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TWELFTH PARLIAMENT – SECOND SESSION, 2018

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THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL  
AFFAIRS

REPORT ON THE PARLIAMENTARY SERVICE BILL, 2018  
(NATIONAL ASSEMBLY BILL NO. 6 OF 2018)

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

NOVEMBER, 2018

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## ABBREVIATIONS

AFP	Australian Federal Police
Hon	Honourable
IGP	Inspector General of Police
MP	Member of Parliament
NA	National Assembly
NPS	National Police Service
PPU	Parliamentary Police Unit
PSC	Parliamentary Service Commission
SRC	Salaries and Remuneration Commission

## LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill
- Annexure 2:** List of Members who attended the sitting that adopted the report.
- Annexure 3:** A copy of newspaper advertisement inviting the public to submit memoranda
- Annexure 4:** Memoranda received from the public

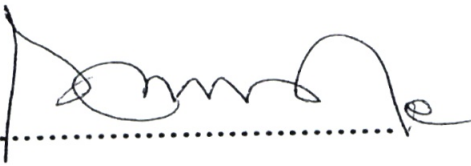
## CHAIRPERSON'S FOREWORD

The Parliamentary Service Bill 2018 (National Assembly Bill No. 6), underwent First Reading on 13<sup>th</sup> March 2018 and immediately thereafter committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3), through advertisement in the local daily newspapers of 16<sup>th</sup> March, 2018 invited the public to make representations on the Bill. Stakeholders most notably the Parliamentary Service Commission, the National Assembly and the National Salaries and Remunerations Commission responded. Indeed, their views were invaluable to the Committee in the consideration of the Bill.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for providing technical and logistical support.

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 duty to present to the House a report of the Committee on the Parliamentary Service Bill, 2018 (National Assembly Bills No. 6).

Signed.....

**HON. WILLIAM CHEPTUMO, M.P.**

**Chairperson, Departmental Committee on Justice and Legal Affairs**

this.....14<sup>th</sup>.....day of.....NOV.....2018

CHAPTER ONE  
INTRODUCTION

**1.1. Mandate of the Committee**

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees *inter alia* as follows-
  - (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
  - (c) *study and review all legislation referred to it;*
  - (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - (e) *investigate and enquire 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;*
  - (f) *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)*
  - (g) *examine treaties, agreements and conventions;*

*(h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*

*(i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*

*(j) examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

(i) Constitutional affairs;

(ii) The administration of law and Justice

(iii) The Judiciary;

(iv) Public prosecutions;

(v) Elections;

(vi) Ethics, integrity and anti-corruption; and

(vii) Human rights.

### **1.2. Committee Membership**

3. The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P. — ***Chairperson***

Hon. Alice Muthoni Wahome, M.P. — ***Vice Chairperson***

Hon. John Olago Aluoch, M.P.

Hon. Roselinda Soipan Tuya, M.P.

Hon. Charles Gimose, M.P.

Hon. Johana Ng'eno, M.P.  
Hon. William Kamoti Mwamkale, M.P.  
Hon. Ben Orori Momanyi, M.P.  
Hon. Peter Opondo Kaluma, M.P.  
Hon. Zuleikha Hassan, M.P.  
Hon. Jennifer Shamalla, M.P.  
Hon. Beatrice Adagala, M.P.  
Hon. Gladys Boss Shollei, CBS, M.P.  
Hon. John Munene Wambugu, M.P.  
Hon. George Gitonga Murugara, M.P.  
Hon. Anthony Githiaka Kiai, M.P.  
Hon. John Kiarie Waweru, M.P.  
Hon. Japheth Mutai, M.P.  
Hon. Adan Haji Yussuf, M.P.

### **1.3. Committee Secretariat**

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. James Macharia	-	Media Liaison Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang'	-	Serjeant-at-Arms
Mr. Ian Otieno	-	Audio Officer

4. Minutes of sittings of the Committee in respect of the consideration of the Bill are attached to this report as annexure 1.

## PART A: INTRODUCTION TO THE BILL

5. The Parliamentary Service Bill, 2018 is an Act of Parliament to make further provisions as regards the Parliamentary Service Commission and the Parliamentary Service as re-established under the Constitution of Kenya 2010; to repeal and replace the Parliamentary Service Act, 2000 and for connected purposes.
6. The Bill is necessary for the following reasons-
  - (i) The current Parliamentary Service Act, Cap 185A of the Laws of Kenya, was enacted under the former Constitution to give effect to sections 45A and 45B of the former Constitution, which established the Parliamentary Service and the Parliamentary Service Commission, respectively. These provisions of the Constitution are no longer in force and, in their place, are Article 127 of the Constitution that establishes a Parliamentary Service Commission and Article 128 of the Constitution that provides for the offices of the Clerks of the Houses of Parliament and the offices of members of staff of the Clerks as offices in the Parliamentary Service. In light of these and other changes in the constitutional regime, it has become necessary to review the Parliamentary Service Act, 2000 in order to ensure that it complies with the provisions of the Constitution;
  - (ii) The Fifth Schedule to the Constitution provided for a period of five years for the enactment of any legislation required to implement the Constitution. Although Parliament subsequently extended this period, the Parliamentary Service Act, 2000, needs review in order to comply with the requirements of the Fifth Schedule to the Constitution; and

(iii) The House accordingly has already reviewed the statutes of the other two constitutional Commissions that existed together with the Parliamentary Service Commission prior to the coming into force of the Constitution of Kenya, 2010 (i.e. the Public Service Commission and the Judicial Service Commission). All the other constitutional commissions and independent offices referred to in Chapter Fifteen of the Constitution have enacted operational legislation that is in conformity with the new constitutional principles. This Bill was first published in October 2015 but was not enacted by the House hence it lapsed at the end of the 11<sup>th</sup> Parliament. The Parliamentary Service Bill, 2018 seeks to address this shortcoming.

## **PART B: THE PARLIAMENTARY SERVICE COMMISSION**

### **History of the Parliamentary Service Commission**

7. The question of the independence of Parliament can be traced back to a Motion by Hon. Jean Marie Seroney moved on 20<sup>th</sup> March, 1970 which proposed that the National Assembly be a self-accounting unit independent of any Government ministry or department to ensure the supremacy and dignity of Parliament<sup>1</sup>. Thereafter in 1993, in light of the repeal of section 2 A of the former Constitution of Kenya, which legalized the Parliamentary Multi-Party system of government, the National Assembly resolved to look into ways of establishing a Parliamentary Service Commission charged with the welfare of the members and staff of the National Assembly<sup>2</sup>.

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<sup>1</sup>Kenya National Assembly Official Record (Hansard), February 6- March 20, 1970, Parliamentary Debates, pg.1665 (Google Books) [accessed 11<sup>th</sup> May, 2017]

<sup>2</sup>Kenya National Assembly Record (Hansard), November, 4, 1998, Parliamentary Debates, pg. 2109 (Google Books) [accessed 11<sup>th</sup> May, 2017]

8. Thereafter, on 4<sup>th</sup> November, 1998, the Hon. Peter Oloo-Aringo moved a Motion in the National Assembly for the establishment of the Parliamentary Service Commission “*to promote and consolidate the dignity, independence and the supremacy of Parliament*” and “*which shall be directly responsible to the National Assembly.*” Hon. Oloo-Aringo, in his submissions to the House, recalled the 1993 resolution and stated that the dignity, independence and supremacy of Parliament are derived from the premise that the people are collectively sovereign and that it is Parliament, which exercises that sovereignty on behalf of the people. Subsequently, Hon. Oloo Aringo introduced a Constitution of Kenya (Amendment) Bill that sought to amend Sections 45 and 107 of the former Constitution to establish the Parliamentary Service Commission<sup>3</sup>. The Constitution (Amendment) Act, No.3 of 1999 was thereafter enacted.
9. The Constitutional provisions were operationalized by the Parliamentary Service Act, 2000 as well as amendments to the National Assembly Standing Orders to reflect the changes.

### **The Parliamentary Service Commission under the Constitution of Kenya, 2010**

10. The Parliamentary Service Commission is established under Article 127 of the Constitution of Kenya, 2010. Article 127 (2) and (3) provides for the membership of the Commission as follows-

*127 (2) The Commission consists of-*

*(a) the Speaker of the National Assembly, as chairperson;*

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<sup>3</sup>Kenya National Assembly Record ( Hansard), May, 12, 1999 , Parliamentary Debates ,pg. 2109

*(b) a vice-chairperson elected by the Commission from the members appointed under paragraph (c);*

*(c) seven members appointed by Parliament from among its members of whom—*

*(i) four shall be nominated equally from both Houses by the party or coalition of parties forming the national government, of whom at least two shall be women; and*

*(ii) three shall be nominated by the parties not forming the national government, at least one of whom shall be nominated from each House and at least one of whom shall be a woman; and*

*(d) one man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament.*

*(3) The Clerk of the Senate shall be the Secretary to the Commission.*

11. Article 127(4) provides for the vacation from office by a member of the Parliamentary Service Commission as follows-

*(4) A member of the Commission shall vacate office-*

*(a) if the person is a member of parliament-*

*(i) at the end of the term of the House of which the person is a member; or*

*(ii) if the person ceases to be a member of Parliament; or*

*(b) of the person is an appointed member, on revocation of the person's appointment by Parliament*

12. Article 127 (5) provides for the term of office of a Commissioner and clarifies that a Commissioner appointed under Article 127(2)(c), that is, those who are Members of Parliament, continue to hold office until a new member is appointed in the member's place in the next House.

13. Article 127 (6) provides for the functions and responsibilities of the Commission as follows-

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

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

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

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

*(e) performing other functions-*

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

*(ii) prescribed by national legislation.*

14. Article 128 provides for the offices of the Clerk and staff of Parliament as follows-

*(1) There shall be a Clerk for each House of Parliament, appointed by the Parliamentary Service Commission with the approval of the relevant House.*

*(2) The offices of the Clerks and offices of members of the staff of the Clerks shall be offices in the Parliamentary Service.*

15. Apart from the provisions under Article 127 and 128, the Parliamentary Service Commission is listed under Chapter 15 of the Constitution that makes general provisions applicable to independent offices and constitutional commissions to the extent that the Constitution does not provide otherwise.

16. As it is presently, the Parliamentary Service Commission serves both Houses of Parliament and is administratively structured into three services, namely-

- (i) National Assembly Service,
- (ii) Senate Service, and
- (iii) Joint Services.

17. The membership of the Parliamentary Service Commission under the Constitution of Kenya, 2010 takes into account the bicameral nature of Parliament and the specific mandates of the two Houses.

18. The Speaker of the National Assembly is the Chairperson of the Commission and the Clerk of the Senate is the Secretary to the Commission.

### **PART C: OVERVIEW OF THE PARLIAMENTARY SERVICE BILL, 2018**

19. The Parliamentary Service Bill, 2018 seeks to make further provisions as regards the Parliamentary Service Commission and the Parliamentary Service

as established under the Constitution of Kenya 2010 and to repeal and replace the Parliamentary Service Act, 2000.

20. Some of the highlights of the Parliamentary Service Bill, 2018 include-

### **Part I - Preliminary provisions**

21. **Clause 1** sets out the short title and commencement time of the Bill.

22. **Clause 2** of the Bill replaces the interpretation of several terms in the current Act to align them with the Constitution of Kenya, 2010 including-

- The Bill proposes to repeal the use of the word “chairman” into the more gender-sensitive word “chairperson”
- The term “Clerk” is expanded to include the Clerk of the Senate
- “Commission” refers to the Parliamentary Service Commission established under the Constitution of Kenya, 2010 as opposed to section 45B of the former Constitution
- “Secretary” means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution; and
- “Speaker” means the Speaker of the National Assembly or the Senate.

23. **Clause 3** outlines the objects and purposes of the Act.

### **Part II -The Parliamentary Service**

24. **Clause 4** establishes the Parliamentary Service as an independent, non-partisan and apolitical institution of exemplary administrative and technical competence.

25. **Clause 5** sets out the Parliamentary Service values in addition to the national values and principles set out under Article 10 of the Constitution and the values and principles of public service set out under Article 232 (1) of the Constitution.
26. **Clause 6** delegates legislative powers to the Commission to prescribe a Parliamentary Service Code of Conduct applicable to every employee but also generally provides for the conduct that is expected of officers of the Commission and the principles they must adhere to.
27. **Clause 7** further provides for complementarity of the values and code of conduct and any other written law.

### **Part III - Parliamentary Service Commission**

28. **Clause 8** provides for the qualifications for appointment as a member of the Commission under Article 127(2)(c) of the Constitution.
29. **Clause 9** of the Bill provides for the qualifications and procedure for appointment of members of the Commission who are not Members of Parliament as per Article 127(2) (d) of the Constitution.
30. **Clause 10** sets out the procedure for the the removal from office of a member of the Commission.
31. **Clause 11** sets out further functions of the Commission, in addition to the functions set out in Article 127(6) of the Constitution.
32. **Clause 12** provides for the powers of the Commission as a body corporate.
33. **Clause 13** provides for the Committees of the Commission. It makes provision for the co-opting into the membership of the Committee any person or persons

whose knowledge and skills are necessary for the proper performance of the functions of the Commission.

34. **Clause 14** provides for the Seal of the Commission and its use and custody.
35. **Clause 15** provides for the conduct of the business and affairs of the Commission (including quorum, notice of meetings, minutes etc. which are particularized under the Second Schedule).
36. **Clause 16** provides for the role of the Secretary to the Commission.

#### **Part IV- The Clerks and other Offices**

37. **Clause 17** sets out the qualifications for appointment as the Clerk of each House pursuant to Article 128 of the Constitution.
38. **Clause 18** provides for the procedure for the appointment of a Clerk.
39. **Clause 19** of the Bill provides for the administrative functions of the Clerks as contemplated by Article 128(2) of the Constitution so as to guarantee the administrative and functional autonomy of the Houses under the constitutive, supervisory and overall administrative powers of the Commission.
40. **Clause 20** provides for the procedural functions of the Clerks and the manner of performing those functions.
41. **Clause 21** makes provision for the exercise of functions of the Clerk during vacancy or inability to discharge duties.
42. **Clause 22** of the Bill provides for the suspension or the removal of a Clerk.

43. **Clause 23** provides for the establishment of offices in the Parliamentary Service.
44. **Clause 24** seeks to anchor the Office of the Joint Services in legislation, which shall be headed by an officer appointed by the commission.
45. **Clause 25** of the Bill provides for the establishment of the Centre for Parliamentary Studies and Training.
46. **Clause 26** of the Bill envisages the Commission as in charge of formulation and dissemination of the Parliamentary Service schemes of service setting out the terms and conditions for the appointment of officers and other staff of the Service.
47. **Clause 27** is on the disciplinary control of officers of the parliamentary service.
48. **Clause 28** contains provisions on retirement and resignation of parliamentary staff.
49. **Clause 29** provides for the Social Security scheme for parliamentary staff.

#### **Part V- Parliamentary Police Unit**

50. **Clause 30** provides for the establishment of the Parliamentary Police Unit (PPU) under the command of the Inspector-General of the National Police Service.
51. **Clause 31** proposes additional functions of the police under the PPU including the maintenance of law and order within the precincts of Parliament, provision of security to members, staff and property of Parliament and authorised persons

within the precincts of Parliament and to the Speakers and members of Parliament.

52. **Clause 32** provides for periodic reporting by the PPU to the Commission in accordance with standard operating procedures.

#### Part VI-Miscellaneous Provisions

53. **Clause 33** deals with the remuneration of staff.

54. **Clause 34** provides that the expenses of the Commission shall be a charge on the consolidated fund.

55. **Clause 35** provides for the legal proceedings against the Commission.

56. **Clause 36** deals with the preparation and laying of annual reports on the operations of the Commission to Parliament.

57. **Clause 37** provides for the authorization of a commissioner to present documents or reply to matters in Parliament.

58. **Clause 38** is on the oath of office for members and staff of the commission (details in Third Schedule)

59. **Clause 39** provides for the power to order attendance of witnesses.

60. **Clause 40** is on the privileges of witnesses appearing before the Commission or its Committees.

61. **Clause 41** provides for evidence of proceedings in the Commission not to be given without special leave

62. **Clause 42** deals with protection of members and staff of the Commission from personal liability for official actions and omissions.
63. **Clause 43** deals with instances where communications by the Commission is to be regarded as privileged.
64. **Clause 44** provides for various offences and penalties under the law
65. **Clause 45** is on the examination and other boards that may be appointed by the Commission.
66. **Clause 46** is on the powers of the Commission to make regulations
67. **Clause 47** repeals the Parliamentary Service Act, 2000.
68. **Clause 48** of the Bill proposes to amend the Third Schedule of the Kenya Citizenship and Immigration Act, 2011 to entitle Members of Parliament to diplomatic passports.
69. **Clause 49** provides for the transitional provisions.
70. **The First Schedule** deals with the procedure for appointment of members of the Commission appointed under Article 127(2) (d) of the Constitution. This procedure shall apply whenever there is a vacancy or for purposes of constituting the Commission upon convening of the first sitting of Parliament pursuant to Article 126(2).
71. **The Second Schedule** deals with the provisions as to the conduct of the business and affairs of the Commission.
72. **The Third Schedule** provides the oath/affirmation of office for the Chairperson, Vice chairperson, Secretary, and other officers of the Commission.

## CHAPTER TWO

### PUBLIC PARTICIPATION

73. Through an advertisement on 16<sup>th</sup> March, 2018 the Committee invited the public to present submissions on the Parliamentary Service Bill, 2018. A copy of the newspaper advertisement is attached as annexure 3:

74. The Committee received submissions on the Parliamentary Service Bill, 2018 from the following stakeholders-

- (i) The Parliamentary Service Commission
- (ii) The National Assembly
- (iii) The National Police Service; and
- (iv) The Salaries and Remuneration Commission.

75. The details of the submissions relate to the provisions under clauses 2, 16, 19, 21, 23, 24, 26, 27, 30, 31, 32, 33 and 38 and are annexed to this report as annexure 4.

76. The Committee extensively considered the contents of the submissions. Details of the deliberations and the Committee's observations and resolutions are contained in Chapter 3 of this report.

#### **SUBMISSIONS BY THE NATIONAL POLICE SERVICE COMMISSION**

77. The Submissions from NPS relate to the establishment of the Parliamentary Police Unit.

## **SUBMISSIONS BY THE SALARIES AND REMUNERATION COMMISSION**

78. The submissions from the SRC relate to clauses 2 and 33 of the Bill which deal with definitions and remuneration of staff.

## **SUBMISSIONS BY THE PARLIAMENTARY SERVICE COMMISSION**

79. The submissions from the PSC relate to-

- (a) clause 2 which deals with definitions;
- (b) clause 16- role of the Secretary;
- (c) clause 19 on the administrative functions of the Clerks;
- (d) clause 21 on the exercise of functions of a Clerk during vacancy;
- (e) clause 23 that deals with offices in the Parliamentary Service;
- (f) clause 24 on the office of joint services;
- (g) clause 26 on the centre for parliamentary studies and training;
- (h) clause 27 on the disciplinary control of officers;
- (i) clause 30 on the establishment of the Parliamentary Police Unit; and
- (j) the memorandum of objects and reasons.

## **SUBMISSIONS BY THE NATIONAL ASSEMBLY**

80. The submissions from the National Assembly relate to-

- (a) clause 2 which deals with definitions;
- (b) clause 10 on the removal of a member of the Commission;
- (c) clause 16 on the role of the Secretary;
- (d) clause 19 on the administrative functions of the Clerks;
- (e) clause 21 on the exercise of functions of a Clerk during vacancy;

- (f) clause 23 that deals with offices in the Parliamentary Service;
- (g) clause 24 on the office of joint services;
- (h) clause 26 on the centre for parliamentary studies and training;
- (i) clause 27 on the disciplinary control of officers;
- (j) clause 30 on the establishment of the Parliamentary Police Unit; and
- (k) clause 38 on the oath of office for members and staff of the Commission.

### CHAPTER THREE

#### CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

81. This part deals with the clause by clause consideration of the Bill by the Committees after taking into consideration the views of the aforementioned stakeholders.

#### ▪ **CLAUSE 1- SHORT TITLE AND COMMENCEMENT**

82. Clause 1 relates to the short title and commencement. It proposed that the Act shall come into operation upon publication.

#### Committee observations and recommendation on clause 1

83. The Committee observed that –

- (a) There were no stakeholder comments received on this provision; and
- (b) Article 116(2) of the Constitution provides for the coming into force of Acts of Parliament on the fourteenth day after publication in the *Gazette* unless the Act stipulates a different date on or time at which it will come into force. In

this case, the Committee noted that the Act shall come into force upon publication.

84. The Committee recommends that the Clause be agreed to as it appears in the Bill.

▪ **CLAUSE 2 AND 21- INTERPRETATION & EXERCISE OF FUNCTIONS OF A CLERK DURING VACANCY OR INABILITY**

85. Clause 2 provides - *“Secretary” means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution.*

86. Clause 21 provides - *If the office of a Clerk of a House of Parliament is vacant or if for any reason the Clerk is unable to exercise the functions of his or her office, the Senior Deputy Clerk, any other office in the Parliamentary Service appointed by the Commission may exercise all the functions, duties and powers of the Clerk.*

**Stakeholder Views**

**a) Parliamentary Service Commission**

87. Clause 2 as read together with clause 21 take away the Constitutional power of the Commission to supervise office holders in the parliamentary service. If there is a vacancy in the office of the Clerk, the Commission shall appoint an Officer to act as Clerk.

88. Clause 21 presupposes the existence of the office of the Senior Deputy Clerk within the parliamentary service. It is within the Commission’s powers under Article 127(6) (b) of the Constitution to create and abolish this office and therefore reference to it in the Bill is not appropriate. Furthermore, at the

moment, there are two Senior Deputy Clerks in each House of Parliament and the Bill would bring uncertainty in this regard.

