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NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION &
NATIONAL SECURITY

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT)
BILL, 2019

DIRECTORATE COMMITTEESERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2019


CHAIRPERSON'S FOREWARD

The Statute Law (Miscellaneous Amendment) Bill, 2019 was published and read the first time. 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 Amendment) Bill, 2019. 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, 2019.

SIGNED.....



HON. (HON. PAUL KOINANGE, MP)
(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

DATE.....

7th May 2019

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. Peter Kaluma, 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. Halima Mucheke, MP
16. Hon. Peter Masara, MP
17. Hon. Aduma Owuor, MP
18. Hon. Edward Oku Kaunya, MP

2.1 COMMITTEE SECRETARIAT

1. Mr. Abdullahi Aden	-	Senior Clerk Assistant
2. Mr. Joshua Ondari	-	Clerk Assistant
3. Ms. Brigitta Mati	-	Legal Counsel
4. Mr. Donald Manyala	-	Researcher Officer III
5. Mr. Edison Odhiambo	-	Fiscal Analyst III

List of Recommendations

The Committee having considered the Statute Law (Miscellaneous Amendments) Bill, 2019 recommends the following;

1. **The Districts and Provinces Act, 1992 (No. 5 of 1992)**

The Committee agreed to the Proposed Amendments

The implication of the amendment is to give power to the Cabinet Secretary responsible for internal affairs to make regulations for the better implementation of the provisions of the Act;

2. **The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010)**

The Committee resolved to delete the Proposed Amendments

Justification

The implication is to allow all cadres of Magistrates to try offences under the Act. The Committee further observed that all cadre may not have the requisite experience to try offences under the Act;

3. **The Prevention of Terrorism Act, 2012 (Act No. 30 of 2012)**

Amendments

(a) in the proposed amendments to the Prevention of Terrorism Act, 2012, (No.30 of 2012)—

(i) by deleting the proposed amendments to section 40A (2) and substituting therefore the following—

s.40A(2) Delete paragraph (e) and substitute therefor the following new paragraph—

“(e) the Directorate of Immigration;

Insert the following new paragraphs immediately after paragraph (e)—

“(ea) the National Police Service;

(eb) the Kenya Coast Guard Service;”

40A (3) the Committee agreed to the proposed Amendments

Justification

The implication of the amendment is to increase the term of the members of the Centre to be cumulative six years to enhance continuity of the centre.

40B (2) the Committee agreed to the proposed amendments

Justification

The implication of the amendment is to provide for additional responsibilities to the centre

40C the Committee agreed to the proposed amendments

Justification

The implication of the amendment is to also provide for additional responsibilities with regard to approving all civil society organizations and international non-governmental organizations engaged in preventing and countering violent extremism and radicalization. The amendment is important as there is need to further vet or interrogate the operations of the above organizations.

3.0 BACKGROUND

The Statute Law (Miscellaneous Amendments) Bill, 2019 was read first time and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1) and there after 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 Districts and Provinces Act, 1992 (No. 5 of 1992)
- II. The Alcoholic Drinks Control Act, (No. 4 of 2010)
- III. The Prevention of Terrorism Act, 2012 (No. 30 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).

1. The Committee received memoranda from the public pursuant to Standing Order 127 (3) from the following two entities:
 - a) Bowmans Coulson Harney LLP)
 - b) Coast Civil Society Network
 - c) The Kenya Association of Manufacturers

Bowmans (Coulson Harney LLP)

The Memoranda by **Bowmans (Coulson Harney LLP)** sates as follows;

The **Bowmans (Coulson Harney LLP)** reviewed the Alcoholic Drinks Control Act, 2010 (No.4 of 2010) and noted that the Act effectively placed offences under the Act outside the jurisdiction of the resident magistrate by defining magistrate as a magistrate above the rank of a resident magistrate.

The Committee observed that;

The implication of the amendment is to open up all cadres of magistrates to try offences under the Act. It further observed that the intention of National Assembly is to restrict some cadres of magistrates who are to hear cases under the Act due to lack of experience in handling such matters.

Coast Civil Society Network

The Memoranda by the Coast Based Civil Society Organization working around preventing and countering Violent Extremism stated as follows;

- a) The Institution reviewed the Prevention of Terrorism Act, 2012 (No.30 of 2012) and noted the following
- b) that the proposed amendments to the above mentioned statute raises concern amongst coast based civil society organisations engaged in preventing and countering violent extremism (PCVE);
- c) the proposed amendment to Section 40 C is against the spirit of collective responsibility and the tenets of the Public Benefit Organisation Act;
- d) that the CSO (Civil based organisations) have clear monitoring and evaluation framework in responding to issues around PCVE and as such the issues will not be well attended by the centre;
- e) the CSOs doubt the capacity of the Centre in approving and reviewing the work of CSO advocating for PCVE;
- f) the CSOs are mandated to carry out their roles pursuant to registration by the NGO board of Kenya and in their view subjecting them to another processes equivalent to double registration.

