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TWELFTH PARLIAMENT (FIFTH SESSION)

THE SENATE

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STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS

.....

REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES  
(AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2020)

.....

Approved  
*[Signature]*  
14/11/2021

RT. Hon. Speaker  
You may approve for  
tabling. *[Signature]*  
14/10/21

Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
**NAIROBI.**

October, 2021

DC - Eti  
Forwarded & recommended  
for tabling

*[Signature]* 14/10/2021

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## FOREWORD BY THE CHAIRPERSON

1. The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020) seeks to amend the Parliamentary Powers and Privileges Act, 2017 to impose a statutory obligation on public officers to provide feedback to Parliament on its resolutions and recommendations of its Committees. This will ensure that timely feedback is made on decisions of Parliament by public officers as delays or failure to submit reports undermines the ability of Parliament to effectively undertake its oversight mandate.
2. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of memoranda was placed in two newspapers with national circulation on Tuesday, 16<sup>th</sup> March, 2021. The advertisement was also posted on the Parliament website and social media platforms. In response to the advertisement, the Committee received written submissions from the Kenya National Commission on Human Rights (KNCHR) which were considered by the Committee in making its recommendations on the Bill.
3. Based on its deliberations, the Committee has made various observations and recommendations on the Bill set out in Chapter Three of this Report. Additionally, the Committee will present amendments with the view of strengthening the provisions of the Bill for consideration by this House.
4. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment. The Committee further wishes to thank the stakeholders who submitted written memoranda on the Bill.
5. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020).



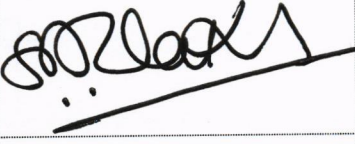
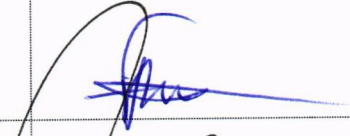
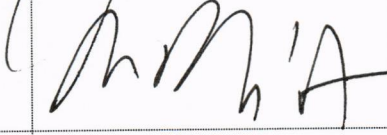
Signed.....

Date.....5<sup>th</sup> October, 2021.....

**SEN. ERICK OKONG'O MOGENI, SC, MP,  
CHAIRPERSON,  
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN  
RIGHTS**

**ADOPTION OF THE REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2020)**

**We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report –**

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, <sup>EBS</sup> EGH, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. Irungu Kang'ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	



## PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 and mandated to: -

*'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'*

The Committee is comprised of –

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP

The Minutes of the Sittings of the Committee in considering the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020) are attached to this Report collectively as *Annex I*.

## CHAPTER ONE: INTRODUCTION

### A. Background on the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020)

1. The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020) is sponsored by Sen. (Dr.) Agnes P. Zani, CBS, MP. A copy of the Bill is attached to this Report as *Annex 2*.
2. The Bill was published on 8<sup>th</sup> December, 2020 and was read a First Time in the Senate on 4<sup>th</sup> March, 2021. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 140 (1), to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
3. Before publication of the Bill on 8<sup>th</sup> December, 2020, the Bill had initially been introduced in the Senate and read a First Time on 5<sup>th</sup> May, 2020. However, before the passage by the Senate, the High Court in Petition No. 284 of 2019 held that the concurrence process under Article 110(3) of the Constitution is mandatory and is a condition precedent before any House of Parliament can consider a Bill. The court further ordered the immediate cessation of consideration of all Bills that were pending before either House, and for which joint concurrence by the Speakers of both Houses could not be demonstrated, in order to allow such Bills to be subjected to the mandatory joint concurrence process contemplated under Article 110(3) of the Constitution.
4. As part of implementing the Court decision, it was determined that concurrence as required under the Constitution could not be demonstrated in respect of this Bill. The Bill was withdrawn and republished in compliance with the Court orders in Petition No. 284 of 2019.
5. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of memoranda was placed in the *Daily Nation* and *Standard* newspapers on Tuesday, 16<sup>th</sup> March, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
6. In response to the advertisement, the Committee received written submissions from the Kenya National Commission on Human Rights (KNCHR) (*Annex 4*). The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this Report as *Annex 5*.



7. Based on its deliberations, the Committee has made various observations and recommendations as set out at Chapter Three of this Report. Additionally, the Committee has presented amendments with a view of strengthening the provisions of the Bill, for consideration by this House (*Annex 6*).

**B. Justification for the Bill**

8. The accountability of other arms of Government to Parliament is necessary for democratic governance and is anchored on the fundamental principle that Parliament represents the will of the people and exercises their sovereignty as provided under Article 1 (3)(a) and (4) of the Constitution. Parliamentary resolutions are the key means of exercising this constitutional authority donated to both Houses of Parliament.
9. Further, parliamentary resolutions contain important policy recommendations and perspectives that reflect the will of the people and insights from legislators and other stakeholders. A lot of time and resources go into the work of Parliament and its Committees in the making of its resolutions. It is therefore antithetical to good governance for those resolutions to be submitted to the National Executive and other public offices and no action is taken nor feedback given.
10. The Bill therefore imposes a specific obligation on public officers to comply with the requirement to give feedback on resolutions of Parliament in accordance with the standing orders of the relevant House. Achieving this directly through the standing orders has been challenging since they are rules ‘for the orderly conduct of Parliamentary proceedings’ as provided under Article 124(1) of the Constitution. This may be contrasted with an Act of Parliament which is binding on everyone it applies to. Whereas the standing orders of both houses provide for reporting on resolutions made by the relevant House, very few reports on resolutions passed by Parliament are submitted.
11. The Bill is therefore meant to cure this problem to ensure that resolutions of Parliament are taken seriously and public officers report on them as provided in the standing orders of the relevant House.

