

REPUBLIC OF KENYA

PARLIAMENT
OF KENYA
LIBRARY



12/3/2024


THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023 (*NATIONAL ASSEMBLY BILL NO. 44 OF 2023*)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	12 MAR 2024
	DAY: TUESDAY
TABLED BY:	Hon George Murugara, MP Chairperson, JLAC
CLERK AT FOOTSTEPS:	Inzogu mwale

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

MARCH 2024

TABLE OF CONTENTS

TABLE OF CASES.....	2
LIST OF ABBREVIATIONS AND ACRONYMS.....	3
ANNEXURES.....	4
CHAIRPERSON'S FOREWORD.....	5
CHAPTER ONE.....	7
1 Preface.....	7
1.1 Establishment of the Committee.....	7
1.2 Mandate of the Committee.....	8
1.3 Committee Membership.....	10
1.4 Committee Secretariat.....	11
CHAPTER TWO.....	12
2 Overview of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023).....	12
2.1 Background.....	12
2.2 Summary of Legal Provisions.....	12
CHAPTER THREE.....	16
3 Public Participation and Stakeholder Engagement on the Bill.....	16
3.1 Legal Framework on Public Participation.....	16
3.2 Memoranda received on the Bill.....	16
CHAPTER FOUR.....	26
4 Committee Observations.....	26
CHAPTER FIVE.....	27
5 Committee Recommendations.....	27
CHAPTER SIX.....	28
6 Schedule of Amendments.....	28

•
•
• **TABLE OF CASES**

•
• British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) [2019] eKLR
• In the Matter of the Speaker of the Senate & another [2013] eKLR

LIST OF ABBREVIATIONS AND ACRONYMS

COG	-	Council of Governors
CRA	-	Commission on Revenue Allocation
FORD	-	Forum for the Restoration of Democracy
KLRC	-	Kenya Law Reform Commission
MCCP	-	Maendeleo Chap Chap Party
OAG	-	Office of the Attorney General
ODM	-	Orange Democratic Movement
TI	-	Transparency International
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

•
-
• **ANNEXURES**

Annexure 1: Adoption Schedule

• Annexure 2: Minutes

Annexure 3: Houses of Parliament (Bicameral Relations) 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 Houses of Parliament (Bicameral Relations) Bill (*National Assembly Bill No. 44 of 2023*) which was published on 28th July 2023.

The Bill was read for the first time in the House on Thursday 17th August 2023 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill seeks to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution. The Bill also seeks to foster bicameral relations by prescribing procedures for ensuring seamless consideration of the legislative business of both Houses.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Monday 9th October 2023 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee vide letters Ref. No. *NA/DDC/JLAC/2023/108* and *NA/DDC/JLAC/2023/143* dated 31st October and 22nd November 2023 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 9th November 2023 and Tuesday 28th November 2023, respectively. The memoranda were to be received on or before Monday 23rd October 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received eight (8) memoranda.

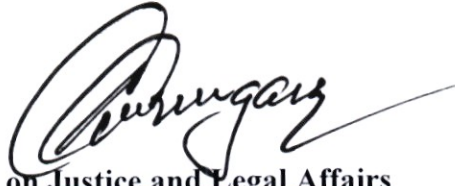
The COG, CRA, the Judiciary, the KLRC, the National Treasury and the Office of the Leader of the Minority Party of the National Assembly, the State Department for Parliamentary Affairs, *Mzalendo* Trust and TI gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that the Bill is timely as it seeks to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution to promote bicameral relations between the National Assembly by prescribing procedures for ensuring seamless consideration of legislative business of both Houses.

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 COG, CRA, the Judiciary, the KLRC, the National Treasury, the Office of the Leader of the Minority Party of the National Assembly, *Mzalendo* Trust and TI 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 Houses of Parliament (Bicameral Relations) Bill (*National Assembly Bill No. 44 of 2023*).

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



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
Ms. Jael Ayiego Clerk Assistant III	Ms. Mary Kamande Public Communications Officer III
Mr. Abdikafar Abdi Clerk Assistant III	Mr. John Nduaci Serjeant-At-Arms
Mr. Omar Abdirahim Fiscal Analyst II	Mr. Calvin Karung'o Media Relations Officer III
Mr. Isaac Nabiswa Legal Counsel II	Mr. Peter Mutethia Audio Officer III
Mr. Silas Opanga Hansard Reporter III	

CHAPTER TWO

2 OVERVIEW OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (*NATIONAL ASSEMBLY BILL NO. 44 OF 2023*)

2.1 Background

6. The Bill which is sponsored by the Hon. Samuel Chepkonga, MP, was published on 28th July 2023 and read for the first time in the House on Thursday 17th August 2023. It was thereafter committed to the Departmental Committee on Justice and Legal Affairs for review and reporting to the House in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

7. The Bill primarily seeks to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution to foster bicameral relations by prescribing procedures for ensuring seamless consideration of the legislative business of both Houses of Parliament. It seeks to provide a framework to guide the legislative procedures of a cohesive and effective Parliament by—
- (1) Outlining a framework to implement Article 110(3) of the Constitution, which has been a basis for disputes between the two Houses. It delineates categories of Bills where no question concerning county governments can arise, such as Bills amending the Constitution, Bills clearly unrelated to county governments, and Appropriation and Finance Bills which are considered solely by the National Assembly;
 - (2) Proposing parameters for the Speakers of Parliament to consider when determining whether a Bill concerns county governments. These parameters include analysing a Bill's purpose, intent, legal effect, and objects. In the event the Speakers cannot agree on whether a Bill concerns county governments, the Bill allows for the appointment of a person or body of persons to make recommendations on the matter;
 - (3) Encouraging collaboration by permitting co-sponsorship of Bills between Members of the National Assembly and the Senate. It also outlines procedures for joint proceedings, mediation, and joint committees of Parliament.
 - (4) proposing joint public participation exercises by corresponding committees from both Houses to avoid duplication of efforts and the wastage of public resources. the Bill allows the second House to rely on the findings of the first House or seek additional views only on substantive amendments; and

- (5) Requiring the Houses to adopt alternative dispute resolution mechanisms before resorting to judicial proceedings. Both Houses are obligated to exhaust these mechanisms before instituting disputes in court.

1. In particular, —

- (1) **Clause 2** of the Bill provides for the interpretation of terms as used in the Bill.
- (2) **Clause 3** of the Bill provides for the objects of the Bill which include to provide a framework for determining the nature of a Bill; define the Bills that do not require a joint resolution by the Speakers under Article 110(3) of the Constitution; define the Bills that are considered only by the National Assembly; define Bills that are Bills not concerning county governments and define Bills concerning county governments.
- (3) **PART II** of the Bill outlines matters relating to publication and the enacting formula for Bills and Acts of Parliament so as to standardize the practice between the Houses. These matters were previously expressly provided for in the Constitution prior to 2010.
- (4) **Clause 4** of the Bill provides for the publication of Bills originating from either House of Parliament, the enacting formula and imposes timelines for such publication to cure scenarios where the Government printer at times delays in the printing of Bill requests.
- (5) **Clause 5** of the Bill provides for the publication of Acts of Parliament after assent by the President,
- (6) **PART III** of the Bill contains provisions relating to the joint resolution of a question under Article 110(3) of the Constitution
- (7) **Clause 6** of the Bill provides for the manner in which the question arises for purposes of Article 110(3) of the Constitution and the matter in which one Speaker notifies the other of the question arising.
- (8) **Clause 7** of the Bill outlines the instances where no question can be deemed to arise under Article 110(3) as the Constitution has in itself expressly provided for the mode of enactment of the Bills in question.
- (9) **Clause 8** of the Bill provides for consideration of a question arising and the options available to the Speaker upon such consideration.

- (10) **Clause 9** of the Bill provides for agreement over the question raised in which case a Certificate of joint Resolution is issued.
- (11) **Clause 10** of the Bill provides for disagreement over the question raised and the options available to the Speaker upon such disagreement.
- (12) **Clause 11** of the Bill provides for conciliation in the event of disagreement.
- (13) **Clause 12** of the Bill provides for consideration of money Bills especially where such a finding is arrived at under Article 114(2) in respect of Bills emanating from the Senate.
- (14) **Clause 13** of the Bill provides for co-sponsorship of Bills.
- (15) **PART IV** of the Bill provides for the conduct of joint proceedings and committees.
- (16) **Clause 14** of the Bill provides for Mediation Committees and includes provisions on the chairing, voting and conduct of such committees
- (17) **Clause 15** of the Bill provided for Joint committees and their procedures.
- (18) **Clause 16** of the Bill provides for Joint sittings of the Houses and the enforcement of the Standing Orders of the House presiding over such sittings.
- (19) **Clause 17** of the Bill provides for an Address of Parliament by visiting dignitaries.
- (20) **PART V** of the Bill provides for miscellaneous provisions on matters of mutual interest to the two Houses of Parliament.
- (21) **Clause 18** of the Bill provides for address of Parliament by visiting dignitaries.
- (22) **Clause 19** of the Bill provides for public participation processes.
- (23) **Clause 20** of the Bill provides for use of alternative dispute resolution mechanisms to resolve disputes in keeping with the judicial principles outlined under Article 159(2)(c) of the Constitution. The clause further provides that where a dispute arises between the Houses relating to the discharge of their respective functions, the Houses shall use alternative forms of dispute resolution in seeking to resolve the dispute and shall before seeking redress in court on any dispute relating to the discharge of their respective functions, first exhaust the alternative dispute resolution mechanisms.

- (24) **The First Schedule** provides for the form of the notification of a question arising under Article 110(3) of the Constitution
- (25) **The Second Schedule** provides for the Certificate of Joint Resolution.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

8. 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.”

9. 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

10. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Monday 9th October 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/2023/108* and *NA/DDC/JLAC/2023/143* dated 31st October and 22nd November 2023, respectively invited key stakeholders to submit views on the Bill and attend public participation forums on Thursday 9th November 2023 and Tuesday 28th November 2023.

11. To this end, the Committee received eight (8) memoranda from the COG, CRA, the Judiciary, the KLRC, the National Treasury and the Office of the Leader of the Minority Party of the National Assembly. The memoranda are annexed to this report as *Annexure 7*.

12. The Judiciary and the National Treasury submitted memoranda supporting the entirety of the Bill. However, the Committee received reservations and proposals from the COG, the CRA, the KLRC, the Office of the Leader of Majority, *Mzalendo* Trust and TI relating to the Bill. They stated as follows:

General

13. The **KLRC** proposed the deletion of the preamble because it goes against Kenya's drafting style.
14. On 9th November 2023, the **State Department for Parliamentary Affairs** attended the public participation forum and stated, in support of the Bill, that it would foster good bicameral relations between the two Houses of Parliament. It also notified the Committee of the ongoing efforts by the offices of the Deputy President, the Prime Cabinet Secretary, the Leader of the Majority Party of both Houses and the OAG to come up with a harmonised draft Bill, the Determination on the Nature of a Procedure Bill, co-sponsored by both Houses.
15. The **CRA** recommended the addition of a new provision for consultation on financial legislation affecting counties as follows:

“ (1) The National Assembly and the Senate shall consult the Commission on Revenue allocation whenever a Bill dealing with the sharing of revenue or any financial matter concerning county governments is published in either House.

(2) Any recommendations made by the Commission shall be tabled in Parliament and each House shall consider the recommendations before voting on the Bill.”

Committee Observation

16. The Committee observed that a preamble in legislation is an introductory and expressionary statement that explains the purpose and underlying philosophy of a Bill.

Clause 1

17. The **CRA** proposed substituting the Bill's title 'The Houses of Parliament (Bicameral Relations) Bill' with 'Bicameral Relations Bill' to avoid repetition.

Committee Observation

18. The Committee observed that the word “bicameral” means consisting of two legislative houses. Therefore, to ensure clarity the title be amended to read “The Houses of Parliament (Bicameral) Relations Bill, 2023”.

Clause 2

19. The **KLRC** proposed amending the definition of ‘a Bill not concerning county government’ to mean any Bill that is not a Bill concerning county government as contemplated under Article 110(1) of the Constitution. It was its view that the proposed definition in the Bill is prone to be interpreted in diverse ways. For instance, a Bill containing provisions that are incidental to the effective exercise of a function or power of the national government under Part 1 of the Fourth Schedule to the Constitution may still concern counties if it contains provisions affecting the functions and powers of the county governments set out under the Fourth Schedule.

20. For clarity, the **COG** also proposed merging the two definitions of the phrases ‘Bill concerning county governments’ and ‘Bill not concerning county governments’ to read as follows:

“ ‘Bill concerning county governments’ has the meaning assigned to it by Article 110 of the Constitution and excludes a Bill –

(a) containing provisions affecting the exclusive functions and powers of the national government under Part 1 of the Fourth Schedule to the Constitution;

(b) containing provisions relating to a function or power not assigned by the Constitution or national legislation to a county government; or

(c) containing provisions that are incidental to the effective exercise of a function or power of the national government under Part 1 of the Fourth Schedule to the Constitution.”

21. **Mzalendo Trust** noted that no definition for the terms ‘Second House’ and ‘Originating House’ had been provided in the Bill. Hence, proposed that inclusion of the following definitions:

“Second House – The House being either National Assembly or Senate that receives the Bill as initiated from an Originating House.

Originating House – Being National Assembly or Senate that initiates the Bill to be considered by both Houses.”

Committee Observation

22. The Committee observed that the definition of a Bill concerning county governments is provided for under Article 110 (1) of the Constitution. Article 109 (3) provides that a Bill not concerning county governments is considered only in the National Assembly and passed in accordance with Article 122 and the Standing Orders on the National Assembly. Therefore, there is a need to expressly state what constitutes a Bill not concerning county governments.

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023)

Clause 3

23. The **KLRC** submitted that the clause is too wordy and thus proposed retaining paragraphs (a), (g) and (j) and deletion of paragraphs (b), (c), (d), (e), (f), (h), (i) and (k). It was its view that these provisions are not necessary since they are already a requirement in Kenya's legislative process as provided for in Article 109(4) of the Constitution.
24. The **CRA** also noted that the objectives are too many and proposed reducing them to retain paragraph (a), (h), (i) and (k).

Committee Observation

25. The Committee observed that the objects clause of the Act outlines the purpose for enactment of an Act of Parliament. Therefore, the clause needs to be as exhaustive as possible.

Clauses 4 and 5

26. The **KLRC** proposed the deletion of these clauses because they provide for what is already enumerated in Article 116 of the Constitution and the Standing Orders. It added that it is Part III of the Interpretation and General Provisions Act, Cap 2 that should provide for the enactment formula and timelines for publication of Bills and Acts.
27. Relating to clause 4, **TI** proposed introducing consequences for failing to meet the publication deadline to promote the timely publication and hold responsible parties accountable.
28. As for clause 5, **Mzalendo Trust** proposed the introduction of a new sub-clause to deal with the issue of commencement dates to harmonise this clause with Article 116 of the Constitution with the effect of doing away with the discretion conferred on Cabinet Secretaries on deciding when coming into force of the statutes should be.

Committee Observation

29. The Committee observed that it is necessary to provide for the requirement that a Bill to be introduced in the House shall be published in the *Gazette* for purposes of informing the public. In addition, the Committee observed that it is important to have a timeline for the publication of Bills to avoid delays.

Clause 6

30. The **COG** noted that the procedure for concurrence by the two Speakers of Parliament under Article 110(3) of the Constitution is the only forum at which the nature of a Bill is determined and whether it concerns county governments at which the nature of a Bill is determined. It therefore, proposed amending sub-clause (2) to read as follows:

“Whenever a Bill is published in the Gazette, in accordance with Section 4 of this Act, the Speakers shall subject to section 7 and at any time before the period specified for the Second Reading of such Bill in the Standing Orders of the respective Houses, become seized of a question as to whether the Bill concerns county governments.”

