



REPORT

**OF THE PORTFOLIO COMMITTEE ON DEFENCE, HOME AFFAIRS AND
SECURITY SERVICES AND THE THEMATIC COMMITTEE ON PEACE AND
SECURITY**

ON

THE POLICE AMENDMENT BILL (H.B. 2, 2021)

THIRD SESSION – NINTH PARLIAMENT

Presented to Parliament August 2021

ORDER OF APPOINTMENT FOR PORTFOLIO COMMITTEES

ORDERED IN TERMS STANDING ORDER NO. 17:

- 1) At the commencement of every session, there shall be as many Committees to be designated according to government policy as the Standing Rules and Orders Committee may deem fit.
- (2) Each select committee shall be known by the portfolio determined for it by the Standing Rules and Orders Committee.

SPEAKER'S ANNOUNCEMENT

The Speaker announced that all the Committees of the First Session would continue to operate as previously constituted until such time that new Committee were appointed by the Committee on Standing Rules and Orders. On Tuesday 27 October 2020, the Hon Speaker, announced that Committees would resume sittings on Monday, 02 November, 2020. The following are Members of the Portfolio Committee on Defence, Home Affairs and Security Services:

Hon Muchimwe P.T, Hon Chidakwa J, Hon Brig. Gen. (Rtd) Gwanetsa K.K, Hon. Chimbaira G, Hon Maj. Gen. (Rtd) Khumalo S.S, Hon Nguluvhe A. Hon Mguni S.K, Hon Masenda N.T, Hon Col. (Rtd) Dr. Murire J, Hon Tsvangirai V, Hon January S, Hon Chamisa S, Hon Moyo L, Hon Chiyangwa P, Hon Chinotimba J, Hon Sewera J, Hon Rungani A, Hon Sikhala J, Hon Machingauta C, Hon Chipato A. **Hon Brig. Gen. (Rtd) Mayihlome L to be the Chairperson**

TERMS OF REFERENCE OF PORTFOLIO COMMITTEES

STANDING ORDER NO. 20

Subject to these Standing Orders, a portfolio committee shall

- a) examine expenditure administration and policy of government departments and other matters falling under their jurisdictions as Parliament may, by resolution determine.
- b) consider and deal with all bills other than a Constitutional Bill, and statutory instruments or other matters which are referred to it by or under resolution of the House or by the Speaker;
- c) consider or deal with an appropriation or money bill or any aspect of an appropriation or money bill referred to it by these Standing Orders or by or under a resolution of this House;
- d) monitor, investigate, inquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such department; and
- e) consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon.

ORDER OF APPOINTMENT FOR THE THEMATIC COMMITTEES

STANDING ORDER NO. 16

- 1) At the commencement of every Session, there shall be Committees to be designated according to such government policy areas as the Committee on Standing Rules and Orders may deem fit.
- 2) Each Thematic Committee must be known by the theme determined for it by the Committee on Standing Rules and Orders.

PRESIDENT OF THE SENATE'S ANNOUNCEMENT

On Tuesday, 27 October, 2020, the President of the Senate announced that that the following Members shall serve on the Thematic Committee on Peace and Security:

Hon. Sen. Chief Charumbira F, Hon. Sen. Chimbudzi A, Hon. Sen. Chisorochengwe T, Hon. Sen. Denga P, Hon. Sen. Dube M.R, Hon. Sen. Khumalo N, Hon. Sen. Komichi M, Hon. Sen. Chief Makumbe S, Hon. Sen. Makone T, Hon. Sen. Chief Mapungwane , Hon. Sen. Chief Mathuthu T, Hon. Sen. Matirira A, Hon. Sen. Chief Matsiwo, Hon. Sen. Mkwebu A, Hon. Sen. Mohadi T.B, Hon. Sen. Moyo G, Hon. Sen. Moyo S, Hon. Sen. Mudziri E, Hon. Sen. Mwonzora D, Hon. Sen. Ndlovu D.M, Hon. Sen. Ndlovu M, Hon. Sen. Chief Ngezi, Hon. Sen. Chief Ngungumbane, Hon. Sen. Chief Ntabeni, Hon. Sen. Nyathi R, Hon. Sen. Parirenyatwa D.P, Hon. Sen. Chief Siansiali.
Hon Sen. Parirenyatwa to be the Chairperson.

