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ELEVENTH PARLIAMENT – SECOND SESSION 2014

Paper laid
By the Hon. Ndung'u
Gathenge - Chair
on 21/8/14
[Signature]

THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS

REPORT ON THE PROHIBITION OF ANTI-PERSONNEL MINES BILL 2014

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2014

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1.0 INTRODUCTION

The Departmental Committee on Defence and Foreign Relations is established pursuant to the provisions of Standing Order No. 216(5) of the Kenya National Assembly and in line with Article 124 of the Constitution (2010) which provides for the establishment of the Committees by Parliament. The functions of the Committee are, *inter alia*, to study and review all legislation referred to it as well as make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

The Committee is mandated to consider the following issues; on Defence, Intelligence, Foreign Relations, Diplomatic and Consular Services, International Boundaries, International Relations, Agreements, Treaties and Conventions.

In executing its mandate, the Committee oversees the operations of the following Ministries/State Departments and or Service:

- i) Ministry of Defence
- ii) Ministry of Foreign Affairs and International Trade
- iii) National Intelligence Service
- iv) State Department for East African Affairs in the Ministry of East African Affairs, Commerce and Tourism

2.0 COMMITTEE MEMBERSHIP

The Departmental Committee on Defense and Foreign Relations comprises the following Members: -

- v) Hon. Ndungu Gethenji, M.P. - Chairperson
- vi) Hon. Elias Bare Shill, M.P. - Vice-Chairperson
- vii) Hon. Jakoyo Midiwo, MGH, M.P.
- viii) Hon. Katoo Ole Metito, EGH, MGH, MP
- ix) Hon. Adan Keynan, CBS, M.P.
- x) Hon. Chrisantus Wamwalwa, M.P.
- xi) Hon. Nyiva Mwendwa, EGH, M.P.
- xii) Hon. Maj-Gen (Rtd) Joseph Nkaiserry, MBS, MGH, M.P.
- xiii) Hon. Gonzi Rai, MGH, M.P.
- xiv) Hon. Joel Onyantha, MGH, M.P.
- xv) Hon. Richard Onyonka, M.P.
- xvi) Hon. Wafula Wamunyinyi, M.P.
- xvii) Hon. Joseph Kiuna, M.P.
- xviii) Hon. Joseph Lekuton, M.P.
- xix) Hon. Yusuf Hassan, M.P.
- xx) Hon. Col (Rtd.) Ali Dido Rasso, MBS, M.P.
- xxi) Hon. John L. Nakara, M.P.
- xxii) Hon. Roselinda Soipan, M.P.
- xxiii) Hon. Anna N. Gathecha, M.P.
- xxiv) Hon. David Wafula, M.P.
- xxv) Hon. Elisha Busienei, M.P.

- xxvi) Hon. Abass S. Mohamed, M.P.
- xxvii) Hon. Joyce Wanjalah Lay, M.P.
- xxviii) Hon. Joseph Gitari, M.P.
- xxix) Hon. David Pkosing, M.P.
- xxx) Hon. Ibrahim Sane, M.P.
- xxxi) Hon. Dennitah Ghati, M.P.
- xxxii) Hon. Beatrice Nyaga, M.P.
- xxxiii) Hon. Ken Obura, M.P.

3.0. PRELIMINARIES

Honourable Speaker,

The legislative proposal giving rise to the Prohibition of Anti-Personnel Mines Bill, 2014 was submitted by the Cabinet Secretary for Defence and introduced in the House by the Leader of the Majority Party, the Hon. Aden Duale, EGH, M.P.

The Bill was read a First Time on the 26th March, 2014 and subsequently committed to the Departmental Committee on Defence and Foreign Relations for consideration pursuant to Standing Order No. 127 and Article 118 of the Constitution.

The principle object of the Bill is to provide for the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and their destruction (Known as the Ottawa Convention) and provides a comprehensive framework for ending the suffering caused by anti-personnel. States that are parties to the Convention, Kenya being among them have undertaken to cease production and acquisition of these weapons and to dispose of existing stockpiles. Ancillary undertakings include periodic reporting to the Secretary General of the United Nations on implementation of the Convention and allowing fact-finding missions to visit the country.

The Constitution of Kenya, Article 2 (6) provides that any Treaty or Convention ratified by Kenya shall form part of the law of Kenya under the Constitution. In addition, most of the obligations undertaken by parties to the Ottawa Convention do not require a legislative basis. Article 9 of the Convention, however, requires a party to the Convention to impose penal sanctions to suppress activities prohibited under the Convention. The object of this Bill is to impose the required sanctions, in such circumstances and with, such exceptions as are consistent with the terms of the Convention.

