

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

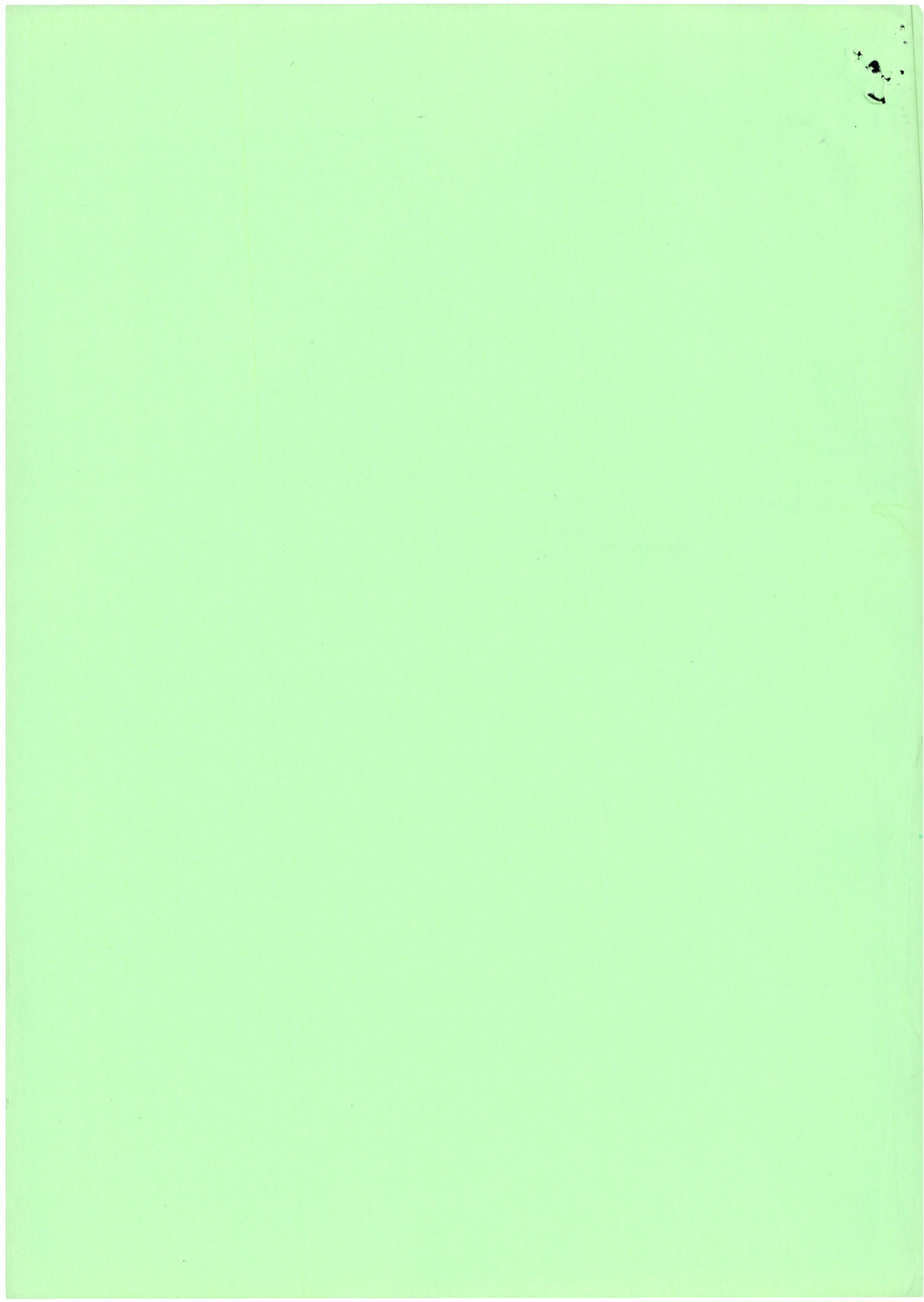
TENTH PARLIAMENT – FOURTH SESSION - 2012

REPORT OF THE
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY ON THE PREVENTION OF TERRORISM BILL,
2012

Approved.
[Signature]
25/9/12

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

SEPTEMBER 2012



PREFACE

Mr. Speaker, Sir,

The Parliamentary Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 198 of the National Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 198 (3), which mandates the Committee Members to, inter alia;

- (i) study and review all legislation referred to it;*
- (ii) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

Mr. Speaker,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i) Public Administration
- ii) National security
- iii) Internal Security
- iv) Immigration
- v) Prisons Service
- vi) National Youth Service
- vii) Natural disasters

The Committee oversees the following Ministries and Departments:

- (i) Office of the President (Cabinet Office and State House)
- (ii) Office of the Vice President and Ministry of Home Affairs
- (iii) Ministry of State for Provincial Administration and Internal Security
- (iv) Office of the Prime Minister
- (v) Ministry of State for Public Service
- (vi) The Public Service Commission
- (vii) Ministry of State for Immigration & Registration of Persons

Mr. Speaker, Sir,

The following are the Members of the Committee:

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Cyprian Omollo, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP
The Hon. Pollyins Ochieng', MP
The Hon. Mohamed Hussein Ali, MP
The Hon. Maison Leshoomo, MP
The Hon. Joseph Kiuna, MP
The Hon. Nkoidila ole Lankas, MP

Mr. Speaker,

Kenya is currently faced with complex human safety and national security challenges as well as conflict prevention issues. As a result, there is little doubt that Kenya needs to urgently enact an effective law to deal with acts of terrorism, having fallen victim of the terrorists' criminal acts, leading to loss of property and innocent lives.

It is imperative to observe that the economic, social and political pillars of the *Kenya Vision, 2030* are anchored on the presumption of the existence and sustainability of security, peace and tranquility.

The Constitution and National Security

Mr. Speaker, Sir,

The critical role of security is well captured under the Principles of National Security which are provided for in Article 238; Chapter 14 of the Constitution of Kenya, 2010 on National Security.

Article 238 (1) states that :- National Security is the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.

