
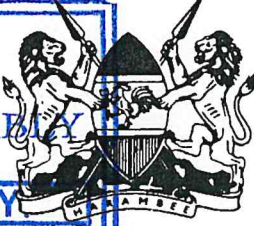


Approved for tabling

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11/8/2021

 THE NATIONAL ASSEMBLY PAPERS LAID		
DATE: 11 AUG 2021		DAY: wed
TABLED BY:	Chairperson Hon. Peter Mwatu	
CLERK-AT THE TABLE:	Mafua	
REPUBLIC OF KENYA THE NATIONAL ASSEMBLY		

TWELFTH PARLIAMENT – FIFTH SESSION, 2021

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY

REPORT ON THE
PUBLIC PETITION NO. 11 OF 2021 REGARDING AMENDMENT OF
THE FIREARMS ACT, CAP 114

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2021

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Public Petition regarding amendment of the Firearms Act, CAP 114. The Petition dated 4th December, 2020 by Dr. Mareko Machanga was conveyed to the National Assembly on 25th March, 2021 and subsequently committed to the Departmental Committee on Administration and National Security for consideration and report to the House pursuant to the provisions of Standing Order 227(1).

The Committee was required to respond to the Petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the National Assembly not more than sixty (60) calendar days from the time of reading the prayer.

While considering the Petition, Dr. Mareko Machanga and the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government appeared before the Committee and made submissions.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Petition. Finally, I wish to express my appreciation to the Honourable Members of the Committee, the Committee secretariat and all the stakeholders who made submissions towards the preparation and production of this report.

On behalf of the Departmental Committee on Administration and National Security and pursuant to provisions of Standing Order 227(2), it is my pleasant privilege and honor to present to this House the report of the Committee on its consideration of the Public Petition No. 11 of 2021 regarding amendment of the Firearms Act, CAP 114.



HON. PETER MWATHI, M.P.
CHAIRPERSON

EXECUTIVE SUMMARY

The Public Petition No. 11 of 2021 dated 25th March, 2021 regarding amendment of the Firearms Act, CAP 114 was conveyed to the National Assembly on 25th March, 2021 by the Speaker. The Petition was subsequently committed to the Departmental Committee on Administration and National Security for consideration and report to the House pursuant to the provisions of Standing Order 227(1).

The Petitioner highlighted several inadequacies in the Firearms Act. In particular, the lack of provisions requiring all applicants for firearm licenses to undergo mandatory mental examination as a precondition for issuance of a firearm certificate might be a precursor to some incidences of misuse of firearms by some licensed holders.

The Petitioner further contended that the Act does not clearly define what constitutes the legal use of a firearm. Consequently, he decried the fact that a lacuna exposes licensed firearms holders to criminal liability and/or murder charges in the event that he/she occasions injury or death even when the firearm was used for defence against a dangerous aggressor(s) or on a humanitarian rescue mission.

Those who made submissions before the Committee on the petition were Dr. Mareko Machanga, the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government and the National Gun Owners Association. Their submissions were key in determination of the Committee's recommendations.

The Committee therefore recommends that any person who seeks to acquire a firearm license shall undergo a mandatory mental examination before acquiring the firearm, and at any other period from time to time.

PART 1

PREFACE

1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Hon. Speaker,

1.1 Mandate of the Committee

1. The Departmental Committee on Administration and National Security is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is –

- (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 the implementation;*
- (c) *study and review all legislation referred to it;*
- (d) *study, assess 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) *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 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 matters within its mandate.*

2. The subjects under the Committee's jurisdiction are; national security, police services, home affairs, public administration, public service, prisons, management of natural disasters and community service orders.

1.2 Composition of the Committee

3. The Committee was constituted on 14th December, 2017 and as at the time of considering the Petition and compiling this report comprised the following Members-

Chairperson

Hon. Peter Mwathi, MP
Limuru Constituency
Jubilee Party

Vice-Chairperson

Hon. Fatuma Gedi, MP
Wajir County
Jubilee Party

Hon. Jeremiah Ekamais Lomurukai, MP
Loima Constituency
ODM Party

Hon. (Dr.) Tecla Tum, MP
Nandi County
Jubilee Party

Hon. Kaluma, George Peter Joseph, MP
Homa Bay Town Constituency
ODM Party

Hon. William Chepkut, MP
Ainabkoi
Independent Party

Hon. (Dr.) Makali Mulu, MP
Kitui Central Constituency
Wiper Party

Hon. Nimrod Mbai, MP
Kitui East Constituency
Jubilee Party

Hon. Ngunjiri Wambugu, MP
Nyeri Town Constituency
Jubilee Party

Hon. Peter Masara, MP
Suna West Constituency
Independent Party

Hon. Aduma Owuor, MP
Nyakach Constituency
ODM Party

Hon. Abdi Shurie, MP
Balambala Constituency
Jubilee Party

Hon. Swarup Ranjan Mishra, MP
Kesses Constituency
Jubilee Party

Hon. Col. (Rtd) Geoffrey King'ang'i, MP
Mbeere South Constituency
Jubilee Party

Hon. Arbelle, Marselino Malimo, MP
Laisamis Constituency
Jubilee Party

Hon. Halima Mucheke, MP
Nominated Member
Jubilee Party

Hon. Oku Kaunya, MP
Teso North Constituency
ANC Party

Hon. Rozaah Buyu, MP
Kisumu County
ODM Party

1.3 Committee Secretariat

4. The Committee Secretariat comprises the following staff-

Mr. Adan Gindicha,
Senior Clerk Assistant
Lead Clerk

Mr. Joshua Ondari
Clerk Assistant

Ms. Jemimah Waiwa
Legal Counsel

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Josphat Bundotich
Serjeant-at-Arms

Ms. Eva Kaare
Serjeant-at-Arms

Mr. Joseph Okong'o,
Media Officer

Rodgers Kilungya
Audio Recording Officer

PART 2

2.0 INTRODUCTION

2.1 Constitutional and Statutory provisions regarding Petitions

5. Standing Order 227 provides for the committal of public petitions to the House whereby every Petition presented or reported to the House shall be committed to the relevant Departmental Committee for consideration and report to the House and petitioner within sixty (60) days. Further, the Petition to Parliament (Procedure) Act, 2012 provides for the procedure to be followed in the submission, processing and consideration of a Petition.
6. The Public Petition No. 11 of 2021 regarding amendment of the Firearms Act, CAP 114 is dated 4th December 2021 and was conveyed to the National Assembly on 25th March, 2021 by the Hon. Speaker. subsequently committed to the Departmental Committee on Administration and National Security for consideration and report to the House and petitioners pursuant to the provisions of Standing Order 227(1);
7. The right to Petition Parliament is provided for under Article 119 of the Constitution and states as follows:-

“Every person has a right to Petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right.”
8. The Petitioner highlighted several inadequacies in the Firearms Act. In particular, the lack of provisions requiring all applicants for firearm licenses to undergo mandatory mental examination as a precondition for issuance of a firearm certificate might be a precursor to some incidences of misuse of firearms by some licensed holders.

