Hon. James Bett, MP
27. The Hon. Benard Shinali, MP

1.3 Consideration of the Bill

The National Police Service (Amendment) Bill, 2014 (Senate Bill No.29 of 2014) was passed by the Senate on Tuesday 24th February and referred to the National Assembly for concurrence pursuant to Article 110 of the Constitution on 10th March, 2015 And thereafter committed to the departmental Committee on Administration and National Security on 10th March, 2015 for consideration pursuant to Standing Order No. 127.

The Departmental Committee on Administration and National Security considered submissions from the National Police Service Commission and the Budget and Appropriation Committee, whose views are captured and contained in the body of the Report.

The National Police Service Commission indicated that amendments to the National Police Service Act, 2011 by the National Assembly in 2014 had provided for vetting, recruitment, training and deployment of reserve police officers by allocating the role of recruitment and vetting to the National Police Service Commission and that of deployment to the Inspector General. The Commission further observed that the amendments from the Senate appeared to have been proposed before the amendments done by the National Assembly and the Senate seemed to have been unaware of the amendments. Therefore, the amendments by the Senate needed to be re – aligned to the

amendments passed by the National Assembly to the National Police Service Act, in 2014.

The Budget and Appropriation Committee observed that the Bill is a money Bill as defined in Article 114 of the Constitution. Further the Committee observed that Article 109 (5) of the Constitution provides that " a Bill may be introduced by any member or Committee of the relevant House of Parliament but a money Bill may be introduced Only in the National Assembly in accordance with article 114". Therefore the Bill was un-procedurally before the National Assembly and constitutional questions would arise if the National Assembly continued with the process of concurrence on the Bill.

1.4 Adoption of the Report

We Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 199 (2) adopted the Report on Consideration of The National Police Service (Amendment) Bill, 2014 (Senate Bill No.29 of 2014) and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity on Thursday 18th February, 2016 as per the attached list (Appendix I).

1.5 Acknowledgement

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee is also grateful to all the stakeholders who made submissions and presentations before the Committee.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Administration and National Security to table its Report to the consideration of the National Police Service (Amendment) Bill, 2014 (Senate Bill No.29 Of 2014) in the House pursuant to the provisions of Standing Order No. 127 (4).

Signed.......... Date..... 8/3/2016

Hon. Asman Kamama, MGH, OGW, MP
Chairman, Departmental Committee on Administration and National Security

2.0 BACKGROUND INFORMATION

The National Police Service (Amendment) Bill, 2014 seeks to amend section 110,115 and 117 of the National Police Service, Act 2011 as follows:-

Clause 2

Clause 2 seeks to amend section 110 of the National Police Service Act, 2011.

Clause 3

Clause 3 seeks to amend section 115 of the National Police Service Act, 2011.

Clause 4

Clause 4 inserts new sections (section 117A and 117B) immediately after section 117 of the Act.

3.0 SUBMISSIONS AND EVIDENCE

3.1 STAKEHOLDER VIEWS ON THE BILL

The Committee received written submissions from the National Police Service Commission and the Budget and Appropriations Committee.

3.1.1 National Police Service Commission

The National Police Service Commission through written submissions made the following observations on the Bill;

- (i) The Bill introduces sections to part XV on the National Police Reserve. The amendments from the Senate appeared to have been proposed before the amendments done by the National Assembly the Senate seemed to have been unaware of amendments to the same Act. This was evident for instance;

In the National Police Service Act, 2011 before amendment, section 110(8) provided that,

“After the commencement of this Act the Commission may undertake the training of existing Reserve Police Officers to ensure that the existing

officers are conversant with and conform to the Constitution and this Act”

The National Police Service Amendment Act by the National Assembly in July 2014 deleted the above subsection and introduced a new one as section 110 (7) below:

“The Inspector General shall, undertake training of police reserve officers to ensure that they are conversant with the relevant provisions of the Constitution and this Act”

However, the Senate Bill seeks to amend the same subsection 7 by, **deleting the word ‘ may’ appearing after the word ‘the Commission ‘ and substitute it with the word ‘shall’**

The above amendments in the Senate Bill seemed to apply to the original Act before it was amended by deletion of the section that the Senate Bill was referring to.

- (ii) The Amendment Bill from the Senate introduces sub – section 2A that:
- “The Commission shall provide the reserve police officers with-**
- (a) Such training as may be necessary on enrolment of the officer and such regular training as may be required during the period of service”**
 - (b) Such uniform, firearms and other facilities as necessary for the execution of the mandate of the Reserve Police Officers”**

The Amendment Act from the National Assembly in 2014 had already introduced section 110 (3A), 110(7) and section 110 C as below:

110 3A The police reserve officers shall-

- (a) Be provided with proper uniform, service identity cards and weapons**
- (b) . Be deployed in specific areas with defined commands and supervision**
- (c) . Undergo vetting and training before deployment**

110 (7) The Inspector General shall, undertake the training of the police reserve officers to ensure that they are conversant with the relevant provisions of the Constitution and this Act

110 C. Police reserve officers shall be –

- (a) Recruited by the Commission upon recommendation and in consultation with the Inspector Deployed in such areas as the Inspector General in consultation with the National Security Council may deem necessary.

- (iii) The Senate Bill introduces section 117 A and 117 B to provide clarity that expenses occasioned by implementation of section 110 -115, on police reserve shall be provided from:
 - (a) Gifts or grants
 - (b) Monies allocated by the National Assembly
 - (c) And there may be established a fund for the purpose

This was an expansion to the existing provision in the National Police Service Act prior to the amendment that provided the sources of funds of the service under section 117. Therefore, the amendment by the Senate needs to be re – aligned to the amendment passed by the National Assembly.

