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THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – THIRD SESSION (2024)

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

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

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 FEB 2024	DAY: WED
TABLED BY:	Hon George Murugan, MP Chairperson, JLAC
CLERK AT THE TABLE:	Miriam modo

CLERK'S CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY 2024

## TABLE OF CONTENTS

Table of Contents .....	1
LIST OF ABBREVIATIONS AND ACRONYMS .....	2
ANNEXURES .....	3
CHAIRPERSON'S FOREWORD .....	4
CHAPTER ONE .....	7
1 Preface .....	7
1.1 Establishment of the Committee .....	7
1.2 Mandate of the Committee .....	8
1.3 Committee Membership .....	10
1.4 Committee Secretariat .....	11
CHAPTER TWO .....	12
2 Overview of the Statute Law (Miscellaneous Amendments) (No.2) Bill ( <i>National Assembly Bill No. 68 of 2023</i> ) .....	12
2.1 Background .....	12
2.2 Summary of Legal Provisions .....	12
CHAPTER THREE .....	14
3 Public Participation and Stakeholder Engagement on the Bill .....	14
3.1 Legal Framework on Public Participation .....	14
3.2 Memoranda received on the Bill .....	14
CHAPTER FOUR .....	30
4 Committee Observations .....	30
CHAPTER FIVE .....	32
5 Committee Recommendations .....	32
CHAPTER SIX .....	33
6 Schedule of Amendments .....	33
ANNEXURES .....	37

## LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Attorney-General
CRJ	-	Chief Registrar of the Judiciary
CSs	-	Cabinet Secretaries
DOJ	-	Department of Justice
JSC	-	Judicial Service Commission
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
OAG	-	Office of the Attorney-General
ODM	-	Orange Democratic Movement
PCs	-	Practising Certificates
PPDT	-	Political Parties Dispute Tribunal
PSs	-	Principal Secretaries
PSC	-	Public Service Commission
ODPP	-	Office of the Director of Public Prosecutions
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

## **ANNEXURES**

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: Statute Law (Miscellaneous Amendments) (No.2) Bill, 2023
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
- Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to submit memoranda on the Bill
- Annexure 6: Letters from the Clerk of the National Assembly inviting stakeholders to attend the public participation forums
- Annexure 7: Memoranda by Stakeholders
- Annexure 8: Reports of other Departmental Committees on the Bill

## CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 68 of 2023) which was published on 30<sup>th</sup> October 2023.

The Bill seeks to make various amendments to the following seventeen (17) statutes—

- 1 The Oaths and Statutory Declarations Act (Cap15)
- 2 The Advocates Act (Cap 16)
- 3 The Notaries Public Act (Cap 17)
- 4 The Civil Procedure Act (Cap 21)
- 5 The Public Holidays Act (Cap 110)
- 6 The Trustees (Perpetual Succession) Act (Cap 164)
- 7 The Industrial Training Act (Cap 237)
- 8 The Traffic Act (Cap 403)
- 9 The Sexual Offences Act (No. 3 of 2006)
- 10 The Employment Act (No. 11 of 2007)
- 11 The Veterinary Surgeons and Veterinary Paraprofessionals Act (No. 29 of 2011)
- 12 The Public Finance Management Act (No. 18 of 2012)
- 13 The Universities Act (No. 42 of 2012)
- 14 The Office of the Attorney General Act (No. 49 of 2012)
- 15 The Civil Aviation Act (No. 21 of 2013)
- 16 The Value Added Tax Act (No. 35 of 2013)
- 17 The Privatization Act (No. 11 of 2023)

The introduction of the Bill is in keeping with the practice of making various amendments which do not merit the publication of separate Bills. The Bill was read for a First Time in the House on 15<sup>th</sup> November 2023 and pursuant to Standing Order 127(1) committed to respective Seventeen (17) Departmental Committees of the National Assembly for consideration as follows:

<b>SCHEDULE</b>	
<p>i. <b>The Oaths and Statutory Declarations Act (Cap. 15)</b></p> <p>ii. <b>The Advocates Act (Cap. 16)</b></p> <p>iii. <b>The Notaries Public Act (Cap. 17)</b></p> <p>iv. <b>The Civil Procedure Act (Cap. 21)</b></p> <p>v. <b>The Sexual Offences Act, 2006 (No. 3 of 2006)</b></p> <p>vi. <b>The Office of the Attorney-General Act, 2021 (No. 49 of 2012)</b></p>	<p><b>Departmental Committee on Justice and Legal Affairs</b></p>
<p>vii. <b>The Value Added Tax Act, 2013 (No. 35 of 2013)</b></p> <p>viii. <b>The Privatization Act, 2023 (No. 11 of 2023)</b></p> <p>ix. <b>The Public Finance Management Act, 2012 (No. 18 of 2012)</b></p>	<p><b>Departmental Committee on Finance and National Planning</b></p>

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 68 of 2023)

x.	<b>The Traffic Act (Cap. 403)</b>	<b>Departmental Committee on</b>
xi.	<b>The Civil Aviation Act, 2013 (No. 21 of 2013)</b>	<b>Transport and Infrastructure</b>
xii.	<b>The Public Holidays Act (Cap. 110)</b>	<b>Departmental Committee on</b>
		<b>Administration and Internal Affairs</b>
xiii.	<b>The Trustees (Perpetual Success) Act (Cap. 164)</b>	<b>Departmental Committee on Social</b>
		<b>Protection</b>
xiv.	<b>The Industrial Training Act (Cap. 237)</b>	<b>Departmental Committee on</b>
		<b>Labour</b>
xv.	<b>The Employment Act, 2007 (No. 11 of 2007)</b>	<b>Departmental Committee on</b>
		<b>Labour</b>
xvi.	<b>The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)</b>	<b>Departmental Committee on</b>
		<b>Agriculture and Livestock</b>
xvii.	<b>The Universities Act, 2012 (No. 42 of 2012)</b>	<b>Departmental Committee on</b>
		<b>Education</b>

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Wednesday 22<sup>nd</sup> November 2023 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee vide letter Ref. No. *NA/DDC/JLAC/2023/148* dated 30<sup>th</sup> November 2023 invited key stakeholders to submit views on the Bill and attend a public participation forum on Tuesday 5<sup>th</sup> December 2023. The memoranda were to be received on or before Friday 1<sup>st</sup> December 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received six (6) memoranda.

The AG, the Judiciary, the ODPP, the LSK, the PSC, and Ashley Kerubo gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that the proposed amendments to the Oaths and Statutory Declarations Act (Cap. 15); the Advocates Act (Cap. 16); the Notaries Public Act (Cap 17); and the Sexual Offences Act, 2006 (No. 3 of 2006) are minor in nature and seek to align references to the Chief Registrar of the Judiciary and other Registrars with the terms currently subsisting within the Judiciary;

The Committee further noted that the proposed amendments to the Civil Procedure Act (Cap. 21) seek to reduce the membership of the Rules Committee of the Judiciary which affects the level of participation of the LSK in the formulation of Rules affecting legal practitioners.

With regard to the proposed amendments to the **Trustees (Perpetual Succession) Act (Cap. 164)**, the Committee observed that the proposed shift of the supervision of the registration of Trusts from the

Ministry of Lands to the Registrar of Companies places the registration of Trusts within the appropriate government agency and shall streamline process for the benefit of applicants.

Additionally, the Committee noted that though the amendments proposed with regard to the Office of the Attorney-General Act, 2012 (No. 49 of 2012) are properly before the House for consideration and enactment, if the House so decides, the scope of proposed additional amendments to ensure the financial autonomy of the Office and empower it to recruit, appoint, promote and discipline its staff was wide and not suited for inclusion in the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023.

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

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Statute Law (Miscellaneous Amendments) (No. 2) Bill (*National Assembly Bill No. 68 of 2023*).

It is my pleasure to report that the Committee has considered the Statute Law (Miscellaneous Amendments) (No. 2) Bill (*National Assembly Bill No. 68 of 2023*) and have the honour to report back to the National Assembly with the recommendation that the House—

- (1) approves the provisions of the Bill relating to the Oaths and Statutory Declarations Act, Cap 15; the Advocates Act, Cap 16; the Notaries Public Act, Cap 17; the Civil Procedure Act, Cap 21 and the Sexual Offences Act, 2006 **without amendment**;
- (2) approves the provisions of the Bill relating to the Oaths and Statutory Declarations Act, Cap 15; the Advocates Act, Cap 16; the Notaries Public Act, Cap 17; and the Sexual Offences Act, 2006 **without amendment**;
- (3) approves the provisions of the Bill relating to the Office of the Attorney General Act, 2012 **with amendments** to provide for the autonomy of the Office and its power to recruit, appoint, promote and discipline its Officers;
- (4) deletes the provisions of the Bill relating to the Civil Procedure Act, Cap 21; and
- (5) approves the recommendations contained in the Reports of the other Departmental Committees attached as Annexure 8 to this Report.

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

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) (No.2) Bill (*National Assembly Bill No. 68 of 2023*)

## CHAPTER ONE

### 1 PREFACE

#### 1.1 Establishment of the Committee

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

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. To study and review all legislation referred to it;*
- v. To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii. To examine treaties, agreements and conventions;*
- ix. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. To examine any questions raised by Members on a matter within its mandate.*

## 1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider<sup>1</sup>:-
  - a) The Judiciary;
  - b) Tribunals;
  - c) Access to Justice;
  - d) Public prosecutions;
  - e) Ethics, Integrity and Anti-corruption;
  - f) Correctional services;
  - g) Community service orders and witness protection;
  - h) Constitutional Affairs;
  - i) Sovereign immunity;
  - j) Elections including referenda;
  - k) Human rights;
  - l) Political parties; and
  - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
  - a) State Department of Correctional Services;
  - b) State Law Office and Department of Justice;
  - c) The Judiciary;
  - d) Judicial Service Commission;
  - e) Office of the Director of Public Prosecutions;
  - f) Ethics and Anti-Corruption Commission;
  - g) Independent Electoral and Boundaries Commission;
  - h) Commission on Administrative Justice;
  - i) Office of the Registrar of Political Parties;
  - j) Witness Protection Agency;
  - k) Kenya National Commission on Human Rights;

<sup>1</sup> National Assembly Standing Orders, 6<sup>th</sup> Edition.

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

### 1.3 Committee Membership

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

#### **Chairperson**

Hon. Murugara George Gitonga, MP  
Tharaka Constituency

#### **UDA Party**

#### **Vice-Chairperson**

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

#### **MCCP Party**

#### **Members**

Hon. Maalim Farah, MP  
Dadaab Constituency  
**WDM-Kenya**

Hon. Francis Kajwang' Tom Joseph, MP  
Ruaraka Constituency  
**ODM Party**

Hon. Junet Mohamed, CBS, MP  
Suna East Constituency  
**ODM Party**

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

Hon. Onyiego Silvanus Osoro, CBS, MP  
South Mugirango Constituency  
**UDA Party**

Hon. Muchira Michael Mwangi, MP  
Ol Jorok Constituency  
**UDA Party**

Hon. Makali John Okwisia, MP  
Kanduyi Constituency  
**FORD-Kenya**

Hon. Muriu Wakili Edward, MP  
Gatanga Constituency  
**UDA Party**

Hon. Maina Jane Njeri, MP  
Kirinyaga (CWR)  
**UDA Party**

Hon. Gichohi Kaguchia John Philip, MP  
Mukurweini Constituency  
**UDA Party**

Hon. Mogaka Stephen M, MP  
West Mugirango Constituency  
**Jubilee Party**

Hon. Aden Daud, EBS, MP  
Wajir East Constituency  
**Jubilee Party**

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

#### 1.4 Committee Secretariat

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

Mr. Douglas Katho  
**Clerk Assistant I /Head of Secretariat**

Mr. Ronald Walala  
**Senior Legal Counsel**

Ms. Vivienne Ogega  
**Research Officer III**

Mr. Stanley Lagat  
**Senior Serjeant-At-Arms**

Ms. Faith Jully  
**Public Communication Officer III**

Ms. Winnie Kiziah  
**Media Relations Officer II**

Mr. Antony Kariuki  
**Serjeant-At-Arms**

Mr. Omar Abdirahim  
**Fiscal Analyst II**

Ms. Fridah Ngari  
**Media Relations Officer III**

Ms. Jael Ayiego  
**Clerk Assistant III**

Mr. Peter Mutethia  
**Audio Officer III**

Mr. Abdikafar Abdi  
**Clerk Assistant III**

Mr. Alex Amwatta  
**Hansard Reporter III**

Mr. Alvin Ochieng'  
**Research Officer III**

Mr. Silas Opanga  
**Hansard Reporter III**

## CHAPTER TWO

### 2 OVERVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL (*NATIONAL ASSEMBLY BILL NO. 68 OF 2023*)

#### 2.1 Background

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

#### 2.2 Summary of Legal Provisions

7. The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023 seeks to amend various provisions of the law, including those in **seven (7) statutes** falling under the mandate of the Justice and Legal Affairs Committee. The Bill seeks to—
  - a) amend sections 3 and 12 of the **Oaths and Statutory Declarations Act (Cap. 15)** to provide that an advocate who has been appointed as a commissioner for oaths shall sign the roll kept by the Chief Registrar of the Judiciary and that the Registrar or Deputy Registrar of a superior court or subordinate court may administer an oath or affirmation or take an affidavit or statutory declaration under the Act.
  - b) amend section 2 of the **Advocates Act (Cap. 16)** to provide that the Registrar responsible for keeping the Roll of Advocates shall be the Chief Registrar of the Judiciary. Further, the Bill proposes to amend section 81 of the Act to provide that the Council of the Society may, with the approval of the Chief Justice, make rules for the admission of advocates.
  - c) amend sections 4 and 5 of the **Notaries Public Act (Cap 17)** to provide that the Chief Registrar of the Judiciary shall be responsible for enrolling notaries public in the book kept for that purpose, granting new certificates to newly enrolled notaries public; and removing from the roll any person whose appointment as a notary public has been revoked under the Act.
  - d) amend section 81 of the **Civil Procedure Act (Cap. 21)** to reduce the number of members nominated by the Law Society of Kenya to the Rules Committee from

eight to three to improve decision-making within the and reduce the cost of facilitating the work of the Committee.

- e) amend the **Trustees (Perpetual Succession) Act (Cap. 164)** to empower the Registrar of Companies to register trusts and issue Certificates of Incorporation of Trusts; process applications for incorporation; prescribe the form of an application; keep and maintain a register of trusts; conduct searches; and prescribe Regulations. The Bill further seeks to amend the Act to prescribe the form of application for registering a trust and the fees chargeable for incorporating a trust (Kshs. 10,000/-) and conducting a search (Kshs. 500/-)
- f) amend sections 39(13) of the **Sexual Offences Act, 2006 (No. 3 of 2006)** to replace the Registrar of the High Court with the Chief Registrar of the Judiciary as the custodian of the register of convicted sexual offenders.
- g) amend sections 13, 21, and 22 of the **Office of the Attorney-General Act, 2012 (No. 49 of 2012)** to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney General as an Independent Office. The amendment removes the reliance of the Office on the advice and recommendations of the Public Service Commission in the appointment and remuneration of State Counsel.

## CHAPTER THREE

### 3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

#### 3.1 Legal Framework on Public Participation

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

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

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

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

*(a) inviting submission of memoranda;*

*(b) holding public hearings;*

*(c) consulting relevant stakeholders in a sector; and*

*(d) consulting experts on technical subjects.*

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

#### 3.2 Memoranda received on the Bill

11. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Wednesday 22<sup>nd</sup> November 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter Ref. No. NA/DDC/JLAC/2023/148 dated 30<sup>th</sup> November, 2023 invited key stakeholders to submit views on the Bill and attend the public participation forum on Tuesday 5<sup>th</sup> December 2023.

12. Furthermore, the AG and the PSC appeared before the Committee to submit additional views on Tuesday 13<sup>th</sup> February 2024 and Wednesday 14<sup>th</sup> February 2024, respectively.

13. To this end, the Committee received six memoranda from the AG, the Judiciary, the LSK, the ODPP, the PSC, and Ashley Kerubo. The memoranda are annexed to this report as **Annexure 7**.

14. The Committee received Memoranda from the AG, the Judiciary, the LSK, the ODPP, the PSC and Ashley Kerubo which were largely in agreement with the proposals referred to the Committees. However, the Committee received reservations and proposals from the PSC

relating to the proposed amendments to the following six (6) Acts of Parliament. They submitted as follows:

### **The Oaths and Statutory Declarations Act (Cap15)**

15. The **Judiciary** submitted, in support of the proposal, that upon the promulgation of the Constitution of Kenya 2010, the office of the Chief Registrar of the Judiciary was established under Article 161(2)(c) of the Constitution and mandated to serve as the chief administrator and accounting officer of the Judiciary tasked with the management of affairs of Advocates in exercise of the powers bestowed by the Act. However, these constitutional changes have yet to be effected in the Act which still bestows the powers to the Registrar of the High Court under the old constitutional regime.
16. Furthermore, the Judiciary noted that Section 12 of the Act excludes the Registrar and Deputy Registrars of the Supreme Court, Court of Appeal and Small Claims Court from among persons who can administer oaths. It, therefore, supported the proposal and proposed an additional provision to provide that those who have served as judicial officers before exiting the Judiciary should not have to wait for three years before they can be appointed as Commissioners for Oaths.
17. The Judiciary noted that currently, the LSK does not allow Magistrates who exit the Judiciary following retirement or resignation to be appointed as Commissioners for Oaths until they have taken out three annual practising certificates.

### **Committee Observation**

18. The Committee did not agree with the submissions of the Judiciary on the procedures applicable to the designation of Magistrates as Commissioners for Oaths.

### **The Advocates Act (Cap 16)**

19. The **Judiciary** submitted, in support of the proposal, that upon the promulgation of the Constitution of Kenya 2010, the office of the Chief Registrar of the Judiciary was established under Article 161(2)(c) of the Constitution and mandated to serve as the chief administrator and accounting officer of the Judiciary tasked with the management of affairs of Advocates in exercise of the powers bestowed by the Act. However, these constitutional changes have

yet to be effected in the Act which still bestows the powers to the Registrar of the High Court under the old constitutional regime.

20. Moreover, the Judiciary noted that the current provision of section 15 of the Act bestows upon the Chief Justice the power to conduct the session for admission of advocates in the form of judicial proceedings. Thus, the Judiciary proposed that the power to make rules governing the admission of advocates be bestowed upon the Chief Justice and not the Council of the LSK by introducing a new subsection as follows:

*“81(4) The Chief Justice may make rules with regard to the admission of advocates under Section 15.”*

21. The Judiciary also stated that the above subsection could be introduced as a new subsection (6) under Section 15.

22. The **ODPP** submitted that since the CRJ has been, in practice, the one receiving applications for and issuing PCs to newly admitted advocates and practising advocates who renew their PCs yearly it was in support of the proposal. Furthermore, it noted that newly admitted advocates take oath before the Chief Justice as facilitated by the CRJ and sign the roll of advocates in the presence of the CRJ who also adds his/her signature as a witness. Therefore, the proposed amendments seek to align the law to the ongoing procedure.

23. The **KMK Law LLP** vide letter reference No. *DG003/RF 215/20* dated 18<sup>th</sup> December 2023 submitted that the Committee on Senior Counsel has made it difficult for qualified advocates to apply for the conferment of the rank of Senior Council. It stated that being the President of the LSK does not automatically qualify one to be conferred the rank of Senior Counsel. It attributed this to the fact that in 2003 the then President during the investigations against Chief Justice Bernard Chunga, appointed and gazetted all previous LSK Chairpersons as Senior Counsels, some of whom have been condemned by the Supreme Court as persons of questionable character.

24. It also noted that the Committee on Senior Counsel has over time conferred the rank of Senior Counsel to unqualified persons such as politicians having not practised law contrary to the qualifications stipulated in Rule 7 of the Advocates (Senior Counsel Conferment and Privileges) Rules. Hence, the need for the proposed amendments to the Act.

25. Therefore, it stated that there is need for the Senior Counsel Committee to be anchored in the Advocates Act, Cap 16 to restructure its composition and grant fair representation. It proposed an amendment to Section 17 of the Act by introducing a new sub-section as follows:

*“(4) There is established a Committee to be known as the Committee on Senior Counsel which shall consist of:*

- (a) a judge of the Supreme Court nominated by the Chief Justice;*
- (b) a Judge of the Court of Appeal nominated by the President of the Court of Appeal;*
- (c) a judge of the High Court nominated by the Kenya Magistrates and Judges Association;*
- (d) the Attorney General;*
- (e) the Chairperson of the Society; and*
- (f) two advocates who shall have at least five years’ experience in practice, elected by the Society.”*

26. Additionally, it submitted that the Committee on Senior Counsel misuses and misapplies the legal provision on advertisement of applications for the conferment of Senior Counsel and has failed to put out an advertisement for the last three years.

27. Moreover, it stated that failure to advertise is being used as a gatekeeper preventing qualified persons from applying for conferment. In its view, the legal provision is insufficient, and prone to abuse and advertisement should not be at the discretion of the Committee, but instead be anchored in law. It proposed amendment of Section 17 to introduce a new sub-section as follows:

*“The Law Society of Kenya Secretariat shall cause to be advertised, at least thirty days before the thirty-first of March in each year, publish in the electronic media and send to the members of the Society, a notice inviting applications from persons who qualify for conferment of the rank of Senior Counsel.”*

### **Committee Observation**

28. The Committee did not agree with the proposal by the Judiciary that the Chief Justice be empowered to make rules with regard to the admission of advocates. The current section 81 of the Advocates Act already requires the LSK Council to make the rules **with the approval of the Chief Justice**. The provision contains adequate safeguards.

### **The Notaries Public Act (Cap 17)**

29. The **Judiciary** submitted, in support of the proposal, that upon the promulgation of the Constitution of Kenya 2010, the office of the Chief Registrar of the Judiciary was established under Article 161(2)(c) of the Constitution and mandated to serve as the chief administrator and accounting officer of the Judiciary tasked with the management of affairs of Advocates in exercise of the powers bestowed by the Act. However, these constitutional changes have yet to be effected in the Act which still bestows the powers to the Registrar of the High Court under the old constitutional regime.

30. Additionally, the Judiciary proposed the addition of a new section allowing magistrates and judicial officers to perform material acts and that they be exempt from annual notarial certificates as follows:

“5A. Powers of magistrates and certain court officers to perform notarial acts

(1) A magistrate, Kadhi, the Registrar or Deputy Registrar of a Superior Court or a Subordinate Court may perform notarial acts which might lawfully be performed by a Notary Public appointed under Section 2 of this Act.

(2) They are not to take annual certificates.”

31. The **ODPP** stated that the proposal is in line with the current constitutional regime as all notaries public take oath before the CRJ who is the chief administrator of the Judiciary as enshrined in Article 161 of the Constitution. Further, that the Chief Justice is the appointing authority of all advocates who wish to perform the duties of a Notary Public as provided for in Section 2 of the Notaries Public Act, Cap 17.

### **Committee Observation**

32. The Committee did not agree with the submissions of the Judiciary on the procedures applicable to the designation of Magistrates Notaries Public.

### **The Civil Procedure Act (Cap 21)**

33. The **Judiciary** and the **ODPP** supported the proposed amendments to the Act. The ODPP noted that the proposal will enable prompt and efficient decision-making processes, especially in the issuance of practice directions.

### **Committee Observation**

34. The Committee noted that the reduction of the members representing the LSK in the Rules Committee would negatively affect the interests of legal practitioners.

### **The Trustees (Perpetual Succession) Act (Cap 164)**

35. The **ODPP** submitted that the proposal is in harmony with the Companies Act, 2015 and will allow for the efficient delivery of services.

### **The Sexual Offences Act (No. 3 of 2006)**

36. The **Judiciary** submitted, in support of the proposal, that upon the promulgation of the Constitution of Kenya 2010, the office of the Chief Registrar of the Judiciary was established under Article 161(2)(c) of the Constitution and mandated to serve as the chief administrator and accounting officer of the Judiciary. However, these constitutional changes have yet to be effected in the Act which still bestows administrative powers to the Registrar of the High Court under the old constitutional regime. Hence, the Judiciary was in support of the proposed amendments to the Act.

37. The **ODPP** stated that the proposed amendment aligns with the constitutional mandate of the CRJ as the chief administrator of the Judiciary under Article 161 of the Constitution. Moreover, it noted that the CRJ is in charge of all courts within the Republic of Kenya and, therefore, the amendment will ensure harmony in the prosecution and handling of sexual offences and related matters.

### **The Office of the Attorney General Act (No. 49 of 2012)**

38. The AG supported the proposed amendments by stating:

- a) That the current structural design of the Office of the AG and the Department of Justice within the Civil Service hinders its ability to recruit and retain experienced State Counsel to support its operations and effectively implement its mandate. This is attributed to the fact that the Public Service Commission has put in place standardized salaries for officers within the public service across the Executive despite the specialized nature of the operations of the OAG and DOJ.

- b) That the specialized nature of the OAG and the DOJ, as a constitutional office providing legal services for the government, requires a unique experiential capability of staff that can only be realized through the proposed amendments.
- c) That the OAG and DOJ being similar to a law firm, require that the AG be given wider powers to recruit, promote, incentivize, and discipline. This will enable the AG to authoritatively manage all officers. Lawyer management utilizes tools crucial for office administration and motivating staff such as bonuses, salaries, reassigning authority and upgrading or downgrading partners' status among others.
- d) That empowering the OAG with the aforementioned powers will allow it to properly manage Deputy Solicitors General and State Counsel and prevent the poaching of skilled officers by other entities after having received invaluable apprenticeship at the OAG.
- e) That the substantial increase in complex constitutional and human rights litigation and commercial litigation requires adequate staffing to address the cases. Therefore, in light of the discharge of the role of principal legal advisor to the government, the proposal seeks to ensure improved handling capacity at the OAG.
- f) That the powers of the Public Service Commission are subject to the Constitution and legislation. Consequently, the power to recruit, appoint or promote can be varied by legislation such as the OAG Act, 2012 which limits the role of the Public Service Commission to recommend when consulted with regard to the appointment of State Counsel.
- g) That under Article 234(2) of the Constitution, as read together with the provisions of the OAG Act, 2012 and the Public Service Commission Act, 2017, the AG has the ultimate authority to establish such directorates, divisions, or departments and the authority to further appoint, promote and transfer State Counsel subject to consultation and recommendation of the Public Service Commission. Further, the AG noted that the Public Service Commission has, however, taken over the functions of the AG leading to the mismanagement of the human resources at the State Law Office. This has resulted in severe understaffing and poor succession management. Hence, it was the AG's view that the proposed amendments will cure the cited challenges.

- h) That according to Section 6(5) of the OAG Act, 2012, the AG should not be under the direction or control of any person or authority in the exercise of the powers and performance of functions of the Office.
  - i) That under Article 252(1)(c) of the Constitution, each commission and each holder of an independent office has the authority to recruit its staff.
  - j) That it recommends that the OAG, 2012 be amended to provide for the establishment of an Advisory Board of the OAG.
39. The LSK proposed additional amendments premised on the fact that members of the OAG are primarily members of the LSK whose complaints regarding delays in recruitment of State Counsel, their promotions and deployment, handling of disciplinary matters, capacity-building and training, and the improvement of the terms of service have been previously submitted to the LSK. It also noted that the aforementioned challenges have led to the demotivation of State Counsels with many highly experienced and qualified personnel leaving to seek greener pastures outside the State Law Office and Government. It added that this has greatly affected the quality of the work of the OAG and exposed the Government to severe legal risks.
40. The LSK proposed the following additional amendments:
- a) Under Section 2(1) by:
    - i. deleting the words “Public Service Commission” and substituting therefor the word “Office” in the definition of subordinate officer;
    - ii. inserting the following new definition in proper alphabetical sequence:
 

*“ ‘Advisory Board’ means the advisory board established under Section 20A(1) ”*
  - b) Under Section 9(2) by deleting the words “Public Service Commission” and substituting therefor the words “Advisory Board”
  - c) Under Section 9(5)(d) by deleting the expression “Article 234” and substituting therefor the expression “Section 20B”
  - d) Under Section 13 by deleting the words “Public Service Commission” and substituting therefor the words “Advisory Board”
  - e) New sections immediately under Section 20:

“20A. (1) There is established an advisory board to be known as the Advisory Board to the Office of the Attorney-General.

(2) The Advisory Board shall comprise—

- (a) the Attorney-General;
- (b) a judge of the High Court nominated by the Chief Justice;
- (c) the Principal Secretary to the National Treasury;
- (d) the Principal Secretary in the State Department responsible for matters relating to the public service;
- (e) the president of the Law Society of Kenya;
- (f) the Chairperson, Kenya National Commission on Human Rights;
- (g) the Chairperson of the Council of the Institute of Human Resource Management; and
- (h) the Solicitor-General, who shall be the secretary to the Advisory Board.

20B. (1) The Advisory Board shall advise the Attorney-General on—

- (a) the recruitment and appointment of State Counsel, other officers and other members of staff;
- (b) promotions;
- (c) transfers and deployments;
- (d) discipline; and
- (e) any other matter that may be referred to the Board by the Attorney-General.

(2) The Attorney General may co-opt into the Board persons whose knowledge and expertise it requires.

20C. (1) The Advisory Board shall meet at least four times in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(2) Unless two-thirds of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(3) Subject to the provisions of this Act, the Advisory Board shall regulate its own procedure.

