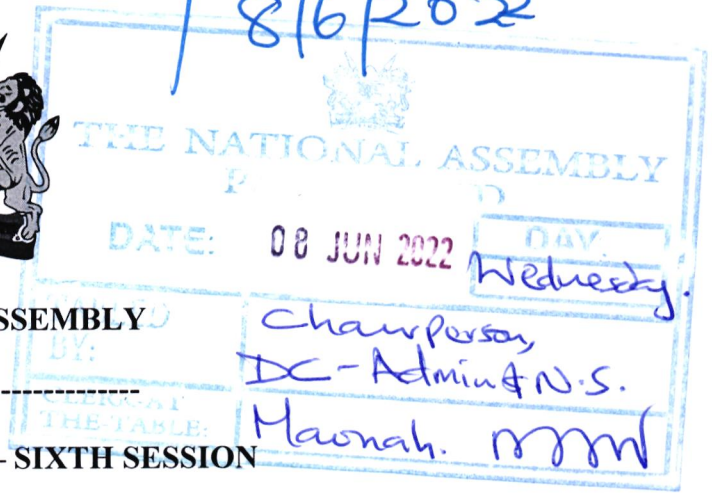


Approved for tabling in the House.

8/6/2022
SNA

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SIXTH SESSION

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON THE THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILL NO. 38 OF 2021)

DIRECTORATE OF DEPARTMENTAL COMMITTEES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2022

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CHAIRPERSON'S FOREWORD

The County Governments (Amendment) Bill, 2021 (*Senate Bill No. 38 of 2021*) was read a First time on Wednesday, 2nd March 2022 and immediately committed to the Departmental Committee on Administration and National Security for reporting to the House pursuant to the provisions of Standing Order 127.

The Bill seeks to amend the County Government Act, 2012 to provide clarity in the operation of the County Assembly Service Board in instances where the office of a Speaker becomes vacant.

In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Orders 127(3), the Committee, through local daily newspapers of Monday, 7th March, 2022 published advertisements inviting the public to submit memoranda on the Bill. However the Committee did not receive any comments from the public.

The report contains the signed list of Members who attended the sitting which considered and adopted the report on Thursday, 28th April 2022 and a copy of the newspaper advertisements of Monday, 7th March, 2022.

May I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty, the Speaker, and the Clerk of the National Assembly for providing leadership and direction, and finally the Committee Secretariat for exemplary performance in the provision of technical and logistical support. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability and transparency.

On behalf of the Departmental Committee on Administration and National Security and under the provisions of Standing Order 127(4) and 199 (6), it is my pleasant privilege and duty to present to the House the Report of the Committee on its consideration of the County Governments (Amendment) Bill, 2021.


HON. PETER MWATHI, CBS, MP
(CHAIRPERSON)

**DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL
SECURITY**

1.0 PREFACE

1. The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to the provisions of Standing Orders 216(1). The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, *inter alia*:
 - a) *investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and*
 - b) *study and review all legislation referred to it;*
 - c) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204.*
2. In executing its mandate, the Committee oversees the functioning of the following Ministries and Departments:
 - i) Ministry of Interior and Coordination of National Government
 - a) State Department of Interior
 - b) State Department of Border Control, Immigration and Registration of Persons.
 - c) State Department of Correctional Services
 - ii) The National Police Service Commission
 - iii) The Independent Policing Oversight Authority
 - iv) The Public Service Commission
3. According to Schedule II of the Standing Orders, the subjects under the purview of the Constitution as follows:
 - i) National Security;
 - ii) Police Services;
 - iii) Home Affairs;
 - iv) Public Administration;
 - v) Public Service,
 - vi) Prisons;
 - vii) Immigration