PART 3

3.0 HEARING ON THE PETITION

3.1 DR. MAREKO MACHANGA

9. Dr. Mareko Machanga appeared before the Committee on Tuesday 13th April, 2021 and submitted as follows-
- (i) In 2019, the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government issued a directive that individuals seeking to own guns to undergo a mandatory mental examination as pre-condition for acquiring a firearm licence;
 - (ii) The lack of provisions requiring all applicants for firearm licence certificate might be a precursor to some incidents of misuse of firearms by some licenced holders;
 - (iii) The Firearms Act did not define what constitutes the legal use of a firearm;
 - (iv) The Firearm Act, Cap 114 of the laws of Kenya did not expressly provide for mandatory mental examination for prospective firearms seekers; and
 - (v) Some licensed firearm holders may use their firearms legally and cause death of their aggressors in the process.
-
- (vi) There was no legal protection of persons who use their legal firearms;
 - (vii) The Firearms Act, cap 114 of the laws of Kenya did not prescribe the circumstance under which a legal firearm holder could use his firearm;
 - (viii) There were no regulations stipulating the circumstances under which a legal firearm holder could use his firearm;
-
- (ix) Subjecting prospective firearm seekers to a mental examination presupposes that they were either of unsound mind or of intemperate

habits as per the provisions of the Firearms Act, Cap 114 of the laws of Kenya;

- (x) Under the existing laws, a person who uses his legal firearm to cause death/injury to an aggressor is a murder/criminal suspect;
- (xi) Under the existing laws, an aggressor enjoys more protection than the aggressed; and
- (xii) Under the existing laws, the conviction for a person who causes death using a legal firearm is non-custodial sentence without a fine option.

3.2 MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT

10. Dr. Fred Matiang'i, Cabinet Secretary for the Ministry of Interior and Coordination of National Government appeared before the Committee on Wednesday, 21st April, 2021 and submitted as follows-

- a) The laws governing the use of firearms are prescribed by statute for the Police (National Police Service Act No11A of 2011) and other laws for members of public/civilians (Firearms Act);
- b) One hand a right to protect himself/herself or another person's life, as was found under the various laws, on exemptions to murder, manslaughter and bodily harm/assault. However, it would be a great burden to try and legislate for every foreseeable use of a firearm;
- c) The lack of definition in the Firearms Act was not to blame for the automatic arrest and prosecution where licensed persons discharge their firearms. To remedy any perceived shortfall in the arrests and prosecutions of a licensed gun holder for using a firearm, there should be a review of the law and policy on prosecution by the Office of the Director of Public Prosecution;
- d) On the mandatory mental examinations for all firearm applications was not necessary since it was taken care of in the applications for civilian firearms regime;

- e) The Firearms Licensing Board had a checklist that enumerates the mandatory requirements to be met, including mental /psychiatrist assessment for all applicants, at the point of applying for a firearm license;
- f) The applicant(s), upon tendering their applications, appears first at their respective Sub County and County Security and Intelligence Committees, and thereafter to the Regional Security and Intelligence Committee for vetting, before being recommended by the Firearms Licensing Board. At every stage, the committees must appraise a mental assessment report before further review;
- g) All persons charged with murder, whether sane or not, must undergo mental examination before pleading to any charge of murder. The judicial policy stands as a protection against the risk of taking an insane person through a murder trial;
- h) The Board was not opposed to the proposed amendments, it is however the view that Amendment to the Firearms Act should be done holistically to include many more amendments, such as proof of proficiency of use of firearm as mandatory criteria before issue of license to civilians.

3.3 THE NATIONAL GUN OWNERS ASSOCIATION

11.0 The National Gun Owners Association submitted as follows-

- a) Amendment to section 2 of Cap. 114 to include definition of the words “telescope”, “mufflers”, “bullet proof gear”, “night vision devices” and other similar devices.
- b) enhanced amendment would lead to better compliance, cooperation, coordination and security to include the mandatory membership to a registered association of civilian firearm holders with national outreach and scope, by all civilian licensed firearm owners for self-regulation and training before issuance of firearms certificate and a firearm;
- c) need to include a clause that would define the justifiable use of firearms by civilian licensed firearms-

“Firearms may only be used when unless extreme means are inadequate, and when the danger is imminent, and for the following purposes:

- i) saving or protecting the life of the licensed firearm holder or other person;
- ii) in self-defence or in defence of other person against imminent threat of life or serious injury; and
- iii) protection of life and property through justifiable use of force.

4.0 COMMITTEE OBSERVATIONS

Arising from the submissions by the Petitioner and stakeholders, the Committee observed that;

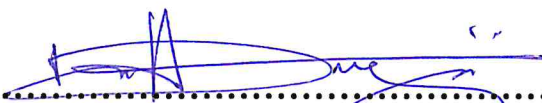
- a) The directive issued by the Cabinet Secretary, Ministry of Interior and Coordination of National Government on individuals seeking to own guns to undergo a mandatory mental examination as pre-condition for acquiring a firearm licence is founded on law and policy.
- b) The Firearms Act Cap 114 and the National Police Service Act No. 11A of 2011 is the legal framework that governs the use of firearms. The law is not exhaustive and adequate in regulating the use of firearms on the following grounds-
 - (i) Lack of mandatory mental examination as pre-condition for acquiring a firearm licence;
 - (ii) The lack of provisions requiring all applicants to possess firearm licence certificate;
 - (iii) Lack of definition on what constitutes the legal use of a firearm;
 - (iv) Absence of legal protection of persons who use their legal firearms;
 - (v) Failure to prescribe the circumstances under which a legal firearm holder could use his or her firearm;
 - (vi) Lack of definition on what is justifiable use of a firearm ;
 - (vii) Lack of definition of the words “telescope”, “mufflers”, “bullet proof gear”, “night vision devices” and other similar devices as used in the Act creating interpretation ambiguity and
 - (viii) Absence of legal framework that would foster self-regulation by licensed firearms owners.
- c) There is need to review and amend the Firearms Act Cap 114, the National Police Service Act No. 11A of 2011, the law and policy on the use of firearms

and on arrest and prosecution of persons accused of misuse of firearms and any other relevant law.