20D. *The quorum at the meeting of the Advisory Board shall be four members.*

20E. *The Attorney-General shall convene and preside over the meetings of the Advisory Board or, in the absence of the Attorney-General, a member of the Board elected by the members present from among their number.*

20F. *Any matter before the Advisory Board shall be decided by a majority of the members present and voting and in case of an equality of votes, the person presiding shall have a casting vote.*

20G. *The members of the Advisory Board shall be paid such allowances as the Cabinet Secretary responsible for matters relating to finance, in consultation with the Attorney-General, shall approve upon the advice of the Salaries and Remuneration Commission.*

20H. (1) *Any member of the Advisory Board or a person present at a meeting of the Board who has any interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and shall be disqualified from participating in the deliberations of the Board in respect of that matter, unless the Board decides otherwise.*

(2) *No member of the Advisory Board shall trade with the Office.*

20I. *The proceedings of the Advisory Board shall not be invalidated by reason of a vacancy among the members.*

f) Under Section 21(1) by deleting the words “Public Service Commission” and substituting therefor “Advisory Board”;

g) Repealing Section 22 and substituting therefor the following new section:

*“22. (1) The State Counsel, officers and other staff appointed under this Act shall service on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission, determine.*

*(2) The terms and conditions determined under this section shall commence not later than one year after the commencement of this Act.*

*(3) The Attorney-General may, in consultation with the Salaries and Remuneration Commission, make Regulations relating to the payment of remuneration, emoluments and other benefits to State Counsel, officers and other staff of the Office.”*

h) New section immediately after Section 25:

*"25A. (1) Parliament shall allocate funds to the Office in accordance with Article 249(1) of the Constitution.*

*(2) Despite the generality of subsection (1), the funds of the Office shall consist of—*

*(a) monies allocated by Parliament;*

*(b) monies or assets as may accrue to the Office in the course of the exercise of its powers or the performance of its functions; and*

*(c) monies from any other lawful source provided, donated or granted to the Office.*

*25B. The financial year of the Office shall be the period of twelve months commencing on the 1<sup>st</sup> July in each year and ending on the 30<sup>th</sup> June in the following year.*

*25C. (1) At least three months before the commencement of each financial year, the Attorney-General shall cause to be prepared the estimates of the revenue and expenditure of the Office for that year for approval by the National Assembly.*

*(2) The annual estimates shall make provision for all the estimated expenditure of the Office for the financial year concerned and, in particular, shall provide for—*

*(a) the payment of the salaries, allowances and other charges in respect of the staff of the Office;*

*(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Office;*

*(c) the maintenance of the buildings and grounds of the Office;*

*(d) the funding of training of, and research and development by, State Counsels, officers and other staff of the Office; and*

*(e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Attorney-General may think fit.*

*25D. (1) The Attorney-General shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Office.*

**Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 68 of 2023)**

(2) *Within a period of three months after the end of each financial year, the Attorney-General shall cause to be submitted to the Auditor-General the accounts of the Office in respect of that year together with a—*

(a) *statement of the income and expenditure of the Office during that year; and*

(b) *statement of the assets and liabilities of the Office on the last day of that financial year.*

(3) *The accounts of the Office shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.*

(4) *The written laws and Regulations relating to public financial management shall apply to the funds of the Office.*

25E. *The Attorney-General shall cause to be opened and maintained such bank accounts with banks that are regulated by the Central bank of Kenya as are necessary for the exercise of the functions of the Office.*

i) *Deleting Section 28;*

j) *New section immediately after Section 28:*

*“28A. (1) There shall be a seal of the Office which shall be such device as the Attorney-General shall determine.*

*(2) The seal of the Office shall be kept in the custody of the Attorney-General or such person as the Attorney-General may authorise in that regard.*

*(3) The seal of the Office shall be used in accordance with the orders of the Attorney-General.*

*(4) The seal of the Office, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorization of the Attorney-General in respect of the seal under this section shall be presumed to have been duly given.*

k) *New section immediately after Section 33:*

*“33A. (1) Any State Counsel, officer or member of staff employed and deployed by the Public Service Commission and serving in the Office immediately before the commencement of this Act shall—*

- (a) on the commencement of this Act, be deemed to have been employed and deployed in accordance with this Act;
- (b) retain any rights that have accrued or are accruing to him or her before the commencement of this Act;
- (c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this Act;
- (d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;
- (e) be deemed to have been employed in accordance with this Act for the purposes of any written law under which any rights accrued or were accruing to him or her under which he or she continues to contribute or by which any entitlement has been conferred; and
- (f) be deemed to be a State Counsel, officer or employee of the Office for the purposes of any superannuation scheme to which he or she is entitled to contribute.

33B. (1) The Attorney-General shall constitute an Implementation Committee consisting of State Counsels, officers and employees of the Office as may be necessary in the circumstances.

(2) The Implementation Committee shall—

- (a) be responsible for co-ordinating the formulation or facilitation of such things and matters that are required for the implementation of the provisions of this Act;
- (b) serve for a period of one year after the date of appointment;
- (c) submit to the Attorney-General, at least once in every two months, a report on the progress achieved in the implementation of the provisions of this act; and
- (d) in the performance of its functions, regulate its own procedure.

(3) *The members of the Implementation Committee shall be paid such allowances as the Attorney-General may, on the advice of the Salaries and Remuneration Commission, determine.*

l) Under the Schedule in paragraph 1(b) deleting the words “Public Service Code of Conduct and the”.

41. The **ODPP** submitted that it supports the proposal in so far as it aims to create harmony with the relevant statute for the AG’s office.

42. The **PSC** opposed the proposed amendments by stating:

- a) That the amendments are unconstitutional to the extent that it is not clear how the involvement of the PSC in the recruitment, appointment or promotion of Deputy Solicitors General and State Counsels presents inconsistencies in the operational framework of the Office of the AG as indicated in the Memorandum of Objects and Reasons of the Bill.
- b) That for the long time that the Office of the AG has been in existence, Solicitors General, their Deputies and State Counsels have been recruited, appointed or promoted by the PSC with no complaint raised on the alleged inconsistencies in the operational framework of the Office.
- c) That Article 156 of the Constitution does not establish the Office of the AG as an independent office nor is the AG listed as one of the independent constitutional offices in Chapter 15 as alleged in the Memorandum of Objects and Reasons of the Bill. Therefore, the Memorandum of Objects and Reasons is misleading and should not be used as a basis for amendment of the Act.
- d) That the AG, as a member of the Cabinet, and his/her staff should be subject to similar recruitment, appointment or promotion procedures undertaken by the PSC as his/her counterparts in Cabinet. This is because removing them from the jurisdiction of the PSC shall be unconstitutional.
- e) That the AG, as the Chief Legal Advisor of the Government, cannot operate in isolation from the Executive neither can it be delinked and removed from the jurisdiction of the PSC and from the legal framework that regulates the public service.

- f) That the amendments will inherently create room for abuse of power as they give the AG unfettered power to appoint, promote and determine terms and conditions of service of Deputy Solicitors General and State Counsels.
- g) That even the ODPP which is constitutionally independent as provided in Article 157(10) of the Constitution has a Board mandated to advise the ODPP on the management of the human resource function established under Section 16 of the ODPP Act, 2013.
- h) That even H E the President has no power to recruit public officers apart from CSs whom he can only appoint with the approval of Parliament and PSs whom he appoints on the recommendation of the PSC.
- i) That the amendments will weaken the safeguards for the appointment of all persons in the public service enshrined in the law by the Kenyan people.
- j) That the amendments are an affront to the Constitution which at Article 234(2)(a) tasks the PSC the power to appoint persons to hold office in the public service. Further, that the proposed amendments may create a domino effect for other ministries/agencies to seek legislation to give them power to recruit staff for their offices.
- k) That it is not the intention of the Kenyan people to allow State officers to directly recruit public officers in their offices. Further, that Clause 13.6 of the Final Report of the Constitution of Kenya Review Commission (CKRC) expressly states that:
 

*“all public service employees should be appointed by the Public Service Commission.”*
- l) That they are in bad faith as evidenced by the fact that the AG has failed to comply with the law as it is currently subsisting. And that laws ought to be made for the public good, for posterity and not for short-term purposes.
- m) That the proposed amendment to Section 21(2) of the Act is a violation of Article 234(2)(g) of the Constitution on the function of the PSC to review and make recommendations to the national government in respect of conditions of service, code of conduct and qualification of officers in the public service.
- n) That the constitutional powers of the PSC cannot be removed and/or undermined through legislation.

### **Committee Observation**

43. The Committee agreed with the view of the Attorney General and the LSK on the exclusive power of the House to legislate, including on the manner in which the staff of the Office of the Attorney General may be recruited and the need to raise the status and profile of the State Law Office. The Committee also noted particular merit in the submission by the Public Service Commission that the power to recruit, appoint, promote and discipline public officers within the Office of the AG should not be left entirely to the Attorney-General.
44. Consequently, the Committee was of the view that any powers given to the Attorney General with regard to recruitment, appointment, promotion and discipline of staff would have to be subjected to an appropriate Advisory Board to ensure adherence to established human resource principles and the standards required within the public service.

## CHAPTER FOUR

### 4 COMMITTEE OBSERVATIONS

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

- a) The proposed amendments to the Oaths and Statutory Declarations Act (Cap. 15); the Advocates Act (Cap. 16); the Notaries Public Act (Cap 17); the Sexual Offences Act, 2006 (No. 3 of 2006) are minor in nature and seek to align references to the Chief Registrar of the Judiciary and other Registrars with the terms currently subsisting within the Judiciary;
- b) The proposed amendments to the Civil Procedure Act (Cap. 21); and the Sexual Offences Act, 2006 (No. 3 of 2006) seek to reduce the membership of the Rules Committee of the Judiciary which shall streamline its operations and optimise its output;
- c) The proposed amendments to the Civil Procedure Act (Cap. 21) seek to reduce the membership of the Rules Committee of the Judiciary which affects the level of participation of the LSK in the formulation of Rules affecting legal practitioners.
- d) The proposed amendments to the **Trustees (Perpetual Succession) Act (Cap. 164)** seek to shift the supervision of the registration of Trusts from the Ministry of Lands to the Registrar of Companies. This places the registration of Trusts within the appropriate government agency and shall streamline the process for the benefit of applicants.
- a) The Office of the Attorney-General has seen an expansion of its responsibilities, including legal policy management, anti-corruption strategies, and oversight of legal sector institutions, under Executive Order No. 2 of 2023.
- b) The current legal landscape presents challenges for the OAG, such as increased involvement in international legal matters, constitutional litigation, and infrastructural projects, which strain its resources and capacity.
- c) The OAG currently operates at less than half of its approved staff establishment. Various departments within the OAG, notably the Government Transactions Division, operate with significantly fewer staff members than required, leading to increased workload and compromised service quality.

- d) There is a significant remuneration disparity between state counsel at the OAG and their counterparts in other public legal sector institutions which ultimately contributes to demotivation and loss of experienced staff. The OAG has lost 130 senior state counsel between January 2015 and December 2023 on account of poor remuneration and lack of career progression.
- e) The OAG & DOJ faces limitations in recruitment, promotion, and management of staff, partly due to its classification as a state department within the executive branch.
- f) The Constitution grants Parliament a wide legislative mandate that allows it to prescribe the manner in which certain categories of public officers may be recruited, appointed and promoted. The amendments proposed with regard to the Office of the Attorney-General Act, 2012 (No. 49 of 2012) are therefore properly before the House for consideration and enactment, if the House so decides.
- g) Any legislation that provides for the autonomy of the Office of the Attorney-General in recruitment, appointment, promotion and discipline of its staff must subject the functions to an Advisory Board.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

2. The Committee, having considered the Statute Law (Miscellaneous Amendments) (No. 2) Bill (*National Assembly No. 68 of 2023*) recommends that the House—
- a) approves the provisions of the Bill relating to the Oaths and Statutory Declarations Act, Cap 15; the Advocates Act, Cap 16; the Notaries Public Act, Cap 17; and the Sexual Offences Act, 2006 without amendment;
  - b) approves the provisions of the Bill relating to the Office of the Attorney General Act, 2012 with amendments as contained in the SCHEDULE to provide for the autonomy of the Office and its power to recruit, appoint, promote and discipline its Officers; and
  - c) deletes the provisions of the Bill relating to the Civil Procedure Act, Cap 21.

SIGNED.....



DATE.....

21.2.024

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

## CHAPTER SIX

### 6 SCHEDULE OF AMENDMENTS

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

4. **THAT**, the Schedule to the Bill be amended by—

(1) Deleting the proposed amendments to the **Civil Procedure Act (Cap. 21)**.

**Rationale:** the proposed amendments to the Civil Procedure Act (Cap. 21) seek to reduce the membership of the Rules Committee of the Judiciary which affects the level of participation of the LSK in the formulation of Rules affecting legal practitioners.

(2) Inserting the following new amendments in proper chronological sequence in the proposed amendments to the **Office of the Attorney General Act, 2012 (No. 49 of 2012)** by—

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Office of the Attorney General Act, 2012 (No. 49 of 2012)	s. 2	Delete the words “by the Public Service Commission” appearing immediately after the word “employed” in the definition “subordinate officer”;
		Insert the following new definition in proper alphabetical sequence—  “Advisory Board” means the advisory board established under section 20A(1);”
	s. 9(2)	Delete the words “Public Service Commission” appearing immediately after the words “recommended by the” and substitute therefor the words “Advisory Board”.
	s. 9(5)(d)	Delete the expression “Article 234 of the Constitution” appearing immediately after the words “Subject to” and substitute therefor the expression “Section 20B”.
	New	Insert the following new Part immediately after section 20—
		<b>PART IIA—ADVISORY BOARD OF THE OFFICE OF THE ATTORNEY-GENERAL</b>
		Advisory Board. 20A. (1) There is established board to be known as the Advisory Board to the Office of the Attorney-General.
		(2) The Board shall consist of—

			(a) the Attorney-General;
			(b) the principal secretary responsible for matters relating to the Public Service;
			(c) the principal secretary responsible for matters relating to Finance;
			(d) the Chairperson of the Public Service Commission or a representative designated in writing by the Chairperson;
			(e) the Chairperson of the Kenya National Commission on Human Rights or a representative designated in writing by the Chairperson; and
			(f) the Chairperson of the Council of the Institute of Human Resource Management or a representative designated in writing by the Chairperson; and
			(g) the President of the Law Society of Kenya or a representative designated in writing by the President.
			(2) The Attorney-General shall be the Chairperson of the Board.
			(3) The Solicitor-General shall be the secretary to the Board.
		Functions of the Advisory Board.	20B. (1) The Advisory Board shall advise the Attorney-General on—
			(a) recruitment and appointment of the deputy solicitors-general, state counsel and other members of staff of the Office;
			(b) promotion of state counsel and other members of staff of the Office;
			(c) discipline of deputy solicitors-general, state counsel and other members of staff of the Office;
			(d) remuneration of deputy solicitors-general, state counsel and other

			members of staff of the Office in consultation with the Salaries and Remuneration Commission; and
			(e) matters that may be referred to the Board by the Attorney-General.
		Remuneration of the Board.	20C. The members of the Board shall be paid such allowances as the Attorney-General, shall approve upon advise of the Salaries and Remuneration Commission.
		Meetings and quorum.	20D. (1) The Advisory Board shall meet at least four times in every financial year and not more than three months shall elapse between one meeting and the next meeting.
			(2) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.
			(3) The quorum at the meeting of the Advisory Board shall be five members.
			(4) The chairperson of the Board shall convene and preside over the meetings of the Board or in the absence of the chairperson, a member of the Board elected by the members present from among their number.
			(5) The proceedings of the Advisory Board shall not be invalidated by reason of a vacancy among the members
			(6) A member of the Board or a person present at a meeting of the Board who has interest in a matter for consideration by the Board or by the Office shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board or the office in respect of that matter, unless the Board or office decides otherwise.
	s. 21(1)	Delete the words "Public Service Commission" appearing immediately after the words "recommendation of the" and substitute therefor the words "Advisory Board".	
	s. 22	Delete the words "Public Service Commission" appearing immediately after the words "Commission and" and substitute therefor the words "the Advisory Board".	
	New	Insert the following sections immediately after section 33—	

		Saving.	33A. (1) Any State Counsel, officer or member of staff employed and deployed by the Public Service Commission and serving in the Office immediately before the commencement of this section shall—
			(a) on the commencement of this section, be deemed to have been employed and deployed in accordance with this Act;
			(b) retain any rights that have accrued or are accruing to him or her before the commencement of this Act;
			(c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this Act;
			(d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;
			(e) be deemed to have been employed in accordance with this Act for the purposes of any written law under which any rights accrued or were accruing to him or her under which he or she continues to contribute or by which any entitlement has been conferred; and
			(f) be deemed to be a State Counsel, officer or employee of the Office for the purposes of any superannuation scheme to which he or she is entitled to contribute.
	Schedule, Paragraph 1(b)	Delete the words “Public Service Code of Conduct and the” appearing immediately after the words “supplementary to the”.	

**Rationale:** To ensure the autonomy of the Office of the Attorney-General and empower it to recruit, appoint, promote and discipline its staff under the oversight of an Advisory Board.

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 68 of 2023)

# ANNEXURES

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Statute Law  
(Miscellaneous Amendments) (No. 2) Bill (*National Assembly Bill No. 68 of 2023*)

Page 37 of 39





## Annexure 1: Adoption Schedule



THE NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT - THIRD SESSION - 2024  
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

**AGENDA:** Adoption of the Report on the Consideration of the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) sponsored by the Leader of the Majority Party the Hon. Kimani Ichung'wah, EGH, MP

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

Annexure 2: Minutes



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

**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 15<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
JUSTICE AND LEGAL AFFAIRS HELD ON SATURDAY 17<sup>TH</sup> FEBRUARY, 2024 AT  
2:00 PM IN THE MAIN CONFERENCE, HOTEL ENGLISHPOINT MARINA,  
MOMBASA COUNTY**

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**PRESENT**

1. Hon. Murugara George Gitonga, EBS, MP - **Chairperson**
2. Hon. Mutuse Eckomas Mwangi, OGW, MP - **Vice- Chairperson**
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. Onyiego Silvanus Osoro, MP
5. Hon. Junet Mohamed, CBS, MP
6. Hon. (Dr.) Otiende Amollo, SC, MP
7. Hon. Muchira Michael Mwangi, MP
8. Hon. Gichohi Kaguchia John Philip, MP
9. Hon. Aden Daud, EBS MP
10. Hon. Maina Jane Njeri, MP
11. Hon. Mogaka Stephen M, MP
12. Hon. Makali John Okwisia, MP
13. Hon. Siyad Amina Udgoon, MP

**APOLOGIES**

1. Hon. Maalim Farah, MP
2. Hon. Muriu Wakili Edward, MP

**SECRETARIAT**

1. Mr. Douglas Katho - Clerk Assistant I
2. Ms. Jael Ayiego - Clerk Assistant III
3. Mr. Abdikafar Abdi - Clerk Assistant III
4. Mr. Isaac Nabiswa - Legal Counsel
5. Ms. Vivienne Ogeya - Research Officer III

6. Mr. Antony Kariuki - Serjeant-At-Arms

#### **AGENDA**

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Consideration and Adoption of the report on the Statute Law (Miscellaneous Amendments) Bill No.2 (National Assembly Bills No. 68 Of 2023) sponsored by the Leader of the Majority Party Hon. Kimani Ichung'wah, Egh, Mp**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

#### **MIN. NO/DC/JLAC/2024/071: PRELIMINARIES**

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

#### **MIN.NO/DC/JLAC/2024/072: CONFIRMATION OF MINUTES**

The agenda was deferred.

#### **MIN.NO/DC/JLAC/2024/073: ADOPTION OF THE AGENDA**

The agenda was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Gichohi Kaguchia John Philip, MP

#### **MIN.NO/DC/JLAC/2024/074: CONSIDERATION AND ADOPTION OF THE REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL NO.2 (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023) SPONSORED BY THE LEADER OF THE MAJORITY PARTY HON. KIMANI ICHUNG'WAH, EGH, MP**

##### **1. COMMITTEE OBSERVATIONS**

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

- a) The proposed amendments to the Oaths and Statutory Declarations Act (Cap. 15); the Advocates Act (Cap. 16); the Notaries Public Act (Cap 17); the Sexual Offences Act, 2006 (No. 3 of 2006) are minor in nature and seek to align references to the Chief Registrar of the Judiciary and other Registrars with the terms currently subsisting within the Judiciary;
- b) The proposed amendments to the Civil Procedure Act (Cap. 21); and the Sexual Offences Act, 2006 (No. 3 of 2006) seek to reduce the membership of the Rules

Committee of the Judiciary which shall streamline its operations and optimise its output;

- c) The proposed amendments to the Civil Procedure Act (Cap. 21) seek to reduce the membership of the Rules Committee of the Judiciary which affects the level of participation of the LSK in the formulation of Rules affecting legal practitioners.
- d) The proposed amendments to the **Trustees (Perpetual Succession) Act (Cap. 164)** seek to shift the supervision of the registration of Trusts from the Ministry of Lands to the Registrar of Companies. This places the registration of Trusts within the appropriate government agency and shall streamline the process for the benefit of applicants.
- a) The Office of the Attorney-General has seen an expansion of its responsibilities, including legal policy management, anti-corruption strategies, and oversight of legal sector institutions, under Executive Order No. 2 of 2023.
- b) The current legal landscape presents challenges for the OAG, such as increased involvement in international legal matters, constitutional litigation, and infrastructural projects, which strain its resources and capacity.
- c) The OAG currently operates at less than half of its approved staff establishment. Various departments within the OAG, notably the Government Transactions Division, operate with significantly fewer staff members than required, leading to increased workload and compromised service quality.
- d) There is a significant remuneration disparity between state counsel at the OAG and their counterparts in other public legal sector institutions which ultimately contributes to demotivation and loss of experienced staff. The OAG has lost 130 senior state counsel between January 2015 and December 2023 on account of poor remuneration and lack of career progression.
- e) The OAG & DOJ faces limitations in recruitment, promotion, and management of staff, partly due to its classification as a state department within the executive branch.
- f) The Constitution grants Parliament a wide legislative mandate that allows it to prescribe the manner in which certain categories of public officers may be recruited, appointed and promoted. The amendments proposed with regard to the Office of the

Attorney-General Act, 2012 (No. 49 of 2012) are therefore properly before the House for consideration and enactment, if the House so decides.

- g) Any legislation that provides for the autonomy of the Office of the Attorney-General in recruitment, appointment, promotion and discipline of its staff must subject the functions to an Advisory Board.

## **2. COMMITTEE RECOMMENDATION**

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

- a) approves the provisions of the Bill relating to the Oaths and Statutory Declarations Act, Cap 15; the Advocates Act, Cap 16; the Notaries Public Act, Cap 17; and the Sexual Offences Act, 2006 without amendment;
- b) approves the provisions of the Bill relating to the Office of the Attorney General Act, 2012 with amendments as contained in the SCHEDULE to provide for the autonomy of the Office and its power to recruit, appoint, promote and discipline its Officers; and
- c) deletes the provisions of the Bill relating to the Civil Procedure Act, Cap 21

The report was adopted having being proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Francis Kajwang' Tom Joseph, MP

## **3. SCHEDULE OF AMENDMENTS**

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

**THAT**, the Schedule to the Bill be amended by—

- (1) Deleting the proposed amendments to the **Civil Procedure Act (Cap. 21)**.

**Rationale:** the proposed amendments to the Civil Procedure Act (Cap. 21) seek to reduce the membership of the Rules Committee of the Judiciary which affects the level of participation of the LSK in the formulation of Rules affecting legal practitioners.

- (2) Inserting the following new amendments in proper chronological sequence in the proposed amendments to the **Office of the Attorney General Act, 2012 (No. 49 of 2012)** by—

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>	
The Office of the Attorney General Act, 2012 (No. 49 of 2012)	s. 2	Delete the words “by the Public Service Commission” appearing immediately after the word “employed” in the definition “subordinate officer”;	
		Insert the following new definition in proper alphabetical sequence— “Advisory Board” means the advisory board established under section 20A(1);”	
	s. 9(2)	Delete the words “Public Service Commission” appearing immediately after the words “recommended by the” and substitute therefor the words “Advisory Board”.	
	s. 9(5)(d)	Delete the expression “Article 234 of the Constitution” appearing immediately after the words “Subject to” and substitute therefor the expression “Section 20B”.	
	New	Insert the following new Part immediately after section 20—	
		<b>PART IIA—ADVISORY BOARD OF THE OFFICE OF THE ATTORNEY-GENERAL</b>	
		Advisory Board.	20A. (1) There is established board to be known as the Advisory Board to the Office of the Attorney-General.
			(2) The Board shall consist of—
			(a) the Attorney-General;
			(b) the principal secretary responsible for matters relating to the Public Service;
			(c) the principal secretary responsible for matters relating to Finance;
			(d) the Chairperson of the Public Service Commission or a representative designated in writing by the Chairperson;
			(e) the Chairperson of the Kenya National Commission on Human Rights or a representative designated in writing by the Chairperson; and
			(f) the Chairperson of the Council of the Institute of Human Resource Management or a representative designated in writing by the Chairperson; and
			(g) the President of the Law Society of Kenya or a representative

			designated in writing by the President.
			(2) The Attorney-General shall be the Chairperson of the Board.
			(3) The Solicitor-General shall be the secretary to the Board.
		Functions of the Advisory Board.	20B. (1) The Advisory Board shall advise the Attorney-General on—
			(a) recruitment and appointment of the deputy solicitors-general, state counsel and other members of staff of the Office;
			(b) promotion of state counsel and other members of staff of the Office;
			(c) discipline of deputy solicitors-general, state counsel and other members of staff of the Office;
			(d) remuneration of deputy solicitors-general, state counsel and other members of staff of the Office in consultation with the Salaries and Remuneration Commission; and
			(e) matters that may be referred to the Board by the Attorney-General.
		Remuneration of the Board.	20C. The members of the Board shall be paid such allowances as the Attorney-General, shall approve upon advise of the Salaries and Remuneration Commission.
		Meetings and quorum.	20D. (1) The Advisory Board shall meet at least four times in every financial year and not more than three months shall elapse between one meeting and the next meeting.
			(2) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.
			(3) The quorum at the meeting of the Advisory Board shall be five members.
			(4) The chairperson of the Board shall convene and preside over the meetings of the Board or in the absence of the chairperson, a member of the Board elected by the members present from among their number.
			(5) The proceedings of the Advisory Board shall not be invalidated by reason of a vacancy among the members

			(6) A member of the Board or a person present at a meeting of the Board who has interest in a matter for consideration by the Board or by the Office shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board or the office in respect of that matter, unless the Board or office decides otherwise.
	s. 21(1)		Delete the words "Public Service Commission" appearing immediately after the words _____ and substitute therefor the words "Advisory Board".
	s. 22		Delete the words "Public Service Commission" appearing immediately after the words "Commission and" and substitute therefor the words "the Advisory Board".
	New		Insert the following sections immediately after section 25—
	New		Insert the following section immediately after section 28—
		Seal of the office.	28A. (1) There shall be a seal of the Office which shall be such device as the Attorney-General shall determine.
			(2) The seal of the Office shall be kept in the custody of the Attorney-General or such person as the Attorney-General may authorise in that regard.
			(3) The seal of the Office shall be used in accordance with the orders of the Attorney-General.
			(4) The seal of the Office, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorization of the Attorney-General in respect of the seal under this section shall be presumed to have been duly given.
	New		Insert the following sections immediately after section 33—
		Saving.	33A. (1) Any State Counsel, officer or member of staff employed and deployed by the Public Service Commission and serving in the Office immediately before the commencement of this section shall—
			(a) on the commencement of this section, be deemed to have been employed and deployed in accordance with this Act;
			(b) retain any rights that have accrued or are accruing to him or her before the commencement of this Act;

			(c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this Act;
			(d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;
			(e) be deemed to have been employed in accordance with this Act for the purposes of any written law under which any rights accrued or were accruing to him or her under which he or she continues to contribute or by which any entitlement has been conferred; and
			(f) be deemed to be a State Counsel, officer or employee of the Office for the purposes of any superannuation scheme to which he or she is entitled to contribute.
	Schedule, Paragraph 1(b)	Delete the words "Public Service Code of Conduct and the" appearing immediately after the words "supplementary to the".	

**Rationale:** To ensure the autonomy of the Office of the Attorney-General and empower it to recruit, appoint, promote and discipline its staff under the oversight of an Advisory Board.

**MIN. NO/DC/JLAC/2024/075: ADJOURNMENT**

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

SIGNED..........DATE.....*21.2.024*.....  
 (CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT - SECOND SESSION - 2023**

**DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

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

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**PRESENT**

**Members**

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

**ABSENT**

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

**IN ATTENDANCE**

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

## **SECRETARIAT**

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

## **AGENDA**

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

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

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

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

The agenda was deferred.

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

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

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

#### **1. The Parliamentary Service Commission**

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

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

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

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

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

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

## **2. Judicial Service Commission**

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

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

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

### **3. Salaries and Renumerations Commission**

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

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

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

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

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

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

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

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

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

#### **1. The Judiciary/Judicial Service Commission**

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

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

## **2. The Public Service Commission**

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

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

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

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

**ADJOURNMENT**

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

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

Annexure 3: Statute Law (Miscellaneous  
Amendments) (No.2) Bill,  
2023

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 207 (National Assembly Bills No. 68)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2023**

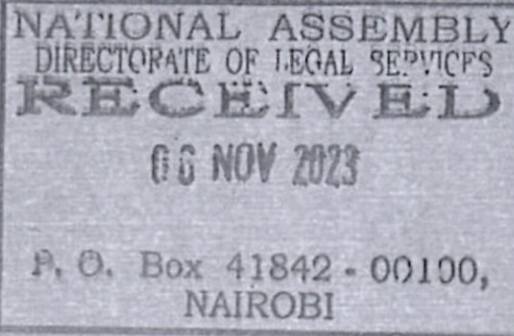
**NAIROBI, 30th October, 2023**

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023 ..... 1835



NATIONAL ASSOCIATION  
OF PROFESSIONAL ENGINEERS  
AND SURVEYORS  
INCORPORATED  
WASHINGTON, D. C.  
1900

**THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) (NO.2) BILL, 2023**

**A Bill for**

**AN ACT of Parliament to make various amendments to  
statute law and for connected purposes**

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

1. This Act may be cited as the Statute Law Short title.  
(Miscellaneous Amendments) (No. 2) Act, 2023.

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

**SCHEDULE**

(s. 2)

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Oaths and Statutory Declarations Act (Cap. 15).	s. 3	Delete the words “Registrar of the High Court” and substitute therefor the words “Chief Registrar of the Judiciary”.
	s. 12	Delete the words “the Registrar of the High Court, a Deputy Registrar, a Deputy Registrar of the Environment and Land Court and a Deputy Registrar of the Employment and Labour Relations Court” and substitute therefor the words “the Registrar or Deputy Registrar of a superior court or subordinate court”.
The Advocates Act (Cap. 16).	s. 2	Delete the definition of “Registrar” and substitute therefor the following new definition— “Registrar” means the Chief Registrar of the Judiciary”.
	s. 81(1)	Insert the following new paragraph immediately after paragraph (a)— (aa) the admission of advocates under section 15.

The Notaries Public Act (Cap. 17).	s. 4(1)	Delete the words "Registrar of the High Court" wherever they appear and substitute therefor the words "Chief Registrar of the Judiciary".
	s. 4(2)	Delete the words "Registrar of the High Court" and substitute therefor the words "Chief Registrar of the Judiciary".
	s. 5(3)	Delete the words "Registrar of the High Court" and substitute therefor the words "Chief Registrar of the Judiciary".
The Civil Procedure Act (Cap. 21).	s. 81(1)(a)	Delete subparagraph (vi) and substitute therefor the following new subparagraph—
		(vi) three advocates nominated by the Law Society of Kenya.
The Public Holidays Act (Cap. 110).	Schedule	Delete the expression "Utamaduni Day" and the corresponding date.
The Trustees (Perpetual Succession) Act (Cap. 164).	s. 2	Delete the definition of "Cabinet Secretary".
		Delete the definition of "pension fund".
		Delete the definition of "Principal Registrar".
		Delete the definition of "provident fund".
		Insert the following new definition in proper alphabetical sequence—
<i>No. 17 of 2015.</i>		"the Registrar" has the same meaning assigned to it in section 3(1) of the Companies Act, 2015.
	s. 3(1)	Delete the word "Principal".
	s. 3(2)	Delete the word "Principal".
	s. 3(2A)	Delete the word "Principal".
	s. 3(2B)	Delete the word "Principal".