89. The Commission proposed that Section 2 of the Bill be amended to read as follows:

*“Secretary” means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate.*

**b) The National Assembly**

90. Clause 2 deals with interpretation and definitions and should be restricted to the Constitutional definitions of the Secretary and the Clerks under Articles 127(3) and 128 of the Constitution, respectively. Article 259(3) (a) of the Constitution provides that *“a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office.”*

91. Matters regarding the exercise of functions during a vacancy or absence of the Secretary or Clerks are substantive in nature and should be placed in the body of the Bill.

92. The National Assembly proposed as follows:

- (a) retain clause 2 of the Bill as published.
- (b) Clause 21 be amended to read *“If the office of the Clerk is vacant, or if for any reason the Clerk is unable to exercise the functions of his or her office, any other person for the time being performing the duties of the Clerk pursuant to the Standing Orders of the relevant House or by direction of the relevant Speaker shall have and may exercise all the functions, duties and powers of the Clerk*

### **c) Salaries and Remuneration Commission**

93. The definition of the words “officer” and “office” do not make reference to the constitutional definition of public officer. Reference should be made to the definitions of public officer and public office in the Constitution.

#### **Committee observations and recommendation on clause 2 and 21**

94. The Committee observed that-

- (a) the definition of the term “office” and “officer” have specific application to their use in the context of the current Parliamentary Service Bill, 2018. The terms “Public Officer” and “Public Office” are defined in the Constitution and represent different concepts and ideas from what is defined in the Bill;
- (b) The Committee observed that the composition of the Parliamentary Service Commission membership under the Constitution of Kenya, 2010 takes into account the bicameral nature of Parliament and the specific mandates of the two Houses which creates a balance in the membership of the two Houses. While the Speaker of the National Assembly is the Chairperson of the Commission, the Clerk of the Senate is the Secretary to the Commission. The Speaker of the Senate and the Clerk of the National Assembly are not members of the Commission.
- (c) Article 259(3) (a) of the Constitution provides that *“a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office.”* The definition of the term “Secretary” may make reference to a person performing the duties of the secretary as does the definition of the term “Chairperson”
- (d) Clause 21 needs to be redrafted in order to take into consideration the fact that, as it is presently, there are two Senior Deputy Clerks in both Houses.

95. The Committee recommends that the Bill be amended as follows-

(a) Clause 2 be amended by deleting the definition of the term Secretary and substituting therefor the following new definition-

*“Secretary” means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution or any other person exercising the functions of the Secretary.*

### **Justification**

This amendment seeks to clarify the definition of the term “Secretary” to include the person acting as the Secretary of the Commission in the absence of the Secretary. The amendment thus brings on board the concerns raised by the Parliamentary Service Commission regarding the definition.

The Committee also noted that the amendment seeks to provide greater certainty regarding the exercise of official powers in light of Article 259(3)(a) of the Constitution which provides that *“a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office”*

(b) **THAT** Clause 21 of the Bill be amended by deleting the expression “the Senior Deputy Clerk” wherever it appears and substituting therefor the expression “a Senior Deputy Clerk”

### **Justification**

The amendment is a drafting harmonization in light of the fact that, at the moment, there are two Senior Deputy Clerks in each House of Parliament and thus the amendment clarifies that either of the two SDCs in a House may exercise the

functions of the Clerk if for any reason the Clerk is absent or unable to exercise the functions of his or her office.

▪ **CLAUSE 3 - OBJECTS AND PURPOSES OF THE ACT.**

96. This clause outlines the objects and purposes of the Act.

**Committee observations and recommendation on clause 3**

97. There Committee observed that there were no stakeholder comments received on this provision; and

98. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 4 – THE PARLIAMENTARY SERVICE.**

99. This clause provides for the establishment of the Parliamentary Service.

**Committee observations and recommendation on clause 4**

100. The Committee observed that Clause 4(1) is drafted in the future tense but should be amended to the present tense so that the law is always speaking.

101. The Committee recommends that the clause be amended as follows-

*“Clause 4(1) of the Bill be amended by deleting the words “shall be” and substituting therefor the words “is established”*

**Justification**

The amendment seeks to harmonize the drafting style used in the Bill for greater certainty.

▪ **CLAUSE 5 – THE PARLIAMENTARY SERVICE VALUES.**

102. This clause provides for the Parliamentary Service Values.

**Committee observations and recommendation on clause 5**

103. There Committee observed that there were no stakeholder comments received on this provision; and

104. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 6 – PARLIAMENTARY SERVICE CODE OF CONDUCT**

105. This clause provides for the Parliamentary Service Code of conduct applicable to employees of the PSC

**Committee observations and recommendation on clause 6**

106. There Committee observed that there were no stakeholder comments received on this provision; and

107. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 7 – COMPLIMENTARITY OF VALUES AND CODES OF CONTRACT**

108. This clause clarifies the complimentary nature of the Parliamentary Service Code of conduct, that is the provisions apply in addition to those set out in other written laws for Kenyan citizens and public officers generally.

**Committee observations and recommendation on clause 7**

109. There Committee observed that there were no stakeholder comments received on this provision; and

110. The Committee recommends that the clause be agreed to as it appears in the Bill.

**▪ CLAUSE 8- QUALIFICATION OF MEMBERS OF THE COMMISSION**

111. This clause sets out the factors for consideration in nomination and appointment of persons as members of the PSC under Article 127(2)(c) (that is, the seven members of Parliament). These considerations include ethnic and regional diversity of the people of Kenya, the person's experience or interests in advancing the ideals of parliamentary democracy.

**Committee observations and recommendation on clause 8**

112. There Committee observed that there were no stakeholder comments received on this provision; and

113. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 9- QUALIFICATIONS AND PROCEDURE FOR APPOINTMENT**

114. This clause provides for the qualifications and procedure for appointment of members of the Commission to be appointed under Article 127(2) (d) of the Constitution, (that is the one man and one woman who are not members of Parliament). Subclause (2) refers to the appointment procedure applicable and outlines it further under the First Schedule.

**Stakeholder Views**

**National Assembly**

115. That clause 9 (1) be amended in paragraph 9(c) by deleting the word “affairs” and substituting therefor the word “service”

**Committee observations and recommendation on clause 9**

116. The Committee observed that-

- (a) the provision relates to qualifications applicable to members of the Commission appointed under Article 127 (2) (d) of the Constitution, being one man and one woman from persons who are experienced in public affairs but are not Members of Parliament;
- (b) Clause 9(1) of the Bill enhances the qualifications of the two members by including educational requirements, professional experience and requirements on leadership and integrity;
- (c) The proposed amendment to clause 9(1)(c) would limit the nominees to persons who have prior experience in public service. However, Article 127 (2) (d) only requires one to have experience in public affairs and thus

the proposed amendment would lock out persons who have not been in public service.

117. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 10- REMOVAL OF A COMMISSIONER**

118. Clause 10 provides for the removal from office of member of the Commission as-

*(1) A member of the Commission may be removed from office in accordance with the grounds and procedure set out in Article 251 of the Constitution.*

*(2) The form of petition for the removal of a member of the Commission under Article 251(2) of the Constitution and the procedure for the consideration of the petition by the National Assembly shall be as specified in the standing orders.*

▪ **Committee observations and recommendation on clause 10**

119. The Committee observed as follows-

(a) It is notable that the Commission is one of the constitutional commissions listed in Article 248 of the Constitution and it would appear from the face of it as if the provisions of Article 251 of the Constitution on the procedure for removal of member of a constitutional commission would apply. However, it is notable that Article 248(1) of the Constitution provides that the provisions of chapter fifteen including Article 251 of the Constitution apply, except to the extent the Constitution provides otherwise;

(b) Article 127 of the Constitution is one exception of the application of the provisions of chapter fifteen in particular on the composition, mode of

appointment and the removal process of the commissioners of the Parliamentary Service Commission among others. In this regard, the procedure for removal of a commissioner as espoused in Article 251 of the Constitution does not apply to commissioners of the Parliamentary Service Commission;

(c) A close reading of Article 127 of the Constitution reveals that Article 127 does not provide for the procedure of removal of commissioner from the Parliamentary Service Commission save for it provides for the manner in which the office of a member of the Commission may become vacant;

(d) Article 127(4)(a) of the Constitution provides that a member of the Commission shall vacate office if the person is a member of Parliament at the end of the term of the House of which the person is a member or if the person ceases to be a Member of Parliament;

(e) In this regard and from a reading of Article 127(4)(a) of the Constitution, it would appear that unless the term of a Member of Parliament comes to an end or the commissioner ceases to be a Member of Parliament, a commissioner continues to hold office;

(f) Article 127(4)(b) provides that that a member of the Commission shall vacate office if the person is an appointed member, on revocation of the person's appointment by Parliament;

(g) In light of the foregoing, one may be quick to argue that Article 127(4) of the Constitution does not therefore provide for the procedure of removal of commissioner appointed by Parliament under Article 127(2)(c)(ii) of the Constitution. However, this is not the case as such an interpretation would arguably defeat the provisions of Article 259(1)(d) of the Constitution which provides that the Constitution should be interpreted in a manner that contributes to good governance. The processes of removal from office are

meant to promote good governance as they act as check and balance mechanisms for safeguarding against abuse power.

- (h) Such an interpretation would also be absurd as it would imply that once a party nominates a member to the Commission and Parliament approves such nomination, then regardless of what a member does, the Party would have no recourse to initiate the process of removal of for instance an errant member. Certainly, the drafters of the Constitution may not have envisaged that there be no recourse to oversight and check and balance devices;
- (i) Indeed, running through the Constitution, it is clear that architecture of the Constitution is designed with such devices for all appointed state officers. The Constitution provides for the procedure of removal from office of a President, Deputy President, Speaker, Members of Parliament, Cabinet Secretaries, etc and the processes for removal include either dismissal by the President, impeachment processes through motions, removal through constitutional petitions or even recall of a Member of Parliament as the case may be and the processes are embodied in the standing orders of the National Assembly;
- (j) The answer to the question as to the removal of commissioner of the Parliamentary Service Commission calls for answering of the question of how commissioners of Parliament are appointed. Ordinarily, once the parties referred to in Article 127 of the Constitution make a decision on who their nominees to the Commission are, the House thereafter is required to approve the names on a Motion in the House.
- (k) The appointing authority being Parliament, the process is through a Motion tabled and considered by the House. It therefore follows that the dismissing authority is also Parliament and the procedure for removal would be in this case also be through a Motion sponsored by any Member of the House tabled,

considered and passed by the House in accordance with the provisions of Article 122 of the Constitution.

- (l) This interpretation is further supported by section 51(1) and (2) of the Interpretation and General Provisions Act Cap. 2 which provides as follows-

*“(1) Where by or under a written law, a power or duty is conferred or imposed upon a person to make an appointment or to constitute or establish a board, commission, committee or similar body, then, unless a contrary intention appears, the person having that power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to reappoint or reinstate, a person appointed in the exercise of the power or duty, or to revoke the appointment, constitution or establishment of, or dissolve, a board, commission, committee or similar body appointed constituted or established, in exercise of the power or duty, and to reappoint, reconstitute or re-establish it.*

*“(2) Where the power or duty of a person under this section is exercisable only upon the recommendation or is subject to the approval or consent of another person, then the power shall, unless a contrary intention appears be exercisable only upon that recommendation or subject to that approval or consent.”*

- (m) In this regard and since the role of a party under Article 127(2) of the Constitution is just to nominate and the House approves such nomination, then a party intending to remove a commissioner must subject such a decision to the House for approval which is through a Motion to the House to deliberate and determine whether or not to approve the proposed removal of a commissioner. The House may in approving a Motion for removal consider factors such as what are the grounds for removal of the commissioner in

question and whether considerations such as Articles 47, 50 and 236 of the Constitution as read with the Fair Administrative Action Act, 2015 have been adhered to by the party among others.

- (n) In this case, Parliament being the appointing authority is also the dismissing authority in accordance with the provisions of section 51(1) of the Interpretation and General Provisions Act Cap. 2.
- (o) Indeed, the Speaker of the National Assembly has advised political parties as to the above procedure.
- (p) Therefore, there is need to anchor in law, a procedure for the removal of the Commissioners. As drafted, the clause suggests that the procedure under Article 251 should apply to the commissioners of the PSC contrary to the aforementioned advise by the Speaker and the provisions of Article 248(1) of the Constitution.

120. The Committee recommends that clause 10 be amended as follows-

*The Bill be amended by deleting clause 10 and substituting therefor the following-*

*10. (1) A Member of Parliament, supported by at least one-quarter of all the members of the respective House, may propose a motion for the removal of a member of the Commission for—*

- (a) serious violation of a provision of the Constitution or of any other law including a violation of Chapter Six;*
- (b) gross misconduct, whether in the performance of the member's functions or otherwise;*
- (c) physical or mental incapacity to perform the functions of office;*

*(d) incompetence; or*

*(e) bankruptcy.*

*(2) If a motion under sub-section (1) is supported by at least one-third of the Members of the respective House—*

*(a) the respective House shall appoint a Select Committee comprising of eleven of its Members to investigate the matter;*

*(b) the select committee shall within ten days report to the respective House whether it finds the allegations against the Member of the Commission to be substantiated.*

*(3) Where the select committee finds that—*

*(a) the allegations against the Member of the Commission have not been substantiated, there shall be no further proceedings on the matter;*

*(b) the allegations against the Member of the Commission have been substantiated and the motion is supported by a majority of all the members of the respective House—*

*(i) the Speaker of that House shall inform the Speaker of the other House of the resolution within two days; and*

*(ii) the Member of the Commission shall continue to perform the functions of the office pending the outcome of the proceedings under this section.*

*(4) The procedure prescribed in sub-sections (1), (2) and (3) shall apply with the necessary modifications to the consideration of the*

*Motion for removal of a Member of the Commission by the other House.*

*(5) If both Houses pass the Motion in the same form, the Member of the Commission shall stand removed.*

### **Justification**

The amendment seeks to set out the procedure for removal of a member of the Parliamentary Service Commission. The Committee observed that Article 127 of the Constitution is one exception of the application of the provisions of chapter fifteen in particular on the composition, mode of appointment and the removal process of the commissioners of the Parliamentary Service Commission among others.

(a) In this regard, the Committee noted that the procedure for removal of a commissioner as espoused in Article 251 of the Constitution does not apply to commissioners of the Parliamentary Service Commission. The committee noted that Parliament being the appointing authority of the Commissioners it should also be the dismissing authority in accordance with the provisions of section 51(1) of the Interpretation and General Provisions Act Cap. 2.

In this respect it becomes imperative that the Clause be amended as proposed to set out the grounds and the procedure for removal of members of the Parliamentary Service Commission.

#### **▪ CLAUSE 11- FUNCTIONS OF THE COMMISSION**

121. This clause provides the functions of the PSC, in addition to those set out under Article 127(2) of the Constitution.

Committee observations and recommendation on clause 11

122. There Committee observed that there were no stakeholder comments received on this provision; and
123. The Committee recommends that the clause be agreed to as it appears in the Bill.
124. The Committee further recommends as follows

**NEW CLAUSES**

**THAT**, the following new clauses be inserted immediately after clause 11—

**11A.** (1) The Commission shall, pursuant to Article 127(6) of the Constitution, to enable the Members discharge their responsibilities effectively and for efficient functioning of Parliament, make the following services and facilities available to Members of Parliament—

- (a) medical cover;
- (b) official transport or in lieu thereof, transport or mileage allowance;
- (c) suitable housing accommodation for Speakers and Leaders of Majority and Minority Parties in both Houses, or in lieu thereof, housing allowance pursuant to section 31 of the Employment Act, 2007;
- (d) suitable housing accommodation for members of Parliament or in lieu thereof, housing allowance, pursuant to section 31 of the Employment Act, 2007;
- (e) mortgage;
- (f) car grants and car loans;
- (g) domestic and international travel allowances; and
- (h) any other service or facility.

(2) The services and facilities referred to in subsection (1) shall be provided in such manner and in such rates as the Commission may determine from time to time, taking into account the rate applicable for other state and public officers.

**11B.** (1) Pursuant to Article 118(1)(b) of the Constitution, each Member of Parliament shall facilitate

public participation of legislative business of Parliament and its committees through public awareness campaigns in the member's area of representation.

(2) For the purpose of subsection (1), the Member shall—

- (a) establish public participation and oversight programmes for the area of representation;
- (b) hold public hearings on matters of public interest within the area of representation;
- (c) facilitate access to information held by the legislature;
- (d) facilitate the participation of the communities in the engagement with government departments on financial matters;
- (e) monitor spending patterns of public entities, being national government projects for Members of the National Assembly and county government projects for Members of the Senate, within the area of representation.

(3) Each House of Parliament shall prescribe, in the Standing Orders, the manner of undertaking public participation under this section.

(4) The Commission shall provide services and facilities necessary to actualize the objects of this section.

### **Justification**

The proposed amendments seek to ensure that the functions of the Parliamentary Service Commission pursuant to Article 127(6)(a) and (e) of the Constitution with respect to provision of services and facilities are achieved in order to ensure the efficient and effective functioning of Parliament. The Committee was of the opinion that the well-being of Members of Parliament is critical in ensuring that they effectively perform their constitutional functions.

### **▪ CLAUSE 12- POWERS OF THE COMMISSION**

125. This clause provides the powers of the PSC, in addition to those set out under Article 253 of the Constitution to enable it perform its functions.

**Committee observations and recommendation on clause 12**

126. There Committee observed that there were no stakeholder comments received on this provision; and

127. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 13- COMMITTEES OF THE COMMISSION**

128. This clause provides for the Committees of the Commission. It makes provision for the co-opting into the membership of the Committee any person or persons whose knowledge and skills are necessary for the proper performance of the functions of the Commission.

**Committee observations and recommendation on clause 13**

129. The Committee observed-

- (a) That there were no stakeholder comments received on this provision;
- (b) Noting that the membership of the Commission is provided for under Article 127, the clause is inconsistent with the Constitution to the extent that it provides for the co-opted members to form part of the membership of a Committee of the Commission. In any event, subclause (1) suffices to enable the Commission engage experts;

130. The Committee recommends that clause 13 be amended as follows -

*That the Bill be amended in clause 13 by-*

- (a) *deleting subclause (2); and*
- (b) *deleting subclause (3);*

### **Justification**

The Committee noted that the membership of the Commission is set out in Article 127 of the Constitution and thus there is thus no need for a legislative provision to empower the Commission to co-opt persons who are not members of the Commission into membership of Commission committees.

#### **▪ CLAUSE 14- SEAL OF THE COMMISSION**

131. This clause provides the Seal of the Commission to be such a device as determined by the Commission and kept in the Secretary's custody. Where it is affixed on any document, it shall be authenticated by the secretary or any other authorised person.

#### **Committee observations and recommendation on clause 14**

132. There Committee observed that there were no stakeholder comments received on this provision; and

133. The Committee recommends that the clause be agreed to as it appears in the Bill.

#### **▪ CLAUSE 15- CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSISON**

134. This clause provides the manner in which the affairs and business of the Commission shall be carried out, that is as further detailed in the Second Schedule.

### Committee observations and recommendation on clause 15

135. The Committee observed that there were no stakeholder comments received on this provision; and

136. The Committee recommends that the clause be agreed to as it appears in the Bill.

#### ▪ **CLAUSE 16- ROLE OF THE SECRETARY**

137. Clause 16 provides as follows-

*The Secretary shall be responsible for-*

- (a) preparing, planning and facilitating the meetings of the Commission and its committees;*
- (b) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct;*
- (c) communicating the decisions of the Commission for execution by the Clerks pursuant to Articles 128(2) and any law made under Article 226 (1) (b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6) (b) or any law made under Article 226(1) (b) of the Constitution;*
- (d) custody of the seal of the Commission;*
- (e) the performance of such other duties as may be assigned by the Commission.*

### Stakeholder Views

#### **a) Parliamentary Service Commission**

138. The roles and responsibilities bestowed on the Secretary of the Commission as Chief Executive Officer stem from the provisions of Article 250(12) of the Constitution. Section 2 of the Public Finance Management Act as now amended provides that the Clerk of the National Assembly shall be the accounting officer in respect of the National Assembly while the Clerk of the Senate shall be the accounting officer in respect of the Parliamentary Service Commission.

139. Clause 16 of the Bill as drafted shall leave the Commission with no person assigned the role of the Chief Executive Officer. The Commission is of the opinion that there needs to be a single point of reference for the Commission as its Chief Executive Officer responsible for carrying out its resolutions.

140. The Commission proposes that this clause should be amended to read as follows:

(1) The Secretary shall be-

*(a) the chief executive officer of the Commission;*

*(b) the administrative head of the Parliamentary Service;*

*(c) and the custodian of the Commission's records;*

*(d) responsible for –*

*(i) the execution of the decisions of the Commission;*

*(ii) assignment of duties and supervision of the staff of the Commission;*

*(iii) the preparation and submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;*

*(iv) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the*

*Commission may direct;*

- (v) ensuring staff compliance with public service values, principles and ethics; and*
- (vi) the performance of such other duties as may be assigned by the Commission or any other written law.*

- (2) The Secretary shall be responsible to the Chairperson of the Commission for the general working and efficient conduct of business of the Parliamentary Service.*
- (3) The Commission may delegate to the Secretary such of its functions as are necessary to carry out the day to day management of the Service, and subject to such directions as may be given by the Commission.*

#### **b) The National Assembly**

141. Articles 127(3) and 250(12) of the Constitution should not be read in isolation but should be read together with Article 128 of the Constitution. One of the cardinal principles of Constitutional interpretation is that the Constitution should be interpreted as a whole and no one provision should be interpreted in such a way as to destroy or render irrelevant another provision of the same Constitution. **(Tinyefuza v Attorney General of Uganda Constitutional Petition No. 1 of 1996 [1997] 3UGCC)**<sup>4</sup>.

