

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

TWELFTH PARLIAMENT— SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL
SECURITY

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL,
NO. 12 OF 2018

DIRECTORATE COMMITTEESERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2018

CONTENTS

FOREWARD.....	3
1.0 PREFACE.....	4
2.0 COMMITTEE MEMBERS	5
2.1 COMMITTEE SECRETARIAT	5
3.0 BACKGROUND.....	6
4.0 SUBMISSION OF MEMORANDA.....	6
6.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS BILL, 2017).....	7
7.0 COMMITTEE GENERAL OBSERVATIONS	14
8.0 COMMITTEE RECOMMENDATIONS.....	16

FOREWARD

The Statute Law (Miscellaneous Amendments) Bill, 2018 National Assembly Bill No. 12 of 2018 was published on 10th April 2018 and read first time on 18th April, 2018. The bill is in keeping with the practice of making amendments which do not merit the publication of separate Bills and consolidating them to one Bill. The bill therefore proposes amendments to various Acts of Parliament. Pursuant to the provisions of Standing Order 127 (1), of the National Assembly Standing Orders which provides *that a Bill having been read a first time shall stand committed to the relevant Departmental Committee* it is on this basis that the Committee makes this Report.

I take this opportunity to thank all Members of the Committee for their input in the consideration of the Statute Law (Miscellaneous Amendments) Bill, 2018. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability and transparency.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Administration and National Security, it is my pleasant privilege and honor to present to this House the Report of the Committee on the Statute Law (Miscellaneous Amendments) Bill, 2018.

SIGNED.....

HON. (HON. PAUL KOINANGE, MP)

(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

DATE.....

1.0 PREFACE

The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to provisions of Standing Orders 216(1).

1. The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, inter alia;
 - 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; and
 - b) study and review all legislation referred to it;
 - c) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204.

Honorable Speaker,

2. In executing its mandate, the Committee oversees the following Ministries and Departments:
 - i) The Ministry of Interior & Coordination of National Government
 - a) State Department of Interior
 - b) State Department of Border Control, Immigration and Registration of Persons.
 - c) State Department of Correctional Services
 - ii) The National Police Service Commission
 - iii) The Independent Policing Oversight Authority
 - iv) The Public Service Commission
3. According to Schedule II of the Standing Orders, the Committee is mandated to

Consider the following subjects:

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service,
- vi) Prisons;
- vii) Immigration

2.0 COMMITTEE MEMBERS

1. Hon. Paul Koinange, MP (Chairperson)
2. Hon. John Waluke, MP (Vice-Chairperson)
3. Hon. Athanas Wamunyinyi, MP
4. Hon. Justus Kizito, MP
5. Hon. Makali Mulu, MP
6. Hon. Didmus Wekesa Barasa Mutua, MP
7. Hon. Geoffrey Kingagi Muturi, MP
8. Hon. Marselino Malimo Arbelle, MP
9. Hon. Tecla Chebet Tum, MP
10. Hon. Josphat Kabinga Wachira, MP
11. Hon. Nimrod Mbithuka Mbai, MP
12. Hon. George Theuri, MP
13. Hon. Martin Deric Ngunjiri Wambugu, MP
14. Hon. Abdi Omar Shurie, MP
15. Hon. Yussuf Mucheke Halima, MP
16. Hon. Peter Masara, MP
17. Hon. Ahmed Kolosh Mohammed, MP
18. Hon. Aduma Owuor, MP
19. Hon. Edward Oku Kaunya, MP

2.1 COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|------------------------|
| 1. Mr. Abdullahi Aden | - | Senior Clerk Assistant |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Mr. Sidney Bwire | - | Legal Counsel II |
| 4. Mr. Donald Manyala | - | Researcher Officer III |
| 5. Mr. Edison Odhiambo | - | Fiscal Analyst III |

3.0 BACKGROUND

The Statute Law (Miscellaneous Amendments) Bill, 2018 National Assembly Bill No. 12 of 2018 was read first time on 18th April, 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1) and report to the House.