The Cabinet Secretary for the time being responsible for matters relating to Defence may from time to time by notice in the Gazette, amend the Schedule to reflect any changes made, to the Convention, or any other subsequent protocols which may be ratified or acceded to by the Country, if those changes are binding on the Republic of Kenya.

The enactment of this Bill will occasion additional expenditure of public funds to be provided for through the estimates. The Bill is not a Bill concerning county governments.

Honourable Speaker,

Article 118(1) (b) 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) states that “the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House.”

In this regard, the Committee did invite interested members of the Public to submit any representations or memoranda on the Bill *vide* a notice in the local dailies dated, 4th July 2014. No representation or memoranda were received by the Committee in this regard.

The Committee was very keen to take into account the views and recommendations of the Ministry of Foreign Affairs and International Trade; the Ministry for Interior and National Coordination (The Small Arms and Light Weapons Division and the National Steering Committee of Peace-building and Conflict Management). Therefore, the Committee did invite these institutions to engagement sessions but they were uncooperative. Views and recommendations on Bills should be voluntary and no stakeholder can be compelled to give their views or recommendations.

Thus, in considering the Bill, the Committee mainly took into account submissions from the Ministry of Defence. Further, the Committee held various Sittings during which Members considered the Bill in accordance with the Standing Orders and the Constitution. The minutes of these Sittings are appended to this report.

Honourable Speaker,

I would like to point out that the Committee was in agreement with the general contents of the Bill. However, the Committee proposed amendments to some Clauses as contained in the Committee Amendments Section of this Report.

In appreciation, the Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. I also wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this Report.

I also wish to thank the Cabinet Secretary for Defence for submitting this proposed legislation that will among other things provide for the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and their destruction in accordance with the Ottawa Convention, and for her input to the Committee during the consideration of the Bill. Further, I wish to thank the Leader of the Majority Party for introducing this proposed legislation to the House. Last but not least, Honourable Speaker,

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Defence and Foreign Relations, to table the Report on the consideration of the Prohibition of Anti-personnel Mines Bill, 2014 pursuant to Standing Order 127 (4).

SIGNED.....

HON. NDUNGU GETHENJI, M.P.
(CHAIRPERSON)

DATE..... 19/8/2014

4.0 COMMITTEE DELIBERATIONS ON THE ANTI-PERSONNEL MINES BILL, 2014

The Committee considered the Bill, clause by clause and below is a summary of the Committee deliberations:-

TITLE – The Prohibition of Anti-Personnel Mines Bill, 2014: Agree to

PART I – PRELIMINARY

- Clause 1: Amendment proposed.
- Clause 2: Amendment proposed.
- Clause 3: Agreed to.
- New Clause 3A proposed
- Clause 4: Amendment proposed.

PART II – OFFENCES RELATING TO ANTI-PERSONNEL MINES

- Clause 5: Agreed to.
- Clause 6: Agreed to.
- Clause 7: Agreed to.
- Clause 8: Agreed to
- Clause 9: Amendment proposed.

PART III – SECURING THE DESTRUCTION OF ANTI-PERSONNEL MINES

- Clause 10: Agreed to.
- Clause 11: Agreed to.
- Clause 12: Agreed to.
- Clause 13: Agreed to.
- Clause 14: Amendment proposed.
- Clause 15: Agreed to.

PART IV – FACT-FINDING MISSIONS

- Clause 16: Amendment proposed.
- Clause 17: Agreed to.
- Clause 18: Agreed to.
- Clause 19: Agreed to.
- Clause 20: Amendment proposed.

PART V – INFORMATION AND RECORDS

- Clause 21: Agreed to.
- Clause 22: Agreed to.
- Clause 23: Agreed to.

PART IV – MISCELLANEOUS PROVISIONS

- Clause 24: Amendment proposed.
- Clause 25: Agreed to.
- Clause 26: Agreed to.
- Clause 27: Agreed to.
- Clause 28: Agreed to.

SCHEDULE – CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION: Agreed to.

5.0 COMMITTEE AMENDMENTS

Honourable Speaker,

Based on the submissions, presentations and observations adduced, the Committee proposes the following amendments to the Prohibition of Anti-personnel Mines Bill, 2014:-

CLAUSE 1

THAT clause 1 be deleted and be replaced with the following clause-

Provision	Amendment
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s.1	This Act may be cited as the Prohibition of Anti-Personnel Mines Act, 2014, and shall come into force on the first day of the sixth month after the date on which Kenya deposits its instrument of ratification, acceptance, approval or accession.
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CLAUSE 2

THAT clause 2 be amended in subsection 1 by inserting the following new definitions in their proper alphabetical sequence-

Provision	Amendment
-----------	-----------

s.2(1)	“anti-personnel mine” means a mine that is designed, altered or intended to be exploded by the presence, proximity or contact of a person and that is capable of incapacitating, injuring or killing one or more persons. Mines that are designed, altered or intended to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, and that are equipped with anti-handling devices, are not considered to be anti-personnel mines as a result of being so equipped;
--------	---

“Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, set out in the schedule to this Act, as amended from time to time in accordance with Article 13 of the Convention and includes any amendments to the Convention, ratified, accepted, approved or acceded to and entered into force by Kenya;

“mine” means a munition designed, altered or intended to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

“transfer”, in respect of anti-personnel mines, includes, in addition to the physical movement of anti-personnel mines, the transfer of title to and control over anti-personnel mines, but does not include the transfer of territory containing emplaced anti-personnel mines;

CLAUSE 4

THAT the following new clause be inserted immediately after clause 3-

Provision	Amendment
-----------	-----------

Purpose of the Act.	3A. The purpose of this Act is to implement Kenya’s obligations under the Convention.
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CLAUSE 9

THAT clause 9 be deleted.

CLAUSE 14

THAT clause 14 be deleted.

CLAUSE 16

THAT subsection (1) of clause 16 be deleted and replaced with the following new clause-

Provision	Amendment
-----------	-----------

s.16(1)	If a fact finding mission is authorized under Article 8 of the Convention and if such request is granted, the Cabinet Secretary may issue an authorization under this section in respect of that mission.
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CLAUSE 20

THAT the following new clause be inserted immediately after clause 20-

Provision Amendment

Delegation
by Cabinet
Secretary. **20A.** (1) The Cabinet Secretary may delegate to any Senior officer under the control direction and supervision of the Cabinet Secretary, by name or office, any of the functions and powers imposed or conferred on the Cabinet Secretary under this Act except for the power to make regulations under section 28.

(2) Any delegation under this section shall not prevent the Cabinet Secretary from personally exercising or performing such delegated function or power.

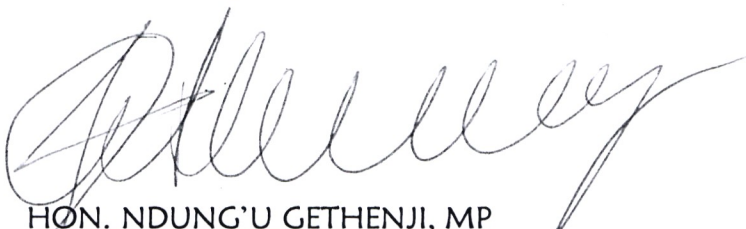
(3) A delegation made under subsection (1) may—

(a) be made subject to such conditions, limitations or restrictions as may be specified in the instrument of delegation; and

(b) be revoked or varied.

CLAUSE 24

THAT clause 24 be amended in subsection 1 by deleting the words “Attorney-General” and substituting therefor the words “Director of Public Prosecutions”.



HON. NDUNG'U GETHENJI, MP

CHAIRPERSON DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS

DATE.....19/08/2014.....

MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD IN THE SMALL DINNING HALL. MAIN PARLIAMENT BUILDINGS ON WEDNESDAY, 13TH AUGUST, 2014 AT 3:30 P.M.

MEMBERS PRESENT

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Elias Bare Shill, M.P. - Vice Chairperson
3. Hon. Katoo Ole Metito, EGH, MGH, M.P.
4. Hon. Jakoyo Midiwo, MGH, M.P.
5. Hon. Christantus Wamalwa, M.P.
6. Hon. Nyiva Mwendwa, EGH, M.P.
7. Hon. Maj-General (Rtd) Joseph Nkaiserry, MBS, MGH, M.P.
8. Hon. Joel Onyancha, MGH, M.P.
9. Hon. Gonzi Rai, MGH, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Joseph Kiuna, M.P.
12. Hon. Yusuf Hassan, M.P.
13. Hon. Col. (Rtd) Ali Dido Rasso, MBS, M.P.
14. Hon. Joyce Wanjalah Lay, M.P.
15. Hon. David Wafula, M.P.
16. Hon. Annah N. Gathecha, M.P.
17. Hon. Ibrahim Sane, M.P.
18. Hon. Ken Obura, M.P.

ABSENT WITH APOLOGIES

1. Hon. Joseph Lekuton, M.P.
2. Hon. Beatrice Nyaga, M.P.

ABSENT

1. Hon. Adan Keynan, CBS, M.P.
2. Hon. Richard Onyonka, M.P.
3. Hon. Joseph Gitari, M.P.
4. Hon. John Lodepe Nakara, M.P.
5. Hon. Elisha Busienei, M.P.
6. Hon. Dennitah Ghati, M.P.
7. Hon. David Pkosing, M.P.
8. Hon. Roselinda Soipan, M.P.
9. Hon. Abass S. Mohammed, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

1. Ms. Rachel Kairu - Senior Clerk Assistant
2. Mr. Douglas Katho - Third Clerk Assistant

MIN. NO.191/2014:

PRELIMINARIES

The Sitting's proceedings commenced with a word of prayer.

