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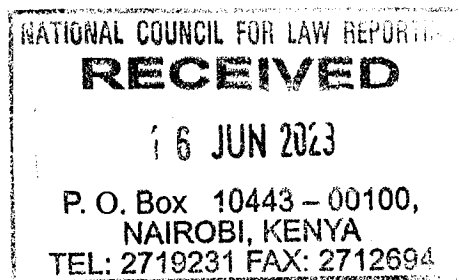
SENATE BILLS, 2023

NAIROBI, 25th May, 2023

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**THE SECURITY SERVICES LAWS (AMENDMENT)
BILL, 2023**

A Bill for

AN ACT of Parliament to amend various security laws to clarify on the respective investigative powers of the National Police Service and the Independent Policing Oversight Authority; to expand the civilian oversight function of the Independent Policing Oversight Authority; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Security Services Laws (Amendment) Act, 2023.

Short title.

2. Section 6 of the Prisons Act is amended by inserting the following new subsection immediately after subsection (2) —

Amendment of section 6 of Cap 90.

(3) The Commissioner shall cooperate with and implement the recommendations of the Independent Policing Oversight Authority established under the Independent Policing Oversight Authority Act.

No. 35 of 2011.

3. Section 12 of the Prisons Act is amended by inserting the following new subsections immediately after subsection (2) —

Amendment of section 12 of Cap 90.

(3) Where a prison officer exercises the powers of a police officer including arrest or use of force or firearm in the performance of duties under this Act, the officer shall exercise such powers in accordance with the Constitution and the Sixth Schedule to the National Police Service Act.

No. 11 of 2011.

(4) Where a person in the custody of the Service dies or is injured or a prison officer or an employee of the Service causes the death or injury of a person, the officer in charge shall, in writing, notify the Independent Policing Authority of such death or injury in accordance with section 25 of the Independent Policing Oversight Authority Act.

No. 35 of 2011.

4. Section 10 of the Borstal Institutions Act is amended by —

Amendment of section 10 of Cap 92.

- (a) numbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1) –

(2) Where a person in custody dies or is injured, or an authorized officer or an employee of a borstal institution causes the death or injury of a person, the Superintendent shall, in writing, notify the Independent Policing Oversight Authority of such death or injury in accordance with section 25 of the Independent Policing Oversight Authority Act.

No. 35 of 2011.

5. The National Police Service Act is amended by inserting the following new section immediately after section 72 –

Insertion of new section 72A in No. 35 of 2011.

Exclusion from investigating certain matters.

72A. (1) Notwithstanding sections 24(e), 35(b), and 51(1)(j) or any other provision of this Act, a police officer shall not investigate a crime suspected to have been committed by a member of a service.

(2) Where a complaint is made against a member of a service or a member of a service is arrested in connection with the commission of a crime, a police officer in charge of a police station or other post, unit or formation shall, in writing, notify the Independent Policing Oversight Authority of such complaint or arrest.

(3) A police officer in charge of a police station or other post, unit or formation shall take all necessary steps to secure evidence which may be relevant to the investigation, including pictorial evidence, and supply the Independent Policing Oversight Authority with the evidence and all other facts relevant to the matter, including the names and contact details of all persons who may be able to assist the Authority to conduct an investigation.

(4) A police officer who contravenes this section commits an offence.

6. Section 87 of the National Police Service Act is amended by deleting subsection (2A) and substituting therefor the following new subsection –

Amendment of section 87 of No 11 of 2011.

(2A) Without prejudice to subsection (2), the Unit –

- (a) shall not investigate a complaint where that complaint relates to a crime suspected to have been committed by a police officer; and
- (b) may investigate and recommend appropriate internal disciplinary action in respect of any a police officer suspected to have engaged in an unlawful conduct.

7. Section 2 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 2 of No. 35 of 2011.

- (a) in the definition of the word “complaint” by deleting the words “the Service” appearing immediately after the words “members of” and substituting therefor the word “a service”;
- (b) in the definition of the word “disciplinary action” by deleting the words “the Service” appearing immediately after the words “member of” and substituting therefor the word “a service”;
- (c) in the definition of the word “disciplinary proceedings” by inserting the words “or such other disciplinary proceedings instituted under the Prisons Act, the Wildlife Conservation and Management Act, or the Forest Conservation and Management Act” immediately after the words “National Police Service Act”;
- (d) by deleting the definition of the word “internal Police investigation” and substituting therefor the following new definition –

“internal investigation” means an investigation conducted by the Internal Affairs Unit or an internal investigation conducted under the Prisons Act, the Wildlife Conservation and Management Act or the Forest Conservation and Management Act”;

- (e) in the definition of the word “misconduct” by deleting the word “Service” appearing

immediately after the words “members of the” in paragraph (a) and substituting therefor the word “services”;

- (f) by deleting the definition of the word “member of the service” and substituting therefor the following new definition —

“member of a service” means a police officer, prison officer, member of the Kenya Wildlife Service, forest officer, or an employee of a service”

- (g) in the definition of the word “policing” by deleting the word “Service” appearing immediately after the words “applicable to the” and substituting therefor the word “services”;

- (h) by deleting the definition of the word “police premises”;

- (i) by deleting the definition of the word “Service” and substituting therefor the following new definition —

“service” means the National Police Service established under Article 243 of the Constitution, the Kenya Prisons Service established under the Prisons Act, the Kenya Wildlife Service established under Wildlife Conservation and Management Act and the Kenya Forest Service established under the Forest Conservation and Management Act” immediately after the words “of the Constitution”;

- (j) by inserting the following new definitions in their proper alphabetical sequence —

“Internal Affairs Unit” means the Unit established under section 87 of the National Police Service Act;

“forest officer” means a member of the Kenya Forest Service and includes the professional, technical and disciplined cadre, and other employees of the Kenya Forest Service;

“prison officer” means a member of the Kenya Prisons Service of whatever rank and includes an employee of the Kenya Prisons Service; and

“service premises” means a building, construction or any location where a service hold office or from where they carry out their duties or may detain a person including a police station, police post, police camp, prison, temporary prison, borstal institution and a youth corrective training centre;

8. Section 5 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 5 of No. 35 of 2011.

- (a) in paragraph (a) by inserting the words “prison officers, members of the Kenya Wildlife Service and forest officers’ immediately after the words “hold the Police”;
- (b) by inserting the following new paragraph immediately after paragraph (a) –
 - (aa) hold the services accountable to the public in the performance of their functions;
- (c) in paragraph (c) by deleting the word “the Service” and substituting therefor the words “a service”.

