

REPUBLIC OF KENYA



Approved
SNA
21/2/24

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

**REPORT ON THE CONSIDERATION OF THE NATIONAL GOVERNMENT
ADMINISTRATION LAWS (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO.
73 OF 2023)**

THE NATIONAL ASSEMBLY PAPERS LTD	
DATE: 21 FEB 2024	DAY: WED
TABLED BY:	Hon George Murugara, mp Chairperson, JLAC
CLERK-AT THE TABLE:	Miriam Mudo

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY 2024

TABLE OF CONTENTS

Table of Contents	1
TABLE OF CASES	2
LIST OF ABBREVIATIONS AND ACRONYMS	3
ANNEXURES	4
CHAIRPERSON'S FOREWORD	5
CHAPTER ONE	7
1 Preface	7
1.1 Establishment of the Committee	7
1.2 Mandate of the Committee	8
Committee Secretariat	11
CHAPTER TWO	12
2 Overview of the National Government Administration Laws (Amendment) Bill (<i>National Assembly Bill No. 73 of 2023</i>)	12
2.1 Background	12
2.2 Summary of Legal Provisions	12
CHAPTER THREE	13
3 Public Participation and Stakeholder Engagement on the Bill	13
3.1 Legal Framework on Public Participation	13
3.2 Memoranda Received on the Bill	13
CHAPTER FOUR	19
4 Committee Observations	19
Minority/Dissenting Opinion on the Proposed Amendments to the National Government Coordination Bill, 2023 to establish the Office of The Chief Administrative Secretary	20
CHAPTER FIVE	21
5 Committee Recommendations	21
CHAPTER SIX	22
6 Schedule of Amendments	22
ANNEXURES	26

TABLE OF CASES

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).

LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Attorney-General
CAS	-	Chief Administrative Secretary
CS	-	Cabinet Secretary
ICT	-	Information, Communication and Technology
JSC	-	Judicial Service Commission
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
NIS	-	National Intelligence Service
OAG	-	Office of the Attorney-General
ODM	-	Orange Democratic Movement
PS	-	Principal Secretary
PSC	-	Public Service Commission
ODPP	-	Office of the Director of Public Prosecutions
SG	-	Solicitor-General
SRC	-	Salaries and Remuneration Commission
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

ANNEXURES

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: National Government Administration Laws (Amendment) Bill, 2023
- Annexure 4: Communication from the Speaker
- Annexure 5: Advertisement inviting the public to submit memoranda on the Bill
- Annexure 6: Letter from the Clerk of the National Assembly inviting stakeholders to submit memoranda on the Bill
- Annexure 7: Letters from the Clerk of the National Assembly inviting stakeholders to attend the public participation forums
- Annexure 8: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

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

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, 7th 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, 9th 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, 12th and Wednesday, 14th February 2024. The memoranda were to be received on or before Thursday, 28th December 2024 on or at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received twenty-one (21) memoranda.

The NIS, the SRC, the Cabinet Office, the Chief of Defence Forces, the State Department for Internal Security and National Administration, the Office of the National Security Advisor, the PSC, the OAG, the Ministry of Public Service, Performance and Delivery Management, the National Treasury, *Mzalendo* Trust, Rebuilding Pastoralist Livelihoods, Innovation Climate Adaptation Kenya, Stephen Lesoron Gambare, Jeremiah Kibet Korir, Mercy Nyambura Mushemi, Francis Habara Moroto, Daniel Kiptum, Joseph Odeph Omulo, Nancy Kariuki and Dennis Matayian Parsanka gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that the proposed amendment to the National Security Council Act, 2012 does not accord with the provisions of Article 240 (2) of the Constitution; the proposal to establish the office of the National Security Advisor is discretionary upon the President and should remain administrative; that there was no satisfactory justification made for transferring the public seal from the custody of the AG to the Head of Public Service; and that the establishment of the office of the CAS is necessary.