MIN.NO. 192/2014: STATEMENT

Members were informed that the Ministry of Foreign Affairs and International Trade had, in its letter to the Committee dated 11th August, 2014 requested for more time to respond to the

Statement requested by Member for Isiolo North (Hon. Tiyah Galgalo, M.P.) regarding alleged non-endorsement of the United Nations Declaration on Prevention of Sexual Violence in Conflict Situations, Kenya and undertaken to respond by Tuesday, 18th August, 2014.

MIN. NO. 193/2014: PETITIONS

a) **Petition by Ex-Capt. J. N. Wafubwa (20654) on Non-Payment of his Pension Benefits**

The Committee was reminded that a sitting had been scheduled for Thursday, 14th August, 2014 to meet with the State Law Office, and the National Treasury to conclude on the Petition.

b) **Petition Seeking Parliament's Approval of Military Action against Uganda Security Forces occupying Migingo & Ugingo Islands in Lake Victoria, Migori County**

Members were in agreement that the fact-finding visit of the said Islands to be carried out as per the resolution of the sitting held on 5th August 2014, i.e 21st and 23rd of August, 2014.

MIN. NO 194/2014: ADOPTION OF THE REPORT ON THE AMENDMENTS TO THE TO THE PROHIBITION OF ANTI-PERSONNEL MINES BILL, 2014

The Chair informed Members that during its sitting held on 5th August 2014, the Committee considered the draft Report of the Prohibition of Anti-personnel Mines Bill, 2014 but the 13 Members present, were less the requisite threshold for adoption of a Report.

The Report was thus was circulated and thereafter adopted by the Members present.

MIN.NO. 195/2014: WAY FORWARD REGARDING THE AMENDMENTS TO KDF ACT 2012 AND NIS ACT 2012 FOLLOWING THEIR WITHDRAWAL FROM THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2014

The withdrawal of the amendments to the KDF Act, 2012 and the NIS Act, 2012 from the Statute Law (Miscellaneous Amendments) Bill, 2014 by the Mover of the Bill, the Leader of Majority Party on Wednesday the 6th August, 2014 was discussed exhaustively with reference to both the Communication from the Chair and the Hansard Report of that particular day.

The Committee made the following observations:- That;

- i. The allegations levelled against the Committee with regard to consideration of amendments to the KDF and NIS Acts, as well as attendance of Committee Members to the US-Africa Summit held in Washington DC, 2nd to 7th August 2014 were false and unfortunate.
- ii. The delays in submitting its report on the Statute Law (Miscellaneous Amendments) Bill, 2014 was caused by delays both NIS and MoD in forwarding their submissions as requested by the Committee.
- iii. The withdrawal of the NIS and KDF Statutes from the Statute Law (Miscellaneous Amendments) Bill, 2014 was informed by other considerations among them the fact that the amendments were substantive.
- iv. Members attended the US-Africa Summit following an invitation by the Ministry of Foreign Affairs and International Trade, and that the nomination of the delegation was done in a Committee sitting.

After very lengthy and productive deliberations, the Committee nominated the following Members to seek audience with the Hon. Speaker with a view to addressing the anxiety caused among the Committee Members: -

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Elias Bare Shill, M.P. - Vice Chairperson
3. Hon. Katoo Ole Metito, EGH, MGH, M.P.
4. Hon. Jakoyo Midiwo, MGH, M.P.
5. Hon. Maj-General (Rtd) Joseph Nkaiserry, MGH, M.P.
6. Hon. Wafula Wamunyinyi, M.P.
7. Any other Member available to attend

MIN.NO. 197/2014:

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Half past Five O'clock in the evening.

SIGNED.....


(CHAIRPERSON)

DATE.....

19/08/2014

MINUTES OF THE 61ST SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD IN THE SMALL DINING, PARLIAMENT BUILDINGS ON TUESDAY, 5TH AUGUST, 2014 AT 10:30 A.M.

MEMBERS PRESENT

1. Hon. Elias Bare Shill, M.P. - Vice Chairperson
2. Hon. Katoo Ole Metito, EGH, MGH, M.P.
3. Hon. Jakoyo Midiwo, MGH, M.P.
4. Hon. Christantus Wamalwa, M.P.
5. Hon. Nyiva Mwendwa, EGH, M.P.
6. Hon. Gonzi Rai, MGH, M.P.
7. Hon. Joel Onyancha, MGH, M.P.
8. Hon. Joseph Kiuna, M.P.
9. Hon. Yusuf Hassan, M.P.
10. Hon. Abass S. Mohammed, M.P.
11. Hon. David Wafula, M.P.
12. Hon. Elisha Busienei, M.P.
13. Hon. John L. Nakara, M.P.

