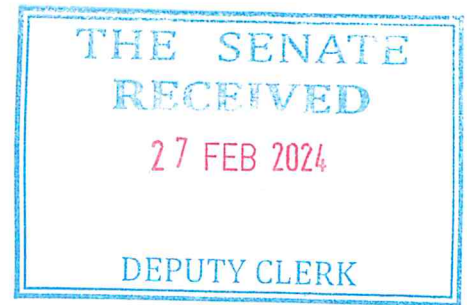


CLERK OF THE SENATE
PARLIAMENT BUILDINGS
P.O. Box 41842 - 00100, NAIROBI
DATE: 28/02/24

Cos
Recommended for
approval for tabling
27/02/2024



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - SECOND SESSION

PAPERS LAID	
DATE	29/02/2024
TABLED BY	Chairperson
COMMITTEE	Devolution & Intergovernmental Relations
CLERK AT THE TABLE	Mr. Polycarp

THE SENATE

Rt. Hon. Speaker
You may approve for tabling:
J.M. Nyegenye, C.B.S.,
Clerk of the Senate/secretary, PSC
Date: 28/02/24

STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

REPORT ON THE COUNTY ASSEMBLY SERVICES (AMENDMENT) BILL,
2023

(SENATE BILLS NO. 34 OF 2023)

Mr. D. Chania, PCA
Please schedule for
tabling tomorrow, 29/02/2024

28/02/2024



Clerk's Chambers,
Parliament Buildings,
NAIROBI.

February, 2024

DC-EG
Forwarded and recommended for approval for tabling
27/02/2024

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LIST OF ABBREVIATIONS/ ACRONYMS

CAF	County Assembly Forum
CASB	The County Assembly Service Board (The Board)
MCAs	Members of County Assembly
SOCATT (K)	The Society of Clerks at the Table

PRELIMINARIES

Mandate of the Committee.

The Senate Standing Committee on Devolution and Intergovernmental Relations is established under the Standing Order 228 (3) and the Fourth Schedule of the Senate Standing Orders. The Committee is mandated to “*consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.*”

Membership of the Committee

1. Sen. Sheikh Mohamed Abass, MP	-	Chairperson
2. Sen. Catherine Muyeka Mumma, MP	-	Vice Chairperson
3. Sen. (Dr) Oburu Oginga, MGH, MP.	-	Member
4. Sen. Richard Momoima Onyonka, EBS, MP	-	Member
5. Sen. Peris Pesi Tobiko, CBS, MP	-	Member
6. Sen. Mohamed Said Chute, MP	-	Member
7. Sen. George Mungai Mbugua, MP	-	Member
8. Sen. Hezena M. Lemaletian, MP	-	Member
9. Sen. David Wafula Wakoli, MP	-	Member

The Minutes of the Sitzings of the Committee in considering the County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023) are attached to this Report collectively as ***Annex 1.***

CHAIRPERSON'S FOREWORD

Mr. Speaker,

The County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023) sponsored by Sen. Mohamed Chute, MP seeks to amend the County Assembly Services Act, No. 24 of 2017 to; Provide for the administrative role of the Clerk of the Assembly as the Secretary of the County Assembly Board; clarify on the procedure for removal of a member of the County Assembly Service Board; provide for a procedure for the suspension of a Clerk of the County Assembly and to set out the pendency of a suspension;

On 22nd June, 2023, the Speaker of the Senate referred, the proposed County Assembly Services (Amendment) Bill, 2023 to the Standing Committee on Devolution and Intergovernmental Relations for pre-publication scrutiny and comments. Pursuant to standing order 130(3)(a) of the Senate Standing Orders, the Committee conducted pre-publication scrutiny of the legislative proposal on Tuesday, 18th July, 2023 and submitted its comments to the Speaker of the Senate.