TERMS OF REFERENCE OF THEMATIC COMMITTEES

STANDING ORDER NO. 19

Subject to these Standing Orders, a Thematic Committees must examine government policies which fall under or relate to the designated theme or themes and other matters falling under their jurisdiction as the Committee on Standing Rules and Orders may determine.

1.0 INTRODUCTION

As part of its law-making function, Parliament through its Committees namely; the Portfolio Committee on Defence, Home Affairs and Security Services as well as the Thematic Committee on Peace and Security, embarked on virtual public hearings on the Police Amendment Bill (H.B. 2, 2021) to gather the views of the public. This is a legal requirement set out in section 141 of the Constitution which stipulates that Parliament should create an environment that enables the public to participate in the law-making process. The public hearings were attended by persons from all walks of life, that included women, men, the youth, retired and serving members of the uniformed forces civic society organisations. While stakeholders openly aired their views, a number of challenges were observed by the Committee. These included intermittent connectivity hiccups, lack of data bundles, lack of access to the Bill and subsequent misinterpretation of various clauses of the Bill.

2.0 BACKGROUND

The Zimbabwean Government continues to enact and amend various pieces of legislation as it strives to make laws for the good governance of the nation. The purpose of the Police Amendment Bill is basically to align the Police Act with the Constitution. Section 219 of the Constitution sets out the establishment and functions of the Police Service which include detecting, investigating and preventing crime. The formation of a Police Service and Police Service Commission in Zimbabwe is in line with regional practices such as in South Africa and Botswana. It is against this background that the Joint Committee solicited public opinion on the Bill and compiled this report.

3.0 METHODOLOGY

The two Committees jointly held a meeting with the Ministry of Home Affairs and Cultural Heritage, represented by the Permanent Secretary and a delegation from the Zimbabwe Republic Police, to unpack the Bill. The Committee then conducted joint virtual public hearings on zoom and radio platforms on 4 August 2021. The zoom platform was live between 1000 hours and 1200 noon and was attended by all interested members of the public. The consultative session was also broadcast live on Radio Zimbabwe, National FM and associated Community Radio stations such as Khulumani FM and Central FM. In addition, the Joint Committee considered written submissions from the Zimbabwe Republic Police (ZRP) and Civic Society Organizations such as Veritas.

3.1 Schedule of activities

Date	Bill	Activity/Platform	Time
04/08/21	Police Amendment Bill (H.B. 2, 2021)	Virtual Public Hearing Radio Sessions i. Radio Zimbabwe ii. National FM iii. Central FM iv. Khulumani FM	1000hrs-1200hrs 1400hrs-1500hrs

4.0 COMMITTEE'S FINDINGS

4.1 While it is necessary to align the Police Act to the Constitution, there were mixed views on interpretation of some provisions of the proposed piece of legislation. Though acknowledging that this was a progressive and crucial stride, some stakeholders, particularly from the security sector, were of the view that certain provisions, if enacted, had detrimental effects on effective policing and ultimately on national security. Others, especially individual members of the public and civic society organizations, applauded the Bill for further responding to the call for the Police Service to uphold and respect human rights through working together effectively with constitutionally established Commissions such as the Zimbabwe Human Rights Commission and Zimbabwe Anti-Corruption Commission, among others.

4.2 Clause 4: Terms and conditions of service of the Commissioner General of Police

Several stakeholders supported this clause which reduces the term of office of the Commissioner General of Police from the current unlimited term to only two five-year terms. This was observed as a positive and fundamental departure from the old situation that allowed a single person to hold office for as long as was seen fit by the President.

4.3 Clause 6: Formulation of Standing Orders

Stakeholders, especially civic society organizations, expressed conflicting views on the interpretation of this clause. The majority argued that the Police Service Commission (PSC) was deprived of its independence in exercising its mandate by making Standing Orders 'on the advice of' the Commissioner General of Police, subsequently and impliedly subjecting it to a mere rubber stamp. It was, therefore, proposed that it would be better and more preferable if the PSC made these operational standards 'after consultation with' the Commissioner General of Police.

