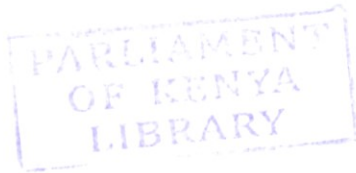


REPUBLIC OF KENYA

Approved for
tabling SNA
15/2/24




THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF THE STATUTE LAW (MISCELLANOUS AMENDMENTS) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 67 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 15 FEB 2024	
DAY: <u>TUES</u>	
TABLED BY:	CHAIRPERSON, JUSTICE & LEGAL AFFAIRS HON GEORGE MURUGARA, MP
CLERK AT THE TABLE:	A. SHIBUKO

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY 2024

TABLE OF CONTENTS

Table of Contents.....	1
Table of Cases.....	2
LIST OF ABBREVIATIONS AND ACRONYMS	3
ANNEXURES	4
CHAIRPERSON'S FOREWORD	5
CHAPTER ONE	8
1 Preface	8
1.1 Establishment of the Committee	8
1.2 Mandate of the Committee.....	9
1.3 Committee Membership.....	10
1.4 Committee Secretariat	11
CHAPTER TWO	12
2 Overview of the Statute Law (Miscellaneous Amendments) Bill (<i>National Assembly Bill No. 67 of 2023</i>)	12
2.1 Background	12
2.2 Summary of Legal Provisions.....	12
CHAPTER THREE	13
3 Public Participation and Stakeholder Engagement on the Bill.....	13
3.1 Legal Framework on Public Participation.....	13
3.2 Memoranda received on the Bill	13
CHAPTER FOUR.....	23
4 Committee Observations	23
CHAPTER FIVE	24
5 Committee Recommendations.....	24
ANNEXURES	25

TABLE OF CASES

Kenyan Caselaw

Muthuuri & 4 Others v National Police Service Commission & 2 Others (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR) (23 June 2023) (Judgement)

Reference 3 of 2019; Council of Governors & 47 Others v Attorney General & 3 Others (Interested Parties); Katiba Institute & 2 Others (Amicus Curiae) [2020] eKLR

Salaries and Remuneration Commission & Another v Parliamentary Service Commission & 15 Others; Parliament & 4 Others (Interested Parties) [2020] eKLR

International Caselaw

Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3

United States v Will, 449 U.S. 200, 217-18 (1980)

LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Office of the Attorney-General
JSC	-	Judicial Service Commission
KLRC	-	Kenya Law Reform Commission
MPs	-	Members of Parliament
ODM	-	Orange Democratic Movement
PPDT	-	Political Parties Dispute Tribunal
ODPP	-	Office of the Director of Public Prosecutions
SRC	-	Salaries and Remuneration Commission
UDA	-	United Democratic Alliance
UN	-	United Nations
US	-	United States
WDM	-	Wiper Democratic Movement

ANNEXURES

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: Statute Law (Miscellaneous Amendments) Bill, 2023
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
- Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to submit memoranda on the Bill
- Annexure 6: Letters from the Clerk of the National Assembly inviting stakeholders to attend the public participation forums
- Annexure 7: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*) which was published on 30th October 2023.

The Bill seeks to make various amendments to the following nine (9) statutes–

- 1 The Copyright Act (No. 12 of 2001)
- 2 The Judicial Service Act (No. 1 of 2011)
- 3 The Scrap Metal Act (No.1 of 2015)
- 4 The National Employment Authority Act (No. 3 of 2016)
- 5 The Fisheries Management and Development Act (No. 35 of 2016)
- 6 The Energy Act (No. 1 of 2019)
- 7 The Parliamentary Service Act (No. 22 of 2019)
- 8 The Public Private Partnerships Act (No. 12 of 2021)
- 9 The Children's Act (No. 29 of 2022)

The introduction of the Bill is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills. The Bill was read for a First Time in the House on 15th November 2023 and pursuant to Standing Order 127(1) committed to respective eight (8) Departmental Committees of the National Assembly for consideration as follows:

SCHEDULE		
i.	The Children's Act, 2022 (No.29 of 2022)	Departmental Committee on Social Protection
ii.	The Copyright Act, 2001 (No. 12 of 2001)	Departmental Committee on Sports and Culture
iii.	The Scrap Metal Act, 2015 (No. 1 of 2015)	Departmental Committee on Trade, Industries and Cooperatives
iv.	The National Employment Authority Act, 2016 (No.3 of 2016)	Departmental Committee on Labour
v.	The Fisheries Management and Development Act, 2016 (No. 35 of 2016)	Departmental Committee on Blue Economy and Irrigation
vi.	The Energy Act, 2019 (No.1 of 2019)	Departmental Committee on Energy
vii.	The Public Private Partnerships Act, 2021 (No. 14 of 2021)	Departmental Committee of Finance and National Planning
viii.	The Parliamentary Service Act, 2019 (No. 22 of 2019)	Departmental Committee on Justice and Legal Affairs
ix.	The Judicial Service Act, 2011 (No. 1 of	

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*)

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday 17th November, 2023 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee vide letter Ref. No. NA/DDC/JLAC/2023/148 dated 30th November, 2023 invited key stakeholders to submit views on the Bill and attend a public participation forum on Tuesday 5th December 2023. The memoranda were to be received on or before Thursday 30th November 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received three memoranda.

The Parliamentary Service Commission, the JSC and the SRC gave their views on the Bill which the Committee considered in the preparation of this report.

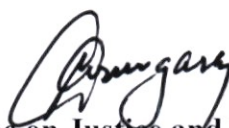
While considering the provisions of the Bill relating to the Judicial Service Act, 2011 and the Parliamentary Service Act, 2019, the Committee observed that That the Parliamentary Service Commission and the Judicial Service Commission are constitutional bodies anchored mandated to perform functions necessary for the well-being of the members and staff of Parliament; and reviewing conditions of service of judges, judicial officers and staff of the Judiciary, respectively. The proposals in the Bill seek to further prescribe guidelines through legislation on how the two Commissions discharge their crucial mandate.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the Parliamentary Service Commission, JSC and the SRC for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*).

It is my pleasure to report that the Committee has considered the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*) and have the honour to report back to the National Assembly with the recommendation that the House approves the provisions in the Bill relating to the Judicial Service Act, 2011 and the Parliamentary Service Act, 2019 without amendment.

Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs



Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*)

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.*
- ii To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate.*
- iv To study and review all legislation referred to it.*
- v To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives.*
- vi To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House.*
- vii 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 (Committee on Appointments).*
- viii To examine treaties, agreements and conventions.*
- ix To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*
- x To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution, and*
- xi To examine any questions raised by Members on a matter within its mandate*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider¹:-
 - a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and
 - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
 - a) State Department of Correctional Services;
 - b) State Law Office and Department of Justice;
 - c) The Judiciary;
 - d) Judicial Service Commission;
 - e) Office of the Director of Public Prosecutions;
 - f) Ethics and Anti-Corruption Commission;
 - g) Independent Electoral and Boundaries Commission;
 - h) Commission on Administrative Justice;
 - i) Office of the Registrar of Political Parties;
 - j) Witness Protection Agency;
 - k) Kenya National Commission on Human Rights;

¹ National Assembly Standing Orders, 6th Edition.

- l) Kenya Law Reform Commission; and
- m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October, 2022 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency

MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency

WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency

ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency

ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency

ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency

UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency

UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency

FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency

UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)

UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency

UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency

Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency

Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)

Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Douglas Katho
Clerk Assistant I /Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Vivienne Ogega
Research Officer III

Mr. Stanley Lagat
Senior Serjeant-At-Arms

Ms. Faith Jully
Public Communication Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Antony Kariuki
Serjeant-At-Arms

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Fridah Ngari
Media Relations Officer III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Peter Mutethia
Audio Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Alex Amwatta
Hansard Reporter III

Mr. Alvin Ochieng'
Research Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (*NATIONAL ASSEMBLY BILL NO. 67 OF 2023*)

2.1 Background

6. The Bill which is sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP, was published on 30th October 2023 and read a First Time in the House on 15th November 2023. It was thereafter committed to various Departmental Committees with the Departmental Committee on Justice and Legal Affairs as the lead Committee in line with the provisions of Standing Order 127 (3).

2.2 Summary of Legal Provisions

7. The Statute Law (Miscellaneous Amendments) Bill seeks to amend various provisions of the law including those in two (2) statutes falling under the mandate of the Justice and Legal Affairs Committee. The Bill seeks to—

- a) amend sections 3, 5, and 18 of the **Parliamentary Service Act, 2019 (No. 22 of 2019)** to specify the nature of the further functions that may be performed by the Parliamentary Service Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution. These include reviewing and determining reimbursement rates for travel by motor vehicle for Members and the rates of reimbursement for daily subsistence costs expended by Members and staff of Parliament in performing their duties.
- b) amend section 13 of the **Judicial Service Act, 2011 (No. 1 of 2011)** to provide for the facilitative mandate of the Judicial Service Commission under Articles 172(1)(b) and 252(1)(d) of the Constitution. The amendments allow the Commission to review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers, and judiciary staff in performing their duties.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

9. Article 118 (1)(b) of the Constitution provides that:

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

10. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*“(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda received on the Bill

11. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Friday 17th November 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letters Ref. No. NA/DDC/JLAC/2023/149 dated 30th November, 2023 invited key stakeholders to submit views on the Bill and attend public participation forums on Tuesday 5th December 2023.

12. To this end, the Committee received three memoranda from the Parliamentary Service Commission, the JSC and the SRC. The memoranda are annexed to this report as **Annexure 7**.

13. During the public participation forum on Tuesday 5th December 2023, the Parliamentary Service Commission, the JSC and the SRC appeared before the Committee and submitted their views.

14. The Committee received Memoranda from the Parliamentary Service Commission and the JSC which were largely in agreement with the proposals referred to the Committee. However, **Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023)**

the Committee received reservations and proposals from the SRC relating to the proposed amendments to the following two (2) Acts of Parliament. They submitted as follows:

Parliamentary Service Act, 2019

15. The Parliamentary Service Commission supported the proposal by stating:

- a) That with respect to the decisions of the SRC on mileage, the SRC departed from the proposals of the Parliamentary Service Commission thus the proposed amendments in the Bill are necessary to clarify the Parliamentary Service Commission's mandate vis-à-vis that of the SRC.
- b) That Article 230(4) of the Constitution on the mandate of SRC must be read together with Article 127(6) on the role of the Parliamentary Service Commission to ensure the effective and efficient functioning of Parliament to perform the functions necessary for the wellbeing of members and staff of Parliament which it is responsible for.
- c) That in line with Article 127(6)(e)(ii) of the Constitution, the proposal shall empower the Commission to provide services and facilities crucial to the efficient and effective functioning of Parliament necessary for the well-being of the members and staff of Parliament.
- d) That the proposal is fundamental in resolving the constant conflict on the constitutional mandate of the Parliamentary Service Commission and the SRC. Moreover, the proposal, if enacted, will prevent unnecessary perennial litigation and unfounded audit queries.
- e) That the proposal is premised on the finding of the Supreme Court in the case of *Muthuuri & 4 Others v National Police Service Commission & 2 Others (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR) (Civ) (23 June 2023) (Judgment)* where it was held that:

“[82] Whereas Article 230(4)(b) integrated the SRC in the determination of matters relating to remuneration and benefits of public officers, this provision must be read alongside other provisions of the Constitution which confer power to some of the Chapter Fifteen commissions to review and make recommendations on the conditions of service of public officers under them.

For instance, Article 234(2)(g) empowers the Public Service Commission (PSC) to, “review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service” with the exception of State officers, an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic. The Article also does not apply to an office or position that is subject to the Parliamentary Service Commission, Judicial Service Commission (JSC), Teachers Service Commission (TSC) and NPSC. See Article 234(3).

[83] Likewise, Article 172(1)(b) empowers JSC to “review and make recommendations on the conditions of service” of the staff of the Judiciary. The JSC is equally granted the power to review and make recommendations on the conditions of service of judges, except those terms and conditions that relate to their remuneration. In other words, the JSC is at liberty and exercises freedom to determine and review the conditions of service of the staff of the Judiciary.

*[84] A reading of the PSC Act and the Judicial Service Act also shows that in **reviewing and making recommendations on those conditions of service consultation with SRC is not mandatory.***

[85] Compared to the role SRC plays in the foregoing two commissions, Section 10 of the NPSC Act provides specifically for the role of SRC in the NPSC’s functions as follows:

- (1) In addition to the functions of the Commission under Article 246(3) of the Constitution, the Commission shall—*
 - (a) on the recommendation of the Inspector-General develop and keep under review all matters relating to human resources policies of members of the Service;*
 - (b) with the advice of the Salaries and Remuneration Commission determine the appropriate remuneration and benefits for the Service and staff of the Commission;*

[86] In this regard, the Court of Appeal correctly observed that the NPSC Act had specifically been amended in 2014 to include the role of SRC in the functions of the NPSC. From a reading of Section 10(1)(b) aforesaid, the 2nd Respondent can determine the appropriate remuneration and benefits for the National Police Service only with the advise of the SRC. The 2nd Respondent cannot by any means, as the appellants suggest, proceed to determine the benefits of graduate police constables without the advice of the SRC. Its role is mandatory and must be obtained prior to taking any action that requires that advice. The advice is binding in terms of Article 259(11) of the Constitution which directs that:

“(11) If a function or power conferred on a person under this Constitution is exercisable by the person only on the advice or recommendation, with the approval or consent of, or on consultation with, another person, the function may be performed or the power exercised only on that advice, recommendation, with that approval or consent, or after that consultation except to the extent that this Constitution provides otherwise.”

- f) That the aforementioned findings of the Supreme Court are in tandem with the previous decision of the Supreme Court in **Reference 3 of 2019; Council of Governors & 47 Others v Attorney General & 3 Others (Interested Parties); Katiba Institute & 2 Others (Amicus Curiae) [2020] eKLR** that where the Constitution requires that where a person makes recommendations, such recommendations are necessary and significant but not binding. Particularly, the Supreme Court held as follows:

“[60] Taking all these into account, it is our considered opinion that the recommendations by the Commission on Revenue Allocation are not binding upon either the National Assembly, or the Senate. What the two Houses cannot do however is to ignore or casually deal with such recommendations. To hold otherwise, would elevate the Commission above Parliament in the legislative chain. We therefore agree with both the Speaker of the National Assembly and the Law society in their submission to the effect that, it could not have been the intention of the

makers of the Constitution to supplant the legislative authority of Parliament in matters Finance, by establishing the Commission on Revenue Allocation.

[61] *By the same token, we affirm as a correct statement of the law regarding this issue, the pronouncement by the High Court in its decision, In the Matter of the 47 County Assemblies and Others; Petition No. 364 of 2014. Faced by the question as to whether the recommendations addressed to all the 47 County Assemblies and County Executives, by the Commission on Revenue Allocation were binding upon the former, Lenaola J, (as he then was) having extensively considered the applicable law on the subject matter, rendered himself thus at paragraph 53:*

“...the 1st Respondent (Commission on Revenue Allocation) is the body charged with the responsibility of making recommendations inter alia to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives on the basis upon which revenue would be shared equally between the National and County Governments... None of the Parties disputed these but the point of disagreement is whether those recommendations are binding on all the organs to which they are made.”

g) That the Supreme Court further reiterated as follows:

“The import of these provisions (Article 218(2)) is that a recommendation made by the 1st Respondent to the Senate is not binding but for good order reasons for a deviation must be given.”

h) That based on the decision of the Supreme Court in ***Muthuri & 4 Others v National Police Service Commission & 2 Others***, Article 230(4) of the Constitution does not apply to a position that is subject to the Parliamentary Service Commission.

i) That the provisions of legislation are critical in setting out the manner in which constitutional bodies may discharge their constitutional functions and statutory provisions are critical in determining the mandate of each independent Commission. It also noted that it is imperative for Parliament to enact legislation to actualize Article 127(6) of the Constitution to safeguard the Parliamentary Service

Commission's mandate and stop further encroachment into its constitutional functions and mandate by the SRC and any other constitutional Commissions.

- j) That as the body tasked with providing MPs with adequate facilities to travel to and from the constituencies or county offices to the national Parliament in Nairobi, it must ensure that MPs are able to perform their dual roles of representation and legislation accordingly.
- k) That the proposal seeks to resolve the protracted disputes between PSC and the SRC. It noted that in 2017, PSC moved to court in Judicial Review Application No. 686 of 2017 *Parliamentary Service Commission v Salaries Remuneration Commission* where the High Court agreed with the Parliamentary Service Commission's position and quashed the Gazette Notice on reviewed remuneration and benefits of State officers by SRC.
- l) It further, submitted that the Parliamentary Service Commission was sued in two High Court Constitutional Petitions including the *High Court Petition 208 of 2019; Salaries and Remuneration v Parliamentary Service Commission & Others and the High Court Petition 185 of 2019; Okiya Omtatah v Parliamentary Service Commission & 422 Others* on the matter of payment of house allowance to MPs. These matters were consolidated and a decision reached hence the filing of a Cross Petition by the Parliamentary Service Commission seeking that the court upholds that the Parliamentary Service Commission is the body responsible for providing services and facilities to ensure the effective and efficient functioning of Parliament and performing the functions necessary for the wellbeing of members and staff of Parliament. The High Court dismissed the Cross Petition and the matter is now pending before the Court of Appeal. It was the view of the Parliamentary Service Commission that the outcome of the appeal could have a bearing on the proposed amendments in the Bill in so far as it will set the beacons of what constitutes services and facilities in Article 127(6) of the Constitution.
- m) That there is currently a Petition filed in the Constitutional and Human Rights Division by Mr. Peter Mwangi Gachuiiri (*HCCHRPET/E304/2023; Peter Mwangi Gachuiiri v Attorney General & Salaries and Remuneration Commission*) against the SRC challenging the SRC's decision to do away with the taxable allowance for

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*)

purchase of motor vehicles for judges on the basis that denying judges a car grant threatens the independence of the Judiciary as provided for under Article 160 of the Constitution.

n) That at its 311th meeting held on 11th September 2023, while considering matters arising from the implementation of the Parliamentary Service Commission's communication to the SRC regarding outstanding matters relating to remuneration and benefits of State officers in Parliament, the Commission noted that above case involving the JSC over similar matters to the issues between the SRC and the Parliamentary Service Commission. Hence, it was the view of the Parliamentary Service Commission that the JSC has faced similar challenges and thus proposed that the proposed amendments to the Judicial Service Act, 2011 be approved to allow the JSC to review and determine the nature of transport facilitation and the rates of reimbursement of daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of their duties.