9. Section 6 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 6 of No. 35 of 2011.

- (a) in paragraph (a) by deleting the words “the Service” appearing immediately after the words “any member of” and substituting therefor the words “a service”;
- (b) in paragraph (b) by deleting the words “the Service” appearing immediately after the words “members of” and substituting therefor the word “a service”;
- (c) by deleting paragraph (d) and substituting therefor the following new paragraph –
 - (d) monitor, review and audit internal investigations and actions taken by the services in response to complaints against the services and keep a record of all such

complaints regardless of where they have been first reported and what action has been taken;

- (d) by deleting paragraph (e) and substituting therefor the following new paragraph –
 - (e) conduct inspections of service premises;
- (e) by deleting paragraph (f) and substituting therefor the following new paragraph –
 - (f) cooperate with other State organs and institutions on issues of oversight of the services;
- (f) in paragraph (g) by deleting the words “Police misconduct” appearing immediately after the words “the pattern of” and substituting therefor the words “misconduct by members of a service”; and
- (g) in paragraph (k) by deleting the word “the Service” appearing immediately after the words “recommendations to” and substituting therefor the words “a service”.

10. Section 7 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 7 of No. 35 of 2011.

- (a) in subsection (1)(a) –
 - (i) by deleting the words “the Service” appearing immediately after the words “to investigate the” in the introductory clause and substituting therefor the words “a service”;
 - (ii) by deleting the words “the Police” appearing immediately after the words “including from” in subparagraph (i) and substituting therefor the words “a service or a member of a service”;
 - (iii) by deleting the word “Police” appearing immediately after the words “premises including” in subparagraph (ii) and substituting therefor the words “service”;
 - (iv) by deleting the word “Police” appearing immediately after the words “premises including” in subparagraph (iii) and substituting therefor the words “service”;

- (v) by deleting the words “Police officer” appearing immediately after the words “serving or retired” in subparagraph (vii) and substituting therefor the words “member of a service”; and
- (vi) by deleting subparagraph (x) and substituting therefor the following new paragraph –
 - (x) investigating any crime suspected to have been committed by a member of a service;
- (b) in subsection (1)(c) by deleting the words “police conduct” appearing immediately after the words “victim of unlawful” and substituting therefor the words “conduct by a member of a service”;
- (c) in subsection (1)(e) by deleting the words “the Service” appearing immediately after the word “require” and substituting therefor the words “a service”; and
- (d) in subsection (3) by inserting the words “the Senate” immediately after the words “the National Assembly”.

11. Section 10 of the Independent Policing Oversight Authority Act is amended by deleting subsection (2) and substituting therefor the following new paragraph –

Amendment of section 10 of No. 35 of 2011.

- (e) is a serving member of a service, or retired from being a member of a service within five years immediately preceding the date of the appointment;

12. Section 24 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 24 of No. 35 of 2011.

- (a) in subsection (1) by deleting the words “the Police” appearing immediately after the words “complaint against” and substituting therefor the words “a service or member of a service”;
- (b) in subsection (4) by deleting the words “the Police” appearing immediately after the words “including members of” in paragraph (b) and substituting therefor the words “a services”;

- (c) in subsection (5) by deleting the words “the Service” appearing immediately after the words “a member of” and substituting therefor the words “a service”;
- (d) in subsection (6) by deleting the words “the Police” appearing immediately after the words “in the event of” and substituting therefor the words “a service”;
- (e) by deleting subsection (10) and substituting therefor the following new subsection –
 - (10) Nothing in this section shall prevent a member of a service from lodging a complaint, but the Authority may, at its discretion, refer any complaint back to the Internal Affairs Unit or any other internal process of a service for redress.
- (f) in subsection (11) by deleting the words “the Police” appearing immediately after the words “member of” and substituting therefor the word “a service”; and
- (g) in subsection (12) by deleting the words “Police officer” appearing immediately after the words “who subjects a” and substituting therefor the words “member of a service”.

13. The Independent Policing Oversight Authority Act is amended by deleting section 25 and substituting therefor the following new section –

Amendment of section 25 of No. 35 of 2011.

Death or injury in custody.

25. (1) The Authority shall investigate any death or serious injury occurring in a police station, prison or any other place where a person may be detained by a service.

(2) A member of a service in charge of a police station, prison or any other place where a person may be detained shall –

- (a) in writing, notify the Authority of any death of or injury to a person while in the custody of the service; and

(b) take all necessary steps to secure evidence which may be relevant for the investigation, including pictorial evidence and supply the Authority with the evidence and all other facts relevant to the matter, including the names and contact details of all persons who may be able to assist the Authority to conduct an investigation.

(3) A member of a service who contravenes this section commits an offence.

14. The Independent Policing Oversight Authority Act is amended by deleting section 26 and substituting therefor the following new section –

Amendment of section 26 of No. 35 of 2011.

Exclusion of certain matters.

26. The Authority shall not investigate a matter where a law has specifically assigned that function to another institution.

15. Section 29 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 29 of No. 35 of 2011.

(a) in subsection (1) by –

- (i) deleting the words “the Service” appearing immediately after the words “a member of” in paragraph (a) and substituting therefor the words “a service”; and
- (ii) deleting the words “the Service” appearing immediately after the words “a member of” in paragraph (b) and substituting therefor the words “a service”; and

(b) in subsection (3) by deleting the word “Police” appearing immediately after the words “employment of the” in paragraph (c) and substituting therefor the words “service”.

16. Section 30 of the Independent Policing Oversight Authority Act is amended –

Amendment of section 30 of No. 35 of 2011.

(c) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The Authority shall submit to the National Assembly and the Senate, at least once in every six months, a report on the performance of the functions of the Authority.