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 NIS, the SRC, the Cabinet Office, the Chief of Defence Forces, the State Department for Internal Security and National Administration, the National Security Advisor, the PSC,

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*)

the OAG, the Ministry of Public Service, Performance and Delivery Management, the National Treasury, the *Mzalendo* Trust, Rebuilding Pastoralist Livelihoods, Innovation Climate Adaptation Kenya, Stephen Lesoron Gambare, Jeremiah Kibet Korir, Mercy Nyambura Mushemi, Francis Habara Moroto, Daniel Kiptum, Joseph Odeph Omulo, Nancy Kariuki and Dennis Matayian Parsanka 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 National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*).

It is my pleasure to report that the Committee has considered the National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*) and have the honour to report back to the National Assembly with the recommendation that the House—

- (a) approves the provisions of the Bill relating to the Assumption of Office of the President Act, 2012 with amendments as contained in the Schedule to remove the National Security Advisor as a member of the Assumption of Office of the President Committee;
- (b) delete the provisions of the Bill relating to the National Security Council Act, 2012;
- (c) delete the provisions of the Bill relating to the Office of the Attorney-General Act, 2012; and
- (d) approves the provisions of the Bill relating to the National Government Co-ordination Act, 2013 with amendments contained in the Schedule to remove the establishment of the Head of Public Service and streamline the office of the Chief Administrative Secretary.


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 consider¹:-
 - 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;

¹ National Assembly Standing Orders, 6th Edition.

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

Committee Membership

4. The Committee was constituted by the House on 27th 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. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

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

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

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

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

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

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

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

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

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

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

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

Committee Secretariat

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

Mr. Douglas Katho
Clerk Assistant I /Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Vivienne Ogega
Research Officer III

Mr. Stanley Lagat
Senior Serjeant-At-Arms

Ms. Faith Jully
Public Communication Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Antony Kariuki
Serjeant-At-Arms

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Fridah Ngari
Media Relations Officer III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Peter Mutethia
Audio Officer III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Alex Amwatta
Hansard Reporter III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF THE NATIONAL GOVERNMENT ADMINISTRATION LAWS (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL NO. 73 OF 2023*)

2.1 Background

6. The Bill, which is sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, EGH, MP, was published on Friday, 24th November 2023 and read for a First Time in the House on Wednesday, 6th December 2023. It was thereafter committed to the Committee for review an reporting back to the House in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

7. The Bill seeks to amend—
 - a) Section 5(2) of the Assumption of the Office of the President Act, 2012 to include the National Security Advisor and the PS responsible for defence as members of the Assumption of the Office of the President Committee and increase the nominees of the President-elect within the Committee from three to six members.
 - b) Sections 2, 5 and 7 of the National Security Council Act, 2012 to introduce the Office of the National Security Advisor as the secretary to the National Security Council and to establish a National Security Council Committee.
 - c) Section 28 of the Office of the Attorney General Act, 2012 to replace the AG as the custodian of the public seal with the Head of Public Service.
 - d) Sections 2 and 28 and insert new sections to the National Government Coordination Act, 2013 to establish and delineate the functions of the Head of the Public Service and the office of the CAS.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

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

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

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

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

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

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

3.2 Memoranda Received on the Bill

11. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on 9th December 2023 inviting the public to submit memoranda by way of written statements on the Bill.

12. On 30th January 2024, the Committee vide letters Ref. No. *NA/DDC/JLAC/2024/005, (007), (008), (009), (010), (012), (013), (014), (016), (017)* and *(018)* invited the PS responsible for the State Department for Internal Security and National Administration, the PSC, the Judiciary, the SG, the KLRC, the LSK, Transparency International, *Kituo cha Sheria, Katiba Institute, Uraia Trust* and the PS responsible for the State Department for Public Service respectively to submit views on the Bill and attend the public participation forum on 12th February 2024.