- d) Moreover, comparable jurisdictions worldwide point towards a move for tighter regulations on the use of firearms including mental assessment of potential firearm holders in order to guarantee public **safety and security**.

5.0 COMMITTEE RECOMMENDATIONS

11. Arising from the observations, the Committee recommends as follows—
- (i) **THAT the National Assembly do undertake a review of the Firearms Act Cap 114, the National Police Service Act No. 11A of 2011 and any other relevant law and policy on arrest and prosecution of persons accused of misuse of firearms.**

Sign 

Date 10/8/2021

HON. PETER MWATHI, MP

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ADMINISTRATION
AND NATIONAL SECURITY**

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE



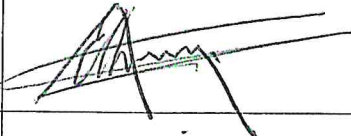
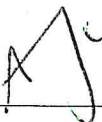

DATE: 05/08/2021

TIME: 10:00 am

VENUE: Committee Room on 1st Floor, Centurion Cross Building.

AGENDA: Adoption of the Report on Public Petition No. 11 of 2021
Regarding Amendment of the Firearms Act, Cap 114

NO.	NAME	SIGNATURE
1.	Hon. Peter Mwathi, MP - Chairperson	
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	
3.	Hon. George Peter Kaluma, MP	
4.	Hon. Dr. Makali Mulu, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Dr. Tecla Chebet Tum, MP	
7.	Hon. Halima Mucheke, MP	
8.	Hon. Marselino Malimo Arbelle, MP	
9.	Hon. Nimrod Mbithuka Mbai, MP	

10.	Hon. Ngunjiri Wambugu, MP	
11.	Hon. Abdi Omar Shurie, MP	
12.	Hon. Col (Rtd) Geoffrey Kingangi, MP	
13.	Hon. Peter Masara, MP	
14.	Hon. Oku Kaunya, MP	
15.	Hon. Rozaah Buyu, MP	
16.	Hon. Jeremiah Lomurukai, MP	
17.	Hon. William Chepkut, MP	
18.	Hon. Swarup Mishra, MP	

Signed.....Date.....
 Adan Gindicha,
 Senior Clerk Assistant,
 Departmental Committee on Administration and National Security.

Signed.....Date.....
 Peter Chemweno,
 Director, Directorate of Departmental Committee Services

MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY, 5TH AUGUST, 2021 AT 10.00 A.M. IN THE COMMITTEE ROOM ON 1ST FLOOR RED CROSS BUILDING, PARLIAMENT BUILDINGS

PRESENT-

- | | |
|---|--------------------|
| 1. Hon. Peter Mwathi, MP | <i>Chairperson</i> |
| 2. Hon. Aduma Owuor, MP | |
| 3. Hon. Dr. Makali Mulu, MP | |
| 4. Hon. Peter George Kaluma, MP | |
| 5. Hon. Dr. Tecla Chebet Tum, MP | |
| 6. Hon. Halima Mucheke, MP | |
| 7. Hon. Peter Masara, MP | |
| 8. Hon. Oku Kaunya, MP | |
| 9. Hon. Marselino Arbelle, MP | |
| 10. Hon. Ngunjiri Wambugu, MP | |
| 11. Hon. Jeremiah Ekamais Lomurukai, MP | |
| 12. Hon. Nimrod Mbithuka Mbai, MP | |
| 13. Hon. Abdi Omar Shurie, MP | |
| 14. Hon. Rozaah Buyu, MP | |

ABSENT WITH APOLOGIES

- | | |
|--|-------------------------|
| 1. Hon. Fatuma Gedi, CBS, MP | <i>Vice chairperson</i> |
| 2. Hon. Col (Rtd) Geoffrey King'ang'i, MP | |
| 3. Hon. William Kamuren Chirchir Chepkut, MP | |
| 4. Hon. Swarup Mishra, MP | |

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|------------------------|---|----------------------------|
| 1. Mr. Adan Gindicha | - | Senior Clerk Assistant |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Jemimah Waiwa | - | Senior Legal Counsel |
| 4. Mr. Edison Odhiambo | - | Fiscal Analyst |
| 5. Ms. Delvin Onyancha | - | Research Assistant Officer |

- | | | |
|-------------------------|---|-------------------------|
| 6. Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 7. Ms. Eva Kaare | - | Serjeant-At-Arms |
| 8. Mr. James Oloo | - | Office Attendant |

MIN No. 88/2021:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson officially welcomed Members to the meeting at 10.30 am with a word of prayer.

MIN No. 89/2021:-

CONFIRMATION OF MINUTES

Minutes of the 23rd sitting held on Wednesday, 28th July, 20221 at 2.30 pm were confirmed as a true record of deliberations after having been proposed and seconded by Hon. Oku Kaunya, MP and Hon. Aduma Owour, MP respectively.

MIN No. 90/2021:-

MATTERS ARISING

The following matters arose-

Under Min No. 85/2021

The Chairperson informed the meeting that he had a meeting with the Cabinet Secretary, Ministry of Interior and Coordination of National Government and agreed to schedule the meeting with the Committee. In the said meeting the said Cabinet Secretary would be appraising the Committee on the status of security in the Country. He would also address the issues of insecurity in Baringo South Constituency.

MIN No. 91/2021:-

**ADOPTION OF THE REPORTS ON
PETITIONS**

**Report on the Public Petition No. 008 of 2021 regarding lack of Access to
Citizen Registration Services by residents of Garissa and Wajir Counties**

The report was unanimously adopted after having been proposed and seconded by Hon. Dr. Makali Mulu, MP and Hon. Oku Kaunya, MP respectively.

Report on the Public Petition No. 41 of 2020 regarding recognition of the Pemba People of Kenya as Citizens of the Republic of Kenya

The report was unanimously adopted after having been proposed and seconded by Hon. Oku Kaunya, MP and Hon. Aduma Owour, MP respectively.

Report on the Public Petition No. 11 of 2021 regarding Amendment of the Firearms Act, Cap 114

The report was unanimously adopted after having been proposed and seconded by Hon. Oku Kaunya, MP and Hon. Jeremiah Ekamais Lomurukai, MP respectively.

