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Rt. Hon. Speaker

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APPROVED
RT. HON. SEN
AMASON J. KINGI

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL, 2023 (SENATE BILLS NO. 37 OF 2023)

PAPERS LAID	
DATE	23/11/2023
TABLED BY	Sen. Chimere Raphael
COMMITTEE	Legal Committee
THE TABLE	KENYA M.

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November, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

CAJ	Commission on Administrative Justice
COG	Council of Governors
KLRC	Kenya Law Reforms Commission
KNCHR	Kenya National Commission on Human Rights
SEN	Senator

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 228 of the Senate Standing Orders and is mandated '*to consider all matters relating to constitutional affairs, the organisation and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights*'.

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Ali Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Nduati, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

Minutes of the Committee in considering the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) are attached to this Report as ***Annex I***.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) seeks to amend the Parliamentary Powers and Privileges Act (No. 29 of 2017) to give clarity on how the powers of arrest are to be exercised by Parliament and its Committees, and to guarantee persons who fail to appear the right to a fair hearing prior to any action being taken against them. The Bill introduces new definitions, amends the procedures for issuing a summons, and provides for the execution of an order of arrest by a police officer or an officer of a House of Parliament.

The Bill is sponsored by Sen. Godfrey Osotsi, MP and was read a First Time in the Senate on Tuesday, 17th October, 2023, following which it stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Honourable Speaker,

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* Newspapers on Friday, 20th October, 2023 inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Additionally, the Committee wrote to key stakeholders inviting them to submit comments on the Bill by way of written memoranda.

Following the call for submissions, the Committee received written memoranda from four (4) stakeholders, namely, the Kenya Law Reform Commission, Kenya National Commission on Human Rights, Commission on Administrative Justice, and the Council of County Governors.

The Committee proceeded to consider the Bill at length which informed its observations and recommendation and set out at Chapters Three and Four, respectively, of this Report.

Honourable Speaker,

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty which made the consideration of the Bill successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

Honourable Speaker,






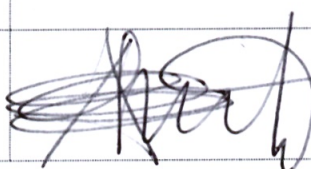
It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023).

Signed  Date..... 14.11.2023

**SEN. WAKILI HILLARY SIGEI, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 37 OF 2023).

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human rights, do hereby append our signatures to adopt this Report.

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP (<i>Chairperson</i>)	
2.	Sen. Raphael Chimera Mwinzagu, MP (<i>Vice-Chairperson</i>)	—
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Nduati, MP	—
8.	Sen. Karen Njeri Nyamu, MP	—
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.0 Introduction

1. The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) sponsored by Sen. Godfrey Osotsi, MP was published *vide* Kenya Gazette Supplement No. 157 of 1st September 2023. The Bill was read a First Time in the Senate on Tuesday, 17th October, 2023, following which it was referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Bill is annexed to this Report as *Annex 2*.

1.1. Background

2. The Parliamentary Powers and Privileges Act (No. 29 of 2017) governs the privileges, immunities, and powers of Members of Parliament and other persons who are involved in parliamentary proceedings. Part VI of the Act which implements Article 125 of the Constitution provides that—
 - (1) *Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.*
 - (2) *For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court—*
 - (a) *to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;*
 - (b) *to compel the production of documents; and*
 - (c) *to issue a commission or request to examine witnesses abroad.*
3. Some gaps have been noted during implementation of the Act, thus necessitating the amendments proposed in this Bill. One of the provisions sought to be amended is section 18 as it does not provide specific timelines for issuance of summons. The fines that may be imposed upon persons who fail to appear before a House or committee of Parliament have also been found to be low and therefore do not serve their role of deterring persons from non-appearance.
4. Additionally, the Act does not state where persons who are arrested are to be held, as well as authorisation of designated members of Staff such as Sergeants- At-Arms to execute arrests.

1.2. Objects of the Bill

5. The Parliamentary Powers and Privileges (Amendment) Bill, 2023 seeks to amend the Parliamentary Powers and Privileges Act to provide clarity on how the powers of arrest are to be exercised by Parliament and its Committees, and to guarantee persons who fail to appear the right to a fair hearing prior to any adverse action being taken against them. The Bill amends the procedures for issuing a summons and provides for the execution of an order of arrest by a police officer or an officer of a House of Parliament.

1.3. Consequences of the Bill

6. The proper exercise of oversight is essential to the functions of Parliament as espoused in Article 93 as read together with Article 125 of the Constitution. This Bill will therefore entrench best practices in the exercise of powers of Parliament specifically the powers to summon and arrest a person.
7. In the long-term, the Bill will therefore advance the rule of law and constitutionalism by virtue of the due process safeguards that it creates. Additionally, enhancing the fines chargeable makes it costlier for persons who fail to appear when summoned, thus ensuring that they are more likely than not to honour summons.

1.4. Overview of the Bill

8. The purpose of this Bill is to give effect to Article 125 of the Constitution, which grants Parliament the power to summon any person to appear before it, as well as power to enforce the attendance of witnesses, as well as Article 50 which guarantees the right to a fair hearing.
9. Clause 2 introduces new definitions to be included in the Act. The new definitions are "Inspector-General", which refers to the holder of the office of the Inspector-General appointed in accordance with Article 245(2)(a) of the Constitution and the National Police Service Act, and "police officer," which references the definition under the National Police Service Act.
10. Clause 3 of the Bill amends section 18 of the Act to provide for the issuance of a summons to a person required to appear before a House or its Committee. The amendment requires the Clerk to specify the date of appearance, which should be at least seven days from the date of receipt of the summons, and to cause the

summons to be served within seven days of receipt of a directive under subsection (2). The House or Committee may require a person to appear before it within a shorter period as it may determine, considering the urgency of the matter.

11. Clause 4 amends section 19 of the Act to enhance the fine for non-appearance before the House or Committee of the House from KShs.500,000/- to KShs.2,000,000/-. It further provides for the right to be heard prior to imposition of the fine and, additionally, that the fine will be a civil debt recoverable in accordance with the Debts (Summary Recovery) Act, Cap 42 of the Laws of Kenya.
12. Clause 4 further provides that the purpose of arresting a person who has failed to honour summons is to enforce appearance before the Committee of House, or for prosecution of that person.
13. Execution of an order of arrest is to be done by a police officer or an officer of a House of Parliament. Where an order of arrest is to be effected by a police officer, the Clerk shall transmit the order to the Inspector-General for execution. Where an order of arrest is to be effected by an officer of a House of Parliament, the Inspector-General shall facilitate the arrest as may be requested by the Clerk.
14. Additionally, persons who have been arrested may be held either at a place designated under the National Police Service Act (i.e., gazetted police station) or at a place designated by the Clerk. The person is to be produced before either the court, or the House or Committee of the House that summoned him on the next working day.
15. Clause 5 of the Bill amends section 27 of the Act to enhance the fine that may be imposed by the Court for someone convicted for non-appearance before the House or House Committee from Kshs.200,000/- to KShs.2,000,000/-.
16. Clause 6 amends section 33 of the Act by deleting subsection (2) and replacing it with a new subsection that defines an "officer of a House of Parliament" as any member of staff acting under the orders of the Speaker or duly authorized by the Clerk.

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.0 Introduction

17. The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) was read a First Time in the Senate on Tuesday, 17th October, 2023, following which it stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
18. The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 20th October, 2023 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Annex 3*. Additionally, the Committee sent letters to key stakeholders inviting them to submit their comments on the Bill.
19. In response to the advertisement and invitations, the Committee received written submissions from four stakeholders, namely –
 - a) Kenya Law Reform Commission;
 - b) Kenya National Commission on Human Rights;
 - c) Commission on Administrative Justice; and
 - d) Council of Governors.
20. Copies of the said submissions are attached as *Annex 4 (a – d)*, with a summary thereon in the form of a matrix attached as *Annex 5*.