13. Additionally, on 5th February 2024, the Committee vide letters Ref. No. *NA/DDC/JLAC/2024/006, (018), (019), (020), (021), (022), (023), (024), (025), (026)* and *(027)* invited the Secretary to the Cabinet, the PS responsible for the Ministry of Defence, the PS responsible for Immigration and Citizen Service, the PS responsible for Foreign and
Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the National Government Administration Laws (Amendment) Bill (National Assembly Bill No. 73 of 2023)

Diaspora Affairs, the PS responsible for ICT and the Digital Economy, the PS responsible for Culture, the Arts and Heritage, the Chief of Defence Forces, the NIS and the Inspector-General, the Intergovernmental Relations Technical Committee and the National Security Advisor, respectively to submit views on the Bill and attend the public participation forum on 12th February 2024.

14. Furthermore, on 12th February 2024, the Committee vide letters Ref. No. *NA/DDC/JLAC/2024/034, (034), (035) and (036)* invited the National Security Advisor, the PSC, the LSK and the PS responsible for National Treasury and Economic Planning to submit views on the Bill and attend the public participation forum on 14th February 2024.
15. To this end, the Committee received twenty-one (21) memoranda from the NIS, the SRC, the Cabinet Office, the Chief of Defence Forces, the State Department for Internal Security and National Administration, the National Security Advisor, the PSC, the OAG, the Ministry of Public Service, Performance and Delivery Management, the National Treasury, *Mzalendo* Trust, Rebuilding Pastoralist Livelihoods, Innovation Climate Adaptation Kenya, Stephen Lesoron Gambare, Jeremiah Kibet Korir, Mercy Nyambura Mushemi, Francis Habara Moroto, Daniel Kiptum, Joseph Odeph Omulo, Nancy Kariuki and Dennis Matayian Parsanka. The memoranda are annexed to this report as *Annexure 7*.
16. The Committee received memoranda from the Ministry of Public Service, Performance and Delivery Management, Rebuilding Pastoralist Livelihoods, Innovation Climate Adaptation Kenya, Stephen Lesoron Gambare, Jeremiah Kibet Korir, Mercy Nyambura Mushemi, Francis Habara Moroto, Daniel Kiptum, Joseph Odeph Omulo, Nancy Kariuki and Dennis Matayian Parsanka which were largely in agreement with the proposals referred to the Committee. However, the Committee received reservations and proposals from the NIS, the SRC, the Cabinet Office, the Chief of Defence Forces, the State Department for Internal Security and National Administration, the Office of the National Security Advisor, the PSC, the OAG and the National Treasury, and the *Mzalendo* Trust relating to the proposed amendments. They submitted as follows:

The Assumption of Office of the President Act, 2012

17. The PSC proposed that the membership of the Assumption of Office of the President Committee be amended to include the Chairperson of the PSC.

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*)

18. The State Department of Internal Security and National Administration agreed with the proposed amendments to the Act. They proposed further amendments to replace the CS for registration of persons and immigration with the CS of internal security; replace the PS for constitutional affairs with the SG; and replace the PS for local government with the PS for devolution.
19. The Cabinet Office proposed that the membership of the Assumption of Office of the President Committee be amended to remove reference to the PSs in the Ministries of Constitutional Affairs; local government and Cabinet Office.
20. *Mzalendo* Trust proposed the deletion of the amendments while the SRC agreed with the proposed amendment.

Committee Observation

21. The Committee observed that the addition of the National Security Advisor was not necessary. This is because the position of National Security Advisor is not established in any law and an advisor is and should remain a personal staff of the President.
22. The Committee observed that the inclusion of the PS in the State Department for Defence would be necessary since he or she would play a critical role in the Assumption of the Office of the President Committee.
23. The Committee observed that there is need to increase the number of nominees by the President-elect. This would give the President-elect adequate independent representation in the Assumption of the Office of the President Committee.