- s. 3J(8) Delete the word “Principal”.
- s. 5 (1) Insert the word “First” immediately before the word “Schedule”.
- s. 6(1) Delete the word “Principal”.
- s. 6(2) Delete the word “Principal”.
- s. 6(3) Delete the word “Principal”.
- s. 8(1) Delete the word “Principal” wherever it appears.
- s. 9(1) Delete subsection (1) and substitute therefor the following new subsection—
- (1) The Registrar shall keep and record in a register kept for that purpose each application, order and other document lodged or given under the provisions of this Act, and a duplicate of each certificate of incorporation issued under this Act.
- s. 9(2) Delete the words “appointed under the Registration of Documents Act (Cap. 285)”.
- Delete the word “prescribed fee” and substitute therefor the words “fee set out in the Second Schedule”.
- s. 11 Insert the words “set out in the Second Schedule” immediately after the word “fee”.
- s. 13(1) Delete the word “Principal” wherever it appears.
- s. 15 Delete the words “Principal Registry of Documents” and substitute therefor the word “Registrar”.
- s. 16(1) Delete the word “Principal”.
- s. 16(2) Delete the word “Principal”.
- s. 17 Delete the words “Cabinet Secretary” and substitute therefor the word “Registrar”.
- Schedule Delete and substitute therefor the following new Schedule—

**FIRST SCHEDULE (s. 5(1))**  
**FORM TR 1**  
**APPLICATION TO REGISTER A TRUST**  
**PART I- TRUST DETAILS**

1. Name of the Trust:

2. Trust Constitution

Please attach the Trust Deed or Will or any other instrument forming the constitution of the Trust.

3. Registered office address

Name of the building/plot No.	
Street/Road	
District	
Floor/Room No.	
Town	
County	

5. Contact address of the Trust

P.O Box	
Postal Code	
Office No.	
Mobile No.	
Email Address <sup>2</sup>	

6. Principal objects of the Trust


**PART II- PROPOSED SETTLOR/  
OFFICERS**

7. Details of the Settlor(s), first Trustees and/or Enforcers of the Trust

Name	
Designation <sup>4</sup>	
Postal Address	
Identity card or passport number <sup>5</sup>	

<sup>2</sup>Please provide an email address which has never been used on iTax.

<sup>5</sup>If a passport number is provided, please also indicate the issuing country and place and date of issue of the passport.

Nationality	
Telephone No.	
Email Address	
I/We hereby consent to act as Trustee/ Enforcer of the Trust.	

Complete a separate sheet for each Settlor, Trustee and/or Enforcer (if applicable) or authorised signatory and attach the following documents for each:

- a) Copy of Kenyan national identification card, alien card or passport
- b) Copy of PIN certificate issued by Kenya Revenue Authority (not applicable to persons who are not Kenyan residents); and
- c) Coloured passport-sized photograph

For a corporate body;

- a) Certificate of incorporation
- b) Copy of PIN certificate issued by Kenya Revenue Authority;
- c) Copies of Kenyan national identification cards, alien cards or passports of the directors; and
- d) Coloured passport-sized photographs of the directors.

### **PART III- STATEMENT OF INITIAL TRUST ASSETS**

8. The Trust property is initially capitalised as follows and shall include any subsequent property registered in the trust's name.

Type of Asset	Value

Complete a separate sheet of Initial Assets (if applicable)

Lodged on behalf of the Trust by:

Settlor/Trustee/Enforcer/Advocate

### OFFICIAL USE

Trust registry

Checked by:

Name:

\_\_\_\_\_

New Insert the following new Schedule—

### SECOND SCHEDULE (s.9, s.11)

#### FEES CHARGEABLE BY THE REGISTRAR FOR INCORPORATION, INSPECTING DOCUMENTS OR OBTAINING COPIES OF DOCUMENTS OR INFORMATION

Column 1 Item no.	Column 2 Matter Fee	(KSh)
1.	Fees chargeable for incorporation of a trust	10,000
2.	Right under the Act to inspect the register of Trusts and get copies of any public documents relating to a trust.	500

- The Industrial Training Act (Cap. 237). s. 5B(3) Delete the words “fifth day” and substitute therefor the words “ninth day”.
- The Traffic Act (Cap. 403). s. 117(3) Insert the words “or through the use of any electronic or mobile communications technology” immediately after the words “vehicle concerned”;  
Insert the words “either pay the fine or” immediately after the words “requiring such person to”.  
Insert the words “or through the use of electronic or mobile medium” immediately after the words “served personally”.
- 117(8) Insert the word “thousand” immediately after the word “hundred”.
- 117(9)(a) Delete the words “two hundred shillings, and on each subsequent conviction to a fine not exceeding five hundred shillings” and substitute therefor the words “two hundred thousand shillings, and on each subsequent conviction to a fine not exceeding five hundred thousand shillings”.
- 117(10) Insert the word “thousand” immediately after the word “hundred”.
- The Sexual Offences Act, 2006 (No. 3 of 2006). s. 39(13) Delete the words “Registrar of the High Court” and substitute therefor the words “Chief Registrar of the Judiciary”.
- The Employment Act, 2007 (No. 11 of 2007). 3(2) Insert the following new paragraph immediately after paragraph (ba)—  
  
(bb) the National Intelligence Service.
- The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011). s. 2(1) Delete the definition of “animal” and substitute therefor the following new definition—

“animal” means all species of the animal kingdom, but not man, whether in aquatic,

domesticated or wild environments and includes wild animals, cattle, camel, buffalo, sheep, goats, pigs, fish, horse, mule, donkey, dog, birds, bees, insects, reptiles and marine animals.

Delete the definition of “animal resource industry” and substitute therefor the following new definition—

“animal resource industry” means the sector responsible for animal health, production, welfare, marketing, animal food safety and security, and sanitary aspects of animals.

In the definition of “annual licence”, delete the words “annual licence” and substitute therefor the words “annual premises licence

Delete the definition of “private practice”.

In the definition of “register”, delete the words “chief executive officer” and substitute therefor the word “Registrar”.

In the definition of “veterinary medicine”, delete the words “alternative medicines” appearing in paragraph (c).

New            Insert the following new definitions in proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to veterinary services;

“veterinary practice” means any practice for hire, gain, fee, compensation, employment or reward received, promised, offered, expected or accepted, either directly or indirectly, by the person rendering the veterinary service from the person requesting or receiving the service.

s. 2            Delete subsection (2).

s. 6(2) (a) Delete the words “and the” appearing immediately after the word “poisons”.

(n) Delete the word “with” appearing immediately after the word “organisations”.

s.16 (5) Delete subsection (5) and substitute therefor the following new subsection—

(5) If the Board is satisfied that the applicant has fulfilled all the conditions for temporary registration as a foreign veterinary surgeon under this section, the Registrar shall effect the registration and issue the applicant with a certificate of temporary registration.

The Public Finance Management, 2012 (No. 18 of 2012).

s.40 (3) Delete.

s.40(4) Delete.

The Universities Act, 2012 (No. 42 of 2012).

s. 25 Delete subsection (2) and substitute therefor the following new subsection—

(2) A declaration made under this section shall only apply to a public institution—

(a) that is or previously was a National Polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013; or

(b) that has the requisite physical facilities and human resource capacity that are appropriate for a technical university.

*No. 29 of 2013.*

s. 56(1)(a) Delete the words “government sponsored”.

The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s.13	Delete the words “in consultation with, the Public Service Commission”.
	s.21(1)	Delete the words “in consultation with, and on the recommendation of the Public Service Commission”.
	s.22	Delete the words “and Public Service Commission.”
The Civil Aviation Act, 2013 (No. 21 of 2013).	s.2(1)	In paragraph (e) of the definition of “publication”, delete the words “for aviation metrology” appearing after the words “information circulars”.
	s.34	Delete the word “three” and substitute therefor the word “six”.
The Value Added Tax Act, 2013 (No.35 of 2013)	Section A of Part 1 of the First Schedule.	Insert the following new paragraph immediately after paragraph 147–
		148. The Supply of gas meters of tariff number 9028.10.00
	Part A of the Second Schedule.	Insert the following new paragraph immediately after paragraph 35–
		36. The supply of denatured ethanol of tariff number 2207.20.00
The Privatization Act, 2023. (No.11 of 2023)	s.9	Delete paragraph (f).

## **MEMORANDUM OF OBJECTS AND REASONS**

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023, seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill.

The Bill contains proposed amendments to the following statutes—

### **The Oaths and Statutory Declarations Act (Cap. 15)**

The Bill proposes to amend the Oaths and Statutory Declarations Act to provide that an advocate who has been appointed as a commissioner of oaths shall sign the roll kept by the Chief Registrar of the Judiciary; and that the Registrar or Deputy Registrar of a superior court or subordinate court may administer an oath or affirmation or take an affidavit or statutory declaration under the Act.

### **The Advocates Act (Cap. 16)**

The Bill proposes the amendment of the Advocates Act to provide that the Registrar responsible for keeping the Roll of Advocates shall be the Chief Registrar of the Judiciary. Further, the Bill proposes to amend the Act to provide that the Council of the Society may, with the approval of the Chief Justice, make rules for the admission of advocates.

### **The Notaries Public Act (Cap. 17)**

The Bill proposes to amend the Notaries Public Act to provide that the Chief Registrar of the Judiciary shall be responsible for enrolling notaries public in the book kept for that purpose; granting new certificates to newly-enrolled notaries public; and removing from the roll any person whose appointment as a notary public has been revoked under the Act.

### **The Civil Procedure Act (Cap. 21)**

The Bill proposes to amend the Civil Procedure Act to provide that the members nominated by the Law Society of Kenya and appointed by the Chief Justice shall be three in number which is intended to improve decision-making within the Rules Committee and reduce the cost of facilitating the work of the Committee.

### **The Public Holidays Act (Cap. 110)**

The Bill proposes to amend the Public Holidays Act to delete the provision for Utamaduni Day as a public holiday.

### **The Trustees (Perpetual Succession) Act (Cap. 164)**

The Bill proposes to amend the Trustees (Perpetual Succession) Act to provide that the Registrar of Companies as defined under section 2 of

the Companies Act, 2015, shall be responsible for the registration of trusts and issuance of Certificates of Incorporation; processing of applications for incorporation; form of an application; keeping and maintaining of a register; conduct of searches in the registry; and making of Regulations.

#### **The Industrial Training Act (Cap. 237)**

The Bill proposes to amend the Industrial Training Act to provide that the date for the remitting of the training levy shall be the ninth day of the month in order to harmonise it with the period within which PAYE is remitted to the Kenya Revenue Authority.

#### **The Traffic Act (Cap. 403)**

The Bill proposes to amend the Traffic Act to incorporate the use of technology in the management of minor traffic offences.

#### **The Sexual Offences Act, 2006 (No. 3 of 2006)**

The Bill proposes to amend the Sexual Offences Act, 2006, to provide that the register of convicted sexual offenders shall be kept and maintained by the Chief Registrar of the Judiciary.

#### **The Employment Act, 2007 (No. 11 of 2007)**

The Bill proposes to amend the Employment Act, 2007, to exempt the National Intelligence Service from the application of the Act in the same manner as other national security organs are exempted.

#### **The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)**

The Bill proposes to amend the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 to make minor corrections to the provisions relating to the definition of “animal”, “animal resource industry”, “annual licence”, “private practice”, “register” and “veterinary medicine” and grammatical errors occurring in other provisions of the Act.

#### **The Public Finance Management Act, 2012 (No. 18 of 2012).**

The Bill proposes to amend the Public Finance Management, 2012 to cure inconsistency in the provisions of the Act on the submission of the Finance Bill.

#### **The Universities Act, 2012 (No. 42 of 2012)**

The Bill proposes to amend the Universities Act, 2012, to provide for the declaration of technical universities under section 25(1) of the Act in respect of public institutions that are or were national polytechnics. It also proposes to amend section 56(1) to provide that the Placement Board shall

be responsible for placing all students, rather than only government-sponsored students, in universities and colleges.

**The Office of the Attorney-General Act, 2012 (No. 49 of 2012)**

The Bill proposes to amend the Office of the Attorney-General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney General as an independent Office.

**The Civil Aviation Act, 2013 (No. 21 of 2013)**

The Bill proposes to amend the Civil Aviation Act, 2013, to provide that the definition of "publication" shall include aviation information circulars; and that the period within which the Director-General shall be required to submit an annual report shall be six months after the end of the financial year.

**The Value Added Tax Act, 2013 (No.35 of 2013)**

The Bill proposes to amend the Value Added Tax Act, 2013 to reclassify the supply of gas meters of tariff number 9028.10.00 and the supply of denatured ethanol of tariff number 2207.20.00 as exempt and zero rated respectively.

**The Privatization Act, 2023 (No. 11 of 2023)**

The Bill proposes to amend the Privatization Act, 2023, to cure inconsistencies between the role of the Authority and the Cabinet Secretary.

Dated the 26th October, 2023.

KIMANI ICHUNG'WAH,  
*Leader of Majority.*

*Section 3 of Cap. 15 which it is proposed to amend—*

### **3. Commissioner for oaths to sign roll**

Every advocate appointed a commissioner for oaths shall, on appointment, sign a roll, which shall be kept by the Registrar of the High Court.

*Section 12 of Cap. 15 which it is proposed to amend—*

### **12. Powers of magistrates and certain court officers to administer oaths**

A magistrate, the Registrar of the High Court, a Deputy Registrar, a Deputy Registrar of the Environment and Land Court and a Deputy Registrar of the Employment and Labour Relations Court may administer any oath or affirmation or take any affidavit or statutory declaration (voluntarily made and subscribed in accordance with the provisions of Part III) which might lawfully be administered or taken by a commissioner for oaths appointed under Part II.

*Section 2 of Cap. 16 which it is proposed to amend—*

“Registrar” means the Registrar of the Court;

*Section 81 of Cap. 16 which it is proposed to amend—*

### **81. Power to make rules**

(1) The Council of the Society, with the approval of the Chief Justice, may make rules with regard to—

- (a) the professional practice, conduct and discipline of advocates;
- (b) the keeping of accounts by advocates;
- (c) the annual submission to the Council of a certificate by an accountant registered under the Accountants Act (Cap. 531) or by some other person or class of persons specified by such Council that he has examined the books, accounts and documents of the advocate to such extent as may be prescribed and stating—
  - (i) whether or not he is satisfied that, during the period covered by his certificate, the advocate has complied with the rules for the time being in force regulating the keeping of accounts by advocates; and
  - (ii) if he is not so satisfied, the matters in respect of which he is not satisfied;
- (d) the retention or otherwise by advocates of interest earned on moneys deposited, received or held for or on account of clients;

- (e) the issue of practising certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;
  - (ee) the procedure for the conferment of, and the privileges attached to, the rank of Senior Counsel;
- (f) the establishment of a compensation fund for the benefit of clients;
- (g) indemnity for clients against loss or damage arising from claims in respect of any civil liability incurred by an advocate or his employee, or from breach of trust by the advocate or his employee;
- (h) continuing professional education for all advocates practising in Kenya;
- (i) generally for the better carrying out of the provisions of this Act, other than Parts III, IV, IX, X and XI.

*Section 4 of Cap. 17 which it is proposed to amend—*

**4. Notaries public to be enrolled and to take out certificate on appointment and annually**

(1) The Registrar of the High Court, on receiving from the Chief Justice the instrument of appointment mentioned in section 2, and on receiving from the person requiring to be enrolled the prescribed fee, shall enroll the name of such person in a book which shall be kept for that purpose in the office of the Registrar of the High Court, and shall issue to such person a certificate of enrolment which certificate shall authorize him to perform within Kenya the functions and duties of a notary public up to the 31st December next after the date on which such certificate became effective.

(2) The Registrar of the High Court shall at any time, on receipt of the prescribed fee, grant a new certificate to any person whose name shall be on the roll of notaries public, but every certificate granted under this subsection shall expire on the 31st December next after the date on which such certificate became effective.

*Section 5 of Cap. 17 which it is proposed to amend—*

(3) The Registrar of the High Court shall remove from the roll of notaries public the name of any advocate or person whose appointment has been revoked in accordance with the provisions of subsection (1) or subsection (2), and the certificate of enrolment in respect of such entry

shall be delivered up by such advocate or person to the Registrar, who shall cancel it.

*Section 81 of Cap. 21 which it is proposed to amend—*

### **81. Rules Committee**

(1) There shall be a Rule Committee which shall consist of—

(a) the following members appointed by the Chief Justice—

- (i) one judge of the Court of Appeal;
- (ii) one judge of the High Court;
- (iii) a judge of the Environment and Land Court;
- (iv) one judge of the Employment and Labour Relations Court who is a member of the Employment and Labour Relations Court Rules Committee;
- (v) two Magistrates, one of whom shall be the Secretary to the Committee;
- (vi) eight advocates nominated by the Law Society of Kenya to represent each of the branches of the Society established under section 24 of the Law Society of Kenya Act, 2014; and
- (vii) one representative from the Kenya Law Reform Commission; and

*The Schedule to Cap. 110 which it is proposed to amend—*

Utamaduni Day.....10th October

*Section 5B of Cap. 237 which it is proposed to amend—*

(3) An employer shall pay the training levy to the Commissioner-General at the time when an employee's salary is payable and shall be remitted to the Commissioner-General not later than the fifth day of the month following the month in which the levy becomes due.

*Section 117 of Cap. 403 which it is proposed to amend—*

### **117. Minor traffic offences**

(3) Notwithstanding any provision contained in this or any other Act, it shall be lawful for any police officer to serve, either personally or by affixing the same prominently to the vehicle concerned, upon the owner or person in charge of any motor vehicle who is reasonably suspected of having committed any of the scheduled minor offences, a police notification of a traffic offence in the prescribed form charging such

person with having committed the offence or offences indicated in the notification and requiring such person to attend court to answer such charge or charges, at such time (which if the police notification is served personally on the owner or person in charge of the motor vehicle, may be within forty-eight hours of such service; or if the police notification is affixed prominently to the vehicle concerned, shall not be sooner than seven days after the date of such service) as is shown on such notification.

*Section 39 of No. 3 of 2006 which it is proposed to amend—*

(13) A register for convicted sexual offenders shall be maintained by the Registrar of the High Court and any person who has reasonable cause to so examine it may examine the register.

*Section 3 of No. 11 of 2007 which it is proposed to amend—*

(2) This Act shall not apply to—

(a) the Kenya Defence Forces or the reserve as respectively defined in the Kenya Defence Forces Act, 2012;

(b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force;

(ba) the Kenya Coast Guard Service;

(c) the National Youth Service; and

(d) an employer and the employer's dependants where the dependants are the only employees in a family undertaking.

*Section 2 of No. 29 of 2011 which it is proposed to amend—*

## **2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“animal” includes cattle, camel, buffalo, sheep, goats, pigs, fish, horse, mule, ass, dog, and any other wild or domestic animal kept in captivity or otherwise;

“animal resource industry” means a sector responsible for animal production, quality assurance, marketing, animal food security and sanitary factors in livestock, companion and other non-human animal resources development;

“annual license” means a license issued to a veterinary surgeon or para-professional under section 26;

“private practice” means any practice for hire, gain, fee, compensation, or reward received, promised, offered, expected or

accepted either directly or indirectly by the person rendering the veterinary service from the person requesting or receiving the service;

“register” means the register kept by the chief executive officer under section 19;

“veterinary medicine” means any curative or preventive substance, formulated medicament, or mixture of substances, whether proprietary or in the form of a preparation effective in animals, which is used, or is manufactured, sold or represented as suitable for use, in—

- (a) the diagnosis, treatment, mitigation or prevention of disease or abnormal physical or mental state or the symptoms thereof in an animal;
- (b) restoring, correcting or modifying any physical, mental or organic function in an animal; or
- (c) controlling internal or external pests and parasites, and includes insecticides, vaccines, hormones, alternative medicines, antiseptics, disinfectants, surgical, nutrients and biological products;

(2) Until after the first elections under the Constitution, any reference in this Act to a Cabinet Secretary shall be construed to mean Minister and any reference to a Principal Secretary shall be construed to mean Permanent Secretary.

*Section 6 of No. 29 of 2011 which it is proposed to amend—*

### **6. Objects and functions of the Board**

(2) Without prejudice to the generality of the foregoing the Board shall—

- (a) advise the Government on matters relating to veterinary training, research, practice and employment, the use of veterinary medicines, poisons and the pesticides, and other issues relating to animal welfare;

*Section 16 of No. 29 of 2011 which it is proposed to amend—*

### **16. Temporary Registration of foreign veterinary surgeons**

(5) If the Board is satisfied that the applicant has fulfilled all the conditions for temporary registration as a foreign veterinary surgeon under this section it shall direct the Registrar to effect the registration and issue the applicant with a certificate of temporary registration:

Provided that a person registered under this section shall be subject to the requirements of section 26 with regard to an annual licence.

*Section 21 of No. 29 of 2011 which it is proposed to amend—*

### **21. Retention fees**

(8) Where the name of a registered person has remained in the register for five consecutive years, such person shall be required to satisfy the Board, in such manner as it may deem fit, of his technical competence.

*Section 40 of No. 18 of 2012 which it is proposed to amend—*

### **40. Submission and consideration of budget policy highlights and the Finance Bill in the National Assembly**

(3) On the same date that the budget policy highlights and revenue raising measures are pronounced, the Cabinet Secretary shall submit to Parliament a legislative proposal, setting out the revenue raising measures for the national government, together with a policy statement expounding on those measures.

(4) Following the submission of the legislative proposal of the Cabinet Secretary, the relevant committee of the National Assembly shall introduce a Finance bill in the National Assembly.

*Section 25 of No. 42 of 2012 which it is proposed to amend—*

### **25. Declaration of Technical Universities**

(2) Where a declaration under this section is made with respect to a public institution, it shall only apply where such institution is a National Polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013.

*Section 56 of No. 42 of 2012 which it is proposed to amend—*

### **56. Functions of the Placement Board**

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

(a) co-ordinate the placement of the government sponsored students to universities and colleges;

*Section 2 of No. 49 of 2012 which it is proposed to amend—*

### **2. Interpretation**

“subordinate officer” means a State counsel or any other member of staff employed by the Public Service Commission under this Act and discharging his or her duties in the Office.

*Section 13 of No. 49 of 2012 which it is proposed to amend—*

### **13. Deputy Solicitors-General**

The Attorney-General may, in consultation with, the Public Service Commission, appoint such Deputy Solicitors-General as the Attorney-General may consider necessary for the proper and efficient discharge of the functions of the Office.

*Section 21 of No. 49 of 2012 which it is proposed to amend—*

### **21. State Counsel**

(1) The Attorney-General may, in consultation with, and on the recommendation of the Public Service Commission appoint such number of State Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.

*Section 22 of No. 49 of 2012 which it is proposed to amend—*

### **22. Terms and conditions of service**

The State Counsel appointed under this Act shall serve on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission and Public Service Commission, determine.

*Section 2 of No. 21 of 2013 which it is proposed to amend—*

### **2. Interpretation**

“publication” includes information given in any of the following publications issued, whether before or after the commencement of this Act—

- (a) notices to airmen;
- (b) aeronautical information publications;
- (c) notices to licensed aircraft maintenance engineers and to owners of civil aircraft;
- (d) civil aviation publications;
- (e) aeronautical information circulars for aviation meteorology;
- (f) manuals of procedures;
- (g) advisory circulars and orders; and
- (h) technical standards.

*Section 34 of No. 21 of 2013 which it is proposed to amend—*

### **34. Annual report by the Authority**

The Director-General shall, within three months after the end of each financial year prepare a report of the operations of the Authority during that year and shall submit such report to the Cabinet Secretary, through the

Board, who shall cause it to be presented to the National Assembly together with the report of the Auditor-General and certified copies of the accounts referred to in section 33(2).

*First Schedule to No. 35 of 2013, it is proposed to amend—*

**FIRST SCHEDULE**

[s. 2]

**EXEMPT SUPPLIES**

**PART I - GOODS**

**SECTION A**

*Second Schedule to No. 35 of 2013 it is proposed to amend—*

**SECOND SCHEDULE**

[s. 7(2)]

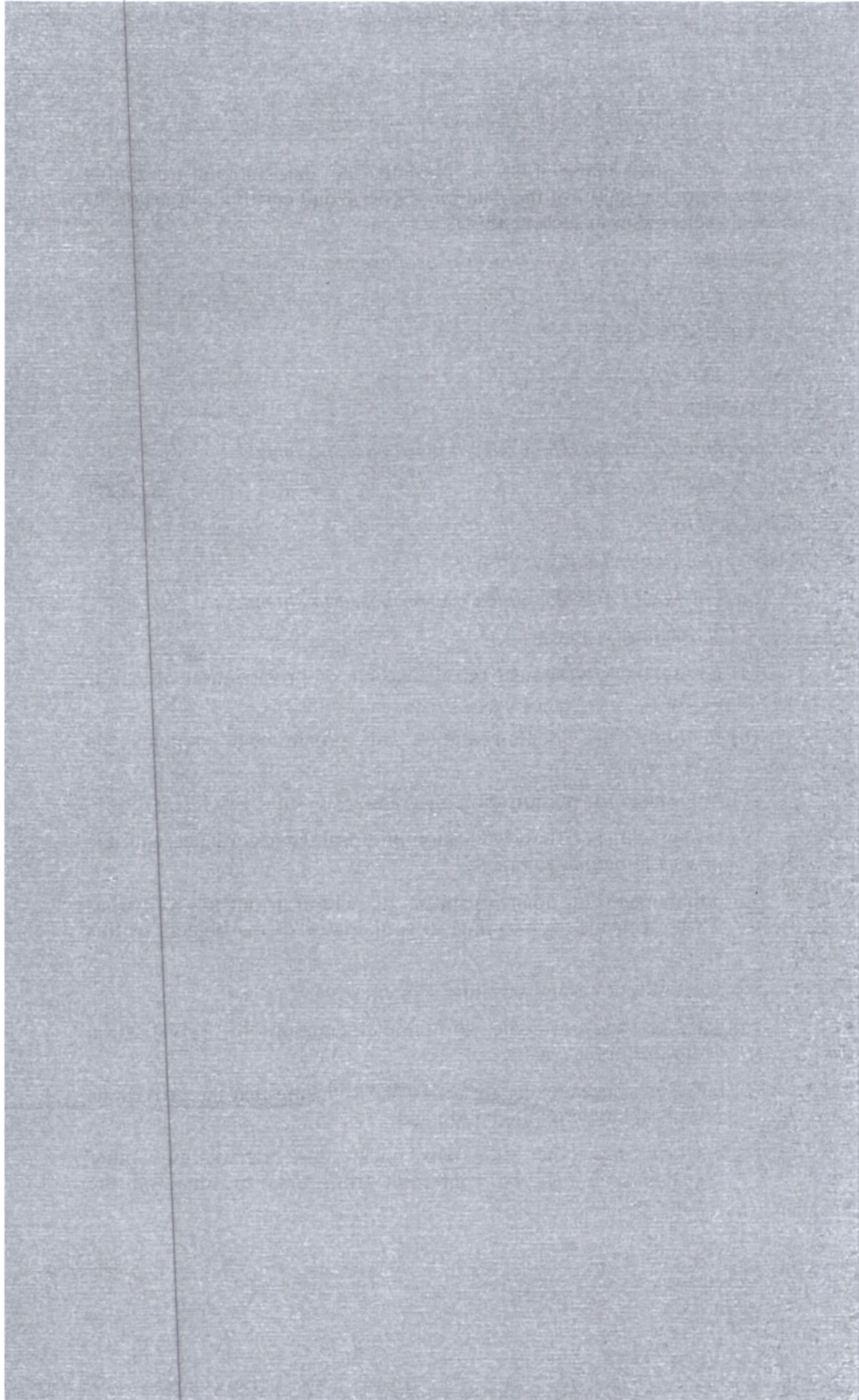
**ZERO-RATING**

**PART A - ZERO RATED SUPPLIES**

*Section 9 of No. 11 of 2023, which it is proposed to amend—*

9. The Authority shall—

- (a) advise the government on all aspects of privatization of public entities;
- (b) facilitate the implementation of government policies on privatisation;
- (c) implement the privatisation programme;
- (d) implement specific privatisation proposals in accordance with the privatisation programme;
- (e) collaborate with other organisations, within or outside Kenya, as it may consider appropriate in furtherance of the objects of this Act;
- (f) prepare long-term divestiture sequence plan;
- (g) monitor and evaluate the implementation of privatisation programs in Kenya;
- (h) take such measures as are necessary to ensure that the provisions of this Act are complied with; and
- (i) perform any other functions under this Act or any other legislation as may be conferred, from time to time, on the Authority.



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



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

**IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION  
AND**

**IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (No. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023)**

**INVITATION TO SUBMIT MEMORANDA**

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

**AND WHEREAS**, the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) was read a First Time on **Wednesday, 15<sup>th</sup> November, 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

**IT IS DECIDED** that the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) sponsored by the **Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP** seeks to make amendments to various statutes. It is in keeping with the practice of making various amendments that do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes—

**(1) The Oaths and Statutory Declarations Act (Cap. 15)**

The Bill proposes to amend the Oaths and Statutory Declarations Act to provide that an advocate who has been appointed as a commissioner for oaths shall sign the roll kept by the Chief Registrar of the Judiciary; and that the Registrar or Deputy Registrar of a superior court or subordinate court may administer an oath or affirmation or take an affidavit or statutory declaration under the Act.

**(2) The Advocates Act (Cap. 16)**

The Bill proposes the amendment of the Advocates Act to provide that the Registrar responsible for keeping the Roll of Advocates shall be the Chief Registrar of the Judiciary. Further, the Bill proposes to amend the Act to provide that the Council of the Society may, with the approval of the Chief Justice, make rules for the admission of advocates.

**(3) The Notaries Public Act (Cap. 17)**

The Bill proposes to amend the Notaries Public Act to provide that the Chief Registrar of the Judiciary shall be responsible for enrolling notaries public in the book kept for that purpose; granting new certificates to newly enrolled notaries public; and removing from the roll any person whose appointment as a notary public has been revoked under the Act.

**(4) The Civil Procedure Act (Cap. 21)**

The Bill proposes to amend the Civil Procedure Act to reduce the members nominated by the Law Society of Kenya to three to improve decision-making within the Rules Committee and reduce the cost of facilitating its work.

**(5) The Public Holidays Act (Cap. 110)**

The Bill proposes to amend the Public Holidays Act to remove *Utamaduni Day* as a public holiday.

**(6) The Trustees (Perpetual Succession) Act (Cap. 164)**

The Bill proposes to amend the Trustees (Perpetual Succession) Act to empower the Registrar of Companies to register trusts and issue of Certificates of Incorporation; process applications for incorporation; prescribe the form of an application; keep and maintain a register; conduct searches; and prescribe Regulations.

**(7) The Industrial Training Act (Cap. 237)**

The Bill proposes to amend the Industrial Training Act to harmonize the date for remitting the training levy with the period within which PAYE is required to be remitted to the Kenya Revenue Authority.

**(8) The Traffic Act (Cap. 403)**

The Bill proposes to amend the Traffic Act to incorporate the use of technology in the management of minor traffic offences and to enhance the maximum fine that may be imposed for failure to attend court pursuant to a notification; unauthorized removal of a notification affixed on a motor vehicle; and failure to report to a police station in relation to a defaced notification.

**(9) The Sexual Offences Act, 2006 (No. 3 of 2006)**

The Bill proposes to amend the Sexual Offences Act, 2006, to replace the Registrar of the High Court with the Chief Registrar of the Judiciary as the custodian of the register of convicted sexual offenders.

**(10) The Employment Act, 2007 (No. 11 of 2007)**

The Bill proposes to amend the Employment Act, 2007, to exempt the National Intelligence Service from the application of the Act in the same manner as other national security organs.

**(11) The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)**

The Bill proposes to amend the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 to make minor corrections to the provisions relating to the definition of "animal", "animal resource industry", "annual license", "private practice", "register" and "veterinary medicine" and grammatical errors in other provisions of the Act.

**(12) The Public Finance Management Act, 2012 (No. 18 of 2012)**

The Bill proposes to amend the Public Finance Management Act, 2012 to delete an inconsistency in the Act relating to the submission of the legislative proposal containing revenue raising measures for the national government. Section 39A of the Act already exhaustively provides for the manner of the introduction consideration and passage of the legislative proposal.