Further, Article 238 (2) states that; the national security of Kenya shall be promoted and guaranteed in accordance with the following principles:-

- (a) National security is subject to the authority of this Constitution and Parliament;
- (b) National security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;
- (c) In performing their functions and exercising their powers, national security organs shall respect the diverse culture of communities within Kenya; and,
- (d) Recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.

Targeted reforms in the security sector

Mr. Speaker,

The Medium Term Plan for 2009/2010 targets for the security, peace-building and conflict management sector including the establishment and equipping of a master forensic laboratory; installation of surveillance cameras in Nairobi, Mombasa, Nakuru and Kisumu; improvement of police and security personnel staff housing; and security and policing reforms.

Other reforms to be implemented target the Kenya Prison Service, encompassing improved training and working conditions for the prison staff; and the re-orientation of the Kenya Prisons Service to focus on correctional activities.

Whilst credible milestones have been made since the Government commenced implementation of actions recommended by the task force on Police reforms, the sector still faces numerous challenges, which include:-

- (i) The upsurge of violent activities by criminal elements, proscribed and militia groups which exhibit terrorist characteristics, identify with and/or are inclined to engage in terrorist activities;
- (ii) Widespread availability and ease of access to illicit small arms and light weapons (SALWs) in informal markets largely owing to Kenya's porous borders;

- (iii) Competition for and access to; control and ownership of limited national resources;
- (iv) Lack of an integrated and comprehensive policy to address peace, security and conflict; in the context of high levels of youth unemployment and multiple social adversities in the country;
- (v) Inadequate human resource capacity in containing and reversing insecurity including terrorist activities in the country;
- (vi) Prevalent drug and substance abuse; and,
- (vii) Human trafficking.

Some fundamental provisions

Mr. Speaker, Sir,

The Bill proposes severe measures and sentences such as life imprisonment for convicted terror suspects.

The Police are granted power to intercept communications where they suspect terrorist activities are being perpetrated.

Telephone and internet service providers will, if the Bill is enacted, be obligated to intercept and retain communication between suspected terrorists.

Courts can issue orders authorizing a police officer to enter any premise and install devices for interception and retention of communication suspected to be for terrorism purposes.

The Bill grants the police powers to seize property used in commission of terrorism.

What are the fears?

Mr. Speaker,

There are misgivings from certain groups that the introduction of the proposed legislation may erode the democratic gains so far made in the country. These fears are based on the following perceptions:-

- Sweeping powers are being handed to security agents who are perceived inappropriately trained and insensitive to upholding basic human rights.

- Existing laws have not been fully effective in fighting crimes due to their weak nature leading to institutional failure to enforce the laws.
- Some provisions in the Bill are perceived as having been aligned to those in foreign legislations such as the US Patriotic Act especially countries with strategic interests in Kenya.
- Enforcement of this law could greatly erode the constitutional guarantees of freedom and human rights, principally, loss of basic human privacy.
- The Law could re-introduce draconian practices and could be used to crack down divergent opinion by use of violence.

Strengths of the provisions

Mr. Speaker, Sir,

The Bill has positive attributes that will enhance and enforce security in the country. The Bill is not targeting any particular group, religion or community as has been claimed in sections of the media and has good intentions for every one of us. Some of the positive highlights of the Bill include;

- Proposals which are necessary to facilitate the work of law enforcement arms/officers to provide solid evidence to win prosecution in a court of law.
- Enhanced need for full disclosure especially of suspect financial proceeds.
- Proposals are long-term in vision not just knee-jerk reaction to prevailing situations.

Required to accomplish a smooth process of legislation

Mr. Speaker,

In order to complete the process of enacting the Bill into law, there is need for;

- Robust, sober and objective debates and presentations aimed at ensuring that we enrich the substance of the Bill to secure and protect our borders and country from political and religious extremists.

- Establishing whether the constitutionality of some of the clauses in the Bill is in tandem with the threshold of what the courts of law in Kenya sets/requires.
- Clarity and precision in the definition of terms. The Committee insists on concrete proposals and their justifications.
- Guaranteeing that proposals are home-grown and demand-driven not alien and/or foreign-driven.
- Application of basic tenets of a functional democracy with the aim of hearing contributions from everybody.

Key observation

Mr. Speaker, Sir,

The Bill puts into sharp focus the need to enhance security and safety of all Kenyans, and the protection of Kenyan territorial borders and strategic installations at all times, within the country. The delicate yet pivotal role that constant vigilance and maintenance of security at all times plays in achieving faster and sustainable socio-economic growth, political stability and development in Kenya cannot be over-emphasized. Anti-terror laws are necessary and desirable in this day and age!

Public Memoranda

Mr. Speaker,

In pursuit of democratic principles which are anchored in Article 118 of the Constitution; and Standing order 180 which allows the public to access Committee sittings; and in line with Article 73(2)(d) of the Constitution which provides for accountability to the public for decisions made, and actions taken, the Committee placed adverts in the mainstream daily newspapers, on 31st August and 2nd September, 2012, inviting members of the public to present Memoranda on any issues they may wish to raise over the proposed legislation.

Consequently, the Committee received written Memoranda from the Supreme Council of Kenya Muslims (SUPKEM), the Jamia Mosque Committee, the National Muslim Leaders Forum (NAMLEF), EMY initiative and the Association of Muslim Organizations in Kenya (AMOK).

The Committee further received oral submissions from SUPKEM on 4th September 2012. The Committee had invited SUPKEM to this meeting in order to give the organization an opportunity to make proposals to the Bills, bearing in mind that the Council had previously expressed strong reservations over certain clauses of the proposed legislation.

The Committee also met with the Jamia Mosque Committee who presented oral submissions on 4th September, 2012. The Jamia Mosque Committee said that there were certain clauses of the Bill that needed to be amended as they would impact negatively not only on Muslims, but Kenyans in general, if passed in their current form.

After deliberations and discussions on the Prevention of Terrorism Bill, 2012, several amendments were proposed. Thereafter, the Committee held consultations with the Acting Minister of State for Provincial Administration and Internal Security, over the proposed amendments to the Bill.


