



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, APRIL 26, 2016

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding**- the Speaker
4. **COMMUNICATION FROM THE CHAIR ON THE DEMISE OF THE IMMEDIATE FORMER FIRST LADY H.E. MRS. LUCY MUTHONI KIBAKI, EGH**

The Speaker conveyed the following Communication –

“Honourable Members,

It is with profound sadness that we have learnt of the demise of the former First Lady Her Excellency Mrs. Lucy Muthoni Kibaki while undergoing treatment at the Bupa Cromwell Hospital in London, United Kingdom.

Honourable Members, H.E. Mrs. Lucy Muthoni Kibaki, who was the spouse to the third President of the Republic of Kenya, H.E. Mwai Kibaki, was born in 1940 in Mukurweini, Nyeri County to the Rev. John Kagai and Rose Nyachomba. She joined the Alliance Girls' High School and later trained as a teacher, rising to the position of Headmistress. She will be remembered for her enormous involvement in leadership, development and charity. She served as patron to the Kenya Girl Guides Association, chaired the Organization of the 40 African First Ladies Against HIV/Aids and was a pivotal and towering supporter for the under privileged in society and in her life, she never shied away from defending and raising issues facing the disadvantaged and people with disabilities. In addition, she spearheaded the establishment of the Mama Lucy Kibaki Hospital in Nairobi County.

Honourable Members, on behalf of all Members of the National Assembly, the Parliamentary Service Commission and indeed on my own behalf, I wish to take this opportunity to condole with H.E. Mwai Kibaki and his family, the people of Othaya and friends of the family for the great loss. As the National Assembly, we assure the family of our support during this period of great sorrow.

In tribute to Mama Lucy and in recognition of her impeccable service to the nation and society, I request that we all stand to observe a minute of silence. May her soul rest in eternal peace.

5. **PETITION**

The Member for Loima (Hon. Protus Akujah) presented a petition on behalf of residents of Turkana County on alleged financial impropriety in the National Irrigation Board in Turkana County;

Petition referred to the Public Investments Committee.

6. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Bi-Annual Report of the Commission on Administrative Justice for the period July-December 2015;
- (ii) The Ministry of Energy and Petroleum Report to the National Assembly on Key Projects, April, 2016; and
- (iii) The Report of the Auditor-General on the financial statements of the Petroleum Levy Training Fund for the period ended 30th June 2015 and the certificate therein.

(The Leader of the Majority Party)

- (iv) Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June, 2016 and projections for 2017/2018-2019;

(Hon. Aden Keynan, Member, Parliamentary Service Commission)

- (v) Reports of the Departmental Committee on Finance, Planning and Trade on its consideration of –

- (a) The Banking (Amendment) Bill, 2015;
- (b) The Controller of Budget Bill, 2015; and,
- (c) A public Petition by the Consumer Federation of Kenya on Operationalization of Section 94 of the Consumer Protection Act, 2012 and amendment of Section 16(3) of the Finance Act, 2013.

(Chairperson, Departmental Committee on Finance, Planning and Trade)

7. **THE JUDICIARY FUND BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2016)**

Order for Second Reading read;

THAT, the Judiciary Bill (National Assembly Bill No.3 of 2016) be now read a Second Time

(Chairperson, Departmental Committee on Justice and Legal Affairs – 21.4.2016 (PM))

Debate on the Second reading having been concluded on Thursday, April 21, 2016;

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

8. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Second Chairperson in the Chair

- (i) The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)

Order deferred to another day

- (ii) The Private Security Regulation Bill (National Assembly Bill No. 4 of 2014)

Clause 3 - agreed to

Clause 4 - amendment proposed –

THAT, clause 4 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)—

“(e) private investigators.”

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 4 - as amended agreed to

Clauses 5, 6, 7 and 8 - agreed to

Clause 9 - amendment proposed –

THAT, clause of the Bill be amended by inserting the following new paragraph immediately after paragraph (c) —

“(ca) maintain a data bank of the operations, conduct and employment history of persons registered and licensed under this Act”

(Hon. Sammy Mwaita)

Amendment dropped

Clause 9 - agreed to

Clauses 10 - agreed to

Clause 11 - amendment proposed -

THAT, clause 11 of the Bill be amended—

(a) in sub clause (1)—

(i) in paragraph (b) by inserting the following new paragraph immediately after paragraph (iv)—

“(v) the National Intelligence Service.”