The National Security Council Act, 2012

24. The PSC submitted that the proposed amendment to Section 5 of the Act should be deleted. They also proposed the deletion of the proposed amendment to Section 7. They submitted the inclusion of further provisions on the Office of the Secretary to the National Security Council to include functions of the office; qualifications for appointment; mode of appointment and tenure of office.
25. The State Department of Internal Security and National Administration agreed with the proposed amendments save for the proposal of having the Secretary of the National Security

- Council being the Secretary to the National Security Council Committee. They also recommended the replacement of the PS for Finance with the PS for National Treasury.
26. The SRC proposed the inclusion of a provision that the remuneration and benefits of the proposed National Security Advisor and members of the proposed National Security Council Committee shall be upon the advice of the SRC.
 27. The Cabinet Office submitted that the Secretary to the Cabinet be included as a member of the National Security Council Committee. They also proposed the deletion of the function of commissioning and preparing reports and briefings in respect of the national security interests of Kenya and the re-drafting of the proposed clause 4 (6) in either singular or plural format.
 28. The Chief of Defence Forces proposed that the Director-General of the Kenya Coast Guard Service be co-opted in the National Security Council Committee.
 29. *Mzalendo* Trust submitted that the proposed amendments to the Act be deleted.

Committee Observation

30. The Committee observed that the establishment and composition of the proposed *National Security Council Committee* did not accord with the provisions of Article 240 of the Constitution. In their view, the membership of the *National Security Council Committee* includes persons who are not members of the National Security Council as outlined under Article 240(2) of the Constitution.
31. The Committee further observed that the position of the National Security Advisor is not provided for in any law and an advisor is and should remain a personal staff of the President. The Committee noted that the designation of the National Security Advisor as the secretary to the National Security Council through statute does not accord with the provisions of Article 240 of the Constitution.

The Office of the Attorney General Act, 2012

32. The State Department for Internal Security and National Administration and the SRC supported the proposal stating that it is logical for the Head of the Public Service, being the administrative head of the Executive Office, be the custodian of the Public Seal.

33. The Cabinet Office noted that the narrative of the public on the public seal appears to suggest a seal in the physical form and contemplated that it may be prudent to consider having a physical and electronic seal. Moreover, it added that the enactment of a separate statute, Public Seal Act, would enable the development of regulations governing the description, design, use, custody, authentication, restriction and display thereof as well as attendant offences.
34. The National Treasury objected the proposal noting that since the Head of Public Service is an appointee of the President and serves at the pleasure of the President, it would be prudent to vest the public seal which is a national symbol in the custody of the AG who is a State officer and is required by Article 156(6) of the Constitution to promote, protect and uphold the rule of law and defend public interest.
35. *Mzalendo* Trust noted that in light of the political and legal ramifications of the proposed amendments, it was essential to have justification and rationale for the proposed amendments as the changes would occasion a transfer of privileges and powers to the Head of Public Service.
36. The PSC proposed the deletion of the amendment to remove the public seal from the custody of the AG.

Committee Observation

37. The Committee observed that there was no satisfactory justification for transferring the public seal from the custody of the AG to the Head of Public Service. This is because the AG is the principal legal advisor to the government and should remain as the custodian of the Public Seal.

The National Government Coordination Act, 2013

38. Stephen Lesoron Gambare proposed amending the definition of 'Chief Administrative Secretary' to "*an officer appointed under Article 132(4)(a) of the Constitution and Section 12A of the Act designated as state officer under Article 260 of the Constitution.*"
39. The State Department for Internal Security and National Administration agreed to the amendments to the Act.

40. The Cabinet Office noted that the Public Seal and instruments of State are symbols of statehood responsible for upholding and representing the sovereignty and identity of a nation thus their existence and maintenance should never be in doubt. It, therefore, proposed the amendment of Section 7(c) to read as follows:

“be the custodian of the Public Seal and any other instruments of State”

41. The SRC submitted that given that the compliment of the CAS would have an impact on the total public wage bill, it was its view that the proposed clause 12A (2) be amended to include the maximum complement for the position of CAS.

42. The OAG noted that the Schedule of the Bill does not indicate the section of the Act being amended to insert the new paragraph (ba) on Head of Public Service and (ca) on CAS. It, therefore, proposed amending the Schedule to indicate the section being amended as Section 7(2) of the Act. Additionally, in respect of the proposed Section 12A(2), it proposed the deletion of the word “of” appearing immediately after the word “Chief” and in the proposed subsection 6(f), deletion of the words “office by”.