The Committee observed that

- a. Registration of NGOs is an activity undertaken by the NGO Board of Kenya. The function of the Board inter alia, is to *advise the Government on the activities of the Non-Governmental Organizations and their role in development within Kenya;*
- b. The Act provides that Board is to work in harmony with Non-Governmental Organizations Council. This is provided for under Section 24 (1) which states *“The Council shall advise the Board with respect to the code of conduct and such other statutes as*

may facilitate the regulation of Non-Governmental Organizations on matters of their activities, national security, training, the development of national manpower, institutional building, scientific and technological development and such other matters of national interest.”The inference of this section is that in terms of the regulation of non- governmental organisations in their activities, national security e.t.c other statutes may provide for a code of conduct or other additional measures that an NGO may be subjected to. In this case, the Council shall advise the Board on such additional measure. In this instance, section 40 C provides for such additional measures that CSOs and NGOs dealing with PCVE are to be subjected to that is further registration and further report to the centre on their daily activities.

- c. It is important to note that Public Benefit Organisations Act 2013 is a law seeking to provide a more enabling environment for NGOs, with clear criteria regarding NGOs’ registration, enhanced accountability, set timelines for processing applications, as well as tax incentives and benefits for organisations conducting “public benefit activities”. It was passed by the Parliament in 2012 and signed into law by the then President Mwai Kibaki on January 14, 2013, but has not been operationalized yet.
- d. The Public Benefit Organisations (Amendment) Bill, 2016 was to amend the Public Benefits Organizations Act, No. 18 of 2013 to operationalize the Act in accordance with the law. The Bill proposed to amend the Act by removing the powers conferred upon the Cabinet Secretary to determine the date or time at which this Act will come into force. The Bill lapsed at the end of the 11th Parliament.

The Kenya Association of Manufacturers

The Committed received Memoranda from the Kenya Association of Manufacturers that intended to amend section 32 (3) of the Alcoholics Drinks Act No. 4 of 2010 which provides the statement and health warning referred to in section (2) shall comprise not less than 30% of the total surface area of the package.

The amendment was to delete the word *package* and substitute it with the word *label*

The committee observed that, this proposed amendment was opening the scope of the Statute Law (Miscellaneous Amendment) Bill 2019, in that, it expanded the subject matter at hand contrary to the standing order 133 (5) of the National Assembly.

The Committee further sought comments on the Statute (Law Miscellaneous Amendment) Bill, 2019 from the Ministry of Interior & Coordination of National Government, the Office of the Attorney General and the Kenya Law Reform Commission to be submitted on or before Tuesday 23rd April 2019.

The Committee did not receive any comments from the Office of the Attorney General and the Kenya Law Reform Commission

The Committee received a letter from the Ministry of Interior and Coordination of National Government requesting for time to consolidate their comments on the Bill. **(Copy of the letter attached)**

5.0 SITTINGS

The Committee considered the Statute Law (Miscellaneous Amendments) Bill, 2019 in its sittings held on Tuesday 23rd April 2019 and Thursday 2nd May 2019 Respectively and adopted its report on Tuesday 7th May, 2019

6.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS BILL, 2019

The Legal Counsel took the Members through the Statute law Miscellaneous Amendments Bill, 2019 on Tuesday 23rd April 2019 explaining the amendments to the various Acts and their effect and informed the committee as follows;

The Statute Law (Miscellaneous Amendment) Bill, 2019 (National Assembly Bill No. 21 of 2019) was read a first time in the House on 3rd April, 2019.

The Bill seeks to make various amendments to several laws as specified. The Committee is tasked with conducting public participation on the following statutes which are proposed to be amended—

- (1) The Districts and Provinces Act, 1992 (No. 5 of 1992);
- (2) The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010); and
- (3) The Prevention of Terrorism Act, 2012 (Act No. 30 of 2012).