2.0 COMMITTEE MEMBERS

Chairperson

Hon. Peter Mwathi, CBS, M.P.
Limuru Constituency
Jubilee Party

Vice-Chairperson

Hon. Fatuma Gedi, CBS, MP
Wajir County
Jubilee Party

Hon. Jeremiah Lomurukai, MP
Loima Constituency
ODM Party

Hon. Abdi Shurie, MP
Balambala Constituency
Jubilee Party

Hon. (Dr.) Tecla Tum, MP
Nandi County
Jubilee Party

Hon. Aduma Owour, MP
Nyakach Constituency
ODM Party

Hon. Kaluma Peter, MP
Homa Bay Town Constituency
ODM Party

Hon. Halima Mucheke, MP
Nominated Member
Jubilee Party

Hon. Wambugu Munene, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Col. (Rtd) Geoffrey King'ang'i, MP
Mbeere South Constituency
Jubilee Party

Hon. (Dr.) Makali Mulu, MP
Kitui East Constituency
Jubilee Party

Hon. Oku Kaunya, MP
Teso North Constituency
ANC Party

Hon. Nimrod Mbai, MP
Kitui East Constituency
Jubilee Party

Hon. Dr. Mishra Swarup, MP
Kesses Constituency
Jubilee Party

Hon. Ngunjiri Wambugu, MP
Nyeri Town Constituency
Jubilee Party

Hon. Marselimo Arbelle, MP
Laisamis Constituency
Jubilee Party

Hon. Peter Masara, MP
Suna West Constituency
Independent Party

Hon. Rozaah Buyu, MP
Kisumu County
ODM Party

COMMITTEE SECRETARIAT

Mr. Adan Sora Gindicha
Senior Clerk Assistant
Head of Secretariat

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigitta Mati
Legal Counsel

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Joseph Okongo
Media Officer

Delvin Onyancha
Research/Policy Analyst

Mr. Josphat Bundotich
Serjeant-at-Arms

Ms. Eva Kaare
Serjeant-at-Arms

Rodgers Kilungya
Audio Recording Officer

2.0 OVERVIEW OF THE OF COUNTY GOVERNMENTS (AMENDMENT) BILL, 2021,

The primary objective of the Bill is to amend the County Governments Act in the following manner—

4. Clause 2 of the Bill seeks to amend section 12 of the County Governments Act in order to provide clarity on instances when the office of the Speaker is vacant. It amends to state that the deputy speaker who is the acting speaker shall not assume the role of the office of a chairperson of the Board in the proposed new section (4A).
5. In the new (4B), it provides that in the absence of the chairperson of the Board, the vice chairperson of the Board shall preside over the meetings of the Board or if the vice chairperson is incapacitated, then the Board shall elect a chair from members of the Board.
6. Clause 3 seeks to amend section 47 to provide that the governor shall within three months of the close of the financial year, submit the annual performance reports of the county executive committee and public service board to the county assembly and the senate for consideration.
7. Clause 4 seeks to amend section 91A of the Act by deleting it and substituting with a new section 91A. The objective of the amendment is to disband the county development boards and establish a county leader's forum.
8. It is important to note that although clause 4 seeks to disband the establishment of county development boards, section 91B and 91C have not been deleted in order to actualise this. The net effect of the oversight will bring confusion in establishing the forum as there still exists a county development board by virtue of section 91B& 91C.

3.0 PUBLIC PARTICIPATION

9. In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Orders 127(3), the Committee, through local daily newspapers of Monday, 7th March, 2022 published advertisements inviting the public to submit memoranda on the Bill. However the Committee did not receive any comments from the public.