**(13) The Universities Act, 2012 (No. 42 of 2012)**

The Bill proposes to amend the Universities Act, 2012 to provide for the declaration of technical universities under section 25(1) of the Act in respect of public institutions that are or were national polytechnics and possess the facilities and human resource necessary to operate as a technical university. It further proposes to amend section 56(1) of the Act to require the Board of the Kenya Universities and Colleges Central Placement Service to place both privately sponsored and government sponsored students in universities and colleges.

**(14) The Office of the Attorney-General Act, 2012 (No. 49 of 2012)**

The Bill proposes to amend the Office of the Attorney-General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney General as an independent office.

**(15) The Civil Aviation Act, 2013 (No. 21 of 2013)**

The Bill proposes to amend the Civil Aviation Act, 2013, to include aviation information circulars in the definition of "publication"; and to increase the period within which the Director-General is required to submit an annual report to within six months after the end of the financial year.

**(16) The Value Added Tax Act, 2013 (No. 35 of 2013)**

The Bill proposes to amend the Value Added Tax Act, 2013 to re-classify the supply of gas meters under tariff number 9028.10.00 and the supply of denatured ethanol under tariff number 2207.20.00 as exempt and zero rated, respectively.

**(17) The Privatization Act, 2023 (No. 11 of 2023)**

The Bill proposes to amend the Privatization Act, 2023 to delete the preparation of a long-term divestiture sequence plan as a role of the Privatization Authority. This cures an inconsistency between the role of the Authority and the Cabinet Secretary.

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

ACT PROPOSED FOR AMENDMENT	COMMITTEE
1. The Oaths and Statutory Declarations Act (Cap. 15)	Justice and Legal Affairs
2. The Trustees (Perpetual Succession) Act (Cap. 164)	
3. The Advocates Act (Cap. 16)	
4. The Notaries Public Act (Cap. 17)	
5. The Civil Procedure Act (Cap. 21)	
6. The Sexual Offences Act, 2006 (No. 3 of 2006)	
7. The Office of the Attorney-General Act, 2012 (No. 49 of 2012)	
1. The Public Finance Management Act, 2012 (No. 18 of 2012)	Finance and National Planning
2. The Value Added Tax Act, 2013 (No. 35 of 2013)	
3. The Privatization Act, 2023 (No. 11 of 2023)	
1. The Traffic Act (Cap. 403)	Transport and Infrastructure
2. The Civil Aviation Act, 2013 (No. 21 of 2013)	
The Public Holidays Act (Cap. 110)	Administration and Internal Security
The Industrial Training Act (Cap. 237)	Trade, Industry and Cooperatives
The Employment Act, 2007 (No. 11 of 2007)	Labour
The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)	Health
The Universities Act, 2012 (No. 42 of 2012)	Education

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100 Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [cn@parliament.go.ke](mailto:cn@parliament.go.ke) to be received on or before **Friday, 1<sup>st</sup> December, 2023 at 5.00 p.m.**

**S. NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY  
22<sup>nd</sup> November, 2023**

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

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



THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

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

Telephone: +254202848000 ext. 3300  
Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)  
[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

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When replying, please quote

Ref: NA/DDC/JLAC/2023/148

30<sup>th</sup> November, 2023

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

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

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

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

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

**Dr. Bernard Mogesa, PhD, CPM**  
Chief Executive Officer,  
Kenya National Commission on Human Rights  
1<sup>st</sup> Floor, CVS Plaza, Lenana Road  
**NAIROBI**

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

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

**Ms. Linda Bonyo**  
Chief Executive Officer  
Lawyers Hub Kenya  
Bishop Road First Ngong Ave  
**NAIROBI**

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

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

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

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

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

Dear Ms Amedi

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) No. 2 BILL (NATIONAL ASSEMBLY BILL No. 68 OF 2023)**

---

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

**The Statute Law (Miscellaneous Amendments) Bill No. 2 (National Assembly Bills No. 68 of 2023)** sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP is an Omnibus Bill which seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes under the purview of the Committee: -

**1. The Advocates Act (Cap. 16)**

The Bill proposes to amend the Advocates Act to provide that the Registrar responsible for keeping the Roll of Advocates shall be the Chief Registrar of the Judiciary. Further, the Bill proposes to amend the Act to provide that the Council of the Society may, with the approval of the Chief Justice, make rules for the admission of advocates.

**2. The Notaries Public Act (Cap. 17)**

The Bill proposes to amend the Notaries Public Act to provide that the Chief Registrar of the Judiciary shall be responsible for enrolling notaries public in the book kept for that purpose; granting new certificates to newly-enrolled notaries public; and removing from the roll any person whose appointment as a notary public has been revoked under the Act.

**3. The Civil Procedure Act (Cap. 21)**

The Bill proposes to amend the Civil Procedure Act to provide that the members nominated by the Law Society of Kenya and appointed by the Chief Justice shall be three in number which is intended to improve decision-making within the Rules Committee and reduce the cost of facilitating the work of the Committee.

**4. The Trustees (Perpetual Success) Act (Cap. 164)**

The Bill proposes to amend the Trustees (Perpetual Succession) Act to provide that the Registrar of Companies as defined under section 2 of the Companies Act, 2015, shall be responsible for the registration of trusts and issuance of Certificates of Incorporation; the processing of applications for incorporation; form of an application; keeping and maintaining of a register; conduct of searches in the registry; and making of Regulations.

**5. The Sexual Offences Act, 2006 (No. 3 of 2006)**

The Bill proposes to amend the Sexual Offences Act, 2006, to provide that the register of convicted sexual offenders shall be kept and maintained by the Chief Registrar of the Judiciary.

## 6. The Office of the Attorney-General Act, 2021 (No. 49 of 2012)

The Bill proposes to amend the Office of the Attorney-General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney-General as an independent Office.

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

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In this regard, the Committee has resolved to invite you to a meeting to make representations on the Bill.

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

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

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

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

Yours



**JEREMIAH W. NDOMBI, MBS**

**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to:-

**Hon. Justin B. Muturi, EGH**

The Attorney-General of the Republic of Kenya

State Law Office and Department of Justice

Sheria House, Harambee Avenue

**NAIROBI**

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



THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

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

Telephone: +254202848000 ext. 3300  
Email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)  
[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

When replying, please quote

Ref: NA/DDC/JLAC/2023/148

1<sup>st</sup> December, 2023

**Dr. Simon K. Rotich, CBS**  
Commission Secretary/CEO  
Public Service Commission  
Commission House, Harambee Avenue  
**NAIROBI**

Dear *Dr. Rotich*

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) No. 2 BILL (NATIONAL ASSEMBLY  
BILL No. 68 OF 2023)**

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

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The Bill proposes to amend the Civil Procedure Act to provide that the members nominated by the Law Society of Kenya and appointed by the Chief Justice shall be three in number which is intended to improve decision-making within the Rules Committee and reduce the cost of facilitating the work of the Committee.

### 4. The Trustees (Perpetual Success) Act (Cap. 164)

The Bill proposes to amend the Trustees (Perpetual Succession) Act to provide that the Registrar of Companies as defined under section 2 of the Companies Act, 2015, shall be responsible for the registration of trusts and issuance of Certificates of Incorporation; the processing of applications for incorporation; form of an application; keeping and maintaining of a register; conduct of searches in the registry; and making of Regulations.

### 5. The Sexual Offences Act, 2006 (No. 3 of 2006)

The Bill proposes to amend the Sexual Offences Act, 2006, to provide that the register of convicted sexual offenders shall be kept and maintained by the Chief Registrar of the Judiciary.

### 6. The Office of the Attorney-General Act, 2021 (No. 49 of 2012)

The Bill proposes to amend the Office of the Attorney-General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney-General as an independent Office.

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

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In this regard, the Committee has resolved to invite you to a meeting to make representations on the Bill.

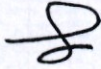
The purpose of this letter is to invite you to the meeting with the Committee scheduled for **Tuesday 5<sup>th</sup> December, 2023 at 10:00 am**. The meeting venue will be communicated in due course.

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

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Yours



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

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## Annexure 7: Memoranda by Stakeholders



**PUBLIC SERVICE COMMISSION**

PSC/LEG/019/14/158/VII/2

22<sup>nd</sup> November 2023

The Chairperson  
Justice and Legal Affairs Committee  
The National Assembly  
Parliament Building  
**NAIROBI**

**RE: PROPOSED AMENDMENTS TO THE OFFICE OF THE ATTORNEY GENERAL ACT**

This has reference to the advertisement appearing in the Daily Nation of 22<sup>nd</sup> November, 2023 calling for views on the proposed Statute Law (Miscellaneous Amendments) (No. 2) Bill, National Assembly Bill No. 68 of 2023. The said Bill proposes to amend several pieces of legislation amongst them the Office of the Attorney General Act.

The Bill proposes to amend Sections 13, 21 and 22 of the Office of the Attorney General as illustrated below:

S/NO	CURRENT PROVISION	PROPOSED AMENDMENT	AFTER AMENDMENT
1.	<b>13. Deputy Solicitors-General</b>  The Attorney-General may, in consultation with, the Public Service Commission, appoint such Deputy Solicitors-General as the Attorney-General may consider necessary for the proper and efficient discharge of the functions of the Office.	Delete the words "in consultation with the Public Service Commission".	The Attorney-General may, appoint such Deputy Solicitors-General as the Attorney-General may consider necessary for the proper and efficient discharge of the functions of the Office.

2.	<p><b>21. State Counsel</b></p> <p>(1) The Attorney-General may, in consultation with, and on the recommendation of the Public Service Commission appoint such number of State Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.</p>	Delete the words “in consultation with, and on the recommendation of the Public Service Commission”	(1) The Attorney-General may, appoint such number of State Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.
3.	<p><b>22. Terms and conditions of service</b></p> <p>The State Counsel appointed under this Act shall serve on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission and Public Service Commission, determine.</p>	Delete the words “and the Public Service Commission”	The State Counsel appointed under this Act shall serve on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission determine.

The proposed amendments are unconstitutional and the Commission opposes the same on the following grounds:

- (a) The Memorandum of Objects and Reasons of the Bill states as follows with regard to the Office of the Attorney General Act:

*“The Bill proposes to amend the Office of the Attorney General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney General in line with Article 156 of the Constitution that establishes the office of the Attorney General as an independent office.”*

- (b) It is not clear how the involvement of the Commission in recruitment, appointment or promotion of Deputy Solicitors General and States Counsel presents inconsistencies in the operational framework of the office of the Attorney General.
- (c) The Office of the Attorney General has been in existence for as long as the Executive arm of government has been in existence and successive Solicitors General, Deputy Solicitors General and States Counsel have always been recruited, appointed and promoted by the Public Service Commission with no complaint raised on the alleged inconsistencies in the operational framework of the office.
- (d) Additionally, contrary to what is stated in the memorandum of objects and reasons, Article 156 of the Constitution does not establish the Office of the Attorney General as an independent office. Unlike the constitutional provisions hinged on the Director of Public Prosecutions which specifically state at Article 157(10) that the Director of Public Prosecutions shall not be under the direction or control of any person or authority in the exercise of his or her powers or functions, there is no similar constitutional provision with regard to the Attorney General.
- (e) The Attorney General is also not listed as one of the independent constitutional offices in Chapter 15 of the Constitution. The Memorandum of Objects and Reasons in the Bill is therefore misleading and should not be used as a basis for amendment of the Office of the Attorney General Act.
- (f) The Attorney General is a member of the Cabinet and similar to all members of the Cabinet, is supported by the requisite staff to deliver on his/her functions as determined by the Commission in exercise of its powers to establish offices in the public service. Staff that support all members of the Cabinet to perform their functions being public officers in the Office of the President, Office of the Deputy President, Ministries and the Office of the Attorney General are public officers who fall within the mandate of the Public Service Commission. Isolating staff of the Office of the Attorney General and removing them from the jurisdiction of the Commission is therefore against the Constitution.
- (g) The Attorney General is the Chief Legal Advisor of the Government. The constitutional functions of the Attorney General do not operate in isolation of or independently from the Executive arm of Government. The Office of the Attorney General cannot therefore be delinked and removed from the jurisdiction of the Commission and from the legal framework that regulates the public service that falls within the mandate of the Commission.

- (h) The effect of the proposed amendments is to give the Attorney General sole and unfettered power to appoint, promote and determine terms and conditions of service of Deputy Solicitors General and States Counsel. This, will inherently create room for abuse of power.
- (i) In comparison, the Director of Public Prosecutions, who is constitutionally independent in the exercise of his/her powers and functions as provided in Article 157(10) of the constitution, has a Board established under Section 16 of the Office of the Director of Public Prosecutions Act with its functions provided in Section 17 of the said Act to advise the DPP on the management of the human resource function in the Office of the DPP.
- (j) Further, for comparison purposes, even H.E. the President has no power to recruit public officers apart from Cabinet Secretaries whom the President cannot appoint without the approval of Parliament. Additionally, the President has no power to appoint Principal Secretaries without the recommendation of the Commission, which undertakes the recruitment process with eventual approval by Parliament.
- (k) It is not possible that the people of Kenya placed safeguards for appointment of all persons in the public service but left room for Parliament to give a free hand to the Attorney General to unilaterally undertake recruitment and appointment of Deputy Solicitors General and States Counsel. Parliament should not be party in defeating the sovereign will of the people.
- (l) The proposed amendments are an affront to the Constitution which at Article 234(2)(a) gives the Commission power to appoint persons to hold office in the public service. The amendment might create a domino effect for other ministries/agencies to seek legislation to give them power to recruit staff for their offices.
- (m) If it was the objective of Kenyans to allow State officers to recruit public officers in their offices, Kenyans would have expressed such intentions in the Constitution and since this did not happen, it is proof that Kenyans preferred such recruitment to have controls so as to prevent abuse of power. Notably clause 13.6 of the Final Report of the Constitution of Kenya Review Commission (CKRC) explicitly stated that *"all public service employees should be appointed by the Public Service Commission"*. This was the wish of Kenyans and it is incumbent upon Parliament

which is the representative of the people to continuously honour the wishes of the Kenyan people.

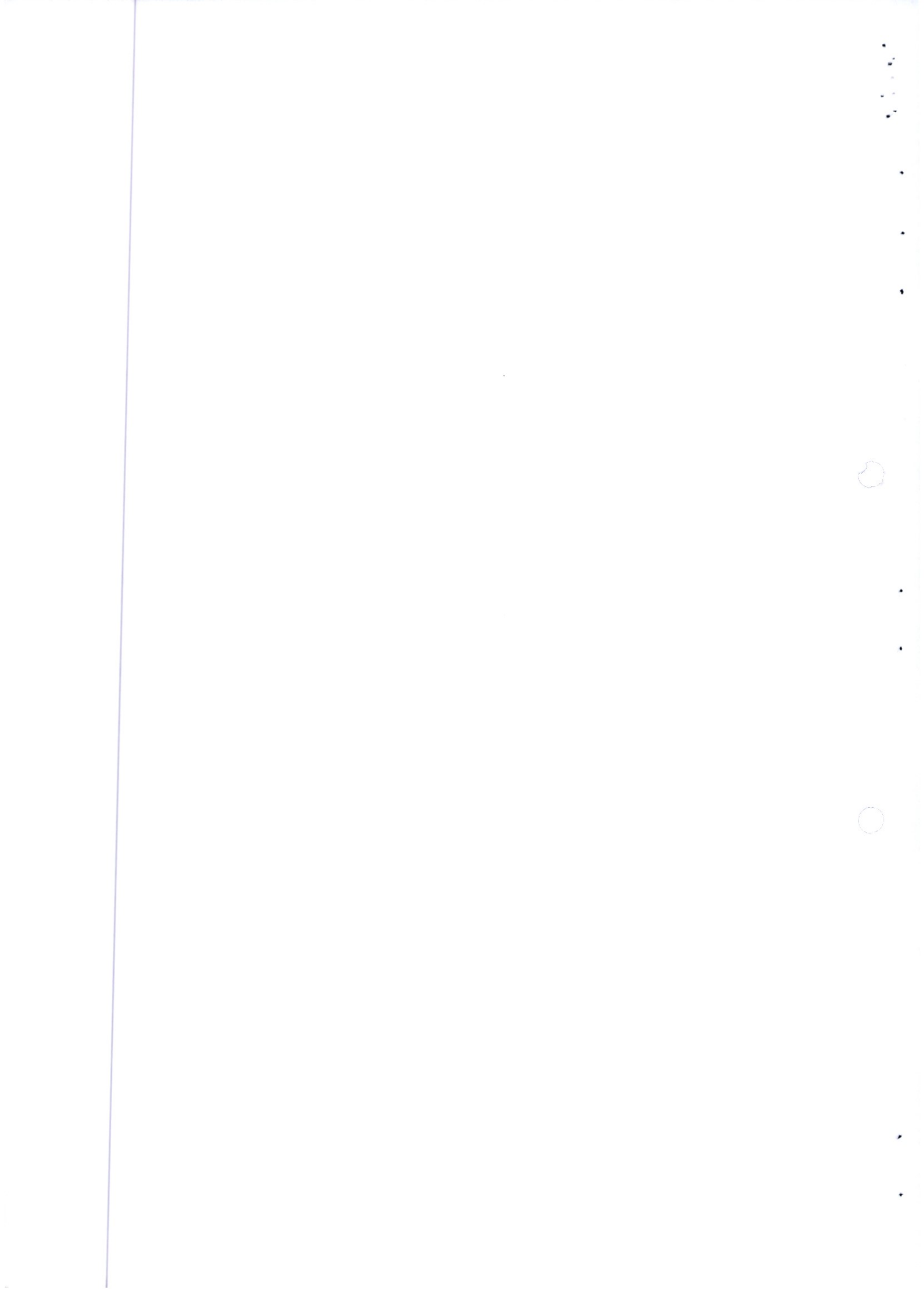
- (n) The proposals to amend the Act have been made in bad faith as evidenced by the fact that the Attorney General has failed to comply with the law as is currently subsisting. If the amendments have been proposed in good faith, the law as is should be applied as the proposed amendments are being pursued for future application.
- (o) Laws are made for the public good and for posterity and should not be made for short term purposes.
- (p) The proposed amendments to Section 21(2) of the Act is a violation of Article 234(2)(g) of the Constitution which provides that the Commission has the function and power to “*review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service.*”
- (q) The constitutional functions and powers of the Commission cannot be removed and/or undermined by Parliament through legislation.

In view of the foregoing, the Commission opposes the proposed amendments and requests to be granted an opportunity to present its views to your Committee.



FCS, DR. SIMON K. ROTICH, CBS  
SECRETARY/CEO  
PUBLIC SERVICE COMMISSION

Copy to:     The Clerk  
                  The National Assembly  
                  Parliament Building  
                  NAIROBI





## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

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

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

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

8.	Office of the Attorney General Act, 2011 (Act No. 49 of 2012)	An amendment to remove inconsistencies in the operational framework of the Office of the Attorney General in line with Article 156 of the Constitution of Kenya which establishes the Office of the Attorney General as an independent office	The ODPP supports this amendment in so far as it aims to create harmony with the relevant statute for the Attorney General's office
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Salaries & Remuneration  
Commission

Rewarding productivity

**Ref. No. SRC/ADM/35**

**4<sup>th</sup> December, 2023**

The Clerk of the National Assembly  
Main Parliament Buildings  
**NAIROBI**

**Attn: Jeremiah W. Ndombi, MBS**

**INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) NO. 2 BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2023)**

Reference is made to your letter Ref. NA/DDC/F&JLAC/2023/148 dated 30<sup>th</sup> November, 2023 on the above subject (which has been received at our offices today 4<sup>th</sup> November, 2023) in which the Salaries and Remuneration Commission (SRC) has been invited to a meeting with the Departmental Committee on Justice and Legal Affairs, scheduled for tomorrow 5<sup>th</sup> December, 2023 at 10:00 am.

Regrettably, due to the short notice and other ongoing Commission's pre-planned activities, SRC will not be in a position to attend the meeting as proposed. The Commission therefore, requests that for purpose of adequate preparation, the meeting be rescheduled to a later date next week.

SRC appreciates your continued cooperation and support as we discharge our respective mandates.

  
**Mrs. Anne R. Gitau, MBS**  
**COMMISSION SECRETARY/CEO**



# THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Our Ref: CRJ 48    Your Ref: NA/DDC/JLAC/2023(148)    Date: 04 December 2023

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

**RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS TO DISCUSS THE STATUTE LAW (MISC. AMENDMENT) BILL (NA BILL NO. 68 OF 2023)**

We refer to your letter Ref: NA/DDC/JLAC/2023(148) dated 30<sup>th</sup> November 2023 on the above subject.

The Judiciary has noted that the Statute Law (Misc. Amendment) Bill No. 2 of 2023 (NA Bill No. 68 of 2023) Bill seeks to amend the the Advocates Act, the Notaries Public Act, the Oaths and Statutory Declarations Act and the Sexual Offences Act to replace the Registrar of the High Court with the Chief Registrar of the Judiciary.

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

1. The Office of Chief Registrar of the Judiciary is established under Article 161(2)(c) of the Constitution to serve as the chief administrator and accounting officer of the Judiciary. Among the functions of the office is the management of the affairs of Advocates in exercise of powers bestowed by the Advocates Act, the Notaries Public Act, and the Oaths and Statutory Declarations Act. The Chief Registrar also maintains a register of convicted sexual offenders under Section 39(13) of the Sexual Offences Act.
2. However, all four statutes bestow these powers on the Registrar of the High Court as opposed to the Chief Registrar of the Judiciary due to the fact that they were enacted under the old constitutional regime when the Registrar of the High Court was the chief administrator of the Judiciary. To date, constitutional changes to the structure of the Judiciary have not been complemented with statutory amendments to reflect these changes.
3. We therefore support the proposed replacement of the Registrar of the High Court with the Chief Registrar of the Judiciary in the Advocates Act, the Oaths & Statutory Declarations Act, the Notaries Public Act and the Sexual Offences Act.





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

**PAUL N. MAINA, OGW, 'NDC'(K)**  
**FOR: CHIEF REGISTRAR OF THE JUDICIARY**

Copy To: Chief Justice & President,  
Supreme Court of Kenya  
Supreme Court Building  
P O Box 30041-00100  
**NAIROBI**



**Social Transformation**  
*through* Access to Justice

Supreme Court Building | Ground Floor, Chamber 6 | P.O. Box 30041-00100 | Nairobi  
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**Justice Be Our Shield and Defender**

**COMMENTS FROM THE JUDICIARY ON PROPOSED AMENDMENTS TO LAWS TOUCHING ON THE FUNCTIONS OF THE OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY**

	<b>STATUTE</b>	<b>SECTION</b>	<b>CURRENT PROVISION</b>	<b>PROPOSED AMENDMENT</b>	<b>COMMENTS</b>
1	Oaths and Statutory Declarations Act	Section 3	<b>3. Commissioner for oaths to sign roll</b> Every advocate appointed a commissioner for oaths shall, on appointment, sign a roll, which shall be kept by the <b>Registrar of the High Court.</b>	<b>Registrar of the High Court</b> to be replaced by <b>the Chief Registrar of the Judiciary</b>	The Judiciary supports this amendment
2		Section 12	<b>12. Powers of magistrates and certain court officers to administer oaths</b> A magistrate, the Registrar of the High Court, a Deputy Registrar, a Deputy Registrar of the Environment and Land Court and a Deputy Registrar of the Employment and Labour Relations Court may administer any oath or affirmation or take any affidavit or statutory declaration (voluntarily made and subscribed in accordance with the provisions of Part III) which might lawfully be administered or taken by a commissioner for oaths appointed under Part II.	Replace the words "the Registrar of the High Court, a Deputy Registrar, a Deputy Registrar of the Environment and Land Court and a Deputy Registrar of the Employment and Labour Relations Court" with " <b>the Registrar or Deputy Registrar of a Superior Court or a Subordinate Court</b> "	The current provision excludes the Registrar and DRs of the Supreme Court, Court of Appeal and Small Claims Court from among persons who can administer oaths.  The Judiciary supports the proposed language that covers all Registrars and Deputy Registrars.  We also propose an additional provision saying those who have served as judicial officers before exiting the Judiciary should not have to wait for 3 years before they can be

	STATUTE	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	COMMENTS
					appointed as Commissioners for Oaths. Presently, the Law Society does not allow Magistrates who exit the Judiciary following retirement or resignation to be appointed as Commissioners for Oaths until they have taken three annual PCs.
3	Advocates Act	Section 2	"Registrar" means the Registrar of the Court	To be amended to say "Registrar means the <b>Chief Registrar of the Judiciary</b> "	The Judiciary supports this amendment.
4		Section 81	<p><b>81. Power to make rules</b></p> <p>(1) The Council of the Society, with the approval of the Chief Justice, may make rules with regard to—</p> <p>(a) the professional practice, conduct and discipline of advocates;</p> <p>(b) the keeping of accounts by advocates;</p> <p>(c) the annual submission to the Council of a certificate by an accountant registered under the Accountants Act (Cap. 531) or by some other person or class of persons specified by</p>	Introduction of a new clause authorizing the Council of the Law Society to make rules with regard to the admission of advocates under Section 15.	In accordance with Section 15 of the Advocates Act, the admission of advocates is a power bestowed on the Chief Justice who conducts the session in the form of judicial proceedings. We propose, therefore, that the power to make rules governing the admission of advocates be bestowed on the Chief

STATUTE	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	COMMENTS
		<p>such Council that he has examined the books, accounts and documents of the advocate to such extent as may be prescribed and stating –</p> <ul style="list-style-type: none"> <li>(i) whether or not he is satisfied that, during the period covered by his certificate, the advocate has complied with the rules for the time being in force regulating the keeping of accounts by advocates; and</li> <li>(ii) if he is not so satisfied, the matters in respect of which he is not satisfied;</li> </ul> <p>(d) the retention or otherwise by advocates of interest earned on moneys deposited, received or held for or on account of clients;</p> <p>(e) the issue of practising certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;</p> <p>(ee) the procedure for the conferment of, and the privileges attached to, the rank of Senior Counsel;</p> <p>(f) the establishment of a compensation fund for the benefit of clients;</p> <p>(g) indemnity for clients against loss or damage arising from claims in respect of any civil</p>		<p>Justice and not the Council of the Law Society. This can be done by way of a <b>new subsection</b> saying:</p> <p>81(4) The Chief Justice may make rules with regard to the admission of advocates under Section 15.</p> <p>Alternatively, this provision can be introduced as a new subsection under Section 15 i.e. 15(6).</p>

	STATUTE	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	COMMENTS
			<p>liability incurred by an advocate or his employee, or from breach of trust by the advocate or his employee;</p> <p>(h) continuing professional education for all advocates practising in Kenya;</p> <p>(i) generally for the better carrying out of the provisions of this Act, other than Parts III, IV, IX, X and XI.</p> <p>(2) If an advocate fails to comply with any rules made under this section, any person may make a complaint in respect of that failure to the Disciplinary Tribunal.</p> <p>(3) No rule made under this section shall require an advocate who is a member of the National Assembly or the Speaker and who holds a practising certificate to undergo continuing legal education during his tenure as such member or as the Speaker.</p>		
5	Notaries Public Act	Section 4(1)	<p><b>4. Notaries public to be enrolled and to take out certificate on appointment and annually</b></p> <p>(1) The <b>Registrar of the High Court</b>, on receiving from the Chief Justice the instrument of appointment mentioned in section 2, and on receiving from the person requiring to be enrolled the prescribed fee, shall enroll the</p>	To be amended to bestow this function on <b>the Chief Registrar of the Judiciary</b>	The Judiciary supports this amendment.

	STATUTE	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	COMMENTS
			name of such person in a book which shall be kept for that purpose in the office of the <b>Registrar of the High Court</b> , and shall issue to such person a certificate of enrolment which certificate shall authorize him to perform within Kenya the functions and duties of a notary public up to the 31st December next after the date on which such certificate became effective.		
6		Section 4(2)	(2) The <b>Registrar of the High Court</b> shall at any time, on receipt of the prescribed fee, grant a new certificate to any person whose name shall be on the roll of notaries public, but every certificate granted under this subsection shall expire on the 31st December next after the date on which such certificate became effective.	To be amended to bestow this function on <b>the Chief Registrar of the Judiciary</b>	The Judiciary supports this amendment.
7		Section 5(3)	(3) The <b>Registrar of the High Court</b> shall remove from the roll of notaries public the name of any advocate or person whose appointment has been revoked in accordance with the provisions of subsection (1) or subsection (2), and the certificate of enrolment in respect of such entry shall be delivered up by such advocate or person to the Registrar, who shall cancel it.	To be amended to bestow this function on <b>the Chief Registrar of the Judiciary</b>	The Judiciary supports this amendment.
8					We propose a new section allowing magistrates and judicial officers to perform

	STATUTE	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	COMMENTS
					<p>notarial acts, and that they be exempt from annual notarial certificates:</p> <p><i>5A. Powers of magistrates and certain court officers to perform notarial acts</i></p> <p>(1) A magistrate, Kadhi, the Registrar or Deputy Registrar of a Superior Court or a Subordinate Court may perform notarial acts which might lawfully be performed by a Notary Public appointed under Section 2 of this Act.</p> <p>(2) They are not to take annual certificates.</p>
9	Civil Procedure Act	Section 81(1)(a)	<p>81. Rules Committee</p> <p>(1) There shall be a Rules Committee which shall consist of –</p> <p>(a) the following members appointed by the Chief Justice –</p> <p>(i) one judge of the Court of Appeal;</p> <p>(ii) one judge of the High Court;</p>	<p><b>Reduction of the number of advocates in the Rules Committee from 8 to 3</b></p>	<p>The Judiciary supports this amendment.</p>

	STATUTE	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	COMMENTS
			(iii) a judge of the Environment and Land Court; (iv) one judge of the Employment and Labour Relations Court who is a member of the Employment and Labour Relations Court Rules Committee; (v) two Magistrates, one of whom shall be the Secretary to the Committee; <b>(vi) eight advocates nominated by the Law Society of Kenya to represent each of the branches of the Society established under section 24 of the Law Society Act, 2014; and</b> (vii) one representative from the Kenya Law Reform Commission; and (b) the Attorney-General or a designated representative.		
10	Sexual Offences Act	Section 39(13)	(13) A register for convicted sexual offenders shall be maintained by <b>the Registrar of the High Court</b> and any person who has reasonable cause to so examine it may examine the register.	<b>Registrar of the High Court</b> to be replaced by <b>the Chief Registrar of the Judiciary</b>	The Judiciary supports this amendment



LAW SOCIETY OF KENYA  
Lavington, Opposite Valley Arcade  
Gitanga Road  
P.O. Box 72219-00200  
NAIROBI  
Tel. 387 4664  
0720 904983

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MEMORANDUM TO  
PARLIAMENT

ON

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

DECEMBER 2023

**Eric Theuri, President Law Society of Kenya**  
**Lavington, opp Valley Arcade,**  
**Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya**  
**Tel: +254 111 045 300**

Email: [lskpresidenttheuri@gmail.com](mailto:lskpresidenttheuri@gmail.com)/ [president@lsk.or.ke](mailto:president@lsk.or.ke)

Website: [www.lsk.or.ke](http://www.lsk.or.ke)

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**THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL, 2023**  
**(NATIONAL ASSEMBLY BILLS NO. 68 OF 2023)**

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## Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith Mony Odhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amana, Njoki Mboce, Ochieng Gor
- **Up-country Representatives**, Byron Menezes, Lindah Kiome, Michael Wabwile, Vincent Githaiga
- **Coast Representative**, Riziki Emukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes the following submissions. The Law Society requests the National Assembly to include the following amendments affecting the Office of the Attorney-General Act, 2012.