Report on *Public* Petition No. 30 of 2020 regarding insecurity in Saku Constituency and the Larger Marsabit County

The report was unanimously adopted after having been proposed and seconded by Hon. Dr. Makali Mulu, MP and Hon. Aduma Owour, MP respectively. **It is noted that Hon. Marcelino Arballe recused himself from the adoption of the report having been a witness during the fact finding visits to Marsabit County.**

MIN No. 92/2021:-

ANY OTHER BUSINESS

The Chairperson informed the meeting that the Committee had received an invitation letter from the Ministry of Foreign Affairs inviting 10 Members of the Committee to attend U.S Embassy sponsored conference in Mombasa from 12th to 15th August, 2021 to deliberate on the Strategic Goods Control (SGC), Bill. He requested Members to confirm the attendance.

MIN No. 93/2021:-

ADJOURNMENT

The Chairperson adjourned the sitting at noon.

Signed.....

Chairperson

Date.....

10/8/2021

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY, 24TH MAY, 2021 AT 2.00 P.M. IN SERENA BEACH HOTEL, MOMBASA

PRESENT-

- | | |
|---|-------------------------|
| 1. Hon. Peter Mwathi, MP | <i>Chairperson</i> |
| 2. Hon. Fatuma Gedi, CBS, MP | <i>Vice chairperson</i> |
| 3. Hon. Peter George Kaluma, MP | |
| 4. Hon. Dr. Makali Mulu, MP | |
| 5. Hon. Aduma Owuor, MP | |
| 6. Hon. Dr. Tecla Chebet Tum, MP | |
| 7. Hon. Halima Mucheke, MP | |
| 8. Hon. Peter Masara, MP | |
| 9. Hon. Marselino Malimo Arbelle, MP | |
| 10. Hon. Oku Kaunya, MP | |
| 11. Hon. Nimrod Mbithuka Mbai, MP | |
| 12. Hon. Col (Rtd) Geoffrey King'ang'i, MP | |
| 13. Hon. Rozaah Buyu, MP | |
| 14. Hon. Abdi Omar Shurie, MP | |
| 15. Hon. William Kamuren Chirchir Chepkut, MP | |
| 16. Hon. Swarup Mishra, MP | |
| 17. Hon. Jeremiah Ekamais Lomurukai, MP | |

ABSENT WITH APOLOGIES

Hon. Ngunjiri Wambugu, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-------------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Joshua Ondari | - | Clerk Assistant II |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Mr. Joseph Okong'o | - | Media Relations Officer |
| 5. Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 6. Ms. Eva Kaare | - | Serjeant-At-Arms |

MIN No. 67/2021:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson officially welcomed Members to the meeting at 2.00 pm with a word of prayer.

MIN No. 68/2021:-

**CONSIDERATION OF REPORT ON THE
PUBLIC PETITION NO. 11 OF 2021
REGARDING AMENDMENT OF THE
FIREARMS ACT, CAP 114**

The Committee considered the report and came up with the following observations and recommendations-

The Committee observed that;

- a) The directive issued by the Cabinet Secretary, Ministry of Interior and Coordination of National Government on individuals seeking to own guns to undergo a mandatory mental examination as pre-condition for acquiring a firearm licence is founded on law and policy.
- b) The Firearms Act Cap 114 and the National Police Service Act No. 11A of 2011 is the legal framework that governs the use of firearms. The law is not exhaustive and adequate in regulating the use of firearms on the following grounds-
 - (i) Lack of mandatory mental examination as pre-condition for acquiring a firearm licence;
 - (ii) The lack of provisions requiring all applicants to possess firearm licence certificate;
 - (iii) Lack of definition on what constitutes the legal use of a firearm;
 - (iv) Absence of legal protection of persons who use their legal firearms;
 - (v) Failure to prescribe the circumstances under which a legal firearm holder could use his or her firearm;

- (vi) Lack of definition on what is justifiable use of a firearm ;
 - (vii) Lack of definition of the words “telescope”, “mufflers”, “bullet proof gear”, “night vision devices” and other similar devices as used in the Act creating interpretation ambiguity and
 - (viii) Absence of legal framework that would foster self-regulation by licensed firearms owners.
- c) There is need to review and amend the Firearms Act Cap 114, the National Police Service Act No. 11A of 2011, the law and policy on the use of firearms and on arrest and prosecution of persons accused of misuse of firearms and any other relevant law.
- d) Moreover, comparable jurisdictions worldwide point towards a move for tighter regulations on the use of firearms including mental assessment of potential firearm holders in order to guarantee public safety and security.

The Committee recommends as follows–

THAT the National Assembly do undertake a review of the Firearms Act Cap 114, the National Police Service Act No. 11A of 2011 and any other relevant law and policy on arrest and prosecution of persons accused of misuse of firearms.

MIN No. 69/2021:-

**CONSIDERATION OF REPORT ON *PUBLIC*
PETITION No. 30 OF 2020 REGARDING
INSECURITY IN SAKU CONSTITUENCY
AND THE LARGER MARSABIT COUNTY**

The Committee considered the report and came up with the following observations and recommendations-

The Committee observed that;

- a) Political supremacy and tribal animosity**

- i) There is evidence on record that there is a battle for political supremacy between the Borana and the Gabra communities, especially in the gubernatorial elections. In their testimony, the Gabra Council of Elders averred that in 2013 when one of their own Amb. Ukur Yatani was elected Marsabit Governor, the Boranas did not accept defeat by the Gabras whom they considered inferior and not competent to lead them. Further to this, between 2013 and 2014, the Boranas waged war against the Gabras living in Moyale killing and injuring members of their community.
- ii) The Committee observed that the Petition itself gives an account of several incidents in which only members of the Borana community were killed by members of the Gabra community. Hon. Chachu Ganya, MP for North Horr and the Gabra Council of Elders all testifying on behalf of the Gabra community have cited several incidents in which the Gabras were killed or injured by the Boranas. They have disassociated themselves with the Petition which according to them was presented by Hon. Dido Ali Rasso on behalf of the Borana community and not on behalf of the Boranas and other communities living in the larger Marsabit County.
- iii) The Boranas attribute the unending wave of conflict and killings between them and the Gabra communities to political interests of Amb. Ukur Yatani, the incumbent Cabinet Secretary for National Treasury who is former Marsabit County, Governor as well as former North Horr MP. The Gabras attribute the unending conflict and killings to the incumbent Marsabit Governor, H.E. Mohamed Mohamud Ali and Saku MP, Hon Dido Ali Rasso. In his submissions, North Horr MP, Hon. Chachu Ganya testified that a peace deal between the Gabra and Borana political leaders was key in ending conflict and killings in the County.
- iv) In the process of mediating for peace, NCIC has convened meetings involving Treasury Cabinet Secretary and former Marsabit County Governor, Amb. Ukur Yatani representing the Gabra community and Marsabit Governor, H.E. Mohamed Mohamud Ali representing the Borana community. As a result of the meetings, the two (2) leaders committed to promoting peaceful coexistence between their communities. A fourteen (14) member Peace and Mediation Committee from the two (2) communities was constituted to

spearhead the peace process. The process however stalled due to the operationalization of two (2) administrative units in North Horr Sub County, which angered the Borana community.