4.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

The Committee considered and approved the following clauses—

- a) Clause 1;
- b) Clause 2; and
- c) Clause 3;

The Committee rejected—

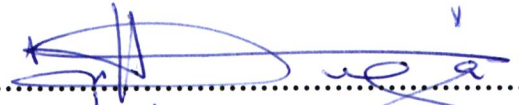
Clause 4

6.0 COMMITTEE OBSERVATIONS

10. In considering the County Governments (Amendment) Bill, 2021 the Committee made the following observations:
- a) That the Bill seeks to amend section 12 of the County Governments Act in order to provide clarity on instances when the office of the Speaker is vacant;
 - b) That the Bill intends to safeguard the position of the chairperson of the Board where he or she is absent from a meeting;
 - c) That the Bill also seeks to include the senate in the consideration of annual performance reports of the county executive committee and public service board;
 - d) That the Bill seeks to establish a county leaders forum which is to among others, consider the views of the county government on the Budget Policy Statement before its adopted, the formula for revenue allocation before it is adopted, the annual division Bills and county Allocation of Revenue Bills before adoption and appropriations from the equalization fund before adoption;
 - e) The proposal for the county leader's forum and the proposed functions seeks to bring confusion in the consideration of the BPS, formula for revenue allocation, annual division of revenue bill and county allocation of revenue bills and appropriations from the equalization fund because there is already a structure provided for in law in consideration of the above;
 - f) It is not line with the Public Finance Management Act and the Constitution to subject the BPS to the County leaders Forum. The BPS deals with proposed expenditure of national government

7.0 COMMITTEE RECOMMENDATIONS

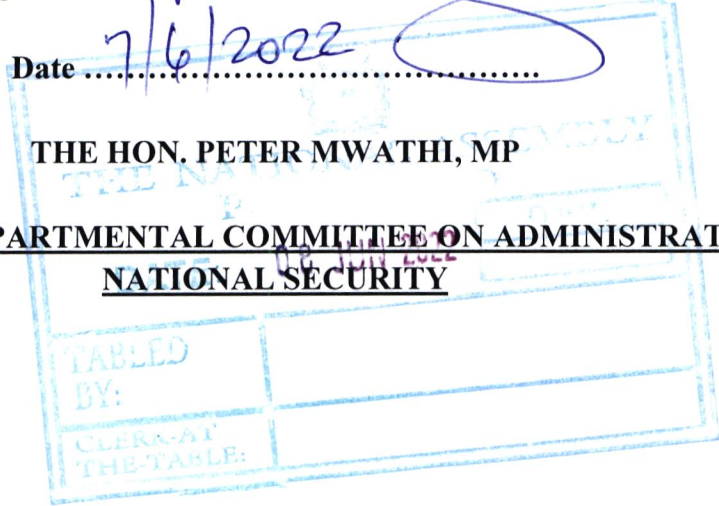
Arising from the aforementioned observations, the Committee recommends the House passes the Bill with recommendations as set out in the attached schedule:

Sign 

Date 7/6/2022

THE HON. PETER MWATHI, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY



SCHEDULE OF PROPOSED AMENDMENTS

THAT the House to **approves** the following clauses—

- d) Clause 1;
- e) Clause 2; and
- f) Clause 3;

And that further, the House **rejects**—
Clause 4 of the Bill.



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SIXTH SESSION**

**In the Matter of Article 118(1) (b) of the Constitution
and
In the Matter of Consideration by the National Assembly of:-**

1. **The Elections (Amendment) Bill** (*Senate Bill No. 42 of 2022*)
2. **The County Governments (Amendment) Bill** (*Senate Bill No.38 of 2021*)
3. **The County Oversight and Accountability Bill** (*Senate Bill No. 17 of 2021*)
4. **The Heritage and Museums Bill** (*Senate Bill No. 22 of 2021*)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Elections (Amendment) Bill (*Senate Bill No. 42 of 2021*) is sponsored by **Sen. Kipchumba Murkomen M.P.** and seeks to amend section 22 of the Elections Act, No. 24 of 2011 on qualifications for nomination of candidates for election to the office under the Constitution and the Act.

The County Oversight and Accountability Bill (*Senate Bill No. 17 of 2021*) is sponsored by **Sen. Ledama Olekina, M.P.** and seeks to amend the County Oversight and Accountability Act to provide a framework and mechanism for effective oversight over the county government by the Senate.

