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

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

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

 <b>THE NATIONAL ASSEMBLY PAPERS LTD</b>	
DATE:	12 MAR 2024
	DAY: TUESDAY
TABLED BY:	Hon George Murugara, MP Chairperson, JLAC
CLERK-AT-THE-TABLE:	Inzofu mwale

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

**MARCH 2024**

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In the Matter of the Speaker of the Senate & another [2013] eKLR

## **LIST OF ABBREVIATIONS AND ACRONYMS**

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

## ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

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

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

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## **CHAIRPERSON'S FOREWORD**

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Houses of Parliament (Bicameral Relations) Bill (*National Assembly Bill No. 44 of 2023*) which was published on 28<sup>th</sup> July 2023.

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

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

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

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

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

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

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the COG, CRA, the Judiciary, the KLRC, the National Treasury, the Office of the Leader of the Minority Party of the National Assembly, *Mzalendo* Trust and TI for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Houses of Parliament (Bicameral Relations) Bill (*National Assembly Bill No. 44 of 2023*).

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



## CHAPTER ONE

### 1 PREFACE

#### 1.1 Establishment of the Committee

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

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



## 1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider<sup>1</sup>:-

- a) The Judiciary;
- b) Tribunals;
- c) Access to Justice;
- d) Public prosecutions;
- e) Ethics, Integrity and Anti-corruption;
- f) Correctional services;
- g) Community service orders and witness protection;
- h) Constitutional Affairs;
- i) Sovereign immunity;
- j) Elections including referenda;
- k) Human rights;
- l) Political parties; and
- m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:

- a) State Department of Correctional Services;
- b) State Law Office and Department of Justice;
- c) The Judiciary;
- d) Judicial Service Commission;
- e) Office of the Director of Public Prosecutions;
- f) Ethics and Anti-Corruption Commission;
- g) Independent Electoral and Boundaries Commission;
- h) Commission on Administrative Justice;
- i) Office of the Registrar of Political Parties;
- j) Witness Protection Agency;
- k) Kenya National Commission on Human Rights;

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

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

### 1.3 Committee Membership

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

#### **Chairperson**

Hon. Murugara George Gitonga, MP  
Tharaka Constituency

#### **UDA Party**

#### **Vice-Chairperson**

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

#### **MCCP Party**

#### **Members**

Hon. Maalim Farah, MP  
Dadaab Constituency

#### **WDM-Kenya**

Hon. Francis Kajwang' Tom Joseph, MP  
Ruaraka Constituency

#### **ODM Party**

Hon. Junet Mohamed, CBS, MP  
Suna East Constituency

#### **ODM Party**

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

#### **ODM Party**

Hon. Onyiego Silvanus Osoro, CBS, MP  
South Mugirango Constituency

#### **UDA Party**

Hon. Muchira Michael Mwangi, MP  
Ol Jorok Constituency

#### **UDA Party**

Hon. Makali John Okwisia, MP  
Kanduyi Constituency

#### **FORD-Kenya**

Hon. Muriu Wakili Edward, MP  
Gatanga Constituency

#### **UDA Party**

Hon. Maina Jane Njeri, MP  
Kirinyaga (CWR)

#### **UDA Party**

Hon. Gichohi Kaguchia John Philip, MP  
Mukurweini Constituency

#### **UDA Party**

Hon. Mogaka Stephen M, MP  
West Mugirango Constituency

#### **Jubilee Party**

Hon. Aden Daud, EBS, MP  
Wajir East Constituency

#### **Jubilee Party**

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

#### **Jubilee Party**

#### 1.4 Committee Secretariat

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

Mr. Douglas Katho  
Clerk Assistant I /Head of Secretariat

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

## CHAPTER TWO

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

#### 2.1 Background

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

#### 2.2 Summary of Legal Provisions

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

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

1. In particular, —

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

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

(24) **The First Schedule** provides for the form of the notification of a question arising under Article 110(3) of the Constitution

(25) **The Second Schedule** provides for the Certificate of Joint Resolution.



## CHAPTER THREE

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

#### 3.1 Legal Framework on Public Participation

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

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

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

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

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

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

#### 3.2 Memoranda received on the Bill

10. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Monday 9<sup>th</sup> October 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letters Ref. No. NA/DDC/JLAC/2023/108 and NA/DDC/JLAC/2023/143 dated 31<sup>st</sup> October and 22<sup>nd</sup> November 2023, respectively invited key stakeholders to submit views on the Bill and attend public participation forums on Thursday 9<sup>th</sup> November 2023 and Tuesday 28<sup>th</sup> November 2023.

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

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

## **General**

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

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

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

## **Committee Observation**

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

## **Clause 1**

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

## **Committee Observation**

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

## **Clause 2**

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

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

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

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

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

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

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

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

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

### **Committee Observation**

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

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### **Clause 3**

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

### **Committee Observation**

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

### **Clauses 4 and 5**

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

### **Committee Observation**

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

### **Clause 6**

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

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

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

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

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

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

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

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

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

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

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

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

#### **Committee Observation**

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

#### **Clause 7**

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

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

#### **Committee Observation**

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

#### **Clauses 8, 9 and 10**

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

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

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

#### **Committee Observation**

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

#### **Clause 11**

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

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

#### **Committee Observation**

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

#### **Clause 13**

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

#### **Committee Observation**

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

#### **Clause 14**

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

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

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

#### **Committee Observation**

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

#### **Part V**

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

#### **Committee Observation**

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

#### **Clause 19**

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



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

### **Committee Observation**

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

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## **Clause 20**

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

## **Committee Observation**

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

## CHAPTER FOUR

### 4 COMMITTEE OBSERVATIONS


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

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

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS


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

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

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 MAR 2024	
DAY: TUESDAY	
TABLED BY:	Hon George Murugara, MP
CLERK-AT THE TABLE:	Chairperson, JAC
	Inzoju mwale

## CHAPTER SIX

### 6 SCHEDULE OF AMENDMENTS

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

#### (1) LONG TITLE

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

**Rationale:** To insert a missing word.

#### (2) CLAUSE 1

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

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

#### (3) CLAUSE 3

**THAT** Clause 3 of the Bill be amended—

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

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

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

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

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

**Rationale:** (1) To correct typographical errors; and

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

#### (4) CLAUSE 5

**THAT** Clause 5 of the Bill be amended—

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

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

**(5) CLAUSE 6**

**THAT** Clause 6 of the Bill be amended—

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

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

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

**(6) CLAUSE 10**

**THAT** Clause 10 of the Bill be amended—

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

**Rationale:** To correct typographical errors.

**(7) CLAUSE 11**

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

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

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

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

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

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

**(8) CLAUSE 12**

**THAT** Clause 12 of the Bill be amended—

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

(b) in subclause (3) by—

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

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

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

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

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

**(9) CLAUSE 13**

**THAT** Clause 13 of the Bill be amended—

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

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

**(10) CLAUSE 14**

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

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

**(11) CLAUSE 15**

**THAT** Clause 15 of the Bill be amended—

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

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

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

**(12) CLAUSE 16**

**THAT** Clause 16 of the Bill be amended—

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

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

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

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

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