**C. Objective of the Bill**

12. The principal object of the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020) is to amend the Parliamentary Powers and Privileges

Act, 2017 to impose a statutory obligation on public officers to provide feedback to Parliament on its resolutions and recommendations of its Committees. This will ensure that timely feedback is made on decisions of Parliament by public officers as delays or failure to submit reports undermines the ability of Parliament to effectively undertake its oversight mandate.

#### **D. Overview of the Bill**

13. The Bill proposes the following—

- i) Clause 1 of the Bill is the short title of the Bill.
- ii) Clause 2 of the Bill inserts a new Part VIA to the Parliamentary Powers and Privileges Act, 2017 to provide for '*reports on action taken on Parliamentary resolutions*'. It defines a responsible officer as the relevant public officer to whom a resolution or report of a House of Parliament is submitted.
- iii) The new Part VIA also mandates the clerks of Parliament to convey relevant resolutions of Parliament to responsible public officers within seven days. The public officers are then required to submit a status report on the resolutions to relevant Parliamentary Committees within the timelines specified in the standing orders of the relevant House. The status report should contain information on actions taken on the Parliamentary resolutions, and where no action has been taken, reasons for the inaction. A public officer who fails to submit a status report in accordance with the provisions of the Bill will be deemed to have committed an offence and will be liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.
- iv) The new Part VIA further allows a chairperson of the relevant Parliamentary Committee to extend the timelines for the submission of reports by public officers. It also allows the Speaker of the relevant House to direct public officers to consolidate reports where a response is sought on the implementation of more than one resolution.
- v) The new Part VIA finally provides that its provisions do not limit the power of Parliament to procure information from any public officer in accordance with any other law.



vi) Clauses 3 and 4 of the Bill propose to amend sections 7 and 11 of the Parliamentary Powers and Privileges Act, 2017 to give effect to the decision of the Court in *Apollo Mboya v Attorney General & 2 others* [2018] eKLR, where sections 7 and 11 declared unconstitutional and therefore null and void.

**E. Consequences of the Bill**

14. The Bill will ensure that timely feedback is made on resolutions of Parliament by public officers as delays or failure to submit reports undermines the ability of Parliament to effectively undertake its oversight mandate. It provides a structured mechanism through which public officers are required to consider the issues raised and the recommendations made by Parliament and give timely feedback on the same.
15. Additionally, the Bill by amending sections 7 and 11 of the Parliamentary Powers and Privileges Act, 2017 ensures that service of civil process on the staff working in Parliament, among them legal officers authorized to receive service on behalf of Parliament is not restricted, and an aggrieved citizen is able to access courts to challenge decision made by Parliament.

## CHAPTER TWO: PUBLIC PARTICIPATION

### A. Invitation and consideration of stakeholder submissions on the Bill

16. The Standing Committee on Justice, Legal Affairs and Human Rights, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement placed in the Daily Nation and Standard newspapers on Tuesday, 16<sup>th</sup> March, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
17. In response to the advertisement, the Committee received written submissions from the Kenya National Commission on Human Rights (KNCHR) (*Annex 4*).
18. The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this Report as *Annex 5*.



### **CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**

#### **A. The Committee made the following observations—**

19. That the accountability of other arms of Government to Parliament is necessary for democratic governance and is anchored on the fundamental principle that Parliament represents the will of the people and exercises their sovereignty as provided under Article 1 (3)(a) and (4) of the Constitution. Parliamentary resolutions are the key means of exercising this constitutional authority donated to both Houses of Parliament.
20. That some public officers have hitherto ignored or neglected to act on or respond to resolutions of Parliament or recommendations of its Committees.
21. That the Bill tries to cure this by amending the Parliamentary Powers and Privileges Act, 2017 to impose a statutory obligation on public officers to provide feedback to Parliament on its resolutions and recommendations of its Committees. This will ensure that timely feedback is made on decisions of Parliament by public officers as delays or failure to submit reports undermines the ability of Parliament to effectively undertake its oversight mandate.
22. That on 21<sup>st</sup> May, 2018, the High Court (Justice J.M. Mativo), in *Apollo Mboya v Attorney General & 2 others* [2018] eKLR, declared sections 7 and 11 of the Parliamentary Powers and Privileges Act, 2017 unconstitutional and therefore null and void. Section 7 of the Act prohibits the service or execution of civil processes by courts within the precincts of Parliament while a House is sitting or through the Speaker or officers of Parliament. Section 11 of the Act, on the other hand, outrightly prohibits the questioning of proceedings or decisions of Parliament or the Parliamentary Committee of Powers and Privileges in any court.
23. That the High Court declared section 7 of the Parliamentary Powers and Privileges Act, 2017 unconstitutional only to the extent that it restricts service of Civil Process to the staff working in Parliament, among them legal officers authorized to receive service on behalf of Parliament. This Bill therefore amends section 7 to remove its application on staff authorized to receive service on behalf of Parliament. This will address the issue raised by the Court and still retain the spirit of the provision.

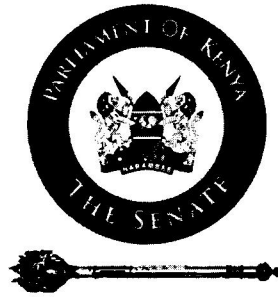
24. That the High Court declared section 11 of the Parliamentary Powers and Privileges Act, 2017 an ouster clause and determined that ouster clauses are antithetical to a just society. It found that ouster clauses offend the constitutional principle of the rule of law because an aggrieved citizen is denied the possibility of access to the courts to challenge the decision affecting them. In this respect, the provision was declared an ouster clause and therefore unconstitutional in its entirety and cannot therefore be salvaged. The Bill therefore proposes to repeal section 11 of the Parliamentary Powers and Privileges Act, 2017.