Acknowledgement

Mr. Speaker, Sir,

The Committee is grateful to the Ministry of State for Provincial Administration and National Security for initiating, drafting and publishing this important Bill which would establish a legal framework for the detection, prevention and investigation of terrorist acts and further enhance and enforce the general security of the country.

Mr. Speaker,

On behalf of the Committee, and pursuant to Standing Order 111 (2), it is my pleasant duty to table in the House the Report of the Departmental Committee on Administration and National Security on the Prevention of Terrorism Bill, 2012, for deliberation and adoption.

Signed..........Date.....25/09/2012.....

Hon. Fred Kapondi, MP

Chairman, Departmental Committee on Administration and National Security

**PROPOSED COMMITTEE AMENDMENTS TO THE PREVENTION OF TERRORISM
BILL, 2012**

No.	Clause	Proposed Amendment	Rationale for the Amendment
1.	Clause 2 - Interpretation	<p>Delete the definition of term "<i>financial institution</i>" and substitute therefor the following new definition-</p> <p><i>"financial institution" means any person or entity, which conducts as a business, one or more of the following activities or operations-</i></p> <ul style="list-style-type: none"> <i>(a) accepting deposits and other repayable funds from the public;</i> <i>(b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;</i> <i>(c) financial leasing;</i> <i>(d) transferring of funds or value, by any means, including both formal and informal channels;</i> <i>(e) issuing and managing means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money);</i> <i>(f) financial guarantees and commitments;</i> <i>(g) trading in-</i> <i>(i) money market instruments, including cheques, bills, certificates of deposit and derivatives;</i> <i>(ii) foreign exchange;</i> 	<p>The current definition for financial institution is very narrow and excludes other financial institutions. The proposed definition is in line with the Proceeds of Crime and Anti-money Laundering Act, 2009</p>

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<p><i>(iii) exchange, interest rate and index funds;</i> <i>(iv) transferable securities;</i> <i>and</i> <i>(v) commodity futures trading;</i> <i>(h) participation in securities issues and the provision of financial services related to such issues;</i> <i>(i) individual and collective portfolio management;</i> <i>(j) safekeeping and administration of cash or liquid securities on behalf of other persons;</i> <i>(k) otherwise investing, administering or managing funds or money on behalf of other persons;</i> <i>(l) underwriting and placement of life insurance and other investment related insurance; and</i> <i>(m) money and currency changing;</i></p>	
2	Clause 2 - Interpretation	<p>Insert the following new definitions in the alphabetical order:</p> <p><i>Funds: refers to assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to, or interest in such assets.</i></p> <p><i>Property: means assets of every kind, whether</i></p>	<p>These technical terms are used in the Bill but have not been clearly defined.</p>

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<p><i>corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets and includes funds.</i></p> <p>Financial Reporting Centre: means the Financial Reporting Centre established under Section 21 of the Proceeds of Crime and Anti Money Laundering Act, 2009</p>	
3	Clause 2 - Interpretation	<p>Amend the definition of the term “terrorist property” by inserting a new paragraph (c) to read as follows: <i>(c)Any property belonging to a specified entity</i></p>	To reflect the provisions of Clause 3
4	Clause 2 - Interpretation	<p>Amend the definition of the term “terrorist act” by deleting paragraphs b(i) and (ii) and substituting therefor the following paragraphs-</p> <p>(i) intimidating or causing fear amongst members of the public or a section of the public; or</p> <p>(ii) intimidating or compelling the Government or an international organization to do, or refrain from doing, any act; or</p>	<p>For clarity and to ensure that the definition does not extend to innocent acts</p> <p>To remove references to religious, ethnic or ideological causes with are emotive.</p> <p>The proviso is for abundant caution.</p>

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<p>(iii) destroying or destabilizing the religious, political, constitutional, economic or social institutions of a country, or an international organization;</p> <p>provided that an act which disrupts any services and is committed in pursuance of a protest, demonstration or stoppage of work shall be deemed not to be a terrorist act within the meaning of this definition so long as the act is not intended to result in any harm referred to in paragraph (a) (i) - (iv).</p>	
5	Clause 5 - Collection or provision of property or services for commission of terrorist acts	<p>Amend Clause 5 by-</p> <p>i) Inserting the words <i>“attempts to collect”</i> immediately after the word <i>“collects”</i></p> <p>ii) Inserting the words <i>“attempts to provide”</i> immediately after the word <i>“provides”</i></p> <p>iii) Inserting the word <i>“funds”</i> immediately after the words <i>“any property”</i> and <i>“such property.”</i></p>	<ul style="list-style-type: none"> • This is to mirror the provisions of Clause 45 • To cater for the incomplete offences (inchoate offences)
6	Clause 11 - Provision of weapons to terrorist groups	<p>Amend paragraph (c) by deleting the words <i>“or for the benefit of a terrorist group or a member of a terrorist group”</i> and substituting therefor the following words <i>“that person to commit an</i></p>	<p>To isolate it from the provisions of (a) and (b)</p>

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<i>offence under this Act”</i>	
7	Clause 35(3)(a)(iii)	Delete Clause 35(3)(a)(iii) and re-number	Clause 35(3)(a)(iii) has already been addressed adequately by 35(3)(a)(iv)
8	Clause 36 - Power to intercept communication and the admissibility of intercepted communication	Amend Clause 36 by inserting the following new sub-clause immediately after sub-clause (5) <i>(6) A Police Officer who intercepts communication other than is provided for under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding five million shillings or to both.</i>	To safeguard against abuse.
9	Clause 42 - Duty to disclose information relating to property of a terrorist	Amend Clause 42:- i) In sub-section 1 by deleting the words “ <i>a police officer</i> ” and substituting therefor the words “ <i>the Financial Reporting Centre</i> ”. ii) By deleting sub-clause 2 iii) In sub-clause 3 by deleting the words “ <i>a police officer</i> ” and substituting therefor the words “ <i>the Financial Reporting Centre</i> ”. iv) In sub-Clause 4 by deleting the words	To mirror the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 which gives the Financial Reporting Centre the mandate of monitoring suspicious transaction reports.