ABSENT WITH APOLOGIES

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Adan Keynan, CBS, M.P.
3. Hon. Maj-General (Rtd) Joseph Nkaisserry, MBS, MGH, M.P.
4. Hon. Beatrice Nyaga, M.P.
5. Hon. Lekuton Joseph, M.P.
6. Hon. Joyce Wanjaloh Lay, M.P.
7. Hon. Annah N. Gathecha, M.P.

ABSENT

1. Hon. Richard Onyonka, M.P.
2. Hon. Wafula Wamunyinyi, M.P.
3. Hon. Joseph Gitari, M.P.
4. Hon. Col. (Rtd) Ali Dido Rasso, MBS, M.P.
5. Hon. Dennitah Ghati, M.P.
6. Hon. David Pkosing, M.P.
7. Hon. Roselinda Soipan, M.P.
8. Hon. Ken Obura, M.P.
9. Hon. Ibrahim Sane, M.P.

IN ATTENDANCE:

- | | | |
|-----------------------|---|-----------------------|
| 1. Ms. Halima Hussein | - | Third Clerk Assistant |
| 2. Mr. Douglas Katho | - | Third Clerk Assistant |
| 3. Ms. Emma Essendi | - | Legal Officer |
| 4. Ms. Fiona Musili | - | Research Officer |

NATIONAL ASSEMBLY

MIN. NO.175/2014: PRELIMINARIES

The Sitting's proceedings commenced with a word of prayer and thereafter, the meeting's agenda was adopted by Members present.

MIN.NO. 176/2014: PETITIONS

Under this agenda, the following were discussed as herein below:-

- a) Petition by Ex-Capt. J. N. Wafubwa (20654) on Non-Payment of Pension Benefits
Members resolved to conclude on the Petition as soon as submissions were received from the

remaining relevant stakeholders.

b) Petition seeking Parliament's approval of Military Action Against Uganda Security Forces occupying Migingo & Ugingo Islands in Lake Victoria, Migori County
Members resolved to undertake the proposed fact-finding visit to Migingo Islands from Friday, 22nd to Saturday 23rd August, 2014 to enable the Committee finalize on the Petition.

MIN.NO. 177/2014: BILLS

Under this agenda the following were discussed as herein below:-

a) Consideration of the draft Report on the Prohibition of Anti-personnel Mines Bill, 2014

The Committee went through the draft Report on the Prohibition of Anti-personnel Mines Bill, 2014, Clause by Clause.

Members agreed to all the proposed amendment except for Section 21 (1) "*The Cabinet Secretary may delegate to any officer under the control direction and supervision of the Cabinet Secretary, by name or office, any of the functions and powers imposed or conferred on the Cabinet Secretary under this Act except for the power to make regulations under section 28*".

Members sought clarification with regard to meaning of the word "officer" that the Cabinet Secretary would delegate power to. The meeting resolved to seek clarification with regard to the rank of the officer under reference.

b) The Statutes Law (Miscellaneous Amendments) Bill, 2014

Due to the urgent nature of the above Bill, Members agreed to retreat to Mombasa, at the Whitesands Hotel between Sunday, 10th to Tuesday, 12th (Morning) August 2014 to consider and adopt its on the Report on the proposed amendments to the Statutes Law (Miscellaneous Amendments) Bill, 2014 regarding the Treaty Making and Ratification Act, 2012, the KDF Act, 2012, and the National Intelligence Service Act, 2012.

MIN.NO. 178/2014 : ANY OTHER BUSINESS

- i. Members resolved to invite CIC to the retreat under Min. 177/2014 (b) consider its input/submission on the Bill.
- ii. Members resolved to have a session to discuss Kenya-Somalia relations regarding the following:-
 - a) Somalia-Kenya diplomatic relations;
 - b) Kenyan troops in Somalia;
 - c) To plan for a fact finding trip to Somalia; and
 - d) Any other relevant issues of Somalia-Kenya interest.

MIN.NO. 179/2014: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at half past twelve O'clock.

SIGNED.....
(CHAIRPERSON)

DATE..... 19/08/2014

MINUTES OF THE 59TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD IN CONTINENTAL HOUSE FOURTH FLOOR, COMMITTEE ROOM, PARLIAMENT BUILDINGS ON WEDNESDAY, 23RD JULY, 2014 AT 11:00 A.M.