(d) by deleting subsection (2) and substituting therefor the following new subsection –

(2) The Authority shall forward a copy of the report referred to in subsection (1) to the Cabinet Secretary, the Inspector-General, the Commission, the Commissioner-General of Prisons, the Director-General of the Kenya Wildlife Service, the Chief Conservator of Forests and the county assemblies.

(e) in subsection (4) –

(i) by deleting the words “Service has” appearing immediately after the words “how the” in paragraph (f) and substituting therefor the words “services have”;

(ii) by deleting the words “Police accountability” appearing at the end of paragraph (h) and substituting therefor the words “accountability by the services”; and

(iii) by inserting the words “and the Senate” immediately after the words “the National Assembly” in paragraph (l).

17. Section 31 of the Independent Policing Oversight Authority Act is amended in subsection (1) by deleting the words “Police oversight” appearing immediately after the words “on issues of” in paragraph (h) and substituting therefor the words “oversight of the services”.

Amendment of section 31 of No. 35 of 2011.

18. Section 38 of the Independent Policing Oversight Authority Act is amended in subsection (4) by inserting the words “and Senate” immediately after the words “the National Assembly”.

Amendment of section 38 of No. 35 of 2011.

19. Section 39 of the Independent Policing Oversight Authority Act is amended in paragraph (c) by deleting the word “Police investigations” appearing immediately after the words “of internal” and substituting therefor the words “investigations undertaken by a service”.

Amendment of section 39 of No. 35 of 2011.

- 20.** Section 7 of the Wildlife Conservation and Management Act is amended by inserting the following new paragraph immediately after paragraph (r) –
- (ra) cooperate with and implement the recommendations of the Independent Policing Oversight Authority established under the Independent Policing Oversight Authority Act.
- 21.** Section 24 of the Wildlife Conservation and Management Act is amended in subsection (2) by inserting the words “or an authorized officer” at the end of the subsection.
- 22.** Section 25 of the Wildlife Conservation and Management Act is amended in subsection (1) by inserting the words “or by an authorized officer” immediately after the words “the Third Schedule”.
- 23.** Section 112 of the Wildlife Conservation and Management Act is amended by inserting the following new subsections immediately after subsection (6) –
- (6A) Whenever an authorized officer exercises the powers of a police officer including arrest and use of force and firearm in the performance of duties under this Act, that officer shall exercise such powers in accordance with the Constitution and the Sixth Schedule to the National Police Service Act.
- (6B) Where a person in the custody of the Service dies or is injured, or an authorized officer causes the death or injury of a person, the authorized officer who is in charge shall, in writing, notify the Independent Policing Authority of such death or injury in accordance with the Independent Policing Oversight Authority Act.
- 24.** Section 8 of the Forest Conservation and Management Act is amended by inserting the following new paragraph immediately after paragraph (p) –
- (pa) cooperate with and implement the recommendations of the Independent Policing
- Amendment of section 7 of No. 47 of 2013.
- No. 35 of 2011.
- Amendment of section 24 of No. 47 of 2013.
- Amendment of section 25 of No. 47 of 2013.
- Amendment of section 112 of No. 47 of 2013.
- No. 11 of 2011.
- No. 35 of 2011.
- Amendment of section 8 of No. 34 of 2016.
- No. 35 of 2011.

Oversight Authority established under the Independent Policing Oversight Authority Act.

25. Section 63 of the Forest Conservation and Management Act is amended by inserting the following new subsection immediately after subsection (3) –

Amendment of section 63 of No. 34 of 2016.

(4) Whenever a forest officer exercises powers of a police officer including arrest and use of force and firearm in the performance of duties under this Act, the officer shall exercise such powers in accordance with the Constitution and the Sixth Schedule of the National Police Service Act.

No. 11 of 2011.

26. The Forest Conservation and Management Act is amended by inserting the following new section immediately after section 63A –

Insertion of new section 63B in No. 34 of 2016.

Death or injury in custody.

63B. Where a person in the custody of the Service dies or is injured, or a forest officer causes the death or injury of a person, the forest manager shall in writing notify the Independent Policing Authority of such death or injury in accordance with the Independent Policing Oversight Authority Act.

No. 35 of 2011.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal purpose of the Bill is to amend the Prisons Act Cap. 90 laws of Kenya, Borstal Institutions Act Cap. 92 laws of Kenya, the National Police Service Act, No. 11 of 2011, the Independent Policing Oversight Authority Act, No. 35 of 2011, the Wildlife Conservation and Management Act, No. 47 of 2013, and the Forest Conservation and Management Act, No. 34 of 2016 to clarify on the respective investigative powers of the National Police service and that of the Independent Policing Oversight Authority, and to expand the civilian oversight function of the Independent Policing Oversight Authority.

Pursuant to the sections 24 and 35 of the National Police Service Act, the police are responsible for investigation of crimes, including crimes alleged to have been committed by police officers. On the other hand, under sections 6 and 25 of the Independent Policing Oversight Authority Act, the Independent Police Oversight Authority is responsible for investigation of crimes committed by the police. As such there is no clear demarcation of the roles of the institutions and there exists an overlap of the mandate of the police and that of the Independent Police Oversight Authority regarding investigation of crimes.

Further, while the National Police Service is placed under the oversight of the Independent Policing Oversight Authority, no such oversight mechanism has been created with regard to officers of the Kenya Wildlife Service, Kenya Forest Service and Kenya Prisons Service who exercise police powers of arrest, detention and use of force.

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

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

Statement on how the Bill concerns county governments

The Bill seeks to enhance civilian oversight over certain security agencies in the country by bringing the Kenya wildlife Service, the Prisons Service, and the Forest Service under the oversight of the Independent Policing Authority. For county governments to effectively perform the functions and exercise powers under the Fourth Schedule to the Constitution, security is a matter of critical importance. The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of 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 4th May, 2023.

HILLARY KIPROTICH SIGEI,
*Chairperson, Standing Committee on
Justice, Legal Affairs and Human Rights.*

Section 6 of Cap. 90 of the Laws of Kenya which it is proposed to amend—

6. Powers of Deputy Commissioner and delegation of powers

(1) The Deputy Commissioner may exercise any of the powers or perform any of the duties vested in or assigned to the Commissioner by or under this Act or any rules made thereunder or by or under any other written law.