The bill is in keeping with the practice of making amendments which do not merit the publication of separate Bills and consolidating them to one Bill. The bill therefore proposes amendments to the following Acts of Parliament.

- I. The Registrations of persons Act (Cap 160)
- II. The Public Holidays Acts (Cap 110)
- III. The Community Service Order Act No. 10 of 1998
- IV. Iv) The Alcoholic Drinks Control Act No. 4 of 2010
- V. The Independent Police Oversight Authority Act No. 35 of 2011
- VI. The National Authority for the Campaign Against Alcohol and Drug Abuse Act No. 14 of 2012

4.0 SUBMISSION OF MEMORANDA

Article 118 of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the Legislative and other business of Parliament and its committees

Standing order 127 (3) provides that, " the Departmental Committee to which a bill is committed shall facilitate public participation and shall take in to account views and recommendations of the public when the committee makes its report to the House.

In the Consideration of the Bill, the committee invited memoranda from the public vide a notice in the local dailies Pursuant to Article 118 of the Constitution and Standing order 127 (3).

5.0 SITTINGS

The Committee considered the Statute Law (Miscellaneous Amendments) Bill. No 12 of 2018 in its sittings held on Thursday 24th May, 2018 and adopted its report Thursday 7th June, 2018.

6.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS BILL, 20178

The Legal Counsel Mr. Sidney Bwire took the Members through the Statute law Miscellaneous Amendments Bill, 2018 on Thursday 24th May 2018 explaining the amendments to the various Acts and their effect in the table below.

STATUTE	SECTION	AMENDMENT	EFFECT
The Alcoholic Drinks Control Act (No. 4 of 2010)	s.2	Delete the definition of the word "magistrate" and substitute therefor the following new definition– "magistrate" shall have the meaning assigned to it under the Magistrate Courts Act, 2015.	Presently a magistrate above the rank of resident magistrate has jurisdiction to handle all cases under the Act. The amendment will permit all magistrates' courts to exercise jurisdiction and to v
The National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012 (No. 14 of 2012)	s.6(1)(a)	Delete the expression "with the approval of the National Assembly".	The Bill proposes to amend the Act by way of deletion that will remove the requirement that a person appointed as Chairperson of the Authority must be approved by Parliament.
The Community Service Orders Act, 1998 (No. 10 of 1998)	s.2	Delete the definitions of the expressions "Minister" and "Permanent Secretary". Insert the following new definitions in proper alphabetical sequence- "Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to correctional services; and "Principal Secretary" means the Principal Secretary in the Ministry for the time being responsible for matters relating to correctional services.	The Bill proposes to amend the Community Service Orders Act, 1998, to introduce the terms "Cabinet Secretary" and "Principal Secretary" . The latter aligns the provision to refer to offices established under Article of the Constitution..
	s.3(3)	Delete the words "it may" and substitute therefor the words "it shall".	The amendments will it mandatory that all persons convicted of an offence for a term that does not exceed three years shall serve community service instead of being jailed.

		Insert the following new subsection immediately after subsection (8)- (9) Where a person is convicted of an offence, and is placed under a Community Service Order, such conviction shall be disregarded for the purpose of any enactment by or under which any disqualification or disability is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of an offence committed after a previous conviction: Provided that if the original order is set aside and the offender is sentenced for the original offence, this section shall cease to apply in respect of that offence, and the offender shall be deemed for purposes of any enactment imposing a disqualification to have been convicted on the date of sentence.	The amendment is to the effect that a person who has served out a community service order will not be placed under a legal disability as a person who has served a jail sentence.
	s.7(1)(c)	Delete and substitute therefor the following new paragraph - “(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to the interior and co-ordination of national government.”	The amendment is a substitution that replaces the term ‘permanent secretary’ with ‘principal secretary’ that aligns the provision to refer to offices established under Article of the Constitution.
		Delete paragraph (g).	The amendment is a deletion that removes the Director of Probation from the membership of the National Community Service