16. The **SRC** submitted that to the extent that the proposal seeks to vest additional functions to the Parliamentary Service Commission as provided for under Article 127 of the Constitution, the proposed amendments are in violation of the Constitution as they expand the Parliamentary Service Commission's mandate beyond that which is outlined in the Constitution.

17. In light of its observations above, the **SRC** proposed the deletion of the proposed amendments to section 18 of the Parliamentary Service Act, 2019.

Committee Resolution

18. The Committee agreed with the views of the Parliamentary Service Commission.

Judicial Service Act, 2011

19. The **JSC** supported the proposal by submitting as follows:

a) That pursuant to Article 172 of the Constitution the core mandate of the JSC is to promote and facilitate the independence and accountability of the Judiciary as well as the efficient, effective and transparent administration of justice. Furthermore, JSC noted that Article 160 provides for the independence of the Judiciary.

- b) That the integrity, independence and impartiality of the Judiciary are protected in the Constitution to facilitate fair and effective access to justice and for the protection of human rights for all.
- c) That the remuneration and benefits enjoyed by judges, judicial officers and judicial staff is a key ingredient of the independence of the Judiciary and should therefore be determined in a manner that safeguards that independence. It is for this reason that Constitution required that the remuneration and benefits payable to a judge shall be a charge on the Consolidated Fund that may not be varied to the disadvantage of a judge.
- d) That it is the practice globally that judicial compensation is subject to certain unique requirements that do not apply with respect to others paid from the public purse. For instance, the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3* recommended that to avoid the possibility of, or the appearance of, political interference through economic manipulation of the Judiciary, a body, such as a commission, must be interposed between the Judiciary and other branches of government. The constitutional functions of this body would be to depoliticize the process of determining changes to judicial remuneration.
- e) That the US Cupreme Court in *United States v Will, 449 U.S. 200, 217-18 (1980)* held that:

“[a] Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government.”

- f) That the UN Basic Principles on the Independence of the Judiciary state that:

“The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.”
- g) Moreover, that the UNODC recommends in its Implementation Guide and Evaluative Framework for Article 11 of the UN Convention Against Corruption that State Parties should ensure through constitutional or legislative means that

“legislative or executive powers that may affect judges in their office, their
Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023)

remuneration, conditions of service or their resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular judges or judges.”

h) That the foregoing is a justification for the establishment of the JSC with the mandate to safeguard the independence of the Judiciary.

20. The **SRC** noted that the mandate of the JSC to make recommendations on conditions of service expressly excludes remuneration and benefits and therefore, cannot be a basis for introducing the proposed amendments. It added that in discharging its role, the SRC engages the JSC and considers the proposals by the JSC.

21. In view of the foregoing, the **SRC** proposed deletion of the proposed new section 13A of the Judicial Service Act, 2011.

Committee Observation

22. The Committee agreed with the views of the Judicial Service Commission.

General submissions

23. The **SRC** noted that:

- (a) while Parliament is mandated by law to confer additional powers and functions to the Parliamentary Service Commission and the JSC pursuant to Article 252(1)(d) of the Constitution. Further, it noted that such additional powers and functions must be in line with the mandate of the Commissions set out in the Constitution and ought to take into account other provisions of the Constitution inter alia Article 230(4).
- (b) the proposal is unconstitutional as it ousts SRC’s mandate to determine the transport and daily subsistence benefits for State officers in Parliament and the Judiciary contrary to Article 230(4)(a) of the Constitution. It was its view that transport and daily subsistence allowances are benefits that accrue to State officers on account of their employment and hence fall within the purview of SRC pursuant to Article 230(4)(a) of the Constitution.
- (c) the proposal, if enacted, would be a breach of Article 2(4) of the Constitution on the consistency of laws with the Constitution.
- (d) the proposal negates the implementation of its constitutional mandate in Article 230(5)(a) to ensure that the total public compensation bill is fiscally sustainable. It added that the that the public sector wage bill comprises basic salaries; remunerative allowances such as house and commuter allowances; hardship, extraneous, domestic, risk and facilitative allowances paid to meet expenses incurred by officers in the

course of duty such as daily subsistence allowance. In addition, the SRC stated that it ensures that the rates for the aforementioned allowances are equitable.

- (e) the proposal will erode the gains made towards harmonizing remuneration and benefits for State officers as setting of comparable, equitable and harmonized remuneration and benefits requires a centralized approach as provide in Article 230(4) of the Constitution. Moreover, it noted that the proposal would result in disparities in the benefits among State and public officers across the public service contrary to Article 230(5) of the Constitution.

24. The **SRC** and the **Kenya Public Financial Management Development Partners Group** opposed the proposal on the basis that the Constitution mandates the SRC to determine staff remuneration and benefits including allowances for all state officers including Members of Parliament, the Judiciary and their staff.

25. Additionally, the **SRC** and the **Kenya Public Financial Management Development Partners Group** noted that the Constitution guards against conflict of interest in the discharge of official duties including the determination of remuneration and benefits. Therefore, the SRC stated that the proposal contravenes Article 75(1) of the Constitution as the proposal would allow State officers to directly derive benefit in the determination of transport and subsistence allowances.

26. The **Kenya Public Financial Management Development Partners Group** noted that—

- (a) the proposal would raise the issue of conflict of interest as Parliament has the power to take decisions with fiscal impact but which ought to be based on assessment provided by the National Treasury or specialized bodies such as the SRC.
- (b) the proposal is inconsistent with Article 230 (4) and (5) of the Constitution.

Committee Observation

27. The Committee disagreed with the views of the **SRC** and the **Kenya Public Financial Management Development Partners Group**.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

28. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

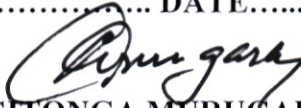
- a) That the Parliamentary Service Commission and the JSC are constitutional bodies anchored in Articles 127 and 172 respectively, of the Constitution mandated to perform functions necessary for the well-being of the members and staff of Parliament as well as review and make recommendations on the conditions of service of judges, judicial officers and staff of the Judiciary. The proposal seeks to further prescribe guidelines through legislation on how these commissions discharge these duties.
- b) That the courts have already pronounced themselves on the interpretation of Article 230(4) of the Constitution on duty of the SRC to set and regularly review the remuneration and benefits of all State officers and advise on the remuneration and benefits of all other public officers. The Supreme Court, having found that Article 230(4) must be read alongside other provisions of the Constitution that provide for the same power to the Parliamentary Service Commission and the JSC, the proposal is merited. For instance, Articles 127(6)(e) and 172(1)(b) of the Constitution.
- c) That the proposal is timely and seeks to address the constant conflict between the SRC; and the Parliamentary Service Commission and the JSC. Moreover, the proposal, if enacted, will prevent unnecessary perennial litigation and unfounded audit queries that also occasion additional expenditure on the taxpayer.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS


29. The Committee, having considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly No. 67 of 2023) recommends that the House approves the provisions in the Bill relating to the Judicial Service Act, 2011 and the Parliamentary Service Act, 2019 without amendment.

SIGNED..... 15. 2. 2024 DATE.....



HON. GEORGE GITONGA MURUGARA, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

 THE NATIONAL ASSEMBLY PAPERS L A I D	
DATE: 15 FEB 2023	
DAY: <i>Business day</i>	
TABLED BY:	<i>Chairperson, Justice & Legal Affairs</i>
CLERK-AT THE TABLE:	<i>Hon. George Murugara, MP</i>
	<i>A. Shindak</i>

ANNEXURES

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law
(Miscellaneous Amendments) Bill (*National Assembly Bill No. 67 of 2023*)

ANNEXURES

Annexure 1: Adoption Schedule



THE NATIONAL ASSEMBLY
13TH PARLIAMENT (SECOND SESSION) - 2023
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

AGENDA: Adoption of the Report on the Consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 67 of 2023) sponsored by the Leader of the Majority Party the Hon. Kimani Ichung'wah, MP

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

Annexure 2: Minutes



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 154th SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 5TH DECEMBER, 2023 AT 12.00 P.M. IN LENANA
MBILI ROOM AT WESTON HOTEL, NAIROBI**

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - **Chairperson**
2. Hon. Mutuse Eckomas Mwengi, OGW, M.P. - **Vice- Chairperson**
3. Hon. Francis Kajwang' Tom Joseph, M.P.
4. Hon. Onyiego Silvanus Osoro, CBS, M.P.
5. Hon. Muchira Michael Mwangi, M.P.
6. Hon. Gichohi Kaguchia John Philip, M.P.
7. Hon. Muriu Wakili Edward, M.P.
8. Hon. Makali John Okwisia, M.P.

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Junet Mohamed, CBS, M.P.
3. Hon. (Dr.) Otiende Amollo, SC, M.P.
4. Hon. Aden Daud, EBS, M.P.
5. Hon. Mogaka Stephen M, M.P.
6. Hon. Maina Jane Njeri, M.P.
7. Hon. Siyad Amina Udgoon, M.P.

SECRETARIAT

1. Mr. Douglas Katho - Clerk Assistant
2. Mr. Shadrack Omondi - Legal Counsel III
3. Mr. Abdirahim Omar - Fiscal Analyst II
4. Ms. Jael Ayiego Kilaka - Clerk Assistant III
5. Mr. Abdikafar Abdi - Clerk Assistant III
6. Ms. Vivvienne Ogega - Research Officer III
7. Ms. Fridah Ngari - Media Relations Officer
8. Mr. Peter Mutethia - Audio Officer
9. Mr. Silas Opanga - Hansard Reporter

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Consideration and adoption of the reports on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) and;**
5. **Statute Law (Miscellaneous Amendments) Bill No. 2 (National Assembly Bill No. 68 of 2023)**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/768: PRELIMINARIES

The meeting was called to order at ten minutes past twelve o'clock by the Chairperson followed by a word of prayer from the Chairperson.

MIN.NO/DC/JLAC/2023/769: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/770: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Gichohi Kaguchia John Philp, MP

MIN. NO/DC/JLAC/2023/771: CONSIDERATION AND ADOPTION OF THE REPORT ON STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 67 OF 2023)

Committee Observation

Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- a) That the Parliamentary Service Commission and the JSC are constitutional bodies anchored in Articles 127 and 172 respectively, of the Constitution mandated to perform functions necessary for the well-being of the members and staff of Parliament as well as review and make recommendations on the conditions of service of judges, judicial officers and staff of the Judiciary. The proposal seeks to further prescribe guidelines through legislation on how these commissions discharge these duties.
- b) That the courts have already pronounced themselves on the interpretation of Article 230(4) of the Constitution on duty of the SRC to set and regularly review the

remuneration and benefits of all State officers and advise on the remuneration and benefits of all other public officers. The Supreme Court, having found that Article 230(4) must be read alongside other provisions of the Constitution that provide for the same power to the Parliamentary Service Commission and the JSC, the proposal is merited. For instance, Articles 127(6)(e) and 172(1)(b) of the Constitution.

- c) That the proposal is timely and seeks to address the constant conflict between the SRC; and the Parliamentary Service Commission and the JSC. Moreover, the proposal, if enacted, will prevent unnecessary perennial litigation and unfounded audit queries that also occasion additional expenditure on the taxpayer.

Committee Recommendation

The Committee, having considered the Statute Law (Miscellaneous Amendments) Bill (*National Assembly No. 67 of 2023*) recommends that the House approves the provisions in the Bill relating to the Judicial Service Act, 2011 and the Parliamentary Service Act, 2019 without amendment.

MIN. NO/DC/JLAC/2023/772:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL
NO. 2 (NATIONAL ASSEMBLY BILL NO. 68
OF 2023)**

Committee Observation

2. Upon reviewing the Bill and the submissions received, the Committee made the following observations:
 - a) The proposed amendments to the Oaths and Statutory Declarations Act (Cap. 15); the Advocates Act (Cap. 16); the Notaries Public Act (Cap 17); the Sexual Offences Act, 2006 (No. 3 of 2006) are minor in nature and seek to align references to the Chief Registrar of the Judiciary and other Registrars with the terms currently subsisting within the Judiciary;
 - b) The proposed amendments to the Civil Procedure Act (Cap. 21); the Sexual Offences Act, 2006 (No. 3 of 2006) seek to reduce the membership of the Rules Committee of the Judiciary which shall streamline its operations and optimise its output;
 - c) The proposed amendments to the **Trustees (Perpetual Succession) Act (Cap. 164)** seek to shift the supervision of the registration of Trusts from the Ministry of Lands to the Registrar of Companies. This places the registration of Trusts within the appropriate government agency and shall streamline process for the benefit of applicants.
 - d) The Constitution grants Parliament a wide legislative mandate that allows it to prescribe the manner in which certain categories of public officers may be recruited,

appointed and promoted. The amendments proposed with regard to the Office of the Attorney-General Act, 2012 (No. 49 of 2012) are therefore properly before the House for consideration and enactment, if the House so decides.

- e) The scope of the proposed additional amendments to the Office of the Attorney-General Act, 2012 to ensure the financial autonomy of the Office and empower it to recruit, appoint, promote and discipline its staff was wide and not suited for inclusion in the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023. Inclusion of the proposals in a separate standalone amendment Bill and urgent publication and introduction of the Bill would allow for a more comprehensive consideration of the proposals by the House.

Committee Recommendation

The Committee, having considered the Statute Law (Miscellaneous Amendments) (No. 2) Bill (*National Assembly No. 68 of 2023*) recommends that the House—

- a. approves the provisions of the Bill relating to the Oaths and Statutory Declarations Act, Cap 15; the Advocates Act, Cap 16; the Notaries Public Act, Cap 17; the Civil Procedure Act, Cap 21 and the Sexual Offences Act, 2006 without amendment;
- b. approves the deletion of the provisions of the Bill relating to the Office of the Attorney General Act, 2012, subject to the publication and introduction of a separate Bill to amend the Office of the Attorney-General Act, 2012 to provide for the financial autonomy of the Office and its power to recruit, appoint, promote and discipline its Officer.

MIN. NO/DC/JLAC/2023/773:

ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past one o'clock. The next meeting will be held on notice.

SIGNED:  DATE: 15.02.2024.....
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY**

THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**MINUTES OF THE 152ND SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 5TH DECEMBER, 2023 AT 10.00 A.M. IN LENANA
MBILI ROOM AT WESTON HOTEL, NAIROBI**

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - Chairperson
2. Hon. Mutuse Eckomas Mwangi, OGW, M.P. - Vice- Chairperson
3. Hon. Muchira Michael Mwangi, M.P.
4. Hon. Gichohi Kaguchia John Philip, M.P.
5. Hon. Muriu Wakili Edward, M.P.
6. Hon. Mohamed Aden Daudi, M.P.
7. Hon. Mogaka Stephen M, M.P.

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Onyiego Silvanus Osoro, M.P.
4. Hon. Junet Mohamed, CBS, M.P.
5. Hon. (Dr.) Otiende Amollo, SC, M.P
6. Hon. Makali John Okwisia, M.P.
7. Hon. Maina Jane Njeri, M.P.
8. Hon. Siyad Amina Udgoon, M.P.

IN ATTENDANCE

1. Mr. Jeremiah M. Nyegenye, CBS - Clerk of the Senate
2. Mrs. Anne R. Gitau, MBS - CEO, Salaries and Remuneration Commission
3. FCS, Dr. Simon K. Rotich, MBS - CEO, Public Service Commission
4. Mr. Paul N. Maina, OGW, 'NDC' (K) - CEO, Judicial Service Commission

SECRETARIAT

- | | | |
|---------------------------|---|-------------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant |
| 2. Mr. Shadrack Omondi | - | Legal Counsel III |
| 3. Mr. Abdirahim Omar | - | Fiscal Analyst II |
| 4. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 5. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 6. Ms. Vivienne Ogega | - | Research Officer III |
| 7. Ms. Fridah Ngari | - | Media Relations Officer |
| 8. Mr. Peter Mutethia | - | Audio Officer |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of minutes
4. **Public hearing of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023)**
5. **Public hearing of the Statute Law (Miscellaneous Amendments) Bill No.2 (National Assembly Bill No. 68 of 2023)**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/757: PRELIMINARIES

The meeting was called to order at thirty minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson.

MIN.NO/DC/JLAC/2023/758: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/759: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. M.P. and seconded by Hon. M.P.

MIN. NO/DC/JLAC/2023/760: PUBLIC HEARING ON THE STATUTE LAW (MISCELLENOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 67 OF 2023)

1. The Parliamentary Service Commission

The Commission Secretary of the Parliamentary Service Commission informed the Committee that the Commission is in agreement with the amendment to the Parliamentary Service Act, 2019 in its entirety stating THAT: -

In line with Article 127 (6) (e) (ii) of the Constitution, the proposed amendments to the Parliamentary Service Bill prescribe that the Parliamentary Service Commission is the responsible constitutional Commission for providing services and facilities to ensure the efficient and effective functioning of Parliament and is responsible for performing the functions necessary for the well-being of the members and staff of Parliament for introduction in Parliament.

On its part, Salaries and Remuneration Commission is established under Article 230 of the Constitution with the mandate to:

- a) Set and regularly review the remuneration and benefits of all State Officers; and
- b) Advise the national and county government on the remuneration and benefits of all other public officers.

Prior to the promulgation of the Constitution, the regime obtaining for the remuneration of Members of Parliament was the National Assembly Remuneration Act, Cap 5 of the Laws of Kenya.