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<i>“Central Bank of Kenya” and substituting therefor the words “the Financial Reporting Centre”.</i>	
10	Clause 47 - Provision of information relating to persons entering or leaving the country	Amend Sub Clause 1 (a) by inserting the words “or entering” immediately after the word “from”	To mirror the marginal notes
11	Clause 50- Power to make regulations	Delete Clause 50 and substitute therefor the following new Clause- <i>50(1)The Cabinet may make rules in respect of all matters in respect of which rules are required or authorized by this Act. (2) Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon member States to apply those measures, the Cabinet Secretary may, by rules make such provisions as may appear to the Cabinet Secretary or expedient to enable those measures applied. (3) Where a rule under subsection (2) declares that there are reasonable grounds to believe that an entity specified in that rule is engaged in terrorist activity, that entity shall be deemed with effect</i>	To give the Cabinet Minister powers to make rules including rules to implement the UN Security Council Resolutions which are binding on all member states.

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<i>from the date of publication of the rule to have been declared a specified entity under Clause 3 (2)</i>	

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON THURSDAY, 30TH AUGUST, 2012, IN THE COMMITTEE ROOM, 7TH FLOOR, RESTAURANT, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 11.30 AM

PRESENT

The Hon. Peter Kiilu, MP (Vice Chairman) Chairing
The Hon. Mohamed Hussein Ali, MP
The Hon. Joseph Kiuna, MP
The Hon. Raphael Letimalo, MP

ABSENT WITH APOLOGY

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Pollyins Ochieng, MP
The Hon. Cyprian Omollo, MP
The Hon. Danson Mungatana, MP
The Hon. Maison Leshoomo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Abdullahi Aden - Third clerk Assistant
Mr. Mohamed Boru - Parliamentary Intern

MIN.NO.173/2012 - PRELIMINARIES

The Chairman called the meeting to order at 11.30 am. Prayers were said. He welcomed the Committee Members to the meeting to deliberate on the prevention of Terrorism Bill, 2012.

MIN. NO. 174/2012 – DELIBERATION ON THE PREVENTION OF TERRORISM BILL, 2012

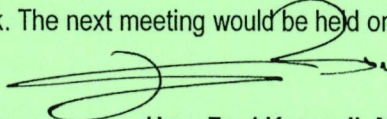
- The Committee Chairman stressed on the importance of supporting the Bill in order to pave way for the establishment of a legal framework for the prevention of terrorist acts and enhance the general security of the country.
- The Committee agreed to place an advertisement in the daily newspapers informing members of the public to send Memoranda on any issues they might have on the Prevention of Terrorism Bill, 2012.

MIN.NO. 175/2012 - BUILD UP OF TENSION IN BANITA SETTLEMENT SCHEME

On the matter regarding the tension in Banita Settlement Scheme which was referred to the three Joint Committees on Administration and national; and on Lands and Natural Resources; and the Select Committee on Equal Opportunity, the Committee agreed the secretariat of the three Committees to fix a tentative date for the joint meeting.

MIN. NO.176/2012 - A.O.B/ADJOURNMENT

There being no other business for discussion, the Acting Chairman adjourned the meeting at fifteen minutes past twelve o'clock. The next meeting would be held on Tuesday, 4th September, 2012 at 10.00 am.



Signed: Chairman.....Hon. Fred Kapondi, MP.....Date.....12/9/2012

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON TUESDAY, 4TH SEPTEMBER 2012, IN THE BOARD ROOM, 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM

PRESENT

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Danson Mungatana, MP
The Hon. Joseph Kiuna, MP
The Hon. Maison Leshoomo, MP

ABSENT WITH APOLOGY

The Hon. Mohamed Hussein Ali, MP
The Hon. Pollyins Ochieng', MP
The Hon. Cyprian Omollo, MP
The Hon. Raphael Letimalo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Abdullahi Aden - Third clerk Assistant
Mr. Mohamed Boru - Parliamentary Intern

IN ATTENDANCE – SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM)

Prof. Abdulgafur El Busaidy - Chairman
Mr. Hussein Shariff Omar - Organizing Secretary
Mr. Ali Mohamud Mohamed - Legal Counsel

MIN. NO. 177/2012 - PRELIMINARIES

The Chairman called the meeting to order at 10.00 am. He welcomed the delegation from the Supreme Council of Kenya Muslims (SUPKEM) to the meeting. He informed SUPKEM that the Committee had invited the Council based on the fact that previously, the group had expressed strong reservations to the Bill, and the Committee wished to hear the views. He further said it was important to have a consensus before the legislation was passed. He then welcomed the SUPKEM Chairman to make his presentation on the Prevention of Terrorism Bill, 2012.

MIN. NO. 178/2012 - DELIBERATION ON THE PREVENTION OF TERRORISM BILL, 2012

The Supreme Council of Kenya raised the following concerns on the Prevention of Terrorism Bill, 2012;

The definition of "terrorist acts" in the Bill was vague. Simple acts of violence were likely to be interpreted as acts of terrorism. There was no difference between a terrorist act and other offences under the penal code.

Section 7 of the Bill relating to money laundering is similar to Cap. 488 of the Banking Act and has provisions that are similar to the Anti-money Laundering Act and therefore there was no need to duplicate the law.

Section 36 of the Bill purported to give the state agents powers to intercept communication and ran counter to the right to a fair trial under Article 50 (4) which nullifies evidence collected in a manner that violates any right or fundamental freedom.

Section 37 of the Bill gave sweeping powers to the Inspector General of Police to seize property of others suspected of terror acts. Sub-section (7) prevents aggrieved parties from taking civil or criminal action against the Inspector General in the event of unlawful seizure.

The Supreme Council of Kenya Muslims suggested the sections mentioned above be amended to comply with the constitution. In particular, they suggested that;

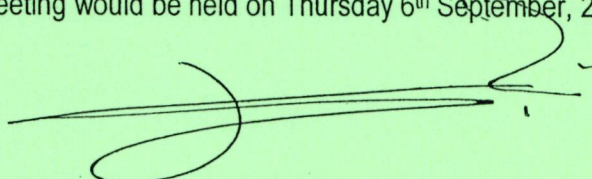
- The definition of "terrorist acts" should be amended to focus on acts that are Terrorist in nature and not include other penal code offences.
- The provisions of section 36 of the Bill that gave the police the powers to intercept communication were ultra vires and as such should be deleted.

