

**To: National Assembly of Kenya
C/O The Clerk,
Kenya National Assembly
Parliament Buildings
P.O Box 41842 - 00100,
Nairobi, Kenya**

**Cc: Hon. Asman Kamama MP
Chairperson,
National Assembly Committee on
Administration and National Security**

**RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE
CONSTITUTION, PETITION TO PARLIAMENT (PROCEDURE) ACT AND
STANDING ORDERS 219, 223 OF THE NATIONAL ASSEMBLY ON THE
NATIONAL POLICE SERVICE (AMENDMENT) BILL 2013 AND THE
NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL 2013.**

WE, the undersigned,

Citizens of Kenya, representing various non-governmental, quasi-governmental organizations and individuals wish to state that it is in the public interest that we formally lodge this petition concerning the National Police Service (Amendment) Bill 2013 (hereinafter called the 'NPS bill'), the National Police Service Commission (Amendment) Bill 2013 (hereinafter called the 'NPSC bill') and the ongoing process of police reform processes.

We humbly draw the attention of the House to the following:

1. The Constitution of Kenya 2010 reposes all sovereign authority in the People of Kenya.
2. The People of Kenya have delegated legislative authority to Parliament as the representatives of the People. That delegation is not absolute and can be exercised by the people simultaneously.
3. Kenya is undergoing a process of police reforms to ensure that our current police institutions are reflective of the democratic policing system established by the Constitution. The National Police Service (NPS) and the National Police Service Commission (NPSC) are two institutions that have been established in pursuance of these constitutional benchmarks.

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4. The National Police Service Act 2011 and the National Police Service Commission Act 2011, as enacted under articles 243 and 246 of the constitution respectively, provide the legal foundation for the democratic, accountable and transparent police service by highlighting the key functions and responsibilities of the National Police Service and the National Police Service Commission. The National Police Service has the operational mandate to amongst other things prevent and investigate crime and maintain law and order while the National Police Service Commission is mandated to exercise human resource and oversight roles over the service by overseeing the appointment, transfer, promotion and discipline of members of the police service.
5. The National Police Service (Amendment) Bill 2013 and the National Police Service Commission (Amendment) Bill 2013 (herein after called 'amendments bills') currently before the Parliamentary Committee on Administration and National Security seek to transform, the operational, human resource and oversight structures as existing in the police service.
6. Some of the proposed substantive changes in the National Police Service (Amendment) Bill 2013 include a significant reduction in operational independence of the Police. The bill proposes to bar the National Police Service Commission from the appointment process of the Inspector General of Police ("IGP"),. It also prevents the competitive process of advertising, conducting public interviews and short listing of candidates for positions in the police service.
7. The oversight and human resource functions of the Commission are limited in the bills. The Amendment Bills take away the constitutional mandate of the Commission to recruit, appoint, transfer and promote members of the Police Service. They also bar the commission from exercising disciplinary control over the Service as stipulated at Article 246(3) of the constitution. The amendments seek to shift these powers and functions of the Commission to either the IGP or the Cabinet Secretary contrary to constitutional provisions.
8. The NPS Bill further proposes at Section 7 to remove the professional discretion of the Commission to develop regulations for the vetting of police officers.

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9. The NPS Bill further proposes at Section 7 to remove the professional discretion of the Commission to develop regulations for the vetting of police officers.
10. Section 9 of the bill reassigns the Commission's control over disciplinary matters to the IGP.
11. Section 26 removes the Commission's involvement in preparing guidelines for the appointment of personnel to the County Policing Authorities, instead leaving it to the Chairperson of the Council of Governors,
12. Section 34 seeks to limit the Commissions recruitment and monitoring processes by establishing a 'Service Examination Board' made up of members directly appointed by the Cabinet Secretary and the Inspector-General.
13. Section 49 removes the constitutionally mandated responsibility of the Commission regarding recruitment so that the Cabinet Secretary has more control over these processes.
14. Sections 32 and 43 undermines the power of the Commission to recruit members of the Police Service, by stating that special police officers and police reserve officers will be recruited by the IGP directly.
15. Section 49 limits the Commission to developing and monitoring disciplinary procedures, rather than recommending action to the IGP.
16. **The substantive amendment proposed in the National Police Service Commission (Amendment) Bill** included at Section 3 which limits the independence of the NPSC in the review of matters of human resource policies of member of the service by requiring that such review be subject to recommendation of the Inspector General and approval of the Cabinet Secretary. Section 3, contrary to constitutional provisions at Article 246(3)(b), further limits Commission to only hearing appeals on disciplinary matters relating to transfers, promotions and appointments.