(ii) by inserting the following new paragraph immediately after paragraph (e)—

“(f)one member nominated by the Kenya Private Sector Alliance.”

(b) in sub clause (2) in paragraphs (a) and (b) by deleting the expression “subsection (2)” and substituting therefor the expression “subsection (1)”

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, the Bill be amended in clause 11—

(a) in sub clause (1) by—

(i) deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) a chairperson selected by the selection panel in accordance with the procedure prescribed in the Third Schedule.”

(ii) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) two persons representing the most representative trade union on security related matters, elected in accordance with regulations prescribed by the Cabinet Secretary;”

(iii) deleting sub clause (d) and substituting therefor the following new paragraph—

“(d) two persons representing the Federation of Kenya Employers, elected in accordance with regulations prescribed by the Cabinet Secretary;”

(iv) inserting the following new paragraph immediately after paragraph (d)—

“(da) two persons representing the Kenya Private Sector Alliance, elected in accordance with regulations prescribed by the Cabinet Secretary;”

(b) by inserting the following new sub clause immediately after sub clause (3)—

“(4) Where the position of chairperson becomes vacant, the President shall appoint a replacement from among the short-listed persons considered by the selection panel in accordance with the Third Schedule, giving due consideration to the rankings and comments of the selection panel, if any.”

(Hon. Wilber Ottichilo)

Proposed amendment withdrawn;

Clause 11 - as amended agreed to

Clauses 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 - agreed to

Clause 23 - amendment proposed –

THAT, clause 23 of the Bill be amended in sub clause (2) by inserting the following new paragraphs immediately after paragraph (b)—

“(ba) holds at least a primary school certificate;

(bb) has attended training in security matters in an institution accredited by the Authority;”

(Hon. Wilber Ottichilo)

Question of the further amendment proposed –

Debate arising;

Question put and agreed to;

Clause 23 - as amended agreed to

Clauses 24 & 25 - agreed to

Clause 26 - amendment proposed –

THAT, clause 26 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clause—

“(2) An application for renewal under this section shall be made to the Authority in such form and manner as may be prescribed and shall be accompanied by—

(a) the prescribed application fee; and

(b) evidence of having undertaken training in security matters of not less than a week in the preceding year.”

(Hon. Wilber Ottichilo)

Question of the further amendment proposed –

Debate arising;

Question put and agreed to;

Clause 26 - as amended agreed to

Clauses 27 & 28 - agreed to

Clause 29 - amendment proposed –

THAT, clause 29 of the Bill be amended in sub clause (2) by inserting the following new paragraph immediately after paragraph (c)—

“(d) has been security-vetted and nothing adverse has been established.”

(Chairperson, Departmental Committee on Administration & National Security)

Debate arising;

Question put and agreed to;

Clause 29 - as amended agreed to

Clause 30 - amendment proposed –

THAT, clause 30 of the Bill be amended in sub clause (2) by inserting the following new paragraph immediately after paragraph (e)—

“(f) it considers that it is not in the national interest to grant a licence.”

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, the Bill be amended by deleting clause 30(2) (e)

Hon. Wilber Ottichilo)

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 30 - as amended agreed to

Clause 31 - agreed to

Clause 32 - amendment proposed -

THAT, clause 32 of the Bill be amended in sub clause (1) by inserting the following new paragraph immediately after paragraph (d)—

“(e) the licensee is or has engaged in acts prejudicial to national security or national interests.”

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Clause 32 - agreed to

Clauses 33, 34, 35, 36, 37 and 38- agreed to

Clause 39 - amendment proposed -

THAT, clause 39 of the Bill be amended in sub clause (1) by inserting the following new paragraphs immediately after paragraph (e)—

“(f) is an agent of foreign power;

(h) is or has engaged in acts prejudicial to national security or national interests.”

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 39 - as amended agreed to

Clauses 40, 41, 42, 43, 44 and 45- agreed to

Clause 46 - amendment proposed -

THAT, clause 46 of the Bill be amended in sub clause (3) by inserting the words “in addition to cancellation of license” immediately after the words “commits an offence and shall”.

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 46 - as amended agreed to

Clause 47 - amendment proposed –

THAT, clause 47 of the Bill be amended in sub clause (4) by inserting the words “in addition to cancellation of licence” immediately after the words “commits an offence and shall”.

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 47 of Bill be amended in sub clause (5) by inserting the words “,within three months of the commencement of this Act,” immediately after the word “shall”.