**B. The Committee makes the following recommendation—**

That clause 2 of the Bill be amended to provide timelines, without being restrictive, within which a responsible public officer shall submit a report on the implementation of a resolution of Parliament. The text of the proposed amendment is set out at *Annex 6* of this Report.

## ANNEXES

- Annex 1:** Minutes of the Committee in considering the Bill.
- Annex 2:** The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020).
- Annex 3:** Advertisement for submission of memoranda placed in the *Nation* and *Standard* newspapers on Tuesday, 16<sup>th</sup> March, 2021.
- Annex 4:** Copy of the submissions received from the Kenya National Commission on Human Rights.
- Annex 5:** Matrix on consideration of public submissions on the Bill.
- Annex 6:** Committee amendments to the Parliamentary Powers and Privileges (Amendment) Bill, (Senate Bills No. 33 of 2020)



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE THIRTY-FIRST SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON FRIDAY, 21<sup>ST</sup> MAY, 2021 AT 6.20 P.M.**

**PRESENT**

1. Sen. Erick Okong'o Mogeni, SC, MP - Chairperson (**Chairing**)
2. Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
3. Sen. Amos Wako, EGH, SC, FCI Arb, MP - Member
4. Sen. Mutula Kilonzo Junior, CBS, MP - Member
5. Sen. Irungu Kang'ata, CBS, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. James Orengo, EGH, SC, MP - Member
2. Sen. Fatuma Dullo, CBS, MP - Member
3. Sen. Johnson Sakaja, CBS, MP - Member

**SECRETARIAT**

1. Mr. Charles Munyua - Clerk Assistant (*Taking minutes*)
2. Mr. Moses Kenyanchui - Legal Counsel
3. Mr. Said Osman - Research Officer
4. Ms. Lucianne Limo - Media Relations Officer
5. Mr. James Ngusya - Serjeant at Arms
6. Mr. James Kimiti - Hansard Officer

**MIN. NO. 163/2021      PRAYER**

The sitting commenced with a word of prayer by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 164/2021      ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Irungu Kang'ata, CBS, MP.

**MIN. NO. 165/2021      THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2020)**

The Committee adopted the Report on its consideration of the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.



**MIN. NO. 166/2021      INQUIRY INTO EXTRA-JUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA**

The Committee adopted the Report on its inquiry into Extra-judicial killings and enforced disappearances in Kenya, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Amos Wako, EGH, SC, FCI Arb, MP.

**MIN. NO. 167/2021      ANY OTHER BUSINESS**

The Committee considered the status of legislative business before the Committee and resolved to -

- a) Undertake a working visit to Nyamira, Kericho and Elgeyo-Marakwet Counties from 9<sup>th</sup> to 13<sup>th</sup> June, 2021;
- b) Explore the possibility of holding one sitting each week, on Thursdays, at noon; and
- c) Undertake a full day working retreat every last Friday of the month, to enable the Committee to comprehensively and expeditiously process the legislative business before it.

**MIN. NO. 168/2021      ADJOURNMENT**

There being no other business, the Chairperson adjourned the meeting at 6.45 pm. The next meeting will be held on Tuesday, 25<sup>th</sup> May, 2021 at 8.00 am.



**SIGNED:** .....  
(CHAIRPERSON)

**DATE:** ..... 7<sup>th</sup> July, 2021 .....

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 220 (Senate Bills No. 33)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**SENATE BILLS, 2020**

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**NAIROBI, 8th December, 2020**

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CONTENT

Bill for Introduction into the Senate—

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**THE PARLIAMENTARY POWERS AND  
PRIVILEGES (AMENDMENT) BILL, 2020**

**A Bill for**

**AN ACT of Parliament to amend the Parliamentary Powers and Privileges Act to provide a structured mechanism through which Parliament is able to receive reports from public officers on the resolutions passed by Parliament; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Parliamentary Powers and Privileges (Amendment) Act, 2020.

Short title.

2. The Parliamentary Powers and Privileges Act, hereinafter referred to as the “principal Act” is amended by inserting the following new Part immediately after Part VI—

Insertion of new Part to No. 29 of 2017.

**PART VIA— REPORTS ON ACTION  
TAKEN ON PARLIAMENTARY  
RESOLUTIONS**

Interpretation

**23A.** In this Part, “responsible officer” means the relevant public officer to whom a resolution or report of a House or a Committee of Parliament is submitted in accordance with this Act.

Reports on  
Parliamentary  
Resolutions.

**23B.** (1) The Clerk of the relevant House shall, within seven days of a resolution of the House or of the tabling of a report of a Committee of the House, convey the resolution or a copy of the report, as the case may be, to the responsible officer under whose portfolio the implementation of the resolution or recommendation of the Committee falls.

(2) The responsible officer shall submit a status report to the relevant Committee within the period specified in the standing orders of the relevant House.

(3) A report under subsection (2) shall contain information on—

- (a) the action taken to give effect to the resolution or recommendation of a report submitted under subsection (1); and
- (b) where no action has been taken on a resolution or recommendation of a report, the reason for such inaction.

(4) The relevant Committee may, upon the written request of the responsible officer, extend the period for submission of a report under subsection (2) by such days and on such conditions as the Committee may consider necessary.

Penalty for failure to report to Parliament.

**23C.** A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Consolidated report.

**23D.** Where a response is sought on the implementation of more than one resolution of a House of Parliament, the relevant Speaker may direct that the responsible officer submits a single report on the status of implementation of all the resolutions.