On the contrary, stakeholders in the security sector, were of the view that the Bill assigned the making of Standing Orders to the PSC when in fact, it was supposed to be the prerogative of the Commissioner General of Police. They contended that the head of the

Police Service, who is well versed with the day-to-day operations and administration of the organization, was better placed to deal with issues relating to discipline and orderly conduct of members of the organization. It was, therefore, proposed that the Commissioner-General of Police be reposed with the power to formulate Standing Orders.

4.4 Clause 8: Commissioner General to comply with directives from certain Commissions

Members of the public supported the clause as it compels the Commissioner General of Police to comply with policy directives from the Zimbabwe Human Rights Commission and the Zimbabwe Anti-Corruption Commission in line with Section 243(2) and 255(2) of the Constitution of Zimbabwe Amendment (No. 20) Act 2013 respectively. They opined that it was prudent for the ZRP to uphold and respect human rights and act positively in combating corruption in Zimbabwe. Thus, by complying with directives from investigative independent Commissions, the security sector would ultimately restore public confidence in the service delivery of the ZRP.

4.5 Clause 9: Appointment, suspension and discharge of non-commissioned members

Members of the public acknowledged that the Constitution vests the powers to appoint, suspend and discharge non-commissioned members of the Police Service in the Police Service Commission. However, several participants pointed out that the effective discharge of the command function reposed in the Commissioner General of Police by Section 221 of the Constitution lied in his or her capacity to control the conduct of those under his or her command. They further posited that stripping him or her of this tool of control was tantamount to rendering him or her powerless and had the potential of fueling indiscipline. To that end, therefore, a proposal was made that the Commissioner General fully retain the power to appoint, suspend and discharge non-commissioned members while the Police Service Commission plays an oversight role.

4.6 Clause 10,11and 12: Promotion, re-appointment and discharge of members

Some stakeholders supported the general amendments on clause 10, 11 and 12 which empowered the PSC to promote, re-appoint or discharge non-commissioned members. Conversely, other stakeholders observed that the promotion and discharge functions were human resource management tools used by managers to effectively fill in positions by competent persons within an organization to ensure effective delivery of expected outcomes or alternatively discharge incompetent personnel. Given that background, they argued that by virtue of being at the apex of the command channel of the Police Service, the Commissioner General of Police required these indispensable management tools to facilitate efficient recruitment or elevation of deserving personnel as well as dismissal of underperforming staff. It was, therefore, proposed that the promotion and discharge

functions should continue to be the responsibility of the Commissioner General while the Police Service Commission simply plays an oversight role.

4.7 Clause 14: Conduct of Disciplinary Trials by Board of Officers

Some stakeholders welcomed this provision and maintained that it was very critical for disciplinary matters to be handled from within and that all disciplinary measures taken by the Police Service had to be fully exhausted before an accused member could resort to external mechanisms. Others, however, disputed the rationale for internal disciplinary matters being handled by a board of officers without the option of approaching external judicial services by aggrieved persons. They contended that accused persons had a right to choose to be heard in a court of law other than a board of officers.

4.8 Clause 16: Procedure on conviction of member for certain offences

Submissions on this clause highlighted that the discharge function is ancillary to the issue of discipline which falls within the purview of the command function of the Commissioner-General of Police. To that end, it was suggested that the power to discharge members on conviction for criminal offences should directly lie with the Commissioner-General of Police as opposed to the Police Service Commission.

4.9 General observations

Some stakeholders noted that commissioned officers (inspectors and more senior officers) will continue to be appointed and promoted by the President in terms of section 14 of the Principal Act, on the advice of the Minister and the Commissioner-General of Police but not the Police Service Commission. The same applied to the dismissal of officers under Section 49 of the Act following their conviction for an offence. Additionally, they also questioned the non-involvement of the Commission in deciding whether or not a member should be discharged for unsuitability or unfitness in terms of section 50 of the Act. A similar observation was made on the appointment of ancillary staff by the Commissioner General of Police without the involvement of the Commission. In all these cases, the stakeholders argued that it was almost unconstitutional to leave the Commission out of the crucial decision-making processes.