(Chairperson, Departmental Committee on Administration & National Security)

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 47 - as amended agreed to

Clause 48 - amendment proposed –

THAT, clause 48 of the Bill be amended in sub clause (3) by inserting the words “Subject to section 45,” immediately before the words “Any information”.

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 48 be amended by inserting the following new sub clause immediately after sub clause (1)—

“(1A) An identification document shall not be retained under subsection (1) if the holder of the document requires to use it within the premises, but particulars thereof shall be noted in the register when recording particulars of the holder.”

(Hon. John Ndirangu)

Proposed amendment dropped;

Clause 48 - as amended agreed to

Clause 49 - agreed to

Clause 50 - amendment proposed –

THAT, clause 50 of the Bill be amended—

(a) in sub clause (1) by inserting the following new paragraphs immediately after paragraph (c)—

“(d) use the names, logos, initials and emblems similar or resembling those of a national security organ or a disciplined service.

(e) use or install equipment that is capable of intercepting or otherwise interfering with another person’s communication; and

(f) use or install such other equipment as the Cabinet Secretary may from time to time prescribe.”

(b) by inserting the following new sub clause immediately after sub clause (3)—

“(4) A person who contravenes this section commits an offence and shall, in addition to cancelation of license, be liable, on conviction, to a penalty prescribed in this Act or any other written law, whichever is higher.”

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 50 of the Bill be amended—

(a) in sub clause (3) (a) by inserting the words “and tools” immediately after the words “types of equipment”;

(b) in sub clause (2) by inserting the words “and private security providers” immediately after the word “Authority”.

(Hon. Wilber Ottichilo)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 50 - as amended agreed to

Clause 51 - agreed to

Clause 52 - amendment proposed –

THAT, clause 52 of the Bill be amended in sub clause (2) by deleting the words “five hundred thousand” appearing immediately after the words “not exceeding” and substituting therefor the words “fifty thousand”.

(Hon. Wilber Ottichilo)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 52 - as amended agreed to

Clauses 53, 54, 55, 56, 57 and 58 - agreed to

Clause 59 - amendment proposed –

THAT, clause 59 of the Bill be amended in sub clause (3) by inserting at the end of the sub clause the words “and to organize training workshops or seminars for private security providers.”

(Hon. Wilber Ottichilo)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 59 - as amended agreed to

Clauses 60, 61, 62, 63 and 64 - agreed to

Clause 65 - amendment proposed –

THAT, clause 65 of the Bill be amended in sub clause (4) by inserting the words “in at least two daily newspapers of national circulation” at the end of the sub clause.

(Hon. Wilber Ottichilo)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 65 - as amended agreed to

Clauses 66 & 67 - agreed to

Clause 68 - amendment proposed -

THAT, clause 68 of the Bill be amended in sub clause (2) by—

(a) inserting the following new paragraph immediately after paragraph (d)—

“(da) the provision of protective gear and tools;”

(b) inserting the following new paragraph immediately after paragraph (e)—

“(f) membership of private security service providers to corporate bodies.”

(Hon. Wilber Ottichilo)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 68 - as amended agreed to

New Clause 11A proposed -

THAT, the Bill be amended by inserting the following new clause immediately after clause 11—

Selection panel.

11A. (1) For the purposes of this Act, the Cabinet Secretary shall constitute a selection panel comprising a nominee of each of the following bodies—

(a) the Law Society of Kenya;

(b) the Kenya Private Sector Alliance; and

(c) the Federation of Kenya Employers.

(2) The function of the selection panel shall be to nominate persons for appointment as chairperson in accordance with the Third Schedule.

(3) Members of the selection panel shall elect a chairperson and vice-chairperson of the selection panel from among their number.

(4) Subject to the provisions of the Third Schedule, the selection panel shall determine its own procedure.

(Hon. Wilber Ottichilo)

Proposed New Clause withdrawn;

New Clause 49A proposed –

THAT, the following new clause be inserted immediately after clause 49—

Powers excludes police powers.	49A. For the avoidance of doubt, nothing contained in this Part shall be construed as conferring upon a private security service provider, a security guard or a security officer the powers of a police officer or member of a disciplined service.
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(Chairperson, Departmental Committee on Administration & National Security)

Motion made and Question proposed –

THAT, the new Clause 49A be read a Second Time

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 49A be part of the Bill

Question put and agreed to

New Clause 51A - amendment proposed –

THAT, the following new clause be inserted immediately after clause 51—

Use of firearms.	51A. (1) A private security service provider shall not use or allow the use of firearms in the rendering of a security service.
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(2) A person who contravenes the provision of this section commits an offence and shall in addition to cancelation of license, be liable on conviction to a penalty prescribed in this Act or any other written law, whichever is higher.