The Heritage and Museums Bill (*Senate Bill No. 22 of 2021*) is sponsored by **Sen. Alice Milgo, M.P.** and seeks to give effect to the Fourth Schedule to the Constitution. The Bill proposes to retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006, to provide for national and county museums; the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and to repeal the National Museums and Heritage Act, 2006.

The County Governments (Amendment) Bill (*Senate Bill No. 38 of 2021*) is sponsored by **Sen. Moses Otieno Kajwang, M.P.** and seeks to amend the County Governments Act, 2012 to provide clarity in the operation of the County Assembly Services Board in instances where the office of a Speaker becomes vacant.

The Bills were Read a First Time on **Wednesday, 2nd March, 2022** and pursuant to National Assembly Standing Order 127(1) committed to House Departmental Committees as set out in the schedule hereunder:

SCHEDULE

No.	BILL	COMMITTEE
1.	The Elections (Amendment) (<i>Senate Bill No.42 of 2021</i>)	Justice and Legal Affairs
2.	The County Oversight and Accountability (<i>Senate Bill No. 17 of 2021</i>)	Finance and National Planning
3.	The Heritage and Museums Bill (<i>Senate Bill No. 22 of 2021</i>)	Sports, Culture and Tourism
4.	The County Governments (Amendment) (<i>Senate Bill No.38 of 2021</i>)	Administration and National Security

Now Therefore, in compliance with Article 118(1)(b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites members of the public and stakeholders to submit memoranda on the Bill. Copies of the Bills are available at the National Assembly Table Office or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to clerk@parliament.go.ke; to be received **on or before Monday, 21st March, 2022 at 5.00 p.m.**

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
7th March 2022

**MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY , 25TH
APRIL, 2022 AT 9.30 A.M. AT WHITE SANDS HOTEL, MOMBASA**

PRESENT

1. Hon. Peter Mwathi, CBS, MP – Chairperson
2. Hon. Dr. Makali Mulu, MP
3. Hon. Aduma Owour, MP
4. Hon. Peter Kaluma, MP
5. Hon. Marselino Arbelle, MP
6. Hon. Dr. Tecla Tum, MP
7. Hon. Halima Mucheke, MP
8. Hon. Peter Masara, MP
9. Hon. Rozaah Buyu, MP
10. Hon. William Chepkut, MP
11. Hon. Wambugu Munene, MP
12. Hon. Oku Kaunya, MP
13. Hon. Abdi Shurie, MP

ABSENT WITH APOLOGIES.

1. Hon. Fatuma Gedi, CBS, MP – Vice-Chairperson
2. Hon. Jeremiah Lomurukai, MP
3. Hon. Nimrod Mbithuka Mbai, MP
4. Hon.Col(Rtd) Geoffrey Kingangi, MP
5. Hon. Ngunjiri Wambugu, CBS, MP
6. Hon. Dr. Swarup Mishra, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT

1. Mr. Adan Gindicha - Senior Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant
3. Ms. Brigitta Mati - Legal Counsel
4. Ms. Delvin Onyancha - Research Assistant Officer
5. Ms. Eva Kaare - Serjeant-At-Arms

MIN No. 38/2022:-

**PRELIMINARIES AND COMMUNICATION FROM
THE CHAIRPERSON**

The Chairperson called the meeting to order at 9.23am with a word of prayer.

The agenda was adopted after being proposed by Hon. William Chepkut, MP and seconded by Hon. Oku Kaunya, MP.

MIN No. 39/2022:-

ADOPTION OF THE REPORT ON THE NATIONAL FLAG, EMBLEMS & NAMES (AMENDMENT) BILL (SENATE BILL NO. 36 OF 2020)

The Committee considered the report and made the following observations and recommendation-

Observations

- a) Copyright exists to give the owner of a work the exclusive right to control how their work is used, communicated and distributed in any medium. In copyright law, protection of a creative work lasts for the lifetime of the author and an extra fifty to seventy years after death. After this period the work goes into a commonly shared space called the Public Domain, where anyone can freely use the work in any manner (including commercially) without having to ask for any permissions. With regards to Government works, this varies jurisdictionally.
- b) In Kenya, per the present Copyright Act, 2001 (Section 25) the copyright for a Government commissioned musical work lasts for fifty years from the date of first publication.
- c) The national anthem is protected under the Constitution (Chapter 2, Article 9) as one of the national symbols of the Republic of Kenya. Although, the Kenyan national anthem is in the public domain, the different arrangement in a new work which incorporates it is entitled to copyright protection as a derivative work.