			Orders Committee. However the amendment appears to remove a repetition as section (1A) provides that the Director of Probation is the vice chairperson of the Committee.
	(3)	Delete.	The amendment is a deletion that eliminates the procedure of electing a vice chairman, the amendment appears to eliminate a contradiction with section subsection (1A) that provides that the Director of Probation is the vice chairperson of the Committee.
	s.8(1)	Delete paragraph (a) and substitute therefor the following new paragraph - (a) advise the Cabinet Secretary and the Chief Justice generally on the proper administration of this Act or on any other matters relating to community services.	The amendment is a substitution that replaces the term 'Minister' with 'Cabinet Secretary' that aligns the provision to refer to offices established under Article of the Constitution.
	s.17	Delete the word "Minister" and substitute therefor the expression "Cabinet Secretary".	The amendment is a substitution that replaces the term 'Minister' with 'Cabinet Secretary' in order to align the provision to refer to offices established under Article of the Constitution.
The Registration of Persons Act (Cap. 107)	s.3,	Insert the following new definitions in proper alphabetical sequence- "Biometric" means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves and Deoxyribonucleic Acid in digital form; "Global Positioning System	The Bill proposes to provide for the capture of biometric data and geographical data in the registrations of persons in Kenya.

	coordinates” means the unique identifier of precise geographic location on the earth, expressed in alphanumeric character being a combination of latitude and longitude; and “physical form” means existing in a form that one can see and touch.	
s.5(1)(d),	Delete the and substitute therefor - (d) (i) county of birth; or (ii) county of residence.	The amendment is a substitution that eliminates the requirement to insert the declared tribe or race of a persona as mandatory information in the register of Persons and in place insert information touching on a person’s country of birth or residence.
(1)(g),	Insert the words “and Global Positioning System coordinates, Land Reference Number, Plot Number or House Number” immediately after the word “place”.	The amendment is an insertion that compels the Registrar of persons to record the Global Positioning System coordinates, Land Reference Number, Plot Number or House Number alongside information touching on a person’s ‘place of residence and postal address’
(1)(h),	Insert the words “in physical form” immediately after the words “toe impressions”.	The amendment is an insertion that compels the Registrar of persons to record finger and thumb impressions but in case of missing fingers and thumbs, palm or toe or palm and toe impressions in physical form.
(1)(h),	Insert the following new paragraph immediately after paragraph (h) - (ha) biometric data.	The amendment is an insertion that compels the Registrar of persons to record biometric data in the Register of persons

	s.9(1)	Delete.	The amendment is a deletion that eliminates the requirement for the Registrar of Persons to issue an identity card within thirty days of an application.
	Establishment of the National Integrated Identity Management System	9A. (1) There is established a National Integrated Identity Management System. (2) The functions of the system are - (a) to create, manage, maintain and operate a national population register as a single source of personal information of all Kenyan citizens and registered foreigners resident in Kenya; (b) to assign a unique national identification number to every person registered in the register; (c) to harmonise, incorporate and collate into the register, information from other databases in Government agencies relating to registration of persons; (d) to centrally print and distribute for collection all national identification cards, refugee cards, foreigner certificates, birth and death certificates, driving licenses, work permits, passport and foreign travel documentation, student identification cards issued under the Births and Deaths Registration Act; Basic Education Act; Registration of Persons Act, Refugees Act, Traffic Act and the Kenya Citizenship and Immigration Act and all other forms of government issued identification documentation as may be specified by gazette notice by the Cabinet Secretary; (e) to prescribe, in consultation with the various relevant issuing authorities, a format of	The amendment is an insertion and proposes to establish the National Integrated Identity Management System.