2.1 Overview of Stakeholder Submissions on the Bill

a) Kenya Law Reform Commission

21. The Kenya Law Reform Commission (KLRC) submitted that the proposals contained in the Bill were in consonance with the proposed goals that Parliament hopes to achieve, that they were constitutionally, legally, and technically sound, and that they met the threshold for consideration by the Senate.
22. They submitted that, even as the Senate considers raising the fines payable for offenses under the Parliamentary Powers and Privileges Act, it should consider the adoption of a penalty and fee units' policy and legislative system for Kenyan legislation. The adoption of a penalty and fee unit system will greatly improve the operationalization

of penal and fee provisions in all our legislation and would align with global best practices.

b) Kenya National Commission on Human Rights

23. The Kenya National Commission on Human Rights presented written submissions in which it observed and proposed as follows –

- (i) that clause 3(b) of the Bill be amended since it is paradoxical, to avoid confusion and serve ends of justice. The summons should be very specific on when and where a witness is expected to appear;
- (ii) under clause 4(a) of the Bill, KNCHR submitted that the proportionality of fine is of concern. Further, that though discretionary, the increase of a fine to Kshs.2 million (over 300%) is very concerning. Although the practice of the Australian Parliament is not a benchmark, the fine imposed is 5,000 AUD (equivalent to 3,200 USD). This is significantly less than the proposed Kshs.2 million (equivalent to 13,300 USD);
- (iii) that under clause 4(c), section 2A be deleted because it imposes penal sanctions. Stating it is a civil debt does not itself cure/change the fact that this is a penal sanction;
- (iv) clause 4(d) be amended to read “*Parliament as the authority ordering arrest or imposing a fine*”. This was on the premise that, while the imposition of a sanction on an administrative basis against members of parliament may be considered passable as internal disciplinary procedures, the imposition of a fine or the ordering of the arrest of a witness (non-member) in contempt may be considered criminal. However, Parliament does not constitute an independent court or tribunal for the purposes of contempt proceedings;
- (v) similar to clause 4(a), that the increase of fine from Kshs.200,000/- to Kshs. 2 million under clause 5 is of concern;
- (vi) that section 19 of the Act on procedure if a witness fails to appear, punishes a person who appears but fails to satisfy the relevant House of Parliament or Committee and thus should be deleted. This is because it is vague, indeterminate, and incapable of being objectively ascertained by both the accuser and accused. Further, that the Courts have in a string of cases declared similar vague sections as unconstitutional therefore invalid;

(vii) that Part VI of the Act generally lacks safeguards including separation of powers, fails to provide for protections of witness immunities, and potentially threatens the rights of an arrested person. Thus, the clause should be amended to include those safeguards, in line with Articles 49 and 50 of the Constitution and the Fair Administrative Action Act (No. 4 of 2015); and

(viii) the power of arrest should be used judiciously and with proper safeguards to prevent potential abuse.

24. The Commission further expressed concerns with certain provisions of the Bill, and made proposals as follows –

(i) that granting Parliament the power to execute arrest orders blurs the lines of separation between the legislative and judicial branches potentially undermining this fundamental principle;

(ii) that Parliamentary committees cannot accuse, try, convict, and retain the proceeds of such cause as it is against the rules of natural justice;

(iii) introduction of Clause 2A which describes the fine imposed as “a civil debt recoverable summarily in accordance with the Debts (Summary Recovery) Act” does not cure the fact that what is created is a crime in the public realm and not a civil proceeding. As such, the Bill would create criminal offenses or otherwise seek to punish those who disobey summons which effectively is punishment for contempt proceedings of a quasi-criminal nature. By doing so, Parliament arrogates itself the judicial authority against the tenure of Article 159 (1) of the Constitution;

(iv) a person cannot be summarily heard, condemned, and automatically fined or otherwise penalised without applying the full basic tenets of fair administrative action which are also couched under Articles 49 and 50 of the Constitution;

(v) clause 4(4) of the Bill that anticipates that, “an authorised officer of the House” may effect an arrest is erroneous in principle and fundamentally flawed;

(vi) it is crucial that the law expressly safeguards the immunity of witnesses. The action of a witness in giving evidence and producing documents and the evidence given should not be used against the witness in any sense in subsequent proceedings before a court or tribunal; and

- (vii) holding facilities within parliament must be gazetted as such. It must be clear to the public that specific areas are holding facilities for the purpose of the Act. The Clerk or other unauthorized person for this purpose should not have powers to designate other facilities as holding/detention centers.

c) *Commission on Administrative Justice*

25. The Commission on Administrative Justice (CAJ) submitted as follows —

- (i) that clause 3(b) of the Bill seeking to amend section 18 of the Parliamentary Powers and Privileges Act (No. 29 of 2017), be amended to require Parliament or the relevant Committee to communicate or issue summons to a person in a timely and efficient manner. This would be in tandem with Article 50 on fair hearing and adhere to Article 47 of the Constitution on fair administrative action;
- (ii) that clause 4(e) of the Bill be deleted, as an arrested person can only be held at a place specified under the National Police Service Act (No. 11A of 2011) and not by the Clerk; and
- (iii) that part of clause 7(b) of the Bill be deleted because an arrested person should be produced in court and the Criminal process should follow.

d) *Council of Governors*

26. The Council of Governors presented written submissions in which it observed and proposed as follows –

- (i) that clause 3(b) of the Bill be amended to provide a mandatory notice period of at least fourteen days from the date of receipt of summons to the date of appearance before the House or the relevant Committee. This would allow sufficient time for adequate preparation by the summoned individuals and align with principles of due process, fair administrative action, and the right to a fair hearing as enshrined under Articles 47 and 50 of the Constitution;
- (ii) that clause 3(b) be further amended to include instances, in exceptional circumstances, when the House or relevant Committee may summon a person to appear within a shorter period. This would ensure that the discretion is not abused;

- (iii) that the proposed amendment under clause 4(a) be deleted and the original text retained. This was because the proposed increase in fines was punitive, unreasonable, and not commensurate with the non-appearance. The deletion of this the clause would maintain a fair and proportionate approach to penalties and fines imposed. Further, that increasing fines to such a significant extent could place an undue financial burden on government officials and potentially promote corruption; and

- (iv) lastly, CoG proposed that clause 4(b) be amended to provide for non-imposition of penalties where valid reasons were given to justify non-appearance before a House of Parliament or the relevant Committee. This would ensure that individuals summoned to appear were not unduly penalized for unforeseen circumstances beyond their control. This safeguard was essential to prevent unwarranted punitive measures and to uphold the principles of justice and due process thus safeguarding the rights of summoned individuals.

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.0 Committee Observations on the Bill

27. Having considered the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023), the Standing Committee on Justice, Legal Affairs and Human Rights makes the following observations –
- (a) that Article 125 of the Constitution grants Parliament powers similar to those of the High Court to summon witnesses and enforce such summons. The enforcement mechanisms may include imposition of fines and the arrest and prosecution of such persons for contempt;
 - (b) that the provisions of the Bill are key in ensuring that Parliament exercises its power under Article 125 to enforce attendance of witnesses and production of documents in a manner that does not violate the right to fair administrative action and fair trial, as provided for under Articles 49 and 50 of the Constitution, respectively;
 - (c) that it would be fair to persons summoned to increase the period within which they have to appear from seven days to fourteen days to give them an opportunity to prepare themselves sufficiently, and the Bill should be amended to provide for this;
 - (d) that failure to appear when summoned is a serious violation of Chapter Six of the Constitution as it interferes with Parliament's role in ensuring accountability, and thus the increase in fines reflects the seriousness with which summons should be treated by their recipients;
 - (e) that the fine imposed is meant to be a deterrent and should therefore be high enough to serve this purpose;
 - (f) that, in the future, such failure to appear when summoned should also be considered as a ground for removal of such a person from office particularly when done repeatedly, and this can be enforced through amendments to the Leadership and Integrity Act; and
 - (g) that persons arrested should only be held in gazetted police stations, and the Clerk should not have the power to designate any holding places as the Parliament Police Station can serve that purpose.
28. The text of the proposed amendments is attached to this Report as *Annex 6*.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

4.0 Committee Recommendations on the Bill

29. Arising from its Observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) be **approved with amendments**.

LIST OF ANNEXES

- Annex 1:** Minutes of the sittings of the Committee in considering the Bill
- Annex 2:** The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023)
- Annex 3:** Advertisement published in the *Daily Nation* and *Standard* Newspapers on Friday, 20th October, 2023
- Annex 4:** Copies of Stakeholder Submissions on the Bill
- Annex 5:** Matrix on the Committee's consideration of Stakeholder Submissions
- Annex 6:** Text of the proposed Committee amendments to the Bill

Annex 1: Minutes of the sittings of the
Committee in considering the Bill



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-FIRST SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 10TH NOVEMBER, 2023 AT 9.00 A.M. AT SAROVA WHITESANDS HOTEL, IN MOMBASA COUNTY

PRESENT

- | | |
|--------------------------------------|----------------------------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair (<i>Chairing</i>) |
| 2. Sen. Catherine Muyeka Mumma, MP | - Member |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 4. Sen. Hamida Ali Kibwana, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |
| 6. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. S. Njenga Nguguna | - Director |
| 2. Mr. Charles Muniyua | - Senior Clerk Assistant |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Constant Wamayuyi | - Research Officer III |
| 6. Ms. Ndindi Kibathi | - Research Officer III |
| 7. Ms. Ngesa Rosebella | - Public Communications Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 444/2023

PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past nine O'clock and opened with a word of prayer.

MIN. NO. 445/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP, and seconded by Sen. Andrew Okoiti Omtatah, MP.

MIN. NO. 446/2023

**CONSIDERATION OF A REPORT ON THE
ACTIVITIES OF THE COMMITTEE DURING ITS
FIRST YEAR AND AGENDA SETTING ON
PRIORITY AREAS FOR ENGAGEMENT DURING
THE SECOND AND SUBSEQUENT YEARS OF THE
TERM**

The Committee was taken through the Report on the activities of the Committee during its first year, and the proposed areas for engagement during the subsequent Sessions. The Committee noted the Report and adopted the proposed priority areas.

