Bill for Introduction into the National Assembly—

The National Police Service Commission (Amendment) Bill, 2013 475
THE NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL, 2013

AN ACT of Parliament to amend the National Police Service Commission Act, 2011

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Police Service Commission (Amendment) Act, 2013.

2. Section 4 of the Principal Act is amended in subsection (2) by deleting the words "other than ex officio members".

3. Section 10 of the National Police Service Commission Act, (in this Act referred to as "the Principal Act") is amended—

(a) in subsection (1) (a) , by deleting paragraph (a) and substituting therefor the following new paragraph—

"(a) on the recommendation of the Inspector-General and approval of the Cabinet Secretary, develop and keep under review all matters relating to human resources policies of members of the Service";

(b) in subsection (1) (g), by adding a proviso as follows—

"Provided that—

(i) the Commission shall not undertake investigations on criminal matters;

(ii) where, in the course of disciplinary investigations the Commission identifies violation of any written law, whether civil liability or criminal offence, the Commission shall recommend the prosecution of the offender in accordance with the law:

Provided that disciplinary proceedings by the Commission or the Inspector-General shall not be affected by any criminal or civil
action commenced under paragraph (ii).

(c) by deleting subsection (1) (j);

(d) in subsection (1) (k), by adding the words “on disciplinary matters relating to transfers, promotions and appointments” immediately after the words “of the Service”;

(e) in subsection (1) (n) by deleting the words “the organization, administration appearing after the words “monitor and evaluate”.

(f) by deleting subsection (1) (r);

(g) by deleting subsection (1) (r) and substituting therefor the following new subsection—

(4) The disciplinary control envisaged under Article 246(3)(a) shall mean—

(a) the development and prescription of fair and clear disciplinary procedures in accordance with Article 47 of the Constitution;

(b) development and prescription of disciplinary procedures and mechanisms;

(c) monitoring compliance by the Inspector General with the prescribed disciplinary procedures and guidelines issued by the Commission;

(d) monitoring compliance with the due process in disciplining members of the Service;

(e) receiving regular reports from the Inspector-General on disciplinary matters handled by the National Police Service;

(f) reviewing or ratification of disciplinary actions taken by the Inspector-General;

(g) hearing and determining appeals on disciplinary matters from members of the Service.
4. Section 11 of the Principal Act is amended—
   (a) in subsection (1)(d), by adding the words “on matters relating to its mandate as provided for under Article 246(3) of the Constitution immediately after the word “Act”;
   (b) in subsection (1)(h), by adding the words “on matters relating to its mandate as provided for under Article 246(3) of the Constitution” immediately after the word “inquiries”;

5. Section 17 of the Principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—
   “The Commission may, with the consent of the Cabinet Secretary, appoint such officers and staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as it may determine, taking into consideration gender, county and ethnic balancing.”

6. Section 28 of the Principal Act is amended by deleting paragraph (n).

7. The Principal Act is amended in the Second Schedule by—
   (a) deleting the word “five” appearing before the words “shall be” in paragraph 3 (1) and substituting therefor the word “six”;
   (b) deleting paragraph 3 (2).

8. The Principal Act is amended in paragraph 1 of the Second Schedule by inserting the following new paragraphs immediately after paragraph (5)—
   (6) The Commission shall hold a minimum of six meeting in every financial year.
   (7) The Chairperson shall issue to members at least fourteen days notice before any meetings of the Commission may be held.
MEMORANDUM OF OBJECTS AND REASONS

This legislative proposal giving rise to this Bill has been submitted by the Cabinet Secretary for the Ministry of Interior and Co-ordination of National Government. The object of the Bill is to clarify the role and responsibilities of the Inspector-General and the role and responsibilities of the National Police Service Commission.

The Bill provides for recognition of the Inspector-General and both the Deputy Inspectors-General as substantive members of the National Police Service Commission which is in accordance with Article 246 (2) (b) and (c) of the Constitution.

The Bill provides for consultation of the Inspector-General and the Cabinet Secretary by the Commission while dealing with the human resource functions.

The Bill provides for the limits of the Commission while undertaking its functions and it provides that the Commission shall not undertake investigations on criminal matters.

The Bill also provides for a detailed explanation of what disciplinary control envisaged under Article 246 (3) (a) mean. It provides that the disciplinary control *inter alia* means the development and prescription of fair and clear disciplinary procedures, monitoring compliance by the Inspector-General with the prescribed disciplinary procedures and reviewing or ratification of disciplinary actions taken by the Inspector-General.

The Bill is not a Bill concerning county government.

The enactment of this Bill shall not occasion additional expenditure of public funds

Dated the 16th July, 2013.