The Bill was published on 11th August, 2023 and read a first time in the Senate on Thursday, 19th October, 2023. Following the first reading in the Senate, the Bill stood committed to the Standing Committee on Devolution and Intergovernmental Relations for consideration pursuant to standing order 145(1) of the Senate Standing Orders.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. The committee published an advertisement in the Daily Nation and Standard newspapers inviting stakeholders and members of the public to submit any representations that they may have on the Bill by way of written memoranda on or before Wednesday, 22nd November, 2023.

Following advertisement and invitations to stakeholders, the Committee received written memoranda from Mr. Mbaka Omwoyo, The County Assembly Forum (CAF) and The Society of Clerks at the Table (SOCATT (K)).

The Committee thereafter proceeded to consider extensively the provisions of the Bill and the submissions received thereon. Based on its deliberations, the Committee has made various observations which are set out in Chapter Four of this report. The final recommendation by the Committee is that the Senate proceeds to consider and pass the County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023).

Mr. Speaker,

May I take this opportunity to commend the Members of the Standing Committee on Devolution and Intergovernmental Relations for their devotion and commitment to duty, which made the consideration of the Bill successful.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the continued and steadfast support extended to the Committee in undertaking this important assignment. Lastly, I wish to acknowledge and thank the stakeholders who submitted written memoranda and who appeared before the Committee to present their comments on the Bill.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 148 (1), to present the Report of the Standing Committee on Devolution and Intergovernmental Relations on the County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023).

Signed.....

Date.....

**SEN. SHEIKH MOHAMED ABASS, MP
CHAIRPERSON,**

**STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS**

CHAPTER ONE: OVERVIEW OF THE BILL

1.1 Background

1. The County Assembly Services (Amendment) Bill, Senate Bills No. 34 of 2023 is sponsored by Sen. Mohamed Chute, MP. On 22nd June, 2023, the Speaker of the Senate referred, the proposed County Assembly Services (Amendment) Bill, 2023 to the Standing Committee on Devolution and Intergovernmental Relations for pre-publication scrutiny and comments.
2. Pursuant to standing order 131(1) of the Senate Standing Orders, the Standing Committee on Devolution and Intergovernmental Relations, conducted pre-publication scrutiny of the legislative proposal on Tuesday, 18th July, 2023 and submitted its comments to the Speaker of the Senate.
3. The Bill was published on 11th August, 2023 and read a First Time in the Senate on Thursday, 19th October, 2023. Following the first reading in the Senate, the Bill stood committed to the Standing Committee on Devolution and Intergovernmental Relations for consideration in terms of Article 118 of the Constitution as well as standing order 145(5) of the Senate Standing Orders. A copy of the Bill is attached to this Report as **Annex 3**.

1.2 Justification of the Bill

4. The amendment of this act brings uniformity to the County Assembly Service Board (CASB) by mirroring its operations and structure to that of the Parliamentary Service Commission. In addition, the clerk of the County Assembly should perform administrative roles as the secretary of the Board together with the normal procedural functions.
5. There was need for clear guidelines on the procedures for removal of a member of the County Assembly Service Board (The Board) and for the suspension of a Clerk of the

County Assembly. These are not provided for in the act and hence the amendment aims to bring uniformity across all county assemblies.

1.3 Objects of the Bill

6. The purpose of this Bill is to amend the County Assembly Services Act, No. 24 of 2017, in order to:
 - a) Provide for clarity in the process of removal of a member of the County Assembly Service Board;
 - b) Provide for the administrative role of the Clerk of the Assembly as the Secretary of the County Assembly Board;
 - c) Provide for a procedure for the suspension of a Clerk of the County Assembly;
 - d) Provide for the pendency of the said suspension; and
 - e) Ensure that the Clerk of the County Assembly exercises effective control over the staff of the County Assembly.