The Parliamentary Service Commission resolved that a Bill making provisions that safeguard its mandate and stops further encroachment into its Constitutional functions and mandate by the Salaries and Remuneration Commission as provided for in Article 127 (6) (e) (ii) of the Constitution be drafted.

2. Judicial Service Commission

The Deputy Chief Registrar of the Judiciary stated that the Judiciary Service Commission agrees to the amendment of the Judicial Service Act in its entirety stating THAT: -

1. Under Article 172, the core mandate of the JSC is to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice. The Independence is provided for in Article 160 of the Constitution which states that the Judiciary- consisting of Judges of superior courts, magistrates, other Judicial Officers and staff- shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority.
2. The independence only protected by Article 160 is the independence of the Judiciary from the other branches of government and bodies which can exercise pressure on the judiciary through power conferred on them by the state. The integrity, independence and impartiality of the judiciary are protected by the Constitution not as an end, but as pre-conditions for fair and effective access to justice and for protection of human rights for all.
3. The remuneration and benefits enjoyed by judges, judicial officers and judicial staff is a key ingredient of the independence of the Judiciary and should therefore be determined in a manner that safeguards that independence. This is the reason, for instance, that the Constitution requires that the remuneration and benefits payable to a judge shall be charge on the Consolidated Fund, and shall not be varied to the disadvantaged of that Judge.
4. The Judiciary and the JSC support unreservedly the proposed amendment to the Judicial Service Act to empower the JSC to review and determine the nature of transport

facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of their duties.

3. Salaries and Remunerations Commission

The Secretary to the Salaries and Remuneration Commission submitted the views of the Commission as follows:

1. Proposed amendment to the Parliamentary Service Act No. 22 of 2019 by:
2. Specify further functions that may be performed and power that may be exercised by the Commission pursuant to Article 127 (6) (e) and Article 252(1) (d) of the Constitution;
3. Amending section 5 by inserting the following new paragraph immediately after paragraph (f) – (fa) the provision of technical, infrastructural and administrative competence to ensure efficient and effective delivery of services to parliament;
4. Amending section 18 by inserting the following new sub-sections after subsection (2)-

(3) The Commission shall review and determine the rates of reimbursement for travel by motor vehicles for Members, in accordance with international best practice;

(4) The Commission shall review and determine the rates of reimbursement of daily subsistence costs expended by Members and staff of Parliament in the performance of their duties.

Proposed amendment to the Judicial Service Act No. 1 of 2011 by amending section 13 by inserting a new section immediately after section 13-

a) 13A. In accordance with the mandate conferred to the Commission by Articles 172(1)(b) and 252(1)(d) of the Constitution, the Commission shall review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by Judges, Judicial Officers and Staff of the Judiciary in the performance of duties.

The SRC is of the considered view that the proposed introduction of section 13A to the Judicial Service Act is unconstitutional and therefore recommends that the proposed section 13A to the Judicial Service Act be deleted from the Bill.

Further SRC stated that the proposed introduction of section 18(3) and (4) to the Parliamentary Service Act is unconstitutional and recommends that the proposed section 18(3) and (4) to the Principal Act be deleted from the Bill.

**MIN. NO/DC/JLAC/2023/761: PUBLIC HEARING ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL
(NATIONAL ASSEMBLY BILL NO. 68 OF 2023)**

1. The Judiciary/Judicial Service Commission

The Deputy Chief Registrar of the Judiciary/Secretary Judicial Service Commission, briefed the Committee that:

1. The Bill seeks to amend the Advocates Act, the Notaries Public Act, the Oaths and Statutory Declarations Act and the Sexual Offences Act to replace the Registrar of the High Court with the Chief Registrar of the Judiciary.
2. The Judiciary agrees with the amendment of section 3 of the Oaths and Statutory Declarations Act the Judiciary to replace the Registrar of the High Court with the Chief Registrar of the Judiciary.
3. With regards section 12 of the Oaths and Statutory Declarations Act the Judiciary proposes an additional provision to include those who have served as judicial officers before exiting the Judiciary from serving 3 years to in order to be appointed as Commissioners for oaths as required by the Law Society of Kenya.
4. The Judiciary agrees with the amendment of to section 2 of the Advocates Act, on the definition of Registrar to mean the Chief Registrar of the Judiciary.
5. With regards to section 81 of the Advocates Act, the Judiciary proposes a new subsection stating that the Chief Justice may make rules with regard to the admission of advocates under section 15. The admission of advocates is a power bestowed on the Chief Justice who conducts the session in the form of judicial proceedings.
6. The Judiciary supports the amendment of sections 4(1) and 4(2) of the Notaries Public Act, to delete the words Registrar of the High Court and substitute therefor with Chief Registrar of the Judiciary.
7. With regards to section 5(3) of the Notaries Public Act the Judiciary proposes a new section allowing magistrates and judicial officers to perform notarial acts and that they be exempt from annual notarial certificates.
8. The Judiciary supports the amendment of section 81(1)(a) of the Civil Procedure Act to reduce the number of advocates in the Rules Committee from 8 to 3.
9. The Judiciary supports the amendment section 39(13) of the Sexual Offences Act, to replace the Registrar of the High Court with the Chief Registrar of the Judiciary.

2. The Public Service Commission

The Commission Secretary/Chief Executive Officer of the Public Service Commission, briefed the Committee that:

1. The Bill proposes to amend several pieces of legislation amongst them the Office of the Attorney General Act.
2. The Bill seeks to amend sections 13, 21 and 22 of the Office of the Attorney General Act, 2012 (No. 49 of 2012) by deleting the words "in consultation with the Public Service Commission"
3. The Commission opposes the amendments stating that the amendments are unconstitutional on the following grounds;
 - i. That the Office of the Attorney General exists as the Executive arm of Government.
 - ii. That contrary to the memorandum of objects and reasons, Article 156n of the Constitution does not establish the Office of the Attorney General as independent office.
 - iii. That contrary to the memorandum of objects and reasons in the Bill, the Attorney General is also not listed as one of the Independent Constitutional offices in Chapter 15 of the Constitution.

- iv. The Attorney General is a member of the Cabinet and is supported by the requisite staff to deliver on his/her functions as determined by the Commission in exercise of its powers to establish offices in the public service.
- v. The constitutional functions of the Attorney General as the Chief Legal Advisor of the Government, do not operate in isolation of or independently from the Executive arm of Government.
- vi. The proposed amendments are an affront to the Constitution which at Article 234(2)(a) gives the Commission power to appoint persons to hold office in the public service.
- vii. The proposed amendments to section 21(2) of the Act is a violation of Article 234(2)(g) of the Constitution.

MIN. NO/DC/JLAC/2023/762:

ADJOURNMENT

There being no other business, the meeting was adjourned at five minutes past two o'clock. The next meeting will be held on notice.

SIGNED..........DATE:15.02.2024.....
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

Annexure 3: Statute Law (Miscellaneous
Amendments) Bill, 2023

SPECIAL ISSUE

Kenya Gazette Supplement No. 206 (National Assembly Bills No. 67)



REPUBLIC OF KENYA

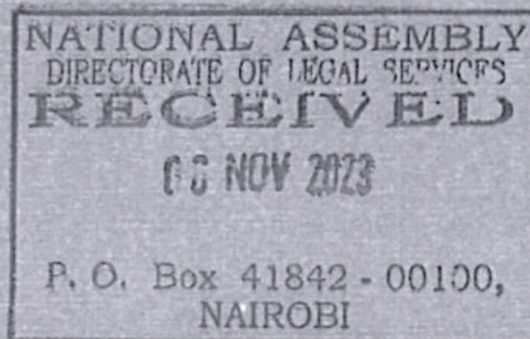
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 30th October, 2023

CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Statute Law (Miscellaneous Amendments) Bill, 2023	1797



THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637
TEL: 773-936-3000

**THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2023**

A Bill for

**AN ACT of Parliament to make various amendments to
statute law**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) Act, 2023. Short title.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner respectively specified in the third column. Amendment of written laws.

SCHEDULE

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Children's Act (No. 29 of 2022)	s. 186 (4)	Delete
	(6) (f)	Delete
The Copyright Act (No. 12 of 2001)	s.2	Delete the definition of "collective management organizations" and substitute therefor the following new definition— "collective management organization" means an organization approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the license fees for the use of copyright work, distribution of royalties and the granting of licences in respect of the use of copyright works or related rights;
	New	Insert the following new section immediately after section 30— 30AA. (1) Where a sound recording is published for commercial purposes, or a

Equitable
Remuneration.

reproduction of such phonograms is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication, provided that the phonogram is still protected under the Act.

(4) For the purposes of this section, phonograms that have been available to the public by wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered to have been published for commercial purposes.

(5) A performer shall have the unwaivable and untransferable rights to receive

equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audiovisual fixation to be managed through the relevant collective management organization.

(6) The right to an equitable remuneration under this section shall subsist from the date of publication of the audiovisual performance until the end of the fiftieth calendar year following the year of publication, provided that the audiovisual work or performance is still protected under the Act.

s.30B(1) Insert the word “authors” immediately before the word “performers”

(2) Insert the word “authors” immediately before the word “performers”

(3) Insert the word “authors” immediately before the word “performers”.

s.46(1) Delete and substitute therefor the following new subsection—

No person or association of persons shall commence or carry on the business as a collective managements organization unless registered as such by the Board and granted operating license.

(3) Delete the expression “twelve months” and substitute therefor the expression “thirty-six months”.

(4)

Insert the words “and is registered as a Collective Management Organization by the Board” at the end of paragraph (a).

Delete paragraph (d) and substitute therefor the following new paragraph—

(d) its main object, or one of its main objects, is negotiating for the licence fees for the use of copyright works and the granting of licences in respect of the use of copyright works or related rights.

Insert the following new subsections immediately after subsection (12)—

(13) An organization registered in accordance with subsection (4)(a) may apply to the Board in the prescribed manner for an operating licence.

(14) Where a collective management organization operating licence is revoked, the approved collecting agent shall in conjunction with the Board open and operate an escrow account to hold monies not immediately available for utilization or distribution until the operating license is reinstated or a new organization is licensed by the Board.

(15) During the period of revocation under subsection (14), the agency shall continue to collect and remit royalties to rights holders.

s.46A

Renumber the existing provision as subsection (1) and insert the following new subsection—

(2) A licensed collective management organization shall appoint an agency approved by the Board to collect and distribute royalties on their behalf through the National Rights Registry.

(3) The agency appointed under subsection (2) shall collect royalties on such terms and conditions as may be agreed upon between their and the collective Management Organization subject to approval of such terms by the Board.

s.46B

Insert the following new subsection immediately after subsection (1)—

(1A) In addition to the members provided for under subsection (1) there shall be coopted into the board of directors of a collective management organization at least four persons who hold professional qualifications recognized by a professional body established under the relevant law.

Insert the following new subsections immediately after subsection (4)—

(5) The members of the board of a collective management organization shall be eligible to such salaries, honorariums, and other allowances as may be approved by members in a general meeting and endorsed by the Board.

(6) A person who has been convicted of an offence under this Act or any law relating to the management of any company or organization or of a felony shall not be eligible to hold office as a director or to be employed as a member of the staff of a collective management organization.

(7) Where a person who is a member of the board of a collective management organization or a member of its staff is charged with an offence under this Act or any other law relating to the management

of any company or organization or of a felony such person shall step aside from his or her position until the matter is heard and determined.

(8) A person to whom subsection (7) applies shall during the hearing of the case be entitled to receive half of his or her basic pay and if acquitted of the offence shall be paid the outstanding amount, and may with the concurrence of the members of the organization be reinstated to his or her respective position in the Board.

(9) The payment of royalties by the collective management organization shall be automated and based on monitoring data and conducted in accordance with such conditions as the Board may from time to time prescribe.

s.46C

Insert the following new subparagraph immediately after subsection (1)—

(1A) Notwithstanding subsection (1), the Board may issue a licence for one entity to represent the rights of all parties within a sector.

s.46E

(6) Insert the following new paragraph immediately after paragraph (g)—

(h) at any other time when the Board considers it appropriate to do so in the best performance of its functions under this Act.

Insert the following subsections immediately after subsection (6)—

(7) Any member or director of a collective management organization who approves accounts beyond the limits

directed by the Board commits an offence and shall on conviction be liable to a fine not exceeding five times the amount in excess of the allowed amount or imprisonment for a term not exceeding three months or to both.

(8) A collective management organization shall only operate bank accounts authorized and monitored by the Board.

The Scrap Metal s. 2
Act, 2015 (No. 1
of 2015).

Insert the following new definitions in proper alphabetical sequence—

“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act;

“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect the government’s ability to undertake national defence and security;

“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;

“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business of smelting”; and

“steel fabricators” means an installation or factory for the production

of metal structures using a range of processes such as cutting, bending or assembling, which generates scrap metal in their processes.

- s. 4(1) Insert the following new paragraph immediately after paragraph (e) —
- (ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.
- s. 4(1)(f)(i) Delete the word “the” and substitute therefor the word “a”.
- s. 4(1)(f)(v) Delete.
- s. 6(1)(a)(ii) Delete the word “utility” and substitute therefor the words “critical national”.
- s. 9(1) Insert the word “a” immediately after the word “of”.
- s. 11 Renumber the provision as subsection (1) and add the following subsections —
- (2) Notwithstanding subsection (1), the Cabinet secretary shall issue a special licence for dealing in copper, aluminium and their alloys.
- (3) An application for a special licence shall be made in accordance with section 10.
- s. 18(3)(a) Delete the words “one million” and substitute therefor the words “five million”.
- s. 18(3)(b) Delete the word “five” and substitute therefor the word “ten”.
- s. 20(4) Delete the word “one” and substitute therefor the word “five”.
- s. 22(2) Delete the words “one million” and substitute therefor the word “five million”.

s. 24

(1) Insert the words “critical national” immediately after the word “the”.

Insert the following new sections immediately after section (1)—

(1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited for smelting into billets.

(1B) Where there is inadequate capacity at the Numerical Machining Complex and Kenya Shipyard Limited, the respective state entity through a written consent from the Numerical Machining Complex and the Kenya Shipyard Limited, shall seek approval from the Council to partner with a local smelter directly without involving a broker.

s. 24(2)

Delete the word “ten” and substitute therefor the word “twenty”

Delete the word “three” and substitute therefor the word “seven”.

s. 26(1)

Insert the words “or import” immediately after the word “export”.

s. 26(2)

Insert the words “or import” immediately after the word “export”

s. 26(3)

Insert the words “in consultation with the Authority.” immediately after the word “Secretary”

s. 26

Insert the following new sub section immediately after sub section (3)—

(3A) The certificate issued under subsection (3) shall indicate the nature, quantity and consideration for scrap metal

- to ensure compliance with the approved limits.
- s. 30(1)(a) Insert the words “critical national” immediately after the word “vandalized”.
- s.30(1)(e)(ii) Insert the words “smelter, electrical rewinder, steel fabricator” immediately after the word “miller”.
- The National Employment Authority Act, 2016 (No. 3 of 2016).
- s. 2 In the definition of “Authority”, delete the word “Youth”.
- s.4 (a) in the opening statement, insert the words “an employer who employs ten or more employees including” immediately after the words “applies to”;
- (b) insert the following new paragraph immediately after paragraph (a)—
(aa) each county government;
- s.9 (c) Delete the word “function” and substitute therefor the word “functions”.
- s. 17(2) (a) Delete paragraph (c) and substitute therefor the following new paragraph—
(c) has at least ten years’ experience, five of which shall be in a management level.
- (b) Delete paragraph (d).
- s.28(2) Delete.
- s. 30(1) Delete the word “youth” and substitute therefor the word “jobseeker”.
- s.30(2) Delete the word “youth” and substitute therefor the word “jobseeker”.

- s.30(3) Delete the word “youth” and substitute therefor the word “jobseeker”.
- s.33(1) Delete the words “private companies” and substitute therefor the words “prospective employers”.
- s.33(3) Delete the word “youth” and substitute therefor the word “jobseekers”.
- s.34 Delete the words “through community initiatives and similar fora”.
- s. 36(1) (a) Delete the word “students” and substitute therefor the word “trainees”.
- (b) Delete the words “or attachment during and”.
- s.36(3) Delete the word “student” and substitute therefor the words “trainee”.
- s.36(4) Deleting the word “students” wherever it appears and substitute therefor the word “trainees”.
- s.37 (a) Delete subsection (1) and replace it with the following new subsection—
- (1) The Authority shall encourage private and public institutions to employ Kenyans in all positions, including positions of leadership and management.
- (b) Delete subsection (2) and substitute therefor the following new subsection—
- (2) The Authority shall establish incentives to reward a private institution that employs Kenyans within six months after completing their certificate or undergraduate studies, and who do not possess more than five years’ experience.

	s.42	Delete the word “youth” wherever it appears and substitute therefor the word “jobseekers”.
The Fisheries Management and Development Act, 2016 (No. 35 of 2016).	s. 6(1)	Delete paragraph (a) and substitute therefor the following new paragraph— (a) the Cabinet Secretary responsible for matters relating to fisheries, who shall be the chairperson.
	s. 6(3)	Delete.
The Energy Act, 2019 (No. 1 of 2019)	s. 2	Delete the definition of the term “distribution licence”. Insert the following new definition in proper alphabetical sequence— “distribution licence” means a document or instrument authorising a person to distribute energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;
	New	Insert the following new section immediately after section 6— National Energy Efficiency and Conservation Action Plan 6A. The Cabinet Secretary, in consultation with the relevant statutory authorities and stakeholders, shall coordinate the development and implementation of a national energy efficiency and conservation action plan.
	s. 10	Delete the words “with the exception of crude oil” appearing in paragraph (a) (ii); Delete paragraph (ii) and substitute therefor the following new paragraph— (ii) make proposals to the Cabinet Secretary for purposes of making

regulations on energy efficiency and conservation.