31. It also proposed amending sub-clause (3) to read as follows:

“Whenever the Speakers become seized of a question under subsection (2), the Speakers shall as soon as is practicable, notify each other of the questions.”

32. It also proposed amending sub-clause (5) by replacing the word ‘Speaker’ with the words ‘the Speakers shall jointly’ because neither Speaker may determine the nature of a bill to the exclusion of the other. It was its view that the sub-clause, as drafted, would inevitably result in the usurpation of jurisdiction to the prejudice of the constitutional principle of the harmonious interplay of Houses of Parliament.

33. The **CRA** submitted that sub-clause (2) be amended by adding the phrase ‘and if it is, whether it is a special or an ordinary Bill’ after the word ‘government’ to align it to Article 110(3) of the Constitution.

34. Relating to sub-clause (3), the **CRA** noted that the term ‘practicable’ is subjective hence the need for the timelines to be specified for clarity.

35. Additionally, the **CRA** proposed inserting the following two new paragraphs under sub-clause (5):

“ (e) consider whether the Bill contains provisions relating to election of members of county assembly or county executive; and

(f) consider whether it is a Bill referred to in chapter twelve affecting the finances of county governments.”

36. **TI** noted that the sub-clause (3) lacks a definitive timeline for notifying the Second House which is vital to guarantee timely resolution, transparency, accountability, and to prevent unwarranted delays in addressing questions related to county governments. It, therefore

recommended that a specific timeframe is included, that is both practical and predictable, to ensure that the notifications are delivered within a reasonable and realistic period.

Committee Observation

37. The Committee observed that Article 110 (3) requires the Speakers of the National Assembly and the Senate to jointly resolve any question as to whether a Bill concerns counties before either House considers a Bill. Clause 6 clarifies the manner in which a question may arise; the timeline on when a Speaker may become seized of a question; and factors to be considered by a Speaker in determining whether a question has arisen under Article 110 (3) of the Constitution.

Clause 7

38. The **COG** proposed amending the clause by replacing the word ‘not’ with the word ‘also’ to avoid ousting the application of Article 110(3) of the Constitution. It referred to the case of *Matter of the Speaker of the Senate & Another [2013] eKLR* where it was held that concurrence by the two Speakers of Parliament is mandatory precedent to consideration of any Bill by either House of Parliament.

39. The **CRA** was of the view that the clause be deleted to align the Bill with recommendations for sub-clause 6(5).

Committee Observation

40. The Committee observed that it is important to clearly outline the Bills so that no question as to whether they concern counties may arise for joint resolution in order to avoid constant litigation of the consideration of the Bills.

Clauses 8, 9 and 10

41. **Mzalendo Trust** was of the view that the clauses as couched appear to be assigning roles to the Speaker as an individual thereby side-stepping other relevant organs of Parliament. Thus, it proposed their revision.

42. **TI** stated that clause 10 (1) be amended to specify a timeline for notification to ensure that disagreements are handled promptly and efficiently. Moreover, regarding sub-clause (2), TI submitted that it be amended to clarify the authority of the Speaker of the Originating House

and specific procedures to guarantee adherence to well-defined protocols when adjusting the Bill.

Committee Observation

43. The Committee observed that clauses 8, 9 and 10 provide for the consideration of a question upon receipt of a notification of a question; outlines the procedure to be followed when the Speaker of the second House agrees with the question raised; and the procedure to be followed when the Speaker of the second House disagrees with the question raised. The procedures as outlined will guarantee that questions on whether a Bill concerns counties are determined effectively and efficiently.

Clause 11

44. **TI** submitted that sub-clause (1)(b) be amended to clarify the process for appointing persons or bodies and to specify their authority to maintain the integrity of the legislative process and prevent any ambiguity in the appointment procedure. It added that such clarity is essential for maintaining consistency and effectiveness in the recommendation process.

45. The **CRA** was of the view that sub-clause 11(2) defeats the purpose of the conciliation process provided for in the Bill. It, therefore, proposed its substitution with content to the effect that the position elucidated in clause 11(1)(a) and (b) is final.

Committee Observation

46. **The Committee observed that, when the Speakers are unable to jointly resolve a question and the Bill is referred to the sponsor pursuant to clause 11 (b), the sponsor ought not to give further directions to the Speakers. Directions can only be given by the Speakers to the sponsor and not the other way round. The Bill may, however, be referred back to the Sponsor for reconsideration.**

Clause 13

47. **Mzalendo Trust** was of the view that the clause be redrafted to align it to clauses 8 to 12 of the Bill.

Committee Observation

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023)

48. **The Committee observed that allowing a Bill that to be co-sponsored between a member of the National Assembly and a member of the Senate would contravene the provisions of Article 109 (5) of the Constitution. Nevertheless, a procedure to allow the “adoption” of Bills originating from a Second House would cure the concern.**

Clause 14

49. The **CRA** recommended redrafting sub-clauses (7) to (9) to focus provision on the Bill and not the report of a mediation committee to align it to Article 113 of the Constitution.

50. **TI** submitted that while the clause addresses the formation of a mediation committee, it does not offer comprehensive information regarding the committee’s precise roles and duties.

51. **TI** added that the sub-clause (7) must delineate the precise content requirements for the mediation committee’s report to ensure that both Houses are equipped with the necessary information contributing to a smoother flow of communication and understanding between them.

Committee Observation

52. The Committee observed that the provisions of Clause 14 give effect to Articles 112 and 113 on the referral of a Bill to a mediation committee. It makes further provisions on the quorum of a mediation committee; appointment of a chairperson and vice-chairperson of a mediation committee; decision-making in a mediation committee; and reporting by a mediation committee.

Part V

53. The **CRA** proposed changing the title of Part V to ‘Public Participation’ for clarity.

Committee Observation

54. The Committee observed that Part deals with other issues and not just public participation

Clause 19

55. For sub-clause (1), **TI** stated that the role of committees in public participation must be clarified to guide the manner in which the committees should engage with the public, stakeholders and experts, and how they should document and consider public views.

56. Additionally, it submitted that the sub-clause be amended to include specific timeframes for public participation to enhance the efficiency and effectiveness of public participation initiatives.
57. Concerning sub-clause (2), TI proposed the inclusion of a broader spectrum of mechanisms for public participation because the proposal only outlines four mechanisms that it deems restrictive.
58. The **CRA** noted that, for clarity, specific timelines be provided instead of using the open-ended term ‘reasonable’ in sub-clause (3)(c).
59. It further recommended the substitution of the phrase ‘persons with disability’ with ‘special interest groups’ to ensure the inclusivity of all special interest groups in accordance with Article 27 of the Constitution.
60. The **Office of the Leader of the Minority Party** and **Mzalendo Trust** noted that the aspect of broad discretion has the potential to be abused and ought to be revised to incorporate some key pointers from the Supreme Court decision in *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for Ministry of Health & 2 Others (2019)* on how public participation ought to be conducted.
61. In addition, the Office of the Leader of the Minority Party noted key components of meaningful public participation as clarity of the subject matter for the public to understand; a clear and simple medium of engagement for public participation; opportunity for balanced influence from the public in general; commitment to the process; inclusive and transparency of the process; and capacity to engage on the part of the public.
62. Regarding sub-clause (7), the **CRA** proposed deletion of the term ‘broadly’ as it is ambiguous and defeats the purpose of the public participation exercise.
63. Moreover, it proposed the deletion of sub-clause (8) on the grounds that the role of interpreting laws to reach a decision lies with the Judiciary as stipulated in Chapter Ten of the Constitution.

Committee Observation

64. The Committee observed that there is a need to provide in law the mechanisms that a House and its committees shall use in conducting public participation as well ensuring the prudent use of public resources in conducting public participation such as holding a joint public participation exercise where a Bill will have to be considered by both Houses.

Clause 20

65. The **Office of the Leader of the Minority Party** and *Mzalendo Trust* proposed the inclusion of a new sub-clause to provide a framework on how to conduct the negotiations including who has the power to convene them, the timelines and how they should be carried out to strengthen the framework for the negotiations envisaged under clause 20 of the Bill.
66. It further proposed that, for clarity and avoidance of doubt, a new sub-clause be introduced under sub-clause 3(b)ii to provide for a dispute resolution mechanism borrowing from Part IV of the Intergovernmental Relations Act, Cap 2 that outlines mechanisms for resolving disputes between the various levels of government.
67. **TI** also stated that the Alternative Dispute Resolution mechanisms including mediation, conciliation and expert determination should be diversified further to provide a more flexible and versatile approach to resolving various types of disputes, enabling a more customized and effective resolution process.
68. The **CRA** noted that sub-clause (2) is ambiguous. In its view, the phrase ‘the Leadership of a House of Parliament’ should be defined.

Committee Observation

69. The Committee observed that the inclusion of the provisions on alternative dispute resolution to resolve disputes between the Houses of Parliament is important so as to reduce litigation between the Houses of Parliament which takes a considerable long time while in courts.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

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

- a) The Bill is timely as it seeks to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution to promote bicameral relations between the National Assembly by prescribing procedures for ensuring seamless consideration of the legislative business in both Houses.
- b) The Bill provides a framework for the amicable resolution of disputes between the National Assembly and the Senate.
- c) The passage of the Bill by both Houses constitutes a legislative and legally binding mechanism to guide the Houses of Parliament in matters that may not be included in the Standing Orders of each House.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

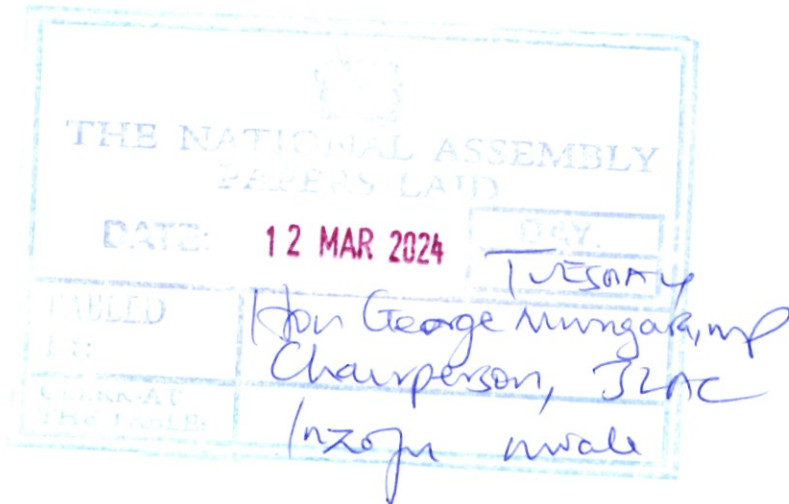
71. The Committee, having considered the Houses of Parliament (Bicameral Relations) Bill (*National Assembly No. 44 of 2023*) **recommends that the House approves the Bill with amendments as proposed in Chapter Six of this Report.**

SIGNED.......... DATE.....*12. 3. 2024*.....

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

72. In view of the observations made, the Committee proposed the following amendments to the Bill:

(1) LONG TITLE

THAT the Long Title of the Bill be amended by inserting the word “a” immediately after the words “matters of”;

Rationale: To insert a missing word.

(2) CLAUSE 1

THAT Clause 1 of the Bill be amended by deleting the words “Houses of Parliament (Bicameral Relations) Act” appearing immediately after the words “as the” and substituting therefor the words “Houses of Parliament (Bicameral) Relations Act”;

Rationale: To rename the Bill as the Houses of Parliament (Bicameral) Relations Bill.

(3) CLAUSE 3

THAT Clause 3 of the Bill be amended—

(a) in paragraph (b) by deleting the words “of the Houses” appearing immediately after the word “either” and substituting therefor the word “House”;

(b) in paragraph (h) by deleting the words “by the Constitution for purposes of” appearing immediately after the word “contemplated” and substituting therefor the word “under”;

(c) in paragraph (j) by inserting the following new subparagraph immediately after subparagraph (iv)—

“(v) The procedure governing joint sittings between the Committees of Parliament;”

(d) in paragraph (k) by deleting the words “their respective functions” appearing immediately after the word “Parliament” and substituting therefor the words “of their respective functions, or otherwise”.

Rationale: (1) To correct typographical errors; and

(2) To include the provision of a procedure to govern joint sittings between committees of the two Houses as an object of the Bill.

(4) CLAUSE 5

THAT Clause 5 of the Bill be amended—

- (a) in subclause (1) by inserting the words “and assented to by the President” immediately after the word “Constitution”;
- (b) in subclause (2) by inserting the words “and assented to by the President” immediately after the word “Constitution”;

Rationale: To align the Clause with Article 116(1) of the Constitution.

(5) CLAUSE 6

THAT Clause 6 of the Bill be amended—

- (a) in subclause (2) by deleting the words “county governments” appearing immediately after the word “concerns” and substituting therefor the word “counties”;
- (b) by inserting the following new subclause immediately after subclause (2)—
 - “(2A) In determining whether a question has arisen under Article 110 (3) of the Constitution, a Speaker shall for the purposes of subsection (2)—
 - (a) consider the Bill’s purpose, intent and legal effect;
 - (b) examine the contents of the Bill and the memorandum of objects and reasons to ascertain its inherent nature;
 - (c) consider whether the Bill falls under the exclusive mandate of the National Assembly pursuant to Article 109(3) of the Constitution; and
 - (d) consider whether the provisions of the Bill specifically affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.”
- (c) by deleting subclause (5).

Rationale: (1) To align the provisions in the Clause with the language of Article 110(3) of the Constitution; and

(2) To reorder the subclauses for logical and sequential flow of the Clause to typographical errors.

(6) CLAUSE 10

THAT Clause 10 of the Bill be amended—

- (a) in subclause (2) by deleting the word “Speaker” appearing immediately after the words “Speaker of the originating House”;
- (b) in subclause (4) by deleting the word “on” appearing immediately after the words “notify the House” and substitute therefor the word “of”;

Rationale: To correct typographical errors.

(7) CLAUSE 11

THAT Clause 11 be amended by deleting subclause (1) and substituting therefor the following new subclause—

“(1) Where the Speakers are unable to jointly resolve a question arising under Article 110(3) of the Constitution, the Speakers may—

(a) refer the Bill to its sponsor for further consideration;

(b) jointly appoint any person or body of persons to make such recommendations within fourteen days on the way forward as may be appropriate.”

Rationale: (1) To allow the sponsor of the Bill to reconsider the contents of a Bill on which the two Speakers are unable to jointly resolve a question that has arisen; and

(2) To increase the period given to a person or body of persons appointed to advise the Speakers on the content of a Bill from a maximum of seven to a maximum of fourteen days.

(8) CLAUSE 12

THAT Clause 12 of the Bill be amended—

(a) in subclause (2) by deleting the word “shall” appearing immediately after the words “of “a money Bill”, the Assembly” and substituting therefor the word “may”;

(b) in subclause (3) by—

(i) inserting the word “or” immediately after the word “Constitution” appearing in paragraph (a);

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) the relevant departmental committee of the Assembly or a Member be at liberty to adopt the Bill and that the process of consideration of the Bill be deemed to have begun afresh in the Assembly pursuant to the provisions of Article 109(5) of the Constitution.”

Rationale: (1) To align subclause (2) with the provisions of Article 114 of the Constitution; and

(2) To amend the reference to co-sponsorship of a Bill by Members of different Houses to a process where a Member or a committee of the other House “adopts” a Bill.

(9) CLAUSE 13

THAT Clause 13 of the Bill be amended—

- (a) in the marginal note by deleting the word “Co-sponsorship” and substituting therefor the word “Adoption”;
- (b) in subclause (1) by deleting the words “to co-sponsor a Bill with” appearing immediately after the words “in charge of a Bill intends” and substituting therefor the words “that his or her Bill be adopted by”;
- (c) in subclause (2)(b) by deleting the word “co-sponsor” appearing immediately after the words “nominated to” and substituting therefor the word “adopt”.