1.4 Overview of the Bill

7. **Clause 1** of the Bill sets out the short title of the Bill.
8. **Clause 2** seeks to amend Section 3 of the County Assembly Services Act, referred to as “the principal Act” in paragraph (e) by inserting the words “and administrative” immediately after the words “provide for the procedural”. This assigns administrative roles to the Clerk of the assembly.
9. **Clause 3** provides for the procedure of removal of a member of the County Assembly Service Board. Under this clause, Section 10 of the principal Act is amended—
 - a) in subsection (2) by inserting the words “by submitting a petition to the office of the respective Clerk, in the prescribed form” immediately after the words “specified under subsection (1)”;
 - b) by deleting subsection 3 and substituting therefor the following new subsection—
 - (3) Upon receipt of a petition under subsection (2), the Speaker shall report the petition to the Assembly within seven days.
 - c) by inserting the following new subsections immediately after subsection (3)—

- (4) Upon reporting of the petition under subsection (3), the Speaker shall refer the petition to a select committee of the county assembly to investigate the matter.
 - (5) The committee referred to in subsection (4) shall consist of eleven members and shall be established in accordance with the Standing Orders of the respective county assembly.
 - (6) The select committee shall investigate the matter within ten days of the receipt of the petition and report to the assembly whether it finds the allegations against the member of the Board to be substantiated.
 - (7) The member of the Board shall have the right to appear and be represented by an Advocate before the select committee during its investigations.
 - (8) If the Committee find that the allegations against the member are unsubstantiated, no further proceedings shall be taken further proceedings shall not be in respect of that allegation.
 - (9) The assembly shall consider the report of the select committee and resolve whether to approve the motion.
 - (10) If the assembly approves a motion filed under this section, the member of the Board against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved.
 - (11) The Clerk shall inform, in writing, a member who is removed under this section, of the resolution of the county assembly.
10. **Clause 4** is an amendment of section 11 of the principal Act that provides for the functions of the Board. The act is amended in subsection (1) by deleting paragraph (a) and inserting the following new paragraph immediately after paragraph (c) –
- (ca) The Board shall approve the membership of the assembly to any national, regional or international organization.
11. **Clause 5** amends Section 12 of the principal act on the powers of the Board by inserting the following new paragraph after paragraph (c) —

(ca) by resolution, subscribe or join the membership of national, regional or international organizations that promote the well-being of members of the county assembly and undertake programs that promote the ideals of parliamentary democracy.

12. **Clause 6** is an amendment of section 17 on the functions of the secretary of the Board. In subsection (2) the words “chairperson of the Board and the” appearing immediately after the words “responsible to the” are deleted. This makes the secretary only answerable to the Board.

13. **Clause 7** assigns an additional function of the clerk in paragraph (a) by deleting the word “and” appearing immediately after the words “the county assembly;” and;
(b) inserting the following new paragraph after paragraph (a)—
(aa) exercise supervisory control over the staff of the County Assembly; and

14. **Clause 8** provides for the procedure for suspension of a clerk. This is an insertion of a new section immediately after section 22 -

22A. (1) Where the Board considers it necessary to suspend the Clerk under section the Board shall—

- (a) inform the Clerk in writing of the reasons for the suspension;
- (b) invite the Clerk to respond within seven days, in writing, to the reasons set out under paragraph (a);
- (c) invite the Clerk to appear before the Board on a specified date to exculpate himself or herself.

(2) The Board shall not suspend a Clerk under section 22 for a period exceeding six months.

15. **Clause 9** seeks to amend Section 23 of the principal Act —

(a) in subsection (1) –

- i. to correct a mistake by deleting the words “section 20” appearing immediately after the words “the Clerk under” in the introductory phrase and substituting therefor the words “section 22”;
- ii. to give specific timelines by inserting the words “within fourteen days” immediately after the words “allegations in writing” appearing in paragraph (c);

iii. to give specific timelines by inserting the words “within fourteen days of the lapse of the period of response under paragraph (c)” immediately after the words invite the Clerk” appearing in paragraph (d).

(b) in subsection (8) by inserting the words “two thirds of the members of” immediately after the word “if”.

16. **Clause 10** is an amendment of Section 25 of the principal act that provides for the County assembly schemes of service. The following new subsection is inserted immediately after Subsection (1) –

(1A) The County Assembly Service Board shall put in place measures to protect its officers on secondment from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.