The SUPKEM Chairman further asserted that the Bill should not be rushed, especially at a time when Kenya was heading to a crucial election. He suggested that the Bill be suspended awaiting further consultations and more importantly, the successful completion of Police reforms before such a law is enacted.

The Committee Chairman assured SUPKEM that their concerns would be given due consideration. He pointed out that there was need to make a good law which would ensure the security of all Kenyans was upheld. He further reiterated that the law was not targeting any group, religion or organization but was meant to enhance and protect Kenyans from acts of terrorism.

MIN. NO.179/2012 - A.O.B/ADJOURNMENT

There being no other business for discussion, the Chairman adjourned the meeting at 11:30am. The next meeting would be held on Thursday 6th September, 2012.



Signed:- Chairman.....Hon. Fred Kapondi, MP.....Date. 12/9/2012.....

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON TUESDAY, 4TH SEPTEMBER 2012, IN THE BOARD ROOM, 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS, AT 12.00 PM

PRESENT

The Hon. Fred Kapondi, MP (**Chairman**)
The Hon. Peter Kiilu, MP (**Vice Chairman**)
The Hon. Joseph Kiuna, MP
The Hon. Danson Mungatana, MP

ABSENT WITH APOLOGY

The Hon. Mohamed Hussein Ali, MP
The Hon. Pollyins Ochieng, MP
The Hon. Cyprian Omollo, MP
The Hon. Maison Leshoomo, MP
The Hon. Raphael Letimalo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Abdullahi Aden - Third Clerk Assistant
Mr. Mohamed Boru - Parliamentary Intern

IN ATTENDANCE – JAMIA MOSQUE COMMITTEE

Hon. Billow Kerow - Conveners of Religious Affairs
Prof. Ibrahim Lithome - Member
Mr. Abdul Bary Hamid - Secretary General
Mr. Salim Ibrahim - Administrator

MIN. NO. 180/2012 - PRELIMINARIES

The Chairman called the meeting to order at 12.00 noon. He welcomed the delegation from the Jamia Mosque to the meeting. He informed them that the anti-terror Bill was very important as it was meant to enhance and enforce security in the country. The Bill was therefore necessary in achieving these goals. He then invited the Chairman of Jamia Mosque Committee to make his presentation on the Prevention of Terrorism Bill, 2012.

MIN. NO. 181/2012 - DELIBERATION ON THE PREVENTION OF TERRORISM BILL, 2012

The Jamia Mosque Committee raised the following concerns on the on the Prevention of Terrorism Bill, 2012;

- *Clause 2* on definition of 'terrorist acts' is vague. The clause is not specific in defining what an act of terrorism is and a normal act of violence or crime could easily be interpreted to mean an act of terror. There was need to define acts of terrorism clearly to indicate that the intention was actually premeditated to execute a terrorist act.
- *Clause 2 (a) (vii)* stifles the freedom to picket or demonstrate as enshrined in the Constitution and therefore there is need to change this provision which seems to go against the tenets of the Constitution.
- *Clause 2 (a) (ix)* could be used to clamp down on dissenting voices or gag the media. Any person can claim that some action by the media or an individual prejudices national security or public safety and issue an order for arbitrary arrests.
- *Clause 2 (b) (ii)* criminalizes acts that are intended to intimidate the public but the concern is how to gauge an act that is meant to intimidate the public.
- *Clause 2 (b) (ii)* stifles freedom of expression as it criminalizes divergent views on international organizations.
- The Bill gives the cabinet secretary wide discretion to declare any organization a terrorist group by claiming that the organization has engaged in, participated, attempted or facilitated any of the acts stated as terrorist acts.
- *Clause 42* of the Bill attempts to shift the burden of proof in offences dealing with terrorists' property from the prosecution to the defence. The suspect thus has to prove his innocence rather than the prosecutor proving him/her guilty.
- *Clauses 5,6,7,8 and 9* make it an offence to collect funds, possess and retain property used directly or indirectly in commission of terrorist acts as well as dealing or engaging in any transaction in property owned by a terrorist group. These provisions are impractical to enforce considering the excessively wide range of offences that fall under 'terrorist acts.'
- *Clause 27* creates the offence of incitement to terrorism. Many statements can be conceived as incitement to terrorism and can be charged as such.
- *Clause 29* reigns in academics and media personnel that may be carrying out terrorism related research. *Clause 30* goes further and criminalizes possession of articles connected with terrorism. The provision may be open for abuse bearing in mind that one may be found with research material which may be declared pro-terrorist in nature.

- There was need to look into provisions of the Bill relating to the tracking, attachment, seizure and forfeiture of terrorist property under Articles 37, 40, 42 and 48 which appear flawed and legally untenable.
- The appointment of a receive manager by the court to manage the property of a suspect violates his right of being presumed innocent till proven guilty. The Bill does not provide for a clear mechanism for return of seized property if the suspect is innocent hence can be exploited for the unjust enrichment of others.
- The Bill purports to limit the fundamental rights of an individual including right to privacy, freedom of expression, and freedom of media and security of the person by attempting to waive certain provision of Article 24 of the Constitution.
- Clause 35 of the Bill details the various rights limited under the Bill and argues such limitation shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

In conclusion, the Jamia Mosque Committee suggested that;

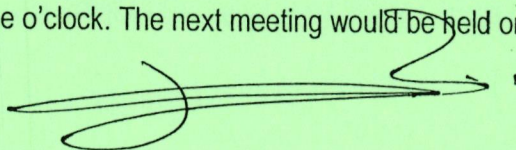
- 'Terrorist acts' should be properly defined as everything in the Bill is dependent on such definition and as such, the whole Bill becomes flawed with half-baked definitions.
- The provisions that are in contravention with the constitution of Kenya should either be amended to comply with the supreme law. In instances where amendments are not viable, the clauses should be deleted.