MIN. NO. 447/2023

**CONSIDERATION OF STATUS OF LEGISLATIVE
BUSINESS BEFORE THE COMMITTEE AND
PROPOSED WORK SCHEDULE FOR THE
REMAINDER OF THE SECOND SESSION**

The Committee was taken through and noted the status of legislative business before the Committee and approved the sitting schedule for the remainder of the Second Session.

MIN. NO. 448/2023

**CONSIDERATION OF THE PARLIAMENTARY
POWERS AND PRIVILEGES (AMENDMENT) BILL,
2023 (SENATE BILLS NO. 37 OF 2023)**

The Committee was taken through the Brief on the Bill and the Matrix of stakeholder submissions on the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 OF 2023).

The Committee considered the Bill clause by clause, and agreed on the amendments to be sponsored by the Committee.

Thereupon, the Committee directed the Secretariat to prepare the draft Report for consideration and adoption on Tuesday 14th November, 2023.

MIN. NO. 449/2023

**CONSIDERATION OF THE PETITION BY MS.
ZIPPORAH C. K. SERONEY CONCERNING
MISTREATMENT, HARASSMENT, PROPERTY
LOSS AND HUMAN RIGHTS VIOLATIONS METED
ON THE FAMILY OF THE LATE HON. JEAN
MARIE SERONEY**

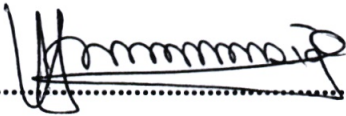
The Committee was taken through and considered the draft Report on the Petition by Ms. Zipporah C. K. Seroney concerning mistreatment, harassment, property loss and human rights violations meted on the family of the late Hon. Jean Marie Seroney.

Members made proposals be incorporated as observations and recommendations at chapters Three and Four of the report, following which the report would be scheduled for adoption.

MIN. NO. 450/2023

ADJOURNMENT

The Vice-Chairperson adjourned the meeting at thirty minutes past twelve O'clock. The next meeting was scheduled to be on the same day at two O'clock.

SIGNED: 

DATE: 21/11/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-THIRD SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 14TH NOVEMBER, 2023 AT 8.00 A.M. AT COMMITTEE ROOM 5, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Veronica W. Maina, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Ngesa Rosebella | - Public Communications Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 457/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 458/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Karen Njeri Nyamu, MP.

MIN. NO. 459/2023

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 37 OF 2023)

The Committee was taken through and considered the draft Report on the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter the Committee adopted the Report, having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Karen Njeri Nyamu, MP.

MIN. NO. 460/2023

PETITION BY MS. ZIPPORAH C. K. SERONEY CONCERNING MISTREATMENT, HARASSMENT, PROPERTY LOSS AND HUMAN RIGHTS VIOLATIONS METED ON THE FAMILY OF THE LATE HON. JEAN MARIE SERONEY

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon, the Committee adopted the Report, having been proposed by Sen. Fatuma Adan Dullo, CBS, MP and seconded by Sen. Raphael Chimera Mwinzagu, MP.

MIN. NO. 461/2023

PETITION BY TARATISIO IRERI KAWE CONCERNING INTRODUCTION OF AN AMENDMENT TO THE CONSTITUTION OF KENYA AND OTHER RELEVANT LAWS ON THE ELECTION OF THE DEPUTY PRESIDENT AND DEPUTY GOVERNORS

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon the Committee adopted the Report, having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Catherine Muyeka Mumma, MP.

MIN. NO. 462/2023

PETITION BY MUINDI MBINGU MEMORIAL NGELANI ASSOCIATION CONCERNING HISTORICAL INJUSTICES SUFFERED BY RESIDENTS OF NGELANI AREA IN MACHAKOS COUNTY DURING THE COLONIAL PERIOD

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon the Committee adopted the Report, having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 463/2023

PETITION BY MR. LABAN OMUSUNDI ON
BEHALF OF RESIDENTS OF NAKURU COUNTY
CONCERNING THE ENACTMENT OF A CLAUSE
IN THE ELECTORAL LAWS THAT WILL MAKE
SURE THAT ALL NOMINATED MEMBERS OF
THE COUNTY ASSEMBLY (MCAS) ARE VOTERS
AND RESIDENTS OF RESPECTIVE COUNTIES

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon the Committee adopted the Report, having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP

MIN. NO. 464/2023

ADJOURNMENT

The Chairperson adjourned the meeting at twelve minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 15th November, 2023 at eight O'clock.

SIGNED: 

DATE: 21 / 11 / 2023
.....

Annex 2: The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023)

SPECIAL ISSUE

Kenya Gazette Supplement No. 157 (Senate Bills No. 37)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 1st September, 2023

CONTENT

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**THE PARLIAMENTARY POWERS AND
PRIVILEGES (AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Parliamentary Powers and Privileges Act to give effect to Article 125 of the Constitution by operationalizing the powers of arrest by Parliament and Article 50 of the Constitution on the right to a fair hearing and connected purposes.

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Parliamentary Powers and Privileges (Amendment) Act, 2023.

Short title.

2. Section 2 of the Parliamentary Powers and Privileges Act, in this Act referred to as the “principal Act”, is amended by inserting the following new definitions in their proper alphabetical order —

Amendment of section 2 of No.29 of 2017.

Act No. 11 of 2011.

“Inspector-General” means the holder of the office of the Inspector-General appointed in accordance with Article 245(2)(a) of the Constitution and the National Police Service Act;

“police officer” has the same meaning assigned to it under section 2 of the National Police Service Act.

3. Section 18 of the principal Act is amended by—

Amendment of section 18 of No.29 of 2017.

(a) inserting the following new subsections immediately after subsection (2) —

(2A) The Clerk shall cause the summons to be served within seven days of receipt of a directive under subsection (2).

(b) inserting the following new subsections immediately after subsection (5) —

(5A) The person summoned shall be required to appear on the date specified in the summons, but not earlier than seven days from the date of receipt of summons.

(5B) Despite subsection (5A) the relevant House or its committee may require a person to appear before it within a shorter period of time as it may determine taking into account the urgency of the matter before the House or Committee.

4. Section 19 of the principal Act is amended —

Amendment of
section 19 of
No.29 of 2017.

(a) in subsection (1) by deleting the words "five hundred thousand" appearing immediately after the words "fine not exceeding" and substituting therefore the words "two million";

(b) by inserting the following new subsection immediately after subsection (1) —

(1A) A witness shall be given an opportunity to be heard prior to imposition of the fine.

(c) by inserting the following new subsection immediately after subsection (2) —

(2A) The fine imposed in subsection (1) shall be a civil debt recoverable summarily in accordance with the Debts (Summary Recovery) Act.

(d) deleting subsection (3) and substituting therefor the following new subsection —

(3) Parliament or its committee may order the arrest of a person who fails to honour a summons for purposes of —

(a) enforcing appearance before the House or relevant committee; or

(b) prosecution.

(e) by inserting the following new subsections immediately after subsection (3) —

(4) An order of arrest may be effected by a police officer or an authorised officer of a House of Parliament.

(5) Where an order of arrest is to be effected by a police officer, the Clerk shall transmit the order to the Inspector-General for execution.

(6) Where an order of arrest is to be effected by an officer of a House of Parliament, the Inspector-General shall facilitate the arrest as may be requested by the Clerk.

(7) A person arrested under subsection (3) shall —

(a) be held at such a place as specified in the National Police Service Act or as shall be designated by the Clerk for purposes of holding such persons; and

(b) be produced before court, or the House or committee that summoned that person on the next working day.

5. Section 27 of the principal Act is amended in subsection (2) by deleting the words “two hundred thousand” appearing immediately after the words “fine not exceeding” and substituting therefor the words “two million”.

Amendment of section 27 of No.29 of 2017.

6. Section 33 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection —

Amendment of section 33 of No.29 of 2017.

(2) In this section, “officer of a House of Parliament” means any officer acting under the orders of the respective Speaker or duly authorized by the respective Clerk.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the Parliamentary Powers and Privileges Act to ensure that the process of summoning persons to appear before Parliament is in accordance with Article 50 of the Constitution on the right to a fair hearing.

Oversight is an important pillar for democratic governance, the proper exercise of which underscores Parliament's role as representatives of the people in the exercise of their sovereignty. Article 125 of the Constitution gives Parliament the powers to summon any person in the exercise of its oversight role. In the exercise of these powers, it is imperative that due process be followed and that persons summoned are accorded a fair hearing which is guaranteed by Article 50 of the Constitution. Article 25 of the Constitution provides that the right to a fair trial may not be limited. This Bill therefore introduces specific provisions into the Parliamentary Powers and Privileges Act to safeguard this right to a fair hearing by ensuring that due process is followed when summoning persons before a Parliament or any of its committees.

The Bill further amends sections 19 and 33 of the Parliamentary Powers and Privileges Act to provide a mechanism by which an order of arrest may be executed. Such an order may be executed by the Inspector-General of the National Police Service or a member of staff duly authorized by the Speaker or Clerk.

The Bill also enhances the fine that is payable to the House or House Committee by a person who fails to appear upon being summoned to KSh. 2,000,000.00 from KSh. 500,000.