(1B) Unless there is an agreement to the contrary, it shall be the responsibility of the Board to pay the salaries, remuneration, allowances and other benefits due to the staff on secondment.

(1C) An employee on secondment shall not lose any of their benefits.

(1D) If for any reason it is not necessary for an officer on secondment to remain seconded and the secondment period has not lapsed, the officer shall be entitled to revert back to the position the public officer held before secondment.

(1E) The Board shall not second an officer of the service without the officer’s consent.

(1F) The Board shall not allow the secondment of an officer unless it has considered representation by the concerned authorized officer or head of department of the officer proposed to be seconded.

1.5 Consequences of the Bill

17. The Bill will clearly outline the procedure for removal of a member of the County Assembly Service Board and further outlines the procedure for suspension of a Clerk of the County Assembly. This will empower the County Assembly Service Board and ensure effective functioning and service delivery by the officers of the Board.

18. The Bill will make the Secretary of the County Assembly Service Board responsible to the Board and not to the Chairperson of the Board. Further, it will enhance the functions of the Clerk of the County Assembly to include exercising supervisory role over the staff of the County Assembly in order to ensure efficient running of the respective legislature.

CHAPTER TWO: OVERVIEW OF PUBLIC PARTICIPATION

2.1 Introduction

19. In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. The committee published an advertisement in the Daily Nation and Standard newspapers inviting stakeholders and members of the public to submit any representations that they may have on the Bill by way of written memoranda on or before Wednesday, 22nd November 2023. A copy of the advertisement is attached as *Annex 4*.
20. In response to the advertisement and invitations, the Committee received written memoranda from;
- a) Mr. Mbaka Omwoyo vide an email dated 8th November, 2023;
 - b) The County Assembly Forum vide a letter dated 22nd November, 2023; and
 - c) The Society of Clerks at the Table (SOCATT (K)) vide an email dated Wednesday, 7th February, 2024.
21. The detailed submissions by stakeholders, organized clause-by-clause, are set out in a matrix attached as *Annex 5*. Additionally, copies of the stakeholder submissions on the Bill are attached collectively as *Annex 6*.

CHAPTER THREE: CLAUSE BY CLAUSE SYNTHESIS OF SUBMISSIONS

22. The following are some of the key issues arising from the stakeholder submissions on the County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023). The matrix on stakeholder engagement and Committee resolution is attached –

Clause 2 : Assigns administrative role to the Clerk of the Assembly

23. The Society of Clerks At the Table (SOCATT (K)) supported the amendment stating that it recognizes the administrative role of the Clerk of a County Assembly

Clause 3 : Procedure for removal of a member of the Board (CASB)

24. SOCATT (K) supported the amendment stating that it provides uniformity in the procedure for removal of a Member of the CASB across the 47 counties, through having a statutory procedure rather than the current uneven provision in each respective Assemblies' Standing Orders.

Clause 4 : An addition to the functions of the Board

25. The County Assemblies Forum (CAF) vehemently opposed the proposed amendment, highlighting that it undermines critical oversight functions of the Board and encroaches upon the democratic rights of Members of County Assemblies (MCAs). They further noted that the suggested changes not only weaken the structure of the County Assembly Service Board but also pose a threat to the constitutional principles that underpin the functioning of County Assemblies across the country. Therefore, CAF strongly urged a reconsideration of these amendments in the interest of upholding democratic values and the effective functioning of County Assemblies.

26. On the same Clause, SOCATT (K) supported the amendment since it streamlines the mandates of the CASB by eliminating overlap of roles shared with other State/Public

Officers. This maintains the CASB role of oversight over the general performance and management of the Assembly.