Rationale: To amend the reference to co-sponsorship of a Bill by Members of different Houses to a process where a Member or a committee of the other House “adopts” a Bill.

(10) CLAUSE 14

THAT Clause 14 of the Bill be amended subclause (7) by inserting the words “Chairperson, Vice-Chairperson or” immediately after the words “House by”;

Rationale: To allow the Chairperson, Vice-Chairperson or a Member of a mediation committee to table the Report of the committee.

(11) CLAUSE 15

THAT Clause 15 of the Bill be amended—

- (a) in subclause (2) by deleting the words “and Senators” appearing immediately after the words “National Assembly” and substituting therefor the words “and the Senate”;
- (b) in subclause (4) by deleting the words “or more” appearing immediately after the word “two-thirds”

Rationale: (1) To correct a typographical error; and

(2) To set the quorum of a joint committee to at least two-thirds of all members of the committee.

(12) CLAUSE 16

THAT Clause 16 of the Bill be amended—

- (a) in subclause (1) by inserting the words “with the written permission of the Speakers of Parliament” immediately after the word “may”;
- (b) by inserting the following new subclauses immediately after subclause (1)—

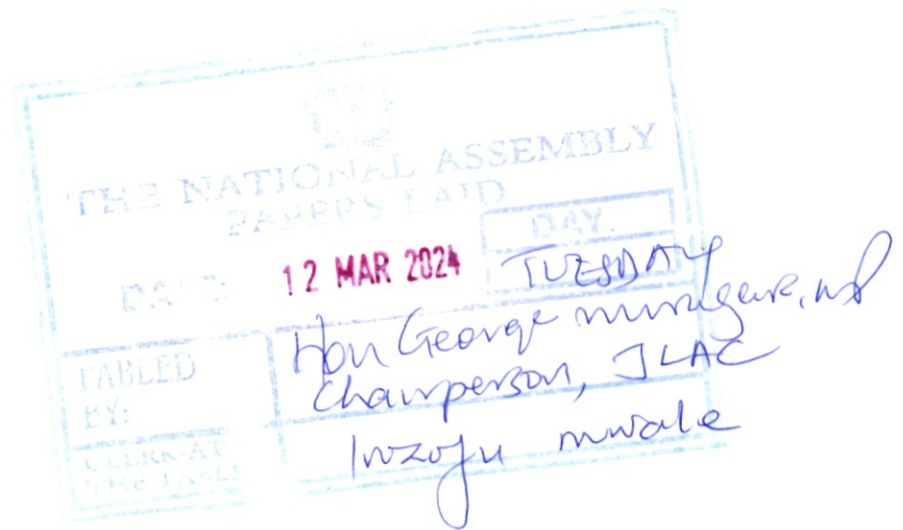
Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023)

“(1A) The quorum of a joint sitting shall be a third of its members from the National Assembly and a third of its members from the Senate.

(1B) Unless a decision is reached by consensus, any vote to be taken in a joint sitting shall be by separate Houses.”

Rationale: (1) To require committees of the two Houses proposing to hold a joint sitting to obtain the permission of both Speakers;

(2) To set the quorum requirements and modalities of conducting a vote in a joint sitting of committees.



ANNEXURES

Annexure 1: Adoption Schedule



THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION - 2024
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

AGENDA: Adoption of the Report on the Proposed Houses of Parliament (Bicameral Relations) Bill, 2023 by the Hon. Samuel Chepkonga, MP

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, CBS, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, 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	<i>Virtual</i>
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	<i>Virtual</i>
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	<i>Virtual</i>

Handwritten text on the left side of the page.

Handwritten text on the left side of the page.

Handwritten text on the left side of the page.

Handwritten text on the left side of the page.

Handwritten text on the left side of the page.



Annexure 2: Minutes



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION - 2024
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 23rd SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY 6TH MARCH, 2024 AT 10:00AM IN NG-CDF BOARDROOM, HARAMBEE SACCO PLAZA, PARLIAMENT BUILDINGS

PRESENT

1. Hon. Murugara George Gitonga, EBS, MP - **Chairperson**
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - **Vice- Chairperson**
3. Hon. Onyiego Silvanus Osoro, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Aden Daud, EBS MP
6. Hon. Makali John Okwisia, MP
7. Hon. Gichohi Kaguchia John Philip, MP
8. Hon. Muchira Michael Mwangi, MP
9. Hon. Maina Jane Njeri, MP

APOLOGIES

1. Hon. Maalim Farah, MP
2. Hon. Junet Mohamed, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. Muriu Wakili Edward, MP
5. Hon. Siyad Amina Udgoon, MP
6. Hon. Mogaka Stephen M, MP

SECRETARIAT

1. Mr. Ronald Walala - Senior Legal Counsel
2. Mr. Abdikafar Abdi - Clerk Assistant III
3. Mr. Abdirahim Omar - Fiscal Analyst II
4. Ms. Vivienne Ogega - Research Officer III
5. Mr. Peter Mutethia - Audio Officer III
6. Mr. Calvin Karung'o - Media Relations Officer

7. Ms. Mary Kamande - Public Communications Officer
8. Mr. John Nduaci - Serjeant-at-arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Adoption of the Report on the consideration of the Houses of Parliament (Bicameral Relations) Bill, 2023 sponsored by Hon. Samuel Chepkonga, MP**
5. **Adoption of the Addendum report on the consideration of the National Government Administration Laws (amendment) Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2024/113: PRELIMINARIES

The meeting was called to order at ten o'clock by the Chairperson of the Committee on Justice and Legal Affairs followed by a word of prayer and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2024/114: CONFIRMATION OF MINUTES

The agenda was deferred

MIN.NO/DC/JLAC/2024/115: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Maina Jane Njeri, MP.

MIN.NO/DC/JLAC/2024/116: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023 SPONSORED BY HON. SAMUEL CHEPKONGA, MP

COMMITTEE OBSERVATIONS

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

- a) The Bill is timely as it seeks to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution to promote bicameral relations between the National Assembly by prescribing procedures for ensuring seamless consideration of the legislative business in both Houses.
- b) The Bill provides a framework for the amicable resolution of disputes between the National Assembly and the Senate.

- c) The passage of the Bill by both Houses constitutes a legislative and legally binding mechanism to guide the Houses of Parliament in matters that may not be included in the Standing Orders of each House.

COMMITTEE RECOMMENDATIONS

The Committee, having considered the Houses of Parliament (Bicameral Relations) Bill (*National Assembly No. 44 of 2023*) **recommends that the House approves the Bill with amendments as proposed in the schedule of amendments.**

SCHEDULE OF AMENDMENTS

In view of the observations made, the Committee proposed the following amendments to the Bill:

(1) LONG TITLE

THAT the Long Title of the Bill be amended by inserting the word “a” immediately after the words “matters of”;

Rationale: To insert a missing word.

(2) CLAUSE 1

THAT Clause 1 of the Bill be amended by deleting the words “Houses of Parliament (Bicameral Relations) Act” appearing immediately after the words “as the” and substituting therefor the words “Houses of Parliament (Bicameral) Relations Act”;

Rationale: To rename the Bill as the Houses of Parliament (Bicameral) Relations Bill.

(3) CLAUSE 3

THAT Clause 3 of the Bill be amended—

- (a) in paragraph (b) by deleting the words “of the Houses” appearing immediately after the word “either” and substituting therefor the word “House”;
- (b) in paragraph (h) by deleting the words “by the Constitution for purposes of” appearing immediately after the word “contemplated” and substituting therefor the word “under”;
- (c) in paragraph (j) by inserting the following new subparagraph immediately after subparagraph (iv)—

“(v) The procedure governing joint sittings between the Committees of Parliament;”

- (d) in paragraph (k) by deleting the words “their respective functions” appearing immediately after the word “Parliament” and substituting therefor the words “of their respective functions, or otherwise”.

Rationale: (1) To correct typographical errors; and

(2) To include the provision of a procedure to govern joint sittings between committees of the two Houses as an object of the Bill.

(4) CLAUSE 5

THAT Clause 5 of the Bill be amended—

- (a) in subclause (1) by inserting the words “and assented to by the President” immediately after the word “Constitution”;
- (b) in subclause (2) by inserting the words “and assented to by the President” immediately after the word “Constitution”;

Rationale: To align the Clause with Article 116(1) of the Constitution.

(5) CLAUSE 6

THAT Clause 6 of the Bill be amended—

- (a) in subclause (2) by deleting the words “county governments” appearing immediately after the word “concerns” and substituting therefor the word “counties”;
- (b) by inserting the following new subclause immediately after subclause (2)—
- “(2A) In determining whether a question has arisen under Article 110 (3) of the Constitution, a Speaker shall for the purposes of subsection (2)—
- (a) consider the Bill’s purpose, intent and legal effect;
- (b) examine the contents of the Bill and the memorandum of objects and reasons to ascertain its inherent nature;
- (c) consider whether the Bill falls under the exclusive mandate of the National Assembly pursuant to Article 109(3) of the Constitution; and
- (d) consider whether the provisions of the Bill specifically affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.”
- (c) by deleting subclause (5).

Rationale: (1) To align the provisions in the Clause with the language of Article 110(3) of the Constitution; and

(2) To reorder the subclauses for logical and sequential flow of the Clause To typographical errors.

(6) CLAUSE 10

THAT Clause 10 of the Bill be amended—

- (a) in subclause (2) by deleting the word “Speaker” appearing immediately after the words “Speaker of the originating House”;
- (b) in subclause (4) by deleting the word “on” appearing immediately after the words “notify the House” and substitute therefor the word “of”;

Rationale: To correct typographical errors.

(7) CLAUSE 11

THAT Clause 11 be amended by deleting subclause (1) and substituting therefor the following new subclause—

“(1) Where the Speakers are unable to jointly resolve a question arising under Article 110(3) of the Constitution, the Speakers may—

- (a) refer the Bill to its sponsor for further consideration;
- (b) jointly appoint any person or body of persons to make such recommendations within fourteen days on the way forward as may be appropriate.”

Rationale: (1) To allow the sponsor of the Bill to reconsider the contents of a Bill on which the two Speakers are unable to jointly resolve a question that has arisen; and

(2) To increase the period given to a person or body of persons appointed to advise the Speakers on the content of a Bill from a maximum of seven to a maximum of fourteen days.

(8) CLAUSE 12

THAT Clause 12 of the Bill be amended—

- (a) in subclause (2) by deleting the word “shall” appearing immediately after the words “of “a money Bill”, the Assembly” and substituting therefor the word “may”;
- (b) in subclause (3) by—
 - (i) inserting the word “or” immediately after the word “Constitution” appearing in paragraph (a);

- (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) the relevant departmental committee of the Assembly or a Member be at liberty to adopt the Bill and that the process of consideration of the Bill be deemed to have begun afresh in the Assembly pursuant to the provisions of Article 109(5) of the Constitution.”

Rationale: (1) To align subclause (2) with the provisions of Article 114 of the Constitution; and

(2) To amend the reference to co-sponsorship of a Bill by Members of different Houses to a process where a Member or a committee of the other House “adopts” a Bill.

(9) CLAUSE 13

THAT Clause 13 of the Bill be amended—

- (a) in the marginal note by deleting the word “Co-sponsorship” and substituting therefor the word “Adoption”;
- (b) in subclause (1) by deleting the words “to co-sponsor a Bill with” appearing immediately after the words “in charge of a Bill intends” and substituting therefor the words “that his or her Bill be adopted by”;
- (c) in subclause (2)(b) by deleting the word “co-sponsor” appearing immediately after the words “nominated to” and substituting therefor the word “adopt”.

Rationale: To amend the reference to co-sponsorship of a Bill by Members of different Houses to a process where a Member or a committee of the other House “adopts” a Bill.

(10) CLAUSE 14

THAT Clause 14 of the Bill be amended subclause (7) by inserting the words “Chairperson, Vice-Chairperson or” immediately after the words “House by”;

Rationale: To allow the Chairperson, Vice-Chairperson or a Member of a mediation committee to table the Report of the committee.

(11) CLAUSE 15

THAT Clause 15 of the Bill be amended—

- (a) in subclause (2) by deleting the words “and Senators” appearing immediately after the words “National Assembly” and substituting therefor the words “and the Senate”;
- (b) in subclause (4) by deleting the words “or more” appearing immediately after the word “two-thirds”

Rationale: (1) To correct a typographical error; and

(2) To set the quorum of a joint committee to at least two-thirds of all members of the committee.

(12) CLAUSE 16

THAT Clause 16 of the Bill be amended—

- (a) in subclause (1) by inserting the words “with the written permission of the Speakers of Parliament” immediately after the word “may”;
- (b) by inserting the following new subclauses immediately after subclause (1)—

“(1A) The quorum of a joint sitting shall be a third of its members from the National Assembly and a third of its members from the Senate.

(1B) Unless a decision is reached by consensus, any vote to be taken in a joint sitting shall be by separate Houses.”

Rationale: (1) To require committees of the two Houses proposing to hold a joint sitting to obtain the permission of both Speakers;

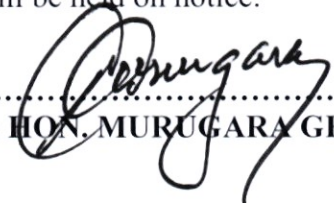
(2) To set the quorum requirements and modalities of conducting a vote in a joint sitting of committees.

The Report was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Maina Jane Njeri, MP.

MIN. NO/DC/JLAC/2024/117:

ADJOURNMENT

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

SIGNED..........DATE.....*12.3.024*.....
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

Annexure 3: Houses of Parliament
(Bicameral Relations) Bill,
2023

SPECIAL ISSUE

Kenya Gazette Supplement No. 130 (National Assembly Bills No. 44)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 28th July, 2023

CONTENT

Bill for Introduction into the National Assembly —

	PAGE
The Houses of Parliament (Bicameral Relations) Bill, 2023	1309



**THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS)
BILL, 2023**

ARRANGEMENT OF CLAUSES

Clause

PREAMBLE

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of the Act.

PART II—PUBLICATION AND ENACTING FORMULA

- 4—Publication of Bills.
- 5—Publication of Acts.

**PART III—JOINT RESOLUTION OF A QUESTION UNDER
ARTICLE 110(3) OF THE CONSTITUTION**

- 6—Notification of question arising.
- 7—Bills on which no question can arise for joint resolution.
- 8—Consideration of a question arising.
- 9—Agreement over the question raised.
- 10—Disagreement over the question raised.
- 11—Conciliation in the event of disagreement.
- 12—Consideration of money Bills.
- 13—Co-sponsorship of Bills.

**PART IV—CONDUCT OF JOINT PROCEEDINGS AND
COMMITTEES**

- 14—Mediation Committees.
- 15—Joint committees.
- 16—Joint sittings of committees.
- 17—Joint sittings of Parliament.

PART V—MISCELLANEOUS

- 18—Address of Parliament by visiting dignitaries.

19—Public participation processes.

20—Use of alternative dispute resolution mechanism to resolve disputes.

FIRST SCHEDULE —Notification of Question Arising Under
Article 110(3)

SECOND SCHEDULE —Certificate of Joint Resolution

PREAMBLE

AWARE that Article 1 of the Constitution provides that sovereign power belongs to the people of Kenya and is exercised either directly or indirectly through democratically elected representatives in Parliament;

FURTHER AWARE that Article 93(1) and (2) of the Constitution establishes the Parliament of Kenya comprising the National Assembly and the Senate to perform their respective functions in accordance with the Constitution;

WHEREAS Articles 94, 95(3), 95(4)(b), 109(2), (3), (4) and (5); 114; 209, 210, 221 and 223 of the Constitution provides for the legislative powers and the manner of exercising those powers by the National Assembly and the exclusive role of the National Assembly in revenue raising and appropriation of funds for expenditure by the national government;

FURTHER WH/EREAS Articles 94, 96(2); 96(3); 109(4); and 110(1) of the Constitution provides for the legislative powers and the manner of exercising those powers by the Senate and the determination of the allocation of national revenue among counties and oversight of such revenue by the Senate;

NOTING that Article 186 of the Constitution as read with the Fourth Schedule to the Constitution sets out the respective functions and powers of the national government and the county governments.

FURTHER NOTING that Article 109(3) of Constitution as read together with Article 109(4) of the Constitution confers upon the National Assembly the exclusive mandate of enacting Bills not concerning county governments and excludes the Senate from participation in the enactment of such Bills;

RECOGNIZING that Article 110(1) and (2) of the Constitution defines a Bill concerning county governments and Article 110(3) of the Constitution requires the Speakers of Parliament to jointly resolve any question arising on whether a Bill concerns counties;

FURTHER RECOGNIZING the need to establish procedures for processing legislation, public participation, joint sittings, joint committees, mediation committees, and other matters related to the functions of the bicameral legislature under Article 94 of the Constitution;

ACKNOWLEDGING that engagements between the Houses of Parliament should be based on consultation and cooperation to promote a harmonious mechanism for democratic governance;

COMMITTED to creating a framework that enables both Houses of Parliament to perform their respective functions and enhance seamless bicameral relations;

NOW THEREFORE, Parliament enacts the following

**THE HOUSES OF PARLIAMENT
(BICAMERAL RELATIONS) BILL, 2023**

A Bill for

AN ACT of Parliament to give further effect to the procedures relating to matters of bicameral nature between the Houses of Parliament as contemplated in Chapter Eight of the Constitution of Kenya and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Houses of Parliament (Bicameral Relations) Act, 2023.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Bill concerning county governments” has the meaning assigned to it by Article 110 of the Constitution;

“Bill not concerning county governments” means a Bill—

(a) containing provisions affecting the exclusive functions and powers of the national government under Part 1 of the Fourth Schedule to the Constitution;

(b) containing provisions relating to a function or power not assigned by the Constitution or national legislation to a county government; or

(c) containing provisions that are incidental to the effective exercise of a function or power of the national government under Part 1 of the Fourth Schedule to the Constitution;

“Clerk” means the Clerk of the National Assembly or the Senate;

“Houses of Parliament” means the National Assembly and the Senate;

“mediation committee” means a mediation committee established under Article 113 of the Constitution;

“money Bill” has the meaning assigned to it by Article 114 of the Constitution; and

“Speaker” means the Speaker of the National Assembly or of the Senate.

3. The objects of this Act are to—

Objects of the Act.

- (a) provide a seamless framework for the manner of conducting matters of bicameral nature;
- (b) provide for the publication in the *Gazette* of all Bills to be introduced in either of the Houses of Parliament pursuant to Article 109(4) of the Constitution;
- (c) provide for the enacting formula to be included in all Bills and Acts passed by Houses of Parliament;
- (d) outline the Bills on which no question can arise for joint resolution by the Speakers under Article 110(3) of the Constitution;
- (e) outline the manner in which a question can arise for resolution by the Speakers under Article 110(3) of the Constitution;
- (f) define what constitutes consideration of a Bill for purposes of Article 110(3) of the Constitution;
- (g) provide for the manner of jointly resolving a question that arises on a Bill under Article 110(3) of the Constitution;
- (h) outline what constitutes a Bill not concerning county governments as contemplated by the Constitution for purposes of Article 109(3) of the Constitution;
- (i) provide for the mode of originating and considering a money Bill as contemplated under Article 109(5) of the Constitution;
- (j) provide a framework for the conduct of joint processes including—
 - (i) the conduct of a joint sitting of Parliament under Article 107(2) of the Constitution;
 - (ii) the procedure applicable to the chairing, quorum, voting and timelines in respect of a mediation committee established under Article 113 of the Constitution;

- (iii) facilitation of public participation under Article 118 of the Constitution; and
- (iv) establishment and the procedure applicable to a joint committee under Article 124(2) of the Constitution; and
- (k) provide a framework for amicable resolution of disputes arising from the discharge by the Houses of Parliament their respective functions.

PART II—PUBLICATION AND ENACTING FORMULA

4. (1) A Bill to be introduced by any member or committee of a House of Parliament pursuant to Article 109(5) of the Constitution shall be published in the *Gazette* in such a manner as may be specified in the Standing Orders of the respective House.

Publication of Bills.

(2) Where a request is submitted to the Government printer by the respective Clerk for the publication of a Bill under subsection (1), the Government Printer shall cause to be published in the *Gazette* the Bill within a period not exceeding seven days after the date of receipt of the request.

5. (1) A Bill passed by both Houses of Parliament or by the National Assembly under Article 109(3) of the Constitution shall be published in the *Gazette* as an Act of Parliament in accordance with Article 116(1) of the Constitution.

Publication of Acts.

(2) A Bill passed by both Houses of Parliament or by the National Assembly under Article 109(3) of the Constitution, shall be styled "An Act of Parliament" and the words of enactment shall be "Enacted by the Parliament of Kenya".

PART III—JOINT RESOLUTION OF A QUESTION UNDER ARTICLE 110(3) OF THE CONSTITUTION

6. (1) A question under Article 110(3) of the Constitution may arise in the manner provided for under this Part.

Notification of question arising.

(2) Whenever a Bill is published in the *Gazette*, in accordance with section 4 of this Act, a Speaker may, subject to section 7 and at any time before the period

specified for the Second Reading of such Bill in the Standing Orders of the respective House, become seized of a question as to whether the Bill concerns county governments.

(3) Whenever the Speaker becomes seized of a question under subsection (2), the Speaker shall as soon as is practicable, notify the Speaker of the second House of the question.

(4) The notification under subsection (3) shall be in the form set out in the First Schedule.

(5) In determining whether a question has arisen under Article 110 (3) of the Constitution, a Speaker shall for the purposes of subsection (2)—

- (a) consider the Bill's true purpose, intent and legal effect;
- (b) examine the contents of the Bill and the memorandum of objects and reasons to ascertain its inherent nature; and
- (c) consider whether the Bill falls under the exclusive mandate of the National Assembly pursuant to Article 109(3) of the Constitution;
- (d) consider whether the provisions of the Bill specifically affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.

7. The provisions of section 6 shall not apply to—

- (a) a Bill to amend the Constitution as provided for under Article 255, 256 and 257 which is considered by both Houses;
- (b) a Bill relating to the election of members of a county assembly or a county executive under Article 110(1)(b) of the Constitution which is considered by both Houses;
- (c) the annual County Allocation of Revenue Bill as provided for under Article 218 of the Constitution which is considered by both Houses;

Bills on which no question can arise for joint resolution.

(d) an Appropriation Bill as provided for under Articles 95(4) (b), 221, 222, and 223 of the Constitution which is considered only by the National Assembly;

(e) a Finance Bill introduced pursuant to Articles 95(4)(c), 114, 209(1), 210 and 221(1) of the Constitution which is considered only by the National Assembly;

(f) any Bill providing for taxation and other revenue-raising powers of the national government introduced pursuant to the provisions of Part 3 of Chapter Twelve of the Constitution which is considered only by the National Assembly; and

(g) a Bill not concerning county governments which pursuant Article 109(3) of the Constitution is considered only in the National Assembly and passed in accordance with Article 122 and the Standing Orders of the Assembly.

8. (1) Upon receipt of a notification of a question under section 6(3), the Speaker of the second House shall within a period not exceeding seven days, consider the question raised.

Consideration of a question arising.

(2) Upon consideration of the question, the Speaker may—

(a) agree with the question as raised; or

(b) disagree with the question as raised.

9. (1) Whenever a Speaker of the second House agrees with the question raised as contemplated under section 8(2)(a), the Speaker shall prepare and transmit a Certificate of Joint Resolution in duplicate, for endorsement by the Speaker of the originating House.

Agreement over the question raised.

(2) Upon receipt of a Certificate of Joint Resolution on a question as to whether a Bill concerns counties, the Speaker of the originating House shall, as soon as is practicable indicate their resolution and convey a copy of the Certificate to the Speaker of the second House.

(3) The Certificate of Joint Resolution shall be in the form set out in the Second Schedule and shall be deemed to be evidence of the resolution of the particular question.

10. (1) Whenever the Speaker of the second House disagrees with the question raised as contemplated under section 8(2)(b), the Speaker shall immediately refer back the question to the Speaker of the originating House for reconsideration noting the specific clauses of the Bill subject to the disagreement and the specific reasons for the disagreement.

Disagreement
over the question
raised.

(2) If the Speaker of the second House refers a question back to the Speaker of the originating House Speaker for reconsideration, the Speaker of the originating House may, following the appropriate procedures as set out under the respective Standing Orders—

(a) cause the Bill to be modified taking into account the observations and recommendations of the Speaker of the second House; or

(b) further disagree with the observations and recommendations of the Speaker of the second House on the question.

(3) If the originating Speaker causes the Bill to be modified to accommodate the observations and recommendations of the Speaker of the second House, the question shall be deemed to have been resolved for purposes of Article 110(3) of the Constitution.

(4) The Speaker of the originating House shall notify the House on the modification of the Bill and the procedure for its consideration as modified.

(5) Where the Speaker of the originating House further disagrees with the observations and recommendations of the Speaker of the second House on the question, the provisions of section 11 shall apply.

11. (1) Where the Speakers are unable to jointly resolve a question arising under Article 110 of the Constitution, the Speakers may—

Conciliation in the
event of
disagreement.

(a) refer the Bill to its sponsor for further directions;

(b) jointly appoint any person or body of persons to make such recommendations within seven days on the way forward as may be appropriate.

(2) Where the Speakers of the Houses of Parliament are unable to reach a joint resolution on a question after

invoking the provisions of subsection (1), the originating House may proceed with the consideration of the Bill notwithstanding the disagreement.

12. (1) A money Bill or motion shall be introduced only in the National Assembly in accordance with Article 114 of the Constitution.

Consideration of money Bills.

(2) If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of "a money Bill", the Assembly shall, pursuant to Article 114(2) of the Constitution proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.

(3) Where the matter under consideration under subsection (2) relates to a Bill or motion originating from the Senate, the relevant committee of the Assembly may recommend that—

(a) the Bill or motion be not proceeded with by the Assembly for want of compliance with the procedure set out in Articles 109(5) of the Constitution;

(b) the relevant departmental committee of the Assembly is at liberty to take up the origination of the Bill or motion in question in co-sponsorship with the Senator who sponsored the Bill or motion and the process of consideration of the Bill be deemed to begin afresh in the Assembly pursuant to the provisions of Article 109(5) of the Constitution.

13. (1) Where a Member in charge of a Bill intends to co-sponsor a Bill with a Member of the other House, the Member shall include in the memorandum of objects of the Bill a statement indicating the name of the Member of the other House who shall be in charge of the Bill upon its passage of the Bill by the originating House.

Co-sponsorship of Bills.

(2) The relevant Clerk, shall upon passage of the Bill under paragraph (1), forward a certified copy of the Bill, signed by the Clerk and endorsed by the Speaker, to the Clerk of the other House together with a Message—

(a) requesting the consideration of the Bill by the other House in accordance with the respective Standing Orders; and

(b) notifying the other House of the name of any Member of the House nominated to co-sponsor the Bill.

(3) This section shall not apply to a Bill which, in terms of Article 109(3) of the Constitution, is considered only in the National Assembly.

PART IV—CONDUCT OF JOINT PROCEEDINGS AND COMMITTEES

14. (1) If one House passes an ordinary Bill concerning county governments, and the second House—

Mediation
committees.

(a) rejects the Bill, it shall be referred to a mediation committee appointed under Article 113 of the Constitution; or

(b) if after the originating House has reconsidered a Bill referred back to it under Article 112(1)(b) of the Constitution, that House rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113 of the Constitution.

(2) The Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of Members of each House, to attempt to develop a version of the Bill that both Houses will pass.

(3) The quorum of a mediation committee shall be a third of its members from the National Assembly and a third of its members from the Senate.

(4) The Chairperson and Vice-Chairperson of a mediation committee shall be appointed by the majority of the Members of the committee present at its first meeting.

(5) The Chairperson and the vice-chairperson of a mediation committee shall not be Members of the same House.

(6) unless a decision is reached by consensus, any vote to be taken in a mediation committee shall be by separate Houses.

(7) The report of a mediation committee on a Bill prepared in terms of Article 113 of the Constitution shall be laid on the Table of each House by a Member of the mediation committee authorized by the committee in that behalf.

(8) Where the report of a mediation committee includes an agreed version of the Bill in terms of Article 113(2) of the Constitution, the Houses shall consider the report of the mediation committee and the Houses shall vote to approve or reject the report of the Committee.

(9) Where the report of a mediation committee is to the effect that the committee has failed to agree on a version of the Bill or where the mediation committee fails to agree on a version of the Bill within thirty days from the date the Bill was referred to it, the Bill shall stand defeated in terms of Article 113(4) of the Constitution.

15. (1) The Houses may, by resolution establish Committees to be designated as joint committees of Parliament stating the mandate and objects of such committee and the number of members to be appointed to the committee.

Joint committees.

(2) A joint committee of Parliament shall comprise an equal number of Members of the National Assembly and Senators.

(3) The quorum of a joint committee shall be a third of its members from the National Assembly and a third of its members from the Senate.

(4) Unless a decision is reached by consensus, any decision by the committee shall be by resolution supported by at least two-thirds or more of all the members of the committee.

16. (1) A committee of one House may hold a joint sitting with the corresponding committee of the other House to deliberate on matters of mutual interest and concern.

Joint sittings of committees.

(2) The National Assembly and the Senate shall, upon commencement of this Act prescribe under their respective Standing Orders joint rules for the conduct of the sittings under subsection (1).

(3) In the absence of the rules under subsection (2)—

- (a) the Houses may, on a motion, prescribe rules for the conduct of a proposed joint sitting by committees of the Houses;
- (b) the Speakers may issue joint guidelines for the conduct of a proposed joint sitting by committees of the Houses.

17. (1) Pursuant to Article 107(2) of the Constitution, at a joint sitting of the Houses of Parliament, the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate.

Joint sittings of Parliament.

(2) At any Joint Sitting of the Houses, the Standing Orders of the National Assembly shall apply with such modifications and variations as the Speaker of the National Assembly may consider necessary or appropriate.

(3) The Speakers of the Houses of Parliament shall enforce any directions given during a joint sitting in relation to the conduct of a Member of Parliament in accordance with the applicable provision of the National Assembly Standing Orders.

18. The Speakers of the Houses of Parliament may, in consultation with the Leaders of the Majority Party and the Minority Party, arrange for a joint sitting of Parliament for purposes of an address by a visiting Head of State or dignitary.

Address of Parliament by visiting dignitaries.

PART V—MISCELLANEOUS

19. (1) Each House of Parliament and its committees shall facilitate public participation under Article 118 of the Constitution.

Public participation processes.

(2) The public participation under subsection (1) shall be conducted through any of the following—

- (a) inviting submission of memoranda;
- (b) holding public hearings;
- (c) consulting relevant stakeholders in a sector; or
- (d) consulting experts on technical subjects.

(3) A committee of a House of Parliament shall have a broad measure of discretion in conducting public

participation on a matter referred for its consideration and shall—

- (a)!endeavour to avoid duplication of any related exercise conducted on the matter;
- (b)!embrace modern means of engagement, including the use of information communication technology;
- (c)!give reasonable notice of the exercise and afford the public a reasonable opportunity to participate;
- (d)!adopt a clear and simple medium of engagement with wide reach for the exercise;
- (e)!target specific stakeholders, where appropriate;
- (f)!ensure reasonable access and participation of persons with disabilities in the exercise;
- (g)!maintain a record of the submissions received from the exercise.

(4) When a Bill under Article 109(4) of the Constitution has been passed in one House, the Clerk shall forward a certified copy of the Bill, signed by the Clerk and endorsed by the Speaker, to the Clerk of the other House together with the public participation report on the Bill.

(5) A committee of one House may hold a joint public participation exercise with the corresponding committee of the other House.

(6) In considering a Bill or a matter on which a committee of a House of Parliament has conducted public participation, a committee of the second House may—

- (a)!elect not to undertake a similar exercise and rely on the findings of the committee of the first House; or
- (b)!seek additional views on the Bill or matter—
 - (i)! with respect to substantive amendments made to a Bill during its consideration;
 - (ii)! from persons or stakeholders who did not participate in the exercise conducted in the first House;

(iii)! from persons or stakeholder whose submissions were not taken into account by the first House.

(7) A committee of Parliament shall consider the views received from public participation broadly.

(8) An Act of Parliament is not invalid on account of the failure to incorporate any view submitted during public participation.

20. (1) Before formally declaring the existence of a dispute between the Houses of Parliament, the Houses of Parliament shall, in good faith, make every reasonable effort and take all necessary steps to amicably resolve the matter by initiating direct negotiations with each other or through an intermediary.

Use of alternative dispute resolution mechanism to resolve disputes.

(2) Where the negotiations under subsection (1) fail, the Leadership of a House of Parliament may formally declare a dispute by referring the matter for resolution by the Speakers of the Houses.

(3) Within twenty-one days of the formal declaration of a dispute, the Speakers of the Houses of Parliament shall convene a meeting inviting the Leadership of the Houses or their designated representatives —

(a)!to determine the nature of the dispute, including—

- (i)! the precise issues in dispute; and
- (ii)! any material issues which are not in dispute; and

(b)!to—

- (i)! identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist in settling the dispute; or
- (ii)! agree on an appropriate mechanism or procedure for resolving the dispute, including mediation or arbitration.

(4) A party in court shall demonstrate that all efforts of amicably resolving a dispute between the Houses of Parliament under this section have failed.

FIRST SCHEDULE
NOTIFICATION OF QUESTION ARISING UNDER ARTICLE
110(3) [s. 6(3)]
REPUBLIC OF KENYA



PARLIAMENT

WHEREAS theBill, 20... (National Assembly/Senate Bills No....of 20....) was published on theday of, 20....

A question as to whether the.....Bill, 20..... (National Assembly/Senate Bills No....of 20....) concerns county governments has arisen as follows—

(indicate the details relating to the question)

NOW THEREFORE, this is to request your view on the question.

DATED this day of.....20....

.....
Speaker of the National Assembly/Senate

SECOND SCHEDULE
CERTIFICATE OF JOINT RESOLUTION [s. 9(3)]
REPUBLIC OF KENYA



PARLIAMENT

WHEREAS the Bill, 20.....
 (National Assembly/Senate Bills No.....of 20...) was published on the
day of, 20....

AND having considered the provisions of Article 109(3) of the Constitution

NOW THEREFORE,

Pursuant to Article 110(3) of the Constitution, I hereby certify that the
 Bill, 20.... (National Assembly/Senate Bills
 No. ...of 20) is—

- (a) a Bill concerning county governments ; or a Bill not concerning county
 governments ; and
- (b) a special Bill within the meaning of Article 110(2) of the Constitution ;
 or an ordinary Bill within the meaning of Article 110(2) of the Constitution

This..... day of....., 20.....

.....
Speaker of the National Assembly/Senate

Pursuant to Article 110(3) of the Constitution, I hereby certify that the
 Bill, 20..... (National Assembly/Senate Bills No.of 20
) is—

- (a) a Bill concerning county governments ; or a Bill not concerning county
 governments ; and
- (b) a special Bill within the meaning of Article 110(2) of the Constitution ; or
 an ordinary Bill within the meaning of Article 110(2) of the Constitution

This..... day of.....20...

.....
Speaker of the National Assembly/Senate

*This Certificate does not apply with regard to the Bills specified under section 7 of the Act

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons of the Bill

The principal object of the Bill is to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution. The Bill also seeks to foster the bicameral relations by prescribing procedures for ensuring seamless consideration of the legislative business of both Houses.

PART I—outlines the Preliminary provisions

Clause 1 of the Bill is the short title.

Clause 2 of the Bill provides for the interpretation of terms as used in the Bill.

Clause 3 of the Bill provides for the objects of the Bill which include to provide a framework for determining the nature of a Bill; define the Bills that do not require a joint resolution by the Speakers under Article 110(3) of the Constitution; define the Bills that are considered only by the National Assembly; define Bills that are Bills not concerning county governments and define Bills concerning county governments.

PART II—outlines matters relating to publication and the enacting formula for Bills and Acts of Parliament so as to standardize the practice between the Houses. These matters were previously expressly provided for in the Constitution prior to 2010.

Clause 4 of the Bill provides for the publication of Bills originating from either House of Parliament, the enacting formula and imposes timelines for such publication to cure scenarios where the Government printer at times delays in the printing of Bill requests.

Clause 5 of the Bill provides for the publication of Acts of Parliament after assent by the President,

PART III—contains provisions relating to the joint resolution of a question under Article 110(3) of the Constitution

Clause 6 of the Bill provides for the manner in which the question arises for purposes of Article 110(3) of the Constitution and the matter in which one Speaker notifies the other of the question arising.

Clause 7 of the Bill outlines the instances where no question can be deemed to arise under Article 110(3) as the Constitution has in itself expressly provided for the mode of enactment of the Bills in question.

Clause 8 of the Bill provides for consideration of a question arising and the options available to the Speaker upon such consideration.

Clause 9 of the Bill provides for agreement over the question raised in which case a Certificate of joint Resolution is issued.

Clause 10 of the Bill provides for disagreement over the question raised and the options available to the Speaker upon such disagreement.

Clause 11 of the Bill provides for conciliation in the event of disagreement.

Clause 12 of the Bill provides for consideration of money Bills especially where such a finding is arrived at under Article 114(2) in respect of Bills emanating from the Senate.

Clause 13 of the Bill provides for co-sponsorship of Bills.

PART IV provides for the conduct of joint proceedings and committees.

Clause 14 of the Bill provides for Mediation Committees and includes provisions on the chairing, voting and conduct of such committees

Clause 15 of the Bill provided for Joint committees and their procedures.

Clause 16 of the Bill provides for Joint sittings of the Houses and the enforcement of the Standing Orders of the House presiding over such sittings.

Clause 17 of the Bill provides for an Address of Parliament by visiting dignitaries.

PART V—provides for miscellaneous provisions on matters of mutual interest to the two Houses of Parliament.

Clause 18 of the Bill provides for address of Parliament by visiting dignitaries.

Clause 19 of the Bill provides for public participation processes.

Clause 20 of the Bill provides for use of alternative dispute resolution mechanisms to resolve disputes in keeping with the judicial principles outlined under Article 159(2)(c) of the Constitution. The clause further provides that where a dispute arises between the Houses relating to the discharge of their respective functions, the Houses shall use alternative forms of dispute resolution in seeking to resolve the dispute and shall before seeking redress in court on any dispute relating to the discharge of their respective functions, first exhaust the alternative dispute resolution mechanisms.

THE FIRST SCHEDULE provides for the notification of question arising under Article 110(3) of the Constitution.

THE SECOND SCHEDULE provides for the Certificate of Joint Resolution.

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

The Bill does not delegate legislative powers or limit any fundamental rights and freedoms.

Consideration of the Bill by both Houses

This Bill provides for the seamless processing of matters of a bicameral nature by the Houses of Parliament and a mode of resolving any disputes that may arise between the Houses. The Bill shall be considered by both Houses.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill may not occasion additional public expenditure.

Dated the 28th July, 2023

SAMUEL CHEPKONGA,
Member of Parliament.

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



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT-SECOND SESSION 2023
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL
(NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF 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 Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023) was read a First Time on **Thursday 17th August 2023** thereafter referred to the relevant Departmental Committee for consideration and reporting to the House.

IT IS NOTIFIED THAT:

The Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023) is a Bill sponsored by the **Member for Ainabkoi Constituency (The Hon. Samuel Chepkonga, MP)** with the principal object being to give effect to Articles 109,110,113,114 and 118 of the Constitution.

The Bill also seeks to foster the bicameral relations by prescribing procedures for ensuring seamless consideration of the legislative business of both Houses.

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 to the **Departmental Committee on Justice and Legal Affairs**.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or 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 41842-00100, 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 **Monday 23rd October, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
9th October, 2023

For the Welfare of Society and the just Government of the People

Annexure 5: 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/2023/143

22nd November, 2023

Mr. Felix K Koskei, EGH

Head of Public Service
Executive Office of the President
Harambee House

NAIROBI

Ms. Aurelia C. Rono

Principal Secretary
Parliamentary Affairs
Office of the Prime Cabinet Secretary

NAIROBI

Dr. Chris K. Kiptoo, CBS

Principal Secretary,
The National Treasury
The National Treasury and Economic Planning
Treasury Buildings
Harambee Avenue

NAIROBI

Ms. Anne Amadi,

Chief Registrar Judiciary of Kenya / Secretary
Judicial Service Commission
Supreme Court Building

NAIROBI

Ms. Elsy Sainna

Executive Director
International Commission of Jurists
ICJ Kenya House, Off Silanga Road, Karen

NAIROBI

Mr. Joash Dache, MBS

Chief Executive Officer/Commission Secretary
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. 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

Dr. Annette Mbogoh

Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Prof. Githu Muigai, EGH, SC

Senior Partner,
Mohammed Muigai Advocates
MM Chambers, 4th Floor, K-Rep Centre
Wood Avenue, Off Lenana Road, Kilimani
NAIROBI

Hon. Justice Charles Nyachae
Judge, East African Court of Justice
1st Floor, EAC Headquarters
Africa Mashariki Road, EAC Close
P. O. Box 1096, Arusha

TANZANIA

Justice (Rt). Prof. JB Ojwang
Chairperson,
Energy and Petroleum Regulatory Authority Board of Directors
Eagle Africa Centre
Longonot Road, Upper Hill

NAIROBI

Prof. Yash Pal Ghai
Constitutional Law Expert
Katiba Institute
House No.5 -the Crescent-Off Parklands Road

NAIROBI

Dr. Mutakha Kangu
Constitutional Law Expert

NAIROBI

Dear *Ms Muturi*

RE: MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

The Departmental Committee on Justice and Legal Affairs is established pursuant to National Assembly Standing Order 216 which mandates it to *inter alia*, '*study and review all legislation referred to it.*'

The Committee acknowledges your attendance and submissions on the Houses of Parliament (Bicameral Relations) Bill, 2023 sponsored by the Member for Ainabkoi Constituency, Hon. Samuel Chepkonga, MP, during its sitting on Thursday 9th November, 2023. At its subsequent sitting, the Committee found it necessary to meet you again to discuss the Bill before reporting to the House.

The purpose of this letter is to invite you to the meeting scheduled for **Tuesday 28th November, 2023 at 12:00 pm**. The venue of the meeting 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 27th November, 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** tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke and **Mr. Abdikafar Abdi Sheikh** tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Hon. Musalia Mudavadi, E.G.H.**
Prime Cabinet Secretary
Office of the Prime Cabinet Secretary
Kenya Railways Headquarters
Off Haile Selassie Avenue
NAIROBI

Pro. Njuguna Ndung'u, CBS
Cabinet Secretary
The National Treasury and Economic Planning
Treasury Buildings
Harambee Avenue
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/2023/143

22nd November, 2023

Mr. Felix K Koskei, EGH
Head of Public Service
Executive Office of the President
Harambee House
NAIROBI

Ms. Aurelia C. Rono
Principal Secretary
Parliamentary Affairs
Office of the Prime Cabinet Secretary
NAIROBI

Dr. Chris K. Kiptoo, CBS
Principal Secretary,
The National Treasury
The National Treasury and Economic Planning
Treasury Buildings
Harambee Avenue
NAIROBI

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

Ms. Elsy Sainna
Executive Director
International Commission of Jurists
ICJ Kenya House, Off Silanga Road, Karen
NAIROBI

Mr. Joash Dache, MBS

Chief Executive Officer/Commission Secretary
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. 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

Dr. Annette Mbogoh

Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Prof. Githu Muigai, EGH, SC

Senior Partner,
Mohammed Muigai Advocates
MM Chambers, 4th Floor, K-Rep Centre
Wood Avenue, Off Lenana Road, Kilimani
NAIROBI

Hon. Justice Charles Nyachae
Judge, East African Court of Justice
1st Floor, EAC Headquarters
Africa Mashariki Road, EAC Close
P. O. Box 1096, Arusha
TANZANIA

Justice (Rt). Prof. JB Ojwang
Chairperson,
Energy and Petroleum Regulatory Authority Board of Directors
Eagle Africa Centre
Longonot Road, Upper Hill
NAIROBI

Prof. Yash Pal Ghai
Constitutional Law Expert
Katiba Institute
House No.5 -the Crescent-Off Parklands Road
NAIROBI

Dr. Mutakha Kangu
Constitutional Law Expert
NAIROBI

Dear *Di Kenya*

RE: MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

The Departmental Committee on Justice and Legal Affairs is established pursuant to National Assembly Standing Order 216 which mandates it to *inter alia*, 'study and review all legislation referred to it.'

The Committee acknowledges your attendance and submissions on the Houses of Parliament (Bicameral Relations) Bill, 2023 sponsored by the Member for Ainabkoi Constituency, Hon. Samuel Chepkonga, MP, during its sitting on Thursday 9th November, 2023. At its subsequent sitting, the Committee found it necessary to meet you again to discuss the Bill before reporting to the House.

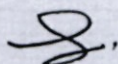
The purpose of this letter is to invite you to the meeting scheduled for **Tuesday 28th November, 2023 at 12:00 pm**. The venue of the meeting will be communicated in due course.

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 27th November, 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** tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke and **Mr. Abdikafar Abdi Sheikh** tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke

Yours



JEREMIAH NDOMBI, MBS

For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Hon. Musalia Mudavadi, E.G.H.**
Prime Cabinet Secretary
Office of the Prime Cabinet Secretary
Kenya Railways Headquarters
Off Haile Selassie Avenue
NAIROBI

Pro. Njuguna Ndung'u, CBS
Cabinet Secretary
The National Treasury and Economic Planning
Treasury Buildings
Harambee Avenue
NAIROBI

Annexure 6: Memoranda by Stakeholders



THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Our Ref: CRJ 48 **Your Ref:** NA/DDC/JLAC/2023(143) **Date:** November 28, 2023

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

② Kato Beat
29/11/23

DDC
28/11

Dear Sir

RE: Meeting with Departmental Committee on Justice and Legal Affairs on the consideration of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023)

We acknowledge receipt of your letter dated 22nd November 2023 on the above subject.

During the first breakfast meeting on February 7, 2023 between the Chief Justice and the Justice and Legal Affairs Committee (JLAC) of the National Assembly at the Stanely, JLAC Members expressed concerns over the manner in which courts were intervening in disputes between the two Chambers of Parliament. In her response, the Chief Justice recommended that Parliament should develop a framework for the resolution of such disputes out of court.

We are glad to note that the Houses of Parliament (Bicameral Relations) Bill is now before the House, and one of its objects is to create a framework for the amicable resolution of disputes arising between the two Houses of Parliament. We are particularly glad that courts will now be the very last option when mediation between the Houses fails.

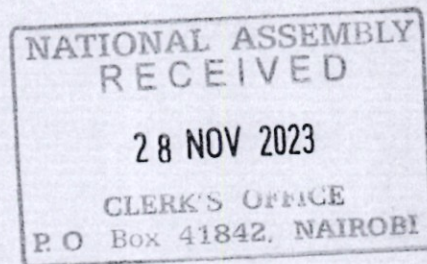
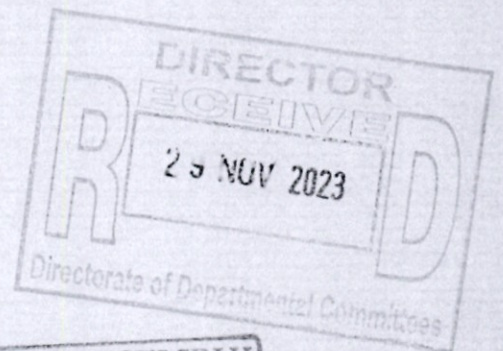
For the above reasons, we support the enactment of the Bill and thank you for giving us the opportunity to comment on the Bill.

Yours sincerely

Paul N. Maina, OGW 'ndc' (K)
FOR: CHIEF REGISTRAR OF THE JUDICIARY

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

aaa/ko



KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote

KLRC/8/64/Vol.IX (24)

Ref. No.
and Date



KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA
6th November, 2023

.....20.....

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
NAIROBI

(Attn: Ms. Serah Kioko, MBS)

Dear *Serah,*

RE: MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL
RELATIONS) BILL (NATIONAL ASSEMBLY BILL NO.44 OF 2023)

We acknowledge with thanks receipt of your letter Ref.NA/DDC/JLAC/2023/108 dated 31st
October, 2023.

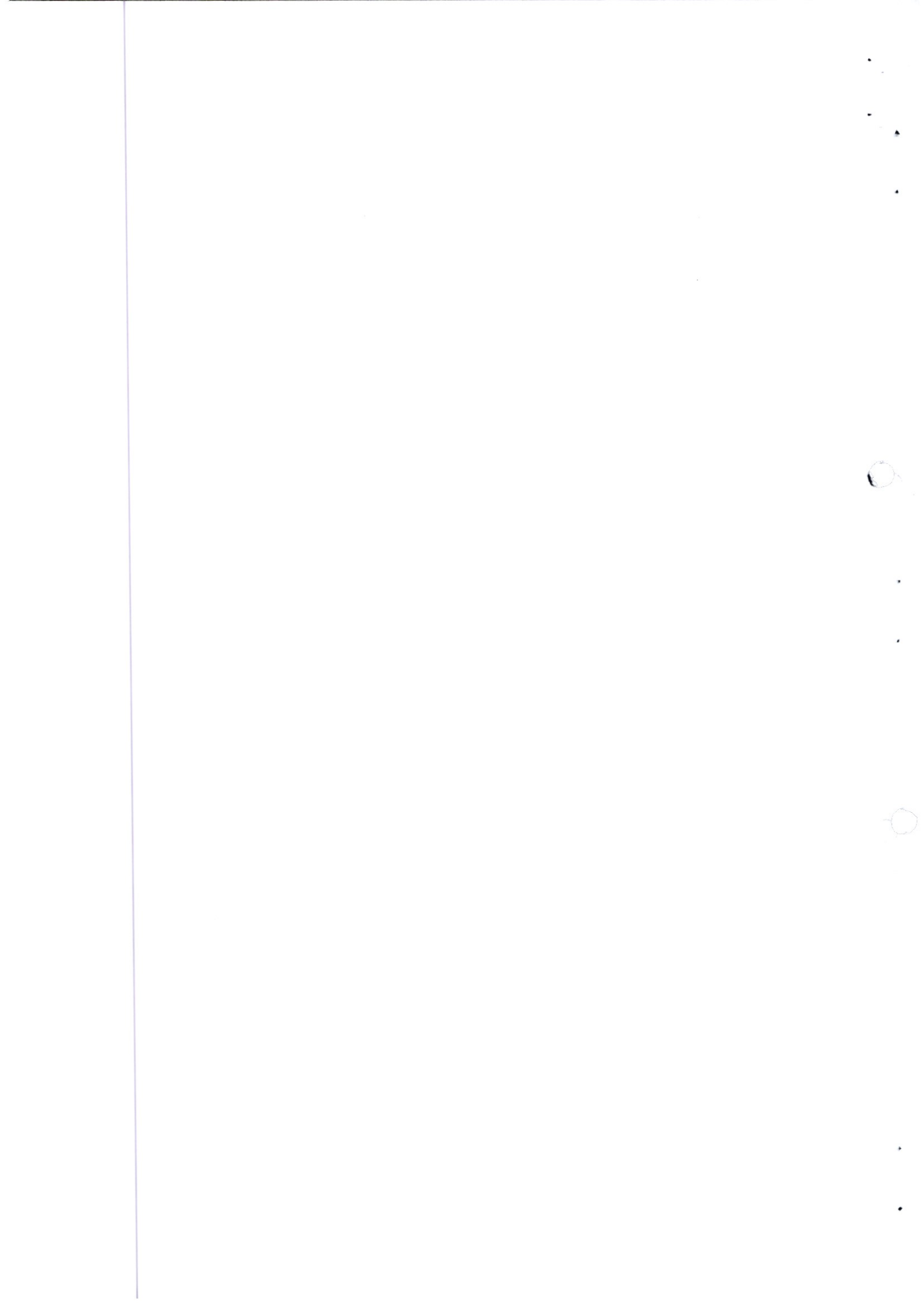
Attached please find written submissions from the Kenya Law Reform Commission.

As always, we thank you for your continued support and cooperation.

Yours *Sincerely,*

Joashi Dache, MBS
SECRETARY/CEO

Encls.





REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

DDC
29/11

Telegraphic Address: 22921
Finance - Nairobi
FAX NO. 310833
Telephone: 2252299

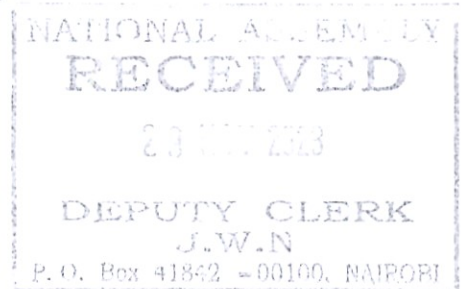
THE NATIONAL TREASURY
P O BOX 20191 - 00200
NAIROBI

Douglas Katho
to facilitate
via w/a
29/11/23

Ref: TNT/CONF 269/04 'A' (7)

Date: 24th November, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
NAIROBI.



Dear *The Clerk of NA*

**RE: CONSIDERATION OF THE HOUSES OF PARLIAMENT
(BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY
BILL NO. 44 OF 2023)**

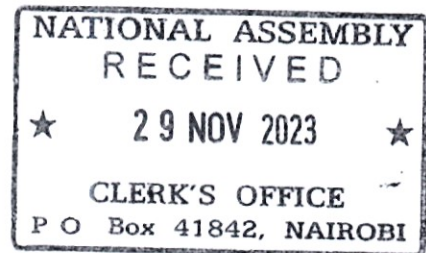
This in in reference to your letter No. NA/DDC/JLAC/2023/143 dated 22nd November, 2023. I have been invited to a meeting with the Departmental Committee on Justice and Legal Affairs to discuss the above Bill. The meeting is scheduled for **Tuesday, 28th November, 2023** at 12.00Noon.

However, I will be attending the IMF Closed Door Roundtable on 'Scaling Up Climate Finance in Kenya' at Villa Rosa, Kempinski from 9.00A.M to 4.00P.M on the same date and therefore not able to attend the meeting as scheduled.

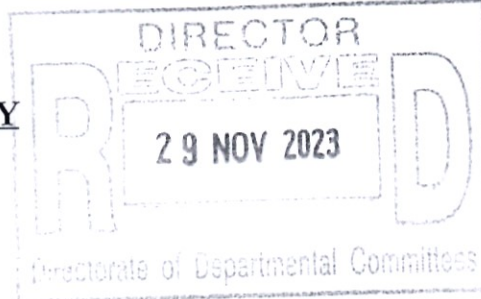
The purpose of this letter therefore, is to communicate this situation and seek your indulgence to request the Committee to accept our written submission on the said Bill through letter Ref. No. NT/LEGAL/761 'TY' (8) dated 10th November, 2023. A copy of the same is hereby attached for your reference.

Thank you for your continued support.

Yours *Steady*
[Signature]



DR. CHRIS KIPTOO, CBS
THE PRINCIPAL SECRETARY



Copy: **HON. MURUGARA GEORGE GITONGA, M.P**

The Chairperson

Departmental Committee on Justice and Legal Affairs

The National Assembly

Parliament Buildings

NAIROBI



DF

Disfidele!
on 14/11/23

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921
Finance - Nairobi
FAX NO. 310833
Telephone: 2252299

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

When Replying Please Quote

Ref: NT/LEGAL/761 'TY'(8)

Date: 10th November, 2023

The Clerk
National Assembly
Parliament Building
NAIROBI

MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS ON THE CONSIDERATION OF THE HOUSES OF
PARLIAMENT (BICAMERAL RELATIONS) BILL, (NATIONAL
ASSEMBLY BILL NO 44 OF 2023)

Reference is made to letter Ref: No. NA/DDC/JLAC/2023/108 dated 31st October, 2023 from the Clerk, National Assembly requesting the National Treasury to attend a meeting on Thursday 9th November, 2023 at 9.30am.

The National Treasury was not able to attend the physical meeting as the communication was received after the date of the meeting, however, we have reviewed the Bill and our comments are as follows:-

- (i) The objective of the Bill is to foster bicameral relations by pressing procedures for seamless consideration of the legislative business of both Houses and provides a framework for determining the nature of a Bill. It also defines Bills that do not require joint resolution by the Speakers under Article 110 (3) of the Constitution and defines Bills that are only considered by the National Assembly;

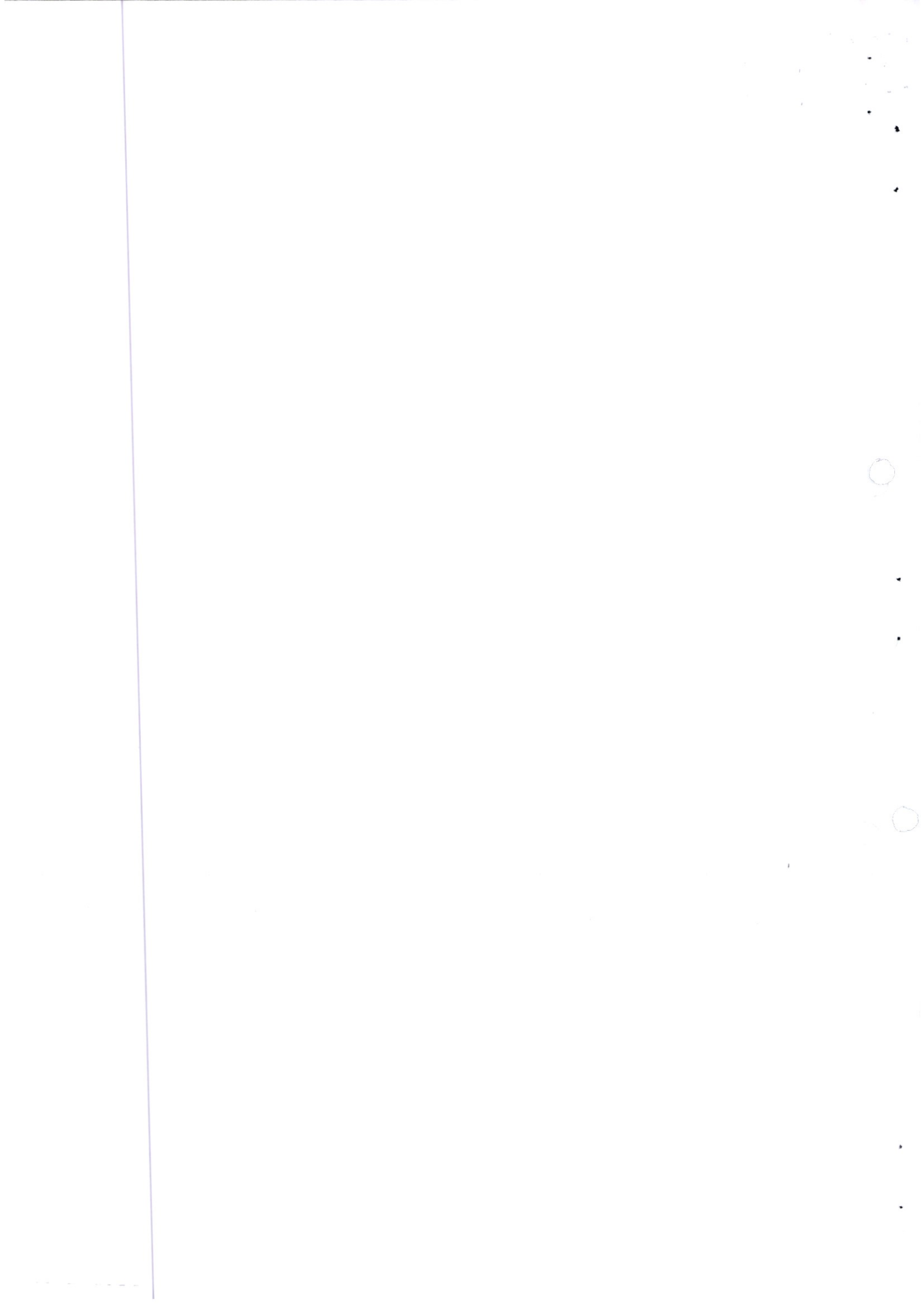
- (ii) Section 7 (c) (d) and (e) of the draft Bill exempts the County Allocation Revenue Bill, the Appropriation Bill and the Finance Bill respectively from joint resolution of a question as provided in Article 110 (3) of the Constitution; and
- (iii) Section 12 (1) and (2) of the draft Bill specifies that money Bill shall only be introduced in the National Assembly in compliance with Article 114 (2) of the Constitution. This should be based on the recommendations of the relevant Committee after taking into account the view of the Cabinet Secretary, for the National Treasury and Economic Planning. In this regard, the draft Bill is in compliance with the existing legal framework.

In view of the foregoing, we have no objection to the enactment of the houses of Parliament (Bicameral Relations) Bill (National Assembly Bill No. 44 of 2023) in its current form.



Dr. Chris Kiptoo, CBS

PRINCIPAL SECRETARY/NATIONAL TREASURY





KLRC COMMENTS ON THE PROPOSED HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

The Kenya Law Reform Commission has studied the proposed Bill and makes the following comments

SECTION/ PROPOSED AMENDMENT	KLRC PROPOSAL	RATIONALE
Preable	Delete	Kenya's drafting style does not use preambles for statutes
Section 2		
<p>Section 2 Interpretation The definition of a Bill not concerning county governments" means a Bill</p> <p>(a)containing provisions affecting the exclusive functions and powers of the national government under Part 1 of the Fourth Schedule to the Constitution ;</p> <p>(b)containing provisions relating to a function or power not assigned by the Constitution or national legislation to a county government; or</p> <p>(c) containing provisions that are incidental to the effective exercise of a function or power of the national government under Part 1 of the Fourth</p>	<p>Define Bill not concerning county government to mean any Bill that is not a Bill concerning county government as contemplated under Article 110 (1).</p>	<p>The proposed definition is prone to be interpreted in diverse ways. For instance, a Bill containing provisions that are incidental to the effective exercise of a function or power of the national government under Part 1 of the Fourth Schedule to the Constitution may still concern counties if it contains provisions affecting the functions and powers of the county governments set out under the Fourth Schedule.</p>

Schedule to the Constitution;		
Clause 3: Objects the Bill	The clause is too wordy. An objects clause should just state the broad aim of the Bill but not to provide for a summary of the Bill. It is proposed to retain paragraphs (a), (g) and (J) and delete the rest	Some of the objects like (b) provide for the publication in the Gazette of all Bills to be introduced in either of the Houses of Parliament pursuant to Article 109(4) of the Constitution are not necessary since this is already a requirement in our legislative process. The others summarize various provisions of the Bill
Clauses 4 and 5 Publication of Bills and Act	It is proposed to delete these clauses	Publication of Bills is and Acts of Parliament is already a requirement under Article 116 and the Standing Orders. Part III of the Interpretation and General Provisions Act (Cap 2) deals with General provisions regarding written laws. It is this Act which should provide for enactment formula and timelines for publication of Bills and Acts
All other clauses	No proposals for amendment	Agreeable





REPUBLIC OF KENYA
PARLIAMENT
NATIONAL ASSEMBLY
OFFICE OF THE LEADER OF THE MINORITY PARTY

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

Tel: +254 20 2221 291
Mobile: +254 720 628 051
E-mail: jwundayi@gmail.com

15th November 2023

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi.

Dear Sir,

REF: MEETING WITH THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO DISCUSS THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

Please refer to your letter Ref. NA/DDC/JLAC/2023/108.

The Leader of the Minority Party of the National Assembly has analyzed the proposals and makes the following comments:

Specific comments:			
	Provision in the Bill	Proposed amendment	Justification
1.	Clause 19 sub-clause 3 provides that a committee of a House of Parliament shall have a <u>broad measure of discretion</u> in conducting public participation on a matter referred for its consideration and shall- (paragraphs a-g set out what the committee needs to do)	<p>The aspect of broad discretion has the potential of being abused and therefore should be revised.</p> <p>The bill should therefore incorporate some of the pointers from the Supreme Court decision in <i>British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary</i></p>	<ul style="list-style-type: none">• The potential of the aspect of broad discretion being abused.• The Supreme Court in 2019 gave directions on how public participation should be done. <p>As a constitutional principle under Article 10(2) of the</p>

		<p><i>for the Ministry of Health & 2 others (2019)</i> which gave directions on how public participation ought to be done.</p>	<p>Constitution, public participation applies to all aspects of governance.</p> <p>(i) The public officer and/ or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.</p> <p>(ii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.</p> <p>(iii) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfil' a constitutional requirement. There is a need for both quantitative and qualitative components in public participation.</p> <p>(iv) Public participation is not an abstract notion; it must be purposive and meaningful.</p> <p>(v) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case by case basis.</p> <p>(vi) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that</p>
--	--	--	---

			<p>someone was not heard is not enough to annul the process.</p> <p>(vii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case by case basis.</p> <p>(viii) Components of meaningful public participation include the following:</p> <p>a) clarity of the subject matter for the public to understand;</p> <p>b) structures and processes (medium of engagement) of participation that are clear and simple;</p> <p>c) opportunity for balanced influence from the public in general;</p> <p>d) commitment to the process;</p> <p>e) inclusive and effective representation;</p> <p>f) integrity and transparency of the process;</p> <p>g) capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.</p>
2.	<p>Clause 20 sub-clause 1 provides that before formally declaring the existence of a dispute between Houses of Parliament, the Houses of Parliament shall, in good</p>	<p>Introduce a new sub-clause on how to conduct the negotiations, that is, a framework that will guide on who has the power to convene them, timelines, how should they be done etc</p>	<ul style="list-style-type: none"> To strengthen section 20 as it currently appears weak.

	<p>faith, make every reasonable and take all necessary steps to amicably resolve the matter by <u>Initiating direct negotiations</u> with each other or through an intermediary</p>		
<p>3.</p>	<p>Clause 20 sub-clause 3(b)(ii) states that within twenty-one days of the formal declaration of a dispute, the Speakers of the Houses of Parliament shall convene a meeting inviting the Leadership of the Houses or their designated representatives-</p> <p>(b) to-</p> <p>(i) identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties, to assist in settling the dispute.</p>	<p>Introduce a new clause that provides for a dispute resolution mechanism. For instance, examples may be borrowed from the Intergovernmental Relations Act, under Part IV, that provides for mechanisms for resolving disputes between the various levels of government.</p>	<ul style="list-style-type: none"> • Introduce a dispute resolution mechanism for purposes of clarity and avoidance of doubt.



HON. J. OPIYO WANDAYI, MGH, CBS, MP
THE LEADER OF MINORITY PARTY

NATIONAL ASSEMBLY
RECEIVED
30 NOV 2023
DEPUTY CLERK
J.W.N
P.O. Box 41842 - 00100, NAIROBI



COUNCIL OF GOVERNORS

DOC
2
30/11

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/12 Vol. 12 (84)

29th November 2023

Mr. Samuel Njoroge
The Clerk of the National Assembly
P.O Box 41482-00100
Nairobi.

Douglas Katho
to inform committee and
schedule a new date
by WJN
1/12/23

Dear Mr. Njoroge,

MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

The above subject matter and your letter referenced NA/DDC/JLAC/2023/144 and dated 23rd November 2023 inviting us to appear before the National Assembly Departmental Committee on Justice and Legal Affairs to submit our legislative memorandum on the captioned Bill refers.

We write to inform you that we sent our legislative analysis on the 27th day of November 2023. However, due to unavoidable circumstances the Excellency Governors were unable to attend yesterday's scheduled meeting. In that regard, we request that the aforesaid meeting be rescheduled to **Tuesday, 5th December 2023** to accommodate the Excellency Governors' availability.

The Council appreciates your understanding and flexibility in this matter.

Please accept the assurance of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

NATIONAL ASSEMBLY
RECEIVED
30 NOV 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

30 NOV 2023

② Koko Seal
28/11/23



DDC
28/11

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/12 Vol.12 (83)

27th November, 2023

Mr. Samuel Njoroge
The Clerk of the National Assembly
Main Parliament Buildings
Nairobi

Dear Mr. Njoroge

MEMORANDUM ON THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023

Greetings.

The Council of Governors has reviewed the Houses of Parliament (Bicameral Relations) Bill, 2023 and hereby forwards the legislative memorandum attached herewith for your consideration.

Please accept our highest esteem and regards.

Yours sincerely,

Mary Mwit
Chief Executive Officer

Copy: Excellency Governors

RECEIVED
25 NOV 2023

NATIONAL ASSEMBLY
RECEIVED
28 NOV 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI



LEGISLATIVE MEMORANDUM ON THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023

TO

THE NATIONAL ASSEMBLY

FROM

THE COUNCIL OF GOVERNORS

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (hereafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part.

Aware that Article 1 of the Constitution provides that sovereign power belongs to the people of Kenya and is exercised either directly or indirectly through democratically elected representatives in Parliament.

Further Aware that Article 93(1) and (2) of the Constitution establishes the Parliament of Kenya comprising the National Assembly and the Senate to perform their respective functions in accordance with the Constitution.

Whereas Articles 94,95(3), 95(4)(b), 109(2), (3), (4) and (5);114;209,210,221 and 223 of the Constitution provides for the legislative powers and the manner of exercising those powers by the National Assembly and the exclusive role of the National Assembly in revenue raising and appropriation of funds for expenditure by the national government;

Further Whereas Articles 94, 96(2); 96(3);109(4); and 110(1) of the Constitution provides for the legislative powers and the manner of exercising those powers by the Senate and the determination of the allocation of national revenue among counties and oversight of such revenue by the Senate;

Noting that Articles 186 of the Constitution as read with the Fourth Schedule to the Constitution sets out the respective functions and the powers of the national government and the county governments.

Recognizing that Article 110(1) and (2) of the Constitution defines a Bill concerning county governments and Article 110(3) of the Constitution requires the Speakers of Parliament to jointly resolve any question arising on whether a Bill concerns counties;

Further Recognizing the need to establish procedures for processing legislation, public participation, joint sittings, joint committees, mediation committees and other matters related to the function of the bicameral legislature under Article 94 of the Constitution;

Acknowledging that engagements between the Houses of Parliament should be based on consultation and cooperation to promote a harmonious mechanism for democratic governance;

Committed to creating a framework that enables both Houses of Parliament to perform their respective functions and enhance seamless bicameral relations.

The Council hereby notes as follows on the Houses of Parliament (Bicameral Relations) Bill, 2023.

A. GENERAL CONCERNS

1. The Constitution reintroduced the Senate, transforming Kenya into a bicameral system for the first time since the 1960s. The Senate is mandated to play the legislative function through legislating Bills touching on county governments-a shared function with the National Assembly. Notwithstanding the constitutional provisions that outline the distinct roles and functions of each House, the National Assembly and Senate's relationship has been acrimonious.
2. Firstly, the parliamentary supremacy battle has posed a great challenge as regards which House is more powerful than the other. Lack of consensus between the two Houses over what matters fall within the terrain of bicameralism and which ones can unilaterally be dealt with by the National Assembly has been another challenge.
3. The aforesaid challenges were brought to the fore when the Senate approached the Supreme Court in the **Matter of the Speaker of the Senate & Another [2013] eKLR**, seeking an advisory opinion, on whether the Division of Revenue Act (DRA), 2013 passed by the National Assembly without the Senate's approval was an exclusive legislative authority of the National Assembly. The major issue in that case revolved around the powers and power relations between the National Assembly and the Senate.
4. The Council notes the need to have a law that fosters bicameral relations between the two Houses. We therefore recommend that the National Assembly reviews the Bill to incorporate the following amendments to address the constant supremacy battle between the National Assembly and the Senate which has inspired numerous court battles.

B. SPECIFIC COMMENTS

The Council of Governors proposes the following specific amendments to the Houses of Parliament (Bicameral Relations) Bill, 2023.

CLAUSE/ SUB-CLAUSE OF THE BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
6(2)	6(2) Whenever a Bill is published in the Gazette, in accordance with Section 4 of this Act, a Speaker may subject to section 7 and at any time before the period specified for the Second Reading of such Bill in the Standing Orders of the respective House, become seized of a question as to whether the Bill concerns county governments	Amend to read as follows: “Whenever a Bill is published in the Gazette, in accordance with Section 4 of this Act, the Speakers shall subject to section 7 and at any time before the period specified for the Second Reading of such Bill in the Standing Orders of the respective Houses, become seized of a question as to whether the Bill concerns county governments.”	The procedure of concurrence by the two Speakers of Parliament under Article 110(3) of the Constitution is the only forum for determining a question as to whether the Bill concerns county governments.
6(3)	6(3) Whenever the Speaker becomes seized of a question under subsection (2), the Speaker shall as soon as is practicable, notify the Speaker of the second House of the question	Amend to read as follows: Whenever the Speakers become seized of a question under subsection (2), the Speakers shall as soon as is practicable, notify each other of the question	The procedure of concurrence by the two Speakers of Parliament under Article 110(3) of the Constitution is the only forum for determining a question as to whether the Bill concerns county governments

<p>6(5)</p>	<p>6(5) In determining whether a question has arisen under Article 110(3) of the Constitution, a Speaker shall for the purposes of subsection (2)</p> <ul style="list-style-type: none"> a) Consider the Bill's true purpose, intent and legal effect; b) Examine the contents of the Bill and the memorandum of objects and reasons to ascertain its inherent nature; and c) Consider whether the Bill falls under the exclusive mandate of the National Assembly pursuant to Article 109(3) of the Constitution; d) Consider whether the provisions of the Bill specifically affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution 	<p>Amend by replacing the word "Speaker" with the words "the Speakers shall jointly" to read as follows:</p> <p>"In determining whether a question has arisen under Article 110(3) of the Constitution, the Speakers shall jointly for the purposes of subsection (2)."</p>	<p>The procedure of concurrence by the two Speakers of Parliament under Article 110(3) of the Constitution is the only forum at which the nature of a Bill is determined.</p> <p>Neither the Speaker may to the exclusion of the other determine the nature of a Bill for that would inevitably result in usurpation of jurisdiction to the prejudice of the constitutional principle of the harmonious interplay of Houses of Parliament.</p>
-------------	---	---	--

7	<p>7.The provisions of Section 6 shall not apply to-</p> <p>(a) A Bill to amend the Constitution as provided for under Article 255,256 and 257 which is considered by both Houses;</p> <p>(b) A Bill relating to the election of members of a county assembly or a county executive under Article 110(1)(b) of the Constitution which is considered by both Houses;</p> <p>(c) The annual County Allocation of Revenue Bill as provided for under Article 218 of the Constitution which is considered by both Houses;</p> <p>(d) Any Appropriation Bill as provided for under Articles 95(4) (b), 221,222 and 223 of the Constitution which is considered only by the National Assembly;</p> <p>(e) A Finance Bill introduced pursuant to Article 95(4)(c), 114, 209(1),210 and 221(1) of the Constitution and the Public Finance Management Act 2012 which is considered only by the National Assembly;</p>	<p>Amend by deleting the word not and inserting the word also to read as follows:</p> <p>“The provisions of Section 6 shall also apply to:”</p>	<p>The Council posits that this clause intends to oust the application of Article 110(3).</p> <p>As was stated in the Matter of the Speaker of the Senate & Another [2013] eKLR, concurrence by the two Speakers of Parliament pursuant to Article 110(3) is a mandatory and condition precedent to consideration of any Bill by either House of Parliament.</p> <p>Neither the Speaker may to the exclusion of the other determine the nature of a Bill for that would inevitably result in usurpation of jurisdiction to the prejudice of the constitutional principle of the harmonious interplay of Houses of Parliament.</p> <p>There is no automatic classification of a Bill without an analysis of its contents. Therefore, this clause should be amended. The nature of a Bill can only be determined by analyzing its contents</p>
---	--	--	---

	<p>(f) Any Bill providing for taxation and other revenue-raising powers of the national government introduced pursuant to the provisions of Part 3 of Chapter Twelve of the Constitution and the Public Finance Management Act which is considered only by the National Assembly; and</p> <p>g) A Bill not concerning county governments which pursuant Article 109(3) of the constitution only in the National Assembly and passed in accordance with Article 122 and the Standing Orders of the Assembly</p>		<p>and not relying wholly on the title, the Article of the Constitution cited as relied upon and the Memorandum of Objects and reasons without any further interrogation of the contents of the various clauses of the Bill.</p> <p>For instance, a Bill styled as a Finance Bill may contain provisions amending the Public Finance Management Act or the County Governments Act.</p> <p>The determination of whether a Bill is a Money Bill is exclusive to the National Assembly AFTER the determination under Article 110(3) at which point it becomes a matter within the purview of the National Assembly.</p> <p>The procedure of concurrence by the two Speakers of Parliament under Article 110(3) of the Constitution is the only forum at which the nature of a Bill is determined.</p>
--	--	--	---

12(1)	12.(1) A money Bill or motion shall be introduced only in the National Assembly in accordance with Article 114 of the Constitution	Amend by including the words Articles 110(3) to read as follows: “A money Bill or motion shall be introduced only in the National Assembly in accordance with Articles 110 (3) and 114 of the Constitution.”	Article 110(3) of the Constitution is a mandatory and condition precedent to consideration of any Bill by either House of Parliament.
-------	--	---	---

KENYA MEDICAL SUPPLIES AUTHORITY

Commercial Street, Industrial Area
P.O. Box 47715, 00100 GPO,
Nairobi, Kenya



Tel: +254 20 3922000, Fax: +254 203922400
GSM +254 719 033000, +254 733 606600
Email: info@kemsa.co.ke

23 NOV 2023

All Correspondence should be addressed to Chief Executive Officer

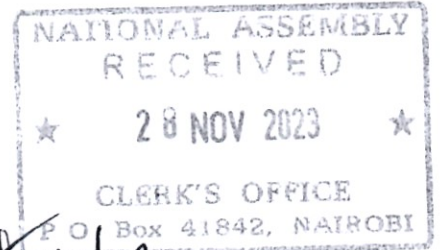
When replying please quote our ref:
Ref: KEMSA/CEO/ADM/JLA/11(2023)

Date: 27th November 2023

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

ATTN: JEREMIAH NDOMBI, MBS

DDC
28/11
Kaka
Dea
28/11/23



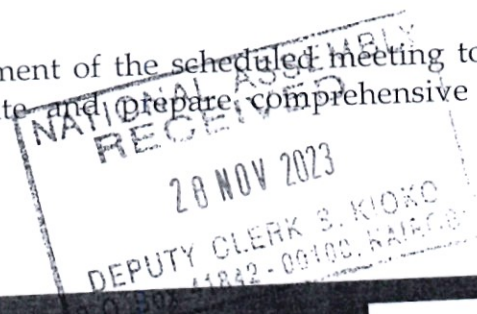
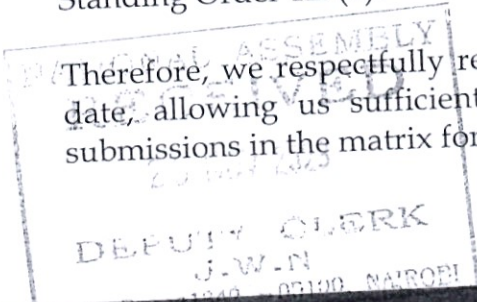
RE: ADJOURNMENT OF MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

Reference is made to your letter dated 23rd November 2023, REF: NA/DDC/JLAC/2023/144, requesting Kenya Medical Supplies Authority (KEMSA) to appear before the Departmental Committee on Justice and Legal scheduled for Tuesday, 28th November 2023, concerning the Houses of Parliament (Bicameral Relations) Bill, 2023.

The Authority wishes to express our appreciation for the Committee's dedication and swift action in bringing this matter to a conclusion. The Bill, as sponsored by Hon. Samuel Chepkonga, Member for Ainabkoi Constituency, is of great importance and warrants thorough consideration, given its role in shaping the legislative framework and fostering bicameral relations in accordance with Articles 109, 110, 113, 114, and 118 of the Constitution.

However, due to the short notice provided for this significant engagement, we find ourselves in a position where more time is required to adequately prepare and discuss the Bill's implications with our Board of Directors and the parent Ministry. This additional time will ensure that we can contribute meaningfully to the legislative process and uphold the constitutional mandate of facilitating public participation and involvement as stipulated in Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3).

Therefore, we respectfully request an adjournment of the scheduled meeting to a later date, allowing us sufficient time to deliberate and prepare comprehensive written submissions in the matrix format as required.



The Authority is committed to supporting the Committee's work and contributing to the legislative process. We look forward to participating in the discussions once a new date is agreed upon.

Thank you for your understanding and consideration of this request. We await your guidance on the next steps.

Yours

Sincerely,



Dr. Andrew Mulwa

Ag. CHIEF EXECUTIVE OFFICER

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

PROF. GITHU MUIGAI

LLB (Hons), LLM (Col.), PhD, C.ARB
CHARTERED ARBITRATOR •

Nairobi
4th Floor, K – REP CENTRE
Wood Avenue
P.O. Box 61323 - 00200
Tel: (254)-2397401/2/3
Fax: (254)-2397404
E-Mail: githu.muigai@gmail.com

*DD called
8
29/11*

Our Ref: GM/GEN/2023

Your Ref: NA/DDC/JLAC/2023/143

Date: 27th November 2023

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

*Douglas Katho
to facilitate
re w/c
28/11/23*

Dear Sirs,

RE: MEETING WITH DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSIDERATION OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2023)

I refer to the above matter and your letter dated 22nd November 2023.

I am delighted and honoured to have received your invitation for the meeting scheduled on Tuesday, 28th November 2023 to further discuss the Houses of Parliament (Bicameral Relations) Bill before it is reported to the House. Unfortunately, I am unable to attend the meeting owing to a conflicting engagement before the High Court.

In any case, I wish you a successful meeting and do look forward to our future engagements.

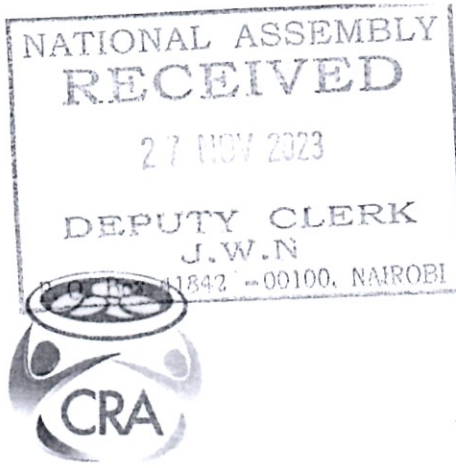
Kind regards,

PROF. GITHU MUIGAI, EGH, SC
gm@mohammedmuigai.com



28 NOV 2023

Tel: 254 (20) 4298000
Fax 254 (20) 4298251
Email: info@crakenya.org
Website: www.crakenya.org



*DDC
8
27/11/23*

14 Riverside Drive
Grosvenor block
2nd Floor
P.O. Box 1310 - 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/LEG/03/VOL.II (59)

DATE: 24th November, 2023

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

*Douglas Katho
to facilitate
28/11/23*

Dear *Mr. Njoroge,*

RE: COMMENTS ON THE THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023

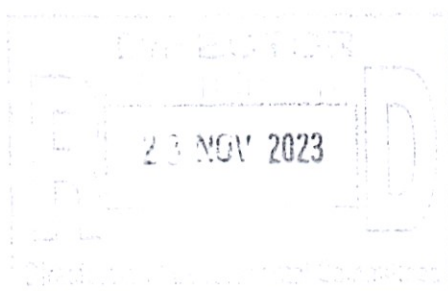
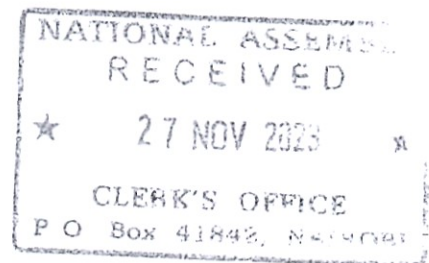
Please refer to the subject matter, your letter of 23rd November, 2023 and our letter dated 8th November, 2023.

In line with your request, the Commission has reviewed the The Houses of Parliament (Bicameral Relations) Bill, 2023 and our comments are as attached.

We thank you for your continued support.

Yours *Sincerely,*

James Katule
CPA James Katule
COMMISSION SECRETARY/CEO



NATIONAL ASSEMBLY
RECEIVED

20 NOV 2023

DEPUTY CLERK
J.W.N

P.O. Box 41842 - 00100, NAIROBI



Tel: 254 (20) 4298000
Fax 254 (20) 4298251
Email: info@crakenya.org
Website: www.crakenya.org

14 Riverside Drive
Grosvenor block
2nd Floor
P.O. Box 1310 - 00200
NAIROBI

DOC
8
21/11

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/LEG/03/VOLL.II/(53)

DATE: 17th November, 2023

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

Douglas Katho

to facilitate
21/11/23

Dear Njoroge,

**RE: COMMENTS ON THE HOUSES OF PARLIAMENT
(BICAMERAL RELATIONS) BILL, 2023**

Please refer to the subject matter, your letter of 31st October, 2023 and our letter dated 8th November, 2023.

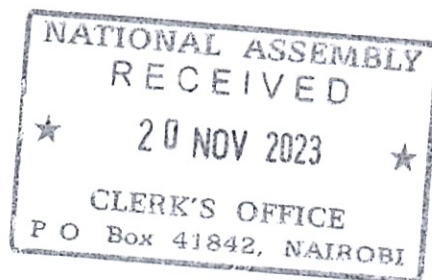
In line with your request, the Commission has reviewed the The Houses of Parliament (Bicameral Relations) Bill, 2023 and our comments are as attached.

We thank you for your continued support.

Yours Sincerely,

James Katule

CPA James Katule
COMMISSION SECRETARY/CEO





COMMENTARY ON THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023

A. Constitutional Basis of this Memorandum

This memorandum is premised on Chapter 12 of the Constitution, Articles 205(1), 209(5) and 216(2).

1. Of special reference, is Article 205(1), which spells out the requirement to make recommendations to Parliament “(1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate

AND

2. Article 205(2), which states that these recommendations shall be tabled in Parliament, and each house shall consider the recommendations before voting on the Bill.

B. Clause by Clause Analysis

Upon review of the Bill, the following issues arise-

Serial No.	Clause	Provision	Justification for CRA Position
-------------------	---------------	------------------	---------------------------------------

1.	<p>Clause 1 Short Title</p>	<p>Substitute the Bill Title "<i>The Houses of Parliament (Bicameral Relations) Bill</i>" title with "<i>Bicameral Relations Bill</i>"</p>	<p>To avoid repetition</p>
2.	<p>Clause 2 Interpretation</p>	<p>In the definition of the phrases "<i>Bill concerning county governments</i>" and "<i>Bill concerning not county governments</i>"</p> <p>Recommendation: merge the two definitions as follows-</p> <p>"<i>Bill concerning county governments</i>" has the meaning assigned to it by Article 110 of the Constitution and excludes a Bill-</p> <p>(a) containing provisions affecting the exclusive functions and powers of the national government under Part 1 of the Fourth Schedule to the Constitution;</p> <p>(b) containing provisions relating to a function or power not assigned by the Constitution or national legislation to a county government;</p> <p>or</p>	<p>For clarity</p>

		(c) containing provisions that are incidental to the effective exercise of a function or power of the national government under Part I of the Fourth Schedule to the Constitution;	
3.	Clause 3 Objects of the Act	<p>This provision stipulates eleven objects. Recommendation: reduce the objects to three or four key ones below e.g.</p> <ul style="list-style-type: none"> (a) provide a seamless framework for the manner of conducting matters of bicameral nature; (h) outline what constitutes a Bill not concerning county governments as contemplated by the Constitution for purposes of Article 109(3) of the Constitution (i) provide for the mode of originating and considering a money Bill as contemplated under Article 109(5) of the Constitution; 	The objectives are too many

		(k) provide a framework for amicable resolution of disputes arising from the discharge by the Houses of Parliament their respective functions.	
4.	<p>Clause 6</p> <p>Notification of Question arising</p>	<p>Sub clause (2)-</p> <p>(2) Whenever a Bill is published in the Gazette, in accordance with section 4 of this Act, a Speaker may, subject to section 7 and at any time before the period specified for the Second Reading of such Bill in the Standing Orders of the respective House, become seized of a question as to whether the Bill concerns county governments.</p> <p>Recommendation: Add the phrase “<i>and if it is, whether it is a special or an ordinary Bill</i>” after the word “<i>government</i>”</p>	To align with Article 110(3)

	<i>Sub clause (3)</i>	<p>Sub clause (3) reads-</p> <p><i>(3) Whenever the Speaker becomes seized of a question under subsection (2), the Speaker shall as soon as is <u>practicable</u>, notify the Speaker of the second House of the question.</i></p> <p>Recommendation: specify the timeline instead of using a subjective term like '<i>practicable</i>'</p>	For clarity
	<i>Sub clause 5</i>	<p>Sub clause 5-</p> <p>In determining whether a question has arisen under Article 110 (3) of the Constitution, a Speaker shall for the purposes of subsection (2) —</p>	To

		<p>(a) consider the Bill's true purpose, intent and legal effect;</p> <p>(b) examine the contents of the Bill and the memorandum of objects and reasons to ascertain its inherent nature; and</p> <p>(c) consider whether the Bill falls under the exclusive mandate of the National Assembly pursuant to Article 109(3) of the Constitution;</p> <p>(d) consider whether the provisions of the Bill specifically affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.</p> <p>Recommendation: add the following paragraphs-</p> <p>(e) <i>Consider whether the Bill contains provisions relating to election of members of county assembly or county executive; and</i></p>	
--	--	---	--

		(f) <i>consider whether it is a Bill referred to in chapter twelve affecting the Finances of County governments</i>	
5.	Clause 7 Bills on which no question can arise for joint resolution	Delete paragraph 7(b)	To align with recommendation for sub clause 6(5) above

6.	Clause 11	The clause reads-	The current provision of sub clause 11(2) defeats the purpose of the conciliation process indicated
Conciliation in the event of disagreement	<p><i>11 (1) Where the Speakers are unable to jointly resolve a question arising under Article 110 of the Constitution, the Speakers may—</i></p> <p><i>(a) refer the Bill to its sponsor for further directions;</i></p> <p><i>(b) jointly appoint any person or body of persons to make such recommendations within seven days on the way forward as may be appropriate.</i></p> <p><i>(2) Where the Speakers of the Houses of Parliament are unable to reach a joint resolution on a question after invoking the provisions of subsection (1), the originating House may proceed with the consideration of the Bill notwithstanding the disagreement.</i></p>		

		<p>Recommendation: Delete sub clause (2) and replace with content to the effect that the position of either (a) or (b) shall be final</p>	
7.	<p>Clause 14 Mediation Committees</p>	<p>Sub clauses (7)-(9) refer to a report of a mediation committee prepared in terms of Article 113 of the Constitution.</p> <p>Recommendation: Article 113 is about development of a Bill by a mediation Committee. These sub-clauses seem to give relevance to a report as opposed to the Bill. Redraft to focus provision on the Bill and not the report.</p>	<p>To align with Article 113 of the Constitution</p>

8.	Part V	Change Part title to “ <i>Public Participation</i> ”	For clarity
	Miscellaneous		
9.	Clause 19 Public Participation processes	Under sub clause (3)(c) reads as follows- <i>(7) A committee of a House of Parliament shall have broad measure of discretion in conducting public participation on a matter referred for its consideration and shall-</i> <i>(c) give <u>reasonable notice</u> of the exercise and afford the public a reasonable opportunity to participate;</i> Recommendation: Specify timelines for notice of the public participation exercise instead of using the term ‘ <u>reasonable</u> ’ which is open ended	For clarity

		<p>Under sub clause (3) (f) reads as follows-</p> <p>(f) <i>ensure reasonable access and participation of <u>persons with disability</u> in the exercise</i></p> <p>Recommendation: Substitute the phrase "<i>persons with disability</i>" " <i>with special interest groups</i>'</p>	<p>So as to be inclusive of all special interest groups as per Article 27 of the Constitution</p>
		<p>Sub clause 19(7) reads-</p> <p>(7) <i>A committee of Parliament shall consider the views received from public participation broadly</i></p> <p>Recommendation: delete the word 'broadly'</p>	<p>The term makes the provision ambiguous and defeats the purpose of the public participation exercise</p>
		<p>Sub clause 19(8) reads-</p>	<p>The role of interpreting laws to arrive at such a conclusion lies with the Judiciary</p>

		<i>(8) An Act of Parliament is not invalid on account of failure to incorporate any view submitted during public participation</i>	in line with Chapter ten of the Constitution
		Recommendation: Delete	
10.	Clause 20 Use of Alternative dispute resolution mechanisms to resolve disputes	Sub clause (2) provides- <i>(2) where the negotiations under sub section (1) fail, the Leadership of a House of Parliament may formally declare a dispute by referring the matter for resolution by the Speakers of the Houses.</i> Recommendation: Define or specify who amounts to <u>“the Leadership of a House of Parliament”</u> for the purposes of this sub clause and also sub clause (3)	For clarity

General Recommendation

- Add a new provision as follows in line with Article 205 of the Constitution-

Consultation on financial legislation affecting counties

(1) The National Assembly and the Senate shall consult the Commission on Revenue Allocation whenever a Bill dealing with the sharing of revenue or

any financial matter concerning county governments is published in either House.

(2) Any recommendations made by the Commission shall be tabled in Parliament and each House shall consider the recommendations before voting on the Bill.

