



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT
THE SENATE

ORDER PAPER
SPECIAL SITTING

TUESDAY, DECEMBER 30, 2014 AT 2.30 P.M

PRAYERS

1. Communication from the Chair
2. Notice of Motion (As Listed in the Appendix)
3. **MOTION** - (The Senate Minority Leader)

THAT:

WHEREAS on 8th December, 2014, the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014 was published;

AND WHEREAS the Bill sought to make amendments to the following array of laws relating to security-

- (1) The Public Order Act (Cap. 56);
- (2) The Penal Code (Cap. 63);
- (3) The Extradition (Contiguous and Foreign Countries) Act (Cap. 76);
- (4) The Criminal Procedure Code (Cap. 75);
- (5) The Registration of Persons Act (Cap. 107);
- (6) The Evidence Act (Cap. 80);
- (7) The Prisons Act (Cap. 90);
- (8) The Firearms Act (Cap. 114);
- (9) The Radiation Protection Act (Cap. 243);
- (10) The Rent Restriction Act (Cap. 395);
- (11) The Kenya Airports Authority Act (Cap. 395);
- (12) The Traffic Act (Cap. 403);
- (13) The Investment Promotion Act (Cap. 485);
- (14) The Labour Institutions Act (No. 12 of 2012);
- (15) The National Transport and Safety Authority Act (No. 33 of 2012);
- (16) The Refugees Act (No. 12 of 2006);
- (17) The National Intelligence Service Act (No. 28 of 2012);
- (18) The Prevention of Terrorism Act (No. 30 of 2012);
- (19) The Kenya Citizenship and Immigration Act (No. 12 of 2011);
- (20) The National Police Service Act (No. 11A of 2011); and
- (21) The Civil Aviation Act (No. 21 of 2013).

...../Motion

AND WHEREAS the Bill was introduced in the National Assembly and read a First Time on Tuesday, 9th December, 2014;

AND FURTHER WHEREAS the Bill was passed by the National Assembly on Thursday, 18th December, 2014, assented to on Friday, 19th December, 2014 and thereafter published in the Kenya Gazette Supplement No. 167 on 22nd December, 2014 as Act No. 19 of 2014;

COGNIZANT THAT Article 110(3) of the Constitution requires that before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

FURTHER COGNIZANT THAT Article 96 of the Constitution provides that the Senate represents the Counties and serves to protect the interests of the Counties and their Governments and further participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties as provided in Part 4 of Chapter Eight of the Constitution;

RECALLING that the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 reaffirmed the central role of Senate in the legislative process and in particular with respect to Bills that concern County Governments and further pronounced itself on the manner in which, pursuant to Article 110(3) of the Constitution, the Speakers of the two Houses are to jointly resolve the question as to whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

AND NOTING IN PARTICULAR that on legislation relating to security the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 cited, with approval, the *Final Report of the Task Force on Devolved Government* Vol. 1: *A Report on the Implementation of Devolved Government in Kenya* [page. 18] which stated, *inter alia*, that “*although security and policing are national functions, how security and policing services are provided affects how county governments discharge their agricultural functions. As such, a bill on security and policing would be a bill concerning counties*”

AND WHEREAS despite the Supreme Court's Advisory Opinion, the National Assembly failed to adhere to the requirements of Article 110(3) and (4) of the Constitution in respect to the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014 by considering the Bill and proceeding to secure presidential assent to the Bill without seeking the concurrence of the Speaker of the Senate in terms of Article 110(3) and without referring the Bill to the Senate in terms of Article 110(4) of the Constitution;

CONCERNED that the exclusion of the Senate in the consideration and enactment of legislation that relates to security adversely impacts the Senate's ability to represent the Counties and to protect the interests of the Counties and their Governments in security matters which are of great concern to the Counties and to the County Governments and which affect the functions and powers of County Governments;

...../Motion

FURTHER CONCERNED that the continued exclusion of the Senate in the legislative process in the national Parliament could eventually result in the weakening and eventual dismantling of the devolved system of government which is the cornerstone of the Constitution of Kenya, 2010;

RECALLING the resolution of the Senate of Tuesday 11th November, 2014 on the processing of legislation between the two Houses;

OBSERVING that despite the resolution of the Senate, the unconstitutional and unprocedural processing of legislation continues to persist as evidenced by the consideration and passage by the National Assembly of the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014;

NOW THEREFORE THE SENATE RESOLVES-

1. That the Security Laws (Amendment) Act, No. 19 of 2014 is unconstitutional and therefore null and void as the consideration and passage of the Bill violated Article 110(3) and (4) of the Constitution;
2. That the Security Laws (Amendment) Act, No. 19 of 2014 be included in the compendium of Bills set out in the Resolution of the Senate of Tuesday 11th November, 2014 in respect of which the Senate is seeking an Advisory Opinion from the Supreme Court on the constitutional status of Acts of Parliament which have been passed by one House of Parliament and assented to in contravention of Article 110(3) of the Constitution.

APPENDIX**NOTICE OF MOTION** - (The Senate Minority Leader)**THAT:**

WHEREAS on 8th December, 2014, the Security Laws (Amendment) Bill, National Assembly Bills No. 39 of 2014 was published;

AND WHEREAS the Bill sought to make amendments to the following array of laws relating to security-

1. The Public Order Act (Cap. 56);
2. The Penal Code (Cap. 63);
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CONCERNED that the exclusion of the Senate in the consideration and enactment of legislation that relates to security adversely impacts the Senate's ability to represent the Counties and to protect the interests of the Counties and their Governments in security matters which are of great concern to the Counties and to the County Governments and which affect the functions and powers of County Governments;

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