The proposed amendments are based on the fact that members of the office of the Attorney General are primarily members of the Law Society and we have received concerns regarding delays in recruitment of State Counsels, their promotions and deployment, handling of disciplinary matters, capacity-building and training, and the improvement of the terms of service. As a result, State Counsels, officers and staff are demotivated, leading many highly experienced

and qualified personnel to seek greener pastures outside the State Law Office and Government, and this has affected the quality of the work of a crucial Constitutional office, which exposes the Government to severe legal risks.

Pursuant of the critical mandate to advice on matters of practice and welfare of members, we urge the committee to consider the following new amendments for inclusion in the Schedule to the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023:

**SPECIFIC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023)**

Statute	Section	Recommendation
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 2(1)	(a) in the definition of “subordinate officer”, delete the words “Public Service Commission” and substitute therefor the word “Office”;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		(b) by inserting the following new definition in proper alphabetical sequence—
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		“Advisory Board” means the advisory board established under section 20A(1).
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 9(2)	Delete the words “Public Service Commission” and substitute therefor the words “Advisory Board”.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 9(5)(d)	Delete the expression “Article 234” and substitute therefor the expression “section 20B”.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 13	Delete the words “Public Service Commission” and substitute therefor the words “Advisory Board”.

2012).			
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	New	Insert the following new sections immediately after section 20—	
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Advisory Board.	<b>20A.</b> (1) There is established an advisory board to be known as the Advisory Board to the Office of the Attorney-General.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(2) The Advisory Board shall comprise—
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(a) the Attorney-General, who shall be the chairperson;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(b) a Judge of the High Court nominated by the Chief Justice;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(c) the Principal Secretary to the National Treasury;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(d) the Principal Secretary in the State Department responsible for matters relating to the public service;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(e) the president of the Law Society of Kenya;
			(f) the Chairperson, Kenya National Commission on Human Rights;

			(g) the Chairperson of the Council of the Institute of Human Resource Management; and
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(h) the Solicitor-General, who shall be the secretary to the Advisory Board.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Functions of the Advisory Board.	<b>20B.</b> (1) The Advisory Board shall advise the Attorney-General on—
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(a) the recruitment and appointment of State Counsel, other officers and other members of staff;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(b) promotions;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(c) transfers and deployments;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(d) discipline; and
			(e) any other matter that may be referred to the Board by the Attorney-General.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(2) The Attorney General may co-opt into the Board persons whose knowledge and expertise it requires.

The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Meetings of the Advisory Board.	<b>20C.</b> (1) The Advisory Board shall meet at least four times in every financial year and not more than three months shall elapse between one meeting and the next meeting.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(2) Unless two-thirds of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(3) Subject to the provisions of this Act, the Advisory Board shall regulate its own procedure.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Quorum of the Advisory Board.	<b>20D.</b> The quorum at the meeting of the Advisory Board shall be four members.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Attorney-General to preside at meetings.	<b>20E.</b> The Attorney-General shall convene and preside over the meetings of the Advisory Board or, in the absence of the Attorney-General, a member of the Board elected by the members present from among their number.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Decisions of the Advisory Board.	<b>20F.</b> Any matter before the Advisory Board shall be decided by a majority of the members present and voting and in case of an equality of votes, the person presiding shall have a casting vote.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Remuneration of the members of the Advisory Board.	<b>20G.</b> The members of the Advisory Board shall be paid such allowances as the Cabinet Secretary responsible for matters relating to finance, in consultation with the Attorney-General, shall approve upon the advice of the

			Salaries and Remuneration Commission.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Conflicts of interest.	<b>20H.</b> (1) Any member of the Advisory Board or a person present at a meeting of the Board who has any interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and shall be disqualified from participating in the deliberations of the Board in respect of that matter, unless the Board decides otherwise.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(2) No member of the Advisory Board shall trade with the Office.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Validity of the proceedings of the Advisory Board.	<b>20I.</b> The proceedings of the Advisory Board shall not be invalidated by reason of a vacancy among the members.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 21(1)	Delete the words "Public Service Commission" and substitute therefor the words "Advisory Board".	
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 22	Repeal section 22 and substitute therefor the following new section—	
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Terms and conditions of service.	<b>22.</b> (1) The State Counsel, officers and other staff appointed under this Act shall serve on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission, determine.
The Office of the Attorney-General Act,			(2) The terms and conditions determined under this section shall commence

2012 (No. 49 of 2012).			not later than one year after the commencement of this Act.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(3) The Attorney-General may, in consultation with the Salaries and Remuneration Commission, make Regulations relating to the payment of remuneration, emoluments and other benefits to State Counsel, officers and other staff of the Office.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	New	Insert the following new Part immediately after section 25—	
<b>PART IVA—FINANCIAL PROVISIONS</b>			
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Funds.	<b>25A.</b> (1) Parliament shall allocate funds to the Office in accordance with Article 249(1) of the Constitution.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(2) Despite the generality of subsection (1), the funds of the Office shall consist of—
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(a) monies allocated by Parliament;
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(b) monies or assets as may accrue to the Office in the course of the exercise of its powers or the performance of its functions; and
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).			(c) monies from any other lawful source provided, donated or granted to the Office.
The Office of		Financial	<b>25B.</b> The financial year of

the Attorney-General Act, 2012 (No. 49 of 2012).		year.	the Office shall be the period of twelve months commencing on the 1st July in each year and ending on the 30th June in the following year.
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).		Financial estimates.	<b>25C.</b> (1) At least three months before the commencement of each financial year, the Attorney-General shall cause to be prepared the estimates of the revenue and expenditure of the Office for that year for approval by the National Assembly.
			(2) The annual estimates shall make provision for all the estimated expenditure of the Office for the financial year concerned and, in particular, shall provide for—
			(a) the payment of the salaries, allowances and other charges in respect of the staff of the Office;
			(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Office;
			(c) the maintenance of the buildings and grounds of the Office;
			(d) the funding of training of, and research and development by, State Counsels, officers and other staff of the Office; and
			(e) the creation of such funds to meet future or contingent

			liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Attorney-General may think fit.
		Accounts and audit.	<b>25D.</b> (1) The Attorney-General shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Office.
			(2) Within a period of three months after the end of each financial year, the Attorney-General shall cause to be submitted to the Auditor-General the accounts of the Office in respect of that year together with a—
			(a) statement of the income and expenditure of the Office during that year; and
			(b) statement of the assets and liabilities of the Office on the last day of that financial year.
		No. 34 of 2015.	(3) The accounts of the Office shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.
			(4) The written laws and Regulations relating to public financial management shall apply to the funds of the Office.
		Bank accounts.	<b>25E.</b> The Attorney-General shall cause to be

			opened and maintained such bank accounts with banks that are regulated by the Central bank of Kenya as are necessary for the exercise of the functions of the Office.
	s. 28	Delete.	
	New	Insert the following new section immediately after section 28—	
		Seal of the Office.	<b>28A.</b> (1) There shall be a seal of the Office which shall be such device as the Attorney-General shall determine.
			(2) The seal of the Office shall be kept in the custody of the Attorney-General or such person as the Attorney-General may authorise in that regard.
			(3) The seal of the Office shall be used in accordance with the orders of the Attorney-General.
			(4) The seal of the Office, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorization of the Attorney-General in respect of the seal under this section shall be presumed to have been duly given.
	New	Insert the following new sections immediately after section 33—	
		Transitional matters.	<b>33A.</b> (1) Any State Counsel, officer or member of staff employed and deployed by the Public Service Commission and serving in the Office immediately before the commencement of this Act

			shall—
			(a) on the commencement of this Act, be deemed to have been employed and deployed in accordance with this Act;
			(b) retain any rights that have accrued or are accruing to him or her before the commencement of this Act;
			(c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this Act;
			(d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;
			(e) be deemed to have been employed in accordance with this Act for the purposes of any written law under which any rights accrued or were accruing to him or her under which he or she

			continues to contribute or by which any entitlement has been conferred; and
			(f) be deemed to be a State Counsel, officer or employee of the Office for the purposes of any superannuation scheme to which he or she is entitled to contribute.
		Implementation Committee.	<b>33B.</b> (1) The Attorney-General shall constitute an Implementation Committee consisting of State Counsels, officers and employees of the Office as may be necessary in the circumstances.
			(2) The Implementation Committee shall—
			(a) be responsible for coordinating the formulation or facilitation of such things and matters that are required for the implementation of the provisions of this Act;
			(b) serve for a period of one year after the date of appointment;
			(c) submit to the Attorney-General, at least once in every two months, a report on the progress achieved in the implementation of the provisions of this act; and
			(d) in the performance of its functions, regulate

			its own procedure.
			(3) The members of the Implementation Committee shall be paid such allowances as the Attorney-General may, on the advice of the Salaries and Remuneration Commission, determine.
Schedule			In paragraph 1(b), delete the words "Public Service Code of Conduct and the".

In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours **faithfully**,



**Eric Theuri**  
**President Law Society of Kenya**

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Douglas Katho  
to authenticate  
to who  
4/12/23

KERUBO ASHLEY  
Telephone: 0797575242  
NAIROBI,  
KENYA.

CLERK OF THE NATIONAL ASSEMBLY  
P.O. BOX 41842-00100,  
NAIROBI,  
KENYA.

NATIONAL ASSEMBLY  
RECEIVED  
04 DEC 2023  
CLERK'S OFFICE  
P.O. Box 41842, NAIROBI

REF: MEMORANDA SUBJECT TO THE STANDARD, WEDNESDAY,  
NOVEMBER 22, 2023 ADVERTISEMENT

COMMITTEE :	JUSTICE AND LEGAL AFFAIRS
STATUTES	RECOMMENDATION
<p>The Oaths and Statutory Declarations Act (Cap. 15)</p> <p>04 DEC 2023</p>	<p>The Chief registrar of the Judiciary should retain the role of an accounting officer of the Judiciary so that the Judiciary can be held accountable to its decision making and hence keep the roll of the appointed advocates legible for commissioning of oaths with their signatures. The amendment makes room for misconduct on who can commission an oath for its open to representation by a subordinate Courts deputy registrar or registrar</p>
<p>The Advocates Act (Cap. 16)</p>	<p>Complaints should be forwarded to the Advocates Complaints Commission as established by the Advocates act (A). The Council of Society plays no role in the Law curriculum accreditation hence shouldn't be involved in the existing structure. The Chief registrar should consider in detail the Constitution of Kenya, Article 161(2)(c)</p>
<p>The Civil Procedure Act (Cap. 17)</p>	<p>Law Society nominees in the Rules Committee are not to be reduced for the scope they represent is broad, the entire Public relies on LSK for representation in Justice and legal affairs.</p>

The cost of quality representation is not up for bargain. The risk of political activities is evident, 3 nominated members are narrow and limited in effecting their professionalism within the Committee.

Statute	Recommendation
The Sexual Offences Act of 2006 (No. 3)	The register of convicted sexual offenders shouldn't be housed in the Judiciary but in the High Court by the Chief Registrar to avoid irregularities within the Independent Office. The Court is mandated by Article 165(b) of the Constitution of Kenya hence no potential harm or threat stimulating such an amendment.

The Office of the Attorney-General Act of 2012 (No. 49)	The Constitution article 156(7) states the AG's powers to be referable the framework doesn't encompass the office in question as independent according to Article 248(3) and article 156(3)(c). Any such amendment is therefore not removing any inconsistency in the operation of the office but interfering.
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### COMMITTEE : FINANCE & NATIONAL PLANNING

Statute Recommendation

The Public Finance Management Act of 2012 (No. 15)	The inconsistency isn't well represented to reform the law given the existing over reliance on indirect taxes to raise government revenue. These legislative proposal is unethical
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The Value Added Tax of 2013 (No. 35)	The permanency in regard to the tax exemption to gas meters and denatured ethanol importation is unfair. Subsidy should be explored if the Change is related to Climate Change, if not these should be done away with for revenue is
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### The Privatization

### Recommendation

Act of 2023  
(No. 11)

The Privatisation Authority is lawfully recognized to execute the role of designing and ensuring implementation of the long-term plan within a divestiture sequence. The ~~role~~ law must not be amended for risk exists if left to the Cabinet Secretaries office since the government has a record of shuffling the Cabinet and this can impact the intended success from privatising parastatals; further repeal of this 2023 Act should be considered and partnership schemes explored.

### COMMITTEE :

TRANSPORT & INFRASTRUCTURE

### The Civil Aviation

### Recommendation

Act of 2013 (No. 21)

The identification of aviation information circulars as publication is key to enhancing literacy however delaying an annual report by six months inspires laziness for the holder of the office of Director general. Such an amendment alters annual accountability and should not be part of Kenya's legislation in the aviation or road and railway sector.

### COMMITTEE :

INTERNAL SECURITY

The Public Holidays  
Act (Cap 110)

### Recommendation

The Moi day transitioned to Utamaduni to celebrate Kenyans diverse cultures. Culture Change and erosion will be a strategic developing consequence and ethnic inequalities will persist. Retain Utamaduni day as a Public holiday for the exposure it possesses and for its root in Culture at present day. Creative endeavors promoting Culture come to light on 10<sup>th</sup> of October and it

<p>COMMITTEE :</p>	<p>LABOUR. <del>6</del></p>
<p>Statute The Employment Act of 2007 (No. 11)</p>	<p>Recommendation The National Intelligence service should be subject to the employment Act for the ancestral standard of Operation doesn't jeopardise National security at all.</p>
<p>COMMITTEE :</p>	<p>HEALTH</p>
<p>Statute The Veterinary Surgeons and Veterinary Paraprofessionals Act of 2011 (No 29)</p>	<p>Recommendation Redefining terms vacillates principles as Ideologies are reinvented to mean what they didn't mean in the onset of the legislation. The livestocks are facing Climate Change shocks and such transformation open way for potential misunderstanding. Unless scientific study backs such change the amendment should only cater for the grammatical errors within the Act.</p>
<p>COMMITTEE :</p>	<p>EDUCATION</p>
<p>Statute The Universities Act of 2012 (No 42)</p>	<p>Recommendation. The Board of the Kenya Universities and Colleges Central placement is subject to Public Universities. The extended grace is costly and may alter performance within public Universities. The Proposal to declare national polytechnics Technical Universities if they have the capacity in Human Resource and facilities is due and should be applauded.</p>

1<sup>st</sup> December, 2023

The Clerk of the National Assembly,  
P. O. Box 41842-00100,  
[cna@parliament.go.ke](mailto:cna@parliament.go.ke)

RE: MEMORANDA ON THE NATIONAL ASSEMBLY STATUTE LAW (MISCELLANEOUS AMENDMENTS)(NO. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023) PROPOSAL TO REMOVE UTAMADUNI DAY AS A PUBLIC HOLIDAY

<u>Statute being Amended</u>	<u>Effect of Amendment</u>	<u>Proposal for consideration</u>	<u>Justification for proposal</u>
The Public Holidays Act	To amend the Public Holidays Act to remove Utamaduni Day as a Public Holiday	Redesignate Utamaduni Day as “National Tree Planting Day”	<p>The recent celebration of National Tree Planting Day on November 13th, 2023, was a resounding success, underscoring Kenya's commitment to environmental stewardship. Communities, organizations, and individuals came together to actively participate in tree planting activities, demonstrating a collective dedication to addressing environmental challenges. Building on this success, designating Utamaduni Day as the National Tree Planting Day ensures a seamless continuation of this momentum, allowing us to celebrate and build upon the positive impact achieved on November 13th.</p> <p>Utamaduni Day seeks to celebrate the richness and cultural heritage of the</p>

		<p>Country. One of the most important features of the country that has had role to play in our culture, economy and national psyche is our environment. The Government has recognised this in various ways by hosting the inaugural African Climate Summit and celebrating the aforementioned tree planting day. By ensuring that there is a designated day set aside in law to participate in this vital and important act we can ensure that our environment is safeguarded for generations to come.</p> <p>In addition to the environmental benefits there are economic benefits to be gained by the country. The international market for carbon credits is gaining maturity. Our forest cover and the possibility of it being extended afford us a unique opportunity to tap into this market. A regular and marked tree planting day allows us to constantly stay ahead of the need for carbon credits. It is a way that we can do well by doing good.</p> <p>Having a National Tree Planting Day makes Kenya a leader in environmental stewardship, and a beacon that can be followed by others. The ripple effect of this can spread to corners of the globe not only increasing our global standing and influence but also ensuring through leadership by example that other nations</p>
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			implement similar initiatives with the end-effect of an environmental renewal.
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Yours Faithfully,

Gragory Nyauchi

GRAGORY ORIARO NYAUCHI  
Advocate and Commissioner of Oaths  
P. O. Box 35434-00100, NAIROBI  
Cell: 0736 351753





December 4, 2023

## **REVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2023**

### **(a) Comment on the Proposed Amendment to the Industrial Training Act (Cap 237)**

The Bill proposes to amend the Act to align the date for remitting the training levy to the ninth day of each month. This change aims to align it with the timeline for remitting PAYE to the Kenya Revenue Authority.

The Commission endorses this proposed amendment, recognizing its intention to simplify the levy's administration and resolve inconsistencies with existing tax law filing dates.

### **(b) Comment on the Proposed Amendment to the Employment Act (No. 11 of 2007).**

The Bill intends to amend the Employment Act, 2007, to exempt the National Intelligence Service (NIS) from the Act's provisions, similar to other security organs.

The Commission endorses this proposed amendment, particularly considering that the NIS was established as a security organ after the enactment of the Employment Act.

### **(c) Comment on the Proposed Amendments to the National Employment Authority Act, 2016**

The Bill seeks to amend the National Employment Authority Act, 2016, to rectify inconsistencies and errors within the Act.

The Commission had reviewed the proposed changes and notes they are consistent with the principal Act and contribute to legislative clarity and precision.



# National Transport and Safety Authority

Telephone: +254-(020) 6632000  
Website: www.ntsa.go.ke

Office of the Director General  
316 Upper Hill Chambers  
2<sup>nd</sup> Ngong Avenue  
9<sup>TH</sup> FLOOR  
P.O. Box 3602-00506  
NAIROBI

NTSA/C/FIN/007 Vol. I (82)

27<sup>th</sup> November 2022

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

Dear *STN*,

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO 2) BILL (NATIONAL ASSEMBLY BILL NO 68 OF 2023)**

Reference is made to the above matter and letter Ref **NA/DDC/TI/2023/103** dated **23<sup>rd</sup> November 2023**.

Having perused the Draft Bill we note that the same does not contain the proposed amendment and only contains a replication of Section 117(3) as is currently contained in the Traffic Act. To achieve the first objective of incorporation of technology in instant fines we would propose that the amendment required should read as below: -

*(3) Notwithstanding any provision contained in this or any other Act, it shall be lawful for any police officer, the Authority or persons authorized by the Authority to serve, either electronically through the use of mobile or other technology or personally or by affixing the same prominently to the vehicle concerned, upon the owner or person in charge of any motor vehicle who is reasonably suspected of having committed any of the scheduled minor offences, a police notification of a traffic offence in the prescribed form charging such person with having committed the offence or offences indicated in the notification and requiring such person to attend court to answer such charge or charges, at such time (which if the police notification is served personally on the owner or person in charge of the motor vehicle, may be within forty-eight hours of such service; or if the police notification is affixed prominently to the vehicle concerned, shall not be sooner than seven days after the date of such service) as is shown on such notification.*

To achieve the second objective of enhancing the fine for non-attendance to court or non-payment of the fine within a stipulated period pursuant to the service of notice, we would propose the below amendment to section 117(8):

*(8) If any person having been served with a notification issued under this section fails either to pay the statutory maximum penalty within 14 days of service he may be brought before the court either by summons or by warrant and, unless he shows good cause to the contrary, shall be guilty of an offence and liable forthwith by order of the court to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one month.*

Submitted for your consideration.

Regards

George Njao, EBS  
**DIRECTOR GENERAL**

Copy to: **Mr. Mohamed Daghar**  
Principal Secretary  
State Department of Transport  
Ministry of Roads and Transport  
Transcom House  
P.O. Box 52692-00200  
**NAIROBI**



# National Transport and Safety Authority

Telephone: +254-(020) 6632000  
Website: www.ntsa.go.ke

Office of the Director General  
316 Upper Hill Chambers  
2<sup>nd</sup> Ngong Avenue  
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NTSA/C/FIN/007 Vol. I (82)

27<sup>th</sup> November 2022

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Main Parliament Building  
P.O. Box 41842-00100  
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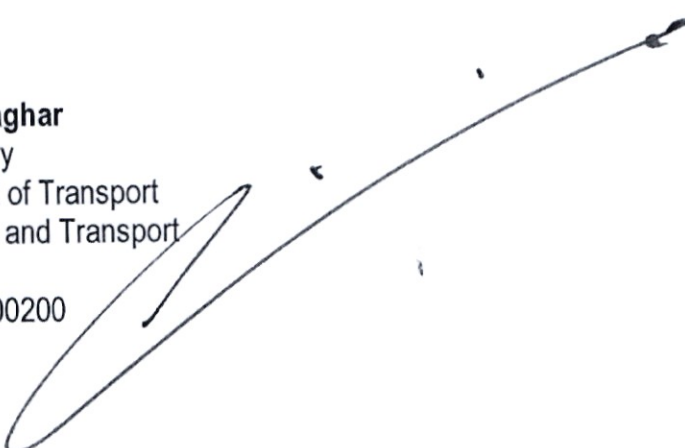
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Submitted for your consideration.

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Copy to: **Mr. Mohamed Daghar**  
Principal Secretary  
State Department of Transport  
Ministry of Roads and Transport  
Transcom House  
P.O. Box 52692-00200  
**NAIROBI**





REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/85

1<sup>st</sup> December 2023

**The Chairperson**  
Justice and Legal Affairs Committee  
National Assembly  
Parliament Buildings  
**NAIROBI**

**RE: MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2 BILL, 2023)**

**A. INTRODUCTION**

The Clerk of the National Assembly published the Statute Law (Miscellaneous Amendments) (No. 2 Bill, National Assembly Bill No 68) which seeks to amend among other statutes, the Office of the Attorney-General Act, (No. 49 of 2012).

The Office of the Attorney-General seeks to introduce further amendments to the provisions in the proposed amendments to the Office of the Attorney-General Act provided in the Schedule of the Bill to introduce an Advisory Board of the Office of the Attorney-General to oversee appointment, promotion, discipline, terms and conditions of service of the office and any other matter that may be referred to the Board by the Attorney-General.

**B. MANDATE OF THE ATTORNEY-GENERAL**

*The Constitution*

The Office of the Attorney-General is established under Article 156 of the Constitution and derives its mandate from the Constitution and the Office of the Attorney-General Act, 2012. The Attorney-General is the principal legal adviser to the Government and represents the national government in court or any other legal proceedings to which the National Government is a party, other than criminal proceedings. The Attorney-General also performs any other function conferred on the Office by an Act of Parliament or by the President.

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified



The Office of the Attorney-General is responsible for promoting, protecting and upholding the rule of law and defending the public interest. The powers of the Attorney-General may be exercised in person or by subordinate officers acting under general or special instructions.

The Attorney-General is a member of—

- (a) the Advisory Committee on the Power of Mercy under Article 133;
- (b) the Cabinet under Article 152;
- (c) the Judicial Service Commission under Article 171; and
- (d) the National Security Council under Article 240; and
- (e) nominates one person to the Salaries and Remuneration Commission under Article 230.

#### *Office of the Attorney-General Act, 2012*

The functions of the Office of the Attorney-General are specified under section 5 of the Act and can be categorized into, services offered directly to the Government and services offered to the public. For services offered directly to the Government, the Office of the Attorney-General offers legal advice to the President, Ministers and government agencies on domestic and international matters, represents the National Government in domestic and international courts and tribunals and is responsible for drafting legislation as the principal legal adviser to the Government.

For the services offered directly to the public, the Office of the Attorney-General is responsible for public trustee services, regulatory matters relating to marriages, the Coat of Arms, the College of Arms, the administration of societies, management of complaints against advocates and other matters of public interest.

#### *Executive Order No. 2 of 2023*

In addition to the responsibilities under the Constitution and the Act, under Executive Order, No. 2 of 2023, the Office of the Attorney-General is responsible for legal policy management, providing anti-corruption strategies, upholding integrity and ethics, management of national registries, management of public trustees, children adoptions, keeping custody of enemy property Wakf Commissioners, College of Arms, matters Related to the legal profession, legal aid, policy on the administration of justice, constitutional implementation, legislative drafting, drafting and vetting of agreements.

Further, the Office of the Attorney-General provides policy coordination and oversight for various legal sector institutions including the Business Registration Service, the Council for Legal Education, the National Anti-Corruption Campaign Steering Committee, the Assets Recovery Agency, the Kenya School of Law, the Auctioneers Licensing Board, the Witness Protection Agency, the Victims Protection Agency, the

Nairobi Centre for International Arbitration, the Advocates Disciplinary Tribunal, the Advocates Complaints Commission, the Car Loan Scheme for the Electoral Commissioners Fund, the Kenya Law Reform Commission, the Office of the Registrar of Political Parties, the National Committee on Implementation of National Humanitarian Law and the National Council for Law Reporting.

### *Vision 2030*

Kenya's development agenda is contained in the Kenya Vision 2030. The Office of the Attorney-General is required to contribute to Vision 2030 and the Fourth Medium Term Plan by facilitating the creation of a conducive legal environment that fosters the economic, social, and political development of the country. In line with Vision 2030 and MTP IV, the Office will undertake key priority programmes, among other policy, legal and institutional reforms.

### *East African Community*

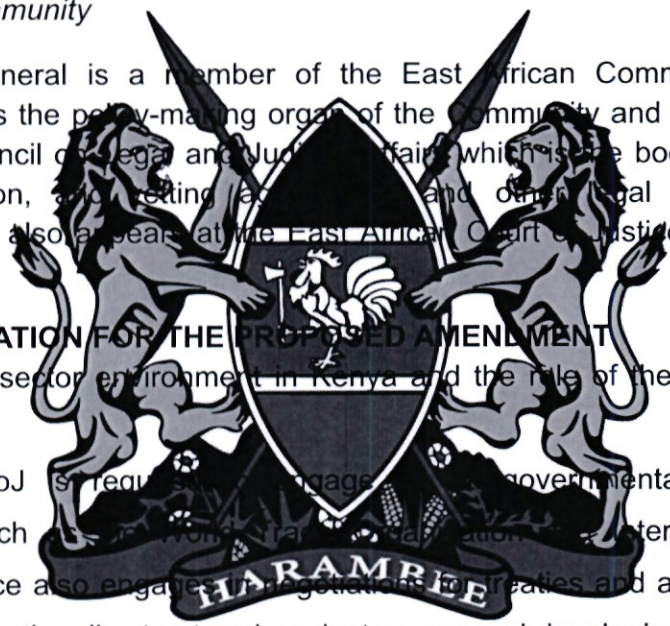
The Attorney-General is a member of the East African Community Council of Ministers which is the policy-making organ of the Community and also a member of the Sectoral Council of Legal and Judicial Affairs which is the body responsible for drafting legislation, and setting practice and other legal instruments. The Attorney-General also appears at the East African Court of Justice to represent the Government.

### **C. JUSTIFICATION FOR THE PROPOSED AMENDMENT**

The public legal sector environment in Kenya and the role of the OAG & DoJ has radically evolved.

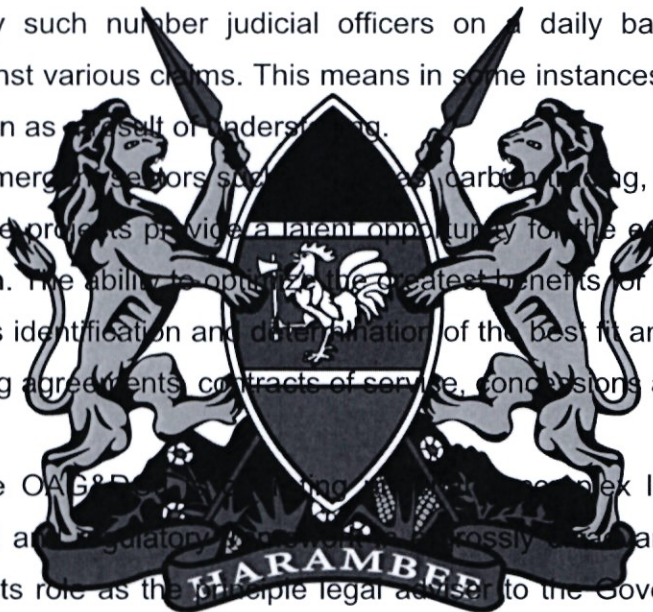
The OAG & DoJ is required to engage governmental structures and organizations such as the International Court of Justice. The Office also engages in negotiations to treaties and agreements, which are often disproportionately structured against poorer and developing countries. At the same time, jurisdictions are operating in a legal environment that continuously recognizes transnational and new forms of crime such as cybercrime, money laundering and international terrorism and thereby employing new politico-legal regimes such as mutual legal assistance and asset recovery.

Another phenomenon that has been observed that has a significant impact on the public sector is the substantial increase in constitutional and human rights litigation before local and regional courts and tribunals. This is in addition to complex constitutional litigation brought about by an improved democratic space for citizens together with the expanded Bill of Rights whose enforcement is enshrined in Article 258 of the Constitution. Further to the foregoing as a developing economy, the



Government continues to engage foreign contractors to undertake complex infrastructural projects that sometimes result in commercial litigation and arbitration in international dispute resolution fora. This raises a grave concern about the capacity of the public legal sector to present the best defence for the Government in the numerous suits and petitions filed and defended by private lawyers of skill and repute. Currently, the Office is handling 62, 344 cases against the Government with a staff complement of 62 state counsel under the litigation department which means each counsel is handling 1005 cases thus compromising the quality of government defence due to overwhelming the counsel. Further, the Judiciary currently has approximately 854 judicial officers (191 judges and 663 magistrates) compared to 62 litigation Counsel at OAG & DOJ who at any given time are expected to appear before a majority such number judicial officers on a daily basis to defend the Government against various claims. This means in some instances Government may lack representation as a result of understaffing.

Lastly, the new emerging sectors such as green economy, carbon trading, blue economy and large infrastructure projects provide a latent opportunity for the economic take-off of the Kenyan nation. The ability to optimize the greatest benefits for Kenyans demands the public sector's identification and determination of the best fit and best outcome of legal and financing agreements, contracts of service, concessions and negotiations.



Unfortunately, the OAG&DOJ is operating in a complex local, regional and international legal and regulatory environment in a disadvantaged position. In the discharge of its role as the principle legal adviser to the Government, there are lingering questions as to the capacity of the Office to offer quality legal advice, representation, and service to its Government and public clientele as a result of the following factors:

### **OAG&DOJ STRUCTURING WITHIN THE CIVIL SERVICE**

The OAG & DOJ is established as a state department within the Executive structure of Government, and thereby employs the Public Service and Salaries and Remuneration Commissions set salary scales and terms of service. These include the standardized salary bands in the defined job groups; standardized qualification requirements for promotions and upgrades; standardized mortgage benefits and

medical schemes etc. which must of necessity be the same across the executive to cater for intra-staff mobility.