		identification document to capture the various forms of information contained in the identification documents in paragraph (d) for purposes of issuance of a single document where applicable; (f) to verify and authenticate information relating to the registration and identification of persons; (g) to collate information obtained under this Act and reproduce it as may be required, from time to time; (h) to ensure the preservation, protection and security of any information or data collected, obtained, maintained or stored in the register; and (i) to perform such other duties which are necessary or expedient for the discharge of functions under this Act.	
The Public Holidays Act (Cap 110)	Schedule Part I	Delete the words "Kenyatta Day" and substitute therefor the words "Mashujaa Day". Delete the words "Independence Day" and substitute therefor the words "Jamhuri Day".	The Bill proposes to amend the Public Holidays Act to replace the term "Kenyatta Day" with the term "Mashujaa day" and the term "Independence Day" with term "Jamhuri Day" in keeping with the Constitution of Kenya, 2010.
The Independent Police Oversight Authority Act, 2011 (No. 35 of 2011)	s. 11(1)	Delete the words "within fourteen days after the commencement of this Act" and substitute therefor the words "at least three months before the lapse of the term of the chairperson or member of the Authority, or within fourteen days of the occurrence of a vacancy in the office of the chairperson or member of the Authority under this Act".	The principal object of this Bill is to amend the Independent Policing Oversight Authority Act, Cap. 88 to ensure that the process of recruitment of the Board of the Authority is undertaken three months before expiry of the term of the board members. The amendment shall ensure that there will be no lacuna in decision making and general stewardship of

			the Authority, especially touching on administrative matters that require resolution of the Board.
--	--	--	--

7.0 COMMITTEE GENERAL OBSERVATIONS

The Committee having considered the Statute Law (Miscellaneous Amendments) Bill, 2018 observed the following;

1. The Alcoholic Drinks Control Act No. 4 of 2010: the committee agreed to the Amendments
2. The Public Holidays Acts (Cap 110) : the committee agreed to the Amendments
3. The Independent Police Oversight Authority Act No. 35 of 2011: the committee agreed to the amendments
4. The National Authority for the Campaign Against Alcohol and Drug Abuse Act No. 14 of 2012; **the committee agreed to the amendments**
5. **The Community Service Order Act No. 10 of 1998**

The committee proposes the following amendments

SCHEDULE

THAT, the Schedule to the Bill be amended—

- (a) in the proposed amendments to section 3 of the Community Service Orders Act (No. 10 of 1998) by inserting the following new paragraph immediately after new subsection (9)—
“(10) Subsection (1) of this Act shall not apply to a person convicted under the following legislation—

 - (a) the Anti-Corruption and Economic Crimes Act, No. 3 of 2003;
 - (b) the Sexual Offences Act, No. 3 of 2006;
 - (c) the Prohibition of Female Genital Mutilation, No. 32 of 2011;
 - (d) the Prevention of Terrorism Act, No. 30 of 2012;

- (e) the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009; or
- (f) the Bribery Act, No. 47 of 2016.”

Justification

The proposed amendment will limit a Court from issuing community service orders against persons convicted under legislation listed in the amendment.

6. The Registration of persons Act cap 107

The Committee proposes the following Amendments

(b) In the proposed amendments the Registration of Persons Act (Cap.107)

- (i) by inserting the following new definition in proper alphabetical sequence to the proposed amendments to section 2—

“the Principal Secretary in the Ministry responsible for matters relating to registration of persons”

Justification

The proposed amendment will clarify as to exactly who administration and management of the Act shall vest under. Presently, the Act does not assign any Ministry responsibility for management of the Act..

- (ii) by deleting the proposed amendment to section 5(1)(g) and substituting therefor the following amendment—

“delete and substitute therefor—

- (g) place of residence and postal address, Global Positioning System coordinates, Land Reference Number, Plot Number or House Number, if any;”

Justification

The proposed amendment serves to clarify that when the Registrar of Persons is taking entering details of a person in the register, the Registrar may enter a combination of either sets of information. This will ensure that persons who lack one or more combinations of details are denied registration and consequently, access to a national identity card and related benefits.