The Chairman informed the Jamia Mossque team that their concerns had been noted, and the Committee shall strive to ensure that the Bill would serve everyone well, in terms of enhancing and enforcing security in the country. He reiterated that the provisions in the Bill should not be seen to target any individual, group, community or religion.

MIN. NO.182/2012 - A.O.B/ADJOURNMENT

There being no other business for discussion, the Chairman adjourned the meeting at fifteen minutes past one o'clock. The next meeting would be held on Thursday 6th September, 2012.

Signed:



Chairman.....Hon. Fred Kapondi, MP.....Date.11 /9/2012.....

MINUTES OF THE 52ND SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON THURSDAY, 6TH SEPTEMBER, 2012, IN THE COMMITTEE ROOM, 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM

PRESENT

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Raphael Letimalo, MP

ABSENT WITH APOLOGY

The Hon. Mohamed Hussein Ali, MP
The Hon. Joseph Kiuna, MP
The Hon. Pollyins Ochieng, MP
The Hon. Maison Leshoomo, MP
The Hon. Cyprian Omollo, MP
The Hon. Danson Mungatana, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Abdullahi Aden - Third clerk Assistant
Mr. Mohamed Boru - Parliamentary Intern

MINISTRY OF STATE FOR PROVINCIAL ADMINISTRATION AND INTERNAL SECURITY

The Hon. Mohamed Yusuf Haji, EGH, MP - Minister
Mr. Mathew Itere - Police Commissioner
Mr. B.N. Mwaniki - CDT Antiterrorism
Mr. S.M. Mwdime - Ag. Secretary OOP
Mr. E.J. Mafuko - NIS
Mr. Richard Ongeti - National Counter Terrorism Centre
Mr. Issack Ochieng - Director National Counter Terrorism
Mr. Naftali Rono - NIS
Mr. Simon Karanja - PA to the Minister

MIN.NO.183/2012 - PRELIMINARIES

The Chairman called the meeting to order at 10.00 am o'clock. Prayers were said. He welcomed the acting Minister of State for Provincial Administration and Internal Security and his team to the meeting. He informed the Minister that the Bill was very critical in that it addressed the general security matters of the country. He further informed the Minister that the Committee had placed adverts in the mainstream newspapers in order to invite public participation.

The Chairman further informed the Minister that the Committee had met with the Supreme Council of Kenya Muslims (SUPKEM) and Jamia Mosque Committee over concerns they had regarding the Prevention of Terrorism Bill, 2012.

The Committee had also received written Memoranda from the National Muslim League NAMLEF and Emy Initiative concerning the Prevention of Terrorism Bill, 2012.

MIN.NO.184/2012 – DELIBERATION ON THE PREVENTION OF TERRORISM BILL, 2012

The Chairman further informed the Minister that Clause 2 (a) on the definition of 'terrorist acts' was considered as vague by all the stakeholders who had appeared before the Committee.

The Minister said that Clause 2 (a) on the definition of terrorist acts should be read together 2 (b) of the bill, which states that "terrorist act" means an act or threat of action which is carried out with the aim of –

- (i) advancing a political, religious, ethnic, ideological or other cause; and
- (ii) causing fear amongst the members of the public or a section of the public, or intimidating or compelling the Government or an international organization to do or refrain from doing any act.

The Minister proposed the following amendments to the Bill;

PROPOSED AMENDMENTS TO THE PREVENTION OF TERRORISM BILL, 2012

No.	Clause	Proposed Amendment	Rationale for the Amendment
1.	Clause 2 – Interpretation	Delete the definition of term " <i>financial institution</i> " and substitute therefor the following new definition- <i>"financial institution" means any person or entity, which conducts as a business, one or more of the following activities or operations-</i> <i>(a) accepting deposits and other repayable funds from</i>	The current definition for financial institution is very narrow and excludes other financial institutions. The proposed definition is in line with the Proceeds of Crime and Anti-money Laundering Act, 2009

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<p><i>the public;</i> <i>(b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;</i> <i>(c) financial leasing;</i> <i>(d) transferring of funds or value, by any means, including both formal and informal channels;</i> <i>(e) issuing and managing means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money);</i> <i>(f) financial guarantees and commitments;</i> <i>(g) trading in—</i> <i>(i) money market instruments, including cheques, bills, certificates of deposit and derivatives;</i> <i>(ii) foreign exchange;</i> <i>(iii) exchange, interest rate and index funds;</i> <i>(iv) transferable securities; and</i> <i>(v) commodity futures trading;</i> <i>(h) participation in securities issues and the provision of financial services related to such issues;</i> <i>(i) individual and collective portfolio management;</i> <i>(j) safekeeping and administration of cash or liquid securities on behalf of other persons;</i> <i>(k) otherwise investing, administering or managing funds or money on behalf of other</i></p>	

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<p><i>persons;</i> <i>(l) underwriting and placement of life insurance and other investment related insurance; and</i> <i>(m) money and currency changing;</i></p>	
2	Clause 2 – Interpretation	<p>Insert the following new definitions in the alphabetical order:</p> <p>Funds: <i>refers to assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to, or interest in such assets.</i></p> <p>Property: <i>means assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets and includes funds.</i></p> <p>Financial Reporting Centre: <i>means the Financial Reporting Centre established under Section 21 of the Proceeds of Crime and Anti Money Laundering Act, 2009</i></p>	These technical terms are used in the Bill but have not been clearly defined.
3	Clause 2 – Interpretation	<p>Amend the definition of the term “terrorist property” by inserting a new paragraph (c) to read as follows: <i>(c) Any property belonging to a specified entity</i></p>	To reflect the provisions of Clause 3
4	Clause 2 – Interpretation	<p>Amend the definition of the term “terrorist act” by deleting paragraphs b(i) and (ii) and substituting therefor the following paragraphs-</p>	<p>For clarity and to ensure that the definition does not extend to innocent acts</p> <p>To remove references to</p>