Provision not to limit discretion of Parliament.

**23E.** This Part does not limit the power of Parliament to require information from any public officer in accordance with the Constitution or any other law.

**3.** The principal Act is amended by deleting section 7 and substituting therefor the following new section. Amendment of section 7 of No. 29 of 2017.

Service of civil processes.

**7 (1)** No process issued by any court in the exercise of its civil



jurisdiction shall be served or executed—

- (a) within the precincts of Parliament while a House of Parliament is sitting;
- (b) through the Speaker or any member of staff—
  - (i) unless it relates to the attachment of a Member's salary; or
  - (ii) if the subject matter relates to a Member exercising their personal duty.

(2) Subsection (1)(a) shall not apply to service made to a member of staff of Parliament authorised to receive service on behalf of—

- (a) either House of Parliament; or
- (b) the Parliamentary Service Commission.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

4. The principal Act is amended by deleting section 11.

Deletion of section  
11 of No. 29 of  
2017.

**MEMORANDUM OF OBJECTS AND REASONS****Statement of objects and reasons**

The accountability of other arms of Government to Parliament is necessary for democratic governance and is anchored on the fundamental principle that Parliament represents the will of the people and exercises their sovereignty.

Reporting requirements are one of the oversight mechanisms that Parliament employs to monitor the actions of the Executive and other independent offices to ensure accountability, transparency and responsibility in the performance of their duties.

In addition, parliamentary committee reports contain important policy recommendations and perspectives that reflect the will of the people and insights from the legislators and other stakeholders. A lot of time and resources go into the work of Committees and the resultant reports that are tabled and adopted in Parliament. It is therefore antithetical to good governance for those resolutions to be submitted to the Executive and other offices with no action taken or feedback given.

This Bill imposes a specific obligation on officials of the Executive, constitutional commissions and independent offices to comply with the requirement to give feedback to Parliament's resolutions. This has been difficult to achieve through the Standing Orders of the Houses of Parliament since they are rules for the "orderly and effective discharge of the business of Parliament", unlike legislation which has a binding effect on those to whom it applies. Although the current Standing Orders provide for reporting on resolutions, very few reports are ever submitted on action taken on the resolutions passed by Parliament.

The Bill will therefore ensure that feedback on Parliament's resolutions and reports is not only given but given in a timely manner as delays or failure to submit reports undermine the ability of Parliament to undertake its oversight mandate.

The Bill provides a structured mechanism through which the Executive and the independent commissions and offices are required to give greater consideration to the issues raised and the recommendations made by Parliament.

The Bill further amends section 7 of the Parliamentary Powers and Privileges Act to comply with the decision of the High Court (Justice J.M. Mativo) in *Apollo Mboya v Attorney General & 2 others* (2018). The High Court declared the provision unconstitutional to the extent that it restricts service of Civil Process to the staff working in Parliament,

among them legal officers authorized to receive service on behalf of Parliament.

The Bill further deletes section 11 of the Parliamentary Powers and Privileges Act to comply with the same High Court decision. The High Court declared the provision an ouster clause and determined that ouster clauses are antithetical to a just society. It found that ouster clauses offend the constitutional principle of the rule of law because an aggrieved citizen is denied the possibility of access to the courts to challenge the decision affecting them. In this respect, the provision was declared an ouster clause and therefore unconstitutional in its entirety.

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

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

**Statement on how the Bill concerns county governments**

This Bill provides for a structured mechanism through which Parliament is able to receive reports from the Executive, constitutional commissions and independent offices and on its resolutions. These reports enable Parliament to hold the relevant offices accountable on various matters, including matters touching on the functions and powers of county governments and to require these offices to give regard to input given by Parliament.

Further, the Bill is in line with Articles 153(4)(b) and 254(2) of the Constitution which requires the Executive, constitutional commissions and independent offices to report to both Houses of Parliament on matters falling within their respective jurisdictions. This is necessary for the Senate in the exercise of its mandate under Articles 94 and 96 of the Constitution.

The Bill therefore concerns county governments in terms of Article 110(1)(a) of the Constitution as it affects the functions and powers of county governments set out in the Fourth Schedule.

**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 the 2nd December, 2020.

AGNES P. ZANI,  
*Senator.*

***Section 7 of No. 29 of 2017 which it is proposed to amend—***

**Service of civil process**

7. (1) No process issued by any court in Kenya in the exercise of its civil jurisdiction shall be served or executed—

- (a) within the precincts of Parliament while either one or both Houses are sitting; or
- (b) through the Speaker or any officer of Parliament—
  - (i) unless it relates to a person employed within the precincts of Parliament or to the attachment of a member's salary; or
  - (ii) if the subject matter relates to a member or members exercising their personal duties.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

***Section 11 of No. 29 of 2017 which it is proposed to delete—***

**Proceedings not to be questioned in courts**

11. No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court.



# REPUBLIC OF KENYA



## TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

### INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 4<sup>th</sup> March, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Standing Orders of the Senate, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke) and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Wednesday, 31<sup>st</sup> March, 2021 at 5.00pm.**