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17. Section 5 of the NPSC bill also implies that the Commission would require the approval of the Cabinet Secretary prior to appointing officers and staff.
18. Section 6 would delete the power of the Commission to make regulations regarding the vetting of police officers.
19. Section 7 changes the number of members required for a NPSC quorum from five to six thus affecting the nature and extent of deliberations within the commission.
20. **Other proposed substantive amendments to the National Police Service (Amendment) Bill 2013 relates to use of firearms by law enforcement officers.** Section 54 of the Amendment bill, changes the Sixth Schedule of the Principal Act to allow police officers to use firearms to protect property and also to stop a person escaping lawful custody.
21. Section 41 of the NPS Bill further seeks to give the IGP the power to make regulations regarding the use of firearms by foreign police services working in Kenya.
22. The security sector and specifically the Kenya police service is viewed as being badly governed and lacking a value system. Many reasons such as lack of transparency and accountability in the administration and management of the service, have been proffered for the poor performance of the security sector.
23. Kenyans believed that enacting a new constitution would be a first step in transforming a society through instillation of progressive values in administration, governance and all other aspects of civic life. In this regard, Kenya's constitution is a value-laden transformative document. It prescribes minimum requirements in many aspects of administration and governance, and requires a total transformation of the manner in which our institutions have been administered as well as a complete mental shift in how public services are provided.

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24. The proposed amendments have immense constitutional and legal implications on the socio-political structures of the country. For instance, changes regarding the appointment and dismissal from service of police officers have a great impact on the morale, efficiency and accountability of members of the service. These provisions are also critical to the security of Kenya, mostly because they touch on the independence and security of tenure of the Inspector General of Police as provided for in the constitution.
25. Further, the framers and drafters of the constitution proposed a broad-based body to oversee the critical aspects related to policing, including within the police service. This body is what is now the National Police Service Commission which was intended to root out the abuse that was prevalent from the past police structure. The proposed changes to the NPSC Bill, however, seek to limit these constitutional ideals by curtailing the functional mandate of the commission on human resource and oversight over the police service.
26. The amendments regarding the use of firearms by the police also have grave implications of the rights of the citizen to life and liberty. Under the NPS bill law enforcement officers now have a wider discretion in the use of firearms contrary to international and regional best practises.
27. Given the constitutional and legal implications of the proposed amendments, it is imperative that citizens are given adequate opportunity to fully understand and exhaustively engage the National Assembly on the issue before it. There should be wider public participation in the relevant committee before the proposed amendments can be considered for enactment into law, if at all.
28. On Thursday 25th June 2013, pursuant to Article 118(1) of the constitution and Standing Order 127 (3), the National Assembly published a notice in the Daily Nation Newspaper, urging citizens to submit any representations they may have on the Amendment bills on or before Thursday 1st August 2013 at 5:00pm.

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29. The publication date for the two bills were also reduced from the 14 days to 7 days within which timeframe interested parties must have submitted their views on the amendment bills to the Committee on Administration and National Security. No reasonable justification was given for hastening the maturity timeframe.
30. Article 10 and 118 of the constitution and Part XIX Standing order 127(3) all reinforce the requirement that Parliament has a responsibility to facilitate public participation and involvement in the development of legislation. It is our contention that given the substance of the proposed amendments to the National Police Service Act and the National Police Service Commission Act, the window of opportunity for public participation as offered by the National Assembly is inadequate for any meaningful public participation.
31. The notice restricts public participation to 6 calendar days which is democratically untenable given the serious nature of the proposals before parliament. It should also be noted that the Commission for the Implementation of the Constitution ("CIC") released initial copies of the two amendment bills in late June for public comment. The initial bills were however significantly shorter and less detailed than the bills currently before the Committee on Administration and National Security. The National Police Service (Amendment) Bill is 20 pages, whereas the version of the same Bill earlier released by CIC for public comment was only seven pages. These additional 13 pages include many new and significant amendments that the public has not had a chance to study, be properly informed of their impact, and provide comment on.
32. The Principal Acts (National Police Service Act and the National Police Service Act) underwent an extensive public engagement process before their enactment in 2011. The laws were passed after a lengthy period of exhaustive public engagement and discussions. The provisions that parliament now seeks to amend are some of those that the public provided extensive views about. It is our view that any amendments to the principal acts must reflect and be commensurate to the same democratic process undertaken during the public consideration and eventual passage of the principal acts and that in considering these

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amendments, parliament must employ itself to the inclusivity and transparency afforded in the enactment of the existing laws

THAT

33. To the best of our knowledge this matter has been initiated by the National Assembly and is only being considered by the relevant committee of the National Assembly.

THAT

34. To the best of our knowledge there is no matter before the Courts on the responsibility of parliament to facilitate public participation regarding the National Police Service (Amendment) Bill 2013 nor the National Police Service Commission (Amendment) Bill 2013.

The Petitioners requests that:

35. That this Petition be dealt with immediately in view of the urgency of this matter and the seriousness of the issues raised.