- v) In their testimony, the Rendilles living in Karare Ward, Saku Constituency have accused the Boranas of attacking, killing and injuring them. They have provided a list of 96 members of their community killed by the Boranas since 1978. The Daasanach community in their testimony have averred that they are under constant threat of encroachment and fraudulent manipulation of their original land demarcation in Illeret recently reduced to a location under the Gabras on North Horr.
- vi) The Gabras and Boranas are also on record accusing each other of owning militia and fighting other communities with a view to displacing them from land occupied and expanding their territories.
- vii) In light of the foregoing, the Committee was persuaded that political supremacy and tribal animosity, especially between the Boranas and the Gabras was one of the major causes of insecurity in Marsabit County.

b) Creation of administrative units in Marsabit County

- i) According to the Gabras and Boranas, the creation of administrative units in North Horr and Saku Constituency was among the major causes of conflict and clashes in Marsabit County.
- ii) The Gabras argued that Gazette Notice No. 5853 Vol. CXIX—No. 80 dated 21st June, 2017 establishing administrative units of Oronder sub-location under Marsabit Central Division, Elle Bor Location and Elle Dimtu Sub-location under Sololo Sub County was in areas predominantly occupied by Borana community. They further argued that Elle Dimtu and Elle Bor were Gabra community land since time immemorial and were electoral units in North Horr Constituency thus opposed to the creation of the units in areas predominantly occupied by the Boranas.
- iii) The Boranas were opposed to the creation of two administrative units in North Horr Sub County, arguing that this was part of the ongoing impartial allocation of national resources to one area of the County. They

further contended that the creation of the two units for North Horr came against the backdrop of other skewed allocation of national resources where development projects worth billions of shillings were directed to the same area. The new administrative units had not facilitated the delivery of services but instead brought about more conflict, clashes and deaths and therefore the Gazette Notice establishing them ought to be revoked.

iv) The Committee noted that Section 14 of the National Governments Co-ordination Act mandates the Cabinet Secretary for Interior and Co-ordination of National Government in consultation with the President of the Republic of Kenya to create administrative units. The Committee observed that among the factors for consideration in the creation of new administrative units are as follows –

- a) Geographical features and urban centres;
- b) Population density and demographic trends;
- c) Cost of administration;
- d) Physical and human infrastructure;
- e) Views of the affected communities;
- f) Community of interest, historical, economic and cultural ties;
- g) Means of communication;
- h) Security pursuant to Article 240 of the Constitution of Kenya and relevant provisions and regulations of the National Security Council Act; and
- i) Any other pertinent and reasonable factor that the Cabinet Secretary may consider necessary in the circumstances.

v) The Committee observed that the reasons advanced by the Gabras and the Boranas opposing creation of administrative units in their County cannot override the factors for consideration in creation of the units which it believes the Cabinet Secretary and the President applied before issuing Gazette Notice No. 5853 Vol. CXIX—No. 80 dated 21st June, 2017.

vi) The Committee further observed that the creation of the administrative units pursuant to Gazette Notice No. 5853 Vol. CXIX—No. 80 dated 21st June, 2017 was not for Marsabit County alone but the entire 47 Counties in the country and was intended to improve service delivery by bringing services closer to the people, among other reasons.

c) Land and boundary disputes

- i) H.E. Mohamed Mohamud Ali, Governor, Marsabit County and Amb. Ukur Yatani, Cabinet Secretary, National Treasury and Planning and former MP. North Horr and Governor Marsabit County in their testimonies, have attributed the conflict and clashes in Marsabit County to land and boundary disputes as a major source. Their evidence has been corroborated by other witnesses and stakeholders who testified before the Committee.
- ii) According to Dr. Fred Matiangi, Cabinet Secretary for Interior and Co-ordination of National Government, land is at the centre of conflict in Marsabit County. There is competition for both grazing and settlement land, particularly in Marsabit Central area of Saku. This has from time to time led to conflict and clashes.
- iii) According to the Burji Professional Association, land remains a politically sensitive and culturally complex issue for Kenya. Kenya's history with regard to the land question is characterized by breakdown in land administration, disparities in land ownership, tenure insecurity and conflict. Land belonging to the Burji Community in Sagante/Jaldesa ward and Marsabit Central Ward in Marsabit town and Gubalticha area land in Moyale town are not adjudicated as opposed to other areas within the constituency. The Gubalticha land conflict for instance, is a time bomb that needs immediate intervention due to the recurrent disputes that have concerted interests from all the communities living in the area.
- iv) The Daasanach community living in North Horr as a distinct minority claimed to be under constant threat of encroachment and fraudulent manipulation of the original land demarcation of Illeret Division (2008), now recently reduced to a location under North Horr District. The community protests against this and asks the national government to correct and if possible, recommend giving them a District as affirmative action.

- v) There is evidence on record that most of the communities in Marsabit County are pastoralists and their movement in search for water and pasture see them trespass into other communities' land due to lack of boundaries thereby leading to conflict and clashes. According to the Petition, most of the Boranas allegedly killed by the Gabras were herders an indication that they lost lives while in search for water and pasture. Similarly, the Gabras in their response to the Petition cite their kinsmen death while grazing.
- vi) The Rendilles living in Saku claim that during the dry season, Borona herders forcefully enter their land to graze their animals. The Burjis who are mostly agriculturalists specializing in crop farming averred that their land is forcibly invaded by members of the pastoral communities during the dry season in search of water and pastures. In both instances of forceful eviction, lives have been lost. The Wayyu Community also cite land boundary disputes as one of the major causes of insecurity in Marsabit County.
- vii) There is further evidence on record that both the Boranas and the Gabras claim the Horrander location to be within their territorial boundaries. The constituency boundaries between Moyale and North Horr as well as Saku and North Horr, remain unclear and contested.
- viii) Based on the evidence on record, the Committee was convinced that land and boundary disputes were among the major causes of conflict and clashes in Marsabit County.

d) Skewed distribution of national and county jobs and resources

- i) In their testimony, the Gabras averred that despite being the second largest community in the county, none of their members had held positions of Chief or Assistant Chief due to the machinations of Borana political leaders. They provided figures of those holding positions of Chief in 2020 as follows; Borana-14, Burji-3, Rendille-9, Turkana-2, Kosso-1, Indian-1, Waata-1 and Gabra-0.
- ii) The Gabras further stated that their members in Saku don't benefit from NG-CDF and Affirmative Action Fund. The Borana Managers who are in most cases in charge ensure Boranas dominantly benefit.