MEMBERS PRESENT

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Jakoyo Midiwo, MGH, M.P.
3. Hon. Adan Keynan, CBS, M.P.
4. Hon. Christantus Wamalwa, M.P.
5. Hon. Joel Onyancha, MGH, M.P.
6. Hon. Lekuton Joseph, M.P.
7. Hon. Yusuf Hassan, M.P.
8. Hon. Wafula Wamunyinyi, M.P.
9. Hon. Richard Onyonka, M.P.
10. Hon. Maj-General (Rtd) Joseph Nkaiserry, MBS, MGH, M.P.
11. Hon. Joseph Kiuna, M.P.
12. Hon. Abass S. Mohammed, M.P.
13. Hon. Beatrice Nyaga, M.P.
14. Hon. David Wafula, M.P.
15. Hon. Col. (Rtd) Ali Dido Rasso, MBS, M.P.
16. Hon. Elisha Busienei, M.P.
17. Hon. Annah N. Gathecha, M.P.
18. Hon. Dennitah Ghati, M.P.

ABSENT WITH APOLOGIES

1. Hon. Joyce Wanjalah Lay, M.P.

ABSENT

1. Hon. Elias Bare Shill, M.P. - Vice Chairperson
2. Hon. Katoo Ole Metito, EGH, MGH, M.P.
3. Hon. Nyiva Mwendwa, EGH, M.P.
4. Hon. Gonzi Rai, MGH, M.P.
5. Hon. Joseph Gitari, M.P.
6. Hon. Ibrahim Sane, M.P.
7. Hon. John Lodepe Nakara, M.P.
8. Hon. Ken Obura, M.P.
9. Hon. David Pkosing, M.P.
10. Hon. Roselinda Soipan, M.P.

MINISTRY OF DEFENCE

- | | | |
|--------------------------|---|-------------------------------|
| 1. Amb.(Dr.) Monica Juma | - | Principal Secretary |
| 2. Lt. Gen. Mwachethe | - | Vice Chief Defence Forces |
| 3. Brig. K. O. Dindi | - | Chief of Legal Service |
| 4. Mr. G.F. Sakwa | - | Parliamentary Liaison Officer |
| 5. Mr. Paul Muthangya | - | Assistant Secretary |

IN ATTENDANCE:

NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|------------------------|
| 1. Ms. Rachel Kairu | - | Senior Clerk Assistant |
| 2. Ms. Halima Hussein | - | Third Clerk Assistant |
| 3. Mr. Douglas Katho | - | Third Clerk Assistant |
| 4. Ms. Emma Essendi | - | Legal Council |

MIN. NO.168/2014:

PRELIMINARIES

The Sitting's proceedings commenced with a word of prayer and thereafter, the meeting's agenda was adopted having been proposed by Hon. Rasso and seconded by Hon. Keynan. This was followed by a round of introductions.

MIN.NO. 169/2014:

CONSIDERATION OF THE PROHIBITION OF ANTI-PERSONNEL MINES BILL, 2014

The Committee was informed that the Cabinet Secretary for Foreign Affairs and International Trade had written to convey her apologies and requesting that the meeting be rescheduled to a later date as she was attending the IGAD meeting that was taking place in Nairobi.

The Chair welcomed the team from the Defence Ministry to the meeting. The Principal Secretary for Defence informed the Committee as follows;

- a) The purpose of the Prohibition of Anti-personnel Mines Bill, 2014 is to give effect to Article 9 of the Ottawa Convention, on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and their destruction, which Kenya is a signatory to. The Convention requires national implementation.
- b) Kenya signed the Convention in May 1997 and ratified the same in 23rd January 2001 unlike its neighboring countries that are yet to ratify the Convention.
- c) The Prohibition of Anti-Mines Bill 2014 is spearheaded by the Attorney General and also involves the Ministry of Foreign Affairs and International Trade owing to its international character.

The following amendments were proposed;-

- 1) It is proposed that a new section be introduced under part one of the Bill under the side note 'purpose of the Act' to read as follows;
The purpose of this Act is to implement Kenya's obligations under the Convention
- 2) Section 1
Section 1 of the Bill on Commencement is contrary to the spirit of the Constitution which provides that the coming into force of any Act of Parliament shall be on the fourteenth day after its publication in the Kenya gazette. The contrary intention as per the bill which mandates the cabinet Secretary to decide the date of its coming into force is not necessary. It's therefore proposed this section reads as follows; "*This Act may be cited as the Prohibition of Anti-personnel Mines Act, 2013.*"
- 3) Best practices in implementation of International instruments would require that the Convention be put as a schedule to the Act. In this case, since the Bill makes references to the Convention on the Prohibition of the use, stockpiling, production and transfer of Anti-personnel mines and on their destruction, the same should be a schedule but the definition of a convention must be put in order to tie the two. It's therefore proposed that a definition of Convention be inserted in the Interpretations clause so as to read;

“Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, set out in the schedule to this Act, as amended from time to time in accordance with Article 13 of the Convention and includes any amendments to the Convention, ratified, accepted, approved or acceded to and entered into force by Kenya”

4) Section 2

It's proposed the following definitions as per the Convention be adopted;

“anti-personnel mine” means a mine that is designed, altered or intended to be exploded by the presence, proximity or contact of a person and that is capable of incapacitating, injuring or killing one or more persons. Mines that are designed, altered or intended to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, and that are equipped with anti-handling devices, are not considered to be anti-personnel mines as a result of being so equipped.