- (iii) by deleting the proposed amendment to section 9(1)

Justification

The original provision is an amendment by way of a deletion that eliminates the requirement for the Registrar of Persons to issues an identity card within thirty days of an application. The amendment appears to arbitrarily deny a person the right to registered as a citizen by birth or by registration, contrary to Articles 12, 14 and 15 of the Constitution. The Committee proposes to delete the amendment.

- (iv) by inserting the following new paragraph in the proposed section 9A immediately after paragraph (2)—

“(3) The Principal Secretary shall be responsible for the administration, coordination and management of the system.”

Justification

The proposed amendment serves to clarify that the Principal Secretary in the ministry responsible for matters relating to registration of persons shall be the person who shall exercise overall responsibility with respect to the administration, coordination and management for proposed National Integrated identity Management System.

8.0 COMMITTEE RECOMMENDATIONS

The Committee having considered the Statute Law (Miscellaneous Amendments) Bill, 2018 recommends the following;

1. The Alcoholic Drinks Control Act No. 4 of 2010: the committee agreed to the Amendments
2. The Public Holidays Acts (Cap 110) : the committee agreed to the Amendments
3. The Independent Police Oversight Authority Act No. 35 of 2011: the committee agreed to the amendments
4. The National Authority for the Campaign Against Alcohol and Drug Abuse Act No. 14 of 2012; the committee agreed to the amendments

5. The Community Service Order Act No. 10 of 1998

The committee proposes the following amendments

SCHEDULE

THAT, the Schedule to the Bill be amended—

- (c) in the proposed amendments to section 3 of the Community Service Orders Act (No. 10 of 1998) by inserting the following new paragraph immediately after new subsection (9)—

“(10) Subsection (1) of this Act shall not apply to a person convicted under the following legislation—

- (h) the Anti-Corruption and Economic Crimes Act, No. 3 of 2003;
- (i) the Sexual Offences Act, No. 3 of 2006;

- (j) the Prohibition of Female Genital Mutilation, No. 32 of 2011;
- (k) the Prevention of Terrorism Act, No. 30 of 2012;
- (l) the Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009; or
- (m) the Bribery Act, No. 47 of 2016.”

Justification

The proposed amendment will limit a Court from issuing community service orders against persons convicted under legislation listed in the amendment.

6. The Registration of persons Act cap 107

The Committee proposes the following Amendments

- (d) In the proposed amendments the Registration of Persons Act (Cap.107)
 - (v) by inserting the following new definition in proper alphabetical sequence to the proposed amendments to section 2—

“the Principal Secretary in the Ministry responsible for matters relating to registration of persons”

Justification

The proposed amendment will clarify as to exactly who administration and management of the Act shall vest under. Presently, the Act does not assign any Ministry responsibility for management of the Act..

- (vi) by deleting the proposed amendment to section 5(1)(g) and substituting therefor the following amendment—

“delete and substitute therefor—

 - (n) place of residence and postal address, Global Positioning System coordinates, Land Reference Number, Plot Number or House Number, if any;”

Justification

The proposed amendment serves to clarify that when the Registrar of Persons is taking entering details of a person in the register, the Registrar may enter a combination of either sets of information. This will ensure that persons who lack one or more combinations of details are denied registration and consequently, access to a national identity card and related benefits.

- (vii) by deleting the proposed amendment to section 9(1)

Justification

The original provision is an amendment by way of a deletion that eliminates the requirement for the Registrar of Persons to issues an identity card within thirty days of an application. The amendment appears to arbitrarily deny a person the right to registered as a citizen by birth or by registration, contrary to Articles 12, 14 and 15 of the Constitution. The Committee proposes to delete the amendment.

(viii) by inserting the following new paragraph in the proposed section 9A immediately after paragraph (2)—

“(3) The Principal Secretary shall be responsible for the administration, coordination and management of the system.”

Justification

The proposed amendment serves to clarify that the Principal Secretary in the ministry responsible for matters relating to registration of persons shall be the person who shall exercise overall responsibility with respect to the administration, coordination and management for proposed National Integrated identity Management System.