Bill	Committee Referred To	Email Address
The Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020)	Standing Committee on Health	<a href="mailto:senatekehealth@gmail.com">senatekehealth@gmail.com</a>
The Persons with Disabilities (Amendment) Bill (Senate Bill No. 29 of 2020)	Standing Committee on Labour and Social Welfare	<a href="mailto:senatecommittee.labour@parliament.go.ke">senatecommittee.labour@parliament.go.ke</a>
The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 30 of 2020)	Standing Committee on Land, Environment and Natural Resources	<a href="mailto:senlandenviron@gmail.com">senlandenviron@gmail.com</a>
The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020)	Standing Committee on Finance and Budget	<a href="mailto:scfinanceandbudget@gmail.com">scfinanceandbudget@gmail.com</a>
The County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020)	Standing Committee on Tourism, Trade and Industrialization	<a href="mailto:senatetourismandtrade@gmail.com">senatetourismandtrade@gmail.com</a>
The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020)	Standing Committee on Justice, Legal Affairs and Human Rights	<a href="mailto:senatejlahrc@gmail.com">senatejlahrc@gmail.com</a>
The Community Health Services Bill (Senate Bills No. 34 of 2020)	Standing Committee on Health	<a href="mailto:senatekehealth@gmail.com">senatekehealth@gmail.com</a>
The Political Parties Primaries Bill (Senate Bills No. 35 of 2020)	Standing Committee on Justice, Legal Affairs and Human Rights	<a href="mailto:senatejlahrc@gmail.com">senatejlahrc@gmail.com</a>

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**



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**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

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**ADVISORY ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2020**

**PRESENTED TO**

**THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS**

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**SUBMISSION DATE: 31<sup>ST</sup> MARCH 2021**

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## **A. INTRODUCTION**

1. The Kenya National Commission on Human Rights (KNCHR), is an independent National Human Rights Institution established under Article 59 of the Constitution of the Constitution of Kenya, 2010 and operationalized under the Kenya National Commission on Human Rights Act 2011.<sup>1</sup> It is the successor to the Kenya National Commission on Human Rights established in 2003 under the Kenya National Commission on Human Rights Act 2002.<sup>2</sup> KNCHR has a broad mandate to promote a culture of respect for human rights in Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles.
2. The KNCHR is mandated under Article 249 of the Constitution to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the KNCHR to secure observance of all state organs of democratic values and principles is through the review of bills, new laws and subsequent issuance of advisories. It is in this regard, that the National Commission issues this advisory.

## **B. BACKGROUND**

3. The Parliamentary Powers and Privileges (Amendment) Bill, 2020<sup>3</sup> seeks to amend the Parliamentary Powers and Privileges Act (No. 27 of 2017). According to the statement of object and reasons, the Bill is premised on the notion that delays or failure to submit

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<sup>1</sup> Act No 14 of 2011 available at <http://www.kenyalaw.org/lex//actview.xql?actid=No.%2014%20of%202011>

<sup>2</sup> Act No 9 of 2002 (repealed). The History of the institution however dates further back in 1996 when the then His Excellency President Moi set up a Standing Committee on Human Rights (SCHR) vide a gazette notice of June 1996.

<sup>3</sup> Kenya Gazette Supplement No. 18 (Senate Bills I No. 4).

reports to parliament undermines the ability of Parliament to undertake its oversight mandate. The Bill therefore, “imposes a specific obligation on officials of the Executive, constitutional commissions and independent offices to comply with the requirement to give feedback to Parliament’s resolutions.” Once enacted into law, it is envisioned that it will, “ensure that feedback on Parliament’s resolutions and reports is not only given but given in a timely manner”.

4. Sponsored by Hon Agnes Zani, the Bill dated December 2020 proposes to introduce a new Part VIIA to the Principal Act. The Bill introduces provisions to require the transmission of a copy of the resolutions of the House to the responsible officer within seven days of the resolution or tabling of a report of the Committee. Failure by the responsible officer to give a status report within the required period attracts a penalty of Ksh 500,000 and/or six months imprisonment. The Bill further seeks to amend sections 7 and 11 of the Act in compliance with the judgment of the High Court in ***Apollo Mboya v Attorney General***. In its judgment of 21<sup>st</sup> May 2018, the High Court declared that, **sections 7 and 11** of the Parliamentary Powers and Privileges Act (No. 29 of 2017) contravene Articles 1, 2, 3, 10, 19, 20, 21(1), 22, 23, 24, 48, 50, 93 (2), 94 (4), 159, and 258 of the Constitution of Kenya and therefore null and void.<sup>4</sup>
5. The Parliamentary Powers and Privileges Act (PPP Act) commenced operations on 16<sup>th</sup> August 2017 and according to its long title, it is meant to, *inter alia* “give effect to Article 117 of the Constitution”. Article 117 of the Constitution is one that provides as follows:
  - 117 (1). There shall be freedom of speech and debate in Parliament.
  - (2) Parliament may, for the purposes of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members.

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<sup>4</sup> *Apollo Mboya v Attorney General & 2 others* [2018] eKL Petition No. 472 of 2017 available at <http://kenyalaw.org/caselaw/cases/view/152585/>.



6. The Parliament exercises delegated sovereign power of the people of Kenya.<sup>5</sup> Article 94 of the Constitution recognises that the legislative authority of the Republic is derived from the people and vested in Parliament at the national level. Parliament is bound to in turn perform its functions in accordance with the Constitution of Kenya, to protect the Constitution and promote the democratic governance of the Republic.<sup>6</sup> Both Houses are constitutionally mandated to exercise oversight of state organs as well as national revenue.<sup>7</sup>
7. Besides the legislative function, Parliament plays a crucial role of oversight over other state organs. Pursuant to exercise of these powers, either House whether the National Assembly or the Senate, “has power to summon any person to appear before it for the purpose of giving evidence or providing information”.<sup>8</sup> The PPP Act further details the procedure for summoning witnesses and consequences for non-attendance of witnesses.
8. The courts have recognised the significance of parliamentary oversight, noting that, “Parliamentary decisions may affect the way the Country is governed and or affect the Citizens rights” and that, “Decisions made by Parliamentary Committees can have serious impacts on citizens fundamental rights and freedoms”.<sup>9</sup>

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<sup>5</sup> Article 1(3)(a) Constitution of Kenya, 2010.