The Waayu Community in the testimony averred that they had not benefited from the County Government of Marsabit in terms of scholarships or bursaries and job opportunities for the last three (3) years.

- iii) The Burjis also submitted that they had not been appointed to senior positions in the county government. The Rendilles living in Karare Ward in Saku also submitted to the Committee that the County Government had marginalized them in resource allocation. Since the inception of NG-CDF in 2003, the Rendilles living in Karare Ward which has three (3) locations, had received not more than Kshs.5,000,000.00. They had also not benefitted much from the County Government in the provision of essential services such as water, health neither had they benefitted much in employment.
- iv) The Boranas cited skewed national distribution of resources and opportunities as a contributory factor for clashes and insecurity in the County. NCIC also attributed the same reasons for conflict and clashes in the County.
- v) The Committee was persuaded that the skewed distribution of resources in the County was a contributory factor for conflict and clashes in Marsabit County.

e) Scramble for water and pasture for livestock and cattle rustling

- i) Almost all witnesses and stakeholders who testified before the Committee attributed scramble for water and pasture for livestock and cattle rustling as some of the major causes of conflict and clashes in the county. This was because most of the communities in the County are pastoralists and scramble for water and pasture during the dry season while cattle rustling was part of their way of living. There is further evidence on record of revenge attacks to have become a culture whenever one community's livestock is stolen.
- ii) The Rendilles of Karare Ward in Saku are on record saying that the Borana herders forcefully enter their land to graze their animals causing deaths and injuries to community members. The Burjis who

are mostly agriculturalists specializing in crop farming are also on record that during the dry season their land is invaded by the pastoralist communities destroying their crops and injuring or killing members of their community.

f) Possession of illegal firearms by civilians

- i) In the Petition, the Petitioners have cited use of firearms illegally owned by the Gabra attackers. For instance, in an incident of April, 2017 when four (4) Boranas were murdered, the police recovered 7.62 mm spent cartridges at the scene of crime. In another incident of 11th April, 2017 where Boranas were again killed by Gabras, the Petitioners have averred that the Gabra attackers were heavily armed with sophisticated machine guns and automatic weapons.
- ii) In their testimonies, Hon. Chachu Ganya, MP, North Horr Constituency and the Gabra Council of Elders affirmed that indeed, there was exchange of fire in attacks between the Boranas and the Gabras which are outlined in the Petition. The Cabinet Secretary for Interior and Co-ordination of National Government, Dr Fred Matiangi, the Marsabit County Police Commander, Mr. Samuel Mutunga, NCIC Chairperson, Rev. Dr. Samuel Kobia are also on record that there are civilians in Marsabit County in illegal possession of firearms.
- iii) The Cabinet Secretary for Interior and Co-ordination of National Government, Dr. Matiangi in his submissions, affirmed that during the last disarmament exercise which was voluntary, not all firearms were surrendered and this has threatened peace and stability in the County. Further, intelligence reports available indicate that after the disarmament, political leaders cried foul and silently armed their kinsmen arguing that they were vulnerable and prone to attacks. The County Police Commander averred that most illegal firearms found their way into the County through the long porous Kenya/Ethiopia border which is not well protected with militia operating freely along the border.

- iv) In view of the foregoing, the Committee found possession of illegal firearms by civilians as one of the major causes of conflict and clashes in Marsabit County.

g) Presence of militia in Marsabit County

- i) The Petitioners and the Borana Council of Elders in their submissions averred that the Gabras own a militia that has been behind killings of the Boranas as outlined in the Petition. They contend that the militia acts with impunity as if running a system parallel to the existing government structure. They further contend that the North Horr militia arm themselves in secrecy, plan and gang up without knowledge of Government security apparatus in order to carry out an expansionist agenda against the neighbouring communities.
- ii) The Gabra Council of Elders is on record that there are 5 Borana militia camps at Elle Dimtu, Jaldesa/Badassa, Ambalo, Badan Rero and Kubi financed and coordinated by the County Government of Marsabit Governor H.E. Mohamed Mohamud Ali and Saku MP Hon. Dido Ali Rasso as well as the Moyale NG-CDF.
- iii) The Gabra Council of Elders further averred that the OLF militia from Ethiopia also operates in the County supported by the Borana leadership and launches attacks against other communities on behalf of the Borana Community. The OLF live freely amongst members of the Borana community, particularly in Moyale, Sololo and Marsabit. The Rendilles of Karare Ward in Saku also claimed that the Boranas import OLF militia from Ethiopia to execute killings and commit other atrocities on their behalf.
- iv) The Committee observed that claims of presence of militia in Marsabit County were made against each other by the two warring communities who are the main players in the conflict and clashes in the entire county need to be investigated and appropriate action taken.

h) Hate speech and unfounded rumours perpetrated through FM Stations and social media

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- i) In their testimonies, the Gabras averred that Governor, H.E. Mohamed Mohamud Ali has openly demonized, criminalized and castigated the Gabra community. The Governor is on record referring to the Gabra community as ‘Mashetani’ (devils) and Gabra Council of Elders as Wakora (criminals) and petty brokers during peace meeting between the Borana and Degodia community after 40 Degodias were killed by Borana militia. The Gabra community was not present in the meeting and was not party to the conflict. He has also been on air severally hurling insults at the entire Gabra community.
 - ii) According to the Boranas, one of the masterminds of that Forolle raid Mr. Pius Wario went live on national television and recklessly and falsely profiled the Borana as warmongers and outsiders to Marsabit County, further exacerbating the situation and sowing seeds of hatred and animosity between Gabra and the Borana.
 - iii) The Cabinet Secretary for Interior and Co-ordination of National Government, Dr Fred Matiangi and the Chairperson, NCIC Chairperson, Dr. Sam Kobia also attributed the conflict and clashes in the county to hate speech and unfounded rumours perpetrated through FM Radio Stations and social media.
 - iv) Based on the evidence on record, the Committee found hate speech and unfounded rumours perpetrated through FM Radio Stations and social media to be among the causes of insecurity in Marsabit County.
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i) Inadequate policing of the County due to its vastness and poor infrastructure