3.1.2 Budget and Appropriations Committee

The Budget and Appropriations Committee was of the opinion that the Bill is a money Bill as defined in Article 114 of the Constitution. Further the Committee observed that Article 109(5) of the Constitution provide that ” a Bill may be introduced by any member or Committee of the relevant House of Parliament but a money Bill may be introduced Only in the National Assembly in accordance with article 114”. Therefore the Bill was un-procedurally before the National Assembly and constitutional questions may arise if the National Assembly commences the process of concurrence on the Bill.

3.2 Analysis of the Bill

Clause 2

Clause 2 amends section 110 of the National Police Service Act, 2011.

Clause 2(a) - Seeks to introduce the requirement for one to be vetted and enrolled as Reserve police officers by the Commission.

Clause 2(b) - The proposed amendment adds a new provision to provide for regular training, issuance of uniform, firearms and other facilities to Reserve police officers.

Clause 2(c) - The proposed amendment adds an additional mandate of the Reserve police officers of securing of the country’s borders.

Clause 2(d) – The proposed amendment makes it mandatory for the National Police Service Commission to train the existing Reserve police officers. It proposes that the word “may” be deleted and substituted with the word “shall”. The use of the word “may” made it optional for the Commission to train the existing Reserve police officers.

Clause 3

Clause 3 amends section 115 of the National Police Service Act 2011.

Clause 3 provides for the payment of Reserve police officers of salaries and allowances as may be prescribed by the National Police Service Commission.

Clause 4

Clause 4 inserts new sections (section 117A and 117B) immediately after section 117 of the National Police Service Act 2011.

- i) **The proposed new section 117A** expands the sources of funds of the Service to include gifts, grants or donations as may be given. It also proposes to establish a fund from the monies specified. The amendments seek to provide for the salaries and allowances of the Police reserve officers.
- ii) **The proposed section 117B** indicates that the Bill is not a money Bill.

4.0 COMMITTEE OBSERVATIONS

The Committee noted that:-

1. The National Police Service (Amendment) Bill, 2014 (Senate Bill No. 29 of 2014) is an amendment to the National Police Service Act 2011. The Act, and its amendment, falls within the functions of the National Government. Under the Fourth Schedule of the Constitution, one of the functions of the National Government is police services, to wit, the setting of standards of recruitment, training of police and use of police services. This therefore means that this is a Bill not concerning county government vide Article 109(3) of the Constitution and should have been considered only in the National Assembly.
2. Article 241(3) (a) of the Constitution provides for one of the functions of the Kenya Defence Forces as being responsible for the defence and protection of the sovereignty and territorial integrity of the Republic. Clause 2(c) of the Bill might be unconstitutional in two ways: i) Article 241(3) (a) of the Constitution vests

the mandate of securing Kenya's borders with the Kenya Defence Forces only;
ii) Section 110(3) of the National Police Service Act, in giving the mandate to the Reserve police officers, states "The Reserve may be deployed in Kenya to assist the Kenya Police Service or the Administration Police Service in their respective mandates...". It would appear that the intention of this provision was for cooperation between the Reserve police officers and the Administration Police Service and not the Kenya Defence Forces.

3. The amendments to the National Police Service Act, 2011 by the National Assembly in 2014 had provided for vetting, recruitment, training and deployment of reserve police officers by allocating the role of recruitment and vetting to the National Police Service Commission and deployment to the Inspector General. the Senate seemed to have been unaware of amendments by the National Assembly to the same Act
4. The Bill is a money Bill as defined in Article 114 of the Constitution. Further the Budget and Appropriations Committee observed that Article 109(5) of the Constitution provide that " a Bill may be introduced by any member or Committee of the relevant House of Parliament but a money Bill may be introduced Only in the National Assembly in accordance with article 114". Therefore the Bill was un-procedurally before the National Assembly and constitutional questions may arise if the National Assembly continues with the process of concurrence on the Bill.

5.0 COMMITTEE RECOMMENDATION

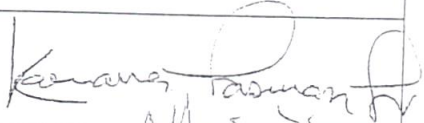

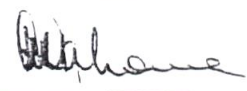
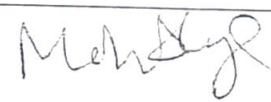
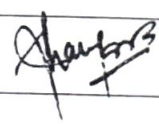

The Committee recommends that:-

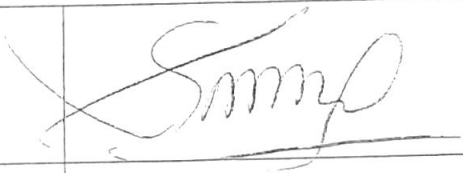

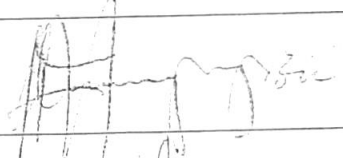
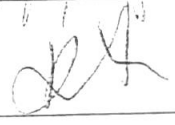
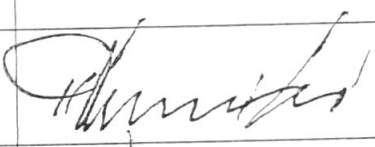
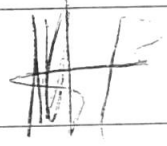