<sup>6</sup> See Articles 1(3) and 94(4) Constitution of Kenya, 2010.

<sup>7</sup> Under Article 95(5), the National Assembly: (a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and (b) exercises oversight of state organs. The Senate on the other hand, “participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145” (Article 96(4)). On financial oversight, Article 95(4)(c), the National Assembly exercises oversight over national revenue and its expenditure whereas the Senate is mandated under Article 96(3) to exercise ‘oversight over national revenue allocated to the county governments.

<sup>8</sup> Article 125 Constitution of Kenya, 2010.

<sup>9</sup> High Court (Mativo J.) in *Apollo Mboya v Attorney General & 2 others* [2018] eKL Petition No. 472 of 2017 para. available at <http://kenyalaw.org/caselaw/cases/view/152585/>.

9. The High court has defined parliamentary privilege as, “a legal immunity enjoyed by members of Parliament, in which legislators are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties”.<sup>10</sup>

10. In elucidating on the nature and purpose of parliamentary immunity, the courts have further interpreted that parliamentary immunity, “is designed to ensure the proper operation of Parliament”, that “it confers specific rights and privileges to members of parliament, most importantly the privilege of freedom of speech. Indeed, freedom of expression is the working tool of Members of Parliament which enables them to do their job as representatives of the people, legislating, adopting the budget and overseeing the activities of the government”. The Court went on to clarify the purpose of parliamentary immunity in the following terms:

Parliamentary immunity is not an individual privilege granted to members of parliament for their personal benefit, but rather a privilege for the benefit of the people and the institution which represents them, Parliament. Parliamentary immunity ensures that Parliament can fulfill its tasks and function without obstruction from any quarter. Obviously, a Parliament can only work insofar as its members are free to carry out their mandate. Immunity is therefore a prerequisite for ensuring that a Parliament can indeed function as an independent institution and vindicate its own authority and dignity.<sup>11</sup>

11. Separation of powers is a core element of our constitutional set up. As the Court of Appeal observed in ***Mumo Matemu case*** :

It is not in doubt that the doctrine of separation of powers is a feature of our Constitutional design and a per-commitment in our Constitutional edifice. However, separation of power does not only proscribe organs of Government

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<sup>10</sup> *Apollo Mboya v Attorney General & 2 others* para. 69.

<sup>11</sup> *Apollo Mboya v Attorney General & 2 others* Para 73.

from interfering with the other's functions. It also entails empowering each organ of Government with countervailing powers which provide checks and balances on actions taken by other organs of Government. Such powers are, however, not a licence to take over functions vested elsewhere. There must be judicial, legislative and executive deference to the repository of the function.<sup>12</sup>

12. Article 153 obliges cabinet secretaries to attend before the National Assembly or Senate, or the respective House committees when required to, and to answer any question, concerning a matter for which they are responsible. It further requires Cabinet secretaries to, "provide Parliament with full and regular reports concerning matters under their control".<sup>13</sup>

13. Like all state organs and persons, the commissions and independent offices are required to operate only subject to the Constitution and the law. **Article 254** provides a mechanism of reporting for Commissions and Independent Offices in the discharge of their functions. The provision states as follows:

**254. Reporting by commissions and independent offices**

(1) As soon as practicable after the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament. Constitution of Kenya, 2010 Const2010 109 (2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue. (3) Every report required from a commission or holder of an independent office under this Article shall be published and publicised.

Similar provisions are reiterated in the respective constitutive Acts of Commissions and Independent Offices.

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<sup>12</sup>*Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR Civil Appeal 290 of 2012 accessible at <http://kenyalaw.org/caselaw/cases/view/84167/>.

<sup>13</sup> Article 153(4)(b) Constitution of Kenya, 2010.

14. As the Supreme Court professed in the ***National Land Commission Case***, “The system of checks and balances serves the cause of accountability, and it is a two-way motion between different State organs, and among bodies which exercise public power. The commissions and independent offices restrain the arms of Government and other State organs, and *vice versa*. The spirit and vision behind separation of powers is that there be checks and balances, and that no single person or institution should have a monopoly of all powers”.<sup>14</sup>

### C. GENERAL COMMENTS ON PROPOSED BILL

15. First, the Commission generally welcomes the intention of the Bill in as far as it seeks to entrench accountability, good governance and constitutionalism. The legislative intent to boost Parliamentary oversight mandate with regard to reporting by state organs and implementation of its resolutions is in line with Articles 1, 10, 94, 95, 96, 117, 125, 153 and 254 of the Constitution of Kenya, 2010.

16. Secondly, the Commission applauds Clause 4 of the Bill that proposes to delete section 11 of the PPP Act to align with the judgment of the High Court in the ***Apollo Mboya case***.<sup>15</sup> The Court found sections 7 and 11 to be an ouster clauses that prevent courts from carrying out their constitutional function contrary to the doctrine of separation of powers thus unconstitutional.<sup>16</sup> Section 11 of the Act provides, “No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court”. In its determination, the High Court found that section 11, “bars any person from challenging in Court decisions made by Parliament or its committees” and “seeks to shield their decisions from court scrutiny”. The Court upheld

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<sup>14</sup> In the Matter of the National Land Commission [2015] eKLR (Advisory Opinion Reference No. 2 of 2014) para 193 available at <http://kenyalaw.org/caselaw/cases/view/116512>.

<sup>15</sup> *Apollo Mboya v Attorney General & 2 others* [2018] eKL Petition No. 472 of 2017 available at <http://kenyalaw.org/caselaw/cases/view/152585/>.