- i) Marsabit County is the largest county in Kenya, covering approximately Kshs.71, 000 Square Kilometres. The county is also poorly developed in terms of infrastructure, most notably in roads, water, communication and power supply.
- ii) The Cabinet Secretary for Interior and Co-ordination of National Government, Dr. Fred Matiangi is on record that his Ministry which is responsible for providing security had challenges providing services to each and every part of Marsabit County due to its vastness. His testimony was corroborated by the Marsabit County Police

Commander. He cited an incident in which officers on duty lost lives in the hands of bandits because their distress calls could not be responded to due to lack of network in the area they were calling from.

iii) The Committee observed that for many years, Marsabit County lacked tarmacked roads and it was quite challenging travelling from Moyale to Marsabit to Isiolo until not long ago when the Isiolo/Marsabit/Moyale tarmac Road was constructed by the national government. Otherwise, most parts of the County lack or have poor infrastructure.

j) Disarmament of National Police Reservists

- i) In their testimony, the Boranas averred that the 2019 disarmament of National Police Reservists in Marsabit County was inconsistently and selectively carried out leaving members of Borana community extremely vulnerable to attacks from other communities. According to the Gabras, the Government of Kenya disarmed all the National Police Reservists across the county without any discrimination as per the national government directive on disarmament.
- ii) The Committee observed that there is credible evidence on record on political supremacy and tribal animosity between the Gabras and the Boranas as major cause of insecurity in Marsabit County. Consequently, there were high chances that Police Reservists from the two communities would be partial in operations in favour of members of their respective communities.
- iii) In a statement issued to the House by the Chairperson, Departmental Committee on Administration and National Security on behalf of the Cabinet Secretary for Interior and Co-ordination of National Government regarding the disarmament of police reservists in Marsabit and Samburu Counties, the Cabinet Secretary submitted as follows –

Section 110(c) of the National Police Service Act vests the recruitment, deployment and dismissal from service of National Police Service Reservists in the National Police Service

Commission in consultation with the Inspector-General of Police;

iv) The Government of Kenya disarmed some of the Police Reservists in Marsabit and Samburu counties because of the following reasons-

- Being partial in operations and aligning themselves with tribes;
- Failure to protect life and property;
- Failure to cooperate with security agencies;
- Failure to account for the number of ammunition issued;
- Engagement in highway robberies; and
- Abuse of powers and privileges.

v) The recent restructuring of the National Police Service had boosted personnel strength and therefore recruitment or redeployment of Reservists shall be considered on a need basis after vetting of Reservists previously in service

vi) The Government had deployed specialized units in Marsabit and Samburu Counties to contain rising cases of insecurity complimented with the General Service Duty Officers.

vii) The Committee found the reasons for disarmament of National Police Reservists by the National Police Service Commission plausible and in the best interest of the people of Marsabit and Samburu Counties.

k) Long porous and unprotected Kenya/Ethiopia border

i) There is evidence on record that the long porous Kenya/Ethiopia border which is not adequately protected is among the causes of insecurity in Marsabit County.

ii) In their testimony, Amb. Ukur Yatan averred that the long porous Kenya/Ethiopia border is used to smuggle into the country illegal firearms used by militia to cause insecurity. Hon. Chachu Ganya, the Gabra Council of Elders the Rendilles living in Saku, the Marsabit

County Police Commander Mr. Samuel Mutunga averred that the long porous border facilitated the importation of illegal firearms and immigrants which include militia.

- iii) Based on the testimonies, the Committee was persuaded that the long Kenya/Ethiopia porous border was a factor for insecurity in Marsabit County and needed to be well protected.

l) Compensation of victims of Marsabit conflict and clashes

- i) The Committee observed that the clashes in Marsabit County were inter-communal and had led to loss of lives of innocent persons, with others suffering injuries while others becoming internally displaced. The Committee further observed that every Kenyan is entitled to security from the Government of Kenya against such clashes and that victims of the 2007 post election violence were compensated by the Government of Kenya. However there lacked legal framework for compensation of victims like those of Marsabit County.

The Committee recommends as follows—

- a) The National Government and the Marsabit County Government should ensure fairness and equity in the distribution of resources, including employment opportunities to all residents of Marsabit County; with deliberate affirmative action to minority ethnic groups in the County.
- b) The Cabinet Secretary for Interior and Co-ordination of National Government should expeditiously investigate the claimed mass issuance of national identification documents to illegal immigrants from Ethiopia in Marsabit County in general and Sololo Sub-County and Sagante Ward in Saku Sub-County in particular.
- c) The Cabinet Secretary for Interior and Co-ordination of National Government should take immediate action to flush out illegal immigrants from Marsabit County.

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- d) The Cabinet Secretary for Interior and Co-ordination of National Government and the Inspector-General, National Police Service should as a matter of urgency crack down on all militia camps within Marsabit County including; Ambalo, Badan Rero, Elle Bor Elle Dimtu and Kubi Qallo.
 - e) The Cabinet Secretary for Lands should institute measures to ensure land adjudication, demarcation, registration and issuance of title deeds in Marsabit County, starting with the disputed areas.
 - f) The Cabinet Secretary for Lands and the Cabinet Secretary for Interior and Co-ordination of National Government should immediately ensure the internally displaced persons in Kosso Banchale, Salesa and Isacko Umuro are resettled.
 - g) The Cabinet Secretary for Interior and Co-ordination of National Government and the Inspector-General National Police Service should disarm and recover all illegally owned firearms in Marsabit County in particular and generally across the country.
 - h) The Cabinet Secretary for Interior and Co-ordination of National Government should as a matter of urgency ensure the disarmament of National Police Reservists in Marsabit County is concluded and their roles taken up by the National Police Service personnel.
 - i) The Cabinet Secretary for Interior and Co-ordination of National Government and the Cabinet Secretary in charge of Defence should ensure the borders of Kenya are adequately secured and more particularly the border of Kenya with Ethiopia to prevent the entry of illegal firearms and aliens into the country.
 - j) The Cabinet Secretary for Interior and Co-ordination of National Government and the National Cohesion and Integration Commission should roll-out programmes and activities to promote peaceful coexistence and reconciliation of the various communities in Marsabit County.
 - k) The Cabinet Secretary for Interior and Co-ordination of National Government should institute legislative and other measures to forestall cattle rustling in Marsabit and across the country.

- l) The Director of Criminal Investigations should expeditiously investigate claims of ethnic incitement and hate speech disturbing peace in Marsabit County with a view to having the perpetrators prosecuted.
- m) The national government and the county government of Marsabit should take necessary action to ensure development of transport and communication infrastructure in Marsabit County in order to improve on policing.
- n) The Cabinet Secretary for Interior and Co-ordination of National Government should strengthen national security agencies in Marsabit County, especially the National Police Service's Specialized Units to ensure their presence is felt all over the County.
- o) The Kenya National Commission on Human Rights should investigate claims of inter-ethnic killings in Marsabit County and report to the National Assembly within 90 days from the date the report is tabled before the House.
- p) All Government Ministries, Departments, Commissions and Agencies required to act on this report should do so and report to the National Assembly within 90 days from the date the report is tabled before the House.