Clause 5 : Addition to the powers of the Board

27. Similar to clause 4, the County Assemblies Forum vehemently opposed the proposed amendment with the same reason that it undermines critical oversight functions of the Board and encroaches upon the democratic rights of MCAs. Further that the suggested changes not only weaken the structure of the County Assembly Service Board but also pose a threat to the constitutional principles that underpin the functioning of County Assemblies across the country. CAF strongly urged a reconsideration of these amendments in the interest of upholding democratic values and the effective functioning of County Assemblies.
28. On the other hand, SOCATT (K) supported the amendment and proposed to Insert the word “staff” between the words “members and of”. Their rationale was that this clause enables the CASB as a body corporate just like the case of Parliament (sec. 24 of the PSC Act) to enjoin the Assembly into the membership of national, regional or international organizations; this will enhance Intergovernmental relations among County Assemblies and with other Intergovernmental organs at national, regional and international level. This will further strengthen legislative partnership with other legislatures locally, regional level and within the commonwealth. The additional amendment they proposed is to indicate that the programs cater for the welfare of both members and staff of the Assembly.

Clause 6 : Functions of the Secretary of the board

29. County Assemblies Forum opposed the amendment due to several reasons;
 - i. **Altered Reporting Structure:** The amendment in question deletes the phrase "chairperson of the Board and the" from Section 17(2), thereby making the Secretary responsible solely to the Board. This modification fundamentally changes

the reporting structure, eliminating the dual accountability of the Secretary to both the chairperson and the Board.

- ii. **Absence of Oversight:** CAF noted that by eliminating the reporting responsibility to the chairperson, the amendment risks creating a scenario where the Secretary operates without direct oversight from the chairperson. This absence of oversight could lead to potential imbalances and unchecked decision-making within the County Assembly Service Board.
- iii. **Unprecedented Reporting Structure:** Further highlighted that the proposed amendment suggests an unprecedented reporting structure where the Secretary does not answer or report to the Chairperson of the Board. This departure from established norms and practices raises concerns about the effectiveness and efficiency of the County Assembly Service Board.
- iv. **Potential for Unilateral Decision-Making:** The modification places a significant amount of authority in the hands of the Board, potentially allowing for unilateral decision-making without the necessary checks from the chairperson. This concentration of power could have far-reaching implications for the overall governance and functioning of the County Assembly.

30. SOCATT (K) supports the proposed amendment as it emphasizes the CASB role of oversight over the general performance and management of the Assembly.

Clause 7 : Include additional functions of the Clerk

31. SOCATT (K) Supports the proposed amendment stating that it recognizes the function of the Clerk in supervising the staff of the County Assembly, as an important aspect of the Clerks mandate as administrative head of the Assembly. This further serves to support professional ethics within the County Assembly Service similar to administrative function of Clerks of Parliament in section 28 (c) of the PSC Act, 2019

Clause 8 : Procedure for suspending the Clerk of the County Assembly

32. SOCATT (K) supports the proposed amendment noting that this provides a process of suspension of a Clerk of the County Assembly since the Act has not provided one.

Clause 9 : Corrects a mistake in the act and give specific timelines for removal of the Clerk

33. County assemblies Forum opposed the amendment for the following reasons;

- i. **Removal Grounds Undermined:** The amendment in question alters the wording in Section 23(1), replacing "section 20" with "section 22." This modification directly impacts the grounds for the removal of a Clerk as outlined in Section 20. One of these grounds is the Clerk's obligation to operate under the direction of the Speaker, a critical aspect of maintaining the constitutional balance of powers.
- ii. **Weakening Speaker's Authority:** The proposed amendment, by removing the reference to "section 20," weakens the Speaker's authority over the Clerk. This compromises the established hierarchical structure within the County Assembly, where the Speaker plays a central role in directing the Clerk's actions.
- iii. **Constitutional Implications:** The amendment seeks to place the Clerk under the direction of the Board rather than the Speaker, contrary to the constitutional framework that establishes the authority and independence of the County Assembly Speaker.
- iv. **Potential for Unilateral Decision-Making:** The amendment introduces a more detailed process for the removal of the Clerk, involving charges, responses, and a select committee. While transparency is crucial, the changes may open the door to potentially arbitrary actions without sufficient checks and balances.

34. SOCATT (K) supports the proposed amendment as it provides clarity in the procedures and timelines for the removal of a Clerk from office.