ADEN DUALLE,

*Leader of the Majority Party.*
Section 4 of Act No 30 of 2011 which it is proposed to amend—

4 (2) The chairperson, the members of the Commission, other than ex-officio members, shall serve on a full-time basis.

Section 10 of Act No 30 of 2011 which it is proposed to amend—

10. In addition to the functions of the Commission under Article 246(3) of the Constitution, the Commission shall—

(a) keep under review all matters relating to standards or qualifications required of members of the Service;

(b) with the advice of the Salaries and Remuneration Commission, determine the appropriate remuneration and benefits for the Service and staff of the Commission;

(c) approve applications for engagement by police officers in trade and other businesses, in accordance with the law relating to matters of leadership and integrity under Article 80 of the Constitution;

(d) co-operate with other State agencies, departments or commissions on any matter that the Commission considers necessary;

(e) provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;

(f) develop fair and clear disciplinary procedures in accordance with Article 47 of the Constitution;

(g) investigate and summon witnesses to assist for the purposes of its investigations;

(h) exercise disciplinary control over persons holding or acting in office in the Service;

(i) promote the values and principles referred to in Article 10 and 232 of the Constitution throughout the Service;

(j) ensure that the Service is efficient and effective;

(k) hear and determine appeals from members of the Service;

(l) develop policies and provide oversight over training in the Service;

(m) approve training curricula and oversee their implementation;

(n) investigate, monitor and evaluate the organization, administration and personnel practices of the Service;

(o) receive and refer civilian complaints to the Independent Policing Oversight Authority, the Kenya National Human Rights and Commission, the Director of Public Prosecutions or the Ethics
and Anti-Corruption Commission, as the case may be, where necessary;

(p) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the Service;

(q) evaluate and report to the President and the National Assembly on the extent to which the values and principles referred to in Article 10 and 232 are complied with in the Service;

(r) monitor and evaluate the performance of the Service;

(s) receive complaints and recommendations from police associations registered in accordance with the applicable law;

(t) perform such other functions as are provided for by the Constitution, this Act or any written law.

(2) Subject to the provisions of the Constitution or any written law, the Commission may delegate to the concerned Inspector-General the recruitment, appointment and promotion of police officers under the rank of sergeant.

(3) Notwithstanding subsection (2), the Commission shall not delegate any of the following functions—

(a) the making of any regulations, rules, code of conduct or subsidiary legislation under this Act or any other written law;

(b) the making and submitting of any report to the President and the National Assembly; and

(c) the performance of any function the delegation of which would amount to unjustified delegation of the Commission’s discretion.

(4) The Commission shall monitor the operations of the Service to ensure efficiency and effectiveness of the Service and the quality and standards of services rendered.

(5) A delegation under this Act shall—

(a) be in writing;

(a) be subject to any conditions the Commission may impose; and

(b) not divest the Commission of the responsibility concerning the exercise of its powers or the performance of the duty delegated.
Subsection (1) (d) and (h) of Section 11 of Act No 30 of 2011 which it is proposed to amend—

(d) hold disciplinary hearing proceedings for the purposes of performing its functions under this Act;

(h) conduct public inquiries and publish the outcome of such inquiries;

Subsection (1) of Section 17 of Act No 30 of 2011 which it is proposed to amend—

17. (1) The Commission may appoint such officers and staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Section 28 of Act No 30 of 2011 which it is proposed to amend—

28. The Commission may make regulations generally for the better carrying into effect of any provisions of this Act, and in particular to provide for—

(a) appointments, confirmation of appointments, promotions and termination of appointments;

(b) discipline;

(c) appeals;

(d) code of conduct for the Service;

(e) training of members of the Service;

(f) recruitment and transfers;

(g) anti-discrimination;

(h) affirmative action;

(i) safety equipment;

(j) ethics and anti-corruption;

(k) dealing with conflict of interest;

(l) information to be provided by the applicants;

(m) tests to be undertaken by the applicants, and

(n) vetting of applicants by the Commission.

Paragraph 3 of the Second Schedule of Act No 30 of 2011 which it is proposed to amend—

1. (1) The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
(2) Meetings shall be convened by the Secretary in consultation with the chairperson.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice of a meeting shall be given to every member.

(4) The chairperson shall preside at all meetings of the Commission and in the absence of the chairperson, the vice-chairperson shall preside.

(5) In the absence of both the chairperson and the vice-chairperson, the members present and forming a quorum shall elect one of their numbers to preside over the meeting of the Commission.

3. (1) The quorum of meetings of the Commission shall be five members, who shall include two members appointed under Article 246 (2) (a) (i) and (iii).

(2) The quorum referred to under paragraph (1) shall exclude the ex-officio members of the Commission appointed under Article 246 (b) (c).