

**THE REPUBLIC OF SOUTH SUDAN**  
**NATIONAL LEGISLATIVE ASSEMBLY**  
**JUBA.**

**Continuation of the joint report of the specialized Committees of Defense, Security and Public Order and Legislation and Justice of the NLA on the National Security Bill in its third reading.**

**08/Oct/2014**

**Rt. Hon. Speaker,**

**Hon. Members**

**Introduction**

Allow me to present the above bill in its third reading. In accordance with resolution NO. 19/2014 of the National Assembly in its Sitting No. 12/2014 and pursuant to regulation 107 of the Conduct of Business regulation of the NLA, 2011 read together with Article 57(j) of the Transitional Constitution of the Republic of South Sudan, 2011, the said committees continued after adjournment of the third reading with incorporation of the observations of the honourable members.

The Speaker of this august House referred the National Security Service Bill, 2014 to the Committee of Defence, Security and Public Order and Legislation and Justice Committee for consideration, scrutiny and presentation to the House.

### Remarks:

1. The bill was adjourned following complaints from some honourable members that some of their observations were not incorporated in the draft bill;
2. Also some honourable members expressed concerns against certain provisions in the bill. These provisions included areas of 1) arrest and detention, 2) penalties, 3) Difference between offenses and crimes against the state and ordinary police crimes and offenses, 4) Immunity of members of the security service and powers of its members.
3. Because of the above concerns the two committees made consultations and references to security laws of other countries and these included Kenya, Uganda, South Africa, Siera Leone, USA, Botswana and the Sudan. These references have informed and enriched the bill.
4. The above consultations have resulted in amendments, subtractions and additions of certain provisions in the bill. This has extensively changed the arrangement in the bill specially numerically. It has therefore necessitated printing a new copy of the bill bearing the new changes.
5. It will therefore be difficult and cumbersome to follow the bill as it originally stood with respect to numerical arrangements and the committee has presented in highlights the changes that have been subtracted or added. Those deleted will not appear.
6. Grammar and clerical mistakes are corrected without necessarily appearing in this report
7. Ignore table of contents.

### Observations and Comments:

1. Under Interpretations, Section 5  
Define "Competent Court"
2. Under Interpretations, Section 5  
Define "Offenses and Crimes against the State" as below

**"Offences and crimes against the State" Are as provided for under Chapter V of the Penal Code Act 2008; and include:**

- (a) any activity related to espionage, sabotage, terrorism, subversion or intention to engage in any such activity directed against or detrimental to the interest of the nation and any other activity performed in conjunction with any activity related to espionage, sabotage, terrorism or subversion.
- (b) any activity directed to undermine or intended to bring about destruction or overthrow of the constitutionally established Government in South Sudan at any level;
- (c) any threat or act of violence or harm directed or intended to achieve, bring about or promote any constitutional, political, industrial, social or economic objective

or change in South Sudan, including any conspiracy, incitement or attempt to commit any such threat or act of violence and

(d) any foreign-influenced activity within or outside which is against or related to South Sudan that is:

- (i) detrimental to the interest of South Sudan and
- (ii) clandestine or deceptive or involves any threat to the State or its citizens or any other person lawfully resident in South Sudan.
- (iii) E) Any act or intention to bring about destruction to industrial installations and physical infrastructures in South Sudan; and

f) Any act of conspiracy, incident and spying against the State or an attempt to commit any such activities.

3. In section 6 insert sub-section (e) to read “Pre-empt and control any situation that may harm and cause danger to national interest” and subsection (g) to read “Continue to improve service through initiation of reforms”

4. In Section 8 subsection 1, insert “Security Council” as the head organ;

5. In Section 8 subsection 4 insert:

There shall be established a Legal Department in the Service

i) The Legal Department Shall be headed by a Senior Legal Counsel of not less than 7 years standing and assisted by 2 Legal Counsels of at not less than 5 years standing

6. Under Section 17 insert:

#### Appointment and Functions of members of the Legal Department

i) The legal team above shall be appointed by the President on the recommendation of the Minister;

ii) Functions of the Legal Department

The Legal Department headed by the senior legal council shall:

- i) Advice the service on legal matters
- ii) Draft contracts for the service
- iii) Act as ombudsman and ensure that cases being handled by the service are expedited and promptly referred to court
- iv) Attends to complaints within and without the service and advice on the best practices regarding the constitution and human rights
- v) Checks excesses of power and receives complaints of members within the service.

7. Under section 19 insert:

**Complaints Board**

1) There is established a Board to be known as the Board which shall consist of the following members all of whom shall be appointed by the President on the recommendation of the Judicial Service Commission-

i) A Chairperson who shall be a person who holds or has held or is qualified to hold office as a judge of the High Court;

ii) Four other members of whom-

a) Head of the Legal Department in the Service shall be a member;

b) One shall be an advocate of not less than five years standing;

c) One shall be a woman judge or advocate of at least 3 years standing;  
and

d) One shall be a religious leader of national repute

2. The Chairperson or member of the Board shall hold office for a period of three years and shall be eligible for re-appointment provided that no Chairperson shall hold office for more than three terms.