5.0 Additional Amendments Proposed by stakeholders

5.1 Section 66 of the Principal Act (Wearing of uniforms, badges, etc. of Police Force)

The submissions received emphasized that Section 66 of the Principal Act be amended by closing the lacuna which exists in the statute. Currently the Act only criminalizes the wearing of police uniforms and badges. It does not criminalize the **unauthorized possession, manufacture, trade, sale, exchange or disposal of police uniforms.**

They proposed that section 66 of the Principal Act be amended as follows;

Unauthorized sale or wearing of uniforms, etc.

In this section—

“Uniform” means any article or articles of wearing apparel and includes a badge, button, braid or insignia, worn in association with any particular item or items of clothing, and a tie.

(2) Any person who, without authority—

(a) sells, offers or exposes for sale, wears or uses any uniform supplied to or authorized for use by any member of the Police Service; or

(b) manufactures, sells, offers or exposes for sale, wears or uses any uniform so nearly resembling a uniform referred to in paragraph (a) as to be likely to deceive; or

(c) wears or uses any decoration supplied to or authorized for use by any member of the Police Service or any decoration so nearly resembling such decoration as to be likely to deceive;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment:

5.2 Protection of Police Property

It was proposed that there be an additional provision similar to section 97 of the Defence Act [Chapter 11:02], which would provide for the protection of police equipment or property. The proposed clause be inserted as follows:

(1) The Minister may, by notice in a statutory instrument, declare and make known what mark or marks applied to any arms, clothing, equipment, animal, vehicle, aircraft or boat shall denote the property of the State therein.

(2) Any person who—

(a) with fraudulent intent, applies to any arms, clothing, equipment, animal, vehicle, aircraft or boat any mark referred to in subsection (1); or

(b) fraudulently defaces or conceals any mark referred to in subsection (1) on any arms, clothing, equipment, animal, vehicle, aircraft or boat; or

(c) unlawfully receives, possesses, sells or delivers any arms, clothing, equipment, animal, vehicle, aircraft or boat bearing any mark referred to in subsection (1) or forbidden by or under this Act to be sold, pledged or otherwise disposed of;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) In any prosecution for a contravention of subsection (2) the burden of proving that he had no fraudulent intent in applying, defacing or concealing any mark referred to in subsection (1) or, as the case may be, that the receipt, possession, sale or delivery of any arms, clothing, equipment, animal, vehicle, aircraft or boat was lawful shall lie upon the accused.

5.3 Power of Board of Officers and Trial officers to issue warrant of arrest

It was observed that the Principal Act is silent on whether the court of a Board of Officers and that of single officer has the power to issue a warrant of arrest for a member who fails to appear before the court of a single officer or Board of Officers. Therefore, a suggestion was made that Trial officers, in terms of the Act, should be given express powers to issue and deal with warrant of arrests emanating from disciplinary tribunals.

The proposed amendment be inserted as follows:

Any member accused of an offence in terms of this Act and having been notified, warned or summoned to appear before a court of a single officer or Board of officers fails to appear without just cause, such court of a single officer or Board of officers shall issue a warrant of arrest against such member.

A warrant of arrest issued in terms of subsection (1) shall cause a member to be arrested and detained and to be brought before the court of a single officer or such Board of Officers as soon as possible who shall make an inquiry to ascertain if such a member was in willful default;

A member who is found to be in willful default in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level two or to imprisonment for a period not exceeding fourteen days or to both such fine and such imprisonment.

5.4 Appeals and representations to the Commissioner General.

A proposal was made that there be a clause in the new Act which provides for an appeal against any adverse decision which could have been taken by the delegates of the Commissioner-General of Police in terms of any Policy. The proposed clause be inserted as follows:

A member who is aggrieved by an order or decision made by a delegate of the Commissioner-General in terms of any policy, directive, Standing Orders or Regulations may appeal to the Commissioner-General within the time and in the manner prescribed.

