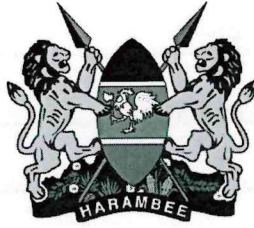


REPUBLIC OF KENYA



Approved  
12/3/2024

**THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024**

**DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

.....

**ADDENDUM TO THE REPORT TABLED ON 21<sup>ST</sup> FEBRUARY 2024 ON THE  
CONSIDERATION OF THE NATIONAL GOVERNMENT ADMINISTRATION LAWS  
(AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 73 OF 2023)**

|                                      |  |
|--------------------------------------|--|
| THE NATIONAL ASSEMBLY<br>PAPERS LAID |  |
| DATE: 12 MAR 2024                    | DAY: TUESDAY                               |
| TABLED BY:                           | Hon George Mwangi, MP<br>Chairperson, JLAC |
| CLERK AT THE TABLE:                  | Inzoyi mbale                               |

**CLERK'S CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI**

**MARCH 2024**

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

|      |   |  |
|------|---|--|
| AG   | - | Office of the Attorney-General         |
| CAS  | - | Chief Administrative Secretary         |
| CSs  | - | Cabinet Secretaries                    |
| FORD | - | Forum for the Restoration of Democracy |
| MCCP | - | Maendeleo Chap Chap Party              |
| ODM  | - | Orange Democratic Movement             |
| PSC  | - | Public Service Commission              |
| UDA  | - | United Democratic Alliance             |
| WDM  | - | Wiper Democratic Movement              |

## **ANNEXURES**

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: Memoranda from Stakeholders



## **CHAIRPERSON'S FOREWORD**

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its further consideration of the National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*) which was published on Monday 24<sup>th</sup> November 2023.

The Bill was read for the first time in the House on 6<sup>th</sup> December 2024 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill seeks to amend four statutes: the Assumption of the Office of the President Act, 2012; the National Security Council Act, 2012; the Office of the Attorney-General Act, 2012; and the National Government Coordination Act, 2013. A majority of the amendments in the Bill relate to the administration of government. Specifically, it seeks to alter the role of governmental bodies and officials including the Assumption of the Office of the President Committee, the National Security Advisor, the National Security Council Committee, the Attorney General, the Head of Public Service and the offices of the Chief Administrative Secretary.

Given the significant constitutional and legal impact the amendments may have the Rt. Hon Speaker vide a communication made on Thursday 7<sup>th</sup> December 2023 committed the Bill to the Committee and directed that the Committee may sit jointly with the Departmental Committee on Administration and Internal Security to address matters in the Bill that require the latter's input. To this end, the Committee held sittings together with the Departmental Committee on Administration and Internal Security during its consideration of the Bill.

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


In addition, the Committee invited key stakeholders to submit views on the Bill and attend public participation forums on Monday 12<sup>th</sup> and Wednesday 14<sup>th</sup> February 2024. The memoranda were to be received on or before Thursday 28<sup>th</sup> December 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received eighteen twenty-one (21) memoranda.

Arising from receipt of an additional memorandum after the tabling of the Committee Report on the Bill, the Committee resolved to undertake further deliberations on the Bill. Consequently, the Committee held a sitting on Wednesday 6<sup>th</sup> March 2024 where it considered clauses of the Bill relating to the establishment of the Head of Public Service and the Office of the Chief Administrative Secretary and adopted this addendum to the Report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this Addendum Report to the Report Tabled on 21<sup>st</sup> February 2024 on the Consideration of the National Government Administration Laws (Amendment) Bill, 2024 (*National Assembly Bill No. 73 of 2023*)

House an Addendum to the Report Tabled on 21<sup>st</sup> February 2024 on the Consideration of the National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*). The two Reports are to be read together and in the event of any conflict in the recommendations, the contents and recommendations of the Addendum Report shall prevail.

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

## CHAPTER ONE

### 1 ADDITIONAL STAKEHOLDER ENGAGEMENT AND PUBLIC PARTICIPATION ON THE BILL

#### 1.1 Legal Framework on Public Participation

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

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

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

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

*(a) inviting submission of memoranda;*

*(b) holding public hearings;*

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

*(d) consulting experts on technical subjects.*

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

#### 1.2 Memoranda Received on the Bill

3. The Committee received additional submissions from the PSC. The memorandum is annexed to this report as *Annexure 3*.
4. The PSC submitted memoranda in support of the Bill with some reservations.