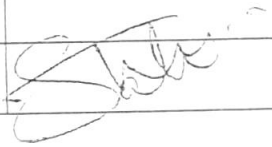
1. **The National Assembly should not proceed with the process of concurrence on the Bill which is unprocedurally before the National Assembly as it is a Money Bill as provided in Article 114 of the Constitution. If the Committee proceeds with this Bill it will be contravening Article. 109(5) of the Constitution.**
2. **The Bill has been overtaken by events given that the National Police Service (Amendment) Act, 2014 which provide for vetting, recruitment, training and deployment of reserve police officers was passed on 26th June by the National Assembly. The provisions in this Bill are similar to those in the Act.**

We Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 199 (2) adopt the Report on Consideration of The National Police Service (Amendment) Bill, 2014 (Senate Bill No.29 of 2014) and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity on

DATE: 18th February 2016 TIME: 10:00am

VENUE: 9th Boardroom Harambee Sacco

S/NO.	NAME	SIGNATURE
1.	The Hon. Kamama Asman, MGH,OGW,MP – Chairperson	
2.	The Hon. Alois M. Lentoimaga, MP – Vice-Chairperson	
3.	The Hon. Ababu Namwamba, EGH, MP	
4.	The Hon. Alice Wahome, MP	
5.	The Hon. Joseph Lekuton, MP	
6.	The Hon. Mohamed Shidiye, MP	
7.	The Hon. Jane Machira, MP	
8.	The Hon. Joseph Kahangara, MP	
9.	The Hon. Zakayo K. Cheruiyot, MP	
10.	The Hon. James Bett, MP	
11.	The Hon. Patrick Ole Ntutu, MP	
12.	The Hon. Shaaban Ali Isaack, MP	

13.	The Hon. Grace Kiptui, MP	
14.	The Hon. Samuel Moroto, MP	
15.	The Hon. Benard Shinali, MP	
16.	The Hon. Humphrey Njuguna, MP	
17.	The Hon. Francis K. Mwangangi, MP	
18.	The Hon. Rashid J. Bedzimba, MP	
19.	The Hon. Ibrahim Abdi Saney, MP	
20.	The Hon. Joseph O. Ndiege, MP	
21.	The Hon. Regina Nthambi Muia, MP	
22.	The Hon. (Maj. Rtd.) John K. Waluke, MP	
23.	The Hon. Akuja Protus Ewesit, MP	
24.	The Hon. Ahmed Abdikadir Ore, MP	
25.	The Hon. David Gikaria, MP	
26.	The Hon. Timothy W. Wetangula, MP	
27.	The Hon. Wanjiku Muhia, MP	
28.	The Hon. George Theuri, MP	

THE 4th SITTING OF DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY ON 18TH FEBRUARY, 2016 IN SMALL DINING ROOM MAIN PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT:

1. The Hon. Asman Kamama, MGH,OGW,MP - **Chairperson**
2. The Hon. Alois M. Lentiomaga, MP - **Vice- Chairperson**
3. The Hon. Alice Wahome, MP
4. The Hon. Mohamed Shidiye, MP
5. The Hon. James Bett, MP
6. The Hon. Grace Kiptui, MP
7. The Hon. Francis K. Mwangangi, MP
8. The Hon. Rashid J. Bedzimba, MP
9. The Hon. (Maj. Rtd.) John K. Waluke, MP
10. The Hon. AkujaProtusEwesit, MP
11. The Hon. Ahmed Abdikar Ore, MP
12. The Hon. David Gikaria, MP
13. The Hon. George Theuri, MP

ABSENT WITH APOLOGIES

1. The Hon. Wanjiku Muhia, MP

ABSENT

1. The Hon. AbabuNamwamba, EGH, MP
2. The Hon. Joseph Lekuton, MP
3. The Hon. Jane Machira, MP
4. The Hon. Joseph Kahangara, MP
5. The Hon. Zakayo K. Cheruiyot, MP
6. The Hon. Patrick Ole Ntutu, MP
7. The Hon. Shabaan Ali Isaack, MP
8. The Hon. Samuel Moroto, MP
9. The Hon. Bernard Shinali, MP
10. The Hon. Humphrey Njuguna, MP
11. The Hon. Ibrahim Abdi Saney, MP
12. The Hon. Joseph O. Ndiege,MP
13. The Hon. Timothy W. Wetangula, MP

SECRETARIAT

- | | | |
|------------------------|---|------------------------|
| 1. Mr. Leonard Machira | - | First Clerk Assistant |
| 2. Ms. Rose Wanjohi | - | Second Clerk Assistant |
| 3. Mr. Eugene Apaa | - | Research Officer |

MIN.NO. 16/ANS/2016: PRELIMINARIES

The Chairperson called the meeting to order at half past ten o'clock and a prayer was said.

MIN.NO. 17 /ANS/2016: CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON NATIONAL POLICE SERVICE (AMENDMENT) BILL, 2014(SENATE BILL NO. 29 OF 2014)

The Committee deliberated on the draft report and resolved that the Bill had been overtaken by events. The amendments to the National Police Service Act, 2011 by the National Assembly in 2014 had provided for vetting, recruitment, training and deployment of reserve police officers by allocating the role of recruitment and vetting to the National Police Service Commission and deployment to the Inspector General. The Senate seemed to have been unaware of amendments by the National Assembly to the same Act

The Committee also agreed with the recommendation of the Budget and Appropriations Committee that the Bill is a money Bill as defined in Article 114 of the Constitution. Further the Budget and Appropriations Committee observed that Article 109(5) of the Constitution provide that " a Bill may be introduced by any member or Committee of the relevant House of Parliament but a money Bill may be introduced Only in the National Assembly in accordance with article 114". Therefore the Bill was unprocedurally before the National Assembly and constitutional questions may arise if the National Assembly continues with the process of concurrence on the Bill.