- s. 12(1)(e) Delete.
- s. 20(1) Delete the phrase “half of a” appearing in paragraph (a).
- s. 20 Delete the word “levies” appearing in the proviso.
- s. 26(4) Insert the word “of” immediately after the word “terms”.
- s. 45(1) Delete the words “who shall be the Secretary to the Board” appearing in paragraph (d).
- s. 45(1)(e) Delete the word “three” and substitute therefor the word “seven”.
- s. 45 Delete paragraph (f).
- s. 76(2) Insert the following new paragraph immediately after paragraph (g)—
- (h) the Managing Director of Kenya Power and Lighting Company PLC or his or her representative.
- s. 82 Delete the word “Authority” and substitute therefor the expression “Renewable Energy Resource Advisory Committee”.
- s. 98(1)(d) Insert the word “with” immediately after the word “compliance”.
- s. 100(1)(b) Insert the word “of” immediately after the word “type”.
- s. 117 Delete the word “one” and substitute therefor the words “one half of a”.
- s. 129(2) Delete the word “three” and substitute therefor the word “four”.
- s. 149 (3) Delete the word “licence” and substitute therefor the word “certificate”.
- s. 154(2) Delete the word “metres” and substitute therefor the word “meters”.
- Proviso*

s. 166(3) Delete and substitute therefor the following new subsection—

(3) For the avoidance of doubt, the licensee shall not be liable to any penalty under subsection (1) or to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines, or by inevitable accident or force majeure, or was so slight as not to materially affect the quality or value of the supply.

s. 166(4) Delete and substitute with the following new subsection—

(4) The Cabinet Secretary may make regulations to give effect to this section subject to the grid attaining the quality and reliability of supply and service as prescribed by the Authority.

s. 167(1) Delete the expression "(1)".

s. 167(1) Delete the word "electrician" appearing in paragraph (o) and substitute therefor the words "electrical worker".

s. 169(2) Delete and substitute therefor the following new subsection—

(2) Any vessel that is used to convey the vandalised or stolen equipment or appliances referred to in subsection (1) shall be forfeited to the State.

s. 187 Delete the words "coordinate the development and implementation of a" and substitute therefor the words "develop and implement".

s. 199(1) Insert the word "*Gazette*" immediately after the words "by notification in the".

s. 208(1) Delete the words "on the recommendation of" and substitute therefor the words "in consultation with".

- s. 216(1) Delete the word “Consolidated”.
- The Public
Private
Partnerships
Act, 2021 (No.
14 of 2021).
- s. 29(3) Insert the word “development” immediately after the words “recoverable project”.
- s.48(2) Delete the word “appraisal” appearing immediately after the word “project” and substitute therefor the word “implementation”.
- s.55(4) Delete the words “than an” and substitute therefor the word “the”.
- s. 73(7) Delete the expression “section 71” wherever it appears and substitute therefor the expression “section 72”.
- s. 75(5) Delete the word “seven” and substitute therefor the word “fourteen”.
- The
Parliamentary
Service Act
(No. 22 of
2019).
- s. 3 Delete paragraph (a) and substitute therefor the following new paragraph—
- (a) specify the further functions that may be performed and powers that may be exercised by the Commission pursuant to Article 127(6)(e) and Article 252(1)(d) of the Constitution;
- s. 5 Insert the following new paragraph immediately after paragraph (f)—
- (fa) the provision of technical, infrastructural and administrative competence to ensure efficient and effective delivery of services to Parliament;
- s.18 Insert the following new sub-sections after subsection (2)—
- (3) The Commission shall review and determine the rates of reimbursement for travel by motor vehicle for Members,

in accordance with international best practice;

(4) The Commission shall review and determine the rates of reimbursement of the daily subsistence costs expended by Members and staff of Parliament in the performance of their duties;

The Judicial Service Act
(No. 1 of 2011).

New

Insert the following new section immediately after section 13—

Review and
recommendations
on conditions of
service

13A. In accordance with the mandate conferred to the Commission by Articles 172(1)(b) and 252(1) (d) of the Constitution, the Commission shall review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of their duties.

MEMORANDUM OF OBJECTS AND REASONS

The Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes—

The Children's Act, 2022 (No. 29 of 2022)

The Bill proposes to amend the Children's Act, 2022 to remove the provisions which prohibit the court from granting a sole male applicant adoption of a child.

The Copyright Act, 2001 (No. 12 of 2001)

The Bill proposes to amend the Copyright Act, 2001 to make provisions for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards the authors and performers.

It is also proposed to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

The Scrap Metal Act, 2015 (No. 1 of 2015)

The Bill proposes to amend the Scrap Metal Act to provide for a special licence for dealing in copper, aluminium and their alloys. This is intended to protect critical infrastructure for instance transformers. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely the Numerical Machining Complex and the Kenya Shipyard Limited.

The Ministry of Industrialization, Trade and Enterprise Development has also proposed the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act to deter vandalism and other prohibited acts.

The National Employment Authority Act, 2016 (No. 3 of 2016)

The Bill proposes to amend the National Employment Authority Act, 2016, to cure inconsistencies in the Act and align it with the National Employment Authority Human Resources policy and procedures Manual.

The Fisheries Management and Development Act, 2016 (No. 35 of 2016)

The Bill proposes to amend the Fisheries Management and Development Act, 2016, to provide that the Cabinet Secretary responsible

for matters relating to fisheries shall be the chairperson of the Kenya Fisheries Advisory Council.

The Energy Act, 2019 (No. 1 of 2019)

The Bill proposes to amend the Energy Act, 2015 to give effect to the recommendations of the Presidential Taskforce on the Review of Power Purchase Agreements. The proposals include:

- (a) addressing the overlap in functions between the Energy Petroleum Regulatory Authority and the Ministry of Energy;
- (b) including the Kenya Power and Lighting Company in the Membership of the Rural Electrification and Renewable Energy Corporation established under the Act;
- (c) winding up the Nuclear Power and Energy Agency and transferring its functions to the Ministry and
- (d) subjecting the making of regulations to the attainment by the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority to allow for compensation of consumers for power outages when the country achieves N-I Grid Reliability status.

The Public Private Partnerships Act, 2021 (No. 14 of 2021)

The Bill proposes to amend the Public Private Partnerships Act, 2021 to correct typographical and cross-referencing errors contained in the Bill, and to align provisions with each other to ensure consistency.

The Parliamentary Service Act, 2019 (No. 22 of 2019)

The Bill proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.

The Judicial Service Act, 2011 (No. 1 of 2011)

The Bill proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Commission under Articles 172(1)(b) and 252(1) (d) of the Constitution.

Dated the 25th October, 2023.

KIMANI ICHUNG'WAH,
Leader of Majority.

Section 186 of No. 29 of 2022 which it is intended to amend—

186. Who may apply to adopt a child.

(1) The Court may make an adoption order on application by—

(a) a sole applicant; or

(b) two spouses jointly.

(2) The Court shall not make an adoption order in any case unless—

(a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and

(b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.

(3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.

(4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.

(5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.

(6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—

(a) is of unsound mind within the meaning of the Mental Health Act (Cap. 248);

(b) is incapable of exercising proper care and guardianship of a child;

(c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;

(d) in the case of joint applicants, if the applicants are not married to each other;

(e) is a sole male applicant except where the applicant is a biological relative of the child; or

(f) is a foreign applicant except where the applicant is a biological relative of the child.

(7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interest of the child to make the order.

(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—

- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) on the application of one of the spouses, the consent of the other spouse; and
- (c) in the case of a child who has attained the age of ten years, the child himself or herself.

(9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.

Section 2 of No. 12 of 2001 which it is intended to amend—

collective management organisation means an organisation approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the collection and distribution of royalties and the granting of licenses in respect of the use of copyright works or related rights;

Section 30B of No. 12 of 2001 which it is intended to amend—

30B. Collection and payment of royalty

(1) Subject to the provisions of sections 28 and 30 of this Act, the Kenya Revenue Authority or any other designated entity by the Board shall collect royalties on behalf of collective management organizations licensed to represent performers and owners of sound recordings.

(2) All claims for compensation under this section shall be made through the collective management organizations representative of performers and producers of sound recordings.

(3) The level of the royalty payable shall be agreed between the collective management organization representative of performers and producers of sound recordings and the organization representative of manufacturers and importers of audio recording equipment, audio blank

tape and media intended for recording or failing such agreement by the Board.

(4) The Board shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rightsholders.

Section 46 of No. 12 of 2001 which it is intended to amend—

46. Collective administration of Copyright

(1) No person or association of persons shall commence or carry on the business of a copyright collective management organisation except under or in accordance with a certificate of registration granted under this section.

(2) Applications for registration as collective management organisations shall be made to the Board accompanied with the prescribed fees and the Board, by a Gazette notice is empowered to declare a body which has applied for registration a collecting society, for all relevant copyright owners or for such classes of relevant copyright owners as are specified in the notice.

(3) Every certificate issued to a collective management organisation shall be in the prescribed form and shall unless cancelled be valid for a period of twelve months from the date of issue.

(3A) Where the collective management organization has not submitted a complete application or where administrative shortfalls are apparent, the Board may issue a provisional license for a period not exceeding six months and such provisional license shall be counted as part of the complete license if the license is subsequently issued.

(4) The Board may approve a collective management organisation if it is satisfied that—

- (a) the body is a company limited by guarantee and incorporated under the Companies Act, 2015;
- (b) it is a non-profit making entity;
- (c) its rules and regulations contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society are adequately protected;
- (d) its principal objectives are the collection and distribution of royalties; and
- (e) its accounts are regularly audited by independent external auditors elected by the society.

(5) The Board shall not approve another collective management organisation in respect of the same class of rights and category of works if there exists another collective management organisation that has been licensed and functions to the satisfaction of its members.

(6) The Board may, where it finds it expedient, assist in establishing a collective management organisation for any class of copyright owners.

(7) Deleted by Act No. 20 of 2019, s. 30.

(8) Deleted by Act No. 20 of 2019, s. 30.

(9) The Board may by notice in the Gazette and two daily newspapers of national circulation de-register a collective management organisation if its satisfied that the collective management organisation—

- (a) is not functioning adequately as collective management organisation;
- (b) is not acting in accordance with its Memorandum and Articles of Association or in the best interests of its members;
- (c) has altered its rules so that it no longer complies with subsection 4 of this section; and
- (d) it has refused or failed to comply with any of the provisions of this Act.

(10) Before deregistering a collective management organization, the Board shall notify the organization in writing and invite it and any of its members to make written representations against deregistration within twenty one days from the date of the notice.

(11) If, after consideration of any written representations made in terms of subsection (10), the Board is of the opinion that the failure in question on the part of the organisation is materially prejudicing or has materially prejudiced its members, the Board may withdraw the registration thereof or otherwise sanction members of the Board of Directors or Management of the organization as set out under this Act.

(12) Any person who purports to collect royalties from users as provided for under this section without authority of the Board commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment to a term not exceeding four years, or both.

Section 46A of No. 12 of 2001 which it is intended to amend—

46A. Approval for imposition and collection of levy

Notwithstanding any other provision of this Act, no collecting society shall—

- (a) impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary in charge of copyright issues in the Gazette from time to time; or
- (b) levy royalty on users exempted by the Cabinet Secretary by notice in the Gazette.

Section 46B of No. 12 of 2001 which it is intended to amend—

46B. Qualification and tenure of Directors and Chairpersons of collective management organizations

(1) A member of a collective management organization shall be eligible for election as a director if he holds a postsecondary qualification recognized in Kenya.

(2) A director elected under this section shall serve for a term of three years and shall be eligible for re-election for one further term.

(3) A director elected as a chairperson of a collective management organization shall hold office for a term of three years and shall be eligible for re-election for one further term.

(4) A chief executive officer of a collective management organization shall hold office for a term of four years and shall be eligible for reappointment for one further term upon satisfactory performance as evaluated by the directors.

Section 46C of No. 12 of 2001 which it is intended to amend—

46C. Role and types of collective management organizations

(1) Authors, producers, performers, visual artists and publishers may form a collective management organization to collect, manage and distribute royalties and other remuneration accruing to their members.

(2) Any new collective management organization to deal with rights not provided for under subsection (1) may be approved by the Kenya Copyright Board as may be necessary.

(3) The designated extent of operation shall be set by Regulations made under this Act.

Section 4 of No. 1 of 2015 which it is proposed to amend—

4. Composition of the Council

(1) The Council shall consist of —

- (a) a chairperson appointed by the Cabinet Secretary who has at least five years' experience in the public or private sector;

- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to transport or representative;
- (c) the Commissioner-General of the Kenya Revenue Authority or a representative;
- (d) the Inspector-General of Police or a representative;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialisation or his or her representative;
- (f) the following persons, nominated as follows, and appointed by the Cabinet Secretary —
 - (i) one person nominated by the Scrap Metal Dealers Association;
 - (ii) one person nominated by the metal cottage industry;
 - (iii) one person nominated by the Kenya Association of Manufacturers;
 - (iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis;
 - (v) one person nominated by the Consumer Federation of Kenya.

Authority may determine.

Section 6 of No. 1 of 2015 which it is proposed to amend—

6. Functions of the Council

(1) The functions of the Council shall be to—

- (a) advise the Cabinet Secretary on—
 - (i) the appropriate measures and mechanisms for regulating the scrap metal industry in ensuring economic growth, protection of public health and conformity to the principles of environmental stewardship as required by the Basel Convention;
 - (ii) the appropriate measures and mechanisms for protecting public interest against vandalism, theft to utility infrastructure and private property;

- (iii) the methods of attracting investors on the utilization of excess scrap materials and supporting existing users of scrap metal;
- (iv) the applicable license fees to be prescribed under this Act; and

Section 9 of No. 1 of 2015 which it is proposed to amend—

9. Restriction from dealing in scrap metal

(1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of Scrap Metal Dealers Association.

Section 11 of No. 1 of 2015 which it is proposed to amend—

11. Issue of licence

Every licence granted or renewed under this section shall —

- (a) be issued in the form prescribed in the Third Schedule;
- (b) be valid for one year;
- (c) specify the licensee as the principal or agent to deal in scrap metal;
- (d) specify the location of all the premises in which the licensee is authorized to deal in scrap metal;
- (e) specify any type of scrap metal the licensee may or may not deal in; and
- (f) be subject to such conditions as the Council may consider necessary.

Section 18 of No. 1 of 2015 which it is proposed to amend—

18. Register by licensee

(3) Any licensee, servant or agent who fails to comply with section commits an offence and is liable on conviction—

- (a) for a first offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both; and
- (b) for a second or subsequent offence to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and such license shall be revoked.

Section 20 of No. 1 of 2015 which it is proposed to amend—

20. Restriction on licensees

(4) Any licensee who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million shillings and, where such offence continues after conviction, to a fine not exceeding two thousand shillings for each day in which such offence continues or until the license is revoked.

Section 22 of No. 1 of 2015 which it is proposed to amend—

22. Information regarding stolen or lost property

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings to imprisonment for a term not exceeding one year or to both.

Section 24 of No. 1 of 2015 which it is proposed to amend—

24. Destruction of infrastructure

(1) A person shall not remove, deface or destroy any scrap metal from the infrastructure designed for roads, bridges, railways, pipelines, telecommunication, electricity, water and sewerage, or any government infrastructure project.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings to imprisonment for a term not exceeding three years or to both,

Section 26 of No. 1 of 2015 which it is proposed to amend—

26. Exports of scrap metal

(1) A person shall not export scrap metal in any form.

(2) Notwithstanding subsection (1), the Cabinet Secretary for matters relating to finance, in consultation with the Cabinet Secretary responsible for industrialization and with the recommendation of the Council, may, under such circumstances as may be prescribed, authorize the export of specific scrap metal for a specified period.

(3) A certificate for each consignment shall be issued by the Principal Secretary .

(4) Any exemption allowed under this section shall be valid for six months from the date of issue of the certificate of exemption.

(5) Any person who contravenes this section commits an offence is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both .

Section 30 of No. 1 of 2015 which it is proposed to amend—

30. Power of entry

(1) An inspector may at any reasonable time, with or without a search warrant—

- (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being stolen scrap metal or vandalized infrastructure are to be found and make a record as provided in the prescribed form;
- (b) take the steps that may be reasonably necessary to terminate the deal or transaction on vandalized or stolen scrap metal at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:

Provided that the actions set out herein shall not include the destruction or alienation of the relevant scrap metal unless authorize)y an order issued by a court of competent jurisdiction,

- (c) seize, detain, and, where applicable, remove for detention, all the scrap metal found at, on or in such place, premises or vehicle or other modes of conveyance;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in processing such scrap metal;
 - (i) question that person and take down a statement from that ^ person;
 - (ii) demand from that person any book, document, article, item or object which in any way may assist in identifying the location, source or destination of the scrap metal, or the identity and address of any person who may be involved in dealing as a supplier, miller, distributor, exporter or clearing and forwarding agent of the scrap metal.

Section 2 of No. 3 of 2016 which it is proposed to amend—

2. Interpretation

“Authority” means the National Youth Employment Authority established by section 6;

Section 4 of No. 3 of 2016 which it is proposed to amend—

4. Application of the Act

This Act applies to –

- (a) the national government;
- (b) the private sector; and
- (c) the informal sector.

Section 9 of No. 3 of 2016 which it is proposed to amend—

9. Powers of the Authority

The Authority shall have powers for the purpose of carrying out its functions to perform such acts as may be authorized by this Act or any other written law and in particular—

- (a) advise the Cabinet Secretary on any matter deemed by the Authority to be necessary or expedient to be considered by the State in connection with the provisions of this Act or the application thereof and on any other matter relating to employment which has been referred by the Cabinet Secretary to the Authority for the advice and recommendations of the Authority;
- (b) conduct studies on any matter relating to its mandate;
- (c) obtain information relevant to the discharge of its function;

Section 17 of No. 3 of 2016 which it is proposed to amend—

17. Director-General

(2) A person shall be qualified to be appointed as a Director-General if that person -

- (a) holds a degree from a university recognized in Kenya;
- (b) meets the requirements of Chapter Six of the Constitution;
- (c) has at least five years' experience, two of which shall be in a management level; and
- (d) has not attained the age of thirty-five years at the time of appointment.