(2) The Commissioner may delegate any of the powers vested in him by this Act or any rules made thereunder or, save where a contrary intention appears therein, by any other written law, to an Assistant Commissioner.

Section 12 of Cap. 90 of the Laws of Kenya which it is proposed to amend—

12. Use of force by prison officer

(1) Any prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a prison.

(2) Any prison officer may use any weapons which have been issued to him, including firearms, against a prisoner if—

- (a) he is escaping or attempting to escape and refuses, when called upon, to return; or
- (b) he is engaged with other persons in breaking out or attempting to break out of any part of a prison and continues to break out or attempts to break out when called upon to desist; or
- (c) he is engaged with others in riotous behaviour in a prison and refuses to desist when called upon; or
- (d) he is endangering the life of, or is likely to inflict grave injury to, the prison officer or to any other prison officer or person and the use of weapons, including firearms, is the only practicable way of controlling the prisoner:

Provided that weapons shall not be used as authorized in paragraphs (a), (b) and (c) of this subsection unless the officer has reasonable cause to believe that he cannot otherwise prevent the escape, breaking out or riotous behaviour, as the case may be.

Section 10 of Cap. 92 of the Laws of Kenya which it is proposed to amend—

10. Duties of superintendent

The superintendent of a borstal institution shall supervise and control all matters concerning the institution, and shall keep or cause to be kept such records as the Commissioner may from time to time direct, and shall be responsible to the Commissioner for the conduct and treatment of staff and of the inmates under his control and for the due observance by staff and inmates of the provisions of this Act and of all rules, directions and orders made thereunder.

Section 87 of No. 11 of 2011 which it is proposed to amend —

87. Internal Affairs Unit

(1) There is established an Internal Affairs Unit (hereinafter referred to as “the Unit”) of the Service which shall comprise of—

- (a) an officer not below the rank of assistant Inspector-General who shall be the Director;
- (b) a deputy director; and
- (c) such other staff as the Unit may require.

(2) The functions of the Internal Affairs Unit shall be to—

- (a) receive and investigate complaints against the police;
- (b) promote uniform standards of discipline and good order in the Service; and
- (c) keep a record of the facts of any complaint or investigation made to it.

(2A) Without prejudice to subsection (2), the unit may where necessary investigate and recommend appropriate action in respect of any Found engaging in any unlawful conduct.

(3) In the performance of its functions, the Unit shall be subject to Article 47 of the Constitution.

- (4) The Unit shall investigate misconduct and hear complaints—
 - (a) from members of the Service or members of the public;
 - (b) at the direction of a senior officer;
 - (c) on its own initiative; or
 - (d) on the direction of the Inspector-General; or

(e) at the request of the Independent Police Oversight Authority.

(5) Notwithstanding subsection (4)(e) the Authority may at any time intervene and take over the investigations when they have reason to believe the investigations are inordinately delayed or manifestly unreasonable.

(6) The Unit may recommend the following disciplinary actions to the Inspector General—

- (a) the interdiction of an officer;
- (b) the suspension of an officer;
- (c) the administration of a severe reprimand or a reprimand to control or influence the pay, allowances or conditions of service of an officer; or
- (d) any other lawful action.

(6A) Where the Unit recommends disciplinary action, it shall submit a copy of the recommendations to the Commission.

(6A) The Inspector-General may in exceptional cases and in the interest of the service, authorise the unit to undertake disciplinary proceedings against any officer who has been a subject of its investigations, and may for that purpose direct a Deputy Inspector-General or the Director of the Unit to appoint an officer to preside over such proceedings.

(7) The Unit shall be located in separate offices from the rest of the Service.

(8) The Director shall assign a senior investigating officer in every county who shall be responsible for police internal affairs in that county.

(9) The Units shall report directly to the Assistant Inspector-General who shall subsequently report directly to the Inspector-General.

(10) There shall be an effective relationship and regular reporting by the Internal Affairs Unit to the Independent Police Oversight Authority, Coroners, the Chief Firearms Licensing Officer as well as the Commission.

(11) The Unit shall not be subject to the control, direction or command of the Kenya Police, Administration Police or the Directorate.

Section 2 of No. 35 of 2011 which it is proposed to amend —

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“appointed member” means a member of the Board appointed other than an ex officio member of the Board;

“Authority” means the Independent Policing Oversight Authority established under section 3;

“Board” means the Independent Policing Oversight Board established under section 8;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to the Police;

“complaint” means a complaint by any person alleging misconduct by one or more members of the Service;

“Director” means the Director of the Authority appointed under section 19;

“disciplinary action” means imposition of any punishment against a member of the Service on account of breach of any code of conduct or misconduct;

“disciplinary proceedings” means proceedings under Part IX of the National Police Service Act;

“ex officio member” means a person who is a member of the Board by virtue of the office the person holds;

“Inspector-General” means the Inspector-General appointed in accordance with article 245 of the Constitution;

“member of the Board” means a member of the Board appointed under section 10;

“internal Police investigation” means an investigation conducted by the Internal Affairs Unit of the Service;

“misconduct” means any action, or failure or refusal to act, which although it may not necessarily constitute a contravention of law, does not meet—

- (a) the requirements or norms of policing contained in any regulation or official document, charter, standing orders or policy providing for standards of discipline, behaviour or ethics, rules of engagement, rules on the use or abuse of power or rules and regulations on the use of equipment, applicable to members of the Service;
- (b) the values and norms applicable to policing in a democratic society and in particular those laid down in Articles 10, 232 and

244, of the Constitution and any law relating to ethics and leadership; or

- (c) applicable norms and standards provided for in international instruments applicable to Kenya;

“member of the Service” has the same meaning assigned to it under the National Police Service Act;

“police officer” has the same meaning assigned to it under the National Police Service Act;

“Police premises” has the same meaning assigned to it under the National Police Service Act;

“the Police” means the National Police Service and includes—

- (a) any person or body—

- (i) employed by it; or
- (ii) acting on its behalf, under its control or at its behest; and
- (iii) any other person for the time being exercising Police powers under any written law.