Committee Recommendation

The Committee resolved to add a second recommendation that the Bill has been overtaken by events given that the National Police Service (Amendment) Act, 2014 provided for vetting, recruitment, training and deployment of reserve police officers that the bill is seeking to make provisions for.

The report was adopted having been proposed by Hon. George Theuri, MP and Seconded by Hon. Grace Kiptui, MP.

MIN.NO.18 /ANS/2016: ANY OTHER BUSINESS

Administration Police pass out parade: Hon. George Theuri, MP and Hon. Wanjiku Muhiu were nominated to represent the Committee during the pass-out parade scheduled for **Friday 19th February 2016** at the Administration Police Training College Embakasi.

Budget Policy Statement: The Chairperson informed the Committee that the Budget office would brief the Committee on Monday 22nd February 2016 at 2:30 pm on the Budget Policy Statement process.

MIN. NO.19 /ANS/ 2016: ADJOURNMENT

There being no other business the meeting was adjourned at half past eleven o'clock. The next meeting will be held on Monday 22nd February, 2016 at 2:30 pm.

Signed.....

(Chairperson)

Date..... 8 | 3 | 2016

MINUTES OF THE 36TH SITTING DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY 2ND JULY, 2015
IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. David Gikaria, MP - Chairing
2. The Hon. Ahmed Abdikadir Ore, MP
3. The Hon. James Bett, MP
4. The Hon. Humphrey Njuguna, MP
5. The Hon. Patrick Ole Ntutu, MP
6. The Hon. Regina Nthambi Muia, MP
7. The Hon. Zakayo Cheruiyot, MP
8. The Hon. Protus Akuja Ewesit, MP
9. The Hon. Joseph Ndiege, MP

ABSENT WITH APOLOGY

1. The Hon. Asman Kamama, MGH, OGW, MP - Chairperson
2. The Hon. Alois Lentoimaga, MP - Vice Chairperson
3. The Hon. Wanjiku Muhia, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Francis Mwangangi, MP
6. The Hon. (Maj. Rtd.) J. K. Waluke, MP
7. The Hon. Benard Shinali, MP
8. The Hon. Ababu Namwamba, MP
9. The Hon. Mohamed Shidiye, MP
10. The Hon. Samuel Moroto, MP
11. The Hon. George Theuri, MP
12. The Hon. Joseph Kahangara, MP
13. The Hon. Jane Machira, MP
14. The Hon. Ibrahim Abdi Saney, MP
15. The Hon. Shaaban Ali Isaack, MP
16. The Hon. Grace Kiptui, MP
17. The Hon. Timothy Wetangula, MP
18. The Hon. Joseph Lekuton, MP
19. The Hon. Rashid Bedzimba, MP

IN-ATTENDANCE - MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Hon. Joseph Nkaisery | - | Cabinet Secretary |
| 2. Mr. Joseph Boinnet | - | Inspector General of Police |

IN-ATTENDANCE - NATIONAL ASSEMBLY

- | | | |
|------------------------|---|-----------------------|
| 1. Mr. Leonard Machira | - | First Clerk Assistant |
| 2. Ms. Hellen Lokwang | - | Third Clerk Assistant |
| 3. Mr. Eugene Apaa | - | Research Officer |

MIN.NO. 127/ANS/2015 - PRELIMINARIES

The meeting was called to order at 11.10 a.m. with a word of prayer from Hon. Humphrey Njuguna. Hon. David Gikaria was appointed by the Members to chair the meeting.

MIN.NO.128/ANS/2015 - CONFIRMATION OF MINUTES

Confirmation of the previous minutes was rescheduled to the next meeting.

MIN.NO.129/ANS/2015 - NATIONAL POLICE SERVICE (AMENDMENT BILL) SENATE BILL NO. 29 OF 2014.

The Cabinet Secretary for Interior and National Government requested for more time in order to prepare comprehensive amendments to the National Police Service Amendment Act, 2014 to incorporate issues affecting the two tiers of government. The Committee requested the Cabinet Secretary and Inspector General to submit written views on the Bill.

MIN.NO.130/ANS/2015 - BUSINESS PENDING BEFORE THE COMMITTEE

The Committee was briefed on pending business:-

- (i) Petition by Hon. Susan Musyoka, MP on the reinstatement of Mr. Raphael Kitavi to Public Service and Payment of dues;
- (ii) Petition by Hon. Alois Lentoimaga, MP on behalf of the residents of Samburu North Constituency regarding action taken by the Government towards recovery of illegal firearms in the North Rift;
- (iii) Petition by Hon. Chrisanthus Wamalwa, MP on behalf of residents of Mabonde Location regarding the revocation of the appointment of the Chief Mabonde Location.

Under Petition (ii) the Committee resolved to invite the petitioner for a meeting before embarking on a field visit to the Mabonde Location.

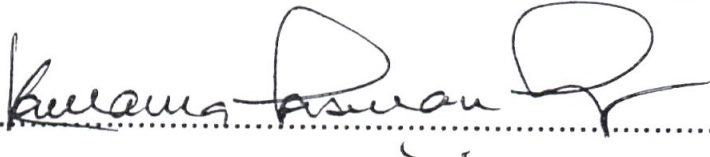
Under Petition (iii) the Committee agreed to meet the Cabinet Secretary for Interior and Coordination of National Government on the matter before conducting a field visit to Mabonde location.

MIN.NO.131/ANS/2015 - ANY OTHER BUSINESS

The Committee resolved that the National Authority for the Campaign Against Alcohol and Drug Abuse Board of Directors be invited for a meeting to clarify on claims of misappropriation of funds and that the Committee will move a motion in the House to declare the war on illicit brew a national disaster.