<sup>16</sup> See *Apollo Mboya v Attorney General & 2 others* para 61.

the supremacy of the Constitution decreeing that, "In our constitutional dispensation, it is not Parliament, or the executive or the Judiciary that are Supreme, but the Constitution".

17. Thirdly, however, the Commission takes issue with the proposed replacement to section 7 of the PPP Act noting that the content more or less retains the impugned provisions. As currently proposed, the section will not cure the mischief that the High Court identified in declaring the section unconstitutional in the *Apollo Mboya case*(above). Section 7 of the PPP Act currently reads as follows:

**7. Service of Civil process**

(1). No process issued by any Court in Kenya in the exercise of its civil jurisdiction shall be served or executed-

(a) within the precincts of Parliament while either one or both Houses are sitting;  
or

(b) through the Speaker or any officer of Parliament-

- i. unless it relates to a person employed within the precincts of Parliament or attachment of a member's salary; or
- ii. if the subject matter relates to a member or members exercising their personal duties.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

Clause 3 of the Bill proposes to substitute the above provisions with the ones below:

**7. Service of civil processes.**

(1) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed—

(a) within the precincts of Parliament while a House of Parliament is sitting;

(b) through the Speaker or any member of staff—

(i) unless it relates to the attachment of a Member's salary; or

(ii) if the subject matter relates to a Member exercising their personal duty.

(2) Subsection (1)(a) shall not apply to service made to a member of staff of Parliament authorised to receive service on behalf of—

(a) either House of Parliament; or

(b) the Parliamentary Service Commission.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

18. The Commission notes with concern that the Provision still violates the right of access to justice and the limitation that is imposed on Article 48 does not meet the constitutional muster under Article 24 of the Constitution of Kenya 2010. It is neither reasonable nor justifiable in a democratic and open society. This is especially so considering the broad definition of precincts of Parliament under section 3 of the Act and further that there is no express provision that designates member of staff to receive service on behalf of the Parliament or the Public Service Commission. In any case, even the attempt to salvage the offensive Clause 7(1)(a) through Clause 7(2), does not work since Clause 7(1)(b) already claws back on the access to justice by limiting the scope of subject matter. A strict reading of this provision would mean for instance, that processes concerning election petitions (which do not fall under the ambit of Clause 7(1) (b) above) cannot be affected either on Members of Parliament or even the staff of Parliament within the precincts of Parliament. Lastly, there is already in place certain sections of the PPP Act that work to ensure there is no disturbance to parliamentary business. For example, sections 5, 6, 8 and 26 of the Act which safeguard the members and precincts of parliament and activities carried thereon.

The Commission therefore **highly recommends**, that the House deletes the provisions of Clause 3 of the Bill altogether and instead replaces with a complete deletion of section 7 of PPP Act as does Clause 4 of the Bill in deleting section 11. The Clause as crafted is likely to suffer a similar challenge of unconstitutionality and fate as the extant one.

19. Finally, whilst it is incumbent on the responsible officers to submit reports to Parliament, **there should be a correlative duty imposed on the responsible Committees and House of Parliament to table the reports before the Houses within a specified period, debate the reports and submit feedback to the relevant officers/institutions within a reasonable period.** Commissions, independent offices and other agencies often submit various reports to Parliament. The expectation is that these reports are debated and

acted upon to inform policy, correct behaviour in the public interest. There have been concerns over delays or lack of debate over reports previously submitted by the institutions, thus affecting implementation of recommendations in those reports by the relevant duty bearers.



#### D. SPECIFIC COMMENTS

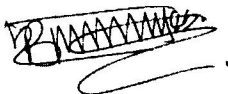
20. Further to the foregoing, the Commission proposes the following specific amendments to the Bill:

S/NO	CLAUSE IN THE PPP BILL, 2020	PROPOSED AMENDMENT	RATIONALE/JUSTIFICATION
1.	Clause 2: Reports on Parliamentary Resolutions	Amend the proposed section 23 B (2) to read, "(2) The responsible officer shall submit a status report to the relevant Committee within the period specified in the communication from the Clerk	For certainty and transparency. As it reads, cross-referencing the respective standing orders of the House, is not helpful.  Leave the responsibility to the Clerk of the House to ensure that the notice period given to the responsible officer conforms to the respective Standing Orders.
2.	Clause 2: Penalty for failure to report to Parliament	Under section 23(C), add a subsection to clarify whether such payment of fine is to be levied on the specific officer or in the case of a corporate, if such monies will be a 'corporate' liability.	Whilst it is understood that criminal sanctions apply singularly to responsible officers, it is useful to expressly provide for this for avoidance of doubt. This would ensure effectiveness of the penalty and to safeguard public monies where it is proven a failure is a result of negligence of responsible officers.

S/NO	CLAUSE IN THE PPP BILL, 2020	PROPOSED AMENDMENT	RATIONALE/JUSTIFICATION
		<p>Use of the term 'conviction' needs further clarification. Is the intention to have Parliament exercise powers of the High Court as in Article 125(2) of the Constitution as read with section 19 of PPP Act or is reference to the judicial process? Either way, the provisions need to provide for due process in such a determination.</p>	<p>For clarity and to ensure that responsible officers are accorded fair administrative action in line with Article 47 of the Constitution as read with the Fair Administrative Action Act, 2015(No. 4 of 2015).</p> <p>Section 19 of PPP Act is clear that if a witness fails to honour summons by the House, it is the relevant House or Committee to impose upon the witness such fine, not exceeding five hundred thousand shillings. The provision is also express that, "Parliament or its committee may order the arrest of a person who fails to honour a summons".</p> <p>For avoidance of confusion, it is necessary that clarity be brought to bear upon the proposed new section.</p>
3.	Clause 3	<p>Delete Clause 3 and substitute therefor the following:</p> <p><b>"Deletion of section 7 of No. 29 of 2017</b> <b>3. The principal Act is amended by deleting section 7".</b></p>	<p>To align with High Court Judgment in <i>Apollo Mboya Case</i>(above).</p> <p>Because as currently stands, the proposed substitution does not cure the mischief and infringes on the right of access to justice. Such limitation does not meet the dictates under Article 24 of the Constitution on limitation of rights as it overly broad and appears to spill outside the intended purpose/objective of parliamentary privilege to ensure orderly conduct of parliamentary business to actually shielding the members of parliament from certain civil processes altogether.</p>