142. The powers and functions to be assigned to the Secretary of the Parliamentary Service Commission under the Parliamentary Service Act must take cognizance of the bicameral nature of the Kenyan Parliament as

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<sup>4</sup>Major General David Tinyefuza v Attorney General ((Constitutional Petition No.1 of 1996)) [1997] UGCC 3 (25 April 1997)

Available on <https://ulii.org/ug/judgment/constitutional-court-uganda/1997/3>

established under Article 93 of the Constitution. The Houses have different functions in the Constitution as set in Article 95 (Role of the National Assembly) and Article 96 (Role of the Senate). Empowering the Clerk of the Senate/Secretary to assign duties and supervise the staff of the Commission deployed to the National Assembly compromises the autonomy of the National Assembly and runs contrary to the nature of the bicameral Parliament established under Article 93 of the Constitution. The issue of two centres of power is not a creation of the Parliamentary Service Bill, 2018 but recognition of the distinct roles of the two Houses of Parliament (and the clerks of the Houses) as established under the Constitution.

143. The National Assembly therefore proposes as follows:

*Clause 16 of the Bill be retained as published.*

#### **Committee observations and recommendation**

144. The Committee Observed that-

(a) There provisions under Article 250(12) are clear literally and substantively. Specifically Article 250(12) of the Constitution states that-

*“(12) There shall be a Secretary to each commission who shall be—*

*(a) appointed by the commission; and*

*(b) the chief executive officer of the commission.”*

(b) Notably, Article 127(3) provides that the Clerk of the Senate shall be the Secretary to the Commission.

(c) The duties of the Secretary to the commission in sample of Constitutional Commissions are as follows

No.	Constitutional Commission	Provision in the Statute	Functions of the Secretary
1.	Independent Electoral and Boundaries Commission	Section 10 (7) of the IEBC Act, 2011	<p>(7) The secretary shall be—</p> <p>(a) the chief executive officer of the Commission;</p> <p>(b) head of the secretariat;</p> <p>(c) the accounting officer of the Commission;</p> <p>(d) custodian of all commission's records;</p> <p>(e) responsible for—</p> <ul style="list-style-type: none"> <li>(i) executing decisions of the Commission;</li> <li>(ii) assignment of duties and supervision of all employees of the Commission;</li> <li>(iii) facilitating, co-ordinating and ensuring execution of Commission's mandate;</li> <li>(iv) ensuring staff compliance with public ethics and values; and</li> <li>(v) the performance of such other duties as may be assigned by the law and Commission</li> </ul>

No.	Constitutional Commission	Provision in the Statute	Functions of the Secretary
2.	Salaries and Remuneration Commission	Section 16(3) of the SRC Act, 2011	<p>(3) As the chief executive officer, the secretary shall be responsible to the Commission for—</p> <p>(a) the implementation of functions of the Commission;</p> <p>(b) the formation and development of an efficient administration; and</p> <p>(c) the organization, control and management of staff</p>
3.	Judicial Service Commission	Section 21 of the JSC Act, 2011	<p>(1) As Secretary to the Commission, the Chief Registrar shall, in relation to the proceedings before the Commission, act in accordance with the provisions of the Constitution, this Act and any other written law and shall, in particular, be responsible for—</p> <p>(a) the acceptance, transmission, service and custody of documents in accordance with this Act;</p> <p>(b) the enforcement of decisions of the Commission;</p> <p>(c) certifying that any order, direction or decision is an order, direction or decision of the Commission, the</p>

No.	Constitutional Commission	Provision in the Statute	Functions of the Secretary
			<p>Chairperson or a member, as the case may be;</p> <p>(d) causing to be kept records of the proceedings and minutes of the meeting and such other records as the Commission may direct; and</p> <p>(e) undertaking any duties assigned by the Commission.</p> <p>(2) With the authorisation of the Commission, the Secretary may consider and dispose of procedural or administrative matters in accordance with this Act.</p> <p>(3) Any administrative function of the Secretary under this Act may in the Secretary's absence, be performed by any member of staff of the Commission whom the Chairperson may authorise for that purpose.</p>
4.	Kenyan National Commission	Section 21 (3) of the KNCHR Act, 2011	(3) The secretary shall be the chief executive officer of the Commission

No.	Constitutional Commission	Provision in the Statute	Functions of the Secretary
	on Human Rights		and head of the secretariat and shall be responsible to the Commission.
5.	Public Service Commission	Section 16 (7) PSC Act, 2012	<p>7) The secretary shall be-</p> <p>(a) the Chief Executive Officer of the Commission;</p> <p>(b) head of the secretariat;</p> <p>(c) the accounting officer of the Commission;</p> <p>(d) custodian of the commission's records;</p> <p>(e) responsible for—</p> <p>(i) the execution of the decisions of the Commission;</p> <p>(ii) assignment of duties and supervision of the staff of the Commission;</p> <p>(iii) facilitating, co-ordinating and ensuring the execution of Commission's mandate;</p> <p>(iv) the preparation and submission of the programmes necessary for the achievement of the Commission's mandate</p>

No.	Constitutional Commission	Provision in the Statute	Functions of the Secretary
			<p>for approval by the Commission;</p> <p>(v) ensuring staff compliance with public service values, principles and ethics; and</p> <p>(vi) the performance of such other duties as may be assigned by the Commission or any other written law.</p>

- (d) The Bill does not refer to the Secretary of the Commission as the chief executive officer of the Commission. As observed in the above analysis, the secretary to the Judicial Service Commission is the Chief Registrar. As another Commission to which Article 248 (1) applies, the Chief Registrar is not the chief executive officer of the Judiciary. This is unlike the situation obtaining in a Commission with full time members such as the IEBC where the Secretary is also the chief executive officer of the Commission.
- (e) The proposals by the PSC go beyond the ordinary scope of a Secretary's duties. Indeed over description of the role of the Secretary would be venturing into dangerous grounds.
- (f) It is tremendously important that each Clerk be allowed autonomy to run the affairs of their respective House.
- (g) On the issue of a person to act as the secretary to the Commission, it's important to note the provisions of Article 259(3)(b) which provides that-

*“(3) every provision of this Constitution shall be construed according to the doctrine that the law is always speaking and, therefore, among other things-*

*(b) any reference to this Constitution to a State or other public office or officer, or a person holding such office includes a reference to the person acting in or otherwise performing the functions of the office at any particular time*

- (h) The provisions of Article 259(3)(b) are therefore clear as to the issue of vacancy in the office to ensure that there is never a vacuum whenever the substantive office holder is absent or unable to discharge his/her duties. Additionally, the Committee has proposed an amendment to the definition of term “secretary” under clause 2 to refer to another person when performing the duties or acting in the capacity of the secretary.
- (i) Clause 16(c) requires an amendment to remove the superfluous words.

145. The Committee recommends that clause 16 be amended as follows-

*“Clause 16 of the Bill be amended in paragraph (d) by deleting the words “pursuant to Articles 128(2) and any law made under Article 226(1) (b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6) (b) or any law made under Article 226(1)(b) of the Constitution” appearing immediately after the word “Clerks”*

### **Justification**

The Committee observed that the words sought to be deleted were unnecessary cross references to constitutional provisions. The Committee noted that the constitutional provisions cited are applicable without restating them in the Act.

146. The Committee further recommends that clause 16 be amended as follows-

#### **INSERTION OF A NEW PART**

**THAT** the Bill be amended by inserting the following new Part immediately after clause.16—

#### **PART IIIA- SERVICES AND FACILITIES FOR PARLIAMENT**

**16A** (1) The Commission shall, to the extent of its constitutional mandate, be responsible for fulfillment of the provisions under Article 127(6)(a) and (d) of the Constitution and in particular shall formulate policies, regulations, strategies and put in place mechanisms for the provision of such services and facilities as are necessary for the effective functioning of Parliament and the well-being of Members and the staff of the Commission.

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

**16B.** (1) The Commission shall ensure availability, accessibility, adaptability and acceptability of services and facilities for use by Members and staff of Parliament.

(2) The Commission shall put in place adequate infrastructure that would be necessary for provision of services for the well-being of Members and staff of Parliament.

(3) The Commission may provide or designate exclusive use of certain facilities for Members.

(3) The Commission may outsource certain services and facilities for the welfare of Members.

(4) Despite subsection (1), the Commission may take measures to facilitate the use of facilities not available within the precincts of Parliament by Members and staff of Parliament.

**16C.** (1) The Commission shall prescribe the minimum standards for travel and accommodation for Members and staff of Parliament to facilitate performance of official duties outside the precincts of Parliament.

(2) The Commission shall regularly review the domestic and international travel allowances applicable for Members and staff of Parliament.

**16D.** The Commission shall take measures to facilitate Members to discharge their mandate as provided for in Articles 94, 95 and 96 of the Constitution including—

(a) equipping and allocating offices to Members;

(b) facilitating Members to conduct public participation in the performance of their duties;

(c) take any other measure as may be necessary.

**16E.** The Commission shall facilitate the enhancement of legislative skills of Members and staff and of Parliament through the provision of structured and continuous trainings locally or in foreign countries.

**16F.** The Commission shall foster and promote the use of technology in all administrative processes, communication, preparation, dissemination and storage of information and in the relevant day to day functions of Parliament.

**16G.** (1) The Commission may provide facilities to a parliamentary party or caucus to promote the ideals of the political party or parliamentary caucus.

(2) For purposes of sub-section (1), the facilities provided shall be for exclusive use by sitting Members.

**16H.** (1) The Commission may initiate and undertake programmes that promote the ideals of parliamentary democracy.

(2) The Commission may undertake the programmes under section (1) either singly or jointly with domestic and international legislative organs, the Members and staff of such legislative organs and other relevant organizations.

(3) The Commission may, pursuant to international law and treaties, undertake collaborative works with similar institutions that provide parliamentary services in the Commonwealth and other jurisdictions.

(4) For the purposes of attaining the objectives of the programmes under this section, the Commission may enter into memoranda of understanding, contracts or such other agreements as may be authorised from time to time with persons, organizations or other relevant institutions.

### **Justification for the proposed new Part IIIA of the Bill**

The Committee noted that the Parliamentary Service Bill, 2018 primarily actualizes Article 127(6) (b) of the Constitution relating to constituting offices in the Parliamentary service, and appointing and supervising parliamentary staff. The Committee observed with concern that the Bill neglects to provide further provisions as regards Article 127(6)(a) of the Constitution relating to the provision of services and facilities to ensure the effective and efficient functioning of Parliament.

The Committee observes that there is need to incorporate certain provisions in the Bill relating to providing services and facilitation of activities of Members of Parliament within and outside the precincts of Parliament with a view to actualizing paragraph 6 (a) of Article 127.

In order to actualize the paragraph, the Committee proposes that the Bill should have provisions on-

(a) allocation and equipping of offices for Members of Parliament

- (b) facilitating the conduct of structured public participation on legislative matters in the constituency office
- (c) training and enhancing of legislative skills of members on continuous basis
- (d) embracing the use of modern technology in legislative matters
- (e) outsourcing certain services and facilities for welfare of Members of Parliament
- (f) to put in place mechanisms that ensure the Commission is constantly engaging Members of Parliament formally on matters of welfare, services and facilities.
- (g) collaborative measures with relevant International Parliamentary Organizations such as Commonwealth Parliamentary Association, East Africa Legislative Assembly etc and share learning experiences on among other things parliamentary democracy.
- (h) provision of exclusive facilities for use by Members.
- (i) review of travel allowances for domestic and international external travel.

▪ **CLAUSE 17- THE CLERKS AND OTHER OFFICES**

147. This clause deals with the qualifications for appointment as Clerk.

**Committee observations and recommendation on clause 17**

148. There Committee observed that-

- (a) there were no stakeholder comments received on this provision;
- (b) paragraph (c) stipulates a minimum of ten years' experience in senior management and leadership in the public service as one of the qualifications that a person must satisfy in order to be appointed as Clerk;

(c) the provision locks out potential persons who have experience in public affairs akin to what is required for appointed members of the Commission

149. The Committee recommends that the clause be amended as follows-

*Clause 17 be amended in paragraph (c) by deleting the word "service" and substituting therefor the word "affairs"*

### **Justification**

The amendment seeks to remove the requirement in the Bill that restricts potential appointees to the Commission to persons having 10 years of proven experience in the public service. The amendment opens up the qualifications to persons with 10 years' experience in public affairs, in line with the use of the expression "public affairs" in Article 127(2)(d) of the Constitution regarding the appointment of persons as members of the Commission.

150. The Committee recommends that the Bill be amended by inserting the following new clause immediately after clause 17-

17A. (1) A Clerk of a House of Parliament shall be appointed by the Commission for a term of five years and is eligible for re-appointment for one further term of five years.

(2) Despite sub-section (1), if the person appointed as Clerk of a House of Parliament is an employee of the Commission serving on permanent and pensionable terms, the

person shall continue serving on permanent and pensionable terms for the duration of the term provided for in sub-section (1) or retire from the parliamentary service upon attaining the age of sixty years, whichever is the earlier.

- (3) An employee of the Commission serving on permanent and pensionable terms who has served as a Clerk of a House of Parliament and has completed his or her term of office as set out in sub-section (1) before attaining the age of sixty years shall be compulsorily retired and is eligible for payment of pension in accordance with the applicable laws.

### **Justification**

The Committee was of the opinion that there is need to put term limits on the period of service of the Clerks of the Houses. The Committee noted that the Clerks' hold constitutional offices under Article 128 of the Constitution and that all constitutional office holders have term limits and the Clerks of the Houses should not be an exception. The Committee was thus of the opinion that the Clerks should be appointed for a term of five years renewable once for a further term of five years.

The Committee was of the view that an employee of the Commission serving on permanent and pensionable terms and who opts to serve as a Clerk of a House of Parliament, should be prepared to face the reality of early retirement should he or she complete the term of office before attaining the age of sixty years.

▪ **CLAUSE 18- PROCEDURE FOR APPOINTMENT**

151. This clause deals with the procedure for appointment of a Clerk. The approval of the relevant House of Parliament is required for a Clerk to be appointed.

**Committee observations and recommendation on clause 18**

152. There Committee observed that there were no stakeholder comments received on this provision; and

153. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 19- ADMINISTRATIVE FUNCTIONS OF THE CLERKS**

154. The Clause provides-

*The Clerks shall, in each of their respective Houses, be responsible to the Commission for-*

- (a) *the day-to-day management and functioning of the respective Houses;*
- (b) *the execution of the Commissions decisions relating to the respective Houses;*
- (c) *the overall management of the staff under their respective control pursuant to Article 128 (2) of the Constitution and in particular, shall be the authorized officer responsible for advising the Commission and implementing Commission resolutions on all matters relating to—*
  - (i) *the appointment, promotion, and discipline of the members of staff*

- of the respective Clerks;*
- (ii) *the assignment of duties, supervision and training of the staff of respective Clerks;*
  - (iii) *the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.*
- (d) *The preparation and submission of the programmes necessary for the achievement of the mandate of the respective Houses for approval by the Commission; the performance of such other duties as the Commission might determine or as may be provided for in any other written law.*

## **Stakeholder Views**

### **(a) Parliamentary Service Commission**

155. The Commission is not responsible for the day to day management of the Houses of Parliament as this duty falls within the mandate of the Speakers and Clerks of Parliament together with the leadership of the Houses. The Commission is however responsible for the provision of services and facilities to Parliament. The Commission does not direct the respective Houses of Parliament.

156. It is the responsibility of the Commission to supervise office holders in the parliamentary service. For optimal management, there is need for one authorized officer in respect of the staff of the parliamentary service. The Commission shall then resolve on how the powers of supervision of staff shall be decentralized from the one central source. In pursuance of establishing the best structure for this, the Commission has engaged the services of a human resource company to advise it on the best organizational

structure for purposes of optimal provision of services and facilities to Parliament.

157. The Commission proposes amendments as follows-

*19(a) -the provision of such services and facilities as are necessary for the effective functioning of their respective Houses*

*19(b) -be deleted*

*19(c) -be deleted*

**(b) National Assembly**

158. The powers and responsibilities conferred on Clerks of the Houses under clause 19 of the Bill will allow them to effectively manage the Houses. It is critical for the Clerks of the Houses to retain the overall management powers of their Staff as contemplated in Article 128(2) of the Constitution.

159. Clerks of the Houses should have the responsibility of assigning duties and supervising staff deployed in their Houses for the efficient and effective management of each of the Houses. It is their view that the powers and functions to be assigned to the Secretary of the Parliamentary Service Commission under the Parliamentary Service Act must take cognizance of the bicameral nature of the Kenyan Parliament as established under Article 93 of the Constitution.

160. Since the Secretary of the Commission is also the Clerk of one House of our Parliament, designating the Secretary as the authorized officer for all staff employed by the Commission effectively means that the affairs of the National Assembly shall be run from the Senate, an undesirable if not

unconstitutional situation given the bicameral nature of the Kenyan Parliament as set out in the Constitution.

161. The National Assembly also notes that in all jurisdictions with bicameral legislatures, each Clerk of a House of Parliament is generally responsible for the assignment of duties and supervision of staff deployed in their Houses. It is thus important to avoid a 'functional absurdity' in the Kenyan Parliament where Article 128(2) of Constitution assigns staff to each of the Clerks but the enabling Act provides that the staff shall be managed by one Clerk (the Secretary) on behalf of the other Clerk.

*The National Assembly proposed that the clause be retained as published.*

#### **Committee observations and recommendation on clause 19**

162. The Committee observed that-

- (a) the Parliamentary Service Commission is distinct from the Houses as it is an independent constitutional commission;
- (b) The provisions of Article 128 deal with the Clerks for each House of Parliament, that is, the National Assembly and the Senate while matters to do with the Commission are dealt with under Article 127 of the Constitution;
- (c) The model envisaged in Part IV of the Bill is similar to the way the Public Service Commission operates vis-à-vis the line ministries whereby the Commission functions on the elevated podium of policy direction and administrative oversight while the day to day management is devolved to the respective accounting and authorised officers in line with Articles 128(2), 226(1) and 127(6)(b) of the Constitution. This is in cognisance of the fact that firstly, Article 248(1) gives overriding effect to the provisions

of Articles 128(2) (clerks and staff of Parliament), 226(1) (accounting officers of public entities) and 127(6)(b)(constitution of offices in the Parliamentary Service) of the Constitution over those contained in Chapter Fifteen of the Constitution and secondly, Article 249(2)(independence of constitutional commissions) and 252(1) (d) (functions of the constitutional commissions) confer the enabling power for the making of this law as it requires the Commission to be subject the law.

(d) Administrative functions of the Clerks in a comparative jurisdiction such as the United Kingdom are as follows-

### **The United Kingdom**

(e) In the **House of Lords**, the Clerk of the Parliaments is the most senior official in the House of Lords<sup>5</sup>. The Crown appoints him as head of the permanent administration and the chief procedural adviser to the House. It is a role similar to that of a chief executive in a commercial business and with a number of administrative and management responsibilities.

(f) The job title 'Clerk of the Parliaments' is plural to signify that the position is permanent and remains through successive Parliaments. The main functions of the Clerk of the Parliaments are:

- Accounting Officer and Corporate Officer of the House of Lords.
- Employing staff in the Lords
- Keeping the official records of the membership and business of the House
- Offering expert advice on House procedure (the formal and informal rules of its everyday activities)
- Ensuring the text of Acts is accurate

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<sup>5</sup> Clerk of the Parliaments (Lords). Available on <https://www.parliament.uk/about/mps-and-lords/principal/clerk-lords/>

- (g) The Clerk of the Parliaments' Office provides a range of services supporting these responsibilities including internal audit, information compliance and internal communications. The Clerk Assistant and Reading Clerk are part of the office and also members of the House of Lords Management Board. The Clerk Assistant is responsible to the Board for parliamentary services; the Reading Clerk is responsible for corporate services.
- (h) The Clerk of the Parliaments' Office also provides support for the Lord Speaker, the House of Lords Commission and Finance and Services Committees as well as support for a number of Parliament-wide and Administration-wide project boards.
- (i) In the **House of Commons**, the Clerk of the House is the principal constitutional adviser to the House, and adviser on all its procedure and business. She/he is politically impartial and is not a civil servant. The Clerk of the House is, under the Parliamentary Corporate Bodies Act 1992, the Corporate Officer of the House with responsibility for entering into contracts and leases, as well as holding the entire House's property. As Accounting Officer for the House of Commons the Clerk has personal responsibility for the propriety and regularity of the expenditure of public money<sup>6</sup>.
- (j) paragraphs (c), (d) and (e) require to be redrafted;

163. The Committee recommends that Clause 19 be amended as follows-

*“The Bill be amended by deleting clause 19 and substituting therefor the following new clause—*

*(19) The Clerks shall, in each of their respective Houses, be responsible for—*

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<sup>6</sup> Clerk of the House of Commons <https://www.parliament.uk/about/mps-and-lords/principal/clerk-commons/>

- (a) *the day-to-day management and functioning of the respective Houses;*
- (b) *the execution of the Commissions decisions relating to the respective Houses;*
- (c) *the management of the staff under their respective control pursuant to Article 128(2) of the Constitution;*
- (d) *advising the Commission and implementing Commission resolutions on all matters relating to -*
  - (i) *the appointment, promotion, and discipline of the members of staff of the respective Clerks;*
  - (ii) *the assignment of duties, supervision and training of the staff of the respective Clerks;*
  - (iii) *the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.*
- (e) *the preparation and submission of the programmes necessary for the achievement of the mandate of the respective Houses for approval by the Commission;*
- (f) *the performance of such other duties as the Commission might determine or as may be provided for in any other written law.*

### **Justification**

The amendment seeks to clarify the provision and sets out the administrative powers of each of the Clerks of the Houses. The Committee observed that the powers and functions to be assigned to the Secretary of the Parliamentary Service Commission under the Parliamentary Service Act must take cognizance of the bicameral nature of the Kenyan Parliament as established under Article 93 of the Constitution. The Houses have different functions in the Constitution as set in Article 95 (Role of the

National Assembly) and Article 96 (Role of the Senate) and thus the Act should empower each House to enable it deliver her constitutional mandate.