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

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement as to whether the Bill does concerns county governments

This Bill provides a mechanism through which Parliament is able to summon and impose sanctions on witnesses within the confines of the constitutional safeguards of Articles 47 and 50 of the Constitution. Such witnesses may be officers of county governments who will be summoned for accountability purposes. These summonses enable Parliament to hold the relevant officers accountable on various matters, including matters touching on the functions and powers of county governments.

The Bill is in line with Articles 153(4) (b) and 254(2) of the Constitution which requires the Executive, constitutional commissions and independent offices to report to both Houses of Parliament on matters falling within their respective jurisdictions. This is necessary for the Senate in the exercise of its mandate under Articles 94 and 96 of the Constitution. The Bill therefore concerns county governments in terms of Article 110(1) (a) of the Constitution as it affects the functions and powers of county governments set out in the Fourth Schedule.

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

The Bill is not a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 21st August, 2023.

GODFREY OSOTSI,
Senator.

Section 2 of No. 29 of 2017, which it is proposed to amend –

2. Interpretation

In this Act, unless the context otherwise requires—

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

“committee” means a committee of the National Assembly, a committee of the Senate or a joint committee of the Houses of Parliament;

“Committee of Powers and Privileges” means a Committee established under section 15;

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

“journal” means the minutes and the official records of the Houses of Parliament whether audio, electronic or any other form including all papers and accounts howsoever presented to or belonging to the Houses of Parliament, or any other records of the proceedings of Parliament;

“Member” means a member of the National Assembly or of the Senate;

“member of staff” means an officer of the Parliamentary Service Commission, any person acting under the orders of the Speaker or any police officer on duty within the precincts of Parliament;

“national security organ” means a national security organ specified under Article 239(1) of the Constitution;

“Parliament” means the Parliament of Kenya established under Article 93 of the Constitution;

“Parliamentary Service Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“proceedings” means—

- (a) all things said, done or written by a Member or by any officer of either House of Parliament or by any person ordered or authorized to attend before such House or its committees, in or in the presence of such House or its committees and in the course of a sitting for the purpose of transacting the business of the House or its committees; and
- (b) all things said, done or written between Members or between Members and officers of either House of Parliament for the

- (c) purpose of enabling any Member or any such officer to carry out his or her functions.

“Speaker” means the Speaker of the National Assembly or of the Senate, and includes the Deputy Speaker, or a member presiding at a sitting of a House of Parliament under Article 107(1)(c) of the Constitution; and

“Standing Orders” means the Standing Orders of a House of Parliament for the time being in force.

Section 18 of No. 29 of 2017, which it is proposed to amend —

18. Invitation and summoning of witnesses

(1) Parliament or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, Parliament and its committees shall have the same powers as the High Court as specified under Article 125 of the Constitution.

(2) A summons issued under subsection (1) shall be issued by the Clerk on the direction of—

- (a) the Speaker; or
- (b) the chairperson of a committee acting in accordance with a resolution of the committee.

(3) The general form of a summons shall be as set out in the First Schedule.

(4) The summons shall be served by a member of staff or a police officer who is duly authorized by the Clerk by delivering a copy of the summons—

- (a) to the person mentioned in the summons; or
- (b) at that person’s usual or last known place of residence, employment or business or left with a person who is over the age of eighteen years and who resides or is employed at that place.

(5) Where the summons is to be served on a corporation, the summons may be served—

- (a) on the secretary, director or other officer authorised by the corporation; or
- (b) if the officer serving the summons is unable to find any of the officers of the corporation mentioned in paragraph (a)—

- (i) by leaving it at the registered office of the corporation;
- (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation;
- (iii) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or
- (iv) by sending it by registered post to the last known postal address of the corporation.

(6) The serving officer in all cases in which summons has been served under this section shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons.

(7) The affidavit of service shall be in the form set out in the Second Schedule with such variations as circumstances may require.

(8) Any person who knowingly swears a false affidavit of service commits the offence of perjury and may in addition be subject to such disciplinary action as the Parliamentary Service Commission may determine.

(9) A return by a person who serves a summons under this section shall be prima facie proof of the service of the summons.

(10) A person requested or summoned in terms of this section by Parliament or a committee to attend a sitting of Parliament or committee shall be paid such amount of money as shall be approved by the Clerk as reimbursement for the expenses incurred.

Section 19 of No. 29 of 2017, which it is proposed to amend –

19. Procedure if witness fails to appear

(1) Where a witness summoned does not appear, or appears but fails to satisfy the relevant House of Parliament or committee, the relevant House or Committee may impose upon the witness such fine, not exceeding five hundred thousand shillings, having regard to the witness' condition in life and all the circumstances of the case.

(2) A person may pay the fine under subsection (1) to the Clerk of the relevant House.

(3) Parliament or its committee may order the arrest of a person who fails to honour a summons.

Section 27 of No. 29 of 2017, which it is proposed to amend –

27. Offences relating to witnesses

(1) A person commits an offence where the person—

(a) having been duly summoned in terms of section 18 fails, without sufficient cause to—

(i) attend at the time and place specified in the summons; or

(ii) remain in attendance until excused from further attendance by the person presiding at the inquiry;

(b) when called upon under section 20, refuses to be sworn in or to make an affirmation as a witness; or

(c) fails or disobeys without sufficient cause to—

(i) answer fully and satisfactorily all questions lawfully put to the person under section 20;

(ii) produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce under section 20.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(3) A person commits an offence where the person—

(a) threatens, obstructs, assaults or insults a member of staff or police officer carrying out service of summons issued under this Act;

(b) uses abusive language directed at a member, a committee or a House of Parliament;

(c) threatens or obstructs another person in respect of evidence to be given before Parliament or a committee;

(d) induces another person to—

(i) refrain from giving evidence to or to produce a document before Parliament or a committee; or

(ii) give false evidence before Parliament or a committee;

- (e) assaults or penalizes or threatens another person or deprives that person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
- (f) with intent to deceive or mislead Parliament or a committee, produces a false, untrue, fabricated or falsified document; or
- (g) wilfully furnishes Parliament or a committee with information which is false or misleading or makes a statement before Parliament or committee that is false or misleading.

(4) A person who commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment.

Section 33 of No. 29 of 2017, which it is proposed to amend —

33. Officers of a House of Parliament to have powers of police officer

(1) Every officer of a House of Parliament shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

(2) In this section, “officer of a House of Parliament” means any officer acting within the precincts of Parliament under the orders of the Speaker.

*Annex 3: Advertisement published in the
Daily Nation and Standard
Newspapers on Friday, 20th
October, 2023*

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 17th October, 2023 and Wednesday, 18th October, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 3rd November, 2023 at 5.00 p.m.**

Bill	Committee Referred To	Email Address
a) The Public Holidays (Amendment) Bill, 2023 (Senate Bills No. 31 of 2023)	Standing Committee on National Security, Defence and Foreign Relations	senate.nsdfr@parliament.go.ke
b) The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senate.jlahrc@parliament.go.ke
c) The Public Transport (Motorcycle Regulation) Bill, 2023 (Senate Bills No. 38 of 2023)	Standing Committee on Roads, Transportation and Housing	roadstranshousingcomm.senate@parliament.go.ke
d) The Public Finance Management (Amendment) Bill, 2023 (Senate Bills No. 40 of 2023)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
e) The Street Vendors (Protection of Livelihood) Bill, 2023 (Senate Bills No. 41 of 2023)	Standing Committee on Trade, Industrialization and Tourism	tradeindtourismcomm.senate@parliament.go.ke
f) The Energy (Amendment) Bill, 2023 (Senate Bills No. 42 of 2023)	Standing Committee on Energy	energycommittee.senate@parliament.go.ke
g) The Sugar Bill, 2023 (National Assembly Bills No. 34 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries	agriculturelfcommittee.senate@parliament.go.ke

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

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

Annex 4: Copies of Stakeholder
Submissions on the Bill

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

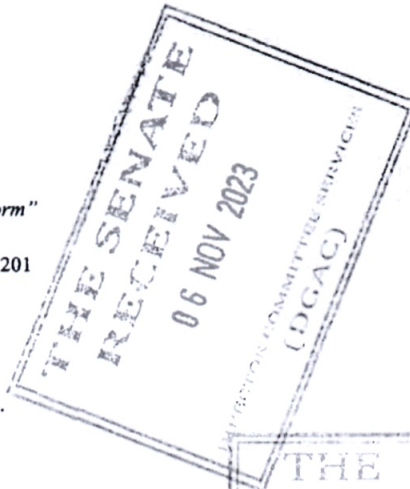
Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote
KLRC/8/86(24)

Ref. No. _____
and Date



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



2nd November, 2023

Mr. J.M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



*DH
DGAC*

Kindly deal.

20/11/2023

Dear *Jeri,*

REF: INVITATION TO SUBMIT COMMENTS ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 37 OF 2023)

I. BACKGROUND

The Kenya Law Reform Commission (the Commission) is in receipt of a letter from the Senate dated 23rd October 2023 requesting KLRC to submit its comments on the Parliamentary Powers and Privileges (Amendment) Bill, 2023. This is in accordance with the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders.