“policing” means the discharge of functions, exercise of the powers and, performance of duties applicable to the Service;

“Service” means the National Police Service established by Article 243 of the Constitution;

“police station” has the same meaning assigned to it under the National Police Service Act;

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

Section 5 of No. 35 of 2011 which it is proposed to amend —

5. Objectives of the Authority

The objectives of the Authority shall be to —

- (a) hold the Police accountable to the public in the performance of their functions;
- (b) give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and

- (c) ensure independent oversight of the handling of complaints by the Service.

Section 6 of No. 35 of 2011 which it is proposed to amend –

6. Functions of the Authority

The functions of the Authority shall be to—

- (a) investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations;
- (b) receive and investigate complaints by members of the Service;
- (c) monitor and investigate policing operations affecting members of the public;
- (d) monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the Police and keep a record of all such complaints regardless of where they have been first reported and what action has been taken;
- (e) conduct inspections of Police premises, including detention facilities under the control of the Service;
- (f) co-operate with other institutions on issues of Police oversight, including other State organs in relation to services offered by them;
- (g) review the patterns of Police misconduct and the functioning of the internal disciplinary process;
- (h) present any information it deems appropriate to an inquest conducted by a court of law;
- (i) take all reasonable steps to facilitate access to the Authority's services for the public;
- (j) subject to the Constitution and the laws related to freedom of information, publish findings of its investigations, monitoring, reviews and audits as it sees fit, including by means of the electronic or printed media;
- (k) make recommendations to the Service or any State organ;

- (l) report on all its functions under this Act or any written law; and
- (m) perform such other functions as may be necessary for promoting the objectives for which the Authority is established.

Section 7 of No. 35 of 2011 which it is proposed to amend —

7. Powers of the Authority

(1) The Authority shall have all the powers necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing, the Authority shall have the power—

- (a) to investigate the Service on its own motion or on receipt of complaints from members of the public, and for that purpose, to gather any information it considers necessary by such lawful means as it may deem appropriate, including by—
 - (i) requisition of reports, records, documents or any information from any source, including from the Police, irrespective of whether that source is located within or outside Kenya and irrespective of whether any other person or body, other than a court of law, has already instituted or completed a similar investigation or similar proceedings;
 - (ii) entering upon any establishment or premises, including Police premises, on the strength of a warrant, and subject to any relevant law, where the premises are a private home or dwelling;
 - (iii) seizing and removing any object or thing from any premises, including Police premises, which may be related to the matter under investigation, and in respect of which a receipt shall be given to the owner or person apparently in control of the object or thing;
 - (iv) interviewing and taking statements under oath or affirmation from any person, group or members of organizations or institutions and, at its discretion, to conduct such interviews in private;
 - (v) summoning any person to meet with its staff, or to attend any of its sessions or hearings, and to compel the attendance of any person who fails to respond to its summons;
 - (vi) administering oaths or affirmations before taking evidence or statements where necessary;

- (vii) summoning any serving or retired Police officer to appear before it and to produce any document, thing or information that may be considered relevant to the function of the Authority;
 - (viii) ensuring that where necessary, the identities of complainants or witnesses are not disclosed to their detriment;
 - (ix) recommending to the Director of Public Prosecutions the prosecution of any person for any offence;
 - (x) investigating any death or serious injury occurring or suspected of having occurred as a result of police action.
- (b) to take over on-going internal investigations into misconduct or failure to comply with any law if such investigations are inordinately delayed or manifestly unreasonable;
- (c) where appropriate, to provide relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income;
- (d) require the Director of Public Prosecutions to provide it with his response to any recommendation made by the Authority to prosecute any person or body;
- (e) require the Service to within a specified, reasonable time, provide it with information on issues relating to policy, its implementation and its effectiveness, and its response to any recommendation made to it by the Authority; subject to the approval of a complainant, and only if it is not a serious complaint, reconcile or mediate on any matter within its mandate; and
- (f) exercise any other power provided for in this Act or any other law which is necessary for the effective performance of its functions.

(2) The Authority may in the exercise of its powers under this Act, request and receive such assistance from the or any other governmental or international body or person as may in its opinion be necessary in the exercise of its powers.

(3) The Authority may in exceptional circumstances regarding matters of national importance submit a report simultaneously to the National Assembly and the Cabinet Secretary if such a matter requires urgent consideration for the wellbeing of the people of Kenya.

Section 10 of No. 35 of 2011 which it is proposed to amend —

10. Qualifications and disqualifications

(1) A person shall be eligible to be appointed as a member of the Board if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) is fit and proper to serve as a member of the Board charged with upholding and protecting ethics, professionalism, accountability and lawful conduct;
- (c) is a Kenyan citizen;
- (d) is not disqualified from serving in accordance with the provisions of subsection (2), and
- (e) meets the requirements of Chapter Six of the Constitution.

(2) No person may be appointed or serve as a member of the Board if that person—

- (a) has previously served as a member of the Board;
- (b) is employed by or is associated with any person who supplies services or goods to the Authority, or whose spouse or other family member is so employed or associated;
- (c) holds office in a political party;
- (d) is a member of Parliament or a member of a county assembly or a Governor or Deputy Governor;
- (e) is a serving police officer, or retired from being such an officer within the five years immediately preceding the commencement of this Act;
- (f) has been convicted, whether in Kenya or elsewhere, of an offence involving dishonesty or of any other offence for which such person has been sentenced to imprisonment without the option of a fine; or
- (g) is unable to perform the functions of office due to mental incapacity; or
- (h) is an undischarged bankrupt.

(3) A member of the Board, including the Chairperson, who at any time during his term of office becomes disqualified to hold office as a member of the Board under subsection (2) shall—

(a) immediately and in writing inform the President and the Chairperson of the Board of that disqualification, and the President shall forthwith remove that member from the Board; and

(b) not attend any meeting of the Board from the time the member has so become disqualified.

(4) A member of the Board who contravenes subsection (3) commits an offence.

Section 24 of No. 35 of 2011 which it is proposed to amend –

24. Lodging of complaint and investigation

(1) A person wishing to lodge a complaint against the Police may do so orally or in writing or in such other appropriate format as may be prescribed in the regulations.

