

KEPSA WEEKLY LEGISLATIVE BULLETIN

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Focus on an upcoming Bill

KEPSA speaks on Police Service reforms

The National Assembly is expected to commence debate on the National Police Service Commission (Amendment) Bill to help clarify and streamline areas of potential conflict that



have arisen in the past concerning the relationship between the Inspector General of the National Police Service and the Police Service Commission. The Bill has gone through stakeholder consultation in the committee stage and is now set for its third reading before the House.

The National Police Service Commission Act was enacted following promulgation of the new Constitution which created the National Police Service Commission under Article 246. Article 243 of the Constitution created the National Police Service and a corresponding law, the National Police Service Act, was accordingly enacted.

Since the enactment of these two Acts of Parliament, challenges have arisen over the functional relationship between the National Police Service Commission on the one hand and the National Police Service on the other.

While the former is headed by a Commission Chair with a mandate on issues touching on police recruitment, there has been disquiet within the National Police Service led by the Inspector-



General that an effective police service requires a clear and well-defined reporting structure under the command of the Inspector-General rather than the Chair of the National Police Service Commission.

At the height of this quiet “war”, there was widespread concern from various sectors, including the Private Sector, that the lack of harmony between the national Police Service and the National Police Service Commission could adversely affect the security sector. The Private Sector was concerned that a deterioration of insecurity – exacerbated by uncertainty over operational and oversight issues in relation to the National Police Service – could create a difficult environment for business.

Security is a major concern to the Private Sector and a major determinant of the ability to attract and retain investments. A third of Kenyan firms rate crime as a major constraint to their operations; reporting crime-related losses of 4 per cent of their annual sales – four times higher than the 1 per cent reported in South Africa. Insecurity has been one of the major drawbacks to the promotion of a 24-hour economy

Insecurity forces business enterprises to incur high insurance costs against crime and the need to employ more security personnel. The Private Sector in Kenya spends up to 4 per cent of total revenues on security-related costs; much higher than comparator countries. Ultimately, this increases the cost of doing business and constrains the growth of the private sector.

KEPSA has already appeared before the parliamentary Departmental Committee on Administration and Security and presented its views on the proposed amendments to the National Police Service Commission (Amendment) Bill.

KEPSA has supported the proposed amendment that would require the National Police Service Commission to consult with the Inspector-General on “all matters relating to human resource policies and standards or qualifications required of members of the Service”.

“This would ensure that human resource issues benefit from an inclusive process of consultation. The Inspector-General’s involvement would bring on board, significant practical knowledge and understanding, from an operational perspective on human resource needs and the gaps that need to be addressed”, observes KEPSA.

The Bill has also proposed to vest in the Commission the power to hear and determine appeals from members of the National Police Service on disciplinary matters, transfers, promotions and appointments. KEPSA supports this amendment through which the Commission will play an oversight role over decision making by the National Police Service.



KEPSA has pointed out that this amendment will strengthen the rule of natural justice where appeals are heard by a different organ other than the one that made a decision besides reinforcing accountability and oversight over the way the National Police Service makes decisions on human resource issues regarding disciplinary matters, transfers, promotions and appointments.

“However, given the structure of the National Police Service as a disciplined Force operating on a clear chain of command, it is important that the Commission undertakes this role with care and sensitivity so as not to breed any form of “insubordination” that would disrupt the efficient running of the Service”, warns KEPSA.

KEPSA has broadly supported the proposed amendment to vest the exercise of disciplinary control in the National Police Service exclusively under the Inspector General while limiting the role of the Commission to the development and prescription of disciplinary procedures and mechanisms including reviewing and ratifying the Inspector-General’s disciplinary actions.

“Where there are proper procedures over disciplinary actions, this provision would ensure that the Police are answerable to their command structures and bear primary accountability for their actions at that level. The problem is that there are no guarantees of internal mechanisms that are strong and efficient – and also fair and impartial – to ensure that this power is exercised appropriately. Parliament must demand clear safeguards on how internal disciplinary procedures would be undertaken within the National Police Service”, observes KEPSA.

KEPSA wants appeals arising from the administrative actions of the Police Service handled by the National Police Service Commission to ensure that the rules of natural justice and oversight over decisions by the Service are both upheld. If the Police Service handled disciplinary matters efficiently, the number of appeals submitted to the Commission would be significantly reduced. KEPSA has informed the Parliamentary Departmental Committee on Administration and Security of the need for a clear command structure within the National Police Service including oversight by the Commission.

“It is important that there is sufficient authority on operational decision-making on the part of the National Police Service in view of the sensitive nature of security concerns which demand quick decision-making’, observes KEPSA.

EAC seeks clear regulations on cross border Legal Practice

The East African Community (EAC) has published a new Bill – the East African Community Cross Border Legal Practice Bill, 2014 – which will provide measures and mechanisms regulating cross border legal practice within the Partner States of the EAC. This Bill is expected to advance regional integration by supporting the harmonization of regulations governing the legal

profession within the EAC region within the wider objectives of supporting service provision by professionals with limited barriers in line with article 10 of the Common Market Protocol which calls for measures to support the free movement of persons.



The EAC Bill is also expected to support the implementation of Article 126 of the EAC Treaty which specifically obligates the Partner States to work towards the harmonization of legal training and certification.

In its observations and recommendation to the Parliamentary Standing Committee on Regional Integration, KEPSA observed that “the EAC Cross Border Legal Practice Bill 2014 will support and strengthen regional integration and help give effect to the spirit of various instruments under the EAC Treaty which address the free movement of persons and the right of establishment”.

“Importantly, the enactment of this Bill will help secure common standards and rules that can be used as an anchor in regulating cross border legal practice which should, in turn, enhance standards of legal practice by facilitating interaction amongst and between lawyers with the Partner States”, KEPSA added.

The East African Community Cross Border Legal Practice Bill, 2014¹ is expected to secure and safeguard the interests and rights of clients who often suffer loss on account of professional misconduct by establishing and creating clear and explicit mechanisms that address professional misconduct and provide redress to aggrieved clientele.

Blowing the horn on regional integration

As the process of consolidating regional integration picks pace, the East African Community (EAC) is shifting attention towards enhancing awareness on the value and benefit of regional integration. It has been recognized that support for regional integration requires a population that well understands the essence of various processes being undertaken to bring the region’s citizens closer together.

To support this endeavour, the EAC has now drafted a Bill geared towards enhancing awareness on regional integration to bolster support for this effort. The East African Community



Integration (Education) Bill, 2014 seeks to provide a clear framework for carrying out civic education within the EAC.

In its support for the proposed Bill, KEPSA noted that “a better understanding of the EAC will enhance buy-in and a sense of shared ownership of the various programmes and initiatives being spearheaded by the

EAC besides strengthening the work of the different agencies established under the EAC to drive regional integration”.

The East African Community Integration (Education) Bill, 2014 is also expected to guide and improve coordination at the national level on education and raising awareness on the EAC as one way of maximizing on the overall effect and impact of various regional level initiatives.

It will thus support the ease in securing several broad objectives such as the move towards creating the EAC Political Federation which must be anchored on a clear understanding of the EAC and a buy-in of its agenda. Civic education is also expected to enhance the sense of identity for the people of East Africa and image building for the EAC.

KEPSA has proposed that the objectives of the Act be expanded to capture the full essence of the activities to be carried out in supporting and encouraging public participation in the integration process. This should focus on raising awareness “on various regional protocols, agreements and other legislative instruments of the EAC”.

KEPSA has also proposed that EAC do more in building better “understanding on the duties and responsibilities assigned to the people of East Africa and the obligations of the East African Community to the people of East Africa”