This legal opinion is issued in furtherance of the Commission's mandate, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

II. INTRODUCTION

The Parliamentary Powers and Privileges Act is an Act of Parliament that outlines the powers and privileges of members of the Kenyan Parliament. It provides legal protection to MPs, Senators and other parliamentary officers to carry out their parliamentary duties effectively. In addition, it stipulates certain procedures and processes that allow Parliament to undertake its various legislative and oversight roles effectively.

*Hob/Local Clerk
JLAHRC*

please deal

20/11/2023

The Amendment Bill seeks to amend the Parliamentary Powers and Privileges Act to ensure that the process of summoning persons to appear before Parliament is in accordance with Article 50 of the Constitution on the right to a fair hearing. Additionally, the Bill seeks to enhance fines payable to the House or House Committee by a person who fails to appear upon being summoned.

III. OUR CONSIDERATION OF THE BILL

We have reviewed the Bill and find that the proposals are in consonance with the proposed goals that Parliament hopes to achieve and further that the proposals are constitutionally, legally and technically sound and therefore meet the threshold for consideration by the House.

IV. CONCLUSION AND RECOMMENDATION

As always, we remain committed to enhancing the reach of our Constitutional ideals by supporting every effort to improve our laws in response to the social, economic and political needs of the country.

In view of this, we wish to recommend that even as the Senate considers raising the fines payable for offences under the Powers and Privileges Act, it also considers as a matter of adopting global good practices and appreciating the dynamics that fiscal penalties and fees brings about in legislation, the adoption of a penalty and fee units policy and legislative system for Kenyan legislation.

A penalty unit (often abbreviated to 'PU') is an amount of money used as a basis to calculate the monetary penalties and fines for breaches of laws. To determine the amount to be paid as a fine, the value of the penalty unit is multiplied by the number of penalty units that are set for the offence. In the same manner, a fee unit is the amount of money used as a basis to calculate the monetary fee for access to services.

The application of penalty and fee units in legislation allows for the upward or downward variation of applicable fines and fees across different pieces of legislation through a single amendment to one piece of legislation. This allows for the pecuniary fines and fees provided for in law to be amended in line with the social, economic and political realities of the day, including inflation and the need to have fines in legislation adequately serve to deter infringement.

To contextualise the concept in the case of national and county legislation, the adoption of a penalty and fee units system will greatly improve the operationalization of penal and fee provisions in all our legislation.

We have, as part of our mandate to ensure that our legislation develops in tandem with the social, economic and political needs of the country, developed a policy and legislative proposal on the subject and will be happy to share more with the Committee, upon its finalization.

Lastly, we appreciate your invitation to appear and present our consideration of the Amendment Bill and hereby confirm our attendance.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to read 'Joash Dache', written in a cursive style.

Joash Dache, MBS
SECRETARY/CEO

Copy to: Ms. Christine Agimba, Chairperson to see file copy



Kenya National Commission on Human Rights

1st Floor, CVs Plaza, Lenana Rd, P.O. Box 74359 - 00200 Nairobi - Kenya. Tel: +254-020-3969000
Mobile: 0733 780 000; 0736 780 000; 0724 256 448; 0726 610 159 SMS: 22359

Website: www.knchr.org Email: haki@knchr.org Complaints: complaint@knchr.org

Coast Region Office-Mombasa
Imasura building 10th Floor unit 10D
Deedan Kimathi Avenue Kizingo
Opposite - Parda Memorial Hospital
P.O. Box 90171-80100, Mombasa
Tel: 041-2220468/2220584
Email: coast@knchr.org
Twitter: @KNCHRMombasa

Western Region Office-Kisumu
3rd Floor, Re Insurance plaza
Oginga Odinga Street
Opposite Mega center - Nakumatt
P.O. Box 7768-40100, Kisumu
Tel: 057-2020078
Mobile: 0717045681
Email: kisumu@knchr.org
Twitter: @KNCHRKisumu

North Rift Regional Office - Kitale
AFC Building
Opposite Mega center - Nakumatt
P.O. Box 299 - 30200, Kitale
Tel: 054-31773/0203969057
Mobile: 0708271216/0786236683
Email: northrift@knchr.org
Twitter: @KNCHRKitale

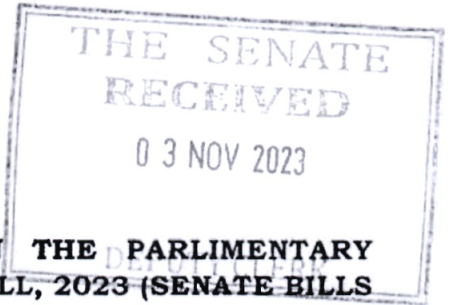
North Eastern Region - Wajir
Wajir-Bor Rd, near Public Works
P.O. Box 363 - 70200, Wajir
Tel: 046-4421512
Email: nothernkenya@knchr.org
Twitter: @KNCHRWajir

Central Region Office
Old National cereals and Produce board
Building, behind Jamsa Supermarket
P.O. Box 650 - 20300, Nyahururu
Tel: 0705 982 617
Email: laikipia@knchr.org
Twitter: @KNCHRLaikipia

KNCHR/OTC/NA/Vol.3 (2)
3rd November, 2023

03 NOV 2023

Jeremiah Nyegenye, CBS
Clerk of the Senate
Parliament Buildings, Harambee Avenue
Nairobi



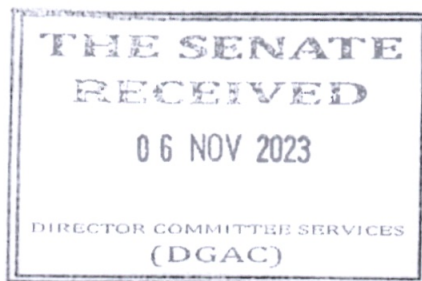
Dear Mr. Nyegenye,

RE: INVITATION TO SUBMIT COMMENTS ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 37 OF 2023)

Warm regards from the Kenya National Commission on Human Rights (KNCHR).
We acknowledge receipt of your communication with regard to the subject above.
We hereby submit our comments for consideration.

Yours sincerely


Roseline D.A. Odede
Chairperson



*Load done
JLAHAC
Please deal
3/11/2023*

*DGAC
DLF
Kindly deal
3/11/2023*



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023

SUBMITTED TO

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

3RD NOVEMBER 2023

**Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 254-20-2717908 /2717256/2712664
Fax: 254-20-2716160 Website: www.knchr.org
Email: haki@knchr.org**

A. ABOUT THE COMMISSION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect of human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under **Article 249** of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. It is in this regard, and pursuant to the letter dated 23rd October referenced SEN/DGAC/DGC/JLAHRC/2023(156) inviting the National Commission to submit its comments on the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) that is sponsored by Hon. Senator Godfrey Osotsi. Part B of the advisory flags out important General observations concerning the Bill whilst Part C highlights specific areas of amendments.

B. GENERAL COMMENTS

4. Article 125 of the Constitution of Kenya, 2010 provides Parliament the powers to call for evidence in the following terms:
 - (1) **Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.**
 - (2) **For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court-**
 - (a) **to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;**
 - (b) **to compel the production of documents; and**
 - (c) **to issue a commission or request to examine witnesses abroad.**

5. The above provisions are further given life under **Part VI** of the Parliamentary Powers and Privileges Act ([Act No. 29 of 2017](#)) which expounds on the exercise of this power.
6. The Commission notes the significance of effective oversight in ensuring good governance through a responsive leadership. As representatives of the people, the Legislative arm plays a critical role of oversight. **Articles 95 and 96** of the Constitution vests the National Assembly and the Senate with the powers of oversight over revenue and its expenditure as well as over state organs and state officers. This is an important element of checks and balances. Part of safeguarding this oversight role and ensuring it actually works is to have a reasonable enforcement mechanism in place.
7. The Commission acknowledges the noble objectives of the Bill towards enhancing the right to a fair hearing in tandem with Article 50 of the Constitution, and more specifically the introduction of section 1A which introduces a fair and due process element. Before imposing a fine on a witness, one must be given an opportunity to present their side of the story or to provide any valid reasons for failing to appear before Parliament or its committees. This adds a layer of protection for witnesses and ensures their rights are respected. However, the power of arrest should be used judiciously and with proper safeguards to prevent potential abuse.
8. The Commission cautions against “overzealous” exercise of this mandate and in a manner that would contravene the Constitution and hence claw back on the very protections that Parliament is meant to safeguard. Despite the noble objective of the Bill on the right to fair hearing, the Commission notes some fundamental weaknesses as highlighted herebelow:
 - 8.1 The separation of powers is a foundational principle in democratic systems. It ensures that each branch of government (legislative, executive, and judicial) operates independently and has distinct roles. Granting Parliament, the power to execute arrest orders blurs the lines of separation between the legislative and judicial branches, potentially undermining this fundamental principle.
 - 8.2 Respecting the doctrine of separation of powers and common law rules of natural justice demand that one cannot be the accuser, judge and executioner in their own cause. In this case, the Parliamentary committees cannot accuse, try, convict, fine and retain the proceeds of such cause. While the imposition of a sanction on an administrative basis against Members of Parliament may be considered passable as an internal disciplinary procedure, the imposition of a fine or the ordering of the arrest of a witness (non-

member) in contempt, is considered criminal.¹ However, Parliament does not constitute an independent court or tribunal for the purposes of contempt proceedings.² In line with Art 50 (1) of the Constitution such witness should be tried publicly by an independent Court, tribunal or other body.