MIN.NO.132/ANS/2015 - ADJOURNMENT OF THE MEETING

The meeting was adjourned at 12.00 noon and the next meeting will be held on notice.

Signed.....
(Chairperson)

Date.....28th August 2015.....

MINUTES OF THE 33RD SITTING DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY 23RD JUNE 2015
AT THE MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. The Hon. Alois Lentoimaga, MP - Vice Chairperson
2. The Hon. Wanjiku Muhia, MP
3. The Hon. Zakayo Cheruiyot, MP
4. The Hon. Francis Mwangangi, MP
5. The Hon. (Maj. Rtd.) J. K. Waluke, MP
6. The Hon. Benard Shinali, MP
7. The Hon. Alice Wahome, MP
8. The Hon. Ababu Namwamba, MP
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19. The Hon. Patrick Ole Ntutu, MP
20. The Hon. Humphrey Njuguna, MP
21. The Hon. Ahmed Abdikadir Ore, MP
22. The Hon. George Theuri, MP
23. The Hon. Protus Akuja Ewesit, MP

ABSENT WITH APOLOGY

1. The Hon. Asman Kamama, MGH, OGW, MP - Chairperson
2. The Hon. Jane Machira, MP
3. The Hon. Timothy Wetangula, MP
4. The Hon. Joseph Kahangara, MP
5. The Hon. David Gikaria, MP
6. The Hon. Joseph Lekuton, MP
7. The Hon. Rashid Bedzimba, MP

IN ATTENDANCE –NATIONAL ASSEMBLY

1. Mr. Leonard Machira - First Clerk Assistant
2. Ms. Hellen Lokwang - Third Clerk Assistant
3. Mr. Mohamed N. Boru - Third Clerk Assistant
4. Mr. Salem Lorot - Legal Counsel II

MIN.NO.116 /ANS/2015 - PRELIMINARIES

The Chairperson called the meeting to order at 11.26 a.m. A prayer was said.

MIN.NO.117 /ANS/2015 - BRIEF ON THE NATIONAL POLICE SERVICE (AMENDMENT BILL) SENATE BILL NO. 29 OF 2014

The Legal Counsel briefed the Committee on the Bill as follows:-

Clause 2 sought to amend section 110 of the National Police Service Act.

Clause 2(a) - It proposed to remove the requirement of 18 years for one to join the National Police Reserve and replaces it with the requirement of one to be vetted and enrolled as Reserve police officers by the Commission.

Clause 2(b) - It sought to add a new provision to provide for regular training, issuance of uniform, firearms and other facilities to Reserve police officers.

Clause 2(c) - It sought to add an additional mandate of the Reserve police officers: securing of the country's borders.

Clause 2(d) - It sought to make it mandatory for the National Police Service Commission to train the existing Reserve police officers. It proposes that the word "may" be deleted and substituted with the word "shall". The use of the word "may" made it optional for the Commission to train the existing Reserve police officers.

Clause 3 amends section 115 of the National Police Service Act.

Clause 3 provided for the payment of Reserve police officers of salaries and allowances as may be prescribed by the National Police Service Commission.

Section 115 of the National Police Service Act provides for a Reserve police officer to serve voluntarily and not to be entitled to claim any remuneration for his services save for such allowances as may be prescribed. It also provides for a Reserve police officer to receive pay and allowances as may be prescribed for a police officer who has a rank and seniority to the Reserve police officer.

Clause 4 inserts new sections (section 117A and 117B) immediately after section 117 of the National Police Service Act.

- i) The proposed new section 117A expanded the sources of funds of the Service to include gifts, grants or donations as may be given. It also proposes to establish a fund from the monies specified.
- ii) The proposed section 117B indicated that the Bill is not a money Bill.

Committee Observations

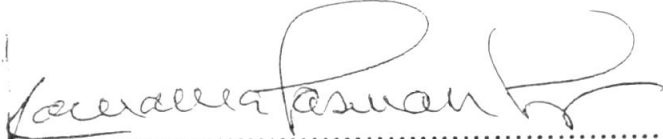
The Committee made the following observations:-

- (i) There was no clear rationale of removing the requirement for a person to be above 18 years to enroll as a Reserve police officer given that any person below the age of 18 year was legally considered to be a child.
- (ii) Article 241(3) (a) of the Constitution provides for one of the functions of the Kenya Defence Forces as being responsible for the defence and protection of the sovereignty and territorial integrity of the Republic. Clause 2(c) might be unconstitutional in two ways: i) Article 241(3) (a) of the Constitution vests the mandate of securing Kenya's borders with the Kenya Defence Forces only; ii) Section 110(3) of the National Police Service Act, in giving the mandate to the Reserve police officers, states "The Reserve may be deployed in Kenya to assist the Kenya Police Service or the Administration Police Service in their respective mandates....". It would appear that the intention of this provision was for cooperation between the Reserve police officers and the Administration Police Service and not the Kenya Defence Forces.
- (iii) Given the directive of the Speaker in his message in relation to this Bill, the Committee resolved to engage with the Budget and Appropriations Committee so as to satisfy the requirements of Article 114 of the Constitution relating to Money Bills.

MIN.NO.118/ANS/2015

ADJOURNMENT OF THE MEETING

The meeting was adjourned at 12.45 pm and the next meeting will be held on notice.

Signed.....

Chairperson  8 / 10 / 2015

NATIONAL ASSEMBLY

Directorate of Legislative and Procedural Services

MEMO

TO : DIRECTOR, COMMITTEE SERVICES
FROM : PRINCIPAL CLERK ASSISTANT
DATE : MARCH 10, 2015
SUBJECT : MESSAGE FROM THE SENATE ON THE NATIONAL POLICE SERVICE (AMENDMENT) BILL, 2014

The following Senate Bill was conveyed to the National Assembly by way of a Message from the Senate delivered on Tuesday, March 10, 2015 during the afternoon.