S/NO	CLAUSE IN THE PPP BILL, 2020	PROPOSED AMENDMENT	RATIONALE/JUSTIFICATION
			Furthermore, there are already in place other provisions under the PPP Act as well as the Standing Order which together work to safeguard the precincts of parliament and ensure orderly conduct of parliamentary business.

Yours Sincerely,



**Dr. Bernard Mogesa, PhD, CPM**  
**Secretary to The Commission/Chief Executive Officer**

THE SENATE



THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2021

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
2	Kenya Commission on Human Rights (KNCHR)	<p>1. Amend the proposed section 23 B (2) to read –</p> <p>(2) The responsible officer shall submit a status report to the relevant Committee within the period specified in the communication from the Clerk</p> <p>2. Under section 23(C), add a subsection to clarify whether such payment of fine is to be levied on the specific officer or in the case of a corporate, if such monies will be a 'corporate' liability.</p>	<p>For certainty and transparency. cross-referencing the respective standing orders of the House, is not helpful.</p> <p>Leave the responsibility to the Clerk of the House to ensure that the notice period given to the responsible officer conforms to the respective Standing Orders.</p>	<p>Clause 2 of the Bill be amended to provide timelines, without being restrictive, within which a responsible public officer shall submit a report on the implementation of a resolution of Parliament.</p>
		<p>2. Under section 23(C), add a subsection to clarify whether such payment of fine is to be levied on the specific officer or in the case of a corporate, if such monies will be a 'corporate' liability.</p>	<p>Whilst it is understood that criminal sanctions apply singularly to responsible officers, it is useful to expressly provide for this for avoidance of doubt. This would ensure effectiveness of the penalty and to safeguard public monies where it is proven a failure is as a result of negligence of responsible officers.</p>	<p>Liability will depend on the facts of the case. And it is after analysis of those facts that a court of law will determine whether it will be individual or corporate.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>3. The term 'conviction' used in the proposed 23C needs clarification. Is the intention to have Parliament exercise powers of the High Court as in Article 125(2) of the Constitution as read with section 19 of PPP Act or is reference to the judicial process? Also, the provisions need to provide for due process in such a determination.</p>	<p>For clarity and to ensure that responsible officers are accorded fair administrative action in line with Article 47 of the Constitution as read with the Fair Administrative Action Act, 2015.</p> <p>Section 19 of PPP Act is clear that if a witness fails to honour summons by the House, it is the relevant House or Committee to impose upon the witness such fine, not exceeding five hundred thousand shillings. The provision is also express that, "Parliament or its committee may order the arrest of a person who fails to honour a summons".</p>	<p>The enforcement here is contemplated criminal enforcement where principles of criminal law will be applicable before punishment.</p> <p>On the other hand, section 19 of the Act contemplates an administrative fine which does not require the strict adherence to the principles of criminal law.</p>
3	KNCHR	<p>Amend clause 3 to read –</p> <p>The principal Act is amended by deleting section 7.</p>	<p>To align with High Court Judgment in Apollo Mboya v Attorney General &amp; 2 others [2018] Case.</p> <p>The proposed substitution does not cure the mischief and infringes on the right of access to justice. Such limitation does not meet the dictates under Article 24 of the Constitution on limitation of rights as it is overly broad and appears to spill outside the intended purpose/objective of parliamentary privilege to ensure orderly conduct of parliamentary business to actually shielding the members of parliament from certain civil processes altogether.</p> <p>Also, there are other provisions under the PPP Act and Standing Orders which together work</p>	<p>The High Court declared section 7 of the Act unconstitutional only to the extent that it restricts service of Civil Process to the staff working in Parliament, among them legal officers authorized to receive service on behalf of Parliament. The amendment therefore seeks to remove its application on staff authorized to receive service on behalf of Parliament.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			to safeguard the precincts of parliament and ensure orderly conduct of parliamentary business.	

21<sup>st</sup> May, 2021

The Clerk of the Senate  
Parliament Buildings

**NAIROBI**

**RE: COMMITTEE STAGE AMENDMENTS TO THE PARLIAMENTARY  
POWERS AND PRIVILEGES (AMENDMENT) BILL, SENATE BILLS NO.  
33 OF 2020**

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NOTICE is given that Sen. Erick Okong’o Mogeni, the Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Parliamentary Powers and Privileges (Amendment) Bill, Senate Bills No. 33 of 2020, at the Committee Stage —

**CLAUSE 2**

**THAT** clause 2 of the Bill be amended in the proposed new section 23B by deleting subsection (2) and substituting therefor the following new subsection –

- (2) The responsible officer shall submit a status report to the relevant Committee within sixty days from the date the resolution is conveyed or within such period as shall be specified by a resolution of the House.

Date: 5<sup>th</sup> October, 2021.



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Sen. Erick Okong’o Mogeni, SC, MP,  
Chairperson,  
Standing Committee on Justice, Legal Affairs and Human Rights.