MIN No. 70/2021:-

ADJOURNMENT

The Chairperson adjourned the sitting at 6.00 pm.

Signed.....
Chairperson

Date.....10/8/2021.....

MEMO

TO : THE DEPUTY CLERK OF THE NATIONAL ASSEMBLY

THRO' : DIRECTOR, LEGAL SERVICES- NATIONAL ASSEMBLY

*Forwarded. The petition meets the stipulated requirements and may be tabled for consideration.
Dum. 25/02/21*

THRO' : DEPUTY DIRECTOR, LEGAL SERVICES- NATIONAL ASSEMBLY

THRO' : PRINCIPAL LEGAL COUNSEL- NATIONAL ASSEMBLY

Petitioner is an expert in the areas covered in his prayer. The amendments to the Firearms Act (Cap 114) which is the subject matter of the petition is within the ambit of the National Assembly in terms of Article 119(1) and Article 94(3) of the Constitution, and may be forwarded to the Hon. Speaker for consideration.

FROM : LEGAL COUNSEL I- NATIONAL ASSEMBLY

DATE : 23RD FEBRUARY, 2021

RE: PETITION TO AMEND THE FIREARMS ACT TO PROVIDE FOR THE PROTECTION OF LEGAL USE OF FIREARMS AND MENTAL EXAMINATION OF PROSPECTIVE FIREARM SEEKERS

The above matter refers and your instructions to the Legal Directorate to peruse and establish whether the petition by Dr. Machanga Mareko on the above subject matter, complies with the National Assembly Standing Orders.

We have perused the Constitution, the Petition to Parliament (Procedure) Act, 2012 and the National Assembly Standing Orders and advise as hereunder:

Dr. Muchanga Mareko

P.O. Box, 26-00202

Tel: 0724481658

Email: machangamarekog@gmail.com

My Ref: IVLPET/011/2019

Date: 04/12/2020

The Clerk,

National Assembly,

P.O. Box 41842, Nairobi.

Please advise

12/02/21

Ms. Christine Johnson
 Please advise
 15/2/2021

12 FEB 2021

RE: PETITION TO THE NATIONAL ASSEMBLY FOR THE AMENDMENT OF THE FIREARMS ACT TO PROVIDE FOR THE PROTECTION OF LEGAL FIREARMS HOLDERS UPON LEGAL USE OF THEIR FIRE ARMS AND TO EXPRESSLY PROVIDE FOR A MENTAL EXAMINATION FOR PROSPECTIVE FIREARM SEEKERS.

Pursuant to article 119 of the constitution of Kenya 2010, and in accordance with the Petition to Parliament (Procedure) Act, 2012, I, the undersigned, a Kenyan citizen, a Firearms Examiner at Kenyatta National Hospital, and a Psychiatrist, ID NO. 6485106, hereby draw the attention of the House to the need to amend the firearms act, cap 114 of the laws of Kenya to provide for the protection of legal firearm holders upon legal use of their fire arms.

Aware that;

1. Some citizens are legal firearm holders as provided for by the firearms act;
2. The firearms act does not define what constitutes the "legal use of a firearm";
3. A firearm's purpose is to scare, disable, or kill depending on the level of the threat by the aggressor;
4. The firearms act, cap 114 of the laws of Kenya, does not expressly provide for mandatory mental examination for prospective firearms seekers;

Concerned that;

1. Some licensed firearm holders may use their firearms legally and cause death of their aggressors in the process;
2. Some licensed firearm holders may use their firearms legally and cause harm or injury of their aggressors in the process;

Mr. Dime Dime
 Please assign and
 supervise 15/2/2021

NATIONAL ASSEMBLY
 RECEIVED
 12 FEB 2021
 DEPUTY CLERK
 P.O. Box 41842 - 00100, NAIROBI

PROSPECTIVE FIREARM SEEKERS. MENTAL EXAMINATION FOR

3. There is no legal protection of persons who use their legal firearms;
4. The firearms act, cap 114 of the laws of Kenya, does not prescribe the circumstances under which a legal firearm holder can use his firearm;
5. There are no regulations stipulating the circumstances under which a legal firearm holder can use his firearm;
6. Subjecting prospective firearm seekers to a mental examination presupposes that they are either of unsound mind or of intemperate habits as per the provisions of the firearms act, cap 114 of the laws of Kenya;
7. Under the current laws, a person who uses his or her legal firearm to cause death to an aggressor is a murder suspect;
8. Under the current laws, a person who uses his or her legal firearm to cause injury to an aggressor is a criminal suspect;
9. Under the current laws, an aggressor enjoys more protection than the aggressed;
10. Under the current laws, the conviction for a person who causes death using a legal firearm is a non-custodial sentence without a fine option;
11. Such legal use of a firearm will make the user to have a criminal record that will deny him certain privileges and services;

THAT

No previous efforts have been made to have this matter addressed, as the issues raised are domiciled in the National Assembly.

THAT

I confirm that the issues in respect of which this petition is made are not pending before any court of law or legal body.

SEEKERS.

AND HEREOFRE YOUR HUMBLE PETITIONER PRAYS THAT:

Parliament (National Assembly) AMENDS THE FIREARMS ACT, CHAPTER 114, as follows:

1. To insert:

5.10

Prescribed use of a firearm by a licensed firearm holder whose consequences shall not fall under the charge of murder or attract criminal prosecution.

1. When the life of a legal firearms holder is in danger from an aggressor;
2. Where failure of the legal firearm holder to use the firearm would result in the killing of the legal firearms holder by the aggressor;
3. Where grave circumstances require a licensed firearm holder to shoot to scare away or immobilize the aggressor;
4. Where a licensed firearm holder uses his firearm to rescue or save another person or persons from an aggressor or aggressors.

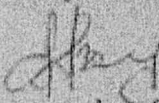
2. To insert:

5.11

All firearm seekers shall undergo a mandatory mental examination as a precondition to acquiring a firearms license.

And your PETITIONER will ever pray.

Dr Mareko Machanga, Consultant Psychiatrist, Kenyatta National Hospital; Mental Examiner for Prospective Firearms License Seekers.



Email: machangamarekog@gmail.com

Phone: 0724481658

P.O Box 26-00202, Nairobi