1. The Chairperson or member of the Board may resign by writing to the President which resignation shall take effect from the date of receipt of the letter by the President;

2. If the Chairperson or a member of the Board vacates office before the expiry of his/her term, the President shall appoint another person in their place;

3. Any person aggrieved by anything done by the Director –General or by a Director, officer or other member of staff of the service in the exercise of the powers or the performance of the functions of the service under this bill may make a complaint in respect thereof to the Board in such manner as may be prescribed.

4. (1) **FUNCTIONS OF THE BOARD**

The functions of the Board shall be-

a) To inquire into complaints against the service

b) To inquire into any matter referred to it by the President and make its recommendations thereon to the President.

2) Subject to subsection (3), for the purpose of investigating any complaint under this bill, the Board shall have the powers of the High Court to summon any witnesses, to administer oaths or affirmations and to order the production of any documents relevant to the investigation;

3) In the discharge of its functions under this bill, the Board shall have regard to the requirements of national security and shall for that purpose –

a) Consult the Director General and the Council in determining information or circumstances under which certain information may not be disclosed in the course of or in relation to any inquiry in the interest of national security;

b) Take all the necessary precautions to prevent the disclosure of-

- i) Any information which in its opinion may not be disclosed in the course of or in relation to any inquiry; and
    - ii) The source of any such information;
  - 4) The Board shall hear separately and in private, such evidence as may be tendered by the complainant and the Director General in connection with the complaint.
  - 5) If at any stage, during the course of an inquiry, the Board is of the opinion that there is evidence of any such breach of duty or misconduct by any officer of the service, it shall forthwith inform the President and the council or the Director General with the recommendation for the taking of an appropriate disciplinary action against the service individual or individuals so complained against;
  - 6) The Board shall inform the complainant in writing of its conclusions and shall make a report of its findings to the President and the council with such recommendations as it considers appropriate;
  - 5. (1) No proceedings shall lie against the Chairperson or any member of the Board in respect of anything done bona fide in the performance of the functions or the exercise of the powers of the Board;
  - 6. No Chairperson or member of the Board shall be called upon to give evidence in any court or in any proceedings of a judicial nature in respect of anything in his knowledge by virtue of the powers or the functions of the Board under this Bill;
  - 7. Anything said or information supplied or any document or material produced by any person in the course of any inquiry by or proceedings before the Board shall be privileged in the same manner as if the inquiry or proceedings were in a court;
- A person aggrieved by a decision of the commission may appeal to the High Court within 14 days.

8. Under section 31, 1(f) 2 insert:

**Recruitment to the service shall**

- a) **reflect the diversity of the people on the bases of equitable representation of the states of the South Sudan;**
- b) be based on a quota system or proportional percentage of the states population

9. Under Section 51 insert:

**51. Arrest without warrant**

- (1) Any person who is found committing any one of the offences against the state as provided under section 5 of this bill, or who is reasonably suspected of having

committed, or having attempted to commit or being about to commit such an offence may be arrested without a warrant by any service officer and detained.

- (2) Any person arrested under the provisions of this section shall, whether or not the service inquiries are completed, be brought before a magistrate as soon as is reasonably practicable within 24 hours.
- (3) Once an arrested person is produced before a magistrate or judge the process shall proceed as provided for arrests with warrants under section 52 below.

10. Under section 52 insert:

## 52. Warrants

- (1) Where the Director General or an employee designated by him/her, has reasonable grounds to believe that a warrant is required to enable the service to perform any of its functions under this Act, the Director General or the designated employee may apply for the issue of a warrant.
- (2) An application under sub-section (a) shall be made to the judge of the High Court for a warrant under this section.
- (3) An application under subsection (1) shall specify-
  - a) The purpose for which the warrant is sought;
  - b) Whether the urgency of the matter is such that it would be impracticable to carry out the investigation using any other investigative procedures or that without a warrant it is likely that information of importance with respect to the investigation would not be obtained;
  - c) The type of information, material, record or document proposed to be obtained and the power referred to in sub-section (4) proposed to be exercised for that purpose;
  - d) The identity of the person, if known, who has possession of the information, material, record, document proposed to be obtained;
  - e) The persons or class of persons to whom the warrant is proposed to be directed; and
  - f) A general description of the place where the warrant is proposed to be executed.
- 4) A judge may issue a warrant under this section authorizing the action on any person, property or material specified therein.
  - a) A warrant issued under this section shall be valid for a period not exceeding one month at a time and the period for which it has been issued shall be specified in the warrant. The judge issuing the warrant or one acting in his/her stead may extend that period as deemed fit.
  - b) If the judge who authorized the warrant is convinced that the grounds on which the warrant was issued have ceased to exist, the judge shall cancel the warrant;

5) A person aggrieved by the issue of a warrant or by the extension of the period of a warrant may appeal to the court of Appeal within 14 days and the decision of the court of Appeal shall be final.

11. Under previous section 52 Delete:  
Immunity of members.

**Rt. Hon. Speaker,**

**Hon. Members**

As this bill was adjourned while in debate in its third reading and the concerns of the honourable members have been addressed, I humbly move that the bill entitled "The National Security Service Bill, 2014" be deliberated on and passed to the 4<sup>th</sup> and final reading.

**Hon. Samuel Duwar Deng**  
**Chairperson,**  
**Committee of Defense, Security and Public Order**