8.3 The Commission takes note of the introduction of Clause 2A which describes the fine imposed as, “a civil debt recoverable summarily in accordance with the Debts (Summary Recovery) Act”. Even so, this does not cure the fact that in fact what is created is a crime in the public realm and not a civil proceeding. As such, the Act as is and the proposed Bill supposedly create criminal offences or otherwise seek to punish those who ‘disobey’ summons which effectively is punishment for contempt. As has been severally upheld by the Courts, contempt proceedings are of a quasi-criminal in nature. See for instance *Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment)*. More importantly, by so doing, Parliament arrogates itself the Judicial authority against the tenor of Article 159(1) of the Constitution which categorically stipulates that, “**Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution**”.

8.4 Witnesses, when summoned should appear. When they fail to do so, they must be accorded the due process of the law, including the full rights safeguarded under Articles 49 and 50 of the Constitution on the right to a fair hearing and the rights of arrested persons. Furthermore, the “arrested person” is entitled to fair administrative action in line with Article 47 of the Constitution and section 4 of the Fair Administrative Action Act (No. 4 of 2015). The person cannot be summarily heard, condemned and automatically fined or otherwise penalised without applying the full basic tenets of fair administrative action which are also couched under Articles 49 and 50 of the Constitution.

8.5 Article 125 of the Constitution that bequeaths Parliament the power to summon witnesses expresses recognises that the House and any of its committees will have, “**same powers as the High Court**” to enforce the attendance of witnesses and production of documents. Notably, the High Court in exercise of this power ordinarily operates in total deference of the separation of powers, the Judiciary would defer to the executive, through its officers to do the arresting. Therefore, **Clause 4(4) of the Bill** that anticipates

¹ European Court of Human Rights ‘Guide on Article 6 of the European Convention on Human Rights’ (2022) para 36.

² R Gordon & A Street *Select Committees and Coercive Powers – Clarity or Confusion?* (2012) 38-40; *Demicoli v Malta* ECtHR (1991) Application no. 13057/87 para 32.

that, “an authorised officer of the House” may effect an arrest is erroneous in principle and fundamentally flawed.

8.6 Immunity of Witnesses: It is crucial that the law expressly safeguards the immunity of witnesses. Under Article 50(2)(l) of the Constitution, *the right to refuse to give self-incriminating evidence is one of the tenets to a fair hearing* and one that Parliamentary Committees in their oversight must respect and safeguard. The action of a witness in giving evidence and producing documents and the evidence given should not be used against the witness in any sense in subsequent proceedings before a court or tribunal.³

8.7 The holding facilities within Parliament must be gazetted as such. It must be clear to the public that specific areas are holding facilities for purpose of the Act. Thus, under Clause 7A, the Clause must provide that the arrested person be held in gazetted holding facilities/detention centre. The Clerk or other “unauthorised person” for this purpose should not have powers to designate other facilities as holding/detention centres.

8.8 Section 19(1) of the Act states that, “Where a witness summoned does not appear, or appears but fails to satisfy the relevant House of Parliament or committee, the relevant House or Committee may impose upon the witness such fine...”. The underlined provision is indeterminate, uncertain, vague, overbroad and open to the subjective interpretation of the House/Committee. It should be deleted.

9. In the succeeding **Part C** below the Commission provides for amendments to specific Clauses of the Bill and justification as well as points to additional amendments to the Act that the Bill did not necessarily anticipate. The Commission invites the Honourable House to consider these as well.

³ Odgers' Australian Senate Practice 14th edition 'Chapter 17 Witnesses' (2022)
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_17#footnote-079

C. SPECIFIC COMMENTS

NO.	CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
1.	3(b) Amendment of section 18 of No.29 of 2017	Section 18 of the principal Act is amended by— (a) ... (b) inserting the following new subsections immediately after subsection (5) — (5A) The person summoned shall be required to appear on the date specified in the summons, but not earlier than seven days from the date of receipt of summon.	Amend this section as it is paradoxical.	To avoid confusion and serve ends of justice. The Summons should be very specific and clear enough on <u>when</u> and <u>where</u> a witness is expected.
2.	4(a) Amendment of section 19 of No.29 of 2017	Section 19 of the principal Act is amended — (a) in subsection (1) by deleting the words “ five hundred thousand ” appearing immediately after the words “fine not exceeding” and substituting therefore, the words “ two million ”.	Proportionality of fine is of concern. ⁴	Though discretionary, the increase of the fine to 2 000 000 KES (over 300%) is very concerning. Although the practice of the Australian parliament is not a benchmark, the fine imposed is 5000 AUD (the equivalent of 3200 USD). ⁵ This is significantly less than the proposed 2 000 000 KES (the equivalent of 13 300 USD).
3.	4 (c) Amendment of	(2A) The fine imposed in subsection (1) shall be a civil debt recoverable summarily in	Delete this Clause	This provision imposes penal sanctions. Stating it's a civil debt does not in itself cure/change the

⁴ U.S. Department of Justice ‘Commentary on the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)’ (1993) 2.

⁵ Odgers' Australian Senate Practice 14th edition ‘Chapter 17 Witnesses’ (2022)

https://www.aph.gov.au/About/Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_17#footnote-079

NO.	CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
	section 19 of No.29 of 2017	accordance with the Debts (Summary Recovery) Act.		fact that this is a penal sanction. A civil debt due to whom?
4.	4(d) Amendment of section 19 of No.29 of 2017	(d) deleting subsection (3) and substituting therefor the following new subsection — (3) Parliament or its committee may order the arrest of a person who fails to honour a summons for purposes of — (a) enforcing appearance before the House or relevant committee; or (b) prosecution.	Parliament as the authority ordering arrest or imposing a fine.	While the imposition of a sanction on an administrative basis against members of parliament may be considered passable as internal disciplinary procedures, the imposition of a fine or the ordering of the arrest of a witness (non-member) in contempt may be considered criminal. ⁶ However, Parliament does not constitute an independent court or tribunal for the purposes of contempt proceedings. ⁷
5.	5 Amendment of section 27 of No.29 of 2017.	5. Section 27 of the principal Act is amended in subsection (2) by deleting the words “ two hundred thousand ” appearing immediately after the words “fine not exceeding” and substituting therefor the words “ two million ”.	Proportionality of fine may be of concern. ⁸	Similar to above, the increase of the fine from 200 000 KES to 2 000 000 KES may be of concern. Although the practice of the Australian parliament is not a benchmark, the fine imposed is 5000 AUD (the equivalent of 3200 USD). ⁹ This is significantly less than the proposed 2 000 000 KES (the equivalent of 13 300 USD).

⁶ European Court of Human Rights ‘Guide on Article 6 of the European Convention on Human Rights’ (2022) para 36.

⁷ R Gordon & A Street *Select Committees and Coercive Powers – Clarity or Confusion?* (2012) 38-40; *Demicoli v Malta* ECtHR (1991) Application no. 13057/87 para 32.

⁸ U.S. Department of Justice ‘Commentary on the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)’ (1993) 2.

⁹ Odgers’ Australian Senate Practice 14th edition ‘Chapter 17 Witnesses’ (2022)

https://www.aph.gov.au/About Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_17#footnote-079

NO.	CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
ADDITIONAL PROPOSED AMENDMENTS TO THE PRINCIPAL ACT				
6.	Section 19	The section punishes a person who appears but “fails to <u>satisfy the relevant House of Parliament or committee.</u> ”	Delete this Phrase	<p>It is vague, indeterminate and incapable of being objectively ascertained by both the accuser and accused.</p> <p>The Courts have in a string of cases declared similar vague sections as unconstitutional therefore invalid. See for instance the judgment in <u>Geoffrey Andare v Attorney General & 2 others [2016] eKLR.</u></p>
7.	Part VI generally	The Part lacks various safeguards including: Separation of powers (as detailed in Part B above); fails to provide for protections of witness immunities and also potentially threatens the rights of an arrested person.	Amend the Part to put into account these safeguards.	<p>In line with Articles 49 and 50 of the Constitution as the principal objectives of the Bill.</p> <p>In line with the Fair Administrative Action Act, 2015.</p>

++++THE END++++

Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr. Washington Sati, MBS
Commissioner: Mrs. Lucy Ndung'u, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

Our Ref: CAJ/LEG/5 /VOL VI

Your Ref: SEN/DGAC/DGC/JLAHRC/2023/ (157)

6th November, 2023

J.M NYEGENYE, CBS
Clerk of the Senate
P. O. Box 41842-00100
NAIROBI

Dear Sir,

**RE: COMMENTS ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT)
BILL, 2023 (SENATE BILLS NO. 37 OF 2023)**

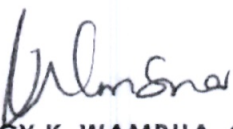
Receive warm compliments from the Commission on Administrative Justice (Office of the Ombudsman).