As a result of this structuring, the OAG & DOJ has been hindered in its ability to recruit and retain experienced state counsel to support its operations and effectively implement its mandate. Given the expectations on the public legal environment elucidated hereinabove, the OAG & DOJ exists in a continuous struggle to survive and subsequently has worked to the bone the limited staff capacity still retained to deliver on its current successes.

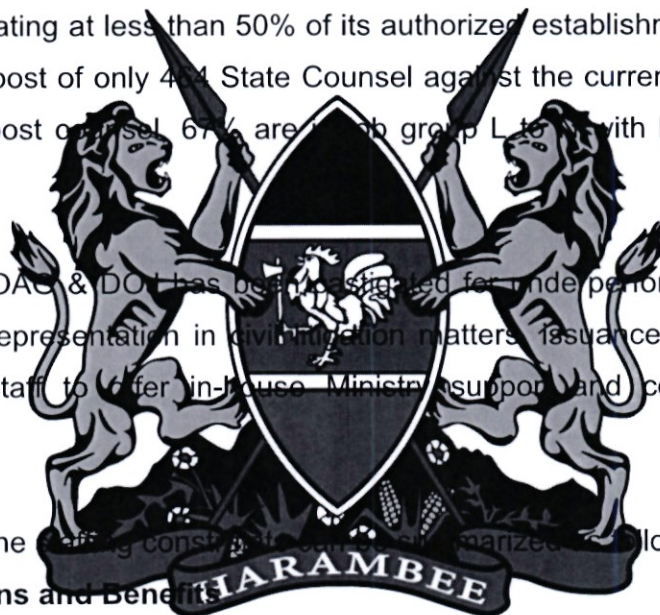
All the technical divisions which include the Public Trustee, Registrar General; Civil Litigation; International Law; Advocates Complaints Commission; Government Transactions; Legal Advisory and Research; Department of Justice and Legislative Drafting are operating at less than 50% of its authorized establishment. Currently the Office has an in-post of only 44 State Counsel against the current establishment of 1066. Of the in-post of counsel, 67% are in job group L to M with less than 10 years' experience.

As a result, the OAG & DOJ has been hindered for under performance, especially with regards to representation in civil litigation matters, issuance of legal opinions, deployment of staff to offer in-house Ministry support and county government support.

The reasons for the hindering consist of the following:

#### **I. Remunerations and Benefits**

- a) For an Office that requires recruiting and retaining state counsel of good standing, with experience and technical knowhow, it is imperative that they benefit from comparable (not necessarily equal) benefits with the private legal sector contemporaries.
- b) However, and more importantly, state counsel ought to receive equal remuneration and benefits with their peer legal contemporaries in public legal sector institutions such as the Office of the Director of Public Prosecutions, Judiciary, Kenya Law Reform Commission, Kenya School of Law, Ethics and Anti-Corruption Commission and Parliament.
- c) Currently, the OAG & DOJ state counsel earn considerably less than their counterparts in the Executive, Judiciary, Parliament and Oversight Agencies.



- d) This disproportionately defined stature and treatment of state counsel within the OAG & DOJ as against other public legal sector entities has created despondency, apathy and a highly demotivated staff. The result of this distinction has been the massive haemorrhage of highly qualified staff from the OAG & DoJ to counterpart organs in the Judiciary, Parliament and more recently the Office of the Director of Public Prosecution and the Public Service Commission for better remuneration and career progression opportunities.
- e) So far, the OAG & DOJ has lost 127 senior state counsel between January 2015 and April 2023.
- f) Enhancing the structure of remuneration and benefits for lawyers in the OAG & DOJ would transform the competitiveness of the Office in defending and protecting the Government's legal interests. However, and more critical, standardizing the remuneration and benefits structure of State Counsel in the public legal sector will stem the haemorrhage of well-trained and experienced state counsel to the State to other public sector institutions within the same Government.
- g) Our engagement with the Public Remuneration Commission has revealed that it is unable to enhance the remuneration of state counsel in the OAG & DOJ because of its positioning as a state department within the Executive. This is despite repeated requests for due justification for consideration. It is not possible to prohibit the OAG & DoJ as constitutionally established to work as an Office of the Director of Public Prosecutions to not enjoy similar administrative and operational autonomy.
- h) In a situation where the OAG & DoJ is treated like a state department, one could construe the challenge faced by the PSC and SRC attributable to the constraint in creating variant treatment of an institution that exists within a structure where like institutions are treated alike. The OAG & DOJ state counsel have thus suffered the brunt of this constraint.



## II. Recruitment, promotion, incentive and disciplinary powers

- a) The OAG & DOJ, as with all State Departments is bound by the Public Service Commission's guidelines and oversight in the recruitment, promotion and discipline of staff. The Attorney General has had limited powers in making the

final determination especially with regards to recruitment, promotion and discipline of staff, more so in Job Group Q and above which forms the managerial cadre.

- b) Yet the State Law Office is a law firm like any other. Lawyers are not initially recruited to a law firm on the basis of their interest or skills in management and they are not usually trained by a firm in these skills. Consequently, the skill and the amount of interest, individual lawyers have in management varies greatly. Lawyer management often utilizes tools available to manage the firm and motivate its personnel. These tools include upgrading or downgrading partner status, salaries or bonuses, reassigning authority and responsibility. These tools serve to not only motivate staff, but further guard against corruption and/or unprofessional conduct.

- c) These tools should be available to the Attorney General in his/her capacity as head of the State Law Office. The OAG & DOJ should thereafter be in a position to authoritatively make such decisions.

### III. Specialized Nature of OAG & DOJ Central Facilitation Services

- a) The OAG & DOJ, as a central legal office providing legal services for the Government develops a unique experiential capability of its staff, both technical and non-technical. This is especially the case for clerical, secretarial, records management and support services cadres who transform into paralegals, legal assistants and legal clerks of their day to day operations and services.
- b) Consequently, their intra-ministry mobility as envisioned within core public service becomes untenable especially when one considers the apprenticeship they receive and experience gathered to support a legal office.
- c) The OAG&DOJ suffers great loss upon the haphazard transfer of these staff from the institution.

In light of the numerous and specialised functions of the Attorney-General, the Office must adequately be facilitated to function efficiently to enable the Office to offer effective service delivery to both the public and the Government. The Office of the Attorney-General should be given the functional independence to recruit its staff to enable the Office to provide efficient services both to the Government and the public.

The Office of the Attorney-General currently does not have the power to recruit, promote or discipline support staff as they are not directly recruited by the Office. This has resulted in the Office having a shortage of support staff who are very critical in service delivery.

Currently, the Public Service Commission and the Salaries and Remuneration Commission set the terms of service and remuneration respectively for Officers in the Office of the Attorney-General, which is equivalent to those in the ministries. These include the standardized salary bands in the defined job groups, standardized qualification requirements for promotions and upgrades, and mortgage and medical schemes. As a result of this structuring, the Office has been hindered in its ability to recruit and retain experienced state counsel to support its operations and effectively implement its mandate.

In light of the fact that the Office is operating at less than the optimum number of staff required, The Attorney-General should have control in making the final determination, especially concerning recruitment, promotion and discipline of the staff. The Office of the Attorney-General, in its mandate, should be able to recruit, promote and discipline staff. The process of recruitment, promotion and discipline as currently undertaken by the Public Service Commission takes an inordinately longer period as the Commission recruits from ministries and therefore is constrained to recruit on a timely basis.

#### *Decentralization*

In recognition of the need to make services of the Office of the Attorney-General accessible in all parts of the Republic, the Cabinet approved the decentralization of the Office to the forty-seven constituencies hosted at county commissioner Offices. The decentralization of the Office to the constituencies includes public trustee services, registration services, handling of complaints against advocates, firms of advocates or any member employed through the Advocates Complaints Commission and providing legal aid and the funding of legal aid through the National Legal Aid Service.

The Office of the Attorney-General intends to decentralise services offered to the public which are currently available only in Nairobi and in 12 other regional Offices, which arrangement is not optimal, and it remains a great inconvenience to the public. As currently structured, the Office does not have enough technical and support services staff to deploy to the decentralised units to enhance service delivery.

The Office of the Attorney-General is established by the Constitution as a State Office that is sui generis in character and distinct from that of a cabinet secretary. By implication, therefore, the express distinction between the Attorney-General and cabinet secretaries and further under Article 152(1) of the Constitution, which ranks the Attorney-General higher than cabinet secretaries, demonstrates and bestows on

the Office of the Attorney General a special character distinct from that of Cabinet Secretaries.

The qualifications for the appointment of the Attorney-General are the same as the qualifications of appointment to the Office of the Chief Justice. This unique distinction of the qualifications of the Attorney-General are cascaded to the staff under his authority. It therefore follows that recruitment and appointment of staff of necessity ought to be fully led by the Attorney-General with inherent checks and balances in place.

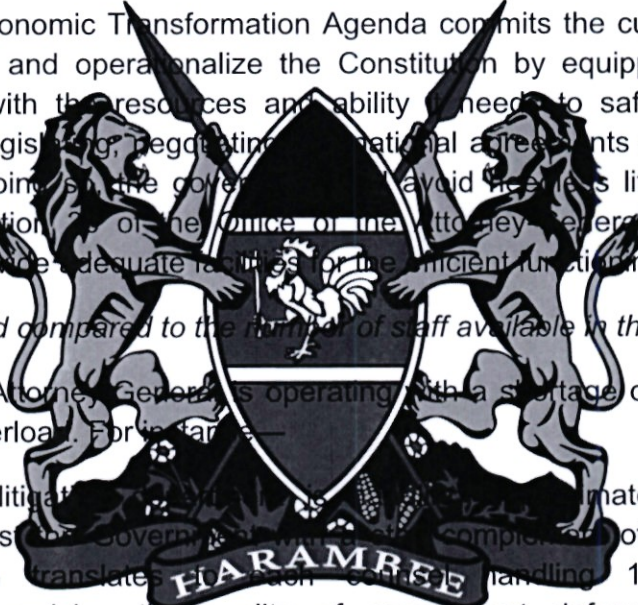
There is a need for the Office to secure the right workforce for the execution of its mandate and purposes of performance management, career progression, staff retention and improvement of the terms and conditions of the staff

#### *Bottom-Up Economic Transformation Agenda*

The Bottom-Up Economic Transformation Agenda commits the current Government to fully implement and operationalize the Constitution by equipping the Attorney-General's Office with the resources and ability needed to safeguard the public interest in court, legislating, negotiating international agreements and in the signing of contracts. By doing so, the government can avoid needless litigation and costly fines. Further, section 23 of the Office of the Attorney General Act requires the Government to provide adequate facilities for the efficient functioning of the Office.

#### *Excessive workload compared to the number of staff available in the Office*

The Office of the Attorney General is operating with a shortage of staff but with an increased work overload. For instance —

- 
- (i) The litigation section has approximately 63,000 cases against the government and the completion of 62 state counsel which translates to a case load of 1005 cases thus compromising the quality of government defence. The Judiciary currently has approximately 854 judicial officers (191 judges and 663 magistrates) compared to 62 litigation Counsel at OAG & DOJ who at any given time are expected to appear before a majority such number judicial officers on a daily basis to defend the Government against various claims. This means that in some instances, the Government may lack representation as a result of understaffing at the Office.
  - (ii) The Marriages Section under the Registrar General's Department, currently has 10 state counsel in the headquarters. The E-citizen platform has an average of about 350 appointments each day for clients seeking various services provided by the Marriages Section. All these services are currently being offered by the 10 state counsel hence the need to grow the figures in line with the demand for marriage services.

During the 2022/23 Financial year, the Office of the Registrar of Marriages collected revenue totaling to Kshs. 116,827,739/=. With approval and deployment of more additional staff as requested above, it is projected that marriages revenue will grow by about 50%. Our projection is based on the expected results such as; timely handling of E-citizen applications; operationalization of Marriage registries and Kenyan Embassies and Missions abroad where revenue will be collected; increased supervision for Deputy County Commissioners and efficient monitoring and inspection of regional and county marriage offices boosting internal revenue reporting controls.

- (iii) The Public Trustee Department has a high volume and value of client base and assets. Currently, the Office is administering a total of 60,000 estates and trusts with an approximate value of 6.5 billion shillings. The department is decentralized to 13 counties. Every financial year, the office disburses approximately Kshs. 2.5 billion to widows, widowers, orphans and other beneficiaries through over 6,500 financial transactions. However, the Office has not been able to operate optimally due to a shortage of staff in critical cadres. Accountants are stewards of the Public Trustee and a responsibility that comes with expectations of high standards of accountability. The Division has lost 15 Accountants through natural attrition without replacement over the last five (5) years thus we have 7 Accountants severely strained to manage the Kshs. 6.5 Billion. This has resulted in undue delays in the disbursement of funds to beneficiaries. The administration of estates and trusts is public facing and Public Trustee services have a very high demand and are widely sought after by all strata of the population. On average, between 50 to 60 enquiries are received daily from the Public Trustee on a day to day basis. This workload is currently being handled by 44 state counsel against a requirement of 142 state counsel.
- (iv) The Legislative Drafting Department has 21 state counsel against the requirement of 44 state counsel. Currently, the department has a workload of 124 Bills and 1500 subsidiary legislation.
- (v) The International Law Department has 25 state counsel against the requirement of 55 state counsel. Currently the department has five international arbitration matters that are ongoing. For instance, in one matter, the claim is in excess of Two Hundred billion shillings and in each of the remaining matters, the exposure of the Government is more than Twenty billion shillings each. Cumulatively the financial risk to the Government is very significant and losing any of these cases will adversely affect the credit worthiness of the Republic of Kenya.

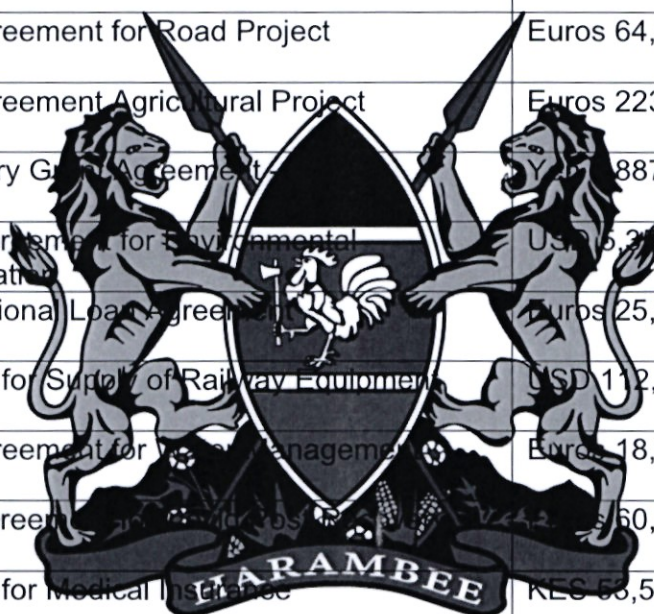
- (vi) The Government Transactions Department which is charged with the responsibility for vetting procurement contracts at the request of Ministries, Department, Agencies and State Corporations; providing legal advice and opinions on commercial matters and the related agreements to MCDA's; negotiating, vetting and interpreting bilateral and multilateral finance, loan and grant agreements for and on behalf of Government MCDAs and providing general legal advice on emerging legal issues affecting the implementation of various legal instruments. The Department has in the last Financial Year handled investment portfolio listed hereinbelow on behalf of the National Government:

**Indicative Value of Briefs Handled by the Government Transactions Division:**

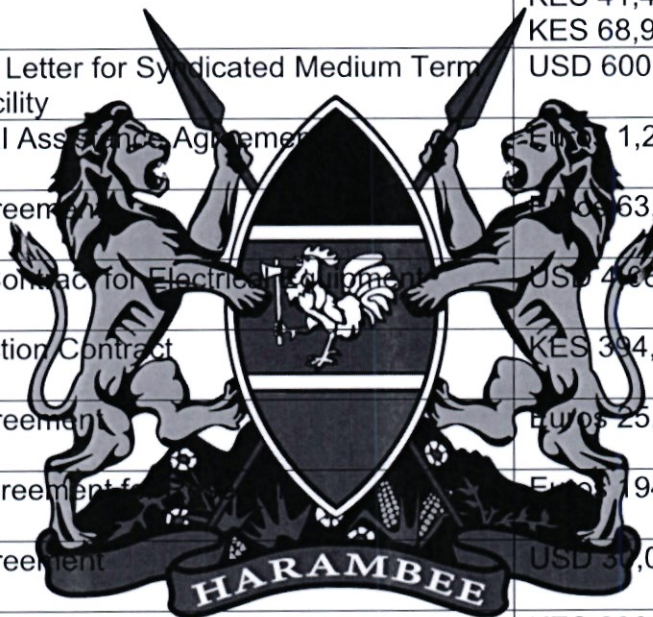
**FY 2022-2023**

No.	CONTRACT TYPE	CONTRACT VALUE
1.	Grant Agreement for Insurance Policy Reforms	USD 75,000.00
2.	Contract for Engagement of Independent Engineer	USD 3,748,644.40 & US 1,029,588,577.60
3.	Supply for Construction Equip	27,207,577.47
4.	Debt Service Suspension	200,007.82
5.	Term Loan Agreement	US 200,000,000.00
6.	Loan Agreement	USD 2,000,000.00
7.	Threshold Grant Agreement	USD 60,000,000.00
8.	Addendum to a Contract for Flete	USD 90,286,383.39 & KES 2,650,743,250.76
9.	Grant Agreement	US 2,565,259.00
10.	Financing Agreement	USD 125,100,000.00
11.	Grant Agreement	143,100,000.00
12.	Contract for Supply of Army Equipment	USD 25,399,676.00
13.	Grant Agreement for Feasibility Studies	USD 500,000.00
14.	Supplemental Grant Agreement	Euros 1,037,140.00
15.	Financing Agreement for Network Transmission	Euros 94,000,000.00
16.	Grant Agreement for Capacity Building	Euros 9,700,000.00
17.	Loan Agreement	USD 30,000,000.00
18.	Syndicated Loan Agreement	USD 300,000,000.00
19.	Grant Agreement for Capacity Building	Euros 3,000,000.00
20.	Loan Agreement for Emergency Food	Euros 63,000,000.00

21.	Share Purchase Agreement	KES 6,400,000,000.00
22.	Commercial Agreement for Cancer Centre	USD 35,000,000.00
23.	Contract for Group Insurance Services	KES 52,023,841.00
24.	Loan Agreement for CERSP II	Euros 89,000,000.00
25.	Contract for ICT Connectivity	KES 828,370,376.00
26.	Contract for Lease of Buses for 3 Years	KES 500,000,000.00
27.	Line of Credit Agreement	USD 100,000,000.00
28.	Short Term Syndicated Loan	USD 200,000,000.00
29.	Loan Agreement for Road Project	Euros 64,660,000.00
30.	Loan Agreement Agricultural Project	Euros 223,300,000.00
31.	Subsidiary Guarantee Agreement	887,000,000.00
32.	Grant Agreement for Environmental Conservation	US\$ 2,314,588.00
33.	Concessional Loan Agreement	Euros 25,339,000.00
34.	Contract for Supply of Railway Equipment	USD 112,500,000.00
35.	Loan Agreement for Project Management	Euros 18,000,000.00
36.	Grant Agreement	60,000,000.00
37.	Contract for Medical Insurance	KES 68,580,306,270.00
38.	Loan Agreement for Maternal Care Project	Euros 19,369,227.25
39.	Legal Advisory on Procurement Contract	KES 11,400,000,000.00
40.	On-Lending Agreement	Euros 49,700,000.00
41.	Extension of Contract for Consultancy Contract	KES 130,707,937.00
42.	Grant Agreement for E-portal Project	KES 15,000,000.00
43.	Amendment Letter to Loan Agreement	Euros 180,000,000.00
44.	Contract for Supply of ICT Hardware and Software	KES 14,137,482.00
45.	Project Implementation Agreement	USD 147,864.30



46.	Loan Agreement	Euro 107,200,000.00
47.	Amendment to Loan Agreement	Euros 17,500,000.00
48.	Loan Agreement	Euros 25,900,000.00
49.	Loan and Separate Agreements	Euros 31,000,000.00
50.		
51.	Implementation Agreements	Euros 1,276,171.00
52.	Five (5) Construction Contracts	KES 65,751,355.00 KES 83,701,585.00 KES 70,580,590.00 KES 41,410,000.00 KES 68,969,700.00
53.	Mandate Letter for Syndicated Medium Term Loan Facility	USD 600,000,000.00
54.	Technical Assistance Agreement	Euro 1,240,462.00
55.	Loan Agreement	Euro 63,000,000.00
56.	Supply Contract for Electrical Equipment	USD 4,681,920.29
57.	Construction Contract	KES 394,637,206.00
58.	Loan Agreement	Euros 25,900,000.00
59.	Grant Agreement for	Euro 194,220
60.	Loan Agreement	USD 30,000,000.00
61.	Consultancy Services Contract	KES 392,000,000.00
62.	Loan Agreement	Euros 248,100,000.00
63.	Contract for Lease	KES 500,000,000.00
64.	Loan Agreement	Euros 31,000,000.00
65.	Implementation Agreement for Market Access	USD 147,864.30
66.	Contract for Supply of Railway Equipment	Euros 24,249,309.42
67.	Loan Agreement	Euros 121,700,000.00
68.	Settlement Agreement	KES 108,000,000.00



	Supply Contract	KES 18,259,292.00
70.	Loan Agreement	KES 242,079,000.00
71.	Grant Agreement	USD 5,354,588.00
72.	Grant Agreement	UA 150,000.00
73.	Grant Agreement for Health	Euros 4,233,648.00
74.	Grant Agreement for Technical Support	Euros 4,000,000.00
75.	Commercial Contract	KES 9,392,517,633.00
76.	Loan Agreement	USD 135,000,000.00

The Department currently has 20 state counsel against a preferred requirement of 94 state counsel. The State Office has built the capacity of the state counsel in this Department due to the lack of career progression, poor remuneration and heavy workload. The state staff has slowly been losing Counselors to Public and private ownership but and private commercial entities that offer better terms of service. The Government is thus losing competent staff who have over the years built their expertise in negotiating for the Government and protecting public interest.

#### D. RECOMMENDATIONS

As illustrated hereinabove the interpretation of laws guiding the appointment and promotions of State Counselors. Under the Constitution, the Office of the Attorney General and the Public Service Commission is not only leading to the collapse of State Law Office but also compromising the quality of provision of legal services to Government and the public.

Based on a textual reading of Article 234 of the Constitution, the functions and the powers of the Public Service Commission is subjected to a number of inbuilt controls. Under Article 234 (2), the function of the Commission to establish, abolish, and appoint persons to hold or act in those offices, and to confirm appointments is subject to the Constitution and legislation.

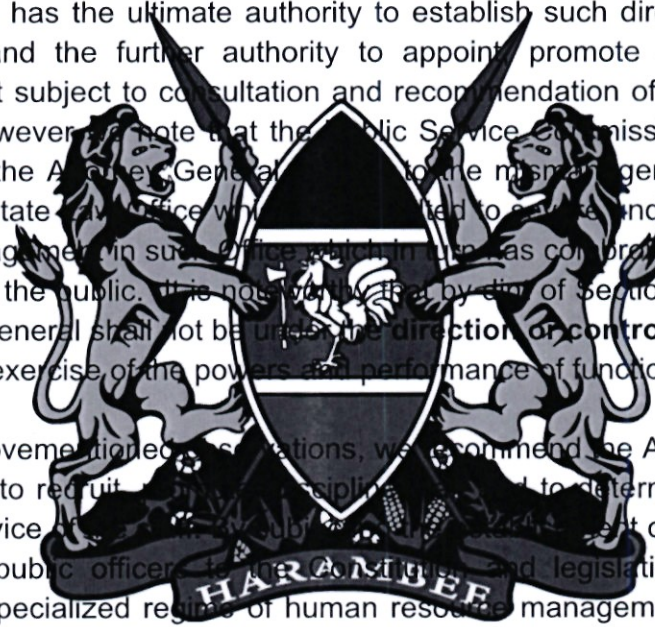
The architectural design of the Constitution requires that the Constitution is read together in harmony. The PSC is a constitutional commission just like many other Constitutional Commissions as outlined under Article 248(2). As a general principle we could have expected that the scheme of drafting the mandate of the PSC, is similar across board but that was not the case. For example, under Article 246 (3) of

the Constitution, the National Police Service Commission has the power to recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service. The architectural design of PSC was therefore meant to be different from other Constitutional Commissions as there was a deliberate use of the words subject to legislation and the Constitution and that is only special with regard to PSC.

The PSC's powers in the public service are subject to the Constitution and legislation; meaning the power can be taken away by legislation, such as the Office of the Attorney General Act which limits the role of PSC to recommend when consulted in regard to appointment of state counsel.

Under Article 234(2) of the Constitution as read together with the provisions of the Office of the Attorney General Act, 2012 and the Public Service Commission Act, the Attorney-General has the ultimate authority to establish such directorates, divisions or department and the further authority to appoint, promote and transfer state counsel to so act subject to consultation and recommendation of the Public Service Commission. However, it is noted that the Public Service Commission has taken over the functions of the Attorney-General to the detriment of the management of the human resource at the State level. This has led to a state of understaffing and poor succession management in such office which in turn has compromised service to the Government and the public. This notwithstanding, by virtue of Section 6(5) of the Office of the Attorney General shall not be used as the **direction or control of any person or authority** in the exercise of the powers and performance of functions of the Office.

In light of the above mentioned observations, we recommend the Attorney-General be given the power to recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service. The architectural design of PSC was therefore meant to be different from other Constitutional Commissions as there was a deliberate use of the words subject to legislation and the Constitution and that is only special with regard to PSC.



recognition of the specialized regime of human resource management on establishing offices and recruiting officers with regard to offices established under law. Taken in context, the Constitution specifically establishes a number of offices with defined recruitment criteria for key officers. For example, the Office of the Attorney-General (Article 156), the Office of the Director of Public Prosecutions (Article 157), the Controller of Budget (Article 228), Auditor General (Article 229), Salaries and Remuneration Commission (230), Central Bank (Article 231) and the Public Service Commission (Article 233). In fact, under Article 252(1) (c) of the Constitution, each commission, and each holder of an independent office have authority to recruit its own staff.

With regard to legislation, Parliament which has legislative authority under Article 94(1) of the Constitution has enacted a number of laws establishing offices with defined appointing authority. The OAG Act is one such legislation.

The OAG Act is an Act of Parliament to make further provisions for the functions and powers of the AG; to provide for the discharge of duties and the exercise of powers of the AG and for connected purposes.

We further recommend that the Office of the Attorney-General Act, No. 49 of 2012, be amended to provide for the establishment of an Advisory Board of the Office of the Attorney-General as provided in the attached Bill.

**Hon. J.B.N. Muturi, EGH**  
**ATTORNEY GENERAL**

**Copy to: Hon. Shadrack J. Mose**  
**SOLICITOR-GENERAL**





**Our Ref: WCL/012/2023/HS/LO**

27<sup>th</sup> November 2023

The Clerk of the National Assembly,  
Office of the Clerk,  
Main Parliament Building,  
Nairobi.

Dear Sir,

**Submission of Memoranda**

**The Statute Law (Miscellaneous Amendments) (No. 2) Bill,  
National Assembly Bill No.68 of 2023**

We are writing in response to your invitation for public participation and submission of memoranda, as outlined in your advertisement in the print media on November 22, 2023. We appreciate the opportunity to contribute our perspective with regards to the below mentioned provisions and provide additional recommendations with regards to various legislation relevant to the Acts to be amended.

Specifically, we:

1. Support the amendment to the Industrial Training Act to harmonize the remittance dates for the training levy with the period within which PAYE is required to be remitted to the Kenya Revenue Authority (KRA). With regards to streamlining employee deductions and providing seamless deduction and accounting of the same, we also propose that the Bill make provision for amendment of legislation to include Affordable Housing Levy as a tax deductible.
2. Support amendment of the Public Finance Management Act, 2012 (No 18 of 2012), deleting sections 40 (3) and (4). We further propose an amendment to the Act to have East African Community (EAC) tariff measures tabled before parliament for approval before they are presented at the EAC regional level.
3. Endorse the proposed amendments of reclassification of the Supply of Gas Meters under tariff Number 9028.10.00 as exempt under the Value Added Tax Act (VAT), 2013 (No 35 of 2013).
4. Recommend the reclassification of the Supply of Denatured Ethanol under the Value Added Tax Act (VAT), 2013 (No 35 of 2013), under Tariff Number 2207.20.00 as zero-rated to be only on locally manufactured ethanol to support the local sugar millers who have ethanol distilleries and are affected by unfair imports.



Hereafter, please find our business case detailing the rationale behind our support for these proposed amendments.

### **Harmonization of Remittance of the Training Levy with the period within which PAYE is remitted to Kenya Revenue Authority**

We endorse the proposal for the harmonization of the remittance period for the Training Levy with the timeline for PAYE submission to the Kenya Revenue Authority. This amendment not only simplifies the process of statutory deductions for employers but also consolidates the submission timeline, reducing the overall compliance costs. Furthermore, it streamlines enforcement procedures for government entities involved in the submission and payment processes.

While acknowledging the positive steps taken to enhance compliance, concerns arise regarding the Affordable Housing Levy, the recently introduced statutory deduction, and its tax treatment. We raise this concern here as the deduction is also submitted and paid within the PAYE cycle. Notably, the legislation is silent on whether employers' contributions to this levy will be considered an allowable deduction for Income Tax computation, given its status as an employee benefit. Given the absence of explicit guidance on the same, whether the employee is taxed as a benefit or whether the taxation is on the employer, many companies seek legal clarity to prevent non-compliance and ensure accurate accounting practices before the next budget cycle. This is considering that observance with tax provision will require accurate payment of balance of taxes and submission of returns before the next budget cycle. Consequently, we propose that the levy be recognized as an allowable expense for improved clarity and compliance in the tax treatment of this contribution.

### **Public Finance Management Act**

The proposed amendment to the Public Finance Management Act, specifically targeting the removal of sections 40(3) and 40(4), is a welcomed move as it marks a pivotal step toward enhancing the efficiency of the legislative process concerning the introduction of the finance bill before parliament. The elimination of these sections signals a commitment to streamlining statutory frameworks, thereby facilitating a more straightforward and accessible approach to financial legislation. By simplifying the process, these amendments demonstrate a keen understanding of the need for clarity and precision in the governance of public finances.

However, amidst this positive momentum, it is imperative to address a critical and glaring omission that reverberates within the very foundations of legislative drafting in Kenya. To delve into this matter, a closer examination of Articles 94 and 210 of the Constitution of Kenya is indispensable. The aforementioned provisions emphasize and define the role of parliament and imbues it with the power to impose taxes. Needless to say, these constitutional provisions underscore the paramount role of Parliament in the formulation of laws that directly impact the lives of Kenyan citizens. The



doctrine of separation of powers, a cornerstone of constitutional governance, assigns Parliament the exclusive responsibility of introducing laws that shape the legal landscape within the country.

The doctrine of separation of powers is a foundational principle in political philosophy and constitutional governance, advocating for the division of governmental authority among distinct branches to prevent the concentration of power in any single entity. Typically structured as an arrangement involving the executive, legislative, and judicial branches, this doctrine establishes a system of checks and balances. The executive branch is responsible for implementing and enforcing laws, the legislative branch for lawmaking, and the judicial branch for interpreting and ensuring the constitutionality of laws. By distributing powers and functions across these branches, the doctrine seeks to safeguard against potential abuses of power, promote accountability, and preserve individual freedoms within democratic systems.