The Committee observed that in the United Kingdom House of Commons the Clerk of the House is the principal constitutional adviser to the House, and adviser on all its procedure and business. She/he is politically impartial and is not a civil servant. The Clerk of the House is, under the Parliamentary Corporate Bodies Act 1992, the Corporate Officer of the House with responsibility for entering into contracts and leases, as well as holding the entire House's property. As Accounting Officer for the House of Commons the Clerk has personal responsibility for the propriety and regularity of the expenditure of public money<sup>7</sup>.

The Committee further observed that in the United Kingdom House of Lords the Clerk of the Parliaments is the most senior official in the House of Lords<sup>8</sup>. The Crown appoints him as head of the permanent administration and the chief procedural adviser to the House. It is a role similar to that of a chief executive in a commercial business and with a number of administrative and management responsibilities.

▪ **CLAUSE 20- PROCEDURAL FUNCTIONS OF THE CLERKS**

164. This clause mainly stipulates the procedural functions of the clerks with respect to functions relating to the Houses including rendering advice etc.

**Committee observations and recommendation on clause 20**

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<sup>7</sup> Clerk of the House of Commons <https://www.parliament.uk/about/mps-and-lords/principal/clerk-commons/>

<sup>8</sup> Clerk of the Parliaments (Lords). Available on <https://www.parliament.uk/about/mps-and-lords/principal/clerk-lords/>

165. The Committee observed that there were no stakeholder views on this clause.

166. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 22-SUSPENSION OR REMOVAL OF A CLERK**

167. This Clause deals with the suspension or removal of a Clerk-

*(1) The Clerk of a House of Parliament may be suspended or removed from office by the Commission for-*

*(a) Inability to perform the functions of the office, whether arising from infirmity of body or mind;*

*(b) Gross misconduct or misbehaviour;*

*(c) Incompetence;*

*(d) Bankruptcy;*

*(e) Violation of the provisions of the Constitution, including Chapter Six of the Constitution; and*

*(f) Violation of the provisions of this Act and any other written law.*

*(2) Where the Commission considers it necessary to remove a Clerk under subsection (1) the Commission shall, in the following sequence-*

*(a) Frame a charge or charges against the Clerk;*

*(b) Forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges;*

*(c) Invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself*

*or herself; and*

*(d) Invite the Clerk to appear before the Commission, either personally or with an Advocate as he or she may opt, on a day to be specified, to exculpate him or herself.*

*(3) If the Clerk does not furnish a reply to the charge or cares within the period specified, or if in the opinion of the Commission the Clerk fails to exculpate him or herself, the Commission shall remove the Clerk from the Office.*

## **Stakeholder Views**

### **Parliamentary Service Commission**

168. The Houses should not be involved in the process of removal of a Clerk of Parliament. The Clerks of Parliament are officers in the parliamentary service and only the Commission should be involved in their removal.

*The Commission proposed that the provision be retained as it is in the Bill.*

### **Committee observations and recommendation on clause 22**

169. The Committee Observed that-

(a) Clause 22(3) provides that that if the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Commission the Clerk fails to exculpate himself or herself, the Commission shall remove the Clerk from office.

(b) The clause is unclear as to the threshold of evidence or the criteria that the Commission would use to determine evidence that would satisfy exoneration. Further, noting that the office of the Clerk is a constitutionally mandated office

under Article 128, the threshold for removal should be higher to ensure its independence and the independence of Parliament.

(c) Taking into cognizance that the appointment of a Clerk of a House of Parliament is approved by the relevant House and further noting the peculiarity and the importance of the functions of a Clerk of a House given that Parliament is a political environment, dismissal/ removal from office should also require approval by the relevant House.

(d) Furthermore, the provisions under sub-clauses (2) and (3) should be re-examined in order to merely set out for the principles for removal but leave out the procedural technicalities to be determined by the Commission. In principle, the provisions relating to fair administrative action including the right to be heard should apply.

170. The Committee recommends that clause 22 be amended as follows-

*Clause 22 be amended-*

*(a) in sub-clause 1 by deleting the word "and" in paragraph (f) and substituting therefor the word "or";*

*(b) by deleting sub-clause (2) and substituting therefor the following new subclause (2)-*

*(2) Before a Clerk is removed under subsection (1), the Clerk shall be informed of the case against him or her in writing and shall be given reasonable time to defend himself or herself against any of the grounds cited for the intended removal*

*(c) by deleting sub- clause (3) and substituting therefor the following new subclause (3)-*

*(3) The Commission shall, within seven days of a decision to remove a Clerk, submit that decision to the relevant House of Parliament for approval in accordance with the standing orders of that House*

### **Justification**

The Committee noted that Clause 22(2)(d) of the Bill as currently drafted presupposes that the Clerk has committed some wrongs and is under a duty to exculpate himself or herself otherwise the Commission shall remove him from office. The Committee noted that the provision offends Article 50 of the Constitution which protects the right to a fair trial. The Committee thus proposes that provision be amended as proposed to protect the right of the Clerk to a fair hearing before the Commission.

### **▪ CLAUSE 23 - OFFICES IN THE PARLIAMENTARY SERVICE**

171. Clause 23 provides-

*(1) The Commission shall establish such offices in the Parliamentary Service as it considers necessary or expedient for the efficient performance of the functions of the Service.*

*(2) The offices established under subsection (1) shall be set out in an organisational structure issued by the Commission.*

*(3) The Commission may from time to time—*

*(a) allocate functions to any directorate or department of the Service;*

*(b) make such arrangements as appear to the Commission expedient in connection with the creation, division, amalgamation or abolition of any directorate or department of the Service.*

*(4) The Commission shall, for the purposes of reviewing the organisational structure issued under subsection (2), appoint a reputable human resource firm to advise on the effectiveness and efficiency of the intended review.*

*(5) The Commission shall, in establishing the offices under section (1) have regard to strengthen the offices referred to in Article 108 (1) of the Constitution.*

### **Stakeholder Views**

#### **(a) Parliamentary Service Commission**

172. This clause provides that the Commission shall in establishing offices in the parliamentary service have regard to strengthen the offices referred to in Article 108(1) of the Constitution which are those of leader of the party and the leader of the minority party in the National Assembly.

173. There are other offices in Parliament such as the offices of the Speakers and Deputy Speakers of Parliament, members of the Chairperson's Panel, Party Whips, and Chairpersons of Committees among others. It is therefore discriminatory for the Bill to single out the offices of the leader of the majority party and leader of the minority party for strengthening at the expense of the other parliamentary office holders.

174. The Commission proposed the following amendment-

*(5) The Commission shall have regard to strengthening all leadership offices in both Houses of Parliament.*

**(b) The National Assembly**

175. The Offices of Leader of the Majority Party in the National Assembly and Leader of the Minority Party in the National Assembly are constitutional offices established under Article 108(1) of the Constitution. In this respect, the hierarchy of parliamentary leadership offices emanates from the Constitution and the Bill is giving effect to this constitutional reality.

*The National Assembly proposed the clause be retained as published.*

**Committee observations on clause 23**

176. The Committee observed that-

- (a) sub-clause 2 is superfluous as sub-clause (1) is sufficient;
- (b) sub-clause 3 is superfluous;
- (c) sub-clause 4 is superfluous as sub-clause (1) is sufficient. As it is presently, the Commission does, as an administrative step, engage reputable firms for purposes of review of the organisational structure. This need not be an issue elevated to legislation;
- (d) sub-clause 5 specifies that in establishing the offices of the Parliamentary Service, the Commission should have regard to strengthen the offices under Article 108(1) which is the office of the Leader of the Majority Party and the Leader of the Minority Party. The Bill is silent on other leadership offices such as the Offices of the Speakers of the Houses, the Speakers Panel and Whips in both Houses and other such offices. The Parliamentary Service is

constitutionally empowered to rationalize the deployment of staff to meet any identified need and there is a need to strengthen all leadership offices.

**Committee observations and recommendation on clause 23**

177. The Committee recommends that the provision be amended as follows-

Clause 23 of the Bill be amended by-

*(a) deleting sub-clause (2);*

*(b) deleting sub-clause (3);*

*(c) deleting sub-clause (4); and*

*(d) deleting sub-clause (5) and substituting therefor the following-*

*“(5) The Commission shall, in establishing the offices set out under subsection (1), have regard to strengthening all leadership offices in both Houses of Parliament.”*

**Justification**

The Committee noted that the matters sought to be provided for under Clause 23(2), 23(3), 23(4) and 23(5) of the Bill were internal procedural matters of the Commission which should be prescribed through Regulations and a Scheme of Service. The Committee thus proposes that these provisions be deleted.

The Committee noted that there are other offices in Parliament such as the offices of the Speakers and Deputy Speakers of Parliament, members of the Chairperson’s Panel, Party Whips, and Chairpersons of Committees among others. The Committee thus agreed with the Commission proposal that this clause be amended to require the Commission to strengthen all leadership offices in both Houses of Parliament.

## 178. CLAUSE 24- OFFICES OF JOINT SERVICES

This Clause provides-

- (1) The Commission shall establish an office of Joint services.*
- (2) The office of joint service; shall be responsible for the provision of such services jointly shared between the two houses of Parliament as the Commission may determine.*
- (3) The office of joint services shall be headed by the Director- General appointed by the Commission on such terms and conditions as it may determine.*
- (4) The Provisions of sections 19, 26 (2) and 27(4) shall with necessary modifications apply to the officer heading the Joint Services*

### Stakeholder Views

#### (a) **Parliamentary Service Commission**

179. This clause is in contravention of the powers of the Commission under Article 127 of the Constitution to constitute and restructure parliamentary offices. In any event the Commission has already created the Joint Services. *The Commission proposed that Clause 24 be deleted.*

#### (b) **The National Assembly**

180. The National Assembly concurred with the views of the Commission.

### Committee observations and recommendation on clause 24

181. The Committee Observed that-

- (a) As it is presently, the Parliamentary Joint Services provides shared services to both Houses of Parliament.
  - (b) The Joint Services is already administratively established and the head of the Joint Services is the Director General;
  - (c) Article 128 establishes the offices of the Clerks and offices of members of staff of the Clerks of the Houses as offices in the Parliamentary Service.
  - (d) Article 252(1)(d) provides that each Commission may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution.
182. The Committee recommends that the Clause be amended-
- (a) *in subclause (2) by deleting the words "such services jointly shared" and substituting therefor the words "shared services";*
  - (b) *in subclause (3) by inserting the word "by" immediately after the words "shall be headed" and by inserting the words "of service" immediately after the words "terms and conditions"; and*
  - (c) *by deleting subclause (4).*

### **Justification**

The Committee observed that Joint Services performs essential services in Parliament which include administrative services, finance and accounting, information and research services, litigation and compliance, buildings and maintenance, security services, Commission secretariat and internal audit. It is thus important that the Bill anchors the Joint Services in law but care should be taken to avoid the joint service encroaching on the mandate of the Clerks of the Houses as set out in Article 128 of the Constitution. As such, it is not desirable

to give the Head of the Joint Services powers that would compete to those of the Clerks' as stipulated in other clauses of the Bill.

## **CLAUSE 25- THE CENTRE FOR PARLIAMENTARY STUDIES AND TRAINING**

183. This clause provides that the Commission may establish a centre for parliamentary studies and training to provide learning and development programmes to build capacity for members and staff of Parliament and other stakeholders.

### **Committee observations and recommendation on clause 25**

184. The Committee observed that the Centre for Parliamentary Studies and Training (CPST) was established by the Parliamentary Service Commission (PSC) in December 2008. It is provided for in law under the Parliamentary Service (Centre for Parliamentary Studies and Training) Regulations, 2011(Legal Notice No. 95 of July 22, 2011). It is currently one of directorates in the PSC. Its management is vested in the Board that is responsible for policy direction. The CPST Board has seven members and the Executive Director who is also the secretary to the Board.

185. In addition to serving the members and staff of Kenya Parliament, Commission Paper No. 286 of September 26, 2009, expands its objectives and mandate, to serve other stakeholders, who may be interested in gaining an appreciable understanding of Parliament, to also serve the Parliaments of the East African Community, the Great Lakes Region and the Continent of Africa at large but not limiting ourselves from engagement with other global Parliamentary institutions. The purpose and objective of establishing CPST, was to have a

one-stop specialized Resource Centre for the training and capacity development of both the members and staff of Parliament of Kenya, County Assemblies and other Legislatures<sup>9</sup>.

186. The Committee recommends that the clause be agreed to as it appears in the Bill.

▪ **CLAUSE 26 PARLIAMENTARY SCHEMES OF SERVICE**

Clause 26 deals with the formulation of a Parliamentary Service Scheme of Service and provides as follows-

*26. (1) The Commission shall formulate and disseminate to officers of the Parliamentary Service schemes of service setting out the terms and conditions for the appointment of the officers and other staff of the Service which shall provide for—*

*(a) the appointment and confirmation of appointment of officers and other staff;*

*(b) promotions, resignations and termination of appointments;*

*(c) secondment of staff and transfer of service;*

*(d) the scales of salaries and allowances;*

*(e) the designation and grades of officers and other staff; and*

*(f) deployment of officers in the service.*

*(2) The Clerks shall be responsible to the Commission for the administration of the schemes of service for the staff under their respective mandate pursuant to Article 128(2) of the Constitution*

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<sup>9</sup><http://www.parliament.go.ke/cpst/management.html> [accessed 9th May, 2017]

## Stakeholder Views

### (a) **Parliamentary Service Commission**

187. Clause 26(2) leaves no central authority with respect to parliamentary staff. Each Clerk reports directly to the Commission on matters relating to the staff deployed to their service. There is no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of appointments, promotions, training, discipline and related matters. Staff in one service shall invariably receive different treatment of staff in the other service thereby leading to discontent.

*The Commission proposed that the clause be deleted*

### (b) **The National Assembly**

188. Given that the Secretary of the Commission is also the Clerk of one House of our Parliament, designating the Secretary as the authorized officer responsible for administration of schemes of service for all staff employed by the Commission erodes the autonomy of the National Assembly and the ability of the Clerk of the National Assembly to manage the affairs of the Assembly.
189. The proposed amendment by the PSC would render Article 128 of the Constitution mute as regards the powers and functions of the Clerk of the National Assembly.

*The National Assembly proposed that clause 26(2) be retained as published.*

## Committee observations and recommendation on clause 26

190. The Committee observed that-

(a) Subclause (1) as drafted is too detailed instead of laying the basic principle. The details of the contents of the Parliamentary Scheme of Service may be contained in regulations as the list provided is not be comprehensive enough to cover all possible matters that should be contained in the Scheme of Service or regulations;

(b) it is the role of the clerks to administer the schemes of service for the staff under the respective houses.

191. The Committee recommends that clause 26 be amended as follows-

26. (1) The Commission shall formulate the Parliamentary Service schemes of service setting out the terms and conditions for the employment of the officers and other staff of the Service.

(2) Each Clerk shall be responsible to the Commission for the administration of the schemes of service for the staff deployed to their respective Houses as contemplated in Article 128(2) of the Constitution.

(3) Each Clerk shall be the authorized officer of the Commission responsible for the discipline of the staff deployed to their respective Houses.

## Justification

The Committee observed that the Clause 26(1) of the Bill provides for internal procedural matters of the Commission which should be prescribed through Regulations and a Scheme of Service. The Committee thus proposes that these provisions be deleted and the Clause be redrafted as proposed.

### ▪ **CLAUSE 27-DISCIPLINARY CONTROL OF OFFICERS**

#### 192. Clause 27 provides as follows-

*27. (1) The Commission shall exercise disciplinary control over the officers of the Service.*

*(2) The Commission may terminate the employment of an employee of the Service in accordance with the provisions of this Act and its regulations.*

*(3) The provisions of Article 236 of the Constitution shall apply in relation to the exercise of the powers conferred under this section.*

*(4) The Clerks shall be the authorised officers of the Commission responsible for the discipline of the staff under their respective control pursuant to Article 128(2) of the Constitution.*

## Stakeholder Views

### (a) **Parliamentary Service Commission**

193. This clause leaves no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of discipline and related matters. Staff in one service may invariably receive different treatment to staff in the other service thereby leading to discontent. This is a matter best suited

to be dealt with by Regulations in which the Commission delegates its supervisory and discipline powers to various offices.

*The Commission proposes that the clause be deleted.*

**(b) National Assembly**

194. Since the Secretary of the Commission is also the Clerk of one House of our Parliament, designating the Secretary as the authorized officer for all staff employed by the Commission empowering the Clerk of the Senate/Secretary to assign duties and supervise the staff of the Commission deployed to the National Assembly compromises the role of the Clerk of the National Assembly as the accounting officer of the National Assembly as provided for in section 2 of the Public Finance Management Act.
195. Deleting clauses 19 and 27(4) of the Bill renders the accounting officer of the National Assembly (Clerk of the National Assembly) incapable of enforcing section 74 of the PFM Act, 2012, which empowers accounting officers to take certain disciplinary measures against public officers under their control.
196. Also the proposed amendment renders Article 128 of the Constitution mute as regards the powers and functions of the Clerk of the National Assembly.

*The National Assembly proposes that clause 27(4) of the Bill be retained as published.*

### Committee observations and recommendation on Clause 27

197. The Committee observed that-

- (a) the matters contained in this clause are dealt with under clause 19 and further, should be best left to either the schemes of service or a staff employment manual.

198. The Committee recommends that clause 27 be deleted.

#### **Justification**

The Committee observed that the Clause 27 of the Bill provides for internal procedural matters of the Commission which should be prescribed through Regulations and a Scheme of Service. The Committee thus proposes that these provisions be deleted.

#### **▪ CLAUSE 28-RETIREMENT AND RESIGNATION OF EMPLOYEES**

199. Clause 28 provides for the retirement age and resignation of employees.

### Committee observations and recommendation on clause 28

200. There Committee observed that there were no stakeholder views on this clause.

201. The Committee recommends that the clause be agreed to as it appears in the Bill.

#### **▪ CLAUSE 29- SOCIAL SECURITY SCHEME**

202. Clause 30 provides for the establishment of social security schemes for the employees including pension scheme, medical fund, provident fund etc

### Committee observations and recommendation on clause 29

203. The Committee observed that there were no stakeholder views on this clause.

204. The Committee recommends that the clause be amended as follows-

*Clause 29 of the Bill be amended by deleting paragraph (c) and substituting therefor the following-*

*(c) may establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for its employees; and*

*(d) may grant pensions, gratuities, retiring allowances or sickness or injury benefits to any employee.*

#### **Justification**

The amendment is a drafting alignment to set out a new paragraph (c) distinct from paragraph (c) of Clause 29.

#### **▪ PART V- PARLIAMENTARY POLICE UNIT**

205. This part deals with the establishment of a specialised parliamentary police unit including its functions and standard operating procedures.

*(1) There is established a Parliamentary Police Unit which shall be a specialised police service under the supervision of the National Police Service and the command of the Inspector-General of the National Police Service.*

(2) *The Inspector-General shall, by notice in the Gazette, appoint an officer not below the rank of Assistant Commissioner of the Police to be in charge of the Parliamentary Police Unit.*

(3) *Officers serving in the Parliamentary Police Unit shall be deployed from the National Police Service by the Inspector-General.*

(4) *The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall—*

*(a) be determined by the National Police Service Commission on the recommendation of the Inspector General;*

*(b) take into account the views of the Commission; and*

*(c) be publicised to the officers of the Unit.*

(5) *The Commission may request the transfer or redeployment of the officers of the Unit.*

31. *In addition to the functions set out in section 24 of the National Police Service Act, 2011, the Parliamentary Police Unit shall be responsible for—*

*(a) maintenance of law and order within the precincts of Parliament;*

*(b) provision of security to members, staff and property of Parliament and authorized persons within the precincts of Parliament; and*

*(c) provision of security to the Speaker of each House of Parliament and members of Parliament generally.*

32. *The officer in charge of the Parliamentary Police Unit shall make such periodic reports as may be specified in the standard operating procedures to the Commission.*

## **Stakeholder Views**

### **(a) National Police Service**

206. NPS is of the view that the proposed amendments under part V impede the independent command of the Service. Article 245 of the Constitution and Section 10 of the National Police Service Act give the Inspector General powers to exercise independent command over the National Police Service and powers to establish among others, police units. Parliament should accord the Inspector General an opportunity to establish the Parliamentary Police Unit with similar powers as intended by the Bill as per the National Police Service Act and the National Police Service Standing Orders. Existing Units have been established by the Inspector General in exercise of powers vested by law, which units are efficiently operational e.g. the General Service Unit, the Diplomatic Police Unit and the Railways Police Unit etc.

207. If it is necessary that the Parliamentary Police Unit be established by an Act of Parliament, the same should be anchored in the National Police Service Act to avoid breach of existing laws and the possible conflict in chain of command and discipline. While supporting the establishment and posting of officers to the Parliamentary Police Unit, the National Police Service proposes that it be done under the existing provisions of the National Police Service Act and the Constitution.

208. The proposed clause 30 does not specifically state under which Police Service the Unit will be domiciled. Article 247 (2) establishes two services, Kenya Police service and Administration Police Service.
209. Currently the rank of Assistant Commissioner of Police is not provided for in the ranking structure of the National Police Service.
210. Clause 30(4) of the Bill is in conflict with section 10 (f) and (g) of the National Police Service Act which gives power to the Inspector General to determine the distribution and deployment of officer in the Service.

*The National Police Service proposes that there should be clarity on where this new Police Unit should be domiciled. The Unit be headed by a Commissioner of Police.*

211. Article 245(4)(c) of the Constitution states... “but no person may give a direction to the *Inspector General with respect to... assignment of any member of the National Police Service*”. Section 10(g) of the National Police Service Act gives power to the Inspector General to determine distribution and deployment of officers of the National Police Service. The provisions under clause 31 are therefore problematic because all police officers in the National Police Service and units are governed by one Service Standing Orders and issuing separate procedures may cause conflict in command and discipline.
212. Further, the proposed clause 31 implies that the Parliamentary Police Unit officers will only be drawn from the Kenya Police Service yet the intended Unit shall comprise of all officers from the National Police Service.