We acknowledge receipt of your letter Ref No. SEN/DGAC/DGC/JLAHRC/2023/ (157) dated 23rd October, 2023 on the above captioned subject.

The Commission has read through the Bill and we hereby attach our comments for your perusal and further action.

We thank you for your continued support and assure you of our highest regards.

Yours Sincerely,


MERCY K. WAMBUA, OGW
COMMISSION SECRETARY/CEO

**THE COMMISSION ON
ADMINISTRATIVE JUSTICE**



"Hata mnyonge ana haki"

**COMMENTS ON THE PARLIAMENTARY POWERS AND PRIVILEGES AMENDMENT BILL
2023**

No.	PARAGRAPH	PROPOSED CHANGE OR COMMENTS	JUSTIFICATION
1.	3 (b) Amendment of Section 18 of No. 29 of 2017	Inclusion of a new clause that should read as: (5C): Subject to Section (5B), the relevant House and its Committee shall communicate and issue the summons to a person in timely and efficient manner.	The clause will be in tandem with the Article 50 on fair hearing and also adhere to Article 47 of the Constitution on Fair Administrative Action.
2.	4(e) Amendment of Section 19, proposed new subsection 7A	Delete 7(a) as shall be designated by the clerk for the purposes of holding such persons	An arrested person can only be held at a place specified under the NPS Act and not the Clerk.
3.	Delete 7(b)	Delete 7(b)" or the house or Committee that summoned the person on the next working day.	An arrested person should be produced in court and the Criminal process should follow.



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/6/11 Vol.3 (77)

3rd November 2023

J. M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
Nairobi



Dear Mr. Nyegenye

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023

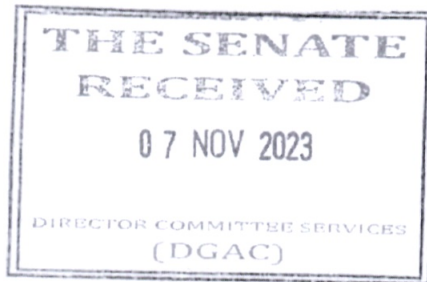
Greetings.

The Council of Governors has reviewed the Parliamentary Powers and Privileges (Amendment) 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



DGAC (1)

DHS

Kindly deal.

EF
07/11/2023

② HOD - Governance
SCA - JLAHR

Kindly Seal

07/11/2023



THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023

FROM

THE COUNCIL OF GOVERNORS

TO

THE SENATE

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL 2023

A. INTRODUCTION

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

B. GENERAL COMMENTS

1. The Council of Governors acknowledges the object of the Bill is to ensure that summons are conducted in accordance with the principles of fair administrative action and the right to a fair hearing as enshrined in Articles 47 and 50 of the Kenyan Constitution. These principles are fundamental to upholding justice and the rule of law.
2. We believe that the inclusion of fair administrative action and the right to a fair hearing in the Powers and Privileges Amendment Act is critical for safeguarding the rights and privileges of all individuals summoned, including Governors. It is essential to ensure that these fundamental rights are upheld and respected in all circumstances.
3. The Council of Governors has, regrettably, witnessed cases where Governors have been summoned without due regard to the principles of fair administrative action and the right to a fair hearing. These instances have raised concerns about the abuse of powers and privileges in the past. It is therefore critical to prevent future violations of these rights and prevent any abuse of powers and privileges in the future.
4. It is important to emphasize that procedural fairness includes providing timely notice and comprehensive information about the allegations, the opportunity to present a defense and an impartial adjudication process.
5. Further, the fines imposed for non-appearance ought to be fair and reasonable

C. SPECIFIC COMMENTS

The Council proposes the following specific amendments to the Bill;

CLAUSE/ SUB-CLAUSE OF THE BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
CLAUSE 3 Amendment of section 18 of the principal Act	Section 18 of the principal Act is amended by- (b) inserting the following immediately after subsection (5) — (5A) The person summoned shall be required to appear on the date specified in the summons, but not earlier than seven days from the date of receipt of summons	Amend to read as follows: (5A)The person summoned shall be required to appear on the date specified in the summons, but not earlier than fourteen days from the date of receipt of summons	The fourteen days will allow sufficient time for adequate preparation before appearing before either House of Parliament. This is essential to ensure that the summoned individuals are provided with sufficient time to prepare their case adequately.
CLAUSE 3 Amendment of section 18 of the principal Act	INSERTION OF A NEW SUB-CLAUSE	Amend to insert a new sub-clause 5B immediately after 5A to read as follows: 5B. The summoned individual shall be issued a mandatory notice of not less than fourteen (14) days prior to their appearance before the Parliament	The law should make provisions for a mandatory notice period within which persons shall appear upon being summoned. This aligns with principles of due process, fair administrative action and the right to a fair hearing as enshrined under Articles 47 and 50 in the Kenyan Constitution.
INSERTION OF A NEW SUB-CLAUSE			

<p>CLAUSE 3 Amendment of section 18 of the principal Act</p>	<p>(5B) Despite subsection (5A) the relevant House or its committee may require a person to appear before it within a shorter period of time as it may determine taking into account the urgency of the matter before the House or Committee</p>	<p>Amend to include instances when the House may summon persons within shorter period of time to read as follows: Despite subsection (5A) the relevant House or its committee may require a person to appear before it within a shorter period of time only under exceptional circumstances including:</p> <ol style="list-style-type: none"> 1. Emergencies 2. National safety 	<p>This is to ensure that the discretion is not abused and in very exceptional cases can the time be shortened.</p>
<p>CLAUSE 4: AMENDMENT OF SECTION 19 OF THE PRINCIPAL ACT</p>	<p>Section 19 of the principal Act is amended — (a) in subsection (1) by deleting the words "five hundred thousand" appearing immediately after the words "fine not exceeding" and substituting therefore the words "two million" ;</p>	<p>Amend by deleting the proposed amendment and retain the original <u>text</u></p>	<p>The proposed increase in fines is punitive, unreasonable and not commensurate with the non-appearance. The deletion of this amendment is necessary to maintain a fair and proportionate approach to penalties and fines imposed. Increasing fines to such a significant extent could place an undue financial burden on Government officials and potentially promote corruption</p>

<p>CLAUSE 4 (b):</p> <p>AMENDMENT OF SECTION 19 OF THE PRINCIPAL ACT</p>	<p>Section 19 of the principal Act is amended —</p> <p>(b) by inserting the following new subsection immediately after subsection (1) —</p> <p>(1 A) A witness shall be given an opportunity to be heard prior to imposition of the fines</p>	<p>Amend by inserting a new sub-clause immediately after 1A to read as follows:</p> <p>1B. Pursuant to sub-clause 1A above, fines and penalties shall not be imposed upon the summoned persons provided they give valid reasons to justify their non-appearance before either House of parliament</p>	<p>This will ensure that individuals summoned before Houses of Parliament are not unduly penalized for unforeseen circumstances beyond their control. This safeguard is essential to prevent unwarranted punitive measures and to uphold the principles of justice and due process thus safeguarding the rights of summoned individuals.</p>
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Annex 5: Matrix on the Committee's
consideration of Stakeholder
Submissions

THE SENATE



MATRIX

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023

Stakeholders:

1. Council of County Governors (CoG);
2. Commission on Administrative Justice (CAJ);
3. Kenya Law Reform Commission (KLRC); and
4. Kenya National Commission on Human Rights (KNCHR).

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
3(b)	CoG	Amend the proposed new 5A to read as follows— <i>5A. The person summoned shall be required to appear on the date specified in the summons, but not earlier than 14 days from the date of receipt of summons.</i>	The 14 days will allow sufficient time for adequate preparation before appearing before either House of Parliament. This is essential to ensure that the summoned individuals are provided with sufficient time to prepare their case adequately.	The proposal to allow persons summons 14 days to appear is reasonable in line with Article 47 on fair administrative action and Article 50 on the right to a fair trial. Proposal is accepted.
3(b)	CoG	Insert new 5B immediately after 5A to read as follows— <i>The summoned individual shall be</i>	The law should make provisions for a mandatory notice within which persons shall appear upon being summoned. This aligns with the	The summons or the invitation sent to an individual to appear is