Clause 10 : Additional provisions for the Schemes of Service

35. SOCATT (K) supported the proposed amendment stating that it extends labour/employee protections to County Assembly officers being considered for secondment, and during the extent of their secondment. Further, it encourages the movement of staff within the public service without denying them benefits due to them.

Additional Comments

36. The following additional comments and proposals were made by the Stakeholders:

Mbaka Omwoyo

37. Mr. Mbaka Omwoyo proposed that;

- a) Section 23 has protected the clerks not to serve suspension for more than six months. similar clause should be introduced under section 27 to similarly protect other members of staff.
- b) Section 24 of the Principal Act should be amended to clarify how the Board shall establish and abolish offices in a manner similar to the provisions of the Public Service Commission Act.
- c) Section 29 of the Principal Act is not clear. Amend it so as to clarify on through which committee the Staff Advisory Committee should advise the Board.
- d) Section 29 should also be amended to address the mischief whereby the Boards persistently ignore the staff advisory committees, hence rendering them moribund.

Society of Clerks at The Table (SOCATT (K))

38. SOCATT gave the following proposals on further Amendments of the Bill;

- i. Section 28, on the establishment of the County Assembly Management Committee states that; The Board shall establish a committee to be known as the management Committee.

SOCATT Recommended that the Act should establish the Committee, rather than have this as a prerogative of the Board.

Justification: Section 27 which deals with the disciplinary matters of officers and the proposed amendment above will allow for the committee to be responsible for advising the board on such matters provided therein.

CHAPTER FOUR: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS.

4.1 Committee Observations and Resolutions

39. Based on its deliberations on the submissions received, the Committee made the following observations and resolutions;

- i. Under Clause 2, the Committee adopted the amendment to anchor the role of the Clerk in County Public Service Role. The committee noted that it was important to note the role of the Clerk and differentiate his role in the house and his role as the Secretary of the Board.
- ii. Regarding Clause 3, the Committee adopted the amendment to provide for clarity of the procedure of removal of the members of CASB. The committee noted that the procedure on removal of members of CASB had ambiguities and as such needed clarification.
- iii. Under Clause 4, the Committee accepted the proposal by CAF to delete the amendment on grounds that CASB works to facilitate the Assembly but should not be the ultimate decision maker. Thereby rejecting the proposal by SOCATT (K) stating that the role of the Board is not to oversight the Assembly but to facilitate the Assembly.
- iv. The resolution in Clause 4 also applies to Clause 5, where the Committee accepted the proposal by CAF to delete the amendment and rejected the support by SOCATT having a similar reason. The committee noted that CASB has a role to facilitate the house and should be careful not to usurp the role of the Assembly.
- v. Under Clause 6, the Committee rejected the proposal by CAF to delete the amendment stating that the Clerk of the Assembly is the Secretary to the Board and not to the Chairperson hence he should be answerable to the board and not the Chairperson as an individual.
- vi. Under Clause 7 the Committee accepted the proposal on the Bill to anchor the functions of the Secretary to include supervising the staff of the County Assembly.

- vii. Under Clause 8 the Committee accepted the proposal on the Bill to provide for the procedure of removal of the clerk which was not there in the Bill.
 - viii. Regarding Clause 9, the Committee rejected the proposal by CAF to delete the amendment, highlighting that the suspension or removal of the Clerk is provided for under Section 22 of the Principal Act.
 - ix. Clause 10 which was supported by SOCATT (K) was further accepted by the Committee as is in the Bill as the same was meant to protect staff on Secondment not to lose their benefits by virtue of secondment.
40. In general, all other amendments were adopted by the Committee except for the amendment in Clause 4 and Clause 5 which were rejected as they clawed back on the role of the Assembly.

4.2 Committee Recommendations

41. Having considered the County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023) and the submissions received thereon, the Senate Standing Committee on Devolution and Intergovernmental Relations recommends that the Senate passes the Bill, with the proposed amendments.

LIST OF ANNEXURES

Annex 1	Minutes of the Standing Committee on Devