

REPUBLIC OF KENYA

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DATE	28/03/18
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COMMITTEE	National Security
CLERK AT THE TABLE	Julian



THE SENATE
RECEIVED
28 MAR 2018
DEPUTY SPEAKER'S OFFICE

THE SENATE

TWELFTH PARLIAMENT - SECOND SESSION

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Forwarded and recommended
for approval for tabling.

Ef 22/03/18

REPORT ON THE CONSIDERATION OF THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL, 2017

Hon. Speaker
You may approve
for tabling.
22/03/18

CLERKS CHAMBERS
THE SENATE

MARCH, 2018

Approved
26/3/2018

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ABBREVIATIONS

COG - Council of Governors

CEO - Chief Executive Officer



PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Senate Standing Committee on National Security, Defence and Foreign Relations was constituted on Thursday, 14th December, 2017, during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of standing order 212 (1) of the Senate Standing Orders which states:

There shall be Select Committees to be designated Standing Committees which shall be nominated by the Senate Business Committee in consultation with parliamentary parties at the commencement of every Parliament.

Mandate of the Committee

The Committee on National Security, Defence and Foreign Relations is mandated to consider all matters relating to national security and foreign relations, disaster reduction and preparedness, home affairs, defence, immigration, and international relations.

Oversight

In executing its mandate, the Committee oversees the following Ministries, -

- (1) Ministry of Interior and Coordination of National Government;
- (2) The Ministry of Foreign Affairs; and
- (3) The Ministry of Defence.

Membership of the Committee

The following are Members of the Standing Committee on National Security, Defence and Foreign Relations.

1. **Sen. Mohamed Yusuf Haji, EGH, MP** - **Chairperson**
2. **Sen. Johnson Arthur Sakaja. MP** - **Vice Chairperson**
3. **Sen. Moses Masika Wetang'ula, EGH, MP**
3. **Sen. Fatuma Dullo, MP**



4. Sen. Susan Wakarura Kihika, MP
5. Sen. Anwar Loititip, MP
6. Sen. Fred Outa, MP
7. Sen. Beatrice Kwamboka, MP
8. Sen. Judith Pareno, MP

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of its meetings and the public hearing. The Committee also thanks members of the public who made submissions.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 137 (1), to present the Report of the Standing Committee on National Security, Defence and Foreign Relations on the National Flag, Emblems and Names (Amendment) Bill, 2017 for consideration by the House.

Signed _____



Senator Mohamed Yusuf Haji, EGH, MP

Chairperson, Standing Committee on National Security, Defence and Foreign Relations

Date 21st march 2018



EXECUTIVE SUMMARY

The National Flag, Emblems and Names (Amendment) Bill, sponsored by Sen. Mutula Kilonzo Junior, MP., was Read a First Time in the Senate on Wednesday, 29th November, 2017. Following the First Reading, the Bill, stood committed to the Standing Committee on National Security, Defence & Foreign Relations pursuant to standing order No. 134 (5) of the Senate Standing Orders.

Subsequently, the Committee subjected the Bill to public hearings pursuant to Article 118 (1) (b) of the Constitution and standing order 134 (5). The Committee invited submissions on the Bill from members of the public via advertisements carried in the Daily Nation and the Standard Newspapers on 4th March, 2018.

The Committee held a public hearing on Wednesday 7th March, 2018, in Committee Room 5, Main Parliament Buildings, but noted that no public turned up to give oral submissions. The Committee received one written submission on the Bill.

The Committee thereafter considered the submissions and views of the Committee as documented in this Report.



1. INTRODUCTION

1.1. The National Flag, Emblems and Names Act, Cap. 99

The National Flag, Emblems and Names Act, Cap. 99 commenced on 10th December, 1963. It was enacted to prevent the improper use of the National Flag and of certain emblems, names, words and likenesses for professional and commercial purposes, and to prohibit the display of certain flags.

1.2. The National Flag, Emblems and Names (Amendment) Bill, 2017

The Bill is sponsored by Sen. Mutula Kilonzo Junior, MP. It introduces a new section 4B to the National Flag, Emblems and Names Act (Cap. 99) to provide that a person may, in expressing their patriotism, display the National Flag at any private residence or any place of work or business during a public holiday. The Bill however only allows such display of the National Flag if it does not undermine the authority or reputation of the State.

The Bill further provides that the Cabinet Secretary may make rules on the display of the National Flag.

The Bill also seeks to bring the National Flag, Emblems and Names Act into conformity with the Constitution by substituting the word “Minister” with the word “Cabinet Secretary” which is now the term used under the current Constitution.

1.2 Committal of the Bill to the Standing Committee on National Security, Defence and Foreign Relations

The National Flag, Emblems and Names (Amendment) Bill, 2017 was published 2nd November, 2017 and Read a First Time in the Senate on 29th November, 2017. The Bill was thereafter committed to the Standing Committee on National Security, Defence and Foreign Relation for consideration and facilitation of public participation.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 134(5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard Newspapers of 3rd March, 2018.

The Committee received a written memorandum from the Council of County Governors, which was delivered through the Office of the Clerk of the Senate.



2. SUBMISSIONS

2.1 Submissions from the Council of County Governors

In a memorandum submitted to the Committee, the Council of County Governors stated that it is in support of the Bill which seeks to amend the National Flag, Emblems and Names Act so as to allow members of the public to express their patriotism by flying the National flag in their private residence and place of work or business during public holidays provided this does not undermine the authority or reputation of the State. It reiterated that the implementation of the national values and principles under Article 10 of the Constitution is a responsibility of both the National and County Governments. Further, it noted that the promotion of patriotism has a positive effect on governance at the county level and promotes national cohesion.

3. COMMITTEE OBSERVATIONS

Having considered the Bill and the submissions received, the Committee observed as follows-

- (1) That Article 9 of the Constitution sets out the national symbols of the Republic, which are the national flag, the national anthem, the coat of arms and the public seal. These are the most sacrosanct symbols for Kenya as a Nation. They reflect Kenya's past, present and aspirations for the future and give a sense of belonging and identity to all Kenyans.
- (2) The National flag in particular, bears colors and symbols which conveys the country's fight for independence, the sacrifice made by Kenyans to achieve independence, the people of Kenya and their desire for peace and prosperity.
- (3) Prior to the promulgation of the Constitution, the law which provided for the national symbols was the National Flag, Emblems and Names Act. The Act came into force on 10th December, 1963, two days before *Jamhuri* Day to prevent the improper use of the National Flag and of certain emblems, names, words and likenesses for professional and commercial purposes.
- (4) The Act as currently worded, does not clearly state whether or not Kenyans are allowed to fly the National Flag during public holidays, yet public holidays,



particularly the celebration national days set out under Article 9(3) of the Constitution, provide opportunities for Kenyans to express their patriotism.

- (5) Patriotism being a national value under Article 10 of the Constitution, it is important that National Flag, Emblems and Names Act allows Kenyans to freely express their patriotism by expressly stating that flying the National Flag on public holidays is allowed.
- (6) Comparatively, in other democratic jurisdictions, the flying of national flags at private residences and places of work is allowed.

The Committee Bill therefore noted that the Bill is timely and will foster the very important value of patriotism.

4. COMMITTEE RECOMMENDATIONS

The Committee unanimously agreed to support the Bill and recommends that the Senate passes the Bill which, if enacted, will foster patriotism, promote national cohesion and have a positive effect on governance at both levels of government.



SPECIAL ISSUE

Kenya Gazette Supplement No. 165 (Senate Bills No. 8)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2017

NAIROBI, 2nd November, 2017

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**THE NATIONAL FLAG, EMBLEMS AND NAMES
(AMENDMENT) BILL, 2017**

A Bill for

AN ACT of Parliament to amend the National Flag, Emblems and Names Act to allow members of the public to fly the National Flag in their places of residence, work and business; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Flag, Emblems and Names (Amendment) Act, 2017.

Short title.

2. The National Flag, Emblems and Names Act, (in this Act referred to as the “principal Act”) is amended in section 2 by inserting the following new definition immediately before the definition of the word “motor vehicle”—

Amendment of section 2 Cap. 99.

“Cabinet Secretary” means any Cabinet Secretary responsible for matters relating to the National Flag, Emblems and Names;

3. Section 3 of the principal Act is amended—

Amendment of section 3 Cap. 99.

(a) in the introductory phrase to subsection (1) by deleting the word “Minister” appearing immediately after the words “permission of the” and substituting therefor the words “Cabinet Secretary”; and

(b) in subsection (3) by deleting the word “Minister” appearing immediately after the words “conditions as the” and substituting therefor the words “Cabinet Secretary”.

4. The principal Act is amended by inserting the following new section immediately after section 4A—

Insertion of new section 4B.

Display of the National Flag in private residences.

4B. (1) Despite any other provision of this Act, during a public holiday, a person may, as a sign of patriotism, display the National Flag, at any private residence or

any place of work or business, provided that the display of the National Flag does not undermine the authority or reputation of the State.

(2) The Cabinet Secretary may make rules on the display of the National Flag under subsection (1).

5. Section 8 of the principal Act is amended by deleting the word “Minister” appearing before the words “may, by notice” and substituting therefor the words “Cabinet Secretary”.

Amendment of
section 8 Cap. 99.

6. Section 9 of the principal Act is amended in the introductory phrase by deleting the word “Minister” appearing immediately after the word “the” and substituting therefor the words “Cabinet Secretary”.

Amendment of
section 9 Cap. 99.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

Patriotism is a national value and principle of governance under Article 10(2)(a) of the Constitution. In this respect, the Bill seeks to allow members of the public to express their patriotism by flying the National flag in their private residence and place of work or business provided this does not undermine the State.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative power and does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Implementation of the national values and principles under Article 10 of the Constitution is a responsibility of both the National and County Governments. Further, promotion of patriotism has a positive effect on governance at the county level and promotes national cohesion.

The Bill therefore concerns county governments in terms of Articles 110 (1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 17th October, 2017.

MUTULA KILONZO JUNIOR,
Senator.

Section 2 of Cap. 99 that the Bill proposes to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“**motor vehicle**” has the meaning assigned to it in the Traffic Act (Cap. 403);

“the National Anthem” means the national anthem, the words and music of which are set out in the Third Schedule to this Act;

“**specified emblem**” means any emblem, seal, flag, pennant, insignia, ensign or coat-of-arms of a kind specified in Part I of the First Schedule to this Act;

“**specified likeness**” means any photograph, drawing or other pictorial representation of the person for the time being holding any of the offices or dignities specified in Part III of the First Schedule to this Act;

“**specified name**” means any of the names and words specified in Part II of the First Schedule to this Act, and includes any abbreviation of any such name;

Section 3 of Cap. 99 that the Bill proposes to amend—

3. Prohibition of improper use of emblems, names and likenesses

(1) Notwithstanding anything contained in any law for the time being in force, no person shall, except with the written permission of the Minister—

- (a) use any specified emblem, specified name or specified likeness, or any colourable imitation thereof, in furtherance of, or display the same as an advertisement for, any trade, business, calling or profession; or
- (b) use any specified emblem, specified name or specified likeness, or any colourable imitation thereof, in the title of any patent, or in any trade mark or design; or
- (c) manufacture or import any article or goods bearing any specified emblem, specified name or specified likeness, or any article or goods on which any title, trade mark or design is used in contravention of paragraph (b) of this subsection.

(2) The provisions of subsection (1)(a) of this section relating to the use of a specified likeness shall not apply to the publication of a *bona fide* news item (whether in a newspaper or by any other medium) or to the publication in a newspaper of any article connected with any *bona*

vide news item other than a news item in the furtherance of, or as advertisement for, any trade, business, calling or profession.

(3) Any permission given under subsection (1) of this section may be given subject to such conditions as the Minister may deem fit.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

Section 8 of Cap. 99 that the Bill proposes to amend—

8. Power to amend First Schedule

The Minister may, by notice in the *Gazette*, amend the First Schedule to this Act.

Section 9 of Cap. 99 that the Bill proposes to amend—

9. Regulations

The Minister may make regulations—

- (a) prescribing the occasions upon which, the persons by whom and the manner in which the National Flag or the Armorial Ensigns may be flown or displayed, as the case may be;
- (b) prohibiting, controlling or restricting the use of any specified emblem, specified likeness or specified name;
- (c) regulating the manner in which application may be made to him for his permission under section 5 of this Act, prescribing the form of any licence by which such permission may be given and fixing any fee for such application and licence;
- (d) generally for carrying this Act into effect.





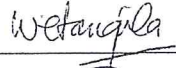
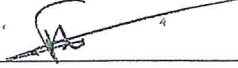


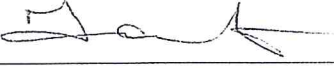


THE SENATE

**STANDING COMMITTEE ON DEFENCE, NATIONAL SECURITY AND FOREIGN
RELATIONS**

Date:..... 4th March 2018

Time:..... 10:00 AM

Venue:..... COMMITTEE ROOM 7

No.	NAME	SIGNATURE
1.	Sen. Mohamed Haji Yusuf, MP (Chairperson)	
2.	Sen. Sakaja Johnson, MP (Vice-Chairperson)	
3.	Sen. Wetang'ula Moses, MP	
4.	Sen. Dullo Fatuma, MP	
5.	Sen. Susan W. Kihika, MP	
6.	Sen. Anuar Loititip, MP	
7.	Sen. Fred Outa, MP	
8.	Sen. Beatrice Kwamboka, MP	
9.	Sen. Judith Pareno, MP	