### National Government Coordination Act, 2013

#### *On the Establishment of the Head of Public Service*

5. Relating to the proposed amendment to Section 8 of the Act on the establishment of the Head of Public Service, the PSC noted that, being an office in the public service, qualifications should be included and the appointment be done by the President on recommendation from the Public Service Commission and subject to parliamentary approval. It, therefore, proposed the addition of a new sub-clause as follows:

*“(2) A person is eligible for appointment as Head of Public Service if the person –*

*(i) is a citizen of Kenya;*

*(ii) holds a degree from a university recognized in Kenya;*



- (iii) *has at least fifteen years relevant professional experience, ten of which should have been in a leadership position or at a top management level in the public service;*
- (iv) *possesses general knowledge of the organization and functions of Government;*
- (v) *demonstrates an understanding of the goals, policies and developmental objectives of the nations;*
- (vi) *has demonstrable leadership and management capacity including knowledge of financial management and strategic people management; and*
- (vii) *meets the requirements of Chapter Six of the Constitution.”*

6. Additionally, the PSC stated that the proposed amendment to Section 8(3) be made as a stand-alone Section 8A because it relates to the establishment of the office of the Head of Public Service.

7. The PSC was of the view that the Head of the Public Service should not also be the Chief of Staff to the President since the two offices have different responsibilities and hence should be separate. It also noted that the Chief of Staff is personal and private to the President hence serving in the capacity of a Head of Public Service defeats the public nature of that office. Therefore, it proposed the deletion of Section 8(7)(a) and substitution with the following paragraph:

*“The Head of the Public Service shall –*

- (a) be the administrative head of the Executive Office of the President;*
- (b) be the custodian of the presidential Seal;*
- (c) transmit Executive Directives, Orders and Presidential Proclamations to Ministries, State Organs, State Departments and State agencies for their information, implementation or other action; and*
- (d) perform such other function ancillary to the functions provided in this section as may be assigned by the President.”*

8. The PSC also proposed deletion of Section 8(7)(c) on the premise that the Public Seal is a national symbol as provided for under Article 9 of the Constitution and should not be placed under the custody of the Head of Public Service who shall be serving at the President’s discretion. Furthermore, the proposal takes away the approval and authentication required



from the AG before the seal is affixed on important Government documents. It added that, seeing as the Head of Public Service shall serve as the administrative head of the Executive Office of the President, s/he should be the custodian of the Presidential Seal as envisaged by Article 135 of the Constitution and not the Public Seal. Moreover, there should be clarification on the difference between the Presidential Seal and the Public Seal.

9. Consequently, the PSC submitted that Section 28 of the Office of the Attorney General Act, 2012 should not be deleted because the Public Seal should remain in the custody of the AG, Chief Legal Advisor to the Government.
10. The PSC proposed the deletion of Section 8(7)(d) noting that the Act should clearly state the functions of the Office as leaving it open-ended may lead to it being assigned functions already assigned to other bodies by the Constitution or legislation.

#### **Committee Observation**

11. The Committee noted the need for the establishment of the position of the Head of the Public Service in the Executive Office of the President with clearly defined roles and qualifications. The holder of the Office would have to be nominated by the Public Service Commission and approved by the National Assembly.

#### ***On the Establishment of the Office of the Chief Administrative Secretary***

12. The PSC stated that it is in support of the proposed Section 12A(1) as it is in line with its recommendation to the President on the establishment of the Office of CAS in accordance with Article 132(4)(a) of the Constitution.
13. In view of the fact that the Office of CAS is a senior position in the public service, the PSC proposed the addition of a new sub-clause (c) to Section 12A(4) to provide for years of professional experience as follows:

*“has at least ten years relevant professional experience, five years of which should have been in a leadership position or a top management level in the public service or private sector;”*
14. It also submitted that the current sub-clause (c) be amended to be a new sub-clause (d).
15. The PSC also noted that the proposed role of the CAS in Section 12A(6)(b) will conflict with Section 9(4) of the current Act on the responsibility of a CS. Thus, it proposed that it instead, be amended to provide for liaising with Parliament on behalf of the CS

#### **Committee Observation**

16. The Committee agreed with the views of the Public Service Commission on a role for the Chief Administrative Secretary that accords with the Constitution. In light of the varied roles that may be assigned to a CAS, the Committee noted that capping the number of CAS's may affect the ability of the Executive to recruit and deploy the number of CAS's require to deliver its programmes.

### **1.3 Minority/Dissenting Opinion on the Proposed Amendments to the National Government Coordination Bill, 2023 to Establish the Office of the Chief Administrative Secretary**

17. The Hon. (Dr.) Otiende Amollo, SC, MP reiterated his minority/dissenting opinion against approval of the provisions amending the National Government Co-ordination Act, 2013 to establish the Office of the Chief Administrative Secretary.