Section 28 of No. 3 of 2016 which it is proposed to amend—

28. Information on vacancies

(2) Whenever a vacancy occurs, the appointing office shall give priority to the job seekers registered by the Authority who possess the qualifications or skills sought.

Section 30 of No. 3 of 2016 which it is proposed to amend—

30. Applications.

(1) A youth registered under this Act may apply directly to a prospective employer.

(2) The Authority may forward applications or details of any qualified candidates to any prospective employer for their consideration and employment of the Kenyans registered under this Act.

(3) A State entity, public office or State office may request for data of qualified youth from the Authority for purposes of considering them for employment.

(4) A State entity, public office or State office may request for data of qualified youth from the Authority for purposes of considering them for employment.

Section 33 of No. 3 of 2016 which it is proposed to amend—

33. Authority to undertake due diligence

(1) The Authority shall, on its own motion, or using other state machineries, undertake due diligence on private companies seeking its services under this Act.

(2) The Authority shall not partner with any prospective employer where the Authority or any national security organ has, upon due diligence, established possible employment malpractices or violation of laws of Kenya.

(3) Notwithstanding subsection (1) and (2), the Authority shall take necessary measures to ensure that the youth are not denied access to employment unreasonably.

Section 34 of No. 3 of 2016 which it is proposed to amend—

34. Facilitation of training

The Authority shall, through community initiative and similar fora, facilitate training on any matter relating to employment to Kenyans seeking employment.

Section 36 of No. 3 of 2016 which it is proposed to amend—

36. Placement for internship

(1) The Authority shall facilitate placement of students at tertiary institutions in positions of internship or attachment during and after completion of their study.

(2) The Authority shall, during or after successful completion of a person's undergraduate, diploma or certificate studies, make efforts to find paid internship for that person in a Government institution or any other sector, as the person seeks employment individually or through the Authority.

(3) A student at a tertiary institution or institution of higher learning who wishes to be placed on internship or attachment by the Authority shall furnish the Authority, in a manner provided by the Authority, with personal and academic details to facilitate such placement.

(4) The Authority shall maintain a record of

(a) all students seeking internship or attachment; and

(b) all students who successfully attain positions of internship or attachment.

Section 37 of No. 3 of 2016 which it is proposed to amend—

37. Encouragement to employ Kenyans

(1) The State shall, through the Authority, encourage private and public institutions to employ Kenyans in all positions, including positions of leadership and management.

(2) The State shall come up with incentives to reward any private institution that employs Kenyans within six months of completion of their certificate or undergraduate studies, and who do not possess more than five years work experience.

Section 42 of No. 3 of 2016 which it is proposed to amend—

42. Annual reports

(2) The report referred to under subsection (1) shall include -

(a) number of youth registered in the period under review;

(b) number of youth who have secured employment during the period under review;

Section 6 of No. 35 of 2016 which it is proposed to amend—

6. Establishment of the Kenya Fisheries Council

(1) There is hereby established an advisory body to be known as the Kenya Fisheries Advisory Council ("the Council"), which shall consist of—

(a) the Cabinet Secretaries responsible for fisheries;

Section 2 of No. 1 of 2019 which it is proposed to amend—

2. Interpretation

“distribution licence” means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;

Section 10 of No. 1 of 2019 which it is proposed to amend—

10. Functions of the Authority

The functions of the Authority shall be to—

(a) regulate—

- (i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;
- (ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;

Section 12 of No. 1 of 2019 which it is proposed to amend—

12. Board of the Authority

(1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—

- (a) a Chairperson who shall be appointed by the President;
- (b) the Principal Secretary responsible for Energy or his representative;
- (c) the Principal Secretary responsible for Petroleum or his representative;
- (d) the Principal Secretary in the National Treasury or his or her authorized representative;
- (e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors;
- (f) the Director-General; and
- (g) five other members not being public officers appointed by the Cabinet Secretary.

Section 20 of No. 1 of 2019 which it is proposed to amend—

20. Funds of the Authority

- (1) The funds of the Authority shall consist of—
- (a) levies not exceeding one half of a percent' on the sales of electricity and petroleum products;
 - (b) licence fees;
 - (c) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
 - (d) such monies as may be provided by Parliament for the purposes of the Authority;
 - (e) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;
 - (f) interest from bank deposits; and
 - (g) all monies from any other source provided for or donated or lent to the Authority:

Provided that any monies collected by the Authority including levies, fines and penalties in exercise of its functions shall be paid into the Consolidated Fund.

Section 26 of No. 1 of 2019 which it is proposed to amend—

26. Members of the Tribunal

(4) The Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.

Section 45 of No. 1 of 2019 which it is proposed to amend—

45. Board of the Corporation

(1) The management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of —

- (a) a Chairperson appointed by the President; or his
- (d) the Chief Executive Officer who shall be the Secretary to the Board;
- (e) three members appointed by the Cabinet Secretary; and
- (f) four other members appointed by the Council of County Governors

Section 76 of No. 1 of 2019 which it is proposed to amend—

76. Establishment of Renewable Energy Resource Advisory Committee

(2) The Renewable Energy Resource Advisory Committee is composed of —

- (a) principal secretary in the Ministry of Energy or his or her representative who shall be the Chairperson;
- (b) chief executive officer of the Corporation or his representative, who shall be the Secretary;
- (c) managing director of the Geothermal Development Company Limited or his or her representative;
- (d) managing director of the Kenya Electricity Generating Company Limited or his or her representative;
- (e) Attorney-General or his or her representative;
- (f) principal secretary of the National Treasury or his representative; and
- (g) principal secretary responsible for matters relating to resources or his or her representative

Section 82 of No. 1 of 2019 which it is proposed to amend—

82. Renewal and surrender of licence, etc

The Cabinet Secretary may, on the advice of the Authority—

- (a) renew a licence for a term not exceeding five years after the initial expiry or any renewal thereof subject to such terms and conditions as the Cabinet Secretary may consider necessary;
- (b) wholly or partly remit all or any of the terms and conditions contained in any licence where, owing to special circumstances, in his opinion, compliance there with would be impossible or great hardship would be inflicted upon the licensee;
- (c) extend time to the licensee for complying with the terms and conditions of any licence upon such terms and conditions as the Cabinet Secretary may consider necessary; or
- (d) accept, whether with a view to renewing or reissuing any licence or otherwise the surrender of any licence or any part of the area comprised therein upon such terms and conditions as the Cabinet Secretary may consider necessary, but no such surrender shall

affect any liability incurred by the licensee before the surrender shall have taken effect.

Section 98 of No. 1 of 2019 which it is proposed to amend—

98. Factors to be considered in reviewing an application

(1) The Authority shall, in granting or rejecting an application for a licence or permit, take into consideration—

- (a) the impact of the undertaking on the social, cultural or recreational life of the community;
- (b) the need to protect the environment and to conserve the natural resources in accordance with the environmental, health, and maritime laws and international maritime treaties ratified by Kenya and other guidelines developed by the Authority;
- (c) compliance with Occupational Safety and Health Act (No. 15 of 2007) or other safety and health standards recommended by the Authority in consultation with the relevant statutory body;
- (d) compliance this Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Authority in consultation with the Kenya Bureau of Standards;
- (e) land use or the location of the undertaking;
- (f) economic and financial benefits to the country or area of supply of the undertaking;
- (g) the cost of the undertaking and financing arrangements;
- (h) the ability of the applicant to operate in a manner designed to y, protect the health and safety of users of the service for which the licence or permit is required and other members of the public who would be affected by the undertaking;
- (i) the technical and financial capacity of the applicant to render the service for which the licence or permit is required; and
- (j) any other matter that the Authority may consider likely to have a bearing on the undertaking.

Section 100 of No. 1 of 2019 which it is proposed to amend—

100. Forms and conditions of a licence or permit

(1) Every licence or permit shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable—

- (a) the duration of the licence or permit;
- (b) the type coal or coal products;
- (c) the market area segments; and
- (d) any other matter connected with the carrying on of the undertaking.

Section 117 of No. 1 of 2019 which it is proposed to amend—

117. Requirement of a licence

A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case maybe to the Authority in accordance with the provisions of this Act: Provided that a person shall not require any authorization to generate electrical energy for own use of a capacity not exceeding one megawatt

Section 129 of No. 1 of 2019 which it is proposed to amend—

129. Accounts, records and reports of licensee

(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Authority within three months after the end of each financial year

Section 149 of No. 1 of 2019 which it is proposed to amend—

149. Certificates for electrical workers

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry, subject to the holder satisfying such continuing technical trainings as may be prescribed .

Section 154 of No. 1 of 2019 which it is proposed to amend—

154. Metering of supply to consumers

(2) The retailer shall supply and fix meters upon the premises of the consumer and connect the supply system therewith:

Provided that the licensee may agree to the value of the supply to any consumer being ascertained by a private metre belonging to the consumer.

Section 166 of No. 1 of 2019 which it is proposed to amend—

166. Penalties and compensation for failure and defects in electricity supply

(3) For the avoidance of doubt, the licensee shall not be liable to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines or inevitable accident or force majeure was so slight as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary shall make regulations to give effect to this section within six months of the coming into force of this Act.

Section 167 of No. 1 of 2019 which it is proposed to amend—

167. Regulations for electrical energy

(1) The Cabinet Secretary may upon recommendation of the Authority make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or any of the following purposes—

(o) carrying out electrical installation work by an electrician and an electrical contractor.

Section 169 of No. 1 of 2019 which it is proposed to amend—

169. Offences deemed to be economic crimes

(2) Any vessel used to convey the vandalised equipment or appliance in the attempted vandalism detailed in subsection (1) shall be forfeited to the state.

Section 187 of No. 1 of 2019 which it is proposed to amend—

187. Energy Efficiency and Conservation Programme

The Authority shall coordinate the development and implementation of a prudent national energy efficiency and conservation programme.

Section 199 of No. 1 of 2019 which it is proposed to amend—

199. Power of County Government to make rules

(1) A County Government may, by notification in the, make rules for carrying out the provisions of this Act and not inconsistent with the rules and regulations, if any, made by the National Government.

Section 208 of No. 1 of 2019 which it is proposed to amend—

208. Cabinet Secretary may make regulations generally

(1) The Cabinet Secretary may, on the recommendation of the Authority and subject to section 167, make regulations for or with respect

to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

Section 29 of No. 14 of 2021 which it is proposed to amend—

29. Success fees and recoverable project development costs

(3) Success fees and recoverable project costs under subsection (2) shall be payable into the Public Private Partnership Project Facilitation Fund.

Section 48 of No. 14 of 2021 which it is proposed to amend—

48. Prequalification committees

(2) The contracting authority may, where it considers it appropriate, constitute the project appraisal team as the prequalification committee for purpose of prequalifying bidders under subsection (1).

Section 55 of No. 14 of 2021 which it is proposed to amend—

55. Evaluation of bids and evaluation reports

(4) The contracting authority shall submit than an evaluation report to the Directorate for no objection within seven days of conclusion of the evaluation.

Section 73 of No. 14 of 2021 which it is proposed to amend—

73. Project management

(7) Where the Directorate determines in accordance with this section and section 71 that there has arisen an imbalance in the distribution of benefits, and for the purpose of promoting the sustained transfer of project-linked economic benefits to the citizens of Kenya, the Directorate shall, in consultation with contracting authority, initiate the amendment or variation of the project agreement in accordance with section 71.

Section 75 of No. 14 of 2021 which it is proposed to amend—

75. Petition Committee

(5) A petition under this section shall be made within seven days from the date of the decision of the Directorate, Committee or a contracting authority.

Section 3(a) of No. 22 of 2019 which it is proposed to amend—

3. Object and purpose of the Act

The object and purpose of this Act is to—

- (a) provide for further functions and powers of the Commission pursuant to Articles 127(6)(e) and 252(1)(d) of the Constitution.

Section 18 of No. 22 of 2019 which it is proposed to amend—

18. Services and facilities for Parliament

(1) The Commission shall, to the extent of its constitutional mandate, be responsible for fulfilment of the provisions under Article 127(6)(a) and (d) of the Constitution and in particular shall formulate policies, regulations, strategies and put in place mechanisms for the provision of such services and facilities as necessary for the effective functioning of Parliament and the well-being of Members and the staff of the Commission.

(2) The Commission shall adopt comprehensive strategic plans that ensure the realization of Article 127 (6) (b) and (d) of the Constitution.

Annexure 4: Advertisement inviting the public to submit memoranda on the Bill

Defence to draw strategy



General Francis Ogolla (left) and National Security Adviser Mohammed Farah. (Kipsang Joseph, Standard)

The President described the inaugural graduation at NDU-K as a milestone for Kenya and other countries with which Kenya collaborates on security matters.

Defence CS Aden Duale hailed the NDU-K, saying that it provides a platform for international collaboration to develop solutions to global challenges.

"This key milestone is a multisectoral platform for dialogue and exchange to find solutions to contemporary and emerging challenges," said Duale.

Education CS Ezekiel Machogu said the multisectoral collaboration between various ministries and government agencies would go a long way in the realisation of national aspirations.

"It is also our call that universities be creative in coming up with revenue streams of their own to complement the little that the government has allocated to them," said Machogu.

The pioneer class of NDU-K consists of military, police, and civilians drawn from various government entities, as well as military officers from other countries including India, Nepal, South Africa, Malawi, Uganda, Egypt, and South Sudan among others.

kgachuhi@standardmedia.co.ke

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 67 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 67 of 2023) was read a First Time on Wednesday 15th November, 2023 and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 67 of 2023) sponsored by the Leader of the Majority Party, the Hon. Klmant Ichung'wah, MP seeks to make amendments to various statutes in keeping with the practice of making amendments that do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes—

- (1) **The Children Act, 2022 (No. 29 of 2022)**
The Bill proposes to amend the Children Act, 2022 to repeal section 166(4) in compliance with Court decision in Adoption Cause E004 of 2022 *Re Baby M* where the court held the section that prohibits adoption by a sole male to be unconstitutional.
- (2) **The Copyright Act, 2001 (No. 12 of 2001)**
The Bill proposes to amend the Copyright Act, 2001 to make provisions for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organizations towards the authors and performers. It also proposes to bring collective management organizations under regulation by the Board in order to enhance their efficiency.
- (3) **The Scrap Metal Act, 2015 (No. 1 of 2015)**
The Bill proposes to amend the Scrap Metal Act, 2015 to provide for a special license for dealing in copper, aluminum, and their alloys to protect critical infrastructure. Additionally, the Bill proposes to restrict the disposal of scrap metal from critical infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited; the regulation of imports and exports; and enhancement of penalties in the Act to deter vandalism and other prohibited acts.
- (4) **The National Employment Authority Act, 2016 (No. 3 of 2016)**
The Bill proposes to amend the National Employment Authority Act, 2016 to cure inconsistencies in the Act and align it with the National Employment Authority Human Resources policy and procedures Manual.
- (5) **The Fisheries Management and Development Act, 2016 (No. 35 of 2016)**
The Bill proposes to amend the Fisheries Management and Development Act, 2016 to provide that the Cabinet Secretary responsible for matters relating to fisheries shall be the chairperson of the Kenya Fisheries Advisory Council.
- (6) **The Energy Act, 2019 (No. 1 of 2019)**
The Bill proposes to amend the Energy Act, 2015 to give effect to recommendations of the Presidential Taskforce on the Review of Power Purchase Agreements to, among others, the overlap in functions between the Energy and Petroleum Regulatory Authority and the Ministry of Energy; add the Kenya Power and Lighting Company to the membership of the Rural Electrification and Renewable Energy Corporation; wind up the Nuclear Power and Energy Agency; and subject the making of regulations to the attainment of the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority.
- (7) **The Public Private Partnerships Act, 2021 (No. 14 of 2021)**
The Bill proposes to amend the Public Private Partnerships Act, 2021 to correct typographical and cross-referencing errors contained in the Act, and to align provisions with each other to ensure consistency.
- (8) **The Parliamentary Service Act, 2019 (No. 22 of 2019)**
The Bill proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Parliamentary Service Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.
- (9) **The Judicial Service Act, 2011 (No. 1 of 2011)**
The Bill proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Judicial Service Commission under Articles 172(1)(b) and 252(1)(d) of the Constitution.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill for consideration by the respective Departmental Committees of the National Assembly set out in the schedule below—

ACT PROPOSED FOR AMENDMENT	COMMITTEE
The Children Act, 2022 (No. 29 of 2022)	Social Protection
The Copyright Act, 2001 (No. 12 of 2001)	Communication Information and Innovation
The Scrap Metal Act, 2015 (No. 1 of 2015)	Trade, Industries and Cooperatives
The National Employment Authority Act, 2016 (No. 3 of 2016)	Labour
The Fisheries Management and Development Act, 2016 (No. 35 of 2016)	Blue Economy, Water and Irrigation
The Energy Act, 2019 (No. 1 of 2019)	Energy
The Public Private Partnerships Act, 2021 (No. 14 of 2021)	Finance and National Planning
1. The Parliamentary Service Act, 2019 (No. 22 of 2019)	Justice and Legal Affairs
2. The Judicial Service Act, 2011 (No. 1 of 2011)	

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41642-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before Thursday 30th November, 2023 at 5.00 p.m.

S. NJORGE
CLERK OF THE NATIONAL ASSEMBLY
17th November, 2023

"For the Welfare of Society and the Just Government of the People"

Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to submit memoranda on the Bill



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/JLAC/2023/151

1st December, 2023

Dr. Chris K. Kiptoo, CBS
Principal Secretary
Ministry of National Treasury and Economic Planning
NAIROBI

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No.
67 OF 2023)**

The Departmental Committee on Justice and Legal Affairs is established under National Assembly Standing Order 216 and is mandated to amongst others, *“study and review all legislation referred to it”*.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) sponsored by the Leader of Majority Party, Hon. Kimani Ichung’wah, CBS, MP is an Omnibus Bill which seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill. The Bill contains amendments to the following statutes under the purview of the Committee: -

1. The Parliamentary Service Act, 2019 (No. 22 of 2019)

The Bill proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.