Committee Clerk

1. Ms. Rose Mudibo

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MINUTES OF THE 4TH SITTING OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS HELD ON WEDNESDAY 7TH MARCH, 2018, IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. Sen. Mohamed Yussuf Haji, M.P - Chairperson
2. Sen. Moses Wetang'ula, MP
3. Sen. Fred Outa, MP
4. Sen. Judith Pareno, MP
5. Sen. Fatuma Dullo, M.P

ABSENT WITH APOLOGY

1. Sen. Johnson Sakaja, MP - Vice-Chairperson
2. Sen. Beatrice Kwamboka, MP
3. Sen. Anuar Loititip, MP
4. Sen. Susan W. Kihika, MP

SECRETARIAT

1. Ms. Rose Mudibo - Committee Clerk
2. Mr. Malcom Ngugi - Legal Counsel
3. Mr. Humprey Ringera - Research Officer

MINUTE NO.19/2018: PRAYER

The sitting commenced at 11.05 a.m. with a word of prayer.

MINUTE NO.27/2018: ADOPTION OF AGENDA

Members adopted the agenda of the meeting as presented having been proposed by Sen. Moses Wetang'ula, MP, EGH, and seconded by Sen. Judith Pareno, MP., as below-

1. Prayer
2. Adoption of the agenda
3. Confirmation of Minutes of the 3rd Sitting
4. Adoption of the Report on the Public Hearing on the National Flag, Emblems & Names (amendment) Bill
5. Induction Retreat
6. House Keeping
7. Any Other Business
8. Adjournment and Date of Next Meeting

MINUTE NO.28/2018: CONFIRMATION OF MINUTES OF THE 3RD SITTING

Minutes of the 3rd sitting of the Committee held on Tuesday 27th March, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Judith Pareno, MP and Sen. Mohamed Yusuf Haji, MP, EGH, respectively.

MINUTE.NO.29/2018: CONSIDERATION OF THE PUBLIC HEARING ON THE NATIONAL FLAG, EMBLEMS & NAMES (AMENDMENT) BILL REPORT

The Committee noted that having provided for the public and stakeholders to appear and give views on the National Flag, Emblems & Names (Amendment) Bill, but no oral submissions were received. However, the Committee received a written memorandum from the Council of Governors.

The Committee was taken through the Bill by the Legal Counsel and unanimously agreed to adopt the report of the Bill noting that what the Bill captures exists in other similar jurisdictions.

MINUTE NO.30/2018: INDUCTION RETREAT

The Committee unanimously resolved to hold its inaugural induction retreat in Isiolo between 16th and 19th March, 2018.

MINUTE NO.31/2018 ANY OTHER BUSINESS

The Secretariat was tasked to look at the provision of diplomatic passports in the Immigration Act to have Members of Parliament included as it is in other jurisdictions.

The Committee resolved to visit Bungoma County between 22nd and 24th March 2018 to visit Bungoma County Government and Mt. Elgon Region to look into the prevailing insecurity.

MINUTE NO. 32/2018: ADJOURNMENT

There being no other business the meeting was adjourned at 10.58 a.m.

Signature:.......... Date: 21/03/2018

 Chairperson

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT

THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The National Flag, Emblems and Names (Amendment) Bill (Senate Bills No.8 of 2017)

The National Flag, Emblems and Names (Amendment) Bill (Senate Bills No.8 of 2017) was read a First Time in the Senate on Wednesday 29th November, 2017 and was thereafter committed to the Senate Standing Committee on National Security, Defence and Foreign Relations for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 134 of the Senate Standing Orders, the Senate Standing Committee on National Security, Defence and Foreign Relations now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearings shall be held on **Wednesday, 7th March, 2018 from 10:00 a.m. to 12:00 p.m. at the Mini Chamber, First Floor, County Hall, Parliament Buildings, Nairobi; or**
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi or emailed to cSenate@parliament.go.ke, to be received on or before Wednesday, 7th March, 2018 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**

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THE SENATE
RECEIVED
22 MAR 2018
SENIOR DEPUTY CLERK

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22 MAR 2018
P.O. BOX 41842 - 00101, NAIROBI

THE SENATE

MEMO

TO: The Clerk of the Senate

✓ 22/03/18

THRO: The Senior Deputy Clerk

forwarded and recommended for approval for tabling.

THRO: The Director, Committee Services

Forwarded and recommended 22/03/18

FROM: Principal Clerk Assistant

DATE: 21st March, 2018

RE: REPORT ON THE PUBLIC HEARING ON THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL, 2017

The above matter refers.

Attached is a Report on the above subject for your approval and signature.

For Ms. Rose Mudibo