5.5 Disciplinary Trials

Stakeholders posited that enforcement of discipline was a salient feature of any branch of the Security Services. They argued that if discipline is not strictly enforced in the Police Service; it could be very difficult for the Commissioner-General to achieve the broad mandate charged with the Police in Section 219(1) of the Constitution. They therefore, proposed a new clause as follows:

Notwithstanding the inherent Review powers of the High Court to review decisions of any lower courts and Tribunals including Police Trials, any member who wishes to approach the High Court on Review for any disciplinary matter whether terminated or still pending must first exhaust all internal remedies as provided in the Police Act.

6.0 COMMITTEE OBSERVATIONS

The Committee made the following observations:

- 6.1** On Clause 6, the Committee noted that Standing Orders are specific operational standards meant to give guidance to employees on how to conduct themselves as they do their work. Given that background, this function should be retained by the Commissioner General while the Commission plays an oversight role.
- 6.2** On Clause 8, Members noted that the Bill neither sets the parameters for complying with directives nor specify the nature of directives to be complied with. It provides no option for non-compliance with directives that may not be in the best interests of national security.
- 6.3** On Clauses 9-12, the Committee observed that authority and discipline are inalienable and, thus, should be vested in one office. While reform of the Police Service is an ongoing process, it has to be carried out in such a manner that it does not weaken the command element of the sector. Hence, the power to make appointments, reappointments, promotion and discharge should be reposed with the head of the Police who works directly with members of the uniformed force while the Police Service Commission plays an oversight role.
- 6.4** On Clause 14, the Committee noted that strengthening of institutional discipline in the Police Service is very critical and necessary. Therefore, internal disciplinary mechanisms must be exhausted or completed before judicial courts can be approached. However, in the spirit of fairness, Tribunal Courts are implored to abide by dictates of the Constitution in delivering justice.

- 6.5** On Clause 14, the Committee observed that, though the Bill seeks to repeal Section 32 of the Act, which allows members to choose to be tried in a Magistrates Courts for disciplinary offences rather than by a Board of Officers, it does not amend section 29A of the Act, which gives the High Court and Magistrates Courts jurisdiction to try disciplinary offences. Thus, should section 32 be repealed, as the case may be, it follows that Section 29A should also be struck off or be amended in such a way as to avoid any irregularities in the Act.
- 6.6** The Committee observed that the proposed additional clauses on **4.5.0** made by stakeholders are indeed critical and relevant in as far as protection of police property and uniforms is concerned.

7.0 COMMITTEE RECOMMENDATIONS

- i.** On Clause 6 the formulation of Standing Orders must remain the responsibility of the Commissioner General of Police while the Police Service Commission plays an oversight role.
- ii.** On Clauses 9, 10, 11 and 12, the power to appoint, re-appoint, promote, suspend and discharge non-commissioned members should be vested in the Commissioner General of Police while the Police Service Commission plays an oversight role.
- iii.** A new clause that criminalizes the unauthorized possession, manufacture, trade, sale, exchange or disposal of police uniforms must be added to section 66 of the Police Act. This is important in order to curb criminal cases involving persons masquerading as police officers.
- iv.** A new clause that criminalizes vandalism of police equipment or property in any way must be inserted in the Bill.
- v.** A new clause that empowers internal Trial Officers to issue and deal with a warrant of arrest emanating from disciplinary trials must be inserted. This will promote discipline within the Police Service.

8.0 CONCLUSION

In conclusion, the Joint Committee applauds the Bill for taking steps towards reforming the Police Service through aligning the Principal Act to the Constitution of Zimbabwe Amendment (No. 20) Act 2013. The establishment of the Police Service Commission is in itself a great move in the right direction as it will go a long way in improving service delivery in the sector through its oversight role as well as collaborating and complementing the efforts of other constitutionally established Commissions. That being the case, therefore, it is pertinent for both institutions to operate in unison and within the confines

of the Constitution at the same time ensuring that the sanctity of national security is preserved.