“mine” means a munition designed, altered or intended to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

“Transfer”, in respect of anti-personnel mines, includes, in addition to the physical movement of anti-personnel mines, the transfer of title to and control over anti-personnel mines, but does not include the transfer of territory containing emplaced anti-personnel mines”.

Rationale: In this Section Bill seeks to implement Article 9 of the Convention so as to impose legal sanctions on prohibited use of Anti-personnel mines and it does not provide a clear definition of Anti-personnel mines but the same is conveniently defined as a Prohibited object.

5) Section 9

Section 5 of the Bill provides punitive sanctions in line with the Convention but this Section provides defence under the Bill which is not in line with Article 9 of the said Convention. In any case a state party cannot provide for defence under the same law that introduces penal sanctions. This should be left to the courts of law to decide on the culpability of the offender. It's therefore proposed the deletion of Section 9.

6) Section 14

It's proposed that this section be deleted

Rationale: This Section is not sustainable within the Kenyan laws as the same can be canvassed by the courts as guided by the Criminal Procedure Code and the Civil Procedure Act.

7) Section 16

This Section is on fact finding missions should be based on request. It's proposed that a caveat be introduced in section 16 (1) so as to read

“If a fact finding mission is authorized under Article 8 of the Convention and if such request is granted, the Cabinet Secretary may issue an authorization under this section in respect of that mission

8) It's proposed that the following be captured under Part IV after section 20 to read. The same can be captured under Part:

Delegation by Cabinet Secretary

- a) *The Cabinet Secretary may delegate to any officer under his control, direction and supervision, by name or office, any of the functions and powers imposed or conferred on him under this Act except for the power to make regulations under section 28.*
- b) *Any delegation under this section shall not prevent the Minister from himself exercising or performing such delegated function or power.*
- c) *A delegation made under subsection (1) may—*
 - i. *Be made subject to such conditions, limitations or restrictions as may be specified in the instrument of delegation; and*
 - ii. *be revoked or varied.*

Rationale: The Bill as it is has not provided for the delegation of powers of the Cabinet secretary and therefore the same can be captured under this Part.

9) Section 24

Under this Section it's proposed that the words "*.....Attorney-General....*" be substituted with the "*Director of Public prosecutions*".

Rationale: Prosecutorial powers are conferred upon the Director of Public prosecutions as provided by Article 157 (6) of the Constitution.

10) Committee's observations and comments

The Committee sought to know the following:-

- a) The benefits of signing this Bill yet neighboring countries have not ratified the Ottawa Convention.
- b) If there is immunities and privileges provided for the fact finding missions.
- c) If the Ottawa Convention would be attached to the Bill.

The responses to issues raised by the Committee were as follows:-

- a) That signing the Bill would see it implemented and the neighboring regions would be advised to come on board and rectify the Convention
- b) That there are the fact finding missions involved in this exercise are entitled to certain rights of immunities and privileges.
- c) That the Bill is just implementing section of the Convention and as such the Convention cannot be attached to Bill.

The Chair requested the Ministry of Defence to provide the proposed agreed amendments to the Committee.

The Ministry was also advised to specify the commencement of the Act in Section 1 in line with Article 116 of the Constitution.

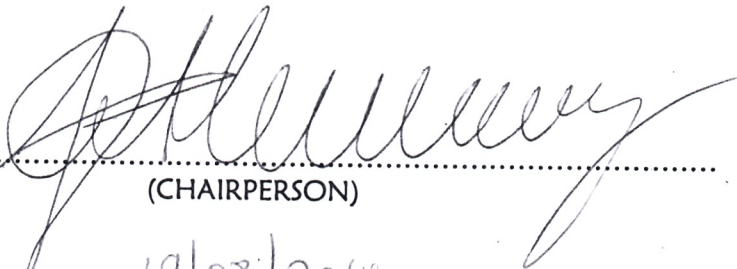
MIN. NO.170/2014 : ANY OTHER BUSINESS

The Principal Secretary for Defence raised concerns about an article in the Standard Newspaper of Wednesday 23rd July, 2014 caption "*MPs oppose Bill over NIS access to phone calls, KDF deployment*" with regard to the Statute Law (Miscellaneous Amendments) Bill, 2014.

Members observed that the media was just being sensational, and what is reported in the press is indeed not necessary the actual presentation of the Committee's proceedings. It was resolved that the false article should be disregarded as the Committee would give its position in its report on the Statute Law (Miscellaneous Amendments) Bill, 2014.

MIN.NO. 171/2014: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at half past twelve O'clock.

