

Approved for tabling

SNM  
13/4/18

Wednesday 14/4/18  
Paper laid by  
Hon. Koinange, MP  
Chairperson

Asda  
14/4/18

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

12<sup>TH</sup> PARLIAMENT - SECOND SESSION - 2018

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON THE NATIONAL FLAG EMBLEMS AND NAMES (AMENMENT)  
BILL SENATE BILL No. 8 OF 2017

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

NOVEMBER 2018

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## **CHAIRPERSON'S FOREWORD**

**Hon. Speaker,**

The Bill was read for the first time on Thursday 5<sup>th</sup> July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1), it is on this basis that the Committee makes this Report. The Committee received submissions from stakeholders before the adoption of this report.

The Bill that seeks to amend the National Flags and Emblems Act to allow members of the public to fly the National Flag in their place of residence, work and business; and for connected purposes. The Bill seeks to

- i. Align some sections of the Act to the provisions of the Constitution;
- ii. To introduce new actors with authority to fly the national flag on Motor vehicle; and
- iii. To allow any person to fly the flag in places of residence during the national holidays.

Further, Standing Order 127(3) provides that “the Departmental Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes a report to the House”

The Clerk of the National Assembly published an advertisement on print media inviting the public to present submissions and memoranda on the National Flag, Emblems Names ( Amendment) Bill (Senate Bill No. 8 of 2017) The submissions/memoranda were to be received on or before Friday 20<sup>th</sup> July 2018 at 5:00 pm.

The Committee received submissions from the Office of the Attorney General

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the Bill.

I also take this opportunity on behalf of the Committee to thank the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee during the deliberations of the Bill. Further, the Committee wishes to thank all the stakeholders for their input of the Bill.

On behalf of the Committee and pursuant to the provisions of Standing Order 199(6) it is my pleasant duty to table the Report of the Departmental Committee on Administration and National Security on the National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017)

SIGNED.....



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

**(CHAIRPERSON)**

**DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL  
SECURITY**

DATE.....

*13<sup>th</sup> November 2018*

## EXECUTIVE SUMMARY

This report contains the Committee's proceedings during the consideration National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017). The Bill was read the first time on Thursday 5<sup>th</sup> July 2018

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017). The submissions/memoranda were to be received on or before Friday 20<sup>th</sup> July, 2018.

The Committee considered the National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017) on Tuesday 7<sup>th</sup> August 2018, Friday 26<sup>th</sup> October 2018 and adopted the report on Tuesday 13<sup>th</sup> November 2018.

The Committee having considered National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017) will be proposing amendments in—

In consideration of the observations above, the Committee recommends-

1. That the Bill be amended by deleting clause 4 and substituting therefore—

### **Clause 4**

Section 4A of the principal Act be amended by inserting the following new subsection immediately after subsection (2)—

“(2a) A person authorized to fly the flag under subsection (2), other than the President, shall not fly any other flag at the time he or she is flying the national flag.”

***Rationale:*** *this is to limit persons authorized to fly the flag other than the President to only one flag at a time.*

2. That the Bill be amended Clause 5 in the proposed section **4B** in subsection (1) inserting the words “**or on a motor vehicle**” immediately after the words “place of work or business”

***Rationale:*** *This is to allow Kenyans to fly the flag in their vehicles during public holidays.*

## 1.0 PREFACE

### 1.1 Establishment and mandate of the Committee

The Departmental Committee on Administration and National Security is established under ***Standing Order 216*** with the mandate to:

- 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;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) **study and review all the legislation referred to it;**
- d) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- g) examine treaties, agreements and conventions;
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- j) examine any questions raised by Members on a matter within its mandate.

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; and
  - c) State Department of Correctional Services.
- ii) The National Police Service Commission;
- iii) The Independent Policing Oversight Authority; and
- iv) The Public Service Commission.

In Accordance with the Schedule II of the Standing Orders, the Committee is mandated to oversight the—

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

### **1.1 Committee Membership**

The Committee comprises of the following 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. Aduma Owuor, MP
7. Hon. Didmus Wekesa Barasa Mutua, MP
8. Hon. Geoffrey Kingagi Muturi, MP
9. Hon. Marselino Malimo Arbelle, MP



10. Hon. Tecla Chebet Tum, MP
11. Hon. Josphat Kabinga Wachira, MP
12. Hon. Nimrod Mbithuka Mbai, MP
13. Hon. George Theuri, MP
14. Hon. Martin Deric Ngunjiri Wambugu, MP
15. Hon. Abdi Omar Shurie, MP
16. Hon. Halima Mucheke, MP
17. Hon. Peter Francis Masara, MP
18. Hon. Ahmed Kolosh Mohammed, MP
19. Hon. Edward Oku Kaunya, MP

### **1.2 Committee Secretariat**

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

## **2.0 BACKGROUND**

The Bill was read for the first time on Thursday 5<sup>th</sup> July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1), it is on this basis that the Committee makes this Report.

The Bill that seeks to amend the National Flags and Emblems Act to allow members of the public to fly the National Flag in their place of residence, work and business; and for connected purposes. The Bill further seeks to

- i. Align some sections of the Act to the provisions of the Constitution;
- ii. To introduce new actors with authority to fly the national flag on Motor vehicle; and

- iii. To allow any person to fly the flag in places of residence during the national holidays.