Recommendation-

The Committee recommends that the House approves the National Flags and Emblems (Amendment Bill) Senate Bill No. 36 of 2020.

The report was unanimously adopted after having been proposed and seconded by Hon. Peter Masara, MP and Hon. Oku Kaunya, MP respectively.

MIN No. 40/2022:-

ADOPTION OF THE REPORT ON THE KENYA CITIZENSHIP & IMMIGRATION (AMENDMENT) BILL (SENATE BILL NO. 33 OF 2021)

In considering the Kenya Citizenship and Immigration (Amendment) Bill, 2021 the Committee came with the following observations and recommendation:

Observations

- a) There is a duplication of roles that are already granted to the Foreign Service by the Foreign Service Act (No. 12 of 2001) and those granted by virtue of this proposed law to a department within the Ministry.
- b) The functions will be undertaken by two entities under two different Acts of Parliament. This is a duplication of roles, efforts and resources to one main function.

The Bill is therefore unnecessary as it what it seeks to cure is already provided for in law;

- c) That the Fourth Schedule, Part 1, paragraph 1, foreign affairs, foreign policy and international trade is a function given by the Constitution to the National Government;
- d) That the proposer should amend the Foreign Service Act and require the responsible Cabinet Secretary to propose regulations with regard to Kenyans living abroad.

Recommendation-

Arising from the aforementioned observations, the Committee recommends that the House rejects the Bill.

The report was unanimously adopted after having been proposed and seconded by Hon. Abdi Shurie, MP and Hon. Oku Kaunya, MP respectively.

MIN No. 41/2022:-

ADOPTION OF THE REPORT ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO. 38 OF 2021)

In considering the County Governments (Amendment) Bill, 2021 the Committee made the following observations and recommendations:

- a) That the Bill seeks to amend section 12 of the County Governments Act in order to provide clarity on instances when the office of the Speaker is vacant;
- b) That the Bill intends to safeguard the position of the chairperson of the Board where he or she is absent from a meeting;
- c) That the Bill also seeks to include the senate in the consideration of annual performance reports of the county executive committee and public service board;
- d) That the Bill seeks to establish a county leaders forum which is to among others, consider the views of the county government on the Budget Policy Statement before its adopted, the formula for revenue allocation before it is adopted, the annual division Bills and county Allocation of Revenue Bills before adoption and appropriations from the equalization fund before adoption;
- e) The proposal for the county leader's forum and the proposed functions seeks to bring confusion in the consideration of the BPS, formula for revenue allocation, annual division of revenue bill and county allocation of revenue bills and appropriations from the equalization fund because there is already a structure provided for in law in consideration of the above;
- f) It is not line with the Public Finance Management Act and the Constitution to subject the BPS to the County leaders Forum. The BPS deals with proposed expenditure of national government

Recommendation-

Arising from the aforementioned observations, the Committee recommends that the House to approves the following clauses—

- a) Clause 1;
- b) Clause 2; and
- c) Clause 3;

And that further, the House rejects—

Clause 4 of the Bill.

The report was unanimously adopted after having been proposed and seconded by Hon. Aduma Owour, MP and Hon. Abdi Shurie, MP respectively.