(2) Where a complaint is made orally, the same shall be reduced into writing by the employee of the Authority with whom it is lodged, and that employee shall render all reasonable assistance to the complainant to ensure that a proper investigation of the complaint is done.

(3) A complaint made under subsection (1) shall contain such particulars as the Authority may from time to time prescribe.

(4) Upon receipt of a complaint the Authority shall forthwith—

(a) call for information or reports regarding the complaint from the appropriate Government department or agency or any other body within a specified period; or

(b) without prejudice to paragraph (a), initiate such inquiry as it may consider necessary, having regard to the nature of the complaint and taking into account the fundamental rights and freedoms of the individuals concerned, including members of the Police, contemplated in Chapter Four of the Constitution.

(5) If criminal proceedings are instituted against a member of the Service in respect of a matter under investigation by the Authority, the Authority may suspend its investigation until the conclusion of those proceedings, after which it may continue its investigation or in appropriate cases, decide to discontinue.

(6) In the event of the Police having conducted and concluded an internal investigation or internal disciplinary proceedings, the Authority may in appropriate cases and in its sole discretion decide to abide by the outcome of such investigation or proceedings and adopt the findings and

recommendations of that investigation or those proceedings as its own, and conclude its own investigation.

(7) The Authority shall during an investigation consider the—

- (a) circumstances which, if present during the incident under investigation, impede the effectiveness of policing; and
- (b) unlawful action, if any, taken by the complainant, the victim or any other person present during the incident under investigation.

(8) Where the Authority considers a complaint to be vexatious or frivolous it may refuse to conduct an investigation.

(9) The Authority may upon receipt of new evidence re-open any investigation which has been concluded, and may amend or withdraw any previous findings and recommendations.

(10) Nothing in this section shall prevent an individual Police officer from lodging a complaint, but the Authority may, at its discretion, refer any complaint back to the Internal Affairs Unit of the Service for redress.

(11) No member of the Police shall be subjected to disciplinary hearings or other disadvantage based solely on the fact that such member has lodged a complaint with or given evidence or information to the Authority.

(12) Any person who subjects a Police officer to a disciplinary hearing or other disadvantage based solely on the fact that he has lodged a complaint with or given evidence before or information to the Authority, commits an offence.

(13) Nothing in this Act shall prevent any person or body from lodging a complaint in terms of this section, or the Authority from conducting an investigation, even if the target, victim or witness of the action does not agree to or approve of such an investigation by the Authority.

(14) Any law providing for the unlawfulness of—

- (a) the intimidation, harassment or interference with witnesses or potential witnesses to any matter under investigation by the Authority; or
- (b) concealment, destruction, tampering with or removal of evidence relevant to any matter under investigation by the Authority, shall apply with necessary modifications to the proceedings of the Authority.

(15) Notwithstanding any other written law, any document or statement drafted or made or taken during an investigation shall remain confidential until the Authority in writing determines otherwise.

(16) The Authority shall upon request from a complainant keep the complaint's identity confidential unless it is demonstrably in the interest of justice not to do so, until the investigation has been concluded:

Provided that the Authority may in exceptional cases determine that the identity of a complainant may not be published even after the conclusion of an investigation, or may be published only on terms determined by the Authority.

Section 25 of No. 35 of 2011 which it is proposed to amend –

25. Deaths and serious injury in custody

(1) The Authority shall investigate any death or serious injury including death or serious injury while in Police custody, which are the result of Police action or were caused by members of the Service while on duty.

(2) The Police shall upon a death or serious injury as contemplated in subsection (1) take all necessary steps to secure evidence which may be relevant for the investigation, including pictorial and written evidence, and shall in writing notify the Authority, and supply it with the evidence and all other facts relevant to the matter, including, if available, the names and contact details of all persons who may be able to assist the Authority should it decide to conduct an investigation.

(3) A Police officer who contravenes subsection (2) commits an offence.

Section 26 of No. 35 of 2011 which it is proposed to amend –

26. Exclusion of certain matters

The Authority shall not investigate any matter which is the subject of proceedings before a court of law or judicial tribunal.

Section 29 of No. 35 of 2011 which it is proposed to amend –

29. Steps after investigations

(1) The Authority may after completing an investigation into a complaint under this Act—

- (a) where the inquiry, in the Authority's opinion, discloses a criminal act by a member of the Service, recommend the prosecution of that member to the Director of Public Prosecutions;

- (b) where the inquiry, in the Authority's opinion, discloses negligence in the performance of duty by a member of the Service, recommend disciplinary action be taken against such member;
- (c) where the investigation discloses any shortcomings in the processes or procedures employed by the Authority, recommend improvement or rectification thereof;
- (d) recommend that the complainant take any other course of action suitable in the circumstances;
- (e) assist the complainant or any other victim with action contemplated in section 7(1)(i); or
- (f) take any other steps it may deem fit.

(2) The Authority may apply to the court for the enforcement of any of its recommendations contemplated in subsection (1).

(3) The Authority's investigations, findings and recommendations provided for in this Act shall remain in force and effect despite the fact that a person or body—

- (a) under investigation, has since the commencement or conclusion of an investigation, left the employment of the Police; or
- (b) is no longer acting on behalf of the, under its control or at its behest.

Section 30 of No. 35 of 2011 which it is proposed to amend —

30. Performance Report

(1) The Authority shall submit to the Cabinet Secretary, at least once in every six months, a report of the performance of the functions of the Authority, making such recommendations as it may consider necessary, and the Cabinet Secretary shall, within fourteen days after receiving such report, cause it to be publicized and laid before the National Assembly, or if the National Assembly is not then in session, on the day that the National Assembly resumes its sittings.

(2) A copy of the report referred to in subsection (1) shall forthwith be forwarded to the Inspector-General, the Commission and the County Assemblies.

(3) The Authority shall publicize the report in such manner as it may consider appropriate.