*The provision should be amended to include Administration Police Service and Directorate of Criminal Investigation.*

213. With respect to clause 32, the NPS proposes that the periodic reports to be made to the Parliamentary Service Commission through the Inspector General.

*Parliament should take into consideration Article 245 (2) (b) of the Constitution and Sections 8 and 10 of the National Police Service Act on the independent command and functions of the Inspector General when enacting the Parliamentary Service Bill.*

**(b) The Parliamentary Service Commission**

214. The Commission noted that there is no position of Assistant Commissioner of Police in the National Police Service. The proper position should be County Commissioner of Police.

*Clause 30 (2) should be amended to delete the words "Assistant Commissioner of Police" and replace with the words "County Commissioner of Police."*

**(c) The National Assembly**

215. The National Assembly concurred with the views of the Commission.

*Clause 30(2) should be amended to delete the words "Assistant Commissioner of Police" and replace with the words "County Commissioner of Police."*

### Committee observations and recommendation on Part V

216. The Committee considered the submissions by the National Police Service, the PSC and National Assembly and observed as follows-

(a) The NPS is established pursuant to Article 243 of the Constitution and consists of the Kenya Police Service and the Administration Police Service. Article 245 establishes the office of the Inspector-General (IG) of the National Police Service.

(b) Under Article 245(2) of the Constitution, the IGP is mandated to exercise independent command over the National Police Service and perform any other functions prescribed by national legislation. It is therefore clear that notwithstanding the provisions of the NPS, any Act of Parliament may prescribe certain functions to the IGP.

(c) Article 245 (4) provides that-

*(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to-*

*(a) the investigation of any particular offence or offences;*

*(b) the enforcement of the law against any particular person or persons;*

*or*

*(c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.*

- (d) Article 247 provides that, *Parliament may enact legislation establishing other police services under the supervision of the National Police Service and the command of the Inspector- General of the Service.*
- (e) In comparative jurisdictions, there exist specialised police units for Parliament e.g. in **Canada, the United Kingdom and Australia.**
- (f) **In Canada**, the Parliamentary Protective Service (PPS)<sup>10</sup> is a Canadian federal law enforcement agency that is mandated to protect life and property and maintain the peace and public order within the Parliamentary Precinct in Ottawa, Ontario. PPS brings together the former Senate and House of Commons Protection Services and the RCMP's Parliament Hill Security Unit (PHSU) into a unified security service. The PPS is mandated to provide protective services to the parliamentarians, employees, visitors and buildings of the Parliamentary Precinct. The constables and detection specialists operate under the Royal Canadian Mounted Police (RCMP) National Division. The Director of PPS, a superintendent of the RCMP, operates under policies set by the Speakers of the House of Commons and the Senate. PPS was established on June 23, 2015 as a statutory office *by Royal Assent of Bill C-59, Economic Action Plan Act, No. 1.*
- (g) In **United Kingdom**, the provision of security services on the parliamentary estate is contracted out to the Metropolitan Police Service<sup>11</sup>. The Metropolitan Police Service is the territorial police force responsible

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<sup>10</sup> Parliamentary Protective Service. Available on <https://www.pps-spp.ca/home/>

<sup>11</sup> Information Note. Parliamentary staffing and services in the United Kingdom Available on <https://www.legco.gov.hk/yr12-13/english/sec/library/1213in12-e.pdf>

for law enforcement in Greater London. It has significant national responsibilities such as coordinating and leading on counter-terrorism matters and protection of the British Royal Family and senior government officials.

(h) In **Australia** the Parliamentary Security Service is the frontline uniformed staff responsible for the day-to-day security operations of both the House of Representatives and the Senate inside the Parliament House. The role of the PSS includes-

- (a) entry screening of persons and property
- (b) access control and monitoring
- (c) mobile patrolling
- (d) immediate response to security incidents, and
- (e) first aid and emergency response

(i) However, since 2015, in response to the escalating security threat, and with the authorization of the Presiding Officers, armed officers from the Australian Federal Police (AFP) have begun guarding inside the Parliament House. The AFP is mainly responsible for the protection of the parliamentary precincts outside the Parliament House. AFP officers within the parliamentary precincts are headed by the Parliament House Protective Security Controller who is a senior AFP officer and is responsible to the Presiding Officers. AFP's security services are provided under a contract with the Parliament. Coupled with the contract are arrangements agreed between the Presiding Officers and the Government for the police to arrest and hold in custody persons required to be detained by order of either House. The requirement for such arrangements is specified in the *Parliamentary Precincts Act 1988* which assures that the

powers, privileges, immunities and rights of the Members and Senators will not be affected.

(j) On the issue of ranking of officers in the National Police Service, section 22(1) of the National Police Service Act provides that the Kenya Police Service shall consist of the ranks set forth in the First Schedule. Further, section 25(1) of the National Police Service Act provides that the Administration Police Service shall consist of the ranks set forth in the Second Schedule. In exercise of the powers conferred by section 22 (2) and 25 (2) of the National Police Service Act (to amend the First Schedule and the Second Schedule by order in the *Gazette*), the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government, in 2014, upon advice of the National Police Service Commission, amended the First and Second Schedules of the National Police Service Act as follows<sup>12</sup>:

(i) Ranking Structure in the Kenya Police Service (Section 22 of the National Police Service Act) is as follows-

1. Deputy Inspector-General
2. Senior Assistant Inspector-General
3. Assistant Inspector-General
4. Commissioner of Police
5. Senior Superintendent
6. Superintendent
7. Assistant Superintendent
8. Chief Inspector
9. Inspector
10. Senior Sergeant
11. Sergeant
12. Corporal
13. Constable

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<sup>12</sup> The Kenya Gazette. (11th July, 2014) Vol. CXVI—No. 81 Government Printer, Nairobi.

(ii) Ranking Structure in the Administration Police Service (Section 25 of the National Police Service Act) -

1. Deputy Inspector-General
2. Senior Assistant Inspector-General
3. Assistant Inspector-General
4. Commissioner of Police
5. Senior Superintendent
6. Superintendent
7. Assistant Superintendent
8. Chief Inspector
9. Inspector
10. Senior Sergeant
11. Sergeant
12. Corporal
13. Constable

**Committee recommendations on clauses 30, 31 and 32**

217. The Committee recommends that Clause 30 be amended-

- (a) *in subclause (1) by deleting the word "service" appearing after the words "specialised police" and substituting therefor the word "unit";*
- (b) *in subclause (2) by deleting the words "Assistant Commissioner" and substituting therefor the words "Assistant Inspector General";*
- (c) *by deleting subclause (4); and*
- (d) *by deleting subclause (5)*

**Justification.**

The proposed amendment seeks to clarify that the Bill is proposing the establishment of a Parliamentary Police Unit under the supervision of the National Police Service Commission and the command of the Inspector-General of the National Police Service. The Bill is not proposing the establishment of another police service as envisaged under Article 247 of the Constitution.

The Committee was of the view that the Unit should be headed by an officer not below the rank of an Assistant Inspector General, a very senior officer who is in the third hierarchy of the Police Ranks for it to be effective in command and delivery of services to Parliament. The amendment further seeks to ensure that administrative issues of transfers, deployment, redeployment and standard operating procedures and staffing requirements of the unit are not prescribed in this Bill but should be dealt with under the applicable police laws and procedures.

218. The Committee recommends that Clauses 31 and 32 of the Bill be retained as in the Bill.

219. The Committee further recommends the insertion of a new part after clause 32.

#### **INSERTION OF A NEW PART**

**THAT** the Bill be amended by inserting the following new Part immediately after clause 32—

#### **PART VA- PROVISIONS ON DELEGATED POWERS**

**32A.** (1) The Commission may make Regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may prescribe regulations on—

(a) the priority of allocation of resources available for use by Members;

- (b) the criteria for allocation of offices to Members on the basis of
- (c) ranking, leadership position, persons with disability or other suitable factors;
- (d) minimum standards on quality of goods and services provided for use by Members;
- (e) minimum standards on equipping of offices of Members;
- (f) the conduct of the business of the Commission;
- (g) the administrative and management structure for the services and facilities of the Commission in accordance with the principles set out in this Act;
- (h) the terms and conditions of service, pension and other retirement benefits of employees;
- (i) the procedures for the discipline of the staff of Parliament;
- (j) the financial procedures of the Commission;
- (k) the orientation and training of Members and staff of Parliament;
- (l) the security of Members;
- (m) the handling of the assets and other resources of the Commission;
- (n) the delegation of the Commission's functions or powers;

- (o) public participation and outreach programmes; and
  - (p) any other matter required under the Constitution, this Act and other written law.
- (4) For the purposes of Article 94 (6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Commission to make regulations for better carrying into effect the provisions of this Act;
  - (b) the authority of the Commission to make regulations under this Act is limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section.
- (5) The principles and standards applicable to the delegated power referred to under this Act are those found in—
- (i) the Statutory Instruments Act, 2013;
  - (ii) the Interpretation and General Provisions Act,
  - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
  - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

### **Justification**

The amendment seeks to redraft Clause 46 of the Bill that empowers the Commission to make Regulations on the provision of services and facilities to ensure the effective and efficient functioning of Parliament as provided for under Article 127(6)(a) of the Bill.

### **▪ CLAUSE 33-REMUNERATION OF STAFF**

220. **Clause 33 provides**

- (1) The employees of the commission shall be paid such remuneration and allowances as shall be determined by the Commission;
- (2) The terms and conditions of employees of the Commission shall be reviewed every three years or within such shorter period as the Commission may determine

**Stakeholder views**

**Salaries and Remuneration Commission**

221. The provision be amended to take into account the advisory role of the SRC in the determination of remuneration and benefits of public officers in terms of Article 230(4) of the Constitution

**Committee observations and recommendations on clause 33**

222. The Committee observed that, under Article 230(4) (b) the Salaries and Remuneration is empowered to advise the national government on the remuneration and benefits of all public officers and this constitutional provision suffices.

223. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 34-EXPENSES OF THE COMMISSION**

224. This clause provides for the expenses of the Commission as a charge out of the Consolidated Fund.

### **Committee observations and recommendations on clause 34**

225. The Committee observed that there were no comments from stakeholders on this clause. The provision amplifies the provisions of Chapter 12 of the Constitution on Public Finance and the Public Finance Management Act, no. 12 of 2012.

226. The Committee recommends that the provision be agreed to as it appears in the Bill.

#### **▪ CLAUSE 35-LEGAL PROCEEDINGS AGAINST THE COMMISSION**

227. This clause provides for the matters pertaining to legal proceedings against the PSC, which is a body corporate and requires service to be made upon the secretary to the Commission.

### **Committee observations and recommendations on clause 35**

228. The Committee observed that there were no comments from stakeholders on this clause.

229. The Committee recommends that the provision be agreed to as it appears in the Bill.

#### **▪ CLAUSE 36-ANNUAL REPORTS OF THE COMMISSION**

230. This clause provides for the annual reports of the Commission to be laid before Parliament.

### Committee observations and recommendations on clause 36

231. The Committee observed that there were no comments from stakeholders on this clause.

232. The Committee recommends that clause 36 of the Bill be amended by inserting the following new sub-section immediately after sub-section (2)

—

(3) The Commission shall hold bi-annual sessions with each House of Parliament on the status of implementation of Article 127(6) of the Constitution.

#### **Justification**

The amendment seeks to ensure that the Commission regularly apprises the Houses of Parliament on the actions it is taking to ensure that Members are effectively facilitated to enable them deliver their constitutional mandate.

#### **▪ CLAUSE 37-DESIGNATED MEMBER MAY PRESENT DOCUMENTS ETC IN PARLIAMENT**

233. This clause allows for the Commission to authorise a Commissioner to present any document or reply to a question relating to the affairs of the Commission.

### Committee observations and recommendations on clause 37

234. The Committee observed that there were no comments from stakeholders on this clause.

235. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 38(4) OATH OF OFFICE FOR MEMBERS AND STAFF OF THE COMMISSION**

This provision stipulates the manner of taking oath of office. Subsection (4) states-

*38(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary, or any other officer shall be administered by the chairperson.*

**Stakeholder's views**

**(a) Parliamentary Service Commission**

236. Subclause (4) removes the responsibility from administering the oath of office for parliamentary officers from the Secretary to the Commission and vests the same in the Chairperson of the Commission. While there is nothing unconstitutional with this clause, it appears to be vesting on the Chairman of the Commission the lowly task of administering the oath on all junior officers of the parliamentary service.

*The Commission proposes the provision be amended to provide that other staff of the Commission shall have their oath administered by the Secretary to the Commission.*

**(b)The National Assembly**

237. The National Assembly concurred with the Commission's views and presented further amendments as follows-

*(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary and the Clerks shall be administered by the chairperson.*

*(5) Every oath or affirmation taken by any other officer shall be administered by the secretary.*

**Committee observations and recommendations on clause 38**

238. The Committee observed that the Chairperson of the Commission should indeed not be tasked to administer the oaths of all junior officers employed in the Service.

239. The Committee recommends that the provision be amended as follows-

*Clause 38 of the Bill be amended by deleting subclause (4) and substituting therefor the following-*

*(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary and the Clerks shall be administered by the chairperson.*

*(5) Every oath or affirmation taken by any other officer shall be administered by the secretary.*

### **Justification**

The amendment seeks to relieve the chairperson of the Commission of the task of swearing in the members and all officers of the Commission. The Committee proposes that the Clause be amended to provide that every oath or affirmation taken by a member of the Commission, the secretary and the Clerks shall be administered by the chairperson and further provides that every oath or affirmation taken by any other officer shall be administered by the secretary.

#### ▪ **CLAUSE 39-POWER TO ORDER ATTENDANCE OF WITNESSES**

240. This clause allows for the Commission to order any person to attend before it and give evidence or produce documents in their possession or control.

#### **Committee observations and recommendations on clause 39**

241. The Committee observed that there were no comments from stakeholders on this clause.

242. The Committee recommends that the provision be agreed to as it appears in the Bill.

#### ▪ **CLAUSE 40-PRIVILEGES OF WITNESSES**

243. This clause provides the privileges available to witnesses

#### **Committee observations and recommendations on clause 40**

244. The Committee observed that there were no comments from stakeholders on this clause.

245. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 41-EVIDENCE OF PROCEEDINGS IN THE COMMISSION NOT TO BE GIVEN WITHOUT LEAVE**

246. This clause requires special leave to be obtained from the Commission or its Committees before any member or officer gives evidence relating to the proceedings or an examination held by the Commission

**Committee observations and recommendations on clause 41**

247. The Committee observed that there were no comments from stakeholders on this clause.

248. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 42-PROTECTION OF MEMBERS AND STAFF OF THE COMMISSION**

249. This clause provides the protection that is enjoyed by members and staff of the commission for things done in good faith for the purposes of carrying out the Act into effect

**Committee observations and recommendations on clause 42**

250. The Committee observed that there were no comments received from stakeholders on this clause.

251. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 43- COMMUNICATION OF THE COMMISSION PRIVILEGED**

252. This clause provides the privilege that is enjoyed by Commission in connection with the exercise of the function of the Commission,

**Committee observations and recommendations on clause 43**

253. The Committee observed that there were no comments from stakeholders on this clause.

254. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 44- OFFENCES AND PENALTIES UNDER THE ACT**

255. This clause provides the various offences and penalties that may be imposed upon persons found guilty of those offences.

**Committee observations and recommendations on clause 44**

256. The Committee observed that-

(a) there were no comments from stakeholders on this clause;

(b) the prescribed penalties were lenient and may not deter the committal of an offence;

(c) in the Acts of Parliament relating to other Constitutional Commission, similar offences attract steeper penalties as follows-

(i) Section 46(1) of the Judicial Service Act provides a general penalty of a fine not exceeding one million shillings, or imprisonment for a

- term not exceeding three years, or both where a person commits an offence and is liable on conviction;
- (ii) Section 52 of the Kenya National Commission on Human Rights prescribes a general penalty of a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both;
  - (iii) Section 24(2) of the Commission for Revenue Allocation Act prescribes a penalty of a fine not exceeding three million shillings, or imprisonment for a term not exceeding five years, or both;
  - (iv) Section 27 of the National Police Service Commission Act prescribes that an offence shall attract a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or both;
  - (v) Section 25 of the Salaries and Remuneration Commission Act stipulates that where a person commits an offence, he or she and is liable to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years;
  - (vi) Section 100 of the Public Service Act provides for different penalties as follows-

***Offences***

*(1) Without prejudice to any other law, no member or officer of the Commission or any other person shall publish or disclose to an unauthorized person, any*

*document, communication or information which has come to the knowledge of such member or officer in the course of performing their duties under this Act or any regulation made there under.*

*(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.*

*(3) Without prejudice to any other law, any person who discloses or publishes any information other than in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand or imprisonment for a term not exceeding two years or to both such fine and imprisonment.*

*(4) Any person who gives false or misleading information to the Commission or to any member of the Commission commits an offence and is liable, on conviction, to a fine not exceeding two hundred*

*thousand or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.*

*(5) A person who fails to produce a document or information required by the Commission on a matter before it, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.*

257. The Committee recommends that the provision be amended as follows-

That Clause 44 of the Bill be amended in sub clause (1) by deleting the words “commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both” appearing at the end of the sub-clause and substituting therefor the words “commits an offence and shall be liable on conviction to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or to both.

**Justification**

The Committee observed that the prescribed penalties for convicted offenders were lenient and may not deter the committal of offences. The Committee thus proposes the amendment of the provision to provide for harsher penalties in line with similar provisions in the Judicial Service Act and the Commission on Revenue Allocation Act.

▪ **CLAUSE 45- EXAMINATIONS AND OTHER BOARDS**

258. This clause provides that the Commission may make provision for examinations and appoint such selection, promotion or other boards as it deems necessary for the proper discharge of its functions.

**Committee observations and recommendations on clause 45**

259. The Committee observed that there were no comments received from stakeholders on this clause.

260. The Committee recommends that the provision be agreed to as it appears in the Bill.

▪ **CLAUSE 46- REGULATIONS BY THE COMMISSION**

261. This clause delegates legislative authority to the Commission.

**Committee observations and recommendations on clause 46**

262. The Committee observed that there were no comments received from stakeholders on this clause.

263. The Committee was of the view that the provision be redrafted to comply with Article 94(6) of the Constitution, which provides as follows-

*(5) An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.*

264. The Committee recommends that the Bill be amended by deleting clause 46.

### **Justification**

The Committee proposes that the Clause be deleted in light of the redrafted Clause 32A of the Bill.

### ▪ **CLAUSE 47- REPEAL**

265. This clause repeals the Parliamentary Service Act, No 10 of 2000.

### Committee observations and recommendations on clause 47

266. The Committee observed that there were no comments received from stakeholders on this clause.

267. The Committee recommends that the provision be agreed to as it appears in the Bill.

### ▪ **CLAUSE 48- DIPLOMATIC PASSPORTS**

This clause provides-

*(48) Despite the provisions of the Kenya Citizenship and Immigration Act, 2011, the following persons shall be entitled to diplomatic passports—*

*(a) the Speakers of the Houses;*

*(b) Members of Parliament;*

*(c) members of the Commission appointed under Article 127(2)(d) of the Constitution;*

*(d) the Clerks of the Houses;*

*(e) the spouse(s) of the persons specified in paragraphs (a), (b), (c), and (d).*

**Committee observations and recommendations on clause 48**

268. The Committee observed-

(a) Section 25 of the Kenya Citizenship and Immigration Act (No. 11 of 2011) makes provision for diplomatic passports to be issued as may be prescribed in Regulations. Regulation 14 of the Kenya Citizenship and Immigration Regulations, 2012 states as follows with regard to persons entitled to hold diplomatic passports-

- (1) The persons occupying the offices or having status set out in the Third Schedule together with the members of their families specified, with respect to each category, shall be entitled, upon application, to be issued with diplomatic passports.*
- (2) The Cabinet Secretary may, where he considers it necessary, authorize the issuance of a diplomatic passport to a person who does not fall in any of the categories set out in the Third Schedule.*
- (3) The holder of a diplomatic passport shall, upon ceasing to hold the office or having the status specified in the Third Schedule, surrender the diplomatic passport.*
- (4) Any passport that has not been surrendered in accordance with paragraph (3) shall cease to be valid, with effect from the date of ceasing to hold the office or having the status specified in the Third Schedule.*

(b) The following persons are entitled to hold diplomatic passports under the Third Schedule of the Kenya Citizenship and Immigration Regulations-

- (i) President and immediate family members
- (ii) Prime Minister and immediate family members
- (iii) Vice President/Deputy president and immediate family members
- (iv) Cabinet Secretary and spouse(s)
- (v) Secretary to the Cabinet and spouse(s)
- (vi) Principal Secretaries and spouse(s)
- (vii) Speakers of National Assembly and the Senate and spouse(s)
- (viii) Chief Justice and spouse(s)
- (ix) Deputy Chief Justice and spouse(s)
- (x) Justices of Supreme Court and spouse(s)
- (xi) Justices of Court of Appeal and spouse(s)
- (xii) Attorney General and spouse(s)
- (xiii) Director of Public Prosecutions and spouse(s)
- (xiv) Solicitor General and spouse(s)
- (xv) Controller of Budget and spouse(s)
- (xvi) Auditor General and spouse(s)
- (xvii) Governor of the Central Bank and spouse(s)
- (xviii) Clerk of the National Assembly and spouse(s)
- (xix) Chief of the Kenya Defence Forces and spouse(s)
- (xx) Service Commanders of the Kenya Defence Forces and spouse(s)
- (xxi) Director-General of the National Intelligence Service and spouse/s
- (xxii) Inspector General of the National Police Service and spouse(s)
- (xxiii) County Governor and spouse(s)
- (xxiv) Aide-De-Camp to the President

- (xxv) Former Presidents and spouse(s)
- (xxvi) Former Prime Minister and spouse(s)
- (xxvii) Former Vice Presidents and spouse(s)
- (xxviii) Foreign Service Officer, spouse and dependant children below the age of 19 years

(c) The Committee observed with concern that members of Parliament had been conspicuously omitted from the list of more than twenty-three state officers and their spouses entitled to diplomatic passports. The omission is discriminatory against members of parliament in light of the functions of Parliament as set out in the Constitution. Clause 48 of the Bill seeks to remedy this situation.