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<i>issued a mandatory notice of not less than 14 days prior to their appearance before the parliament.</i>	principles of due process, fair administrative action, and the right to a fair hearing is enshrined under articles 47 and 50 in the Kenyan constitution.	essentially a notice for a person to appear. You cannot have a separate notice being issued. Proposal not accepted.
3(b)	CoG	Amend to include instances when a House may summon persons within a shorter time, to read as follows— <i>Despite subsection 5A the relevant house or its committee may require a person to appear before it within a shorter period of time only under exceptional circumstances including 1. emergencies and 2. national safety.</i>	This is to ensure that the discretion is not abused and in very exceptional cases can the time be shortened.	The House or Committee shall determine if the matter is urgent on a case by case basis. Proposal not accepted.
3(b)	CAJ	Inclusion of a new clause that should read as follows - <i>5C. Subject to section 5B, the relevant House and its Committee shall communicate and issue the summons to a person in timely and efficient manner.</i>	The clause will be in tandem with the Article 50 on fair hearing and also adhere to Article 47 of the Constitution on Fair Administrative Action.	The proposal is vague. Proposal not accepted.
3(b)	KNCHR	Amend this section as it is paradoxical and not specific on when or where a witness is to appear yet it requires them to appear.	To avoid confusion and serve the ends of justice. The summons should be very specific on <u>when</u> and <u>where</u> a witness is expected.	The format of the summons already includes this information on when and where the witness should appear. Proposal not accepted.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
4(a)	KNCHR	Proportionality of fine is of concern.	Though discretionary, the increase of a fine to Kshs. 2 million (over 300%) is very concerning. Although the practice of the Australian Parliament is not a benchmark, the fine imposed is 5000 AUD (equivalent to 3200 USD). This is significantly less than the proposed Kshs. 2 million (equivalent to 13,300 USD).	<p>The clause only sets the upper limit of the fine. The House or Committee has a leeway in the exact amount charged depending on the facts in its disposal. Furthermore, Parliament has the constitutional role of ensuring accountability, and failure of a person to appear when summoned is a violation of the Constitution and affects the greater public good. The purpose of the fine is deterrence.</p> <p>Proposal not accepted.</p>
4(a)	CoG	Amend by deleting the proposed amendment and retain the original text.	The proposed increase in fines is punitive unreasonable and not commensurate with the non-appearance. The deletion of this amendment is necessary to maintain a fair and proportionate approach to penalties and finds imposed. Increasing fines to such a significant extent could place an undue financial burden on government officials and potentially promote corruption.	<p>The purpose of the fine is deterrence, therefore the amount should be high enough to discourage non-attendance.</p> <p>Proposal not accepted.</p>
4(b)	CoG	Amend by inserting a new subclause immediately after 1A to read as	This will ensure that individuals summoned before Houses of	Under section 19, a fine is only imposed after taking

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		<p>follows—</p> <p><i>Pursuant to subclause 1A above, fines and penalties shall not be imposed upon the summoned persons provided they give valid reasons to justify their non-appearance before either House of Parliament.</i></p>	<p>Parliament are not unduly penalized for unforeseen circumstances beyond their control. This safeguard is essential to prevent unwarranted punitive measures and to uphold the principles of justice and due process thus safeguarding the rights of summoned individuals.</p>	<p>into consideration all the circumstances of the case. The person is also given an opportunity to be heard. Additionally, pursuant to section 27 (1)(a) the offence is only committed if the person fails to attend without sufficient cause</p> <p>Proposal not accepted.</p>
4(c)	KNCHR	Delete proposed section 2A.	<p>This provision imposes penal sanctions. Stating it's a civil debt does not itself cure/change the fact that this is a penal sanction.</p>	<p>Parliament has the power to enforce attendance including through sanctioning non-attendance, which power is derived directly from Article 125 of the Constitution.</p> <p>Proposal not accepted.</p>
4(d)	KNCHR	Parliament is indicated as the authority ordering arrest or imposing a fine.	<p>While the imposition of a sanction on an administrative basis against members of parliament may be considered passable as internal disciplinary procedures the imposition of affine or the ordering of their rest of a witness (non-member) in contempt may be considered criminal. However, Parliament does not constitute an independent court or tribunal for the purposes of contempt proceedings.</p>	<p>Parliament has the same power as the High Court to enforce attendance including through sanctioning non-attendance, which power is derived directly from Article 125 of the Constitution.</p> <p>Proposal not accepted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
4(e)	CAJ	The new sub-clause 7(b) provides for an arrested person to be held at such a place as specified in the National Police Service Act or as shall be designated by the Clerk for purposes of holding such persons. It is proposed that the part on this sub-clause clause 7(a) which provides as follows: <i>“as shall be designated by the clerk for the purposes of holding such persons”</i> be deleted.	An arrested person can only be held at a place specified under the NPS Act and not the Clerk.	Amend clause to provide for persons to be held at places gazetted under the National Police Service Act, with the primary holding place being Parliament Police Station. Proposal accepted.
4(e)	CAJ	The new sub-clause 7(b) provides for an arrested person to be produced before court or the House or Committee that summoned the person. It is proposed that the part on this sub-clause 7(b) which provides as follows– <i>“or the House or Committee that summoned the person on the next working day”</i> be deleted.	An arrested person should be produced in court and the Criminal process should follow.	The purpose of arrest is to enforce appearance at alternatively have them prosecuted in Court. Proposal not accepted.
5	KNCHR	Proportionality of the fine may be of concern	Similar to above, the increase of a fine from Kshs 200,000 to Kshs. 2 million may be of concern. Although the practice of the Australian Parliament is not a benchmark, the fine imposed is 5000AUD (equivalent to 3200 USD). This is significantly less than the proposed Kshs. 2 million (equivalent to 13,300 USD).	The clause only sets the upper limit of the fine. The Court has discretion in the exact amount charged depending on the facts in its disposal. Also, the upper limit set cannot be lower than the fine imposed by Parliament. Proposal not accepted.

GENERAL COMMENTS AND OTHER SUBMISSIONS

1. Kenya Law Reform Commission

- (a) The proposals are in consonance with the proposed goals that parliament hopes to achieve and further that the proposals are constitutionally, legally and technically sound and therefore meet the threshold for consideration by the House.
- (b) Even as the Senate considers raising the fines payable for offenses under the powers and privileges act, it should also consider, as a matter of adopting good global practices and appreciating the dynamics that fiscal penalties and fees bring about in legislation, the adoption of a penalty and fee units policy and legislative system for Kenyan legislation. The adoption of a penalty and fee unit system will greatly improve the operationalization of penal and fee provisions in all our legislation.

2. Kenya National Commission on Human Rights

- (a) The power of arrest should be used Judiciously and with proper safeguards to prevent potential abuse.
- (b) Some fundamental weaknesses of the bill include:
 - (i) granting Parliament the power to execute arrest orders plus the lines of separation between the legislative and judicial branches potentially undermining these fundamental principles;
 - (ii) parliamentary committees cannot accuse, try, convict, and retain the proceeds of such cause as it is against the rules of natural justice;
 - (iii) introduction of close to a which describes the fine imposed as a silver dates this does not cure the fact that what is created is a crime in the public realm and not a civil proceeding as such the act as is and the proposed bill supposedly create criminal offenses or otherwise seek to punish those who disobey summons which effectively is punishment for contempt proceedings of a quasi-criminal nature. By doing so parliament arrogates itself the judicial authority against the tenure of Article 159 (1) of the Constitution;
 - (iv) it is crucial that the law expressly safeguards the immunity of witnesses. The action of a witness in giving evidence and producing documents and the evidence given should not be used against the witness in any sense in subsequent proceedings before a court or tribunal; and

- (v) holding facilities within parliament must be gazette as such. It must be clear to the public that specific areas are holding facilities for the purpose of the act. The Clerk or other unauthorized person for this purpose should not have powers to designate other facilities as holding/detention centers.
- (c) Section 19 punishes a person who appears but fails to satisfy the relevant house of Parliament or committee. This phrase should be deleted. It is vague indeterminate, uncertain, vague, overbroad and open to the subjective interpretation of the court. The courts have in a string of cases declared similar vague sections as unconstitutional therefore invalid.
- (d) Part VI of the Act generally lacks various safeguards including separation of powers, it fails to provide for protections of witness immunities and also potentially threatens the rights of an arrested person. The part should be amended to put into account these safeguards. In line with articles 49 and 50 of the constitution is the principal objectives of the bill and with the Fair Administrative Action Act, 2015.

Annex 6: Text of the proposed Committee
amendments to the Bill

16th November, 2023

The Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE PARLIAMENTARY POWERS
AND PRIVILEGES (AMENDMENT) BILL, SENATE BILLS NO. 37 OF 2023**

NOTICE is given that Sen. Wakili Hillary Kiprotich Sigei, Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Parliamentary Powers and Privileges (Amendment) Bill, Senate Bills No. 37 of 2023, at the Committee Stage —

CLAUSE 3

THAT clause 3 of the Bill be amended in paragraph (b), in the proposed new subsection (5A), by deleting the word “seven” appearing immediately after the words “not earlier than” and substituting therefore the word “fourteen”.

CLAUSE 4

THAT clause 4 of the Bill be amended in paragraph (e) by deleting paragraph (a) in the proposed new subsection (7) and substituting therefore the following new paragraph (a)—

(a) be held at—

- (i) Parliament Police Station; or
- (ii) any other police station *gazetted* under section 40 of the National Police Service Act, in the case of a person arrested outside Nairobi City County or its environs.

Dated 16th November, 2023.



Wakili Hillary Kiprotich Sigei,
Chairperson,

Standing Committee on Justice, Legal Affairs and Human Rights.