2. The Judicial Service Act, 2011 (No. 1 of 2011)

The Bill proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Commission under Articles 172(1)(b) and 252(1)(d) of the Constitution.

The Bill was published on 30th October 2023 and Read a First Time in the House on 15th November, 2023. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting the House.

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. In this regard, the Committee has resolved to invite you to a meeting to make representations on the Bill.

The purpose of this letter is to invite you to the meeting with the Committee scheduled for **Tuesday 5th December, 2023 at 10:00 am** to make representations on the Bill. The meeting venue will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions should be sent to the Office of the Clerk, Main Parliament Building by Monday 4th December, 2023 and a soft copy emailed to cna@parliament.go.ke

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. no. **0722333145** or email: douglas.katho@parliament.go.ke or **Ms. Jael Ayiego Kilaka** on tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke or **Mr. Abdikafar Abdi Sheikh** on tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Prof. Njuguna Ndung'u, CBS**
Cabinet Secretary
Ministry of National Treasury & Economic Planning
NAIROBI



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/JLAC/2023/150

30th November, 2023

Mr. Jeremiah M. Nyegenye, CBS
Secretary
Parliamentary Service Commission
Parliament Building
NAIROBI

Dear

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No.
67 OF 2023)**

The Departmental Committee on Justice and Legal Affairs is established under National Assembly Standing Order 216 and is mandated to amongst others, *'study and review all legislation referred to it'*.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP is an Omnibus Bill which seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes under the purview of the Committee as follows: -

1. The Parliamentary Service Act, 2019 (No. 22 of 2019)

The Bill proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.

2. The Judicial Service Act, 2011 (No. 1 of 2011)

The Bill proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Commission under Articles 172(1) (b) and 252(1)(d) of the Constitution.

The Bill was published on 30th October 2023 and Read a First Time in the House on 15th November, 2023. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House.

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. In this regard, the Committee has resolved to invite you to a meeting to make representations on the Bill.

The purpose of this letter is to invite you to the meeting with the Committee scheduled for **Tuesday 5th December, 2023 at 10:00 am** to make representations on the Bill. The meeting venue will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions should be sent to the Office of the Clerk, Main Parliament Building by Monday 4th December, 2023 and a soft copy emailed to cna@parliament.go.ke

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. no. **0722333145** or email: douglas.katho@parliament.go.ke or **Ms. Jael Ayiego Kilaka** on tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke or **Mr. Abdikafar Abdi Sheikh** on tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Rt. Hon. (Dr.) Moses M. Wetangula, EGH**
Chairperson
Parliamentary Service Commission
Parliament Buildings
NAIROBI



Annexure 6: Letters from the Clerk of the National Assembly inviting stakeholders to attend the public participation forums



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/JLAC/2023/149

30th November, 2023

Ms. Anne Amadi,
Chief Registrar Judiciary of Kenya / Secretary
Judicial Service Commission
Supreme Court Building
NAIROBI

Hon. Shadrack Mose
Solicitor General
The State Law Office and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Mr. Renson Mulele Ingonga, OGW
The Director of Public Prosecutions
ODPP House, Ragati Road, Upper Hill
NAIROBI

Ms. Joyce Koech
Registrar of Companies
The State Law Office and Department of Companies
Sheria House, Harambee Avenue
NAIROBI

Ms. Anne R. Gitau, MBS
Chief Executive Officer
Salaries and Remuneration Commission
Kilimani 4th Ngong Avenue Williamson House
NAIROBI

Mr. Joash Dache, MBS
Commission Secretary/CEO,
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd Floor, Taifa Road,
NAIROBI

Ms. Florence Muturi,
Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
NAIROBI

Ms. Sheila Masinde
Executive Director
Transparency International
Kindaruma Road, Off Ring Road, Kilimani
Next to Commodore Office Suites
NAIROBI

Dr. Annette Mbogoh
Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Dr. Mshai Mwangola
Chairperson,
Uraia Trust
Jacaranda Avenue, off Gitanga Road
NAIROBI

Ms. Caroline Gaita
Executive Director,
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A,
1st Ngong Avenue
NAIROBI

Ms. Christine Gakii Nkonge,
Executive Director
Katiba Institute, House No.5 -the Crescent-Off Parklands Road
NAIROBI

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No.
67 OF 2023)**

The Departmental Committee on Justice and Legal Affairs is established under National Assembly Standing Order 216 and is mandated to amongst others, *“study and review all legislation referred to it”*.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) sponsored by the Leader of Majority Party, Hon. Kimani Ichung’wah, CBS, MP is an Omnibus Bill which seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill. The Bill contains amendments to the following statutes under the purview of the Committee: -

1. **The Parliamentary Service Act, 2019 (No. 22 of 2019)**

The Bill proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.

2. **The Judicial Service Act, 2011 (No. 1 of 2011)**

The Bill proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Commission under Articles 172(1)(b) and 252(1)(d) of the Constitution.

The Bill was published on 30th October 2023 and Read a First Time in the House on 15th November, 2023. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting the House.

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. In this regard, the Committee has resolved to invite you to a meeting to make representations on the Bill.

The purpose of this letter is to invite you to the meeting with the Committee scheduled for **Tuesday 5th December, 2023 at 10:00 am** to make representations on the Bill. The meeting venue will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions should be sent to the Office of the Clerk, Main Parliament Building by Monday 4th December, 2023 and a soft copy emailed to cna@parliament.go.ke

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. no. **0722333145** or email: douglas.katho@parliament.go.ke, **Ms. Jael Ayiego Kilaka** on tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke and **Mr. Abdikafar Abdi Sheikh** on tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Hon. Justin B. Muturi, EGH**
Attorney-General of the Republic of Kenya
State Law Office and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

10

8

0

Annexure 7: Memoranda by Stakeholders

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: cSenate@parliament.go.ke



PARLIAMENT

CLERK OF THE SENATE/ SECRETARY TO THE PARLIAMENTARY SERVICE COMMISSION

Parliamentary Service Commission
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

OUR REF: DLC/ADM/1/52/WT

4th December, 2023

Mr. Samuel Njoroge,
Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.

Dear *Mr. Clerk*

**INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS
NO. 67 OF 2023)**

Please refer to your letter Ref: NA/DDC/JLAC/2023/150 dated 30th November 2023 inviting my office for a meeting with the National Assembly Departmental Committee on Justice and Legal Affairs on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023).

In your letter, the Parliamentary Service Commission is requested to make representations on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023).

The matters in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) which the Parliamentary Service Commission shall submit on are the amendments to the Parliamentary Service Act, 2019 (No. 2 of 2019) and the Judicial Service Act, 2011 (No. 1 of 2011).

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.

The amendments to the Parliamentary Service Bill seek to enable the Parliamentary Service Commission to review and determine the rates of reimbursement of the daily subsistence costs expended by Members and staff of Parliament in the performance of their duties, and to determine the rates of reimbursement for travel by motor vehicle for Members in the performance of their duties.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023) proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Commission under Articles 172(1) (b) and 252(1)(d) of the Constitution.

The amendment to the Judicial Service Act seeks to allow the Judicial Service Commission to review and determine the nature of transport facilitation and the rates of reimbursement of daily subsistence costs expended by judges, judges, judicial officers and staff of the Judiciary in the performance of their duties.

Please find below the memorandum of the Parliamentary Service Commission:

INTRODUCTION

1. In line with Article 127 (6) (e) (ii) of the Constitution, the proposed amendments to the Parliamentary Service Bill prescribe that the Parliamentary Service Commission is the responsible constitutional Commission for providing services and facilities to ensure the efficient and effective functioning of Parliament and is responsible for performing the functions necessary for the well-being of the members and staff of Parliament for introduction in Parliament.

2. The Parliamentary Service Commission is established under Article 127 of the Constitution and its mandate is provided for under Article 127 (6) of the Constitution which provides:

6) The Commission is responsible for—

(a) providing services and facilities to ensure the efficient and effective functioning of Parliament;

(b) constituting offices in the parliamentary service, and appointing and supervising office holders;

(c) preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service;

(d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and

(e) performing other functions—

(i) necessary for the well-being of the members and staff of Parliament; or

(ii) prescribed by national legislation.

3. On its part, the Salaries and Remuneration Commission is established under Article 230 of the Constitution with the mandate to:

(a) set and regularly review the remuneration and benefits of all State officers; and

(b) advise the national and county governments on the remuneration and benefits of all other public officers.

4. Prior to the promulgation of the Constitution, the regime obtaining for the remuneration of Members of Parliament was the National Assembly Remuneration Act, Cap 5 of the Laws of Kenya.

5. This regime remained in force pursuant to the provisions of Part 2 of the Sixth Schedule to the Constitution (Sections 6-13 of the Sixth Schedule) until 4th March 2013 when the first elections under the new Constitution were held.
6. In March 2013, the Salaries and Remuneration Commission published a Gazette Notice in which the Salaries and Remuneration Commission set the mileage and domestic and foreign subsistence rates for members of Parliament.
7. Subsequently, in 2017, 2022 and 2023, the Salaries and Remuneration Commission published Gazette Notices also setting the mileage and domestic and foreign subsistence rates for members of Parliament.
8. From the onset, the Parliamentary Service Commission and the Salaries and Remuneration Commission have taken diametrically opposing positions on their respective jurisdictions on their respective constitutional mandates.
9. The Salaries and Remuneration Commission has taken a global role on its mandate and has interpreted services and facilities provided by the Parliamentary Service Commission as remuneration and benefits within the meaning of Article 230 (4) of the Constitution.
10. The services and facilities that the Parliamentary Service Commission may provide in line with its constitutional mandate were provided for in the Parliamentary Service Act, 2019.
11. Section 2 of the Parliamentary Service Act (Number 10 of 2000) defines the expression services and facilities as follows:

“services and facilities includes all means by which members of the National Assembly are officially assisted in performing their parliamentary duties.”

12. The Parliamentary Service Commission has on numerous occasions protested the setting of facilitative matters by the Salaries and Remuneration Commission which encroaches into the mandate of the Parliamentary Service Commission and other independent constitutional Commissions.
13. However, owing to the Gazette Notices published by the Salaries and Remuneration Commission, the Parliamentary Service Commission has faced audit queries on the payment of foreign and domestic subsistence rates for members of Parliament.
14. At its meeting held on 27th September 2023, the Parliamentary Service Commission resolved that a Bill making provisions that safeguard its mandate and stops further encroachment into its constitutional functions and mandate by the Salaries and Remuneration Commission as provided for in Article 127 (6) (e) (ii) of the Constitution be drafted.

BASIS FOR THE PROPOSED AMENDMENT

A. Need for an Enabling Statute for the Parliamentary Service Commission

15. In *Muthuuri & 4 Others v National Police Service Commission & 2 Others (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR) (Civ) (23 June 2023) (Judgment)*, the Supreme Court considered the role and place of the Salaries and Remuneration Commission in relation to other independent constitutional commissions and held:

“[82] Whereas Article 230(4)(b) integrated SRC in the determination of matters relating to remuneration and benefits of public officers, this provision must be read alongside other provisions of the Constitution which confer power to some of the Chapter Fifteen commissions to review and make recommendations on the conditions of service of public officers under them. For instance, Article 234(2)(g) empowers the Public Service Commission (PSC) to, “review and make recommendations to the national government in respect of conditions of

service, code of conduct and qualifications of officers in the public service” with the exception of State offices, an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic. The Article also does not apply to an office or position that is subject to the Parliamentary Service Commission, Judicial Service Commission (JSC), Teachers Service Commission (TSC) and NPSC. See Article 234(3).

[83] Likewise, Article 172(1)(b) empowers JSC to “review and make recommendations on the conditions of service” of the staff of the Judiciary. The JSC is equally granted the power to review and make recommendations on the conditions of service of judges, except those terms and conditions that relate to their remuneration. In other words, the JSC is at liberty and exercises freedom to determine and review the conditions of service of the staff of the Judiciary.”

16. In the Supreme Court case cited above, *Muthuri & 4 Others v National Police Service Commission & 2 Others (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR) (Civ) (supra)* the decision of the Supreme Court on whether the decision of the Salaries and Remuneration Commission is binding on the National Police Service Commission turned on the provisions of the National Police Service Commission Act.

17. The Supreme Court held:

“[82] Whereas Article 230(4)(b) integrated SRC in the determination of matters relating to remuneration and benefits of public officers, this provision must be read alongside other provisions of the Constitution which confer power to some of the Chapter Fifteen commissions to review and make recommendations on the conditions of service of public officers under them. For instance, Article 234(2)(g) empowers the Public Service Commission (PSC) to, “review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service” with

the exception of State offices, an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic. The Article also does not apply to an office or position that is subject to the Parliamentary Service Commission, Judicial Service Commission (JSC), Teachers Service Commission (TSC) and NPSC. See Article 234(3).

[83] *Likewise, Article 172(1)(b) empowers JSC to “review and make recommendations on the conditions of service” of the staff of the Judiciary. The JSC is equally granted the power to review and make recommendations on the conditions of service of judges, except those terms and conditions that relate to their remuneration. In other words, the JSC is at liberty and exercises freedom to determine and review the conditions of service of the staff of the Judiciary.*

[84] *A reading of the PSC Act and the Judicial Service Act (JS Act) also shows that, in reviewing and making recommendations on those conditions of service, consultation with SRC is not mandatory.*

[85] *Compared to the role SRC plays in the foregoing two commissions, Section 10 of the NPSC Act provides specifically for the role of SRC in the NPSC’s functions as follows:*

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

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

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

[86] In this regard, the Court of Appeal correctly observed that the NPSC Act had specifically been amended in 2014 to include the role of SRC in the functions of the NPSC. From a reading of Section 1o(1)(b) aforesaid, the 2nd respondent can determine the appropriate remuneration and benefits for the National Police Service only with the advice of the SRC. The 2nd respondent cannot by any means, as the appellants suggest, proceed to determine the benefits of graduate police constables without the advice of the SRC. Its role is mandatory and must be obtained prior to taking any action that requires that advice. The advice is binding in terms of Article 259(11) of the Constitution which directs that:

“(11) If a function or power conferred on a person under this Constitution is exercisable by the person only on the advice or recommendation, with the approval or consent of, or on consultation with, another person, the function may be performed or the power exercised only on that advice, recommendation, with that approval or consent, or after that consultation, except to the extent that this Constitution provides otherwise.” [our emphasis]”

18. These findings are in tandem with the previous decision of the Supreme Court in *Reference 3 of 2019; Council of Governors & 47 others v Attorney General & 3 others (Interested Parties); Katiba Institute & 2 others (Amicus Curiae) [2020] eKLR* that where the Constitution requires that a person makes recommendations, such recommendations are necessary and significant but not binding.

19. The Supreme Court held:

[60] Taking all these into account, it is our considered opinion that the recommendations by the Commission on Revenue Allocation are not binding upon

either the National Assembly, or the Senate. What the two Houses cannot do however is to ignore or casually deal with such recommendations. To hold otherwise, would elevate the Commission above Parliament in the legislative chain. We therefore agree with both the Speaker of the National Assembly and the Law Society in their submissions to the effect that, it could not have been the intention of the makers of the Constitution to supplant the legislative authority of Parliament in matters Finance, by establishing the Commission on Revenue Allocation.

*[61] By the same token, we affirm as a correct statement of the law regarding this issue, the pronouncement by the High Court in its decision, **In the Matter of the 47 County Assemblies and Others**; Petition No. 368 of 2014. Faced by the question as to whether the recommendations addressed to all the 47 County Assemblies and County Executives, by the Commission on Revenue Allocation were binding upon the former, Lenaola J, (as he then was) having extensively considered the applicable law on the subject matter, rendered himself thus at paragraph 53:*

“...the 1st Respondent (Commission on Revenue Allocation) is the body charged with the responsibility of making recommendations inter alia to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives on the basis upon which revenue would be shared equitably between the National and County Governments... None of the Parties disputed these facts but the point of disagreement is whether those recommendations are binding on all the organs to which they are made.”

At paragraph 57, the learned judge held, and we quote:

“The import of these provisions (Article 218 (2)) is that a recommendation made by the 1st Respondent to the Senate is not binding but for good order, reasons for a deviation must be given.”

20. The upshot of the Supreme Court decision is that the provisions of legislation are critical in setting out the manner in which constitutional bodies may discharge their constitutional functions and statutory provisions are critical in determining the mandate of each independent Commission.
21. In order for the Parliamentary Service Commission to safeguard its mandate and stop further encroachment into its constitutional functions and mandate by the Salaries and Remuneration Commission or in deed by any other constitutional Commission, it is therefore imperative that Parliament enact enabling legislation for the parliamentary service as provided for in Article 127 (6) of the Constitution.
22. In addition, for the Parliamentary Service Commission to further safeguard its mandate and stop further encroachment into its constitutional functions and mandate by the Salaries and Remuneration Commission, it is proposed that the Parliamentary Service Commission be given the mandate to provide facilities for members of Parliament to perform their dual roles of representation, legislation and oversight that requires them to operate from two points, that is, the constituency or county office and at Parliament in Nairobi.

B. Decisions of the Salaries and Remuneration Commission on Mileage

23. By Gazette Notices No. 10347 and No. 10352 dated 9th August, 2023, the Salaries and Remuneration Commission, reviewed and set the remuneration and benefits for State Officers in Parliament including the Parliamentary Service Commissioners under the Third Remuneration and Benefits Review Cycle that covers Financial Years (FY) 2023/2024-2024/2025.
24. Notably, this revision of remuneration and benefits for State Officers in Parliament will be implemented in two phases. The first phase is in FY 2023/2024 and the second phase is in FY 2024/2025.

25. Prior to this Gazette Notice, the Parliamentary Service Commission presented a Memorandum to the Salaries and Remuneration Commission setting out a position that the Parliamentary Service Commission is responsible for services and facilities necessary for Parliament to function efficiently and effectively.