(d) Diplomatic passports can still be issued to any person at the discretion of the Cabinet Secretary, where he considers it necessary as provided under Regulation 14 (2) of the Kenya Citizenship and Immigration Regulation, 2012.

(e) The status of diplomatic persons is recognized under international law in treaties such as the Vienna Convention on Diplomatic Relations, 1961. Though not automatically conferred by a diplomatic passport, accredited diplomats may also be granted diplomatic immunity.

(f) Persons entitled to a diplomatic passport are those occupying an office which is required to carry out frequent foreign assignments on behalf of the government or official duty abroad.

(g) In many commonwealth jurisdictions, due to the status accorded to the passport internationally, diplomatic passports are restricted to a specific category of offices and persons who have foreign assignments. Proof of an

official diplomatic appointment is a prerequisite for being granted a diplomatic passport in countries such as **South Africa**.<sup>13</sup>

(h) In **Canada** under the *Diplomatic and Special Passports Order*. P.C. 2005-2216, the Minister of Foreign Affairs may, in his or her discretion, authorize the issuance of a diplomatic passport. The persons entitled to a diplomatic passport are specified under the law. Parliamentary Officers entitled to diplomatic passports include-

- (i) the Governor General;
- (ii) the Prime Minister;
- (iii) the Chief Justice of Canada and the other Judges of the Supreme Court of Canada; P.C. 2006-1566
- (iv) members of the Cabinet;
- (v) Lieutenant Governors;
- (vi) the Speakers of the Senate and the Speakers of the House of Commons; P.C. 2005-2216
- (vii) the Leader of the Opposition in the Senate and the Leader of the Opposition in the House of Commons;
- (viii) Deputy Ministers of Departments of the Government of Canada;
- (ix) Ambassadors, Ministers, High Commissioners, and officers of diplomatic rank, Attachés, Trade Commissioners and Consular Officers serving the Government of Canada abroad;
- (x) representatives and delegates of the Government of Canada to international governmental organizations and international conferences, of a diplomatic character;

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<sup>13</sup><http://www.visasouthafrica.org/blog/diplomatic-passports/> [accessed 10<sup>th</sup> May, 2017]

- (xi) officers of the Government of Canada, not otherwise provided for in this section, proceedings abroad on a mission of a diplomatic character;
  - (xii) private citizens duly nominated as official delegates of the Government of Canada to international conferences of a diplomatic character;
  - (xiii) members of the immediate family of a person to whom a passport has been issued under any of paragraphs (a) to (l) whose normal place of residence is with that person and who are travelling with that person or proceeding to join that person abroad; and
  - (xiv) diplomatic couriers<sup>14</sup>
- (i) However, in Canada the Minister has the discretion to authorize the issuance of a special passport (not a diplomatic passport) to various persons including members of the Senate and members of the House of Commons for the duration that they hold the office, among other categories of office holders.
- (j) On the other hand, a number of countries issue diplomatic passport to Members of Parliament. These include Armenia, Algeria, Benin, Cameroon, Cape Verde, Mali, Togo, Chile, Ecuador, Czech Republic, Hungary, Romania, Slovakia, Greece and Turkey. Germany also issues diplomatic passports to members of Parliament; however, the use of a diplomatic passport is restricted to travel in connection with parliamentary business<sup>15</sup>.

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<sup>14</sup>Government of Canada Website , <http://www.cic.gc.ca/english/passport/officialtravel/eligibility.asp> [accessed 10<sup>th</sup> May, 2017]

<sup>15</sup> Marc van der Hulst , The Parliamentary Mandate: A Global Comparative Study , Inter-Parliamentary Union, Geneva, 2000  
<https://books.google.co.ke/books?id=NG6hOvzActoC&pg=PP2&dq=Diplomatic+passports+for+members+of+parlia>

(k) Some jurisdictions such as Canada and Belgium also have a third category of passports which is a special passport which may cater for MPs, senators, governors, and non-diplomats employed by the government who are travelling on an official mission abroad. Similarly, an official passport (which holds less protection than a special passport) is issued in countries such as Finland, Israel, Jordan and Poland. However, the United States and Japan restrict official passport only for official business.

(l) Some countries like the United Kingdom and Spain, diplomatic passports are only issued to the Speaker of the Assembly while members of parliament use ordinary passports<sup>16</sup>.

269. The Committee recommends that the clause be agreed to as it appears in the Bill.

#### ▪ **CLAUSE 49- TRANSITIONAL PROVISIONS**

This clause contains the transitional provisions.

#### **Committee observations and recommendations on clause 49**

270. The Committee observed that this is to ensure the smooth transition of title of property, rights, assets, liabilities, obligation, contracts, agreements and other arrangements of the current Commission that shall be deemed to be automatically vested in the new Commission upon commencement this Act. The transition provisions also relate to disciplinary proceedings pending, the pension scheme, provident and medical funds and schemes that shall continue to exist. Further it provides that the members of the commission, employees

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[accessed 11<sup>th</sup> may, 2017]

<sup>16</sup> Marc, Supra note 11

and Clerks of the two Houses shall continue to hold office for the remainder of the term as if appointed under the new Act.

271. The committee recommends that the clause be agreed to as it appears in the Bill.

▪ **FIRST SCHEDULE- PROCEDURE FOR APPOINTMENT OF A MEMBER OF THE COMMISSION UNDER ARTICLE 127(2)(d) OF THE CONSTITUTION**

272. This schedule provides the details of the procedure to apply during the appointment of appointed members of the PSC (those who are not Members of Parliament)

**Committee observations and recommendations on the First Schedule**

273. There Committee observed that there were no stakeholder comments received on this provision; and

274. The Committee recommends that the First Schedule be agreed to as it appears in the Bill.

▪ **SECOND SCHEDULE - PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION**

275. This schedule provides the details on the matters relating to the conduct of the business and affairs of the Commission.

**Committee observations and recommendations on the Second Schedule**

276. There Committee observed that there were no stakeholder comments received on this provision; and

277. The Committee recommends that the Second Schedule be agreed to as it appears in the Bill.

▪ **THIRD SCHEDULE- OATH/ AFFIRMATION OF OFFICE**

278. This schedule provides the form of the Oath/ Affirmation of office administered upon the members and staff of the Commission.

**Committee observations and recommendations on the Third Schedule**

279. The Committee observed that there were no stakeholder comments received on this provision but it requires to reflect the oath under the Third Schedule to the Constitution; and

280. The Committee recommends that the Second Schedule be amended as follows-

THAT the Bill be amended by deleting the Third Schedule and substituting therefor the following new schedule—

**THIRD SCHEDULE (s. 38(1), 38(2))**

**OATH OF MEMBER OF THE COMMISSION OR A CLERK**

I,....., having been appointed as Chairperson/Vice Chairperson/Member of/ Secretary to the Parliamentary Service Commission/ Clerk of the National Assembly/ Senate do swear in the name of the Almighty God that I will without fear or favour, affection or ill-will discharge the functions of the office of Chairperson/Vice-Chairperson/Member of the Parliamentary Service Commission/ Clerk of the National Assembly/ Senate, and that I will not, directly or indirectly, reveal any matter relating to such function to unauthorised persons or otherwise than in the course of my duty.

SO HELP ME GOD.

Sworn/Declared by the said  
before me this        day of  
Chairperson/Secretary  
Parliamentary Service Commission

**AFFIRMATION OF MEMBER OF THE COMMISSION OR A CLERK**

I ....., having been appointed  
Chairperson/Vice Chairperson/Member of/ Secretary to the Parliamentary  
Service Commission/ Clerk of the National Assembly/ Senate do solemnly and  
sincerely declare and affirm that I will without fear or favour, affection or ill-will  
discharge the functions of the office of Chairperson/Vice Chairperson/Member  
of the Parliamentary Service Commission/ Clerk of the National Assembly/  
Senate, and that I will not, directly or indirectly, reveal any matter relating to such  
function to unauthorised persons or otherwise than in the course of my duty.

Declared by the said  
before me this        day of  
Chairperson/Secretary  
Parliamentary Service Commission

**OATH OF OFFICER OF THE COMMISSION**

I,....., being called upon to exercise the  
functions of [officer/other] of the Parliamentary Service Commission, do swear  
in the name of the Almighty God that I will not, directly or indirectly, reveal to  
any unauthorised person or otherwise than in the course of duty the contents or  
any part of the contents of any document, communication or information

whatsoever which may come to my knowledge in the course of my duties as an officer of the Commission.

So help me God.

Sworn/Declared by the said

before me this        day of

Secretary

Parliamentary Service Commission

**AFFIRMATION OF OFFICER OF THE COMMISSION**

I,....., being called upon to exercise the functions of [officer/other] of the Parliamentary Service Commission do solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Commission.

Sworn/Declared by the said

before me this        day of

Secretary

Parliamentary Service Commission

**Justification**

The amendment to the Third Schedule is a consequential amendment to the amendment to Clause 38 which provides that every oath or affirmation taken by a member of the Commission, the secretary and the Clerks shall be administered

by the chairperson and further provides that every oath or affirmation taken by any other officer shall be administered by the secretary.

The amendments further seek to separate the Oaths of Office from the Affirmations of Office, for greater certainty and clarity.

## **MEMORANDUM OF OBJECTS AND REASONS**

**Statement as to whether the Bill concerns county governments states that this is not a Bill concerning county government.**

### **Stakeholder views**

#### **Parliamentary Service Commission**

281. The Commission is a national government entity that is funded wholly from the share of national government funds. This clause seems to imply that the Bill should only be considered by the National Assembly as the Commission is a national government entity.

282. The Speaker of the National Assembly had already stated that the Bill should also be considered by the Senate as it is a Bill on Parliament of which Senate is a part of. The Commission agrees wholly with the statement by the Speaker of the National Assembly. This statement should therefore be amended to reflect that it shall be considered by the Senate.

## Committee observations and recommendation

283. The Committee observed that the memorandum of objects and reasons is an opinion of the Sponsor of the Bill and is not ordinarily amended or considered.

### CHAPTER FOUR COMMITTEE GENERAL OBSERVATIONS

284. The Committee observed that Article 127 (6) provides that the functions of the Parliamentary Service Commission are as follows;

- (a) *Providing services and facilities to ensure the efficient and effective functioning of Parliament;*
- (b) *Constituting offices in the parliamentary service, and appointing and supervising office holders;*
- (c) *preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service;*
- (d) *undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and*
- (e) *performing other functions—*
  - (i) *necessary for the well-being of the members and staff of Parliament; or*
  - (ii) *prescribed by national legislation*

285. The Committee noted with concern that the Bill primarily actualizes paragraph (b) of sub Article 6 relating to constituting offices and neglects paragraph (a) relating to services and facilities to ensure the effective and efficient functioning of Parliament.

286. There is need to incorporate certain provisions in the Bill relating to providing services and facilitation of activities of Members of Parliament within and outside the precincts of Parliament with a view to actualizing paragraph 6 (a) of Article 127.
287. In order to actualize the paragraph, the Bill should have provisions on-
- (a) allocation and equipping of offices for Members of Parliament
  - (b) facilitating the conduct of structured public participation on legislative matters in the constituency office
  - (c) training and enhancing of legislative skills of members on continuous basis
  - (d) embracing the use of modern technology in legislative matters
  - (e) outsourcing certain services and facilities for welfare of Members of Parliament
  - (f) to put in place mechanisms that ensure the Commission is constantly engaging Members of Parliament formally on matters of welfare, services and facilities.
  - (g) collaborative measures with relevant International Parliamentary Organizations such as Commonwealth Parliamentary Association, East Africa Legislative Assembly etc and share learning experiences on among other things parliamentary democracy.
  - (h) provision of exclusive facilities for use by Members.
  - (i) review travel allowances for domestic and international external travel.
288. The Committee also observed that the Bill does not also provide a term of office for a Clerk which is useful in keeping with terms of office of persons holding similar positions in comparable institutions. The new provision should come into force after commencement of the Act.

**CHAPTER FIVE**  
**COMMITTEE RECOMMENDATIONS**

**The Committee, having considered the Bill clause by clause proposes that the Bill be passed subject to the inclusion of the proposed amendments.**



# PARLIAMENTARY SERVICE COMMISSION



## THE PARLIAMENTARY SERVICE COMMISSION'S MEMORANDUM ON THE PARLIAMENTARY SERVICE BILL, 2018.

CLAUSE	WORDING OF CLAUSE	COMMISSION COMMENT	COMMISSION PROPOSAL
2 & 21	<p>Clause 2 reads as follows: "Secretary" means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution.</p> <p>Clause 21 reads as follows: 21. If the office of a Clerk of a House of Parliament is vacant, or if for any reason the Clerk is unable to exercise the functions of his or her office, the Senior Deputy Clerk in the relevant House, or in the absence of the Senior Deputy Clerk, any other office in the Parliamentary Service appointed by the</p>	<p>The clause as proposed by the Parliamentary Service Commission reads as follows:  "Secretary" means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate.</p> <p>Clause 2 as read together with clause 21 take away the Constitutional power of the Commission to supervise office holders in the parliamentary service. If there is a vacancy in the office of Clerk, the Commission shall appoint an Officer to act as Clerk.</p> <p>Further to this, clause 21 presupposes the existence of the office of Senior Deputy Clerk</p>	<p>That clause 2 of the Bill be amended to read as follows:  "Secretary" means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate.</p> <p>Delete clause 21 in its entirety.</p>

	<p>Commission may exercise all the functions, duties and powers of the Clerk.</p>	<p>within the parliamentary service. It is within the Commission's powers under Article 127(6)(b) of the Constitution to create and abolish this office and therefore reference to it in the Bill is not appropriate.</p> <p>Furthermore, at the moment there are two Senior Deputy Clerks in each House of Parliament and the Bill would bring uncertainty in this regard.</p>	
16	<p>The Secretary shall be responsible for—</p> <p>(a) preparing, planning and facilitating the meetings of the Commission and its committees;</p> <p>(b) causing to be kept records of the proceedings and minutes of the meetings of the commission and such other records as the Commission may direct;</p> <p>(c) communicating the decisions of the Commission for execution by the Clerks pursuant to Articles 128(2) and any law made under Article 226(1)(b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6)(b) or any law made under Article</p>	<p>The roles and responsibilities bestowed on the Secretary of the Commission as Chief Executive Officer stem from the provisions of Article 250(12) of the Constitution.</p> <p>Section 2 of the Public Finance Management Act as now amended provides that the Clerk of the National Assembly shall be the accounting officer in respect of the National Assembly while the Clerk of the Senate shall be accounting officer in respect of the Parliamentary Service Commission.</p> <p>The Parliamentary Service Commission notes with great concern that Clause 16 of the Bill as drafted shall leave the Commission with no person assigned the role of the Chief Executive Officer. The Commission is of the opinion that there needs to be a single point of reference for the Commission as its Chief</p>	<p>This clause should be amended to read as follows:</p> <p><i>The Secretary shall be—</i></p> <p>(a) <i>the chief executive officer of the Commission;</i></p> <p>(b) <i>the administrative head of the Parliamentary Service; and</i></p> <p>(c) <i>the custodian of the Commission's records;</i></p> <p>(a) <i>responsible for —</i></p> <p>(i) <i>the execution of the decisions of the Commission;</i></p> <p>(ii) <i>assignment of duties and supervision of the staff of the Commission;</i></p> <p>(iii) <i>the preparation and</i></p>

<p>226(1)(b) of the Constitution;  (d) custody of the seal of the Commission;  (e) the performance of such other duties as may be assigned by the Commission.</p>	<p>Executive Officer responsible for carrying out its resolutions.</p>	<p>submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;  (iv) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct;  (v) ensuring staff compliance with public service values, principles and ethics; and  (vi) the performance of such other duties as may be assigned by the Commission or any other written law.  (2) The Secretary shall be responsible to the chairperson of the Commission for the general working and efficient conduct of business of the Parliamentary Service.  (3) The Commission may</p>
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			<p><i>delegate to the Secretary such of its functions as are necessary to carry out the day to day management of the Service, and subject to such directions as may be given by the Commission.</i></p> <p><i>(4) The Secretary may, in consultation with the Commission, assign or delegate any of the functions under this section to an employee of the Service."</i></p>
19	<p>The Clerks shall, in each of their respective Houses, be responsible to the Commission for-</p> <p>(a) the day-to-day management and functioning of the respective Houses;</p> <p>(b) the execution of the Commissions decisions relating to the respective Houses;</p> <p>(c) the overall management of the staff under their respective control pursuant to Article 128 (2) of the Constitution and in</p>	<p>The Commission recommends that clause 19(a) requires re-drafting as follows:</p> <p><i>(a) The provision of such services and facilities as are necessary for the effective functioning of their respective Houses;</i></p> <p>The rationale for this stems from the fact that the Commission is not responsible for the day to day management of the Houses of Parliament as this duty falls within the mandate of the Speakers and Clerks of Parliament together with the leadership of the Houses. The Commission is however responsible for the provision of services and facilities to Parliament.</p>	<p>The Commission propose that clause 19 requires re-drafting to read as follows:</p> <p><i>The Clerks shall, in each of their respective Houses, be responsible to the Commission for the provision of such services and facilities as are necessary for the effective functioning of their respective Houses.</i></p> <p>Clauses 19(b), (c) &amp; (d) should</p>

	<p>particular, shall be the authorized officer responsible for advising the Commission and implementing Commission resolutions on all matters relating to-</p> <p>(i) the appointment, promotion, and discipline of the members of staff of the respective Clerks;</p> <p>(ii) the assignment of duties, supervision and training of the staff of respective Clerks;</p> <p>(iii) the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.</p> <p>(d) The preparation and submission of the programmes necessary for the achievement of the mandate of the respective Houses for approval by the Commission; the performance of such other duties as the Commission</p>	<p>Clause 19(b) should similarly be deleted as the Commission does not direct the respective Houses of Parliament.</p> <p>Clause 19(c) should be deleted as it is the responsibility of the Commission to supervise office holders in the parliamentary service. For optimal management, there is need for one authorized officer in respect of the staff of the parliamentary service. The Commission shall then resolve on how the powers of supervision of staff shall be decentralized from the one central source. In pursuance of establishing the best structure for this, the Commission has engaged the services of a human resource company to advise it on the best organizational structure for purposes of optimal provision of services and facilities to Parliament.</p>	<p>be deleted.</p>
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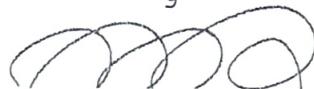
	might determine or as may be provided for in any other written law.		
23(5)	(5) The Commission shall, in establishing the offices under section (1) have regard to strengthen the offices referred to in Article 108 (1) of the Constitution.	<p>This clause in the PSC Bill, 2017 provides that the Commission shall in establishing offices in the parliamentary service have regard to strengthen the offices referred to in Article 108(1) of the Constitution. The offices referred to in Article 108(1) of the Constitution are those of leader of the majority party and leader of the minority party in the National Assembly.</p> <p>There are other offices in Parliament such the offices of the Speakers and Deputy Speakers of Parliament, members of the Chairperson's Panel, Party Whips, and Chairpersons of Committees among others. It is therefore discriminatory for the Bill to singly out the offices of the leader of the majority party and leader of the minority party for strengthening at the expense of the other parliamentary office holders.</p> <p>The Commission proposes that this clause be amended to read that the Commission shall have regard to strengthen all leadership offices in both Houses of Parliament.</p>	<p>The Commission propose that clause 23(5) requires re-drafting to read as follows:</p> <p><i>(5) The Commission shall, in establishing the offices under section (1) have regard to strengthening all leadership offices in both Houses of Parliament.</i></p>



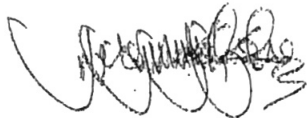
24	<p>24. (1) The Commission shall establish an office of Joint services.</p> <p>(2) The office of joint service; shall be responsible for the provision of such services jointly shared between the two houses of Parliament as the Commission may determine.</p> <p>(3) The office of joint services shall be headed by the Director-General appointed by the Commission on such terms and conditions as it may determine.</p> <p>(4) The Provisions of sections 19, 26 (2) and 27 (4) shall with necessary modifications apply to the officer heading the of joint services.</p>	<p>The Commission finds that this clause is in contravention of the powers of the Commission under Article 127 of the Constitution to constitute and restructure parliamentary offices.</p> <p>In any event the Commission has already created the Joint Services.</p>	It is proposed that this clause be deleted in its entirety.
26(2)	<p>(2)The Clerks shall be responsible to the Commission for the administration of the schemes of service for the staff under their respective mandate pursuant to Article 128(2) of the Constitution.</p>	<p>The Commission noted that this clause leaves no central authority with respect to parliamentary staff. Each Clerk reports directly to the Commission on matter relating to the staff deployed to their service. There is no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of appointments, promotions, training, discipline and related matters. Staff in one service shall invariably receive different</p>	It is proposed that this clause be deleted in its entirety.

		treatment to staff in the other service thereby leading to discontent. This is a matter best left to the Commission to deal with through Regulations and resolutions	
27(4)	(4)The Clerks shall be the authorised officers of the Commission responsible for the discipline of the staff under their respective control pursuant to Article 128(2) of the Constitution.	The Commission noted that this clause leaves no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of discipline and related matters. Staff in one service may invariably receive different treatment to staff in the other service thereby leading to discontent. This is a matter better suited to be dealt with by Regulations in which the Commission delegates its supervisory and discipline powers to various offices.	It is proposed that this clause be deleted in its entirety.
30	30. (1) There is established a Parliamentary Police Unit which shall be a specialised police service under the supervision of the National Police Service and under the command of the Inspector-General of the National Police Service. (2) The Inspector-General shall, by	The Commission noted that there is no position of Assistant Commissioner of Police in the National Police Service. The proper position should be County Commissioner of Police.	Clause 30(2) should be amended to delete the words "Assistant Commissioner of Police" and replace with the words "County Commissioner of Police."

	<p>notice in the Gazette, appoint an officer not below the rank of <b>Assistant Commissioner of the Police</b> to be in charge of the Parliamentary Police Unit.</p> <p>(3) Officers serving in the Parliamentary Police Unit shall be deployed from the National Police Service by the Inspector-General.</p> <p>(4) The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall -</p> <ul style="list-style-type: none"><li>(a) be determined by the National Police Service Commission on the recommendation of the Inspector General;</li><li>(b) take into account the views of the Commission; and</li><li>(c) be publicised to the officers of the Unit.</li></ul> <p>(4) The Commission may request the transfer or redeployment of the officers of the Unit.</p>		
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38(4)	(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary, or any other officer shall be administered by the chairperson.	<p>This clause removes the responsibility from administering the oath of office for parliamentary officers from the Secretary to the Commission and vests the same in the Chairperson of the Commission.</p> <p>While there is nothing unconstitutional with this clause, it appears to vesting on the Chairman of the Commission the lowly task of administering the oath on all junior officers of the parliamentary service.</p>	<p>The Commission recommends amendment of the clause to provide as follows:</p> <p>(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member and the secretary shall be administered by the chairperson.</p> <p>(5) Every oath or affirmation taken by any other officer of the Commission shall be administered by the secretary.</p>
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**J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.**

REPUBLIC OF KENYA



PARLIAMENTARY SERVICE COMMISSION

THE PARLIAMENTARY SERVICE COMMISSION'S MEMORANDUM ON THE PARLIAMENTARY SERVICE BILL, 2018

CLAUSE	PARLIAMENTARY SERVICE BILL AS PUBLISHED
2	<p>Clause 2 in the Bill as published states:</p> <p>“Secretary” means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution.</p> <p><i>The clause as proposed by the Parliamentary Service Commission reads as follows:</i></p> <p>“Secretary” means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate;</p> <p>Clause 21 of the Bill provides that if the office of a Clerk of a House of Parliament is vacant, or if for any reason the Clerk is unable to exercise the functions of his or her office, the Senior Deputy Clerk in the relevant House, or in the absence of the Senior Deputy Clerk, any other office in the Parliamentary Service appointed by the Commission may exercise all the functions, duties and powers of the Clerk.</p> <p>Clause 2 as read together with clause 21 take away the Constitutional power of the Commission to supervise office</p>

	<p>holders in the parliamentary service. Further to this, clause 21 presupposes the existence in office of the office of Senior Deputy Clerk. It is within the Commission's powers to create and abolish this office and therefore reference to it in the Bill is not appropriate. Furthermore, at the moment there are two Senior Deputy Clerks in each House of Parliament and the Bill would bring uncertainty in this regard.</p> <p>The Parliamentary Service Commission proposes adoption of the definition of Secretary as follows-</p> <p>"Secretary" means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate.</p>
16	<p>Clause 16 in the Bill as published states:</p> <p>16. The Secretary shall be responsible for—</p> <ul style="list-style-type: none"> <li>(a) preparing, planning and facilitating the meetings of the Commission and its committees;</li> <li>(b) causing to be kept records of the proceedings and minutes of the meetings of the commission and such other records as the Commission may direct;</li> <li>(c) communicating the decisions of the Commission for execution by the Clerks pursuant to Articles 128(2) and any law made under Article 226(1)(b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6)(b) or any law made under Article 226(1)(b) of the Constitution;</li> <li>(d) custody of the seal of the Commission;</li> <li>(e) the performance of such other duties as may be assigned by the Commission.</li> </ul> <p>The Bill as proposed by the Parliamentary Service Commission provided as follows:</p> <p><i>"(1) The Secretary shall be—</i></p> <ul style="list-style-type: none"> <li><i>(a) the chief executive officer of the Commission;</i></li> <li><i>(b) the accounting officer of the Commission;</i></li> <li><i>(c) the administrative head of the Parliamentary Service; and</i></li> </ul>

*(d) the custodian of the Commission's records;*

*(a) responsible for —*

- (i) the execution of the decisions of the Commission;*
  - (ii) assignment of duties and supervision of the staff of the Commission;*
  - (iii) the preparation and submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;*
  - (iv) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct;*
  - (v) ensuring staff compliance with public service values, principles and ethics; and*
  - (vi) the performance of such other duties as may be assigned by the Commission or any other written law.*
- (2) The Secretary shall be responsible to the chairperson of the Commission for the general working and efficient conduct of business of the Parliamentary Service.*
- (3) The Commission may delegate to the Secretary such of its functions as are necessary to carry out the day to day management of the Service, and subject to such directions as may be given by the Commission.*
- (4) The Secretary may, in consultation with the Commission, assign or delegate any of the functions under this section to an employee of the Service."*

The roles and responsibilities bestowed on the Secretary of the Commission as Chief Executive Officer stem from the provisions of Article 250(12) of the Constitution.

Section 2 of the Public Finance Management Act was subsequently amended to provide that the Clerk of the National Assembly shall be accounting officer in respect of the National Assembly while the Clerk of the Senate shall be accounting officer in respect of the Parliamentary Service Commission.

The Parliamentary Service Commission notes with great concern that Clause 16 of the Bill as drafted shall leave the Commission with no person assigned the role of the Chief Executive Officer. The Parliamentary Service Commission is of the opinion that there needs to be a single point of reference for the Commission as its

	Chief Executive Officer responsible for implementing its resolutions.
19	<p>Clause 19 in the Bill as published states as follows:</p> <p>19. The Clerks shall, in each of their respective Houses, be responsible to the Commission for-</p> <ul style="list-style-type: none"> <li>(a) the day-to-day management and functioning of the respective Houses;</li> <li>(b) the execution of the Commissions decisions relating to the respective Houses;</li> <li>(c) the overall management of the staff under their respective control pursuant to Article 128 (2) of the Constitution and in particular, shall be the authorized officer responsible for advising the Commission and implementing Commission resolutions on all matters relating to- <ul style="list-style-type: none"> <li>(i) the appointment, promotion, and discipline of the members of staff of the respective Clerks;</li> <li>(ii) the assignment of duties, supervision and training of the staff of respective Clerks;</li> <li>(iii) the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.</li> </ul> </li> <li>(d) The preparation and submission of the programmes necessary for the achievement of the mandate of the respective Houses for approval by the Commission; the performance of such other duties as the Commission might determine or as may be provided for in any other written law.</li> </ul> <p>The Parliamentary Service Commission recommends that:</p> <p>Clause 19(a) be re-drafted as follows:</p> <ul style="list-style-type: none"> <li>(a) The provision of such services and facilities as are necessary for the effective functioning of their respective Houses;</li> </ul> <p>The rationale for this stems from the fact that the Commission is not responsible for the day to day management of the Houses of Parliament as this duty falls within the mandate of the Speakers and Clerks of Parliament together with the leadership of the Houses. The Commission is however responsible for the provision of services and facilities to</p>

	<p>Parliament.</p> <p>Clause 19(b) should similarly be deleted as the Commission does not direct the respective Houses of Parliament.</p> <p>Clause 19(c) should be deleted as it is the responsibility of the Commission to supervise office holders in the parliamentary service. For optimal management, there is need for one authorized officer in respect of the staff of the parliamentary service. The Commission shall then resolve on how the powers of supervision of staff shall be decentralized from the one central source. In pursuance of establishing the best structure for this, the Commission has engaged the services of a human resource firm to advise it on the best organizational structure for purposes of optimal provision of services and facilities to Parliament.</p> <p>Clause 19 (d) should be deleted as the Commission does not control the programmes of the two Houses.</p>
22	<p>21(1) The Clerk of a House of Parliament may be suspended or removed from office by the Commission for—</p> <ul style="list-style-type: none"> <li>(a) inability to perform the functions of the office, whether arising from infirmity of body or mind;</li> <li>(b) gross misconduct or misbehaviour;</li> <li>(c) incompetence;</li> <li>(d) bankruptcy;</li> <li>(e) violation of the provisions of the Constitution, including Chapter Six of the Constitution; and</li> <li>(f) violation of the provisions of this Act and any other written law.</li> </ul> <p>(2) Where the Commission considers it necessary to remove a Clerk under subsection (1), the Commission shall, in the following sequence--</p> <ul style="list-style-type: none"> <li>(a) frame a charge or charges against the Clerk;</li> <li>(b) forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges;</li> <li>(c) invite the Clerk to response to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself; and</li> </ul>

	<p>(d) invite the Clerk to appear before the Commission, either personally or with an Advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.</p> <p>(3) If the Clerk does not furnish a reply to the charge or cares within the period specified, or if in the opinion of the Commission the Clerk fails to exculpate himself or herself, the Commission shall remove the Clerk from office.</p> <p>The Parliamentary Service Commission is of the opinion that this clause should remain as it is with the Houses not being involved in the process of removal of a Clerk of Parliament. The Clerks of Parliament are officers in the parliamentary service and only the Commission should be involved in their removal.</p>
23(5)	<p>(5) The Commission shall, in establishing the offices under section (1) have regard to strengthen the offices referred to in Article 108 (1) of the Constitution.</p> <p>This clause in the PSC Bill, 2017 provides that the Commission shall in establishing offices in the parliamentary service have regard to strengthen the offices referred to in Article 108(1) of the Constitution. The offices referred to in Article 108(1) of the Constitution are those of leader of the majority party and leader of the minority party in the National Assembly.</p> <p>There are other offices in Parliament such the offices of the Speakers and Deputy Speakers of Parliament, members of the Chairperson's Panel, Party Whips, and Chairpersons of Committees among others. It is therefore discriminatory for the Bill to single out the offices of the leader of the majority party and leader of the minority party for strengthening at the expense of the other parliamentary office holders.</p> <p>The Parliamentary Service Commission proposes that this clause be amended to read that the Commission shall have regard to strengthen all leadership offices in both Houses of Parliament.</p>
24	<p>24. (1) The Commission shall establish an office of Joint services.</p> <p>(2) The office of joint service; shall be responsible for the provision of such services jointly shared between the two houses of Parliament as the Commission may determine.</p>

	<p>(3) The office of joint services shall be headed by the Director-General appointed by the Commission on such terms and conditions as it may determine.</p> <p>(4) The Provisions of sections 19, 26 (2) and 27 (4) shall with necessary modifications apply to the officer heading the joint services.</p> <p>The Parliamentary Service Commission finds that this clause is in contravention of the powers of the Commission under Article 127 of the Constitution to constitute and restructure parliamentary offices. In any event, the Commission has already created the office of the Joint Services. It is proposed that this clause be deleted.</p>
25	<p>25. (1) The Commission may establish a centre for parliamentary studies and training.</p> <p>(2) The centre shall provide learning and development programmes to build capacity for members and staff of Parliament and other stakeholders and shall -</p> <p>(a) facilitate continuous learning for members and staff of Parliament and other stakeholders;</p> <p>(b) develop linkages and collaborations with other institutions of learning and professional organizations;</p> <p>(c) develop and deliver programmes that promote the parliamentary democracy, the national values and principles of governance and the parliamentary service values; and perform any function assigned by the Commission or that is necessary, or expedient for the discharge of its functions under this Act.</p> <p>(3) The centre shall be headed by an officer appointed by the Commission on such terms and conditions as it may determine.</p> <p>The Parliamentary Service Commission notes that this clause provides that the Commission may establish a centre for parliamentary studies and training and that the centre shall be headed by an officer appointed by the Commission on such terms and conditions as it may determine. The Parliamentary Service Commission noted that this clause was on the Bill as proposed by the Commission and there is therefore no issue on the same.</p>
26(2)	<p>(2)The Clerks shall be responsible to the Commission for the administration of the schemes of service for the</p>

	<p>staff under their respective mandate pursuant to Article 128(2) of the Constitution.</p> <p>The Parliamentary Service Commission notes that this clause leaves no central authority with respect to parliamentary staff. Each Clerk reports directly to the Commission on matters relating to the staff deployed to their service. There is no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of appointments, promotions, training, discipline and related matters. Staff in one service shall invariably receive different treatment to staff in the other service thereby leading to discontent.</p> <p>The Parliamentary Service Commission proposes its deletion.</p>
27(4)	<p>(4) The Clerks shall be the authorised officers of the Commission responsible for the discipline of the staff under their respective control pursuant to Article 128(2) of the Constitution.</p> <p>The Parliamentary Service Commission noted that this clause leaves no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of discipline and related matters. Staff in one service may invariably receive different treatment to staff in the other service thereby leading to discontent. This is a matter better suited to be dealt with by Regulations in which the Commission delegates its supervisory and discipline powers to various offices.</p> <p>The Parliamentary Service Commission proposes its deletion.</p>
29	<p>29. (1) There is established a Parliamentary Police Unit which shall be a specialised police service under the supervision of the National Police Service and under the command of the Inspector-General of the National Police Service.</p> <p>(2) The Inspector-General shall, by notice in the Gazette, appoint an officer not below the rank of Assistant Commissioner of the Police to be in charge of the Parliamentary Police Unit.</p> <p>(3) Officers serving in the Parliamentary Police Unit shall be deployed from the National Police Service by the</p>

	<p style="text-align: center;">Inspector-General.</p> <p>(4) The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall -</p> <ul style="list-style-type: none"> <li>(a) be determined by the National Police Service Commission on the recommendation of the Inspector General;</li> <li>(b) take into account the views of the Commission; and</li> <li>(c) be publicised to the officers of the Unit.</li> </ul> <p>(5) The Commission may request the transfer or redeployment of the officers of the Unit.</p> <p>The Parliamentary Service Commission notes that there is no position of Assistant Commissioner of Police in the National Police Service. The proper position should be County Commissioner of Police. The clause should be amended to delete Assistant Commissioner of Police and replace with County Commissioner of Police.</p>
38 (4)	<p>(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member, the secretary, or any other officer shall be administered by the chairperson.</p> <p>This clause removes the responsibility from administering the oath of office for parliamentary officers from the Secretary to the Commission and vests the same in the Chairperson of the Commission.</p> <p>While there is nothing unconstitutional with this clause, it appears to vesting on the Chairman of the Commission the lowly task of administering the oath on all officers of the parliamentary service including junior officers.</p> <p>The Parliamentary Service Commission recommends amendment of the clause to provide that other staff of the Commission shall have their oath administered by the Secretary to the Commission.</p>
Memorandum of	Statement of as to whether the Bill Concerns County Government

objects	<p>This Bill is not a Bill not concerning county government. The Commission is a national government entity that is funded wholly from the share of national government funds.</p> <p>This clause seems to imply that the Bill should only be considered by the National Assembly as the Commission is a national government entity. The Parliamentary Service Commission notes that the Speaker of the National Assembly has already stated that the Bill should also be considered by the Senate as it is a Bill on Parliament of which the Senate is a part of.</p> <p>The Parliamentary Service Commission agrees wholly with the statement by the Speaker of the National Assembly and recommends that this clause be amended to reflect that it shall be considered by the Senate.</p>
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PARLIAMENTARY SERVICE COMMISSION



THE PARLIAMENTARY SERVICE COMMISSION'S FURTHER RECOMMENDATIONS ON THE  
PARLIAMENTARY SERVICE BILL, 2018.

CLAUSE	PARLIAMENTARY SERVICE BILL AS PUBLISHED
29	<p>29. (1) There is established a Parliamentary Police Unit which shall be a specialised police service under the supervision of the National Police Service and under the command of the Inspector-General of the National Police Service.</p> <p>(2) The Inspector-General shall, by notice in the Gazette, appoint an officer not below the rank of Assistant Commissioner of the Police to be in charge of the Parliamentary Police Unit.</p> <p>(3) Officers serving in the Parliamentary Police Unit shall be deployed from the National Police Service by the Inspector-General.</p> <p>(4) The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall -</p> <ul style="list-style-type: none"><li>(a) be determined by the National Police Service Commission on the recommendation of the Inspector General;</li><li>(b) take into account the views of the Commission; and</li><li>(c) be publicised to the officers of the Unit.</li></ul> <p>(4) The Commission may request the transfer or redeployment of the officers of the Unit.</p> <p>The Commission noted that there is no position of Assistant Commissioner of Police in the National Police Service.</p>

The proper position should be County Commissioner of Police. The clause should be amended to delete Assistant Commissioner of Police and replace with County Commissioner of Police.
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When the Parliamentary Service Commission appeared once again before the Justice and Legal Affairs Committee of the National Assembly on 9<sup>th</sup> October 2018, the Committee noted that the recommendations of the Commission on clause 29 are outdated. The Committee requested the technical team of the Commission to liaise with the technical team of the Committee and make proposals with regard to Clause 29. The proposal is now set out below:

#### **CURRENT POSITION WITH REGARD TO THE NATIONAL POLICE SERVICE**

Chapter 8 of the National Police Standing Orders specifically standing orders 15 – 24 establishes the Police Service units. This include; the Anti-stock theft unit, Kenya Airport Unit, Presidential Escort Unit, Diplomatic Police Unit, Dog Unit, Railway and Port Police Unit, Traffic Police Unit the Kenya National Highway Police Unit and the General Service Unit.

The units are headed by a Commandant who is in charge and reports to the Deputy Inspector – General of Police.

Standing Order 39 (1) provides that the Commander in charge of a Unit shall be responsible to the Deputy Inspector-General for—

- a) The effective and efficient day-to-day administration and operations of the Unit
- b) providing operational and tactical guidance and direction for the Unit;
- c) preparing plans and budget to ensure proper provision of the Unit and submit the plans and budget to the Deputy Inspector General;

- d) monitoring and evaluating the Administration Police services at the county and submit quarterly reports to Deputy Inspector- General;
- e) undertaking the supervision of the Administration Police officers as provided in the law;
- f) in consultation with county security team, advising and recommending to the Deputy Inspector General
- g) on the establishment, maintenance and abolishment of units and unit bases at the county;
- h) receiving, recording and reporting of complaints from members of the public at all unit bases including the Unit headquarters are up-to-date;
- i) conducting training need assessment and keeping an inventory of the skills of his personnel and advice the Deputy Inspector- General, accordingly.
- j) constituting and chairing the unit training committee;
- k) providing internal oversight of the personnel in the unit in terms of professionalism (code of conduct), accountability in all legislations relating to provision of security;
- l) establishing and maintaining a relationship between the Service and the community within the area deployed; co-operating and engaging in joint security operations with other Administration Police Service units and County Commanders, Kenya Police Service units and county commanders, other Government departments or other security organs to ensure the safety and security of the public; and (m) performing any such other duties as may be assigned by the Deputy Inspector General or as may be prescribed by law.

In or about April, 2018 the Kenya Police Service established a new unit the Kenya National Highways Police Unit to help preserve the *highways* and enforce *traffic* in the *country*.

## PROPOSAL

That in line with other units within the National Police Service, the Parliamentary Police Unit be headed by a Commandant who report directly to the Deputy Inspector General. Thus, we propose that clause 29 be amended to read as follows:

29. (1) There is established a Parliamentary Police Unit which shall be a specialised police service under the supervision of the National Police Service and under the command of the Inspector-General of the National Police Service or such other officer as may be specified in the National Police Service Standing Orders.
- (2) The Inspector-General shall, by notice in the Gazette, appoint a Commander to be in charge of the Parliamentary Police Unit.
- (3) Officers serving in the Parliamentary Police Unit shall be deployed by the Inspector-General from such units and services in the National Police Service as are necessary for the efficient and effective functioning of the Parliamentary Police Unit.
- (4) The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall -
- (a) be determined by the National Police Service Commission on the recommendation of the Inspector General;
  - (b) take into account the views of the Commission; and
  - (c) be publicised to the officers of the Unit.
- (5) The Commission may request the transfer or redeployment of the officers of the Unit.

**FURTHER AMENDMENTS PROPOSED ON THE PARLIAMENTARY SERVICE BILL**

**For consideration by the Justice and Legal Affairs**

**CLAUSE 9- qualification for appointment of a person as a Member of the commission (non-MP appointee)**

**THAT**, Clause 9 of the Bill be amended in paragraph (c) by deleting the word "affairs" and substituting therefor the word "service".

**CLAUSE 10- add a new provision for revocation of appointment of that Member in keeping with the Article 127(4)(b)**

Explanation:

Article 127(4)(b) of the Constitution provides that " A member of the Commission shall vacate office..(b) if the person is an appointed member, on revocation of the person's appointment by Parliament. This is different from the removal procedure set out under Article 251of the Constitution.

Proposal:

**THAT**, the Bill be amended by inserting the following new clause immediately after Clause 10-

*Procedure for revocation of appointment of members* 10A. (1) Parliament may, by a resolution, revoke the appointment of a member of the Commission appointed under Article 127(2)(d) of the Constitution for-

- (a) serious violation of the Constitution, or any other law, including, a contravention of the Chapter Six of the Constitution;

- (b) gross misconduct;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) A resolution under paragraph (1) shall set out the ground or grounds of removal and shall pass if made by both Houses (in the same form?);

(3) The Houses of Parliament shall adopt a procedure to give effect to this provision, including the requirement for fair hearing.

#### **CLAUSE 16- Role of Secretary**

##### Explanation:

Insert a provision to create the Secretariat of the commission, akin to what obtains in other administrative Commissions, such as JSC, PSC.

Proposal: Insert the following new Clause immediately after Clause 16-

##### *Secretariat*

16A. (1) There shall be a secretariat of the Commission which shall be headed by the secretary.

(2) The secretariat shall comprise of such professional, technical and administrative officers as may be appointed by the Commission for that purpose.

#### **CLAUSE 19: Administrative functions of the Clerks**

##### Explanation:

As pointed out by the PSC, the Commission does not supervise the Clerks in respect of the execution of decisions of their respective Houses, as this is a responsibility of the respective Houses. In this regard, there is need to reword the paragraph (b) to read as follows-

19. The Clerks shall, in each of their respective Houses, be responsible to the Commission for-

*(b) the execution of its decisions on the provision of such services and facilities as are necessary for the effective functioning of their respective Houses;*

**CLAUSE 22:** There may be need to put a term of office on the Clerks of Houses of Parliament, keeping with practice obtaining in other statutory bodies and commissions.