18. The Hon. Member noted the basis for the dissenting opinion as follows—

- a) That the functions ascribed to the office of the CAS are a duplication of those already assigned to CSs and PSs. The establishment of the office was therefore likely to result in a conflict of roles.
- b) That, having been a member of the Committee of Experts on Constitutional Review and having undertaken public participation around the country, it was his view that Kenyans intended to do away with the position of Assistant Ministers. The office of the CAS is akin to that of Assistant Ministers thus, the proposal offends the spirit of the Constitution of Kenya and the will of the Kenyan people.
- c) That even the courts have pronounced themselves on the unconstitutionality of the office of the CAS as was determined in *Matindi & 3 others v The National Assembly of Kenya & 4 others; Controller of Budget & 50 others (Interested Parties) (Petition E080, E084 & E150 of 2023 (Consolidated)) [2023] KEHC 19534 (KLR) (Constitutional and Human Rights) (3 July 2023) (Judgment) (with dissent - HI Ong'udi, J)..*
- d) That the Constitution under Article 152(1)(d) limits the number of Cabinet Secretaries to twenty-two. Consequently, the proposal to introduce an uncapped number of CASs is indeed an affront to the Constitution and would occasion additional expense on public finances and pose an unnecessary burden on Kenyan taxpayers.

19. Consequently, the Hon. Member **proposed the deletion of new clause 12A in the provisions of the Bill relating to the National Government Co-ordination Act, 2013.**
20. The Hon. (Dr.) Otiende Amollo, SC, EBS, MP further noted that the proposal to entrench the Head of the Public Service is in conflict with the Constitution for the following reasons:
- a) The architecture of the Constitution places the PSC, as the head of the public service contrary to the proposal.
  - b) The Constitution places clear boundaries between the Executive (political and transitory) and the public service (permanent and non-political). Introducing an office to head the public service, politically appointed, conflates the issues.
  - c) Lastly, for purposes of the Executive, the Constitution recognizes the Office of the Secretary to Cabinet. Therefore, introducing a Head of Public Service undermines the Office of the Secretary to the Cabinet.



**CHAPTER TWO**

**2 COMMITTEE RECOMMENDATIONS**

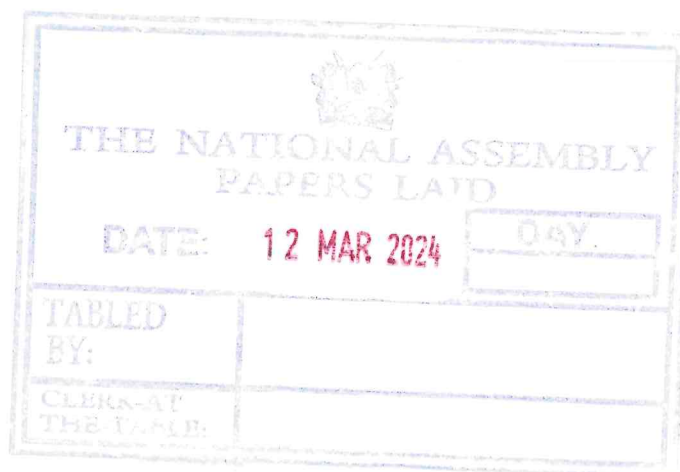
21. The Committee, having reconsidered the National Government Administration Laws (Amendment) Bill (*National Assembly No. 73 of 2023*) and additional submissions, **by a majority of its Members**, recommends that the House—

- (a) approves the provisions of the Bill relating to the Assumption of Office of the President Act, 2012 and the National Government Co-ordination Act, 2013 with amendments as proposed in the Schedule of Amendments; and
- (b) deletes the provisions of the Bill relating to the National Security Council Act, 2012 and the Office of the Attorney-General Act, 2012.

SIGNED..........DATE.....*12.3.24*.....

**HON. GEORGE GITONGA MURUGARA, MP  
CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**





## CHAPTER THREE

### 3 SCHEDULE OF AMENDMENTS

22. In view of the observations and recommendations made, the Committee proposed the following amendments to the Bill:

23. **THAT** the Schedule to the Bill be amended —

(a) in the proposed amendments to the **Assumption of the Office of the President Act, 2012 (No. 21 of 2012)** by—

(i) deleting the proposed new paragraph (ca) appearing in the proposed amendment to section 5(2);

**Rationale:** To remove the National Security Advisor as a member of the Assumption of the Office of the President Committee. The office of the National Security Advisor is not a statutory office.

(ii) inserting the following new amendments immediately after the proposed amendments to section 5(2)—

s. 5(2) Delete the words “Cabinet Secretary” appearing in paragraph (c) and substitute therefor the words “Principal Secretary”;

Delete paragraph (h);

Delete paragraph (j);

Delete paragraph (t)

s. 5(3) Delete

s. 5(4) Delete the words “the commencement of this Act” and substitute therefor the words “declaration of a President elect”.

s.8(2) Delete the word “three” and substitute therefor the word “six”.