SIGNED: 
.....
(CHAIRPERSON)

DATE: 19/08/2014
.....

MINUTES OF THE 42nd SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 29TH APRIL, 2014 AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDINGS, AT 11.00A.M.

PRESENT

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Elias Bare Shill, M.P. - Vice-Chairperson
3. Hon. Chrisanthus Wamalwa, M.P.
4. Hon. Maj-General (Rtd) Joseph Nkaissery, MBS, MGH, M.P.
5. Hon. Wafula Wamunyinyi, M.P.
6. Hon. Gonzi Rai, M.P.
7. Hon. Yussuf Hassan, MP
8. Hon. David Pkosing, M.P.
9. Hon. Beatrice Nyaga, M.P.
10. Hon. David Wafula, M.P.
11. Hon. Elisha Busienei, M.P.
12. Hon. Col (Rtd) Ali Dido Rasso, MBS, MP
13. Hon. Ken Obura, M.P.
14. Hon. Ibrahim Sane, MP
15. Hon. Joyce Wanjalah Lay, MP

ABSENT WITH APOLOGIES

1. Hon. Adan Keynan, CBS, M.P.
2. Hon. Katoo Ole Metito, MGH, EGH, M.P.
3. Hon. Jakoyo Midiwo, MGH, M.P.
4. Hon. Lekuton Joseph, M.P.
5. Hon. Joseph Gitari, M.P.
6. Hon. Roselinda Soipan, M.P.
7. Hon. Dennitah Ghati, MP

ABSENT

1. Hon. Nyiva Mwendwa, EGH, M.P.
8. Hon. Joseph Kiuna, M.P.
9. Hon. Annah Nyokabi Gathecha, M.P.
2. Hon. Joel Onyancha, M.P.
3. Hon. Richard Onyonka, MP
4. Hon. John Lodepe Nakara, MP
5. Hon. Abass S. Mohammed, M.P.

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Ms. Rachel Kairu - Senior Clerk Assistant
2. Ms. Janeffer Ndetto - Legal Counsel

MIN. NO. 090/2014

PRELIMINARIES

The sitting commenced with a word of prayer. Thereafter, the sitting's agenda was adopted.

MIN. NO. 091/2014

CONSIDERATION OF THE PROHIBITION OF THE ANTI-PERSONNEL MINES BILL, 2014

The Legal Counsel informed the Committee that the Bill seeks to domesticate the Ottawa Convention, which Kenya is a signatory. The Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction provides a comprehensive framework for ending the suffering caused by anti-personnel mines. States that are parties to the Convention, Kenya being among them have undertaken to cease production and acquisition of these weapons and to dispose of existing stockpiles.

Ancillary undertakings include periodic reporting to the Secretary General of the UN on implementation of the Convention and allowing fact-finding missions to visit the country.

Most of the obligations undertaken by parties to the Convention do not require a legislative basis. Article 9 of the Convention, however, requires a party to the Convention to impose penal sanctions to suppress activities prohibited under the Convention. The object of the Bill is to impose the required sanctions, in such circumstances and with such exceptions as are consistent with the terms of the Convention. Kenya as a signatory therefore is obligated to pass the legislation.

Deliberations

The Committee made the following observations:-

- i. The definition of prohibited objects/anti-personnel mines was not absolute as there may be other mines which may not necessarily be anti-personnel.
- ii. The Bill was relevant as it seeks to domesticate the Ottawa Convention, which Kenya is a signatory.
- iii. Article 2 (6) of the Constitution provides that any Treaty or Convention ratified by Kenya shall form part of the laws of Kenya.
- iv. The pros and cons of the legislation were unclear.
- v. There was need to establish why the legislation was being enacted now.

The Committee identified the following as the stakeholders to engage during the Consideration of the Bill:-

- i. The Office of the Attorney General
- ii. The Ministry of Defence
- iii. The Ministry of Foreign Affairs and International Trade
- iv. Department dealing with small arms and light weapons
- v. Experts in the Security Sector

vi. Relevant UN agencies

MIN. NO. 092/2014 ADJOURNMENT

- i. The Committee resolved to visit Migingo and Ugingo Islands after completion of the scrutiny of Budget Estimates of Revenue and Expenditure for Financial Year 2014/15 for line Ministries & Departments scheduled to take place in Kisumu between 13th and 15th May 2014 over the petition currently before the Committee.
- ii. Proposed visit to Romania – The Chair informed Members that visit that was proposed to take place between 4th to 8th May 2014 had been cancelled because Romania was going into elections and thus, Parliament had since been dissolved to pave way for campaigns. The Chair was mandated to engage with other Embassies with a view to securing appointments with other Countries.

MIN. NO. 093/2014 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Ten Minutes to One O'clock.

Signed:.....
Chairperson

Date:.....
19/08/2014