Yet, a disconcerting deviation from this principle emerges at the East African Community (EAC) regional level. The EAC, a collaborative platform and customs union comprising of a number East African nations, currently operates without parliamentary oversight in the approval and tabling of 'stay of applications' that are unique to a specific partner state such as Kenya. These applications, which temporarily suspend tariff measures, circumvent the crucial scrutiny of the Kenyan Parliament. This deviation raises fundamental concerns about the adherence to the doctrine of separation of powers and the protection of Kenya's legislative autonomy within the broader regional context.

In light of these observations, it is incumbent upon us to propose a critical amendment to the bill. This proposed amendment advocates for a robust safeguard to ensure that tariff measures unique to Kenya undergo thorough parliamentary scrutiny before their presentation at the EAC regional level. This strategic addition seeks not only to fortify the integrity of the legislative process but also to safeguard Kenya's sovereign interests within the collaborative framework of the EAC. By asserting parliamentary authority over matters that impact the nation's economic landscape, this amendment aims to strike a balance between regional cooperation and the preservation of Kenya's autonomy in legislative decision-making.

### **Reclassification of Supply of Gas Meters under tariff Number 9028.10.00 as exempt**

#### *Overview of Cooking Fuel and Amendments in the Finance Act 2023:*

In Kenya, households utilize a range of energy alternatives to liquefied petroleum gas (LPG) based on factors such as location, affordability, and cultural practices. In rural areas, biogas derived from organic waste serves as a renewable and environmentally friendly cooking fuel. Urban regions with reliable electricity access see the use of electric stoves, while charcoal remains a prevalent option in areas where LPG is less accessible. Traditional firewood is commonly used in rural settings, and solar cookers offer a sustainable solution in sun-rich regions. The decline of kerosene usage reflects safety



concerns, and the overall energy landscape in Kenya is shaped by a dynamic interplay of economic, cultural, and environmental factors, as well as government policies promoting cleaner and more sustainable cooking technologies.

The prevalent use of traditional cookstoves, poses severe health risks and environmental threats. Smoke from these stoves causes approximately 4 million premature deaths globally each year, with 21,650 deaths reported annually in Kenya. Women and young children are disproportionately affected, and the reliance on solid fuels contributes to chronic illnesses and environmental degradation.

In a commendable effort to address these challenges, the government introduced zero-rating of Value Added Tax (VAT) on LPG Gas, effective July 1, 2023. This initiative aimed to make cleaner energy alternatives more affordable and accessible.

*Challenges with Smart Meters and VAT:*

However, a critical challenge has emerged in the form of smart meters (HS Code: 9028.10.00), an essential component in the supply chain. While these smart meters play a pivotal role in facilitating clean, convenient cooking experiences, their importation incurs a standard VAT rate of 16%, creating financial burdens for companies operating in the LPG sector.

*Smart Meter Benefits:*

Smart meters play a pivotal role in optimizing the distribution and utilization of Liquefied Petroleum Gas (LPG), offering a plethora of benefits that enhance safety, efficiency, and overall convenience. Firstly, smart meters facilitate accurate monitoring and billing by providing real-time insights into LPG consumption, eliminating the need for estimated bills and ensuring customers are billed based on actual usage. Additionally, the capability for remote monitoring allows suppliers and consumers to efficiently track gas levels without physical inspections, thereby streamlining operations and reducing the reliance on manual meter readings. This protects both consumer and supplier rights.

Furthermore, smart meters come equipped with sensors for leak detection, automatically shutting off gas supply in the event of a leak to minimize the risk of accidents and bolster safety. The meters also serve as safety alerts systems, notifying users of concerns such as low gas levels or potential leaks, enabling timely intervention. Advanced security features in smart meters reduce susceptibility to tampering, mitigating the risk of unauthorized access, theft, or misuse. For suppliers, these meters contribute to enhanced efficiency in the supply chain by streamlining inventory management and distribution through real-time data on gas levels and demand, ultimately reducing operational costs and minimizing the likelihood of shortages or overstock.

Beyond operational benefits, smart meters empower consumers by providing insights into usage patterns, enabling informed decisions about consumption habits. Supporting various payment



methods, including online payments and mobile apps, these meters offer convenient payment options for users, facilitating easier management of gas expenses. Moreover, by enabling precise monitoring and control of LPG usage, smart meters contribute to environmental sustainability by potentially reducing emissions and promoting a smaller carbon footprint. Additionally, when integrated into energy management systems, smart meters enable users to track and optimize overall energy usage, fostering energy efficiency and aligning with broader environmental goals.

*Financial Implications and the Way Forward:*

This discrepancy in VAT rates has resulted in cash flow constraints, posing a severe threat to the existence of companies in the LPG sector. The uncertainty regarding the reimbursement timeframe for VAT credits, coupled with current revenue restrictions at the Government Treasury, intensifies the challenges faced by these companies.

To ensure the viability of companies providing this essential commodity, we strongly advocate for the VAT exemption of smart meters. This exemption is crucial in alleviating financial burdens on these companies, providing liquidity during the importation of smart meters. Aligned with the government's commitment to expanding access to clean energy, this exemption would contribute significantly to realizing this ambitious goal. Moreover, the proposed amendment holds particular importance for rural areas, especially in improving access to Liquefied Petroleum Gas (LPG), as smart meters offer a more accessible option for purchasing smaller quantities. Representing a pivotal step towards inclusivity and affordability in rural communities, this flexibility allows consumers to align their LPG purchases with budgetary constraints, eliminating the need to buy entire gas cylinders, which may be economically impractical for many households.

Consequently, the amendment acts as a catalyst for economic empowerment in rural areas, enabling a transition to cleaner and more efficient cooking methods without imposing a substantial upfront cost. This shift not only encourages the adoption of LPG but also aligns with broader sustainability goals by promoting the use of cleaner fuels, thereby contributing to improved health outcomes and environmental conservation in rural regions. In summary, the passing of this amendment not only facilitates financial inclusivity but also generates positive socio-economic and environmental impacts for rural areas. It symbolizes a significant stride towards a more equitable energy landscape, where cleaner cooking alternatives become accessible to a broader demographic, thereby fostering the overall well-being and progress of rural communities.

**Reclassification of Supply of Denatured Ethanol under Tariff Number 2207.20.00 as zero rated**

The Kenya Kwanza government has undertaken extensive efforts to rejuvenate the sugar sector, with implications reaching beyond sugar production to other industries along the value chain dependant on the by-products of sugar. Molasses, accounting for the largest percentage of by-products, serves



as a crucial raw material for ethanol production, a versatile substance utilized across various industries in the country. Several Kenyan sugar factories have strategically diversified into ethanol production, not only as an additional revenue stream but also to enhance the overall profitability of their operations. This symbiotic relationship between the ethanol and sugar sectors has yielded positive outcomes, creating additional employment opportunities and contributing significantly to the economic well-being of Kenyans.

However, this interdependence also exposes both sectors to shared challenges. Challenges within the sugar industry, such as a diminished molasses supply, have direct repercussions on the ethanol sector. Conversely, obstacles within the ethanol industry raise uncertainties about the sugar industry's ability to diversify and fortify its income sustainably.

Despite the ban on molasses exports, illegal smuggling persists, depleting the country of this critical raw material and resulting in tax evasion. The ensuing local shortage has had a profound impact on ethanol production by local distillers. Furthermore, local manufacturers face unfair competition from imported ethanol due to practical and viable alternatives for industries relying on ethanol for manufacturing.

The tax regime, especially in relation to the production and supply of denatured ethanol, underwent significant changes with the enactment of the Finance Act 2023. Prior to these changes, the regime provided local manufacturers with a somewhat favourable environment, offering a competitive advantage over importers of similar products. However, the recent provisions, while well-intentioned to safeguard local manufacturers, inadvertently created an unfavourable environment due to the preferential importation of the commodity.

Specifically, the exemption of denatured ethanol from VAT, as per paragraph 138 of the First Schedule, has unintentionally disadvantaged local ethanol producers. Although the government's intention to exempt the supply of denatured ethanol from VAT is commendable, it places local ethanol producers at a disadvantage. Inputs used in the production of exempt goods cannot be claimed, thereby burdening manufacturers with the full production costs and inevitably influencing the pricing of the product. Consequently, any VAT paid on purchases made by local ethanol manufacturers, such as raw materials, equipment, or services directly related to the production of exempt denatured ethanol, cannot be recovered. As a result, the costs incurred during ethanol production are solely shouldered by the distillers, leading to additional expenses for their businesses and subsequently influencing the pricing of the product.

This exemption is also granted to importers who, having minimal additional expenses, can set more competitive prices compared to local manufacturers. Importers do not incur costs from the countries of origin due to export subsidies and incentives provided for the export of denatured ethanol in those countries.



In the report of the Joint Committee of the Departmental Committees on Finance and National Planning, and that on Agriculture and Livestock, on the consideration of the Treasury memorandum on Action Plans to Revive and Commercialize the State-Owned Sugar Companies, the committee stresses the importance of enhancing product diversification through co-generation and ethanol production as a way to revive the sector and protect targeted investors. Protecting the profitability of the sector is thus important in attracting the desperately needed private investors in the government-proposed leasing model.

In light of the above, we support the amendment to zero-rate denatured ethanol of tariff Number 2207.20.00 and recommend that the zero rating be restricted to locally manufactured denatured ethanol. We further propose an amendment to item 138 of the First Schedule exempting denatured ethanol by restricting it to imported denatured ethanol. This will give local manufacturers a competitive advantage over imports and in addition increase earnings for the sugar millers eventually benefitting the sugar farmers.

Thank you for considering our input, we trust that you will find our submission both comprehensive and compelling and we look forward to any further opportunities for engagement on this matter.

Yours Sincerely,

**For: Westminster Consulting Limited**

Hadi Sheikh  
**Partner**





Salaries & Remuneration  
Commission

Rewarding productivity

**Ref. No. SRC/ADM/35**

**4<sup>th</sup> December, 2023**

The Clerk of the National Assembly  
Main Parliament Buildings  
**NAIROBI**

**Attn: Jeremiah W. Ndombi, MBS**

**INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) NO. 2 BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2023)**

Reference is made to your letter Ref. NA/DDC/F&JLAC/2023/148 dated 30<sup>th</sup> November, 2023 on the above subject (which has been received at our offices today 4<sup>th</sup> November, 2023) in which the Salaries and Remuneration Commission (SRC) has been invited to a meeting with the Departmental Committee on Justice and Legal Affairs, scheduled for tomorrow 5<sup>th</sup> December, 2023 at 10:00 am.

Regrettably, due to the short notice and other ongoing Commission's pre-planned activities, SRC will not be in a position to attend the meeting as proposed. The Commission therefore, requests that for purpose of adequate preparation, the meeting be rescheduled to a later date next week.

SRC appreciates your continued cooperation and support as we discharge our respective mandates.

  
**Mrs. Anne R. Gitau, MBS**  
**COMMISSION SECRETARY/CEO**



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/85

29<sup>th</sup> November, 2023

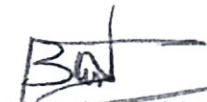
Mr. Samuel Njoroge  
Clerk  
The National Assembly  
Parliament Buildings  
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023)

Reference is made to your letter under Ref. No. NA/DDC/TI/2023/103 dated the 23<sup>rd</sup> November 2023 requesting this Office to present written submissions in a matrix format that indicates the Section of the Act, specific clause, proposed amendment and justification for the amendment.

This Office hereby requests the National Assembly to include the following amendments as per the matrix enclosed herewith, affecting the Office of the Attorney-General Act, 2012.

We trust that this is in order.

  
Hon. J.B.N. Muturi, EGH  
ATTORNEY GENERAL

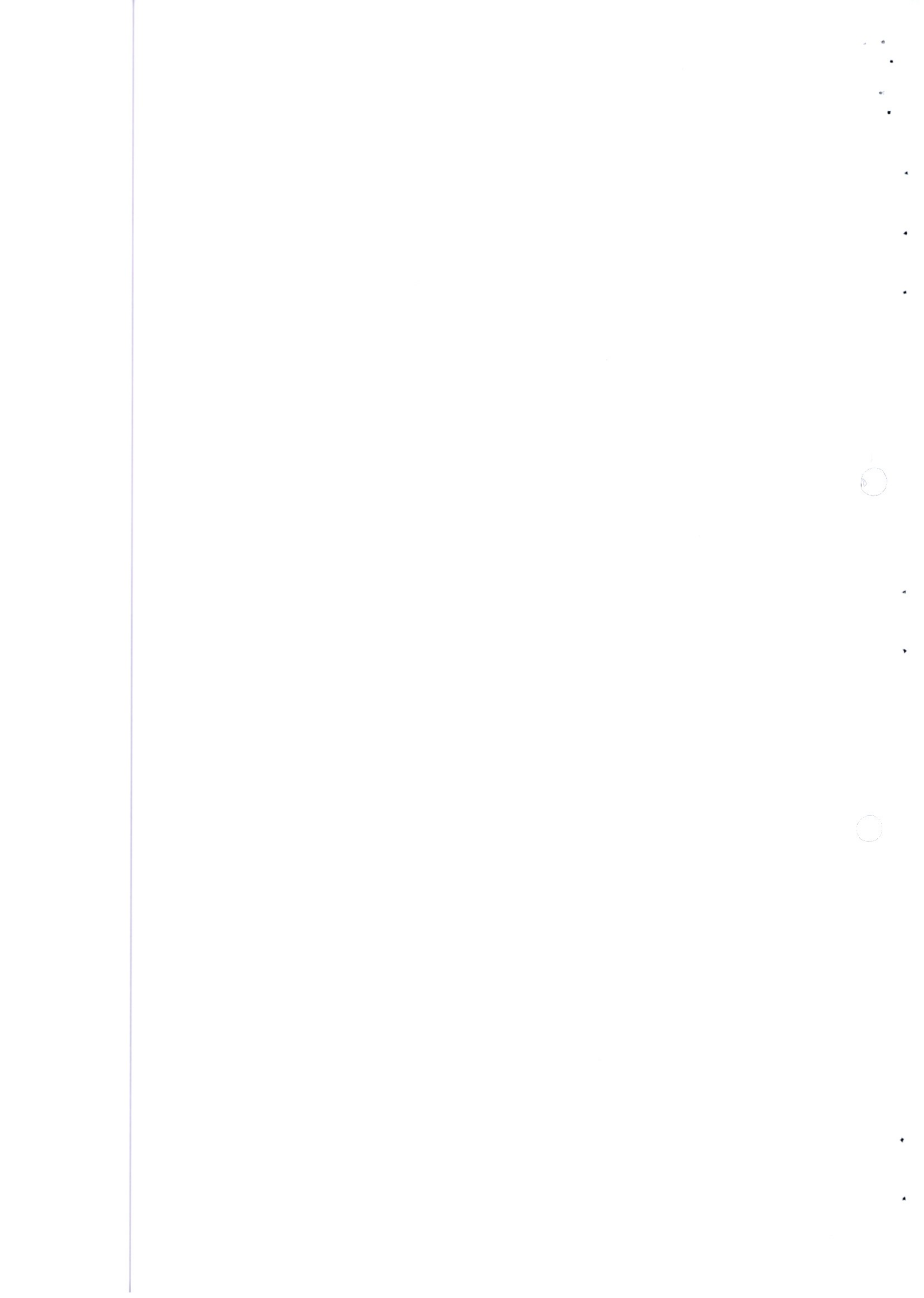
Copy to: Hon. Shadrack J. Mose  
SOLICITOR GENERAL

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLAASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified





Act	Clause	Proposed Amendment	Justification
The Office of the Attorney-General Act, 2012 (No. 49 of 2012).	s. 2(1)	(a) in the definition of “subordinate officer”, delete the words “Public Service Commission” and substitute therefor the word “Office”;	Article 156 of the Constitution establishes the Office of the Attorney General and clause (4) stipulates the roles of the Attorney General. These roles are further expounded in Section 5(1) of the Office of the Attorney General Act (hereinafter referred to as “the Act”). By virtue of Article 152(1) (c) the Attorney General is a member of the Cabinet. The County Governments Act further extends the scope of the Attorney General’s Office to
		(b) by inserting the following new definition in proper alphabetical sequence— “Advisory Board” means the advisory board established under section 20A(1).	
	s. 9(2)	Delete the words “Public Service Commission” and substitute therefor the words “Advisory Board”.	
	s.9(5)(d)	Delete the expression “Article 234” and substitute therefor the expression “section 20B”.	
	s. 13	Delete the words “Public Service Commission” and substitute therefor the words “Advisory Board”.	
	New	Insert the following new sections immediately after section 20—	
Advisory Board.		<b>20A.</b> (1) There is established an advisory board to be known as the Advisory Board to the Office of the Attorney-General.	

			<p>(2) The Advisory Board shall comprise—</p> <ul style="list-style-type: none"> <li>(a) the Attorney-General, who shall be the chairperson;</li> <li>(b) a Judge of the High Court nominated by the Chief Justice;</li> <li>(c) the Principal Secretary to the National Treasury;</li> <li>(d) the Principal Secretary in the State Department responsible for matters relating to the public service;</li> <li>(e) the president of the Law Society of Kenya;</li> <li>(f) the Chairperson, Kenya National Commission on Human Rights;</li> <li>(g) the Chairperson of the Council of the Institute of Human Resource Management; and</li> <li>(h) the Solicitor-General, who shall be the secretary to the Advisory Board.</li> </ul>	<p>represent upon request, county governments in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings. Undoubtedly, the Office of the Attorney General and Department of Justice (OAG &amp;DoJ) under the current constitutional structure incorporates a wider mandate and responsibility within state departments and county governments. This framework demands the establishment of key competencies to support the Office, so as to secure the development of coherent legal policies and programmes.</p>
		<p>Functions of the Advisory Board.</p>	<p><b>20B.</b> (1) The Advisory Board shall advise the Attorney-General on—</p> <ul style="list-style-type: none"> <li>(a) the recruitment and appointment of State Counsel, other officers and other members of staff;</li> <li>(b) promotions;</li> <li>(c) transfers and deployments;</li> <li>(d) discipline; and</li> <li>(e) any other matter that may be referred to the Board by the Attorney-General.</li> </ul> <p>(2) The Attorney General may co-opt into the Board persons whose knowledge and expertise it requires.</p>	<p>It is worthwhile to note that the Constitution in establishing the Office of the Attorney General and similarly the Office of the Director of Public Prosecution does not specifically pronounce it to be an office in</p>

		Meetings of the Advisory Board.	<p><b>20C.</b> (1) The Advisory Board shall meet at least four times in every financial year and not more than three months shall elapse between one meeting and the next meeting.</p> <p>(2) Unless two-thirds of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.</p> <p>(3) Subject to the provisions of this Act, the Advisory Board shall regulate its own procedure.</p>	<p>the Public Service as is the case for the Secretary to the Cabinet and Principal Secretaries.</p> <p>The proposals will cure inconsistencies in the operational framework of the Office of the Attorney General and align accordingly as provided for in the Constitution.</p>
		Quorum of the Advisory Board.	<p><b>20D.</b> The quorum at the meeting of the Advisory Board shall be four members.</p>	
		Attorney-General to preside at meetings.	<p><b>20E.</b> The Attorney-General shall convene and preside over the meetings of the Advisory Board or, in the absence of the Attorney-General, a member of the Board elected by the members present from among their number.</p>	
		Decisions of the Advisory Board.	<p><b>20F.</b> Any matter before the Advisory Board shall be decided by a majority of the members present and voting and in case of an equality of votes, the person presiding shall have a casting vote.</p>	
		Remuneration of the members of the Advisory Board.	<p><b>20G.</b> The members of the Advisory Board shall be paid such allowances as the Cabinet Secretary responsible for matters relating to finance, in consultation with the Attorney-General, shall approve upon the advice of the Salaries and Remuneration Commission.</p>	

	Conflicts of interest.	<p><b>20H.</b> (1) Any member of the Advisory Board or a person present at a meeting of the Board who has any interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and shall be disqualified from participating in the deliberations of the Board in respect of that matter, unless the Board decides otherwise.</p> <p>(2) No member of the Advisory Board shall trade with the Office.</p>
	Validity of the proceedings of the Advisory Board.	<p><b>20I.</b> The proceedings of the Advisory Board shall not be invalidated by reason of a vacancy among the members.</p>
s. 21(1)	Delete the words "Public Service Commission" and substitute therefor the words "Advisory Board".	
s. 22	Repeal section 22 and substitute therefor the following new section—	
	Terms and conditions of service.	<p><b>22.</b> (1) The State Counsel, officers and other staff appointed under this Act shall serve on such terms as the Attorney-General may, on the advice of the Salaries and Remuneration Commission, determine.</p> <p>(2) The terms and conditions determined under this section shall commence not later than one year after the commencement of this Act.</p> <p>(3) The Attorney-General may, in consultation with the Salaries and Remuneration Commission, make Regulations relating to the payment of remuneration, emoluments and other benefits to State Counsel, officers and other staff of the Office.</p>
New	Insert the following new Part immediately after section 25—	
	<b>PART IVA—FINANCIAL PROVISIONS</b>	

		Funds.	<p><b>25A.</b> (1) Parliament shall allocate funds to the Office in accordance with Article 249(1) of the Constitution.</p> <p>(2) Despite the generality of subsection (1), the funds of the Office shall consist of—</p> <ul style="list-style-type: none"> <li>(a) monies allocated by Parliament;</li> <li>(b) monies or assets as may accrue to the Office in the course of the exercise of its powers or the performance of its functions; and</li> <li>(c) monies from any other lawful source provided, donated or granted to the Office.</li> </ul>	
		Financial year.	<p><b>25B.</b> The financial year of the Office shall be the period of twelve months commencing on the 1st July in each year and ending on the 30th June in the following year.</p>	
		Financial estimates.	<p><b>25C.</b> (1) At least three months before the commencement of each financial year, the Attorney-General shall cause to be prepared the estimates of the revenue and expenditure of the Office for that year for approval by the National Assembly.</p>	

			<p>(2) The annual estimates shall make provision for all the estimated expenditure of the Office for the financial year concerned and, in particular, shall provide for—</p> <ul style="list-style-type: none"> <li>(a) the payment of the salaries, allowances and other charges in respect of the staff of the Office;</li> <li>(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Office;</li> <li>(c) the maintenance of the buildings and grounds of the Office;</li> <li>(d) the funding of training of, and research and development by, State Counsels, officers and other staff of the Office; and</li> <li>(e) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Attorney-General may think fit.</li> </ul>	
		Accounts and audit.	<p><b>25D.</b> (1) The Attorney-General shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Office.</p>	

	No. 34 of 2015.	<p>(2) Within a period of three months after the end of each financial year, the Attorney-General shall cause to be submitted to the Auditor-General the accounts of the Office in respect of that year together with a—</p> <p>(a) statement of the income and expenditure of the Office during that year; and</p> <p>(b) statement of the assets and liabilities of the Office on the last day of that financial year.</p> <p>(3) The accounts of the Office shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.</p> <p>(4) The written laws and Regulations relating to public financial management shall apply to the funds of the Office.</p>	
	Bank accounts.	<p><b>25E.</b> The Attorney-General shall cause to be opened and maintained such bank accounts with banks that are regulated by the Central bank of Kenya as are necessary for the exercise of the functions of the Office.</p>	
s. 28	Delete.		
New	Insert the following new section immediately after section 28—		

		Seal of the Office.	<p><b>28A.</b> (1) There shall be a seal of the Office which shall be such device as the Attorney-General shall determine.</p> <p>(2) The seal of the Office shall be kept in the custody of the Attorney-General or such person as the Attorney-General may authorise in that regard.</p> <p>(3) The seal of the Office shall be used in accordance with the orders of the Attorney-General.</p> <p>(4) The seal of the Office, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorization of the Attorney-General in respect of the seal under this section shall be presumed to have been duly given.</p>	
	New	Insert the following new sections immediately after section 33—		

		<p>Transitional matters.</p>	<p><b>33A. (1)</b> Any State Counsel, officer or member of staff employed and deployed by the Public Service Commission and serving in the Office immediately before the commencement of this Act shall—</p> <ul style="list-style-type: none"> <li>(a) on the commencement of this Act, be deemed to have been employed and deployed in accordance with this Act;</li> <li>(b) retain any rights that have accrued or are accruing to him or her before the commencement of this Act;</li> <li>(c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this Act;</li> <li>(d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;</li> <li>(e) be deemed to have been employed in accordance with this Act for the purposes of any written law under which any rights accrued or were accruing to him or her under which he or she continues to contribute or by which any entitlement has been conferred; and</li> <li>(f) be deemed to be a State Counsel, officer or employee of the Office for the purposes of any superannuation scheme to which he or she is entitled to contribute.</li> </ul>	
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		Implementation Committee.	<p><b>33B.</b> (1) The Attorney-General shall constitute an Implementation Committee consisting of State Counsels, officers and employees of the Office as may be necessary in the circumstances.</p> <p>(2) The Implementation Committee shall—</p> <p>(a) be responsible for co-ordinating the formulation or facilitation of such things and matters that are required for the implementation of the provisions of this Act;</p> <p>(b) serve for a period of one year after the date of appointment;</p> <p>(c) submit to the Attorney-General, at least once in every two months, a report on the progress achieved in the implementation of the provisions of this act; and</p> <p>(d) in the performance of its functions, regulate its own procedure.</p>	
			<p>(3) The members of the Implementation Committee shall be paid such allowances as the Attorney-General may, on the advice of the Salaries and Remuneration Commission, determine.</p>	
	Schedule	In paragraph 1(b), delete the words “Public Service Code of Conduct and the”.		



**PUBLIC SERVICE COMMISSION**

PSC/ADM/26/11/ (74)

4<sup>th</sup> December, 2023

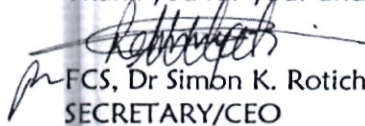
The Clerk of the National Assembly  
Parliament Buildings  
NAIROBI

**INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
No. 2 BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2023)**

This is further to our Letter No. PSC/ADM/26/11/ (72) and yours No. NA/DDC/JLAC/2023/148 dated 4<sup>th</sup> December, 2023 and 1<sup>st</sup> December, 2023 respectively.

Cognizant of the conflicting date and time (5.12.2023; 10.00 am) of the Commission's meeting with the Standing Committee on National Cohesion, Equal Opportunity and Regional integration and the Departmental Committee on Justice and Legal Affairs and the fact that both sessions are critical, we seek your kind consideration to allow the Commission to meet the Justice and Legal Affairs Committee on the same date immediately after the Senate meeting ends.

Thank you for your understanding and support.

  
FCS, Dr Simon K. Rotich, CBS  
SECRETARY/CEO  
PUBLIC SERVICE COMMISSION

Copy to: The Clerk of the Senate  
Parliament Buildings  
NAIROBI

{ Our Letter No. PSC/ADM/26/11/ (73) of 4.12.2023 and  
your LetterNo. SEN/DGAC/DGC/NCEORI/2023/77 of  
16.10.2023 }



December 4, 2023

## **REVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2023**

### **(a) Comment on the Proposed Amendment to the Industrial Training Act (Cap 237)**

The Bill proposes to amend the Act to align the date for remitting the training levy to the ninth day of each month. This change aims to align it with the timeline for remitting PAYE to the Kenya Revenue Authority.

The Commission endorses this proposed amendment, recognizing its intention to simplify the levy's administration and resolve inconsistencies with existing tax law filing dates.

### **(b) Comment on the Proposed Amendment to the Employment Act (No. 11 of 2007).**

The Bill intends to amend the Employment Act, 2007, to exempt the National Intelligence Service (NIS) from the Act's provisions, similar to other security organs.

The Commission endorses this proposed amendment, particularly considering that the NIS was established as a security organ after the enactment of the Employment Act.

### **(c) Comment on the Proposed Amendments to the National Employment Authority Act, 2016**

The Bill seeks to amend the National Employment Authority Act, 2016, to rectify inconsistencies and errors within the Act.

The Commission had reviewed the proposed changes and notes they are consistent with the principal Act and contribute to legislative clarity and precision.