## **2.1 Public access and participation.**

Article 118 (1) of the Constitution provides that; Parliament shall—

- (a) Conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
- (b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
- (c) (2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.

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

One of the most important features of the Country constitutional framework is the requirement of public participation in governance and other administrative activities. Specifically, the provisions of the following Articles are pertinent.

- i) Article 10 recognizes public participation as one of the national values;
- ii) Article 27 provides for equal treatment of all persons, while affirmative action in governance is provided for in Articles 54 and 56 of the Constitution;
- iii) Article 35 provides for the right of access to information held by the State or another person which is necessary for the exercise of any right or fundamental freedom;

- iv) Article 118 requires Parliament to conduct its business in an open manner and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It also prohibits Parliament from denying the public and media access into its sittings unless there are any justifiable reasons.

The Constitution obligates the State and all State organs to ensure adequate public consultation on all public policies, legislation or any decision that is likely to impact on the people of Kenya. Failure to factor in the mandatory requirement of public participation exposes the legislative instrument or policy framework to constitutional challenges of legitimacy, hence making it actionable for unconstitutionality in a court of law.

Effective public consultation is based on principles of openness, transparency, integrity and mutual respect. The open process facilitates acceptability amongst the key stakeholders, subsequently facilitating efficient and effective implementation of the legislative instrument.

## **2.2 Communication and committal to committee**

Pursuant to Standing order 127 (1) of the National Assembly the Bill was read for the first time on Thursday 5<sup>th</sup> July 2018 and subsequently committed to the Departmental Committee on Administration and National Security and report to the House.

## **2.3 Memoranda**

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017).

The submissions/memoranda were to be received on or before Friday 20<sup>th</sup> July 2018.

The committee received submissions from the Office of the Attorney General.

#### **2.4 Committee proceedings**

The Committee Considered the National Flag, Emblems Names (Amendment) Bill (Senate Bill No. 8 of 2017) on Tuesday 7<sup>th</sup> August 2018, Friday 26<sup>th</sup> October 2018 and adopted the report on Tuesday 13<sup>th</sup> November 2018.

### **3.0 SUMMARY OF THE NATIONAL FLAG EMBLEMS AND NAMES (AMENMENT) BILL SENATE BILL No. 8 OF 2017**

The Bill was read for the first time on Thursday 5<sup>th</sup> July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1), it is on this basis that the Committee makes this Report.

The Bill that seeks to amend the National Flags and Emblems Act to allow members of the public to fly the National Flag in their place of residence, work and business; and for connected purposes. The Bill further seeks to

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**Clause 2** seeks to insert a new definition of Cabinet Secretary to the Act

**Implication:** it defines where the power in relation to flags and emblems in the executive is vested.

**Clause 3, 8 and 9** seeks to substitute the word "Minister" with Cabinet Secretary

**Implication:** Align with the constitution.

**Clause 4** seeks to introduce new actors with authority to fly the national flag on Motor vehicle; the Deputy Speaker of Senate, the Deputy Speaker of the National Assembly and the Deputy Chief Justice

**Clause 5** seeks to allow any person to fly the flag in places of residence during the national holidays as a sign of patriotism.

**Clause 6** seeks to substitute the word Local Authority with “county government”

**Implication:** Aligns the provision with the Constitution.

#### **4.0 SUBMISSIONS FROM THE OFFICE OF THE ATTORNEY GENERAL ON THE BILL**

The Committee received comments from the Office of the Attorney General and wish to observe that:

1. The existing legislation provides for offences on a person who contravenes the provision of the Act, the intention of the amendment is to prescribe the actions permitted which if contravened becomes an offence under the provisions of Section 5 of the Act;
2. There is need to penalize a person who flies the flag with another flag unless the same is permitted by the law.

#### **5.0 COMMITTEE OBSERVATION**

1. Clause 4 of the Bill seeks to permit the Deputy Speaker of the Senate, Deputy Speaker of the National Assembly, Deputy Chief Justice to fly the flag on a motor vehicle, the Committee observes that these office holders deputise the substantive office holders, in this perspective therefore, they only exercise the authority of the office holder in absence of the substantive holder.
2. There is need to limit a person who is allowed to fly the national flag to fly one flag only save for the President.

3. There is need to expand the scope of allowing Kenyans to fly the flag on a motor vehicle during a public holiday as a sign of patriotism.

## 6.0 COMMITTEE RECOMMENDATION

In consideration of the observations above, the Committee recommends-

- 1) That the Bill be amended by deleting clause 4 and substituting therefore—

### **Clause 4**

Section 4A of the principal Act be amended by inserting the following new subsection immediately after subsection (2)—

“(2a) A person authorized to fly the flag under subsection (2), other than the President, shall not fly any other flag at the time he or she is flying the national flag.”

***Rationale:** this is to limit persons authorized to fly the flag other than the President to only one flag at a time.*

3. That the Bill be amended Clause 5 in the proposed section **4B** in subsection (1) inserting the words “**or on a motor vehicle**” immediately after the words “place of work or business”

***Rationale:** This is to allow Kenyans to fly the flag in their vehicles during public holidays.*