26. Among the key proposals included in the Memorandum by the Parliamentary Service Commission to the Salaries and Remuneration Commission were:

- (i) a fixed mileage reimbursement of Kshs. 377,000 per month for all Members of Parliament and for Members of Parliament whose constituency/county office is beyond a radius of 205km from Parliament, a claimable mileage from Parliament to the constituency/county office at AA rates;
- (ii) motor vehicle reimbursement **net of tax** of Kshs. 7,550,000;
- (iii) some latitude in the provision of housing benefit for Speakers of Parliament to include leasing of appropriate residences or payment of house allowance.
- (iv) reinstatement of sitting allowance for plenary sessions;
- (v) removal of the limits on the number of remunerable committee sittings;
- (vi) graduation of remuneration of Members of Parliament on the basis of experience;
- (vii) increased sitting allowance for Parliamentary Service Commissioners; and
- (viii) enhanced salary for non-MP Commissioners and introduction of sitting allowance.

27. However, upon publication of Gazette Notices No. 10347 and No. 10352 dated 9th August, 2023, the Parliamentary Service Commission observed that the Salaries and Remuneration Commission departed from the proposals of the Parliamentary Service Commission. This has prompted the Parliamentary Service Commission to propose the amendments in this Bill in order to clarify its mandate *vis-a-vis* that of the Salaries and Remuneration Commission.

28. Pursuant to its mandate in Article 127 (6) of the Constitution, the Parliamentary Service Commission is mandated to facilitate Members of Parliament to perform their duties effectively and efficiently.
29. The amendment seeks to uphold the role of the Parliamentary Service Commission under Article 127 of the Constitution as the proper constitutional Commission established to provide services and facilities to ensure the effective and efficient functioning of Parliament and performing the functions necessary for the wellbeing of members and staff of Parliament.
30. Under Article 127 (6) (a) and (e) of the Constitution, the Parliamentary Service Commission is required to:
- (a) provide services and facilities to ensure the efficient and effective functioning of parliament; and
 - (b) perform other functions:
 - (i) necessary for the well-being of the members and staff of parliament; or
 - (ii) prescribed by legislation.
31. Article 230 (1) of the Constitution establishes the Salaries and Remuneration Commission and Article 230 (4) of the Constitution provides for the powers of the Salaries and Remuneration Commission, which are to:
- (i) set and regularly review the remuneration and benefits of all State Officers; and
 - (ii) advice the national and county governments on the remuneration and benefits of all other public officers.
32. Article 230(5) of the Constitution provides that in performing its functions, the Salaries and Remuneration Commission shall take the following principles into account:
- (i) The need to ensure that the total public compensation bill is fiscally sustainable;

- (ii) The need to ensure that the public services are able to attract and retain the skills required to execute their functions;
- (iii) The need to recognise productivity and performance; and
- (iv) Transparency and fairness.

33. Section 2 of the Salaries & Remuneration Commission Act (Number 10 of 2011) defines the expression salary and remuneration as follows:

“Includes the ordinary, basic or minimum wage or pay and any additional emoluments and benefits whatsoever payable, directly or indirectly, whether in cash or in kind, by an employer to an employee and arising out of the employment of that employee.”

34. Article 249 (1) of the Constitution provides that the objects of constitutional commissions are to:

- (i) protect the sovereignty of the people;
- (ii) secure the observance by all State organs of democratic values and principles; and
- (iii) to promote constitutionalism.

35. Article 249 (2) of the Constitution provides that constitutional commissions are subject only to the Constitution and the law and are independent and not subject to direction or control by any person or authority.

36. Article 252 (1) of the Constitution provides for the general functions and powers of constitutional commissions, which include performing any functions and exercising any powers prescribed by legislation in addition to the functions and powers conferred by the Constitution.

37. Article 259 of the Constitution provides that the Constitution must be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and human rights and fundamental freedoms in the Bill of Rights, permits the developments of the law and contributes to good governance.
38. The role of the Salaries and Remuneration Commission under Article 230 of the Constitution must be read together with the role of the Parliamentary Service Commission under Article 127 (6) (a) to provide services and facilities to ensure the effective and efficient functioning of Parliament and 127 (6) (e) to perform the functions necessary for the wellbeing of members and staff of Parliament.
39. The Parliamentary Service Commission is the body responsible for Members of Parliament and is therefore under an obligation to ensure that the people for whom it is responsible receive equal and fair treatment as well as the services and facilities necessary to discharge their duties including services and facilities necessary for parliamentary duties.
40. Based on the decision of the Supreme Court in *Muthuuri & 4 Others v National Police Service Commission & 2 Others* cited above, Article 230 (4) of the Constitution does not apply to a position that is subject to the Parliamentary Service Commission.
41. Article 230 (4) of the Constitution empowers the Salaries and Remuneration Commission to set remuneration and benefits but pursuant to Article 127 (6) (a) of the Constitution, the Parliamentary Service Commission is responsible for providing services and facilities to ensure the efficient and effective functioning of Parliament, and pursuant to Article 127 (6) (e) of the Constitution, the Parliamentary Service Commission is responsible for performing the functions necessary for the well-being of the members and staff of Parliament.

42. One such function is to ensure that members of Parliament are provided with adequate facilities to travel to and from the constituency or county office to the national Parliament in Nairobi and the Parliamentary Service Commission must ensure that members of Parliament are able to perform their dual roles of representation and legislation that requires them to operate from two points, that is, the constituency or county office and at Parliament in Nairobi.
43. It is therefore the request by the Parliamentary Service Commission that the amendments to the Parliamentary Service Bill be approved to enable the Commission review and determine the rates of reimbursement of the daily subsistence costs expended by Members and staff of Parliament in the performance of their duties, and to determine the rates of reimbursement for travel by motor vehicle for Members in the performance of their duties.

Protracted Disputes between the Salaries and Remuneration Commission and Other Constitutional Commissions

44. In 2017, the Parliamentary Service Commission moved to court in *Judicial Review Application No. 686 of 2017; Parliamentary Service Commission vs Salaries and Remuneration Commission* which the Parliamentary Service Commission filed in the Judicial Review Division of the High Court against the Salaries and Remuneration Commission setting remuneration and allowances for members of Parliament. The High Court agreed with the position put forward by the Parliamentary Service Commission and quashed the Gazette Notice of the Salaries and Remuneration Commission.
45. The Parliamentary Service Commission was sued in two High Court Constitutional Petitions, that is, *High Court Petition 208 of 2019; Salaries and Remuneration Commission vs Parliamentary Service Commission & Others; and High Court Petition*

185 of 2019; Okiya Omtata vs Parliamentary Service Commission & 422 Others on the matter of payment of house allowance to Members of Parliament.

46. On its part, the Parliamentary Service Commission filed *High Court Petition No. 339 of 2019; Parliamentary Service Commission vs Salaries and Remuneration Commission & Others*.

47. In the Cross Petition, the Parliamentary Service Commission sought for the court to uphold that the Parliamentary Service Commission which is a constitutional Commission established under Article 127 of the Constitution is the body responsible for providing services and facilities to ensure the effective and efficient functioning of Parliament and performing the functions necessary for the wellbeing of members and staff of Parliament.

48. The High Court dismissed the Cross Petition filed by the Parliamentary Service Commission and the matter is now pending in the Court of Appeal. The outcome of this appeal could have a bearing on the proposed amendments in this Bill in so far as it will set the beacons of what constitutes services and facilities in Article 127 (6) of the Constitution.

HCCHRPET/E304/2023; Peter Mwangi Gachuri -vs- Attorney General & Salaries and Remuneration Commission

49. This Petition is filed at the Constitutional and Human Rights Division by Mr. Peter Mwangi Gachuri against the Salaries and Remuneration Commission challenging the decision of the Salaries and Remuneration Commission to do away with the taxable allowance for purchase of motor vehicles for Judges, on the basis that the denying Judges a car grant threatens the independence of the judiciary as provided for under Article 160 of the Constitution.

50. The Kenya Judges Welfare Association is joined as the 1st Interested Party and the Judicial Service Commission is joined as the 2nd Interested Party but the Judicial Service Commission has not filed a petition in its own capacity.

51. The Petition seek for the following orders:

- (i) *A declaration that the Taxable Car Allowance for Purchase of Motor Vehicles for judges as it existed as at the end of June, 2021 constituted a benefit payable to and in respect of judges which cannot be reviewed to the disadvantage of judges.*
- (ii) *A declaration that the 2nd Respondent's letter dated 12/07/2021 purporting to scrap the Taxable Allowance for Purchase of Motor Vehicles for Judges as confirmed in the Circular by the Head of Public Service dated 4/06/2018 contravenes Article 160(4) of the Constitution of Kenya, 2010 and therefore the same is invalid.*
- (iii) *A declaration that by purporting to scrap the Taxable Allowance for Purchase of Motor Vehicle the 2nd Respondent threatens the independence of the Judiciary which is protected under Article 160 of the Constitution.*
- (iv) *A declaration that the 1st Respondent in giving his opinion post facto to the 2nd Respondent which opinion was sought to sanitize an unconstitutional and unlawful decision already taken in the year 2021 by the 2nd Respondent in violation of Article 160(4) of the Constitution, the 1st Respondent failed in his constitutional obligation to promote, protect and uphold the rule of law and protect the public interest within the meaning of Article 156(6) of the Constitution of Kenya, 2010.*
- (v) *A declaration that the opinion of the 1st Respondent advising the application of the Allowance for Purchase of Motor vehicles to only judges who were appointed before the promulgation of the Constitution violates the right to freedom from*

discrimination and the right to fair labour practices of judges appointed after the promulgation of the Constitution contrary to Articles 27 and 41 of the Constitution.

(vi) An order compelling the national government offices namely the Hon. Attorney General, the National Treasury and the Head of Public Service to forthwith process and pay, and to continue processing and paying, the Car Grant to Judges as had been the position prior to the 2nd Respondent's unconstitutional and unlawful advice that resulted in the withdrawal of the same.

(vii) Costs of the Petition be provided for.

52. At its 311th Meeting held on 11th September, 2023, while considering matters arising from the implementation of the Commission's communication to the Salaries and Remuneration Commission (SRC) regarding outstanding matters relating to remuneration and benefits of State Officers in Parliament, the Commission noted the above case involving the Judicial Service Commission over similar matters to the issues between the Salaries and Remuneration Commission and the Parliamentary Service Commission.

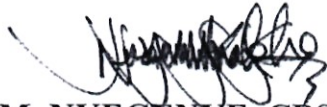
53. As can be seen from the foregoing, the Judicial Service Commission has faced similar challenges and therefore the Parliamentary Service Commission is of the view that the amendment to the Judicial Service Act be approved to allow the Judicial Service Commission to review and determine the nature of transport facilitation and the rates of reimbursement of daily subsistence costs expended by judges, judges, judicial officers and staff of the Judiciary in the performance of their duties.

Submission to the National Assembly Committee

54. The Parliamentary Service Commission requests that the National Assembly approve that the Parliamentary Service Act (No. 22 of 2019) and the Judicial Service Act be

amended as proposed in the Statute Law (Miscellaneous Amendments) Bill, 2023 to protect and uphold the roles of the Parliamentary Service Commission and the Judicial Service Commission.

The above matters are submitted for the consideration of the National Assembly Departmental Committee on Justice and Legal Affairs.



**J. M. NYEGENYE, CBS,
CLERK OF THE SENATE/SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**





THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Our Ref: CRJ 48

Your Ref: NA/DDC/JLAC/2023(149)

Date: 04 December 2023

Clerk of the National Assembly
The National Assembly
Office of the Clerk
P. O. Box 41842-00100
NAIROBI

RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS TO DISCUSS THE STATUTE LAW (MISC. AMENDMENT) BILL (NA BILL NO. 67 OF 2023)

We refer to your letter Ref: NA/DDC/JLAC/2023(149) dated 30th November 2023 on the above subject.

The Judiciary and the Judicial Service Commission (JSC) have noted that the Statute Law (Misc. Amendment) Bill (NA Bill No. 67 of 2023) Bill seeks to amend the Judicial Service Act by introducing a new section that will empower the JSC to review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of their duties. This is in furtherance of the mandate of the JSC under Article 172(1)(b) and 252(1)(d) of the Constitution.

We would like to submit the following comments for consideration by the Justice & Legal Affairs Committee of the National Assembly:

1. Under Article 172, the core mandate of the JSC is to promote and facilitate the **independence and accountability of the Judiciary** and the efficient, effective and transparent administration of justice. This independence is provided for in Article 160 of the Constitution which states that the Judiciary - consisting of judges of the superior courts, magistrates, other judicial officers and staff - shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority.
2. The independence protected by Article 160 is the independence of the Judiciary from the other branches of government, and bodies which can exercise pressure on the Judiciary through power conferred on them by the State. The integrity, independence, and impartiality of the Judiciary are protected by the Constitution not as an end, but as pre-conditions for fair and effective access to justice and for the protection of human rights for all.
3. The remuneration and benefits enjoyed by judges, judicial officers and judicial staff is a key ingredient of the independence of the Judiciary and should therefore be determined in a manner that safeguards that independence. This is the reason, for instance, that the Constitution requires that the remuneration and benefits payable



Social Transformation
through Access to Justice

Supreme Court Building | Ground Floor, Chamber 6 | P.O. Box 30041-00100 | Nairobi
Tel. +254 0730 181600/700/800 | chiefregistrar@court.go.ke | www.judiciary.go.ke

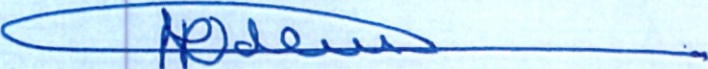
Justice Be Our Shield and Defender



to a judge shall be a charge on the Consolidated Fund, and shall not be varied to the disadvantage of that judge.

4. It is widely accepted across the globe that judicial compensation is subject to certain unique requirements that do not apply with respect to others paid from the public purse. The Supreme Court of Canada recommended in its decision in *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 S.C.R. 3 that to avoid the possibility of, or the appearance of, political interference through economic manipulation of the Judiciary, a body, such as a commission, must be interposed between the Judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to judicial remuneration.
5. In its decision on the compensation of US Judges, the US Supreme Court held in *United States v. Will*, 449 U.S. 200, 217-18 (1980), that "[a] Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government."
6. On the international scene, the UN Basic Principles on the Independence of the Judiciary state that "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law." UNODC also recommends in its Implementation Guide and Evaluative Framework for Article 11 of the UN Convention Against Corruption that State Parties should ensure through constitutional or legislative means that "legislative or executive powers that may affect judges in their office, their remuneration, conditions of service or their resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular judge or judges."
7. This is the justification for the establishment of the Judicial Service Commission with the mandate to safeguard the independence of the Judiciary.
8. For the above reasons, the Judiciary and the JSC support unreservedly the proposed amendment to the Judicial Service Act to empower the JSC to review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of their duties.

We thank you for the opportunity to comment on the Bill and hope that JLAC will find these views useful in its deliberations.


PAUL N. MAINA, OGW, 'NDC'(K)
FOR: CHIEF REGISTRAR OF THE JUDICIARY &
SECRETARY, JUDICIAL SERVICE COMMISSION



Social Transformation
Through Access to Justice

Supreme Court Building | Ground Floor, Chamber 6 | P.O. Box 30041-00100 | Nairobi
Tel. +254 0730 181600/700/800 | chiefregistrar@court.go.ke | www.judiciary.go.ke

Justice Be Our Shield and Defender



Copy to: Chief Justice & President,
Supreme Court of Kenya
Supreme Court Building
NAIROBI

Registrar,
Judicial Service Commission
CBK Pension Towers
NAIROBI





Salaries & Remuneration
Commission

Rewarding productivity

Ref No. SRC/TS/8(79)

30th November, 2023

Mr. Samuel Njoroge

The Clerk of the National Assembly
Parliament Buildings
P.O Box 41842- 00100
NAIROBI

Dear *Mr. Njoroge,*

MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL NO. 67 OF 2023.

Reference is made to the captioned Bill and the proposed amendments to the Parliamentary Service Act No. 22 of 2019 and Judicial Service Act No. 1 of 2011.

The Salaries and Remuneration Commission (SRC) has reviewed the Bill and notes that the Memorandum and Objects of the Bill is to provide for further functions and powers of the Parliamentary Service Commission pursuant to Articles 127 (6) (e) and 252 (1) (d) of the Constitution. The bill further seeks to amend the Judicial Service Act to specify the nature of facilitative mandate of the Commission under Articles 172 (1) (b) and 252 (1) (d) of the Constitution.

SRC has examined the proposed amendments to the Parliamentary Service Act as set out in the Statute Law Miscellaneous Amendment Bill No. 67 of 2023 and wishes to submit its views as follows:

1. PROPOSED AMENDMENT TO THE PARLIAMENTARY SERVICE ACT NO. 22 OF 2019 BY:

- i. **Substituting section 3 (a) with the following paragraph :**
 - (a) **Specify further functions that may be performed and powers that may be exercised by the Commission pursuant to Article 127 (6)(e) and Article 252(1)(d) of the Constitution;**

Page | 1

- (f) The amendments proposed by the Bill to the Parliamentary Service Act seek to vest additional functions to PSC. Having considered the mandate of PSC under Article 127 (6) of the Constitution, it is the considered view of SRC that the proposal to amend section 18 of the principal Act expands the mandate of PSC beyond what is envisaged in the Constitution. The amendments must be in line with the broad mandate of PSC and take into account other provisions of the Constitution including Article 230 (4).
- (g) In particular, the powers and functions sought to be conferred upon PSC by the proposed amendments are expressly vested in SRC by Article 230 (4) of the Constitution. The amendments, therefore, are in violation of the Constitution.
- (h) The Constitution guards against conflict of interest in the discharge of official duties. This includes the determination of remuneration and benefits. It is critical to note that the composition of PSC is mainly Members of Parliament, who would benefit directly from the transport and daily subsistence allowance, which the bill proposes to mandate PSC to set. This is contrary to Article 75 (1) of the Constitution.
- (i) Article 2(4) provides that *any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid*. In view of this, the proposed amendments are invalid for being in contravention of the Constitution.