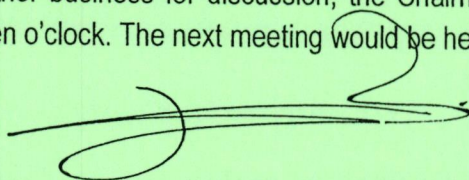
No.	Clause	Proposed Amendment	Rationale for the Amendment
		<p>(i) intimidating or causing fear amongst members of the public or a section of the public; or</p> <p>(ii) intimidating or compelling the Government or an international organization to do, or refrain from doing, any act; or</p> <p>(iii) destroying or destabilizing the religious, political, constitutional, economic or social institutions of a country, or an international organization;</p> <p>provided that an act which disrupts any services and is committed in pursuance of a protest, demonstration or stoppage of work shall be deemed not to be a terrorist act within the meaning of this definition so long as the act is not intended to result in any harm referred to in paragraph (a) (i) - (iv).</p>	<p>Religious, ethnic or ideological causes with are emotive.</p> <p>The proviso is for abundant caution.</p>
5	Clause 5 – Collection or provision of property or services for commission of terrorist acts	<p>Amend Clause 5 by-</p> <p>i) Inserting the words “<i>attempts to collect</i>” immediately after the word “<i>collects</i>”</p> <p>ii) Inserting the words “<i>attempts to provide</i>” immediately after the word “<i>provides</i>”</p> <p>iii) Inserting the word “<i>funds</i>” immediately after the words “<i>any property</i>” and “<i>such property</i>.”</p>	<ul style="list-style-type: none"> • This is to mirror the provisions of Clause 45 • To cater for the incomplete offences (inchoate offences)
6	Clause 11 – Provision of weapons to terrorist groups	<p>Amend paragraph (c) by deleting the words “<i>or for the benefit of a terrorist group or a member of a terrorist group</i>” and substituting therefor the following words “<i>that</i></p>	<p>To isolate it from the provisions of (a) and (b)</p>

No.	Clause	Proposed Amendment	Rationale for the Amendment
		<i>person to commit an offence under this Act"</i>	
7	Clause 35	Delete clause 35(3)(a)(iii)	Clause 35(3)(a) (iii) is adequately addressed in clause 35(3)(a)(iv)
8	Clause 36 – Power to intercept communication and the admissibility of intercepted communication	Amend Clause 36 by inserting the following new sub-clause immediately after sub-clause (5) <i>(6) A Police Officer who intercepts communication other than is provided for under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding five million shillings or to both.</i>	To safeguard against abuse.
9	Clause 42 – Duty to disclose information relating to property of a terrorist	Amend Clause 42:- i) In sub-section 1 by deleting the words “a police officer” and substituting therefor the words “the Financial Reporting Centre”. ii) By deleting sub-clause 2 iii) In sub-clause 3 by deleting the words “a police officer” and substituting therefor the words “the Financial Reporting Centre”. iv) In sub-Clause 4 by deleting the words “Central Bank of Kenya” and substituting therefor the words “the Financial Reporting Centre”.	To mirror the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009 which gives the Financial Reporting Centre the mandate of monitoring suspicious transaction reports.
10	Clause 47 – Provision of information relating to	Amend Sub Clause 1 (a) by inserting the words “or	To mirror the marginal notes

No.	Clause	Proposed Amendment	Rationale for the Amendment
	persons entering or leaving the country	<i>entering</i> " immediately after the word "from"	
11	Clause 50- Power to make regulations	Delete Clause 50 and substitute therefor the following new Clause- <i>50(1) The Cabinet may make rules in respect of all matters in respect of which rules are required or authorized by this Act. (2) Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon member States to apply those measures, the Cabinet Secretary may, by rules make such provisions as may appear to the Cabinet Secretary or expedient to enable those measures applied. (3) Where a rule under subsection (2) declares that there are reasonable grounds to believe that an entity specified in that rule is engaged in terrorist activity, that entity shall be deemed with effect from the date of publication of the rule to have been declared a specified entity under Clause 3 (2)</i>	To give the Cabinet Minister powers to make rules including rules to implement the UN Security Council Resolutions which are binding on all member states.

MIN. NO.185/2012 - A.O.B/ADJOURNMENT

There being no other business for discussion, the Chairman adjourned the meeting at forty five minutes past eleven o'clock. The next meeting would be held on Tuesday 4th September, 2012.



Signed: Chairman.....Hon. Fred Kapondi, MP.....Date.....12/09/2012

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON TUESDAY, 11TH SEPTEMBER, 2012, IN THE RESTAURANT, 7TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 11.30 AM

PRESENT

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Mohamed Hussein Ali, MP
The Hon. Danson Mungatana, MP

ABSENT WITH APOLOGY

The Hon. Joseph Kiuna, MP
The Hon. Raphael Letimalo, MP
The Hon. Pollyins Ochieng, MP
The Hon. Cyprian Omollo, MP
The Hon. Maison Leshoomo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga	-	Second Clerk Assistant
Mr. Abdullahi Aden	-	Third Clerk Assistant
Mr. Perter Adika	-	Research Officer
Mr. Mohamed Boru	-	Parliamentary Intern

MIN.NO.186/2012 - PRELIMINARIES

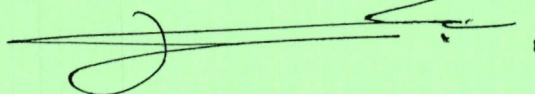
The Chairman called the meeting to order at 11.30 am. Prayers were said. He welcomed the Committee Members to the meeting. He informed them that the day's agenda was to adopt the report on the Prevention of Terrorism Bill, 2012.

MIN. NO. 187/2012 – ADOPTION OF THE REPORT ON THE PREVENTION OF TERRORISM BILL, 2012

- The Committee Chairman postponed the adoption of the Committee report and informed the Members that the Committee required majority Members in order to adopt the report. The meeting was rescheduled to take place on Wednesday 12th September 2012, at 11.30 am.
- On the National Police Service Commission nominees, the Committee agreed to place an advertisement in the daily newspapers for public participation. The nominees would also be invited to appear before the committee for vetting.