(Chairperson, Departmental Committee on Administration & National Security)

Motion made and Question proposed –

THAT, the new Clause 51A be read a Second Time

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 51A be part of the Bill

Question put and agreed to;

Further amendment proposed –

THAT the following new clause be inserted immediately after clause 51-

Possession of firearms.

51A (1) A private security guard may possess a firearm while on duty, but shall only possess the firearm if the guard—

- (a) holds at least a secondary school qualification;
- (b) is serving on a written contract;
- (c) is in possession of a certificate of good conduct from the Criminal Investigation Department;
- (d) has, at the cost borne by the employer, undergone training for a period not less than six months; and
- (e) has been certified as having no history of drug abuse or mental instability by a Government Medical practitioner.

(2) A private security guard in possession of a firearm pursuant to this section shall return the firearm to the nearest police station for safekeeping whenever he or she is not on duty.

(3) A private security guard who pawns, sells, loses by neglect, makes away with or wilfully or negligently damages any firearm or ammunition commits an offence and is liable, on conviction, to imprisonment for a term exceeding five years or a fine not exceeding five hundred thousand, or to both.

(Hon. Benson Mutura)

Amendment withdrawn;

First Schedule - agreed to

Second Schedule - agreed to

New Third Schedule proposed –

THAT, the Bill be amended by inserting the following new schedule immediately after the Second Schedule—

**“THIRD SCHEDULE (S. 11A)
PROCEDURE FOR APPOINTING CHAIRPERSON**

1. The selection panel shall, within fourteen days of its convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson under section 11 of this Act.
2. An application under paragraph 1 shall be submitted to the selection panel within twenty-one days of the advertisement and may be made by any qualified person.
- 3.

4. The selection panel, shall, within seven days of the expiry of the period prescribed under paragraph 2 —
 - (a) consider the applications received under paragraph 2 to determine their compliance with the provisions of the Constitution and this Act; and
 - (b) submit to the National Assembly five suitably qualified persons for nomination as chairperson.
5. The selection panel shall rank and provide comments regarding each of the finalists to the National Assembly.
6. The National Assembly shall, upon receipt of the recommendations of the selection panel under paragraph 3, nominate two persons for appointment as chairperson and shall submit the names of the two nominees for onward transmission to the President.
7. The Cabinet Secretary shall forthwith forward the names of the persons nominated in accordance with paragraph 5 to the President who shall, by notice in the Gazette, appoint the Chairperson."

(Hon. Wilber Ottichilo)

Proposed New Third Schedule withdrawn;

Clause 2 - amendment proposed -

THAT, clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence—

- Cap. 114 "firearm" has the meaning assigned to it under the Firearms Act;
- "foreign power" means a foreign government, foreign organization or an entity that is directed or controlled by a foreign government or foreign organization;

(Chairperson, Departmental Committee on Administration & National Security)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments;

9. **HOUSE RESUMED** - The Fourth Chairperson in the Chair

Bill reported with amendments;

Re-committal

Motion made and Question proposed-

THAT, the House do agreed with the report subject to re-committal of Clause 9

Question put and agreed to;

10. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Second Chairperson in the Chair

(i) The Private Security Regulation Bill (National Assembly Bill No. 4 of 2014)

Clause 9 - amendment proposed -

THAT, clause of the Bill be amended by inserting the following new paragraph immediately after paragraph (c) —

“(ca) maintain a data bank of the operations, conduct and employment history of persons registered and licensed under this Act”

(Hon. Sammy Mwaita)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to

11. HOUSE RESUMED - The Fourth Chairperson in the Chair

The Private Security Regulation Bill (National Assembly Bill No. 4 of 2014)

Bill reported with amendments;

Motion made and Question proposed -

THAT, the House do agree with the Committee in the said Report

(Leader of Majority Party)

Question put and agreed to;

Motion made and Question proposed –

THAT, the Private Security Regulation Bill (National Assembly Bill No. 4 of 2014) be now read a Third Time

(Leader of Majority Party)

Debate arising;

Question deferred to another day.

And the time being thirty minutes past Six O'clock, the Fourth Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

12. HOUSE ROSE - at thirty minutes past Six O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, April 27, 2016 at 9.30 a.m.

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