Recommendation

SRC is of the considered view that the proposed introduction of section 18 (3) and (4) to the Parliamentary Service Act is unconstitutional and recommends that the proposed section 18 (3) and (4) to the principal Act be deleted from the Bill.

2. PROPOSED AMENDMENT TO THE JUDICIAL SERVICE ACT NO. 1 OF 2011 BY AMENDING SECTION 13 BY INSERTING A NEW SECTION IMMEDIATELY AFTER SECTION 13—

13A. In accordance with the mandate conferred to the Commission by Articles 172(1)(b) and 252(1)(d) of the Constitution, the Commission shall review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of duties.

SRC's Observations

- (a) The effect of the proposed amendment is that it divests SRC of the mandate to determine the transport and daily subsistence benefits of for State officers in the Judiciary. This would be contrary to the letter and spirit of Article 230 (4) (a) of the

Recommendation

SRC is of the considered view that the proposed introduction of section 13A to the Judicial Service Act is unconstitutional and therefore recommends that the proposed section 13A to the Judicial Service Act be deleted from the Bill.

3. WAGE BILL MANAGEMENT

- i. The Wage Bill is defined as the total remuneration and benefits paid to employees by the employer for work performed. The Public Sector Wage Bill comprises: Basic salaries; Remunerative allowances such as house and commuter; hardship, extraneous, domestic, and risk and facilitative allowances paid to meet expenses incurred by officers in the course of duty such as daily subsistence allowance. In the financial year 2021/2022 the total wage bill was KES. 1,035,160 million.
- ii. As required by Article 230(5)(a) of the Constitution SRC in performing its functions ensures that total public compensation bill is fiscally sustainable. The proposed amendments to Parliamentary Service Act and Judicial Service Act negates the implementation of this constitutional principle since SRC has set, reviewed and advised on the applicable daily subsistence allowance in the public service. In setting and advising on the rates, SRC ensures that total public compensation bill is fiscally sustainable. Further, rates set by SRC are equitable.

4. DISPARITIES IN BENEFITS

- i. In discharging its mandate SRC has continued to set, review and advise on comparable remuneration and benefits in the Public Service with a view to ensuring *inter alia* that the total public compensation bill is fiscally sustainable and there is equity in remuneration and benefits as required by Article 230(5) of the Constitution.
- ii. The proposed amendments to the Parliamentary Service Act and Judicial Service Act will erode the gains made towards harmonizing remuneration and benefits for State officers as setting of comparable, equitable and harmonized remuneration and benefits requires a centralized approach as provided in Article 230 (4) of the Constitution. Further, this will result in disparities in the benefits in question among State and public officers across the public service contrary to Article 230(5) of the Constitution.

To: The National Assembly Office of the Clerk
From: Katiba Institute
Date: 01 December 2023
Re: Comments on the Statute Law (Miscellaneous Amendments) Bills (National Assembly Bill Nos 67 and 68 of 2023) to the Departmental Committee on Labour

Introduction

Katiba Institute (KI)¹ received two requests for comment on the Statute Law (Miscellaneous Amendments) Bills 2023 (National Assembly Bills 67 and 68 of 2023). Although the Bills propose amendments to many laws, the Departmental Committee on Labour has requested that we comment on proposed amendments to the following Acts:

- The Employment Act
- The Industrial Training Act
- The National Employment Authority Act

Discussion

The Employment Act

The proposed amendment to section 3(2) of the Employment Act would exempt the National Intelligence Service from complying with the Act. The Memorandum of Objects and Reasons states that the proposed amendment exempts the National Intelligence Service ‘in the same manner as other national security organs.’

Our primary concern is that the proposed amendment may not comply with the requirements for limiting a fundamental right or freedom under Article 24 of the Constitution. ‘Labour Relations’ are among the fundamental rights and freedoms guaranteed under the Bill of Rights. According to Article 41:

- (1) Every person has the right to fair labour practices.

¹ Katiba Institute (KI) is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya’s 2010 Constitution, helping to resist efforts to undermine that Constitution, and to assist in developing a culture of constitutionalism in Kenya.

- (2) Every worker has the right---
 - (a) to fair remuneration;
 - (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union; and
 - (d) to go on strike.
- (3) Every employer has the right—
 - (a) to form and join an employers organisation; and
 - (b) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers’ organisation has the right—
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.

Although Article 24(5) states that legislation may limit the right to Labour Relations to persons serving in the Kenya Defence Forces or the National Police Service, it does extend the exception to other national security organs such as the National Intelligence Service.

As a result, if the National Assembly intends to limit labour rights by exempting the National Intelligence Service from the Employment Act, it must comply with Articles 24(1)-(2). Article 24(3) requires the National Assembly to ‘specifically expresses the intention to limit that right [to Fair Labour] and the nature and extent of the limitation’. According to Article 24(2), the National Assembly must explain why the limitation is:

reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

We are concerned that the proposed amendment has not met the requirements under Article 24. The Bill does not explain why exempting the National Intelligence Service is reasonable and justifiable, does not explain the importance and purpose of the limitation, and does not explain why a blanket exemption (as opposed to exemption from specific requirements of the Act) is necessary.

As a result, we believe that the proposed amendment to the Employment Act would be subject to challenge. The most effective way to avoid a legal challenge would be to ensure that the requirements of Article 24 are fully satisfied. That may require a closer look at the exemption, explaining why it is necessary, and determining whether there is a less restrictive means of achieving the intended goals.

The Industrial Training Act

The proposed amendment to the Industrial Training Act would change the date an employer must pay a training levee from the fifth day of the month following the month the levy becomes due to the ninth day of the month.

We do not have any substantive comments on this minor amendment.

The National Employment Authority Act

The Statute Law (Miscellaneous Amendments) Bill, 2023 proposes significant changes to the National Employment Authority Act 'to cure inconsistencies in the Act and align it with the National Employment Authority Human Resources Policy and Procedures Manual.

We do not have a copy of that manual, so it is unclear what the inconsistencies are or why a law passed by Parliament must be amended to be consistent with a policy and procedures manual. Without knowing more, we are concerned that this is a situation where the tail is wagging the dog; policies and procedures should be amended to comply with the law, not the other way around. If there is a compelling, substantive reason to amend the law, then we respectfully submit that those reasons should be included in the Memorandum of Objects and Reasons.

There are other concerns with the Act outside the thin justification for the amendments. First, section 3(a) of the Act states that one of its purposes is to 'give effect to Articles 55(c) and 56(c) of the Constitution'. Articles 55(c) and 56(c) require the State to give the youth and marginalized and minority communities employment opportunities.

The Act, as it is now, focuses significantly on the youth. However, the proposed amendments to sections 2, 30(1), 30(3), 33(3), and 42 delete the word youth from those sections. If these amendments are passed, the purpose of promoting youth employment under section 3(a) will be all but eliminated. It is unclear to us why conforming with a policies and procedures manual would require abandoning one of the essential purposes

of the Act. We would need more information about what is in the policy and procedures manual to understand why the Act no longer gives effect to Article 56(c) of the Constitution.

As regards the amendment to section 4 of the Act – limiting the Act’s application to employers with ten or more employees – there may be a sound reason for imposing such a limit, but compliance with a policy and procedures manual is not one of them. We believe it is incumbent on the National Assembly to provide a more substantive rationale for this amendment.

Including Section 4(aa), which makes the Act applicable to ‘each county government’, will likely require the National Assembly to consult with the Senate. Articles 110-113 and Section 2 of the Sixth Schedule to the Constitution require the National Assembly to consult with the Senate on any bills affecting counties.

Including each county government in the proposed Section 4(aa) without incorporating counties into other sections of the Act may not be sufficient to ensure that the Act binds county governments. For instance, section 28 of the Act requires that the Authority be notified when a vacancy occurs at a ‘public or State office at the national government level’. Including each county in Section 4(aa) would not obligate them to comply with Section 28. To avoid any potential for litigation, it is incumbent that the amendments look at the language through the Act to ensure consistency.

Analysis of Proposed Amendments

The Employment Act

No	Ref	Comments	Recommendations
1.	Insert a new paragraph immediately after paragraph (ba)- (bb)the National Intelligence Service	Section 3 of No. 11 of 2007, which it is proposed to amend, provides that (2) This Act shall not apply to (a)the Kenya Defence Forces or the reserve as respectively defined in the Kenya Defence Forces Act, 2012; (b)the Kenya Police, the Kenya Prisons	This amendment may not comply with the requirements for limiting a fundamental right or freedom under Article 24 of the Constitution, considering that labour relations are among the fundamental rights and freedoms guaranteed under the Bill of Rights. Article 24(5) of the Constitution provides that legislation may limit the right to labour relations to persons serving in the Kenya Defence Forces or the National Police Service; it does not extend the exception to other

		<p>Service or the Administration Police Force; (ba)the Kenya Coast Guard Service; (c) the National Youth Service; and (d) an employer and the employer's dependants where the dependants are the only employees in a family undertaking. The proposed amendment would exempt the National Intelligence Service from complying with the Act.</p>	<p>national security organs such as the National Intelligence Services. -We recommend that if the National intends to limit labour rights by exempting the National Intelligence Service from the Employment Act, it must comply with Articles 24(1)-(2). Article 24(3) requires the National Assembly to specifically express the intention to limit that right and the nature and extent of the limitation. The proposed amendment has not met the requirement and would be subject to challenge in a court of law.</p>
--	--	---	--

The Industrial Training Act

No	Ref	Comments	Recommendations
1		No substantive comments	No recommendations

The National Employment Authority Act

No	Ref	Comments	Recommendations
1	<p>Clause 2 In the definition of 'Authority', delete the word 'Youth'</p>	<p>Section 3(a) of the Act states that one of its purposes is to 'give effect to Articles 55(c) and 56(c) of the Constitution'. Articles 55(c) and 56(c) require the State to give the youth and marginalized and minority communities employment opportunities.</p>	<p>It is unclear to us why conforming with a policies and procedures manual would require abandoning one of the essential purposes of the Act. We would need more information about what is in the policy and procedures manual to understand why the Act</p>

		<p>The Act, as it is now, focuses significantly on the youth. If these amendments are passed, the purpose of promoting youth employment under section 3(a) will be all but eliminated.</p>	<p>no longer gives effect to Article 56(c) of the Constitution.</p>
2	<p>Clause 17(2) It is proposed to delete paragraph (c) and substitute it with a new paragraph and then delete paragraph 17(2) (d).</p> <p>Paragraph (c) now reads- 'A person shall be qualified to be appointed as a Director-General if that person has at least 10 years' experience, five of which shall be in a management level.</p> <p>Paragraph 17(2)(d), proposed to be deleted, provides that 'a person shall be qualified to be appointed as a Director-General of the Authority if the person has not attained the age of thirty-five years at the time of appointment.'</p>	<p>These proposals will ultimately exclude the youth from holding the position of the Director-General, which was not the intent of Parliament when you read Section 17(2) (c) and (d) together, as well as the purpose of the Act.</p> <p>The Director-General is subject to the direction of the Board and is responsible for the day-to-day management of the Authority.</p> <p>Any other necessary experience intended to be drawn from the proposed extra management level experience can be drawn from the board membership the DG works with. It is unnecessary to depart from the Act's initial intent of providing opportunities for the youth.</p>	<p>We propose that Section 17 (2) (c) and (d) qualifications be retained as they are.</p>

3	<p>Clause 28(2)</p> <p>It is proposed that Section 28(2) of the Act be deleted. Section 28(2) states that ‘Whenever a vacancy occurs, the appointing office shall give priority to the job seekers registered by the Authority who possess the qualifications or skills sought.’</p>	<p>Section 20 and 24 of the Act provides that a person seeking employment may register with the Authority, and the Authority shall keep and maintain an up-to-date register of all job seekers seeking employment.</p> <p>The assumption is that the Authority shall prioritise persons registered and pre-vetted for vacancies. Deleting this Section undermines the utility of the proceeding provisions while, more importantly, removing transparency and accountability from the Authority regarding the persons considered for vacancies.</p>	<p>We propose that this Section be retained unless there is another system of considering persons registered with the Authority for vacancies in the regulations, which are yet to be shared with stakeholders for review.</p>
4	<p>Delete the word ‘youth’ and substitute the word with jobseeker in Sections 30(1), (2), (3),33(3), and 42</p>	<p>The Act, as it is now, focuses significantly on the youth. If these amendments are passed, the purpose of promoting youth employment under section 3(a) will be all but eliminated.</p> <p>Article 260 does not prescribe an interpretation of ‘minorities’ but provides interpretations of ‘youth’ and marginalised groups.</p> <p>‘Marginalised groups’ means a group of people who, because of laws or practices before, on, or after the effective date,</p>	<p>We propose the Sections be retained as they are. It is also necessary that the Act have regulations to provide clarity on the interpretation of a ‘jobseeker’ in the context of this specific Act to ensure the preservation of the purpose of the Act if the proposed amendments on substituting ‘youth’ with jobseeker is to cater for marginalised groups and minorities, which groups the Act was purposed for as well. Sections 24 and 25 use the word ‘jobseeker’, and there</p>

		were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4).	is a need to harmonise the meaning of jobseeker in the context of the Act.
5	Delete Section 37 (2) and substitute with a new subsection that states that 'The Authority shall establish incentives to reward a private institution that employs Kenyans within six months after completing their certificate or undergraduate studies, and who do not possess more than five years' experience.'	The incentive scheme/regulations to reward private institutions must be set out beforehand and be subjected to public participation. The incentives must be applied in an open manner that espouses the national values and principles of governance under Article 10.	Requires regulations.

Conclusion

Thank you for the opportunity to comment on the proposed amendments. Please let us know if you want to discuss these issues further. We would be happy to participate in any way we can

Sincerely,



Chris Kerkering
Eileen Imbosa
Ray Odanga



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

MEMORANDUM OF THE PROPOSED STATUTE LAW (MISCELLANEOUS AMENDMENTS) NO. 2 BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2023)

	ACT/LAW	AMENDMENT	COMMENTS
1.	Parliamentary Service Act, 2019 (Act No. 22 of 2019)	An amendment to specify the nature of the further functions that may be performed by the Commission, as provided for in Articles 127(6)(e) and Article 252 (1) (d) of the Constitution	<p>This amendment will clarify the specific roles the Commission should play in ensuring it protects the well-being of the parliamentary staff.</p> <p>The PSC Act is the major legislation for the PSC and should therefore outline in detail majority if not all duties ascribed to the Commission pursuant to Articles 127(6)(e) and 252(1)(d) of the Constitution of Kenya</p>

			Therefore, the ODPP supports this amendment.
2.	Judicial Service Act, 2011 (Act No. 1 of 2011)	An amendment to provide for the facilitative mandate of the Commission under Articles 172(1)(b) and 252(1)(d) of the Constitution	The ODPP supports this amendment since it will clearly set out how the JSC will undertake the general functions enlisted under Article 252 of the Constitution in light of their core mandate under Article 172.
3.	The Advocates Act (Cap. 16)	<p>Bill proposes to amend the Advocates Act to provide that the Registrar responsible for keeping the roll of Advocates shall be the Chief Registrar of the Judiciary.</p> <p>The Act is also amended to provide that the Council of the society may, with the approval of the Chief Justice, make rules for the admission of advocates.</p>	<p>The Chief Registrar of the Judiciary, has been, in practice, the one issuing practicing certificates to newly admitted advocates and practicing advocates who renew their certificates yearly.</p> <p>All applications for practicing certificates are made to the Chief Registrar and the newly admitted advocates take oath before the Chief Justice as facilitated by the Chief Registrar.</p> <p>Further, the roll of advocates is signed in the presence of the Chief Registrar of the Judiciary who also adds her or his signature as a witness.</p> <p>Therefore, the ODPP supports this amendment.</p>
4.	Notaries Public Act (Cap. 17)	An amendment to allow the Chief Registrar of the Judiciary to be responsible for enrolling notaries public in the book kept for that purpose; grant new certificates to newly-enrolled notaries public; and to remove from	All Notaries Public take oath before the Chief Registrar of the Judiciary who is the Chief Administrator of the Judiciary as enshrined under Article 161 of the Constitution.

		the roll any person whose appointment as a notary public has been revoked under the Act.	<p>The Chief Justice is the appointing authority of all Advocates who wish to perform the duties of a Notary Public as provided for under Section 2 of the Notaries Public Act.</p> <p>The ODPP therefore supports this amendment.</p>
5.	Civil Procedure Act (Cap. 21)	An amendment to provide that the members nominated by the Law Society of Kenya and appointed by the Chief Registrar shall be three in number – This is intended to improve decision making within the Rules committee and reduce the cost of facilitating the work of the committee	The ODPP supports this amendment to section 81 of the CPC as it will enable prompt and efficient decision-making processes especially in the issuance of practice directions.
6.	Trustees (Perpetual Succession) Act (Cap. 164)	An amendment allows the Registrar of companies to be responsible for the registration of trusts and issuance of certificates of incorporation; the processing of applications for incorporation; form of application; keeping and maintaining a register; conduct of searches in the registry and making of regulations	The ODPP supports this proposed amendment as it will be in harmony with the Companies Act and allow for efficient delivery of services
7.	Sexual Offences Act, 2006 (Act. No. 3 of 2006).	Proposed amendment to provide that the register of convicted sexual offenders shall be kept and maintained by the Chief Registrar of the Judiciary	<p>The ODPP supports this amendment as it aligns with the Constitutional mandate of the Chief Registrar under Article 161 as the Chief Administrator of the Judiciary.</p> <p>Further, the Chief Registrar is in charge of all courts within the Republic of Kenya and therefore this amendment will ensure harmony in prosecution and handling of sexual offences and its related matters</p>

8.	Office of the Attorney General Act, 2021 (Act No. 49 of 2012)	An amendment to remove inconsistencies in the operational framework of the Office of the Attorney General in line with Article 156 of the Constitution of Kenya which establishes the Office of the Attorney General as an independent office	The ODPP supports this amendment in so far as it aims to create harmony with the relevant statute for the Attorney General's office
----	--	---	---