1. The National Police Service (Amendment) Bill, 2014 (*Senate Bill No. 29 of 2014*).

Please find a copy of the Message and the Bill for your action


Lucy Wanjohi

Copies: Clerk of the National Assembly

Encl. .

Machin
Please bring to the attention
of the committee for
consideration
11/3/15



REPUBLIC OF KENYA



ELEVENTH PARLIAMENT-(THIRD SESSION)
THE NATIONAL ASSEMBLY
MESSAGES

MESSAGE FROM THE SENATE

(No. 009 of 2015)

Honourable Members, pursuant to Standing Order 41(4) of the National Assembly Standing Orders, I wish to convey a Message received from the Senate on March 4, 2015. The message was submitted by way of a letter dated February 27, 2015 for presentation in accordance with Article 110(4) of the Constitution which states that –


(4) When any Bill concerning county government has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House.”

Honourable Members, the message states “THAT, the National Police Service (Amendment) Bill (Senate Bill No. 29 of 2014) as published in the Kenya Gazette Supplement No. 103 of 2nd July, 2014 as a Bill originating in the Senate was passed on Tuesday, 24th February, 2015, without amendments. The message continues, that “the Senate now seeks the concurrence of the National Assembly to the said Bill as passed by the Senate.”

Honourable Members, I am now directing that the Clerk circulates copies of the Bill. Upon being read a First time, the Bill shall stand committed to the Departmental Committee on Administration and National Security.

I further direct that, before the Bill is scheduled for Second Reading, the Committee engages with the Budget and Appropriations Committee with a view to satisfying the requirements of Article 114 of the Constitution relating to Money Bills.

I thank you!


THE HON. JUSTIN B. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, March 10, 2015

REPUBLIC OF KENYA



PARLIAMENT

SENATE BILLS
(*Bill No. 29 of 2014*)

THE NATIONAL POLICE SERVICE (AMENDMENT)
BILL, 2014

(A Bill published in the Kenya Gazette Supplement No. 103 of 2nd July, 2014 and passed by the Senate without amendments on 24th February, 2015.)

THE NATIONAL POLICE SERVICE (AMENDMENT) BILL, 2014

A Bill for

AN ACT of Parliament to amend the National Police Service Act.

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the National Police Service (Amendment) Act, 2014.

Amendment of
section 110 of
No. 11A of
2011.

2. Section 110 of the National Police Service Act, in this Act referred to as “the principal Act”, is amended-

(a) in sub-section (1) by deleting all the words appearing immediately after the words “eighteen years” and substituting therefor the following new words-

“who are vetted and enrolled as Reserve police officers by the Commission”.

(b) by inserting the following new sub-section immediately after sub-section (2)-

(2A) The Commission shall provide the Reserve police officers with-

(a) such training as may be necessary on enrollment of the officer and such regular training as may be required during the period of service; and

(b) such uniform, firearms and other facilities as may be necessary for the execution of the mandate of the Reserve Police Officers.

(c) in sub-section (3) by inserting the following new paragraph immediately after paragraph (b)-

(ba) securing of the country’s borders;

(d) in sub-section (7) by deleting the word “may” appearing immediately after the words “the Commission” and substituting therefor the word “shall”.

Amendment of
Section 115 of
No. 11A of
2011.

3. Section 115 of the principal Act is amended by deleting all the words appearing immediately after the words “police officer shall” and substituting therefor the following new words-

“receive such pay and allowances as may be prescribed by the Commission”.

Amendment of
section 117 of
No. 11A of
2011

4. The principal Act is amended by inserting the following new sections immediately after section 117-

Monies for 117A. (1) Any expenses that may be occasioned in
implementation of the implementation of sections 110 and 115 of this
sections 110 and 115 Act shall be provided from –

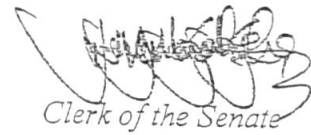
- (a) such gifts, grants or donations as may be given;
- (b) such monies as may, in the future, be provided by the National Assembly for defraying the expenses incurred in the implementation of this Act; and
- (c) such other monies that may lawfully accrue in the discharge of the functions under this Act, not being monies accruing pursuant to Article 114 of the Constitution.

(2) There may be established a fund which shall consist of the monies specified under subsection (1).

Non-money Bill status 117B. For the avoidance of doubt, nothing in section 117A is intended to or may be construed as providing for or dealing with-

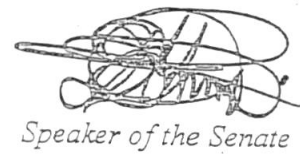
- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

I certify that this printed impression is a true copy of the Bill as passed by the Senate on Tuesday, 24th February, 2015.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of Standing Order 147 of the Senate Standing Orders.



Speaker of the Senate

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

LEGAL BRIEF :

**THE NATIONAL POLICE SERVICE
(AMENDMENT) BILL (SENATE BILL NO. 29
OF 2014)**

SUBMITTED BY:

DIRECTORATE OF LEGAL SERVICES

THE CHAIRPERSON, ADMINISTRATION AND NATIONAL SECURITY-NA

TO : THE CHAIRPERSON, ADMINISTRATION AND NATIONAL
SECURITY- NA

FROM : LEGAL COUNSEL II

RE: THE NATIONAL POLICE SERVICE (AMENDMENT) BILL (SENATE BILL
NO. 29 OF 2014)

The above subject refers.