**Rationale:** To regularize the membership of the Assumption of the Office of the President Committee in line with the current provisions of law and allow broader representation of the President-elect in the membership of the Committee.

(b) by deleting the proposed amendments to the National Security Council Act, 2012 (No. 23 of 2012);

**Rationale:** To ensure conformity of the proposals in the Bill with the Article 240 of the Constitution.

(c) by deleting the proposed amendment to the **Office of the Attorney General Act, 2012 (No. 49 of 2012)**;

**Rationale:** No satisfactory justification has been given for transferring the public seal from the custody of the AG to the Head of Public Service.

(d) by deleting the proposed amendments to the **National Government Co-ordination Act, 2013 (No. 1 of 2013)** and substituting therefor the following amendments—

| <i>Written law</i>  | <i>Provision</i> | <i>Amendment</i>   |
|---|------------------|--|
| National Government Co-ordination Act, 2013 (No. 1 of 2013) | s. 2             | Insert the following new definition in proper alphabetical sequence—<br><br>“Chief Administrative Secretary” means a Chief Administrative Secretary appointed under section 12A. |
|   | s. 7(2)          | Insert the following new paragraph immediately after paragraph (c)—<br><br>“(ca) Chief Administrative Secretary;”  |
|   | s. 8             | Delete the marginal note and substitute therefor the following new marginal note—<br><br>“The Executive Office of the President.”  |
|   |                  | Add the following new subsections immediately after subsection (2)—  |
|   |                  | (3) There is established the office of the Head of Public Service in the Executive Office of the President which shall be an office in the public service.                       |
|   |                  | (4) The President shall, on the recommendation of the Public Service Commission and with the approval of the National Assembly, appoint the Head of the Public Service.          |
|   |                  | (5) The Head of the Public Service shall serve at the pleasure of the President.   |
|   |                  | (6) The Head of the Public Service shall—  |
|   |                  | (a) support the President in facilitating the organization and execution of Government business;   |
|   |                  | (b) be the administrative head of the Executive Office of the President; and   |

|  |     |   |
|--|-----|---|
|  |     | (c) perform such other functions as may be assigned by the President.   |
|  |     | (7) A person shall be qualified for appointment as the Head of the Public Service if he or she—   |
|  |     | (a) holds a degree from a university recognized in Kenya;   |
|  |     | (b) has at least ten years' proven experience in public administration, leadership or public affairs; and   |
|  |     | (c) meets requirements under Chapter Six of the Constitution.   |
|  | New | Insert the following new section immediately after section 12—  |
|  |     | Chief Administrative Secretaries. <b>12A.</b> (1) There is established the Office of the Chief Administrative Secretary which shall be an office in the public service. |
|  |     | (2) The complement of Chief Administrative secretaries shall be as determined as the Public Service Commission.   |
|  |     | (3) The President shall on the recommendation of the Public Service Commission appoint Chief Administrative Secretaries, observing regional and gender balance.         |
|  |     | (4) A person shall be eligible to be appointed as a Chief Administrative Secretary if that person—  |
|  |     | (a) holds a degree from a university recognized in Kenya;   |
|  |     | (b) has knowledge of and experience in the public service; and  |
|  |     | (c) satisfies the requirements of Chapter Six of the Constitution.  |
|  |     | (5) A person is not qualified to be appointed as a Chief Administrative Secretary if the person—  |
|  |     | (a) has been convicted of an offence carrying a penalty of imprisonment for a term of at least six months without the option of a fine;                                 |
|  |     | (b) has been adjudged bankrupt by a court of competent jurisdiction;  |
|  |     | (c) holds any office in a political party;  |
|  |     | (d) is a public officer; or   |



|  |  |  |   |
|--|--|--|---|
|  |  |  | (e) has been removed from any public office by impeachment or conviction by a court of competent jurisdiction.  |
|  |  |  | (6) A Chief administrative Secretary shall be responsible for—  |
|  |  |  | (a) responding to issues relating to the portfolio assigned to the office;  |
|  |  |  | (b) representing the Cabinet Secretary at any meeting as directed by the Cabinet Secretary; and   |
|  |  |  | (c) performing any other duties assigned by the relevant Cabinet Secretary.   |
|  |  |  | (7) Functions assigned to a Chief Administrative Secretary shall not include matters relating to parliamentary affairs.   |
|  |  |  | (8) Remuneration of the Chief Cabinet Secretaries shall be determined by the Public Service Commission on the recommendation of the Salaries and Remuneration Commission. |

- Rationale:** (1) To amend the provisions governing the nature, functions and qualifications applicable to the post of the Head of Public Service; and  
(2) To streamline the functions of CASs.