LAW	PROPOSED AMENDMENT	JUSTIFICATION
The Districts and Provinces Act, 1992 (No. 5 of 1992)	Insert the following new section immediately after	The principal object of the Districts and Provinces Act is to establish provinces and

<p><i>(The Act of Parliament is to prescribe the districts and provinces into which Kenya is divided)</i></p> <p><i>Repeal of section 4 of Act No. 16 of 1968</i></p> <p><i>5. Section 4 of the Constitution of Kenya (Amendment) Act, 1968 is repealed.</i></p>	<p>section 5—</p> <p>Regulations.</p> <p>6. The Cabinet Secretary of the Ministry for the time being responsible for internal affairs may make regulations for the better carrying into effect the provisions of this Act.</p>	<p>districts in Kenya.</p> <p>To restructure the system to fit devolved governance in terms of realigning the old structure to the new structure</p>
<p>The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010)</p> <p>Section 2</p> <p>“magistrate” means a magistrate above the rank of resident magistrate;</p>	<p>Delete the definition of the word "magistrate" and substitute therefor the following-</p> <p>"magistrate" has the meaning assigned to it in the Magistrates' Court Act, 2015 (No. 26 of 2015).</p>	<p>To eliminate inconsistencies between the Acts.</p>
<p>The Prevention of Terrorism Act, 2012 (Act No. 30 of 2012)</p> <p>40A. Establishment of a counter-terrorism Centre</p> <p>(1) There is established a National Counter-Terrorism Centre, hereinafter referred to as the "Centre" which shall be an inter-agency body.</p> <p>(2)The Centre shall consist of offices from the following organisations—</p> <p>(a)the Director appointed by the National Security</p>	<p>Delete paragraph (e) and substitute therefor the following new paragraph---</p> <p>"(e) the Directorate of Immigration;"</p> <p>Insert the following new paragraphs immediately after paragraph (e)—</p> <p>(f) the National Police Service;</p> <p>(g) the Ministry for the time being responsible for foreign affairs;</p> <p>(h) the Office of the Director</p>	<p>To rectify the drafting error in paragraph (e);</p> <p>To include other relevant agencies that acquire vital information that may assist in the prevention of terrorism.</p> <p>To extend the period the officers seconded may serve at the Centre.</p>

<p>Council;</p> <p>(b)the National Intelligence Service;</p> <p>(c) the Kenya Defence Forces;</p> <p>(d)the Attorney-General;</p> <p>(e)Directorate of Immigration and Registration; the National Police Service; and</p> <p>(f) such other national agencies as may be determined by the National Security Council.</p>	<p>of Public Prosecutions;</p> <p>(i) the Kenya Wildlife Services;</p> <p>(j) the Probation and Aftercare Services Department;</p> <p>(k) the Kenya Prisons Service;</p> <p>(l)the Kenya Civil Aviation Authority;</p> <p>and"</p> <p>Renumber paragraph (f) as paragraph (m).</p>	
<p>(3)The members of the Centre specified under subsection (2) shall be seconded to the Centre for a period not exceeding three years.</p>		
<p>(4)The Director shall be responsible for the management and implementation of the functions of the Centre.</p>		
<p>40B. Responsibilities of the Centre</p>	<p>Insert the following new paragraph immediately</p>	<p>To align new developments in prevention of terrorism to existing policy and legal</p>

<p>(1)The Centre shall be responsible for the co-ordination of national counter-terrorism efforts in order to detect, deter and disrupt terrorism acts.</p> <p>(2)Without prejudice to the provisions of subsection (1) the Centre shall—</p> <p>(a)establish a database to assist law enforcement agencies;</p> <p>(b)conduct public awareness on prevention of terrorism;</p> <p>(c)develop strategies such as counter and de-radicalization;</p> <p>(d)facilitate capacity building for counter-terrorism stakeholders ;</p> <p>(e)co-ordinate with other government agencies to provide security certification for aviation schools or companies.</p>	<p>after paragraph (e)—</p> <p>"(f) analyse all information and intelligence on terrorism and counterterrorism for purposes of proposing policy and legal adjustments to the National Security Council and other national security leadership."</p>	<p>structures.</p> <p>Policy and law on terrorism to adapt to new development on terrorism and counterterrorism</p>
<p>40C.Responsibility of the public and government bodies</p>	<p>Re-number the existing provisions as subsections (2) and (3) respectively and</p>	<p>To task the centre with the role of approving all civil societies and NGOs</p>

<p>(1)The Centre may request any person or government body for any information relating to terrorism.</p> <p>(2)Members of the public have a responsibility to furnish the Centre with any information relating to terrorism which is within their knowledge.</p>	<p>insert the following new subsection immediately before the renumbered subsections—</p> <p>"(1) The Centre shall be an approving and reporting institution for all civil society organisations and international non-governmental organisations engaged in preventing and countering violent extremism and radicalisation through counter-messaging or public outreach, and disengagement and reintegration of radicalised individuals."</p>	<p>conducting activities related to counterterrorism. The same organisations are to report to the centre of their daily operations.</p> <p>The Non-Governmental Organizations Co-Ordination Act provides for the registration of all civil societies and non-governmental organisations in Kenya.</p> <p>Section 12 (2) provides that "A certificate of registration shall be conclusive evidence of authority to operate throughout Kenya or such parts of the country as are specified therein."</p>
		<p>In this case, there is need for guidelines for the centre in approving, rejecting an application or appeals of the same</p>