**CLAUSE 30: Parliamentary Police Unit**

**THAT,** Clause 30 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words "specialised police service" and substituting therefor the words "specialised police unit";
- (b) in sub-clause (2) by deleting the words "Assistant Commissioner of Police" and substituting therefor the words "County Commissioner of Police"

**CLAUSE 38: Oath of office**

**THAT,** Clause 38 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses-

- (4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member and the Clerks shall be administered by the chairperson.

(5) Every oath or affirmation taken by any other officer of the Commission shall be administered by the secretary.



COMMENTS ON THE PARLIAMENTARY SERVICE COMMISSION'S MEMORANDUM ON THE PARLIAMENTARY SERVICE BILL, 2018

CLAUSE	WORDING OF CLAUSE	COMMISSION COMMENT	COMMISSION PROPOSAL	NATIONAL ASSEMBLY COMMENT	NATIONAL ASSEMBLY RECOMMENDATION
2 & 21	<p>Clause 2 reads as follows:  <b>“Secretary” means the Clerk of the Senate as stipulated in Article 127(3) of the Constitution.</b></p> <p>Clause 21 reads as follows:  <b>If the office of a Clerk of a House of Parliament is vacant or if for any reason the Clerk is unable to exercise the functions of his or her office, the Senior Deputy Clerk, any other office in the Parliamentary Service</b></p>	<p>The clause as proposed by the Parliamentary Service Commission reads as follows:  <b>“Secretary” means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate.</b></p> <p>Clause 2 as read together with clause 21 take away the Constitutional power of the Commission to supervise office holders in the parliamentary service. If there is a vacancy in the office of</p>	<p>That clause 2 of the Bill be amended to read as follows:  <b>“Secretary” means the Clerk of the Senate or, in the absence of the Clerk of the Senate, the person exercising the functions of the Clerk of the Senate.</b></p> <p><b>“Clerk” means the Clerk of the National Assembly or of the Senate, as the case may be, or if the Clerk is absent, or if the office of the Clerk is vacant, or if for any reason the Clerk is unable to</b></p>	<p>Clause 2 deals with interpretation and definitions and should be restricted to the Constitutional definitions of the Secretary and the Clerks under Articles 127(3) and 128 of the Constitution, respectively.</p> <p>The National Assembly is of the view that matters regarding the exercise of functions during a vacancy or absence of the Secretary or Clerks are substantive in nature and should be placed in the body of the Bill.</p>	<p>Retain clause 2 of the Bill as published.</p> <p>Redraft clause 21 of the Bill to incorporate the Commission's concerns while taking cognizance of Article 259(3)(a) of the Constitution, as follows-</p> <p>21.If the office of Clerk is vacant, or if for any</p>

	<p>Appointed by the Commission may exercise all the functions, duties and powers of the Clerk.</p>	<p>If Clerk, the Commission shall appoint an Officer to act as Clerk. Further to this, clause 21 presupposes the existence of the office of the Senior Deputy Clerk within the parliamentary service. It is within the Commission's powers under Article 127(6)(b) of the Constitution to create and abolish this office and therefore reference to it in the Bill is not appropriate.</p> <p>Furthermore, at the moment, there are two Senior Deputy Clerks in each House of Parliament and the Bill would bring uncertainty in this regard.</p>	<p>exercise the functions of his or her office, such other person appointed by the Commission as is for the time being performing the duties of Clerk"</p> <p>Delete clause 21 in its entirety</p>	<p>The National Assembly notes the Commission's concerns that clause 21 presupposes the existence of the office of the Senior Deputy Clerk and that the clause does not provide certainty on who of the two (2) SDCs currently in office in the two Houses is to perform the functions of the Clerk.</p> <p>The National Assembly further notes that Article 259(3)(a) of the Constitution provides that "<i>a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office</i>"</p>	<p>reason the Clerk is unable to exercise the functions of his or her office, any other person for the time being performing the duties of the Clerk pursuant to the Standing Orders of the relevant House or by direction of the relevant Speaker shall have and may exercise all the functions, duties and powers of the Clerk.</p> <p>Indeed, the foregoing is the current wording of section 15 of the existing Parliamentary Service Act, Chapter 185A.</p>
16	<p>The Secretary shall be responsible for: (a) preparing, planning and facilitating the</p>	<p>The roles and responsibilities bestowed on the Secretary of the Commission as Chief</p>	<p>This clause should be amended to read as follows:</p>	<p>The National Assembly notes that the Commission proposes</p>	<p>Retain Clause 16 of the Bill as published.</p>

meetings of the Commission and its National Assembly;

(b) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct;

(c) communicating the decisions of the Commission for execution by the Clerks pursuant to Articles 128(2) and any law made under Article 226 ( ) (b) of the Constitution or such other offices as the Commission may designate pursuant to Articles 127(6) (b) or any law made under Article 226(1) (b) of the Constitution;

(d) custody of the seal of the Commission;

(e) the performance of the such other duties as may be assigned by the Commission.

Executive Officer shall from the provisions of Article 250(12) of the Constitution.

Section 2 of the Public Finance Management Act as now amended provides that the Clerk of the National Assembly shall be the accounting officer in respect of the National Assembly while the Clerk of the Senate shall be the accounting officer in respect of the Parliamentary Service Commission.

The Parliamentary Service Commission notes with great concern that Clause 16 of the Bill as drafted shall leave the Commission with no person assigned the role of the Chief Executive Officer. The Commission is of the opinion that there needs to be a single point of reference for the Commission as its chief executive officer responsible for carrying out its resolutions.

- The Secretary shall be-*
- (a) *the chief executive officer of the Commission;*
  - (b) *the administrative head of the Parliamentary Service; and*
  - (c) *the custodian of the Commission's records;*
  - (d) *responsible for –*
    - (i) *the execution of the decisions of the Commission;*
    - (ii) *assignment of duties and supervision of the staff of the Commission;*
    - (iii) *the preparation and submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;*
    - (iv) *causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct;*
    - (v) *ensuring staff*

*that Clause 16 of the Bill* redrafted to give more powers and responsibilities to the Clerk of the Senate while exercising his or her functions as the Secretary of the Commission under Articles 127(3) and 250(12) of the Constitution.

The National Assembly is of the view that Articles 127(3) and 250(12) of the Constitution should not be read in isolation but should be read together with Article 128 of the Constitution, which provides as follows-

*128 (1) There shall be a Clerk for each House of*

Retain Clause 16 of the Bill as published.

			<p>compliance with public service values, principles and ethics; and</p> <p>(vi) the performance of such other duties as may be assigned by the Commission or any other written law.</p> <p>(2) The Secretary shall be responsible to the Chairperson of the Commission for the general working and efficient conduct of business of the Parliamentary Service.</p> <p>(3) The Commission may delegate to the Secretary such of its functions as are necessary to carry out the day to day management of the Service, and subject to such directions as may be given by the Commission.</p> <p>(4) The Secretary may, in consultation with the Commission, assign or delegate any of the functions under this section to an employee of the Service."</p>	<p>Parliament, appointed by the Parliamentary Service Commission with the approval of the relevant House.</p> <p>(2) The offices of the Clerks and offices of members of the staff of the Clerks shall be offices in the Parliamentary Service.</p> <p>The National Assembly also notes that one of the cardinal principles of Constitutional interpretation is that the Constitution should be interpreted as a whole and no one provision should be interpreted in such a way as to destroy or render irrelevant another provision of the same Constitution.</p>	<p>Retain Clause 16 of the Bill as published.</p>
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Constitutional Petition

No. 1 of 1997 [1997]3

UGCC)

In this respect, the National Assembly is of the view that the powers and functions to be assigned to the Secretary of the Parliamentary Service Commission under the Parliamentary Service Act must take cognizance of the bicameral nature of the Kenyan Parliament as established under Article 93 of the Constitution. The Houses have different functions in the Constitution as set in Article 95 (Role of the

Retain Clause 16 of the Bill as published.

				<p>National Assembly) and Article 96 (Role of the Senate).</p> <p>The National Assembly is of the view that empowering the Clerk of the Senate/Secretary to assign duties and supervise the staff of the Commission deployed to the National Assembly compromises the autonomy of the National Assembly and runs contrary to the nature of the bicameral Parliament established under Article 93 of the Constitution. The issue of two centres of power is not a creation of the Parliamentary Service Bill, 2018 but a</p>	<p>Retain Clause 16 of the Bill as published.</p>
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				<p>recognition of the distinct roles of the two Houses of Parliament (and the Clerks of the Houses) as established under the Constitution;</p> <p>The National Assembly further notes that the function of supervising office holders in the Parliamentary Service is a direct mandate of the Commission under Article 127(6)(b) of the Constitution and should not be delegated to the Clerk of the Senate/Secretary as proposed in Clause (d) (ii) of the Commission proposal.</p>	Retain Clause 16 of the Bill as published
19	The Clerks shall, in each of their respective Houses, be responsible	The Commission recommends that clause 19 (a) requires re-	The Commission proposes that clause 19 be deleted and replaced	The National Assembly notes that the Commission recalled its	Amend Clause 19 (a) and (b) as proposed by the

	<p>to the Commission for-</p> <p>(a) the day-to-day management and functioning of the respective Houses;</p> <p>(b) the execution of the Commissions decisions relating to the respective Houses;</p> <p>(c) the overall management of the staff under their respective control pursuant to Article 128 (2) of the Constitution and in particular, shall be the authorized officer responsible for advising the Commission and implementing Commission resolutions on all matters relating to -</p> <p>(i) the appointment, promotion, and discipline of the members of staff of the respective Clerks;</p> <p>(ii) the assignment of duties, supervision and training of the staff of</p>	<p>ing as follows:</p> <p>(a) <i>The provision of such services and facilities as are necessary for the effective functioning of their respective Houses;</i></p> <p>The rationale for this stems from the fact that the Commission is not responsible for the day to day management of the Houses of Parliament as this duty falls within the mandate of the Speakers and Clerks of Parliament together with the leadership of the Houses. The Commission is however responsible for the provision of services and facilities to Parliament.</p> <p>Clause 19(b) should similarly be deleted as the Commission does not direct the respective Houses of Parliament.</p> <p>Clause 19(c) should be deleted as it is the responsibility of the Commission to supervise office holders in the parliamentary service. For optimal</p>	<p>with the following clause:</p> <p>19. <i>The Clerks shall, in each of their respective Houses be responsible-</i></p> <p>(a) <i>for the day-to-day management and functioning of their respective Houses;</i></p> <p>(b) <i>to the Commission for the provision of such services and facilities as are necessary for the effective functioning of their respective Houses.</i></p>	<p>earlier proposal that day-to-day House management responsibilities of the Clerks be deleted from the Bill.</p> <p>The National Assembly is of the view that the Clerks of the Houses will not effectively manage those Houses if they are stripped of the other powers and responsibilities conferred on them under clause 19 of the Bill.</p> <p>The National Assembly further notes that it is critical for the Clerks of the Houses to retain the overall management powers of their Staffs as contemplated in Article 128(2) of the Constitution.</p> <p>The National Assembly is also of the view that the Clerks of the Houses should have the responsibility of assigning duties and supervising staff deployed in their Houses for the efficient and</p>	<p>Commission to read as follows-</p> <p>19. <i>The Clerks shall, in each of their respective Houses be responsible-</i></p> <p>(a) <i>for the day-to-day management and functioning of their respective Houses;</i></p> <p>(b) <i>to the Commission for the provision of such services and facilities as are necessary for the effective functioning of their respective Houses.;</i></p> <p>Retain Clause 19(c) and (d) of the Bill as published.</p>
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<p>respective Clerks;  (iii) the deployment of staff of the respective Clerks to serve in any other area in the parliamentary service.</p> <p>(d) The preparation and submission of the programmes necessary for the achievement of the mandate of the respective Houses for approval by the Commission; the performance of such other duties as the Commission might determine or as may be provided for in any other written law.</p>	<p>management, there is need for one authorized officer in respect of the staff of the parliamentary service. The Commission shall then resolve on how the powers of supervision of staff shall be decentralized from the one central source. In pursuance of establishing the best structure for this, the Commission has engaged the services of a human resource company to advise it on the best organizational structure for purposes of optimal provision of services and facilities to Parliament.</p>		<p>effective management of each of the Houses.</p> <p>The National Assembly is of the view that the powers and functions to be assigned to the Secretary of the Parliamentary Service Commission under the Parliamentary Service Act must take cognizance of the bicameral nature of the Kenyan Parliament as established under Article 93 of the Constitution.</p> <p>The National Assembly further notes that since the Secretary of the Commission is also the Clerk of one House of our Parliament, designating the Secretary as the authorized officer for all staff employed by the Commission (including the Clerk of the National Assembly under Article 128 of the Constitution) effectively means that the affairs of the National Assembly shall be run from the Senate, an undesirable if not unconstitutional</p>	<p>Retain Clause 19(c) and (d) of the Bill as published.</p> <p>The human resource consultants recommendations must accord with the prevailing law as enacted by Parliament.</p>
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			<p>situation given the bicameral nature of the Kenyan Parliament as set out in the Constitution.</p> <p>The National Assembly also notes that in all jurisdictions with bicameral legislatures, each Clerk of a House of Parliament is generally responsible for the assignment of duties and supervision of staff deployed in their Houses. It is thus important to avoid a 'functional absurdity' in the Kenyan Parliament where Article 128(2) of Constitution assigns staff to each of the Clerks but enabling the Act provides that the staff shall be managed by one Clerk (the Secretary) on behalf of the other Clerk.</p> <p>The National Assembly further observes that the prevailing practice in ALL bicameral Parliaments worldwide is that each Clerk of a House or Chamber assigns duties and supervises the staff</p>	<p>Retain Clause 19(c) and (d) of the Bill as published.</p>
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				<p>referred to that House or Chamber.</p> <p>The National Assembly notes that the proposed decentralization of supervision powers from one central source does not address the issue of the autonomy of the Houses since central source is ultimately responsible for any decentralized powers.</p>	
23 (5)	<p><b>(5) The Commission shall, in establishing the offices under section (1) have regard to strengthen the offices referred to in Article 108 (1) of the Constitution.</b></p>	<p>This clause in the PSC Bill, 2017 provides that the Commission shall in establishing offices in the parliamentary service have regard to strengthen the offices referred to in Article 108(1) of the Constitution. The offices referred to in Article 108(1) of the Constitution are those of leader of the majority party and the leader of the minority party in the National Assembly.</p> <p>There are other offices in Parliament such as the offices of the Speakers and Deputy Speakers of</p>	<p>The Commission propose that clause 23(5) requires re-drafting to read as follows:</p> <p><i>(5) The Commission shall, in establishing the offices under Section (1) have regard to strengthening all leadership offices in both Houses of Parliament.</i></p>	<p>The National Assembly notes that the offices of Leader of the Majority Party in the National Assembly and Leader of the Minority Party in the National Assembly are constitutional offices established under Article 108(1) of the Constitution.</p> <p>The National Assembly also notes the Commission concerns that there is need to also recognize and provide for other leadership offices in parliament. In this respect, the National Assembly agrees with</p>	<p>Amend Clause 23(5) of the Bill to read as follows-</p> <p><i>(5) The Commission shall, in establishing the offices under section (1) have regard to strengthen the offices established under Article 108(1) of the Constitution and all other leadership offices in both Houses of Parliament as may be established under any written law or the Standing Orders.</i></p>

		<p>Parliament, members of the Chairperson's Panel, Party Whips, and Chairpersons of National Assembly among others. It is therefore discriminatory for the Bill to single out the offices of the leader of the majority party and leader of the minority party for strengthening at the expense of the other parliamentary office holders.</p> <p>The Commission proposed that this clause be amended to read that the Commission shall have regard to strengthen all leadership offices in both Houses of Parliament.</p>		the Commission that the provision needs to be amended.	
24	<p><b>24. (1) The Commission shall establish an office of Joint services.</b></p> <p><b>(2) The office of joint service; shall be responsible for the provision of such services jointly shared between the two houses of Parliament as the Commission may</b></p>	<p>The Commission finds that this clause is in contravention of the powers of the Commission under Article 127 of the Constitution to constitute and restructure parliamentary offices.</p> <p>In any event the Commission has already</p>	It is proposed that this clause be deleted in its entirety.		

	<p>determine.</p> <p>(3) The office of joint services shall be headed by the Director-General appointed by the Commission on such terms and conditions as it may determine.</p> <p>(4) The Provisions of sections 19, 26 (2) and 27 (4) shall with necessary modifications apply to the officer heading the of Joint Services</p>	<p>created the Joint Service</p>			
26 (2)	<p>(2)The Clerks shall be responsible to the Commission for the administration of the schemes of service for the staff under their respective mandate pursuant to Article 128(2) of the Constitution.</p>	<p>The Commission noted that this clause leaves no central authority with respect to parliamentary staff. Each Clerk reports directly to the Commission on matters relating to the staff deployed to their service.</p> <p>There is no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of appointments, promotions, training, discipline and related matters. Staff in one service shall invariably receive different</p>	<p>It is proposed that this clause be deleted in its entirety.</p>	<p>The National Assembly notes that since the Secretary of the Commission is also the Clerk of one House of our Parliament, designating the Secretary as the authorized officer responsible for administration of schemes of service for all staff employed by the Commission erodes the autonomy of the National Assembly and the ability of the Clerk of the National Assembly to manage his or her staff as contemplated under Article 128(2) of the Constitution.</p>	<p>Retain clause 26(2) of the Bill as published.</p>

		<p>tre: .nt of staff in the other service thereby leading to discontent. This is a matter best left to the Commission to deal through Regulations and resolutions.</p>		<p>The National Assembly also notes that the proposed amendment renders Article 128 of the Constitution mute as regards the powers and functions of the Clerk of the National Assembly.</p>	
27(4)	<p><b>(4) The Clerks shall be the authorized officers of the Commission responsible for the discipline of the staff under their respective control pursuant to Article 128(2) of the Constitution.</b></p>	<p>The Commission noted that this clause leaves no central processing unit that shall enable the Commission to see the big picture with respect to staff in terms of discipline and related matters. Staff in one service may invariably receive different treatment to staff in the other service thereby leading to discontent. This is a matter being suited to be dealt with by Regulations in which the Commission delegates its supervisory and discipline powers to</p>	<p>It is proposed that this clause be deleted in its entirety.</p>	<p>The National Assembly notes that since the Secretary of the Commission is also the Clerk of one House of our Parliament, designating the Secretary as the authorized officer for all staff employed by the Commission erodes the autonomy of the National Assembly and the ability of the Clerk of the National Assembly to manage the affairs of the Assembly.</p> <p>The National Assembly further notes that empowering the Clerk of</p>	<p>Retain clause 27(4) of the Bill as published.</p>

assign duties and supervise the staff of the Commission deployed to the National Assembly compromises the role of the Clerk of the National Assembly as the accounting officer of the National Assembly as provided for in section 2 of the Public Finance Management Act.

The National Assembly further notes that deleting clauses 19 and 27(4) of the Bill renders the accounting officer of the National Assembly (Clerk of the National Assembly) incapable of enforcing section 74 of the PFM Act, 2012, which empowers accounting officers to take certain disciplinary measures against public officers under their

				control. The National Assembly also notes that the proposed amendment renders Article 128 of the Constitution mute as regards the powers and functions of the Clerk of the National Assembly.	
30	<p>30. (1) There is established a Parliamentary Police Unit which shall be a specialized police service under the supervision of the National Police Service and under the command of the Inspector General of the National Police Service.</p> <p>(2) The Inspector-General shall, by notice in the Gazette, appoint an officer not below the rank of Assistant Commissioner of the Police to be in charge of</p>	The Commission noted that there is no position of Assistant Commissioner of Police in the National Police Service. The proper position should be County Commissioner of Police	Clause 30(2) should be amended to delete the words "Assistant Commissioner of Police" and replace with the words "County Commissioner of Police."	The National Assembly notes and agrees with the Commission proposal for amendment.	Amend clause 30(2) of the Bill to delete the words "Assistant Commissioner of Police" and replace with the words "County Commissioner of Police."

the Parliamentary Police Unit.

(3) Officers serving in the Parliamentary Police Unit shall be deployed from the National Police Service by the Inspector-General.

((4) The standard operating procedures and staffing requirements of the Parliamentary Police Unit shall –

(a) be determined by the National Police Service Commission on the recommendation of the Inspector General;

(b) take into account the views of the Commission; and

(c) be publicized to the officers of the Unit.

(4) The Commission may request the transfer or redeployment of the officers of the Unit.

38 (4)

**(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every**

This clause removes the responsibility from administering the oath of office for parliamentary officers from the

The Commission recommends amendment of the clause to provide as follows:

The National Assembly notes the Commission proposals for amendment.

Amend clause 38(4) to read as follows:

(4) Every oath or affirmation taken by the

	<p><b>oath or affirmation taken by any other member, the secretary, or any other officer shall be administered by the chairperson.</b></p>	<p>Secretary to the Commission and vests the same in the Chairperson of the Commission.</p> <p>While there is nothing unconstitutional with this clause, it appears to vesting on the Chairman of the Commission the lowly task of administering the oath on all junior officers of the parliamentary service.</p>	<p>(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member and the secretary shall be administered by the chairperson.</p> <p>(5) Every oath or affirmation taken by any other officer of the Commission shall be administered by the secretary.</p>	<p>The National Assembly is of the view that the Clerks of the Houses should take their oaths of office before the Chairman and all other officers to be sworn in before the secretary.</p>	<p>chairperson shall be administered by the secretary and every oath or affirmation taken by any other member and the Clerks shall be administered by the chairperson.</p> <p>(5) Every oath or affirmation taken by any other officer of the Commission shall be administered by the secretary.</p>