MIN No. 42/2022:-

ADOPTION OF THE REPORT ON THE OFFICE OF THE COUNTY PRINTER BILL (SENATE BILL NO. 13 OF 2021)

In considering the Office of County Printer Bill, 2021 the Committee made the following observations and recommendation:

Observations-

- a) Article 199(1) provides that County legislation does not take effect unless published in the Gazette, further, Section 25 (2) of the County Government Act also provides that *“Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the Kenya Gazette unless the legislation stipulates a different date on, or time at which, it shall come into force;*
- b) The Bill is not comprehensive as it does not spell out the steps in the publication process after passage of a Bill at county level and the procedure at the Government printer;
- c) There is need to anchor the operations of the office of the Government Printer so that decentralization of services is feasible in order to better serve counties; and
- d) The Bill has not taken into consideration publication of county legislation under Article 199 of the Constitution.

Recommendation-

The Committee recommends the House rejects the Office of the County Printer Bill (Senate Bill No. 13 of 2021) because the Bill is not comprehensive as it does not spell out the steps in the publication process after passage of a Bill at county level and the procedure at the Government printer.

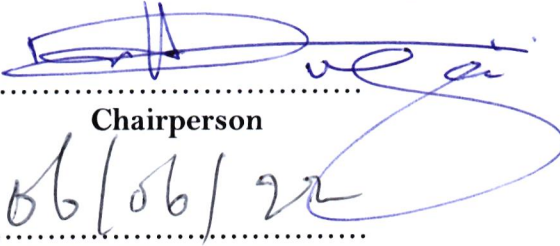
The report was unanimously adopted after having been proposed and seconded by Hon. Aduma Owour, MP and Hon. Abdi Shurie, MP respectively.

MIN No. 43/2022:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at ten minutes past one o'clock. The next meeting will be by notice.

Signed.....



Chairperson

Date.....

06/06/22

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE

- ADOPTION OF
REPORTS ON BILLS

DATE: 25/04/2022

TIME: 9.30 AM

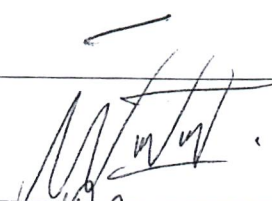

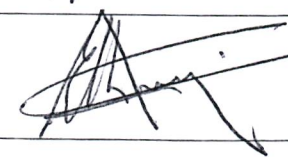
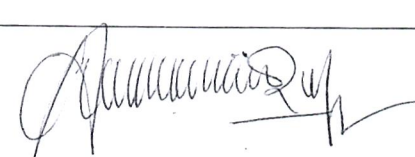
VENUE: WHITE SANDS, HOTEL

AGENDA: ADOPTION OF BILLS

(1) NATIONAL FLAGS, EMBLEMS
AND NAMES (AMENDMENT) BILL
SENATE BILL NO. 036

SENATE BILLS, NO. 36 OF 2020; 33 OF 2021,

NO.	NAME	SIGNATURE
1.	Hon. Peter Mwathi, CBS, MP - Chairperson	
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	
3.	Hon. George Peter Kaluma, MP	
4.	Hon. Dr. Makali Mulu, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Dr. Tecla Chebet Tum, MP	
7.	Hon. Halima Mucheke, MP	Zoom
8.	Hon. Marselino Malimo Arbelle, MP	
9.	Hon. Nimrod Mbithuka Mbai, MP	
10.	Hon. Ngunjiri Wambugu, CBS, MP	

11.	Hon. Abdi Omar Shurie, MP	
12.	Hon. Col (Rtd) Geoffrey Kingangi, MP	
13.	Hon. Peter Masara, MP	
14.	Hon. Oku Kaunya, MP	
15.	Hon. Rozaah Buyu, MP	—
16.	Hon. Jeremiah Lomurukai, MP	—
17.	Hon. William Chepkut, MP	
18.	Hon. Swarup Mishra, MP	—
19.	Hon. Wambugu Munene, MP	Zoom

Signed.....Date.....

Adan Gindicha,
Senior Clerk Assistant,
Departmental Committee on Administration and National Security.

Signed.....Date.....

Peter Chemweno,
Director, Directorate of Departmental Committee Services