43. *Mzalendo* Trust opposed the proposed amendments because they do not align with fundamental constitutional provisions including Articles 10 and 201(d) of the Constitution. Further, the proposal shall occasion an additional expenditure of public finance and, in light of the existing financial strain on the taxpayer, the proposed amendments ought to be informed by a substantial justification and rationale.

Committee Observation

44. The Committee observed that the establishment of the office of the Head of Public Service would create conflict in the public service since the holder of the office would superintend offices which are created under the Constitution. It is the mandate of the PSC to oversee the officers in the public service.

45. The Committee observed that establishment of the office of the CAS was necessary. However, the functions and designation of the office of the CAS would require to be streamlined to avoid conflict of roles with PSs in State Departments. In addition, the complement of the CAS would require to be clearly stated to reflect the constitutional provision on the number of CSs.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

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

- a) Various government agencies submitted conflicting views on the Bill. There was no consensus among government agencies on the contents of the Bill.
- b) That the proposal to amend the National Security Council Act, 2012 does not accord with the provisions of Article 240 (2) of the Constitution. This is because the proposed amendment seeks to establish a standing committee whose members are not members of the National Security Council. The effect of the amendment would be to expand the membership of the Council which would require consideration and passage of an appropriate constitutional amendment. Pursuant to Article 240 of the Constitution, the National Security Council is at liberty to co-opt persons whose knowledge and skills are necessary for the proper performance of its functions into the committees it deems fit. Therefore, the current sections 5 and 7 of the Act are sufficient
- c) The proposal to establish the office of the National Security Advisor is discretionary upon the President and any appointment should remain administrative. Anchoring it in law would take away the discretion given to the President to appoint an advisor.
- d) There is no satisfactory justification for transferring the public seal from the custody of the AG to the Head of Public Service. Since the AG is the principal legal advisor to the government, he or she should remain the custodian of the public seal.
- e) The establishment of the office of the Head of Public Service would create conflict in the public service since the holder of the office would superintend offices which are created under the Constitution. It is the mandate of the PSC to oversee the officers in the public service.
- f) The establishment of the office of the CAS is necessary. However, the functions and designation of the office of the CAS requires to be streamlined to avoid conflict of roles with PSs in State Departments. In addition, the complement of the CAS must be clearly stated to accord with Article 152 of the Constitution which limits the number of CSs.

7/19/23

MINORITY/DISSENTING OPINION ON THE PROPOSED AMENDMENTS TO
THE NATIONAL GOVERNMENT COORDINATION BILL, 2023 TO ESTABLISH
THE OFFICE OF THE CHIEF ADMINISTRATIVE SECRETARY

47. Pursuant to standing order 199(5) and (6) of the National Assembly Standing Orders, the Hon. (Dr.) Otiende Amollo, SC, MP recorded a 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.
48. 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. Establishment of the office was therefore likely to result in 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.
49. 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.**

to approve 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


CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

50. The Committee, having considered the National Government Administration Laws (Amendment) Bill (*National Assembly No. 73 of 2023*), 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..... 21. 2. 024

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

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

52. **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 therefore 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—

Written law	Provision	Amendment	
National Government Co-ordination Act, 2013 (No. 1 of 2013)	s. 2	Insert the following new definition in proper alphabetical sequence— “Chief Administrative Secretary” means a Chief Administrative Secretary appointed under section 12A.	
	7(2)	Insert the following new paragraph immediately after paragraph (c)— “(ca) Chief Administrative Secretary:”	
	New	Insert the following new section immediately after section 12—	
		Chief Administrative Secretaries.	12A. (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 not be more than twenty-two.
			(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: To delete the establishment of the Head of Public Service; streamline the functions of CASS and the maximum complement of CASS.

ANNEXURES

ANNEXURES