(4) The report contemplated in subsection (1) shall include—

- (a) the recommendations made by the Authority during the period under review;
- (b) the action taken by the responsible authorities in response to the Authority's recommendations or lack thereof;
- (c) the trends emerging in cases handled;
- (d) matters contained in earlier reports contemplated in subsection (1) in respect of which the relevant authority has still not taken any action;
- (e) the action taken by the responsible authorities in response to the Authority's recommendations;
- (f) how the Service has acted on the complaints referred to it by the Authority;
- (g) statistics about disciplinary and criminal action taken as a consequence of complaints disposed of by the Authority;
- (h) the Authority's recommendations on Police accountability;
- (i) the Authority's opinion on whether any person, authority or institution has attempted to unlawfully or unduly interfere with the operations of the Authority;
- (j) any matter relating to the operation of the Authority which any minority of members of the Authority may wish to bring to the attention of the public;
- (k) any matter that highlights the need for reform or change in practice or policy regarding the Service; and
- (l) any other matter the Authority wishes to bring to the attention of the National Assembly.

Section 31 of No. 35 of 2011 which it is proposed to amend –

31. Offences and Penalties

- (1) A person or body who—
 - (a) disobeys a summons by the Authority;
 - (b) fails to produce any document, papers or thing on the order of the Authority;
 - (c) refuses to be examined before or to answer questions relating to an inquiry put to him by the Authority;
 - (d) fails to comply with any lawful order or direction of the Authority;

- (e) presents to the Authority a false document or makes a false statement with the intent to deceive or mislead the investigating officers;
- (f) deliberately submits false information;
- (g) wilfully obstructs or hinders a person acting in the performance of functions or exercise of powers conferred by this Act;
- (h) fails to co-operate with the Authority on issues of Police oversight;
- (i) in any way interferes with the functioning or operations of the Authority, whether unduly or unlawfully; or
- (j) contravenes any provision of this Act for which no specific penalty is provided, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three years or to both.

(2) Any person who publishes a confidential document or statement in contravention of section 23(14) commits an offence, and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding three years or to both.

Section 38 of No. 35 of 2011 which it is proposed to amend —

38. Annual report

(1) The Authority shall cause an annual report to be prepared for each financial year.

(2) The Authority shall submit the annual report to the Cabinet Secretary within three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Authority;
- (b) the Authority's opinion on the adequacy of its funding;
- (c) a description of the activities of the Authority;
- (d) such other statistical information as the Authority considers appropriate relating to complaints to the Authority, investigations by the Authority and reports by the Authority on the results of the investigations;
- (e) any other information relating to its functions that the Authority considers necessary.

(4) The Cabinet Secretary shall within thirty days after receiving the annual report, transmit it to the National Assembly.

(5) The Authority shall cause the annual report to be published in the Gazette and in such other manner as the Authority may determine.

Section 39 of No. 35 of 2011 which it is proposed to amend —

39. Regulations

The Authority may make regulations for the better carrying into effect of the purposes of this Act, and in particular for the following—

- (a) the mode of bringing complaints before the Authority;
- (b) the rules relating to the initiation, hearing and disposal of complaints;
- (c) the procedures of taking over of internal Police investigations;
- (d) generally for the good order and management of the Authority.

Section 7 of No. 47 of 2013 which it is proposed to amend —

7. Functions of the Service

The functions of the Service shall be to—

- (a) conserve and manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction;
- (b) provide security for wildlife and visitors in national parks, wildlife conservation areas and sanctuaries;
- (c) set up a county wildlife conservation committee in respect of each county;
- (d) promote or undertake commercial and other activities for the purpose of achieving sustainable wildlife conservation;
- (e) collect revenue levies and charges due to the national government from wildlife and, as appropriate, develop mechanisms for benefit sharing with communities living in wildlife areas;
- (f) develop mechanisms for benefit sharing with communities living in wildlife areas;
- (g) advise the Cabinet Department on matters pertaining to wildlife policy, strategy and legislation;
- (h) coordinate the preparation and implementation of ecosystem plans;

- (i) prepare and implement national park management plans;
- (j) assist and advise in the preparation of management plans for community and private wildlife conservancies and sanctuaries;
- (k) undertake and conduct enforcement activities such as anti-poaching operations, wildlife protection, intelligence gathering, investigations and other enforcement activities for the effective carrying out of the provisions of this Act;
- (l) conduct and co-ordinate, all research activities in the field of wildlife conservation and management and ensure application of research findings in conservation planning, implementation and decision making;
- (m) advise the National Land Commission, the Cabinet Secretary and the Council on the establishment of national parks, wildlife conservancies and sanctuaries;
- (n) promote and undertake extension service programmes intended to enhance wildlife conservation, education and training;
- (o) identify user rights and advise the Cabinet Secretary thereon;
- (p) grant permits;
- (q) establish forensic laboratories;
- (r) monitor the compliance of terms and conditions of licences; and
- (s) perform such other functions as the Board may assign the Service or as are incidental or conducive to the exercise by the Service of any or all of the functions provided under this Act.

Section 24 of No. 47 of 2013 which it is proposed to amend –

24. The Wildlife Compensation Scheme

(1) The Government shall establish a Wildlife Compensation Scheme that shall consist of—

- (a) monies specifically allocated for this purpose through the budget process;
- (b) an insurance scheme to be established by the Cabinet Secretary responsible for matters relating to finance; and
- (c) monies from any other source approved by the Cabinet Secretary for the time being responsible for matters relating to finance; and

(2) The Wildlife Compensation Scheme shall be used for financing compensation claims for human death or injury or crop and property damage caused by wildlife.

Section 25 of No. 47 of 2013 which it is proposed to amend –

25. Compensation for personal injury or death or damage to property

(1) Where any person suffers any bodily injury or is killed by any wildlife listed under the Third Schedule, the person injured, or in the case of a deceased person, the personal representative or successor or assign, may launch a claim to the County Wildlife Conservation and Compensation Committee within the jurisdiction established under this Act.

(2) The County Wildlife Conservation and Compensation Committee established under section 18 shall verify a claim made under subsection (1) and upon verification, submit the claim to the Cabinet Secretary together with its recommendations thereon.