The Senate seeks concurrence of the National Assembly to the National Police Service (Amendment) Bill (Senate Bill No. 29 of 2014) published in the Kenya Gazette Supplement No. 103 of 2nd July 2014. It is a Bill originating in the Senate.

The Bill was passed on Tuesday 24th February, 2015 by the Senate without amendments.

Please find below the analysis.

CLAUSE	ADVICE	COMMITTEE'S RECOMMENDATIONS



<p>2</p>	<p>Clause 2 amends section 110 of the National Police Service Act.</p> <p>Clause 2(a)- It removes the requirement of 18 years for one to join the National Police Reserve and replaces it with the requirement of one to be vetted and enrolled as Reserve police officers by the Commission.</p> <p>Opinion: The question that arises is whether a person below 18 years can then enrol as a Reserve police officer. What is the rationale of removing the requirement? This might create uncertainty and gaps in a provision which was clear.</p> <p>Clause 2(b)- It adds a new provision to provide for regular training, issuance of uniform, firearms and other facilities to Reserve police officers.</p> <p>Clause 2(c)- It adds an additional mandate of the Reserve police officers: securing of the country's borders.</p> <p>Opinion: It should be noted that Article 241(3) (a) of the Constitution provides for one of the functions of the Kenya Defence Forces as being responsible for the defence and protection of the sovereignty and territorial integrity of the Republic. Clause 2(c) might be unconstitutional in two ways: i) Article 241(3) (a) of the Constitution vests the mandate of securing Kenya's borders with the Kenya Defence Forces only; ii) Section 110(3) of the National Police Service Act, in giving the mandate to the Reserve police officers, states "The Reserve may be deployed in Kenya to assist the Kenya Police Service or the Administration Police Service in their respective mandates....". It would appear that the intention of this provision was for cooperation between the Reserve police officers and the Administration Police Service and not the Kenya Defence Forces.</p> <p>Clause 2(d)- It makes it mandatory for the National Police Service Commission to train the existing Reserve police officers. It proposes that the word "may" be deleted and substituted with the word "shall". The use of the word "may" made it optional for the Commission to train the existing Reserve police officers.</p>	
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	<p>Opinion: Given the directive of the Speaker in his message in relation to this Bill, the Committee has been directed to engage with the Budget and Appropriations Committee so as to satisfy the requirements of Article 114 of the Constitution relating to Money Bills.</p>	
3	<p>Clause 3 amends section 115 of the National Police Service Act.</p> <p>Clause 3 provides for the payment of Reserve police officers of salaries and allowances as may be prescribed by the National Police Service Commission.</p> <p>Section 115 of the National Police Service Act provides for a Reserve police officer to serve voluntarily and not to be entitled to claim any remuneration for his services save for such allowances as may be prescribed. It also provides for a Reserve police officer to receive pay and allowances as may be prescribed for a police officer who has a rank and seniority to the Reserve police officer.</p> <p>Opinion: Given the directive of the Speaker in his message in relation to this Bill, the Committee has been directed to engage with the Budget and Appropriations Committee so as to satisfy the requirements of Article 114 of the Constitution relating to Money Bills. The cost implication will be discussed there.</p>	
4	<p>Clause 4 inserts new sections (section 117A and 117B) immediately after section 117 of the National Police Service Act.</p> <p>i) The proposed new section 117A expands the sources of funds of the Service to include gifts, grants or donations as may be given. It also proposes to establish a fund from the monies specified.</p> <p>Opinion: Perhaps the rationale for this is to provide for the salaries and allowances of the Police reserve officers</p>	

	<p>if the provision is carried.</p> <p>ii) The proposed section 117B indicates that the Bill is not a money Bill.</p> <p>Opinion: Given the directive of the Speaker in his message in relation to this Bill, the Committee has been directed to engage with the Budget and Appropriations Committee so as to satisfy the requirements of Article 114 of the Constitution relating to Money Bills. In liaison with the Parliamentary Budget office, a proper determination can be made on this matter.</p>	
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Submitted for the Committee's deliberations.



Salem Dick Lorot

Legal Counsel, Departmental Committee on Administration and National Security

23rd June 2015





② MAETHRA
pb leaf
FA
10/8

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NAIROBI

Our Ref: NPSC/1/29/12/VOL. 1 (18)

Date: 30th July 2015

Clerk of the National Assembly
Parliament Buildings
NAIROBI

① D/Committee
for the attention
of Adm. Chief.

Attention: Mr Michael Sialai

RE: NATIONAL POLICE SERVICE ACT AMENDMENTS IN THE SENATE, 2015 *Sialai*

This is in reference to the letter we received in copy from the National Assembly ref NA/DC.A/ANS/2015/(41) regarding the above subject. *11/8*

The Commission has made the following observations on the Bill:

1. The amendment bill from the Senate introduces sections to part XV on the National Police Reserve. The amendments from the Senate appear to have been proposed before the amendments done by the National Assembly or the Senate seems to have been unaware of amendments to the same Act. This is evident for instance:

In the NPS Act before amendment, section 110 (8) provided that,

“After the commencement of ~~this Act~~ the Commission may undertake the training of existing Reserve police Officers to ensure that the existing officers are conversant with and conform to the Constitution and this Act.”

The NPS Amendment Act from the National Assembly in July 2014 deleted the above sub-section and introduced a new one as section 110 (7) below:

“The Inspector-General shall, ~~undertake~~ the training of police reserve officers to ensure that they are conversant with the relevant provisions of the Constitution and this Act.”

However, the Senate Bill amends the same sub-section 7 by, "deleting the word "may" appearing immediately after the words "the Commission" and substituting it with the word "shall".