7.0 COMMITTEE OBSERVATIONS

The Committee observed the following—

- (1) THAT, the proposed amendments to the Districts and Provinces Act, 1992 (No.5 of 1992), are in order as the implication of the amendment is to give power to the Cabinet Secretary responsible for internal affairs to make regulations for the better implementation of the provisions of the Act;
- (2) THAT, in the proposed amendments to the Alcoholics Drinks Control Act, 2010 (No.4 of 2010) the implication is to allow all cadres of Magistrates to try offences

under the Act. The Committee observed that all cadre may not have the requisite experience to try offences under the Act;

(3) THAT, in the proposed amendments to the Prevention of Terrorism Act, 2012 (No.30 of 2012) —

(a) in the proposed amendment to section 40A (2),

(i) the proposed amendment is to correct a drafting error;

(ii) to insert new paragraphs immediately after paragraph (e), which include the the Ministry for the time being responsible for foreign affairs, the Office of the Director of Public Prosecutions, the Kenya Wildlife Services, the Probation and Aftercare Services Department, the Kenya Prisons Service and the Kenya Civil Aviation Authority. The Committee observed that these agencies are covered under paragraph 2(f) which provides “*The centre shall consist of offices from such other national agencies as may be determined by the National Security Council.*” The Committee further observed that there is need to include the Kenya Coast Guard Services the maritime security organ with the mandate to protect Kenya’s territorial waters against terrorism, piracy among others. The Committee proposed to delete paragraphs (g) – (l) and insert a new paragraph (g) to read as “(g) the Kenya Coast Guard Service;

(iii) to delete the amendment to renumber the paragraph (f) as paragraph (m). the amendment has been rendered nugatory because of the deletion of the proposed paragraphs (g)- (l).

(b) in the proposed amendment to 40A(3), the Committee observed that the implication of the amendment is to increase the term of the members of the Centre to be cumulative six years. It was further observed that the term of the members of the Centre needs to be reconsidered to enhance continuity of the centre.

(c) in the proposed amendments to 40B (2), the Committee observed that the implication of the amendment is to provide for additional responsibilities to the centre;

(d) in the proposed amendments to 40C, the Committee observed that the implication of the amendment is to also provide for additional responsibilities with regard to

approving and all civil society organisations and international non-governmental organisations engaged in preventing and countering violent extremism and radicalisation. It was further observed that the amendment is important as there is need to further vet or interrogate the operations of the above organisations.

8.0 COMMITTEE RECOMMENDATIONS

The Committee having considered the Statute Law (Miscellaneous Amendments) Bill, 2019 recommends the following;

The Districts and Provinces Act, 1992 (No. 5 of 1992)

The Committee agreed to the Proposed Amendments

The implication of the amendment is to give power to the Cabinet Secretary responsible for internal affairs to make regulations for the better implementation of the provisions of the Act;

The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010)

The Committee resolved to delete the Proposed Amendments

Justification

The implication is to allow all cadres of Magistrates to try offences under the Act. The Committee further observed that all cadre may not have the requisite experience to try offences under the Act;

The Prevention of Terrorism Act, 2012 (Act No. 30 of 2012)

Amendments

(b) in the proposed amendments to the Prevention of Terrorism Act, 2012, (No.30 of 2012)—

(ii) by deleting the proposed amendments to section 40A (2) and substituting therefore the following—

s.40A(2)	Delete paragraph (e) and substitute therefor the following new paragraph—
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“(e) the Directorate of Immigration;

Insert the following new paragraphs immediately after paragraph (e)—

“(ea) the National Police Service;

(eb) the Kenya Coast Guard Service;”

40A (3) the Committee agreed to the proposed Amendments

Justification

The implication of the amendment is to increase the term of the members of the Centre to be cumulative six years to enhance continuity of the centre.

40B (2) the Committee agreed to the proposed amendments

Justification

The implication of the amendment is to provide for additional responsibilities to the centre

40C the Committee agreed to the proposed amendments

Justification

The implication of the amendment is to also provide for additional responsibilities with regard to approving and all civil society organizations and international non-governmental organizations engaged in preventing and countering violent extremism and radicalization. The amendment is important as there is need to approve and report the operations of the above organizations.

Signed.......... Date.....7th May 2019.....

Hon. Paul Koinange, MP
Chairman, Departmental Committee on Administration and National Security