(3) The Cabinet Secretary shall consider the recommendations made under subsection (2) and where appropriate, pay compensation to the claimant as follows—

- (a) in the case of death, five million shillings;
- (b) in the case of injury occasioning permanent disability, three million shillings;
- (c) in the case of any other injury, a maximum of two million shillings, depending on the extent of injury.

(4) Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration.

(5) The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates:

Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to take reasonable measures to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.

(6) A person who is dissatisfied with the award of compensation by either the County Wildlife Conservation and Compensation Committee or the Service may within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and on a second appeal to the Environment and Land Court.

(7) The Cabinet Secretary may, by notice in the Gazette, prescribe such regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.

Section 112 of No. 47 of 2013 which it is proposed to amend –

112. Use of firearms

(1) The President may, through the Inspector-General of the National Police Service, make available to the uniformed and disciplined officers of the Service such firearms as may be necessary for the Service to carry out its functions under this Act.

(2) The Service shall co-ordinate and control all wildlife security issues in all the national parks, national reserves, wildlife conservancies and sanctuaries in collaboration with other law enforcement agencies, counties and community wildlife scouts.

(3) A member of the uniformed and disciplined cadre, after acquiring the requisite training, and when authorized by the Director-General, may use firearms for the following purposes, in the course of and for his lawful duty—

- (a) in the course of law enforcement against—
 - (i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape lawful custody;
 - (ii) any person who, by force, removes or attempts to remove any other person from lawful custody;
 - (iii) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or
 - (iv) any person unlawfully hunting any wildlife using a firearm;
- (b) in self-defense or in defense of another officer or other person;
- (c) for the protection of people and property against any animal causing destruction to human life or crops or livestock or property;
- (d) for the protection and safety of visitors against banditry or animals;

- (e) in the course of problem animal control; and
- (f) wildlife veterinary activities.

(4) Notwithstanding the foregoing, a uniformed and disciplined officer of the Service shall not resort to the use of firearms—

- (a) under paragraph (a)(i) of subsection (3), unless the officer concerned has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he is about to use a firearm against him, and the warning is unheeded; or
- (b) under paragraph (a)(ii), (a)(iii) or (a)(v) of subsection (3), unless the officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm, or that he cannot otherwise prevent the removal, effect the arrest or, as the case may be, defend himself or the other officer or person.

(5) When a person has been taken into custody for any offence under this Act, the authorized officer shall, if it does not appear practicable to bring that person to the nearest police station or competent court within twenty-four hours after he has been so taken into custody, detain the person in appropriate premises at the nearest Service station.

(6) A person arrested and detained in accordance with subsection (5) of this section shall be brought before a competent court or the nearest police station within forty-eight hours.

(7) Any person who, without authorization conveys into a wildlife conservation area, or being within the area thereof, is in possession of, any weapon, ammunition, explosive, trap or poison, commits an offence.

(8) The Cabinet Secretary may, on recommendation of the Service make rules and regulations in respect of wildlife security operations in national parks, marine protected areas, wildlife conservancies and sanctuaries.

Section 8 of No. 34 of 2016 which it is proposed to amend —.

8. Functions of the Service

The functions of the Service shall be to—

- (a) conserve, protect and manage all public forests in accordance with the provisions of this Act;
- (b) prepare and implement management plans for all public forests and, where requested, assist in preparation of management plans

- for community forests or private forests in consultation with the relevant owners;
- (c) receive and consider applications for licenses or permits in relation to forest resources or management of forests or any other relevant matter in accordance with this Act;
 - (d) establish and implement benefit sharing arrangements in accordance with the provisions of this Act;
 - (e) assist county governments to build capacity in forestry and forest management in the counties;
 - (f) in consultation with relevant stakeholders, develop programmes for tourism and for recreational and ceremonial use of public forests;
 - (g) promote forestry education and training;
 - (h) register and maintain a register of all forest management plans prepared for public forests;
 - (i) collaborate with relevant persons in identifying research needs and applying research findings in relation to forests and forestry;
 - (j) manage water catchment areas in relation to soil and water conservation, carbon sequestration and other environmental services in collaboration with relevant stakeholders;
 - (k) prepare —
 - (i) a Forest Status Report for the Cabinet Secretary once in every two years; and
 - (ii) a Resource Assessment Report for the Cabinet Secretary once in every five years;
 - (l) consider and recommend to the Cabinet Secretary the establishment of public forests on un-alienated public land or any other public land;
 - (m) consider and recommend to the Cabinet Secretary the determination and alteration of boundaries of public forests;
 - (n) establish forest conservancy areas for purposes of conservation and management;
 - (o) approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons for the sustainable utilization of wood and non-wood forest products;
 - (p) implement and enforce rules and regulations governing importation, exportation and trade in forest produce; and

- (q) develop, maintain and regularly update a geographic information system database of all forests in Kenya.

Section 63 of No. 34 of 2016 which it is proposed to amend —.

63. Use of firearms

(1) The Cabinet Secretary responsible for matters relating to firearms may, through the Inspector-General of Police, make available to the Service such firearms as may be necessary for the Service to carry out its functions under this Act.

(2) Any uniformed and disciplined officer of the Service, after acquiring the requisite paramilitary and skill at arms training, and when authorised by the Chief Conservator of Forests, may use a lawfully issued firearm—

(a) in the course of the enforcement of the provisions of this Act against—

- (i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody;
- (ii) any person who, by force, removes or attempts to remove any other person from lawful custody;
- (iii) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or
- (iv) any person unlawfully hunting any animal within a forest area or nature reserve.

(b) or the protection of people and property against any animal causing destruction to human life or property or crops; and

(c) in the course of animal population control.

(3) Notwithstanding the foregoing, an officer of the Service shall not use a firearm—

- (a) under sub-section (2) (a)(i), unless the officer has reasonable grounds to believe that he or she cannot otherwise prevent the escape, and unless he or she has given ample warning to such person that he or she is about to use a firearm against that person, and the warning is unheeded;
- (b) under sub-section (2)(a) (ii) or (iii) of, unless the officer concerned believes on reasonable grounds that the officer or any other person is in danger of grievous bodily harm, or that the officer cannot otherwise prevent the removal, or, as the case may be, effect the arrest.