MIN. NO.188/2012 - A.O.B/ADJOURNMENT

There being no other business for discussion, the Chairman adjourned the meeting at ten minutes past twelve o'clock. The next meeting would be held on Wednesday, 12th September, 2012 at 11.30 am.



Signed: Chairman.....Hon. Fred Kapondi, MP.....Date.....11/9/2012

MINUTES OF THE 54TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON WEDNESDAY, 12TH SEPTEMBER, 2012, IN THE RESTAURANT, 7TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 11.30 AM

PRESENT

The Hon. Peter Kiilu, MP (Vice Chairman) Chairing
The Hon. Joseph Kiuna, MP
The Hon. Maison Leshoomo, MP

ABSENT WITH APOLOGY

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Mohamed Hussein Ali, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP
The Hon. Pollyins Ochieng, MP
The Hon. Cyprian Omollo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga	-	Second Clerk Assistant
Mr. Abdullahi Aden	-	Third Clerk Assistant
Mr. Perter Adika	-	Research Officer
Mr. Mohamed Boru	-	Parliamentary Intern

MIN.NO.189/2012 - PRELIMINARIES

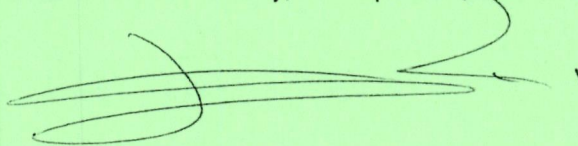
The acting Chairman called the meeting to order at 11.30 am. Prayers were said. He welcomed the Committee Members to the meeting. He informed them that the agenda of the day was to adopt the report on the prevention of Terrorism Bill, 2012.

MIN. NO. 190/2012 – ADOPTION OF THE REPORT ON THE PREVENTION OF TERRORISM BILL, 2012

- The acting Chairman informed the Committee Members present that the requisite number of Members had not been realized and so another meeting would be held to adopt the report. The meeting was rescheduled for Thursday 13th September 2012, at 10.00am.

MIN. NO.191/2012 - A.O.B/ADJOURNMENT

There being no other business for discussion, the acting Chairman adjourned the meeting at twelve o'clock. The next meeting would be held on Thursday, 13th September, 2012 at 10.00 am.



Signed: Chairman.....Hon. Fred Kapondi, MP.....Date.....12/9/2012

MINUTES OF THE 55TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY, HELD ON THURSDAY, 13TH SEPTEMBER, 2012, IN THE COMMITTEE ROOM, 1ST FLOOR, RESOURCE CENTRE , CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM

PRESENT

The Hon. Fred Kapondi, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman) Chairing
The Hon. Maison Leshoomo, MP
The Hon. Danson Mungatana, MP
The Hon. Joseph Kiuna, MP
The Hon. Raphael Letimalo, MP
The Hon. Cyprian Omollo, MP

ABSENT WITH APOLOGY

The Hon. Mohamed Hussein Ali, MP
The Hon. Pollyins Ochieng, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga	-	Second Clerk Assistant
Mr. Abdullahi Aden	-	Third Clerk Assistant
Mr. Perter Adika	-	Research Officer
Mr. Mohamed Boru	-	Parliamentary Intern

MIN.NO.192/2012 - PRELIMINARIES

The acting Chairman called the meeting to order at 10.00 am o'clock. Prayers were said. He welcomed the Committee Members to the meeting. He informed them that the agenda of the day was to adopt the report of the Committee on the prevention of Terrorism Bill, 2012.

MIN. NO.193/2012 – CONFIRMATION OF MINUTES

- (I) Minutes of the 49th sitting held on Thursday 30th August 2012, were confirmed as the true proceedings of that meeting, after being proposed by the Hon. Raphael Letimalo, MP, and seconded by the Hon. Joseph Kiuna, MP.
- (II) Minutes of the 50th sitting held on Tuesday 4th September 2012, at 10.00 am were confirmed as the true proceedings of that meeting, after being proposed by the Hon. Joseph Kiuna, MP, and seconded by Hon. Peter Kiilu, MP.
- (III) Minutes of the 51st sitting held on Tuesday 4th September 2012, At 12.00 pm were confirmed as the true proceedings of that meeting, after being proposed by the Hon. Peter Kiilu, MP, and seconded by the Hon. Joseph Kiuna, MP.

- (IV) Minutes of the 52nd sitting held on Thursday 6th September 2012, were confirmed as the true proceedings of that meeting, after being proposed by the Hon. Raphael Letimalo, MP, and seconded by the Hon. Peter Kiilu, MP.

- (V) Minutes of the 53rd sitting held on Tuesday 11th September 2012, were confirmed as the true proceedings of that meeting, after being proposed by the Hon. Fred Kapondi, MP, and seconded by the Hon. Peter Kiilu, MP.

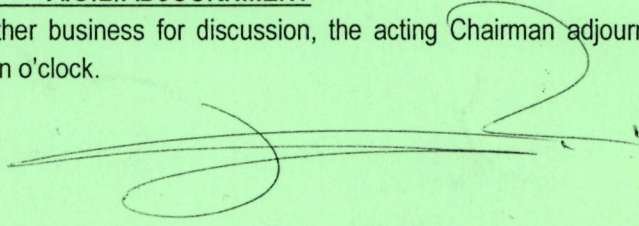
- (VI) Minutes of the 54th sitting held on Wednesday 12th September 2012, were confirmed as the true proceedings of that meeting, after being proposed by the Hon. Joseph Kiuna, MP, and second by the Hon. Peter Kiilu, MP.

MIN. NO. 194/2012 – ADOPTION OF THE REPORT

The Committee Members present unanimously adopted the report on the Prevention of Terrorism Bill, 2012.

MIN. NO.195/2012 – A.O.B/ADJOURNMENT

There being no other business for discussion, the acting Chairman adjourned the meeting at forty five minutes past eleven o'clock.



Signed: Chairman.....Hon. Fred Kapondi, MP.....Date.....13/9/2012