The above amendments in the Senate Bill seem to apply to the original Act before amendment by the National Assembly which deleted the section the Senate Bill is referring to.

2. Further, the Commission also notes that the Senate Bill introduces sub-section 2A that:

"The Commission shall provide the reserve police officers with –

- (a). Such training as may be necessary on enrollment of the officer and such regular training as may be required during the period of service ;
- (b). Such uniform, firearms and other facilities as may be necessary for the execution of the mandate of the Reserve Police Officers."

The Amendment Act from the National Assembly had already introduced section 110 (3A), 110 (7) and section 110C as below:

110 3A The police reserve officers shall-

- (a). Be provided with proper uniform, service identity cards and weapons
- (b). Be deployed in specific areas with defined commands and supervision
- (c). Undergo vetting and training before deployment.

110 (7) The Inspector-General shall, undertake the training of police reserve officers to ensure that they are conversant with the relevant provisions of the Constitution and this Act.

110C. Police reserve officers shall be-

- (a). Recruited by the Commission upon recommendation and in consultation with the Inspector-General; and
- (b). Deployed in such areas as Inspector- General in consultation with the National Security Council may deem necessary,

Therefore, the amendments to the NPS Act from the National Assembly had adequately catered for the vetting, recruitment, training and deployment of

the reserve police officers by allocating the role of recruitment and vetting to the Commission and training and deployment to the Inspector General.

The role of the Commission under the NPSC Act is to approve the police training curriculum and oversee its implementation. While the role of the Inspector General under the NPS Act is to recommend the establishment of, manage and maintain training institutions, centers or places for the training of officers joining the Service and other officers. The Deputy Inspectors-General have the role of coordinating training in the Services. Overall, it is the role of the Inspector General to ensure police officers undergo police training in order to engage in their duties.

Therefore, the mandate to undertake training, equipping and deployment of the National Police Reserve officers is rightly vested in the Inspector General.

3. The Senate Bill introduces section 117A and 117B providing clarity that expenses occasioned by implementation of section 110 -115, on police reserve shall be provided from:
 - a) Gifts or grants
 - b) Monies allocated by the National Assembly
 - c) And there may be established a fund for the purpose

This is an expansion to the existing provision in the NPS Act prior to amendment that provided the sources of funds of the Service under section 117.

Therefore, the amendments proposed by the Senate need to be re-aligned to the amendments passed by the National Assembly to the NPS Act, 2014.

Yours Sincerely,



OJANGO OMUMU
CS/CHIEF EXECUTIVE OFFICER

Office Copy



Kenya National Assembly

To : Hon. Speaker, Kenya National Assembly
From : Chairman, Budget and Appropriations Committee
Date : 29th September, 2015
Subject : Legislative Proposals (Motions) Referred to the Budget
and Appropriations Committee

The Budget and Appropriation Committee has considered several legislative proposals referred to it by your Office pursuant to Article 114(2) of the Constitution. The following are the recommendations of the Committee for each of the legislative proposals.

1. The Senate passed the a number of Bills on various dates and forwarded them to the National Assembly by way of message to seek its concurrence with respect to the standing orders of both houses. Upon receipt of the senate messages, the same were referred to the Budget and Appropriations Committee for consideration pursuant to Article 114 of the Constitution.

Particularly the following Bills and Messages from the Senate were committed to the Budget and Appropriations Committee.

- i. The Public Finance Management (Amendment) Bill, 2014 (Senate Bill No. 11 of 2014)
- ii. The Parliamentary Service Amendment Bill ((Senate Bill No. 21 of 2014)
- iii. The Potato Produce and Marketing Bill, 2014 (Senate Bill No. 22 of 2014)

- iv. The Public Fundraising Appeals Bill, 2014 (Senate Bill No. 28 of 2014)
- v. The National Government Co-ordination (Amendment) Bill, 2014 (Senate Bill No. 30 of 2014)
- vi. The National Police Service (Amendment) Bill, 2014 (Senate Bill No. 29 of 2014)
- vii. The Natural Resources (Benefit Sharing) Bill, 2014 (Senate Bill No. 34 of 2014)

Upon discussions, the Committee formed the opinion that indeed all these Bills are “Money Bills” as defined in Article 114 of the Constitution. Further, the Committee observed that Article 109(5) of the Constitution provides that “a Bill may be introduced by any member or Committee of the relevant House of Parliament, but a Money Bill may be introduced ONLY in the National Assembly in accordance with Article 114”.

Therefore, these Bills are unprocedurally before the National Assembly, Secondly, constitutional questions may arise if the national assembly commences the process of concurrence on the above bills.

2. Consideration and Discussion on the Motion on *Scholarships to at least one student per county to study oncology Bill, 2015* by , Hon. Mrs. Gladys Wanga, M.P

The Committee considered the motion as proposed and formed the opinion that the motion could proceed with amendments taking into consideration holistic approach to cancer treatment and management including, training, facilities, and treatment Centres where the government signs contractual agreement with the oncologists without necessarily restricting the beneficiaries to county hospitals. It could also build on developing partnership with local public universities for training.

3. Review and Discussion of *The Proposed Constituencies Development Fund (Repeal) Bill, 2015* by , Hon. Moses Lessonet, M.P

The committee considered the proposed bill, and formed the opinion that the draft bill should proceed with amendments taking into account coming up with a new title, fast tracking its passage, extension of the court order by at least four years beyond the February 2015 deadline, enriching the Bill with

respect to 4th Schedule of the Constitution in relation to functions that the national government is responsible for

Hon. Mary Emaase, M.P.



Vice Chairperson, Budget and Appropriations Committee