1<sup>st</sup> December, 2023

The Clerk of the National Assembly,

P. O. Box 41842-00100,

[cna@parliament.go.ke](mailto:cna@parliament.go.ke)

RE: MEMORANDA ON THE NATIONAL ASSEMBLY STATUTE LAW (MISCELLANEOUS AMENDMENTS)(NO. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023) PROPOSAL TO REMOVE UTAMADUNI DAY AS A PUBLIC HOLIDAY

<u>Statute being Amended</u>	<u>Effect of Amendment</u>	<u>Proposal for consideration</u>	<u>Justification for proposal</u>
The Public Holidays Act	To amend the Public Holidays Act to remove Utamaduni Day as a Public Holiday	Redesignate Utamaduni Day as "National Tree Planting Day"	<p>The recent celebration of National Tree Planting Day on November 13th, 2023, was a resounding success, underscoring Kenya's commitment to environmental stewardship. Communities, organizations, and individuals came together to actively participate in tree planting activities, demonstrating a collective dedication to addressing environmental challenges. Building on this success, designating Utamaduni Day as the National Tree Planting Day ensures a seamless continuation of this momentum, allowing us to celebrate and build upon the positive impact achieved on November 13th.</p> <p>Utamaduni Day seeks to celebrate the richness and cultural heritage of the</p>

		<p>Country. One of the most important features of the country that has had role to play in our culture, economy and national psyche is our environment. The Government has recognised this in various ways by hosting the inaugural African Climate Summit and celebrating the aforementioned tree planting day. By ensuring that there is a designated day set aside in law to participate in this vital and important act we can ensure that our environment is safeguarded for generations to come.</p> <p>In addition to the environmental benefits there are economic benefits to be gained by the country. The international market for carbon credits is gaining maturity. Our forest cover and the possibility of it being extended afford us a unique opportunity to tap into this market. A regular and marked tree planting day allows us to constantly stay ahead of the need for carbon credits. It is a way that we can do well by doing good.</p> <p>Having a National Tree Planting Day makes Kenya a leader in environmental stewardship, and a beacon that can be followed by others. The ripple effect of this can spread to corners of the globe not only increasing our global standing and influence but also ensuring through leadership by example that other nations</p>
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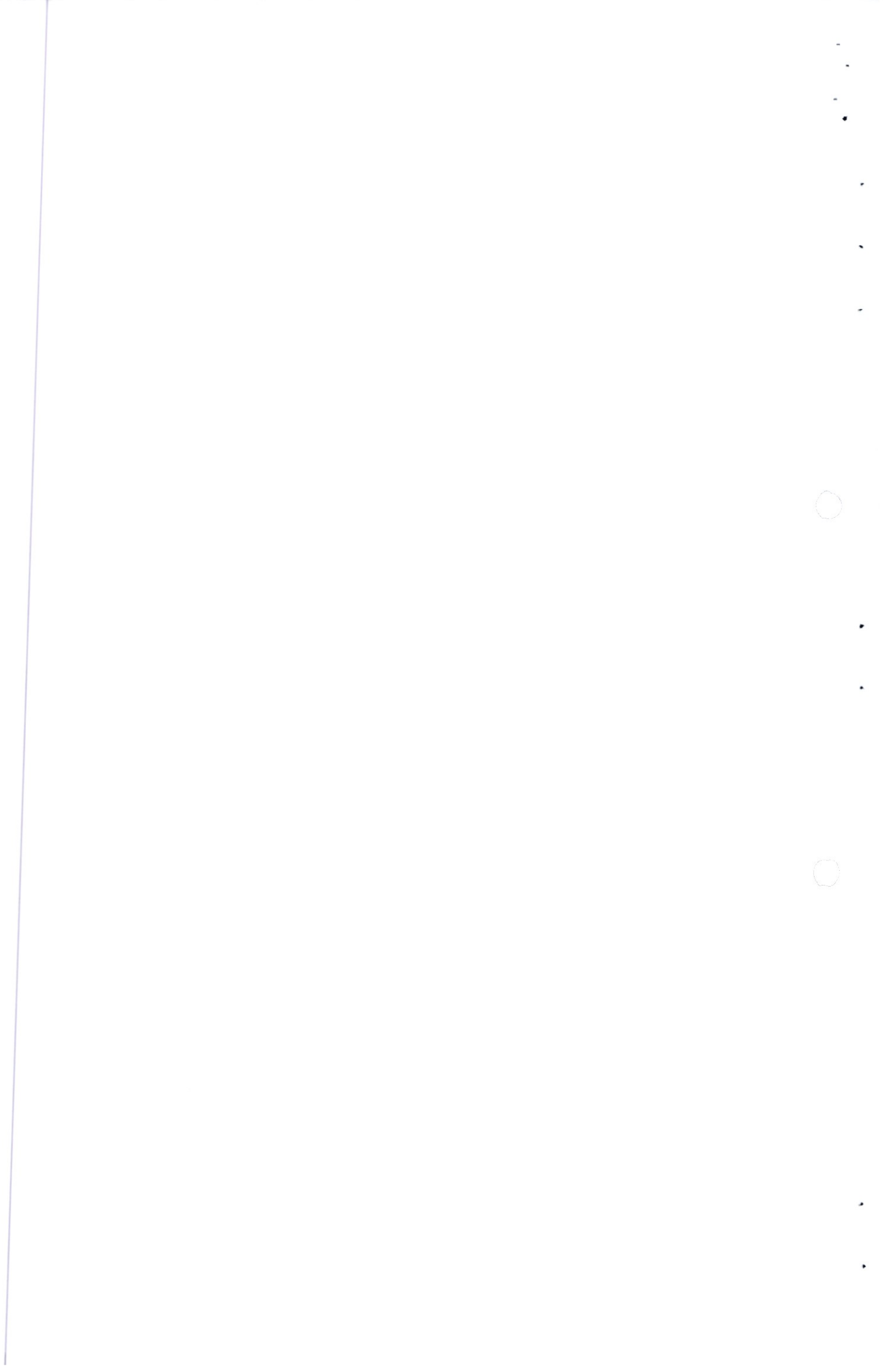
			implement similar initiatives with the end-effect of an environmental renewal.
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Yours Faithfully,

Gragory Nyauchi

GRAGORY ORIARO NYAUCHI  
Advocate and Commissioner of Oaths  
P. O. Box 35434-00100, NAIROBI  
Cell: 0736 351753





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

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### **Introduction**

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

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

### **Discussion**

#### **The Employment Act**

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

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

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

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

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

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

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

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

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

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

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

### **The Industrial Training Act**

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

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

### **The National Employment Authority Act**

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

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

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

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

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

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

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

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

### Analysis of Proposed Amendments

#### The Employment Act

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

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

No	Ref	Comments	Recommendations
1		No substantive comments	No recommendations

#### The National Employment Authority Act

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

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

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

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

### Conclusion

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

Sincerely,




---

Chris Kerkering  
Eileen Imbosa  
Ray Odanga

*Douglas Kotho*  
*Please deal*  
*BK*  
*2/1/2024*

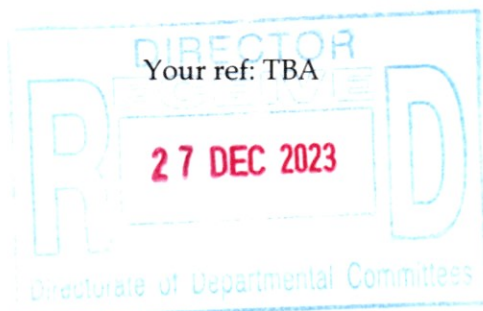
*DDC*  
*22/12/23*

Our ref: DG003/RF215/20

Your ref: TBA

18<sup>th</sup> day of December, 2023

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



**RE; MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS NO.2 BILL, 2023.**

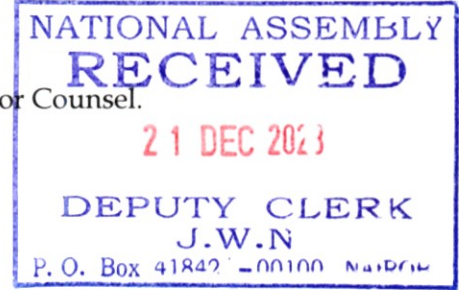
We refer to the above subject matter and we hereby submit our memorandum on the amendments proposed on the Statute Law (Miscellaneous Amendments No. 2 Bill, 2023.

The issue of conferment of the rank of Senior Counsel has been a very thorny issued within the corridors of advocates.

The regulation around the issue has been weak and time is ripe for the issues therein to be addressed.

Among the issues that need be addressed is

- a. The senior counsel committee.
- b. Advertisement.
- c. Past LSK chairperson who were conferred the rank of Senior Counsel.
- d. Politicians being conferred the rank of Senior Counsel.



**A. The Senior Counsel committee.**

It has been submitted that the said Committee is unconstitutional as it was created without proper legal framework. This committee has made it difficult for qualified advocates to apply for the conferment of the rank of senior counsel.

It has been rumored that there do not intend on admitting other advocates to the rank of Senior Counsel and have made it an exclusive club. True to their word they have not advertised for the last three (3) years persons qualified to apply.

**Legal Provisions.**

1. Section 81 (1) (e) allows the Council with the approval of the CJ to make rules for the procedure for the conferment of, and the privileges attached to, the rank of Senior Counsel. The Council in the year 2011 promulgated the Advocates (Senior Counsel Conferment And

Privileges) Rules, 2011) which are the Rules that guide the procedure and conferment of the rank of Senior Counsel.

2. Section 17 (3) of the Advocates Act makes reference to the Committee and is anchor provision for Rules 3 & 4 which provides for composition and functions of the Committee.
3. There is need to have the committee created in the main statute being the Advocates Act and its composition restructured so as to grant a fair representation.

### **Our Proposal on the Senior Counsel Committee.**

We propose addition of Section 17 (4) where There is established a Committee to be known as the Committee on Senior Counsel which shall consist of –

- (a) a Judge of the Supreme Court nominated by the Chief Justice;
- (b) a Judge of the Court of Appeal nominated by the President of the Court of Appeal;
- (c) a Judge of the High Court nominated by the Kenya Magistrates and Judges Association;
- (e) the Attorney General;
- (f) the chairperson of the Society; and
- (g) two Advocates who shall have at least five years' experience in practice, elected by the Society.

### **B. Advertisement.**

The issue of advertisement is being misused and misapplied by the Senior Counsel Committee. The failure to advertise has been used as gatekeeper preventing qualified persons to apply for conferment.

The only legal provision regarding advertising is contained in Rule 5 of the Advocates (Senior Counsel Conferment And Privileges) Rules, 2011) which provides that *The Committee shall, at least thirty days before the thirty-first day of March in each year or on such date as the Committee shall determine, publish in the electronic media and send to the members of the Society, a notice inviting applications from persons who qualify for conferment of the rank of Senior Counsel.*

### **Our Proposal on advertisement**

The regulation around this is not sufficient and reason it is prone to abuse. There is need to introduce in the Advocates Act a provision on advertisement. It should not be on the committee to determine when the advertisement is to be done.

**Section 17 (5) The Law Society of Kenya Secretariat shall cause to be advertised, at least thirty days before the thirty-first day of March in each year, publish in the electronic media and send to the members of the Society, a notice inviting applications from persons who qualify for conferment of the rank of Senior Counsel.**

### **C. Past LSK chairperson who were conferred the rank of Senior Counsel.**

In 2003, there were no rules for the conferment of Senior Counsel. Since the law required the president to appoint a tribunal to investigate the then Chief Justice Bernard Chunga, and that a "Senior Counsel"

had to sit in the tribunal. Kibaki then appointed all past LSK chairpersons and gazetted them as Senior Counsel.

This opened a flood gate to which some unqualified persons were conferred the rank of Senior Counsel. It is so bad that some of the Senior Counsel have been condemned by the Supreme court as persons of questionable character.

We propose that being the President of the LSK does not qualify one to automatically be a Senior Counsel.

#### **D. Politicians being conferred the rank of Senior Counsel.**

The Senior Counsel Committee has in the recent past appointed politicians for conferment of the rank of senior counsel despite them not having practiced law at all.

#### **The Law.**

Section 17 (1) provides that *The President may grant a letter of conferment to any person of irreproachable professional conduct who has rendered exemplary service to the legal and public service in Kenya conferring upon him the rank and dignity of Senior Counsel. (2) A person shall not be eligible to be a Senior Counsel unless – (a) he is a duly enrolled advocate of the High Court of not less than fifteen years' standing; or (b) being a person to whom section 10 applies, he holds, and has held for a continuous period of not less than fifteen years, one or other of the qualifications specified in section 13(1). Rule 7 provides that 7. (1) A person qualifies for conferment of the rank of Senior Counsel if that person –*

- (a) meets the requirements specified under section 17 (2) of the Act;*
- (b) is an active legal practitioner and undertakes training of other members in the legal profession;*
- (c) holds a valid practicing certificate or is entitled to act as an advocate under section 10 of the Act, at the time of making the application;*
- (d) has not been found guilty of professional misconduct by the Disciplinary Committee established under the Act for a period of at least seven years preceding the application for conferment;*
- (e) possesses sound knowledge of law and professional competence;*
- (f) has argued at least five substantive appeals before the Supreme Court or the Court of Appeal and at least ten substantive cases before the High Court within a period of ten years preceding the person's application for conferment or, in the case of an applicant who does not ordinarily undertake litigation, has shown outstanding performance in the area of practice of the applicant;*
- (g) is a person of integrity, irreproachable professional conduct and good character;*
- (h) has actively served the Society or other association whose membership consists of advocates; and*
- (i) has contributed to the development of the legal profession through scholarly writings and presentations.*

These qualifications have been ignored for far too long by the Senior Counsel Committee and there is need to have the committee reconstituted as proposed above

We push for these amendments so that the process of conferment of the rank of Senior Counsel becomes transparent and fair to all qualified persons. Further it is for the reason that we need to make sure that persons conferred with the rank of Senior counsel are persons of integrity and who have contributed the growth of the profession.

We hope that our memorandum will be considered and the proposed amendments be included.

Yours faithfully,

**KMK Law LLP**



**Muguro Irungu**

**muguro@kmklawllp.co.ke**

Cc. Client.



YOUR REFERENCE

OUR REFERENCE

GEN/2023

DATE 18/12/2023

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

*Douglas Kathu*  
*Please deal*  
*[Signature]*  
*20/12/2023*

*DDC*  
*[Signature]*  
*19/12/23*

Dear Sir/Madam,

**RE: MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
(NO. 2) BILL, 2023**

I write to give my comments on the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2023 (“the Bill”) which, *inter alia*, seeks to amend the Advocates Act, Chapter 16 of the Laws of Kenya.

It is well past time to address the issue of Senior Counsel which has been the subject of on-going but unresolved concerns and controversies especially in respect to appointments to that rank. These include:

- (a) Composition of the body responsible for appointments currently the Senior Counsel Committee. It is not fully reflective of the broad spectrum those interested or affected with lay members excluded altogether. To compound matters, the smallest constituency if it be a constituency at all - the so-called Senior Counsel Bar- has three reserved seats and one them invariably chairs the Committee with the obvious incentive to manipulate the process to advantage of Senior Counsels. In contrast, by far the largest constituency, members of the LSK-advocates eligible for such appointments have only two. While obviously we should not follow their practice blindly, it is worth noting that, the English selection panel for KCs, only has provision for senior barristers and solicitors (who need not be KCs) and lay (i.e. non-legally qualified) members- one of whom is the chair.
- (b) Guildlike protectionism. There is a readily apparent temptation by those who already enjoy the rank of Senior Counsel, to restrict their numbers and undermine admission of others, however deserving, to that rank. It is evident that some of them, represented by the leadership of the Senior Counsel bar, have given in to this temptation and do not wish to have any more advocates



appointed as Senior Counsel. Evidence for this comprises the failure over the past three years to take out the annual mandatory advertisement for applications by the committee chaired by one of their own as well as casual conversations when they let this slip when challenged as to the unlawful inaction of the Senior Counsel Committee.

- (c) Calibre. Without mentioning names, there are concerns as whether some of those appointed met the statutory criteria and were probably nominated to be appointed Senior Counsel for reasons other than “*exemplary service to the legal and public service in Kenya*”
- (d) There are also questions whether serving judges both are much too busy to undertake searching scrutiny of applications and possible conflict in reviewing assessing advocates who appear before them, should be serving in the committee.

To address these concerns, time is apt to tweak the current legal framework of Senior Counsel as established by part V (sections 17 to 19 [inclusive]) the Advocates Act and the Advocates (Senior Counsel Conferment and Privileges) Rules, 2011 (“the Senior Counsel Rules”) under the Senior Counsel Rules. Rule 3(1) of the Senior Counsel Rules establishes the Committee which is required annually to invite application for the conferment of the rank of Senior Counsel (rule- 5); considers those applications as stipulated- rules 4(a), 8, 10, as against the statutory criteria set out in rule 7; and makes binding recommendations to the Chief Justice and the President for the conferment of rank of Senior Counsel- rule 11. The Senior Counsel Committee comprises:

- a. *A Judge of the Supreme Court nominated by the Chief Justice;*
- b. *A Judge of the Court of Appeal nominated by the Judges of the Court of Appeal;*
- c. *A Judge of the High Court of Kenya nominated by the Kenya Judges and Magistrates Association;*
- d. *The Attorney General;*
- e. *The President of the Law Society of Kenya;*
- f. *Three Senior Counsel nominated at a meeting of Senior Counsel; and*
- g. *Two Advocates not being Senior Counsel who shall have at least 10 years’ experience in practice elected by the Law Society of Kenya.*



Those nominated serve for one non-renewable two-year term *“and upon expiry, the nominating body shall nominate a different person to serve in the Committee.”*

It will be seen straight away some of these rules are beyond the limited rule-making powers conferred by section 81(ee) of the Advocates Act under which they were ostensibly promulgated. The purported establishment of the Senior Counsel Committee under rule 3 and conferring powers & duties under rule 4 are not matters of *“procedure for conferment of, and privileges attached to the rank of Senior Counsel.”* These should have been, and therefore should be done, as matters of substantive provisions of the Advocates Act as was done, say in respect to the Disciplinary Tribunals and Committees in part XI of the Advocates Act.

Other provisions, which have proven to be prone to abuse- such is invitations for applications should be made administrative and given direct substantive statutory footing.

For all these reasons, I propose to be included in the Bill, the following further amendments to the Advocates Act:

*Section 17 of the Advocates Act (Cap 16) is amended by inserting the following new sub-sections immediately after subsection (2)*

*(2A) There is established a committee to be known as the Senior Counsel Selection Committee (in this Part referred to as “the Committee”) which shall consist of—*

- (a) three retired Judges nominated by the Kenya Magistrates and Judges Association;*
- (b) the Attorney General;*
- (c) the Chairperson of the Society*
- (d) two Advocates not being senior counsel who shall have at least ten years experience in practice, elected by the Society*
- (e) two members nominated by the NGO Council established under section 23(1) of the Non-Governmental Organizations Coordination Act, 1990, one of whom shall serve as Chair of the Committee*



*(2B) The Committee on Senior Counsel shall:*

*(a) consider the applications submitted under subsection (2)(C);*

*(b) make recommendations to the President for the conferment on a person of the rank of Senior Counsel; and*

*(2C) On or before 31<sup>st</sup> March 2023 in each year, the Secretary of the Society shall invite applications by advocates who hold current practising certificates to be considered for appointment as Senior Counsel*

Yours Faithfully

**ANL LAW ADVOCATES**



**WALTER AMOKO**

wamoko@anl.law, office@anl.law



# MAU MAU WAR VETERANS ASSOCIATION



## Nairobi Office

Mwea House, 1st floor  
Cross Road  
NAIROBI  
KENYA

## Contact Address

P.O. Box 13772-00100  
G.P.O - Nairobi - Kenya  
maumaurvva@gmail.com

## B/Office

Tel: 0722-418407  
0723-284023

*Hand-PRS  
to note  
27/11/23*

IN THE MATTER OF ARTICLE 118 (1) (B) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE  
STATUTE LAW (MISCELLANEOUS AMENDMENTS NO 2 BILL (NATIONAL  
ASSEMBLY BILLS NO 68 OF 2023)

*Leaf clerk,  
JLAC, Please  
leaf  
for Head, presiders  
of JLAC.*

MEMORANDUM TO

THE S.N NJOROGE

CLERK OF THE NATIONAL ASSEMBLY

DATED 22<sup>nd</sup> DECEMBER 2023

*PRS  
to deal  
27/11/23*

We refer to our memorandum dated 3<sup>rd</sup> November 2023 and the letter dated 7<sup>th</sup> November 2023.

We hereby support our good government since independence and the good governance of parliament under the leadership of S.N Njoroge as well as the clerk of the Senate under the leadership of J.M Nyegenye C.B.S

We are grateful to note with full confidence the adherence of the constitution 2010 as encapsulated there in Where in article 118 (1) (b) of the constitution requires parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees and standing orders 127 (3) of the National Assembly standing orders requires House Committees considering bills to facilitate Public Participation. We **MAU MAU WAR VETERANS ASSOCIATION HAVE TAUGHT** our members the importance of the following bills.

From number 1 up to no 17 and equally bought special issues of all Kenya gazette supplements appertaining to all amendments contained thereof. We **MAU MAU WAR VETERANS ASSOCIATION** member are in agreement with the amendments. We have been waiting historical injustice which occurred between 15<sup>th</sup> June 1895 when Kenya became a protectorate under the British East Africa protectorate upto 27<sup>th</sup> August 2010 when the constitution of Kenya was promulgated.

We are happy that His Majesty King Charles iii of United Kingdom visited our country and was in agreement that indeed Kenyans suffered injustice during the colonial times.

NATIONAL ASSEMBLY  
PETITIONS DESK  
20 NOV 2023  
SERIAL No.....  
**RECEIVED**

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

NATIONAL ASSEMBLY  
RECEIVED  
28 NOV 2023  
PROCEDURAL, RESEARCH AND JOURNALS  
P. O. Box 41842, NAIROBI

RECEIVED  
NATIONAL ASSEMBLY  
29 JUL 2023  
FEDERAL RESEARCH AND DEVELOPMENT  
P.O. BOX 1142, NAIROBI

Ministry of State for National Heritage & Culture recognized the **MAU MAU WAR VETERANS ASSOCIATION** leadership because it is an organized and focused entity geared toward achieving social economic agenda of this nation. We therefore wish to partner with National Assembly, The Senate and the Commonwealth Development Cooperation as per 1961 agreement which was deposited under the Perpetual Succession Act. 164 deposited at The ministry of lands and settlement. The above started with King James AD 1611 which was to last 400 years. Therefore, we were recognized in the 2011 April exactly after 400 years Since Commonwealth Development Cooperation was started.

Our memorandum is inclusive of the following

- a. The meteorology bill 2023 (Senate bills No: 45 of 2023)
  - b. The County Public Finance Laws (amendment) Bill 2023 (Senate bill No 39 of 2023)
  - c. The Universities (amendment (No3) bill (National Assembly bill no 64 of 2023) and the land laws (Amendment) bill National Assembly bill no 65 of 2023 have been read a first time and referred to the relevant department committee for consideration and report to the house
1. The Universities (Amendment no 3) Bill National Assembly bill no 64 of 2023 in a bill sponsored by Hon Christopher Aseka Wangaya, M.P which seeks to amend the Universities Act no 42 of 2012 to abolish funding of private universities using public fund and to bar the Kenya Universities and Collage Central Placement Service (**KUCCPS**) from placing students to private universities. The objective of the bill is to safeguard public fund from misuse by private entities that have not been brought under the regulatory framework of the Public Finance Management Act 2015 and the regulation there under.
  2. The land laws (Amendment ) bill National assembly bill no 65 of 2023 is a bill sponsored by the leader of the majority party, Hon Kimani Ichungwa M.P Kikuyu which seek to amend various land laws to enhance efficiency in matter relating to grants and dispositions and compulsory acquisition of land. The bill contains amendment to the following statutes-
    - a. The Land Registrations Acts no 3 of the 2012 the Bill seek to Amend section 56 of the Land Registration Act no 3 of 2012 to provide that the Land Registrar shall not register a charge where land rent has not been paid.
    - b. The National Land Commission Act 5 of 2012. The bill proposes to amend the National Land Commission Act of 2012 to remove time limits for the review of all grants and deposition of public land and allow continuous receipt and consideration of historical injustices claims.
    - c. The Land Act No 6 Of 2012  
The bill proposes to amend the Land Act no 6 of 2012 to introduce amendments relating to general conditions on lease licenses and agreements for public land to introduce new provision to regulate rent for several periods of valuations of land for rent. In addition, the bill seeks to amend provisions relating to the compulsory acquisition of interest in land.

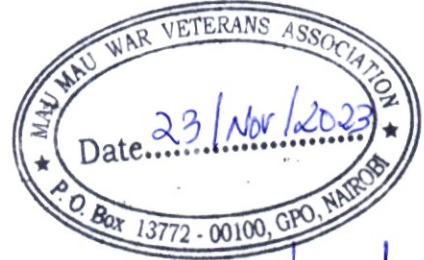
Submission of Ministry of Interior and National Administration State Department for Immigration and Citizen Services vide gazette notice no CXX-no 241 dated 14<sup>th</sup> November 2023 we are in agreement with the provision set thereof

Innovating unlock our commonwealth

We are in agreement with the stated Kenya innovation week set for 27<sup>th</sup> November 2023- 1<sup>st</sup> December 2023


We **MAU MAU** believes that investment in innovation will result in a more prosperous, more equitable and more resilient society for all. With the advent of tools that are cheaper, easier to access and scalable, Africa must maintain or accelerate the moment, we enclose over 13000 members.

We remain faithfully




  
General Muiruri Njuguna  
Chairman

  
Pius Njogu Nguo  
Secretary General

  
Githiga Gikonyo  
National Co-Ordinator

Jane Mumbi Ng'ethe  
Ass National Co-ordinator

  
Prophet Paul Mwangi  
Clergy-Co-ordinator

Cabinet Secretary Ministry of Interior and National Administration- Harambee house

Principal Secretary -Amb Prof Julius K Bitok M.B.S

Principal Secretary  
Interior and National Administration

Speaker of the National Assembly ✓

Speaker of the Senate

Office of the Attorney General & Department of Justice

Kenya Innovation Agency (KENIA)  
NACOSTI Building Waiyaki way





OFFICE OF THE VICE PRESIDENT  
MINISTRY OF STATE FOR NATIONAL HERITAGE & CULTURE

Telegrams: "Heritage" Nairobi  
Tel: +254 - 020 - 2251164, 2251005, 2250576  
Fax: +254 -020-316187  
Website: [www.nationalheritage.go.ke](http://www.nationalheritage.go.ke)  
e-mail: [info@nationalheritage.go.ke](mailto:info@nationalheritage.go.ke)

P.O. Box 49849-00100  
Nairobi Kenya

**Ref: MNH 1/29 (C) Vol. V/(102)**

**Date: 14<sup>th</sup> April 2011**

The Registrar General  
Attorney General's Chambers  
**Nairobi**

**RECOGNITION OF MAU MAU WAR VETERANS ASSOCIATION**

This is to inform you that on 3<sup>rd</sup> February 2011 at 2.30 p.m at this Ministry's Headquarters Kencom House 2<sup>nd</sup> Floor, we had a meeting with the Mau Mau War Veterans Association headed by General Bahati (Minutes attached) and it was agreed that:-

- (a) This Ministry recognizes the Mau Mau War Veterans Association leadership because it is organized and focused entity geared towards achieving socio-economic agenda of this nation.
- (b) The Mau Mau leadership under General Bahati has been working very closely with this Ministry and we are asking you to endorse them as the officials of the Association as per their Minutes.

It was resolved that the Ministry continues to work closely with this leadership and we ask you to confirm the officials in your records and as per the attached Minutes. Kindly keep us posted when the confirmation takes effect.

Thank you for your continued cooperation.

*Anne R. Gahuria*

**Anne R. Gahuria (Mrs)**

For: Permanent Secretary

Encl.

**MINUTES OF THE MEETING BETWEEN THE PERMANENT SECRETARY, MINISTRY OF STATE FOR NATIONAL HERITAGE AND CULTURE AND MEMBERS OF MAU MAU WAR VETERANS ASSOCIATION ON THURSDAY 3<sup>RD</sup> FEBRUARY 2011 AT 2.30 PM AT THE MINISTRY'S CONFERENCE ROOM**

---

**PRESENT**

Dr. Jacob Ole Miaron (PhD), CBS	PS	Chairman
Mrs. Anne R. Gakuria	SDS	D/Chair Person
Monica Omoro	PRO	Member
S K Namuju	PRO	"
Gen. Bahati	Mau Mau Veteran	"
Gen. Muiruri	"	"
Waweru Mugo	"	
Elizaphan Gichami	"	
Mwai wa Muthigi	"	
Evanson K. Mukunya	"	
General Kimbo	"	
Gen. Matenjagwo	"	
Captain Lumumba	"	
Kimunya Kamama	"	"
Felista Naipanoi	"	
Dorcas Muthoka	"	"
Nimrod Mutegi	"	"
Captain Nderitu	"	"
Captain Githiga Gikonyo	"	"
Caroline Arimi	AS	<i>Taking Points</i>

OFFICE OF THE VICE-PRESIDENT  
MINISTRY OF STATE FOR NATIONAL  
HERITAGE AND CULTURE

Telegrams: "ARCHIVES", Nairobi  
Tel: (254-02) 228959, 223977, 223615,  
226007, 247690, 252885  
Fax: (254-02) 228020  
E-mail: [info@kenyarchives.go.ke](mailto:info@kenyarchives.go.ke)  
Website: <http://www.kenyarchives.go.ke>



KENYA NATIONAL ARCHIVES  
AND DOCUMENTATION SERVICE,  
MOI AVENUE,  
P. O. BOX 49210,  
NAIROBI, KENYA.

*When replying please quote.*

Ref. No. KNA/1/49

Date: 28<sup>th</sup> February, 2011

Chairman  
Mau Mau War Veterans Association

### ACCESS TO NATIONAL ARCHIVES

This is to inform you that the Permanent Secretary has conditionally allowed the Mau Mau War Veterans to use the office allocated to them, only for the intended purposes.

In view of the above permission, it is Mr. Mwai Muthigi the spokesperson of the Association who has been granted authority to access the office allocated to you. This permission has been given with the understanding that the genuine intentions of the Mau Mau War Veterans, of rewriting the Kenyan history are upheld.

The National Archives is a government service whose premises, facilities and contacts such as the official address and telephones shall not be used by the Association.

  
John G. Mweria  
Ag. DIRECTOR

cc. Permanent Secretary - For information

(Legislative Supplement No. 45)

LEGAL NOTICE NO. 148

THE SOCIETIES ACT  
(Cap. 108)

REVOCATION OF ORDER DECLARING SOCIETY DANGEROUS TO THE  
GOOD GOVERNMENT OF THE REPUBLIC OF KENYA

IN EXERCISE of the powers conferred by section 4 (1) (ii) of the Societies Act, the Minister of State responsible for matters relating to national security, by this Order, revokes the previous Order declaring the society commonly known as Mau Mau to be a society dangerous to the good government of the Republic of Kenya.

Dated the 27th August, 2003.

CHRISTOPHER MURUNGARU,  
*Minister of State.*



L.N. 913/1950.

LEGAL NOTICE NO. 149

THE WILDLIFE (CONSERVATION AND MANAGEMENT) ACT  
(Cap. 376)

IN EXERCISE of the powers conferred by section 16 of the Wildlife (Conservation and Management) Act, the Minister for Environment, Natural Resources and Wildlife makes the following Regulations:—

THE WILDLIFE (CONSERVATION AND MANAGEMENT)  
(NATIONAL PARKS) (AMENDMENT) (NO. 1) REGULATIONS,  
2003

1. These Regulations may be cited as the Wildlife (Conservation and Management) (National Parks) (Amendment) (No. 1) Regulations, 2003, and shall come into operation on the 1st of April, 2003.

2. The Wildlife (Conservation and Management) (National Parks) Regulations, 2003, are amended—

- (a) in paragraph (b) of Part VII in respect of fees for Impala Sanctuary by deleting the expression "500" and substituting therefor the expression "200"; and
- (b) in paragraph (b) of Part VIII in respect of fees for Nairobi Safari Walk by deleting the expression "500" and substituting therefor the expression "200".

Dated the 12th August, 2003.

NEWTON KULUNDU,  
*Minister for Environment,  
Natural Resources and Wildlife.*

KENYA GAZETTE SUPPLEMENT

7/9/2023

LEGAL NOTICE NO. 55

## THE SOCIETIES ACT 1968

(No. 4 of 1968)

ORDER DECLARING SOCIETIES DANGEROUS TO THE GOOD  
GOVERNMENT OF THE REPUBLIC

IN EXERCISE of the powers conferred upon the Attorney-General by section 4 (1) (ii) of the Societies Act 1968, it is hereby declared that the associations of persons set forth in the Schedule hereto, and every other association of persons, by whatever name called, having substantially the same membership or having substantially the same persons named as office bearers, as the associations so set forth, are societies dangerous to the good government of the Republic of Kenya.

## SCHEDULE

The Kenya War Council.

The Ex-Freedom Fighters Union.

The African Independent Pentecostal Church.

The Sabina Church.

The Kenya Master Aid Society.

The Mwangi and Maina Social Club (Kenya).

The Walioleta Uhuru Union.

The Mahoya Ma Jehova Church.

Dated this 4th day of February 1969.

C. NJONJO,  
*Attorney-General.*

GOVERNMENT NOTICE No. 912

(S. A. Lab. 24 10.3)

THE REGISTRATION OF PERSONS ORDINANCE  
(Cap. 50)

APPLICATION OF ORDINANCE TO ALIEN WOMEN

IN EXERCISE of the powers conferred by section 2 of the Registration of Persons Ordinance, the Governor in Council has been pleased to specify that the provisions of the aforesaid Ordinance shall apply to all alien women.

By Command of the Governor in Council.

Nairobi,  
4th August, 1950.

H. A. C. HOWARD,  
Clerk to Executive Council.

GOVERNMENT NOTICE No. 913

(S. Adm. 1/1/5)

THE PENAL CODE  
(Cap. 24)

ORDER

IN EXERCISE of the powers conferred by paragraph (ii) of sub-section (2) of section 69 of the Penal Code the Governor in Council hereby declares the society commonly known as Mau Mau to be a society dangerous to the good government of the Colony.

By Command of the Governor in Council.

Nairobi,  
12th August, 1950.

H. A. C. HOWARD,  
Clerk to the Executive Council.