36. That the Speaker of the House invoke his mandate and duty to restrain the House from debating the National Police Service (Amendment) Bill 2013 and the National Police Service Commission (Amendment) bill 2013 contrary to constitutional and parliamentary provisions on public participation.

37. That citizens' right to public participation in the development of legislation be upheld and that National Assembly:

- i. Provides the public with sufficient information regarding the extent and impact of the proposed amendments to enable them to fully and meaningfully participate in providing their comments on the proposed amendments;

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- ii. Suspends any parliamentary debates on the proposed amendments bills until it has properly facilitated the dissemination of the information relating to the Bills as noted in paragraph 36(i) above;
- iii. Undertakes a countrywide process of seeking the public views in regard to the proposed amendments;
- iv. Eventually provides sufficient time for submission of memoranda on the amendment bills to allow ample time for public engagement in the legislative process.

And your PETITIONER(S) Prays.

URAIA

Independent Medico-Legal Unit

Katiba Institute

Kenya Human Rights Commission

Constitution and Reform Education Consortium (CRECO)

Rights Promotion and Protection Centre (RPP)

Usalama Forum

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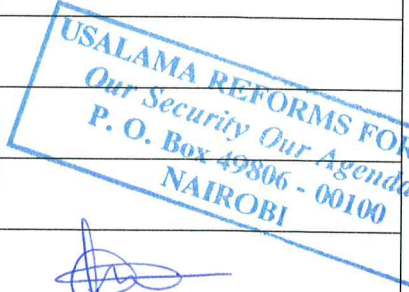
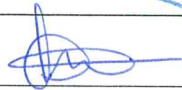


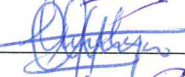

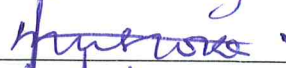
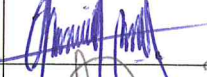

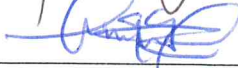

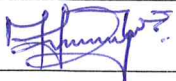


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12	Eunice Oloo	4636-00200 Nairobi	24443221	
13	Namuyak Kirori	21793-00505 Nairobi	25208907	
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15.	MUTHONI KAMAU	4636-00200 NB	0723870692 01135057	
16.	GRACE MUTIE	53067-00200 NRB	28757423	
17	Humphrey Kimani	4636-00200	10167885 0718686157	
18	Mwobi Nelson	4636-00200	27748662	
19	Kimani Wambui)))	13444912	
20.	Patrick Maina	26309-00100 NRB	11323838	

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10	Christine Gitao	73609 -00200 NBI	11396931	
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16	Antonine Riang	61923-00100 NRB	21573523	
17	Burro Richard	101100200 NRB	11194550	
18	Caroline Nyamu	28151 NBI	11645182	
19	Siripon Muchiri	73802-00200	14419161	
20	Elizabeth Nyasaka	53248-00200	21914925	

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2	Eva Kimani	10980-00100	22548965	
3	Immaculate Mwangi	NBI 248-00900	21995314	
4	Catherine Chege	17804-00100 NBI	21986294	
5	Linda Mwangi	6596-00100 NBI	22415628	
6	Michelle de Ryck	49806-00100 NBI	24483459	
7	Peter Mwangi	49806-00100 NBI	26551864	
8	Rafid o Hani	90800-00100 NBI	11469488	
9	Paul ONGUSI	49806 NBI	14667885	
10	JACOB ATANGI	51803,00200	13235801	
11	Cales Wangi	21202-00500	12599213	
12	Tony Matenge	76373-00500	2297537	
13	Atinga Mocha Eric	8686 00200	25098121	
14	SHERETA ALFRED	49806	9079533	

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NO.	NAME OF PETITIONER	FULL ADDRESS	NATIONAL ID/PP NO.	SIGNATURE
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	Oscar Nyamwaye		29516572	<i>Oscar</i>
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	JAMES OKENO		29428923	<i>J.O.</i>
	ADELINE OICHELLO		0752125	<i>A.O.</i>
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	Edmond Zarc		28496003	<i>E.Zarc</i>
	JOSEPH MAMUNU		28020174	<i>J.M.</i>

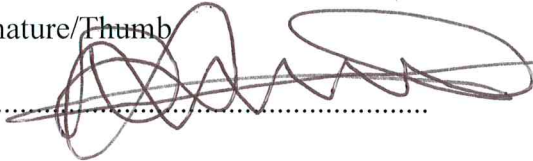
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PETITION concerning the National Police Service (Amendment) Bill 2013 (hereinafter called the 'NPS bill'), the National Police Service Commission (Amendment) Bill 2013 (hereinafter called the 'NPSC bill') and the on going process of police reform processes.

Name of petitioner

Wairua Wanyole

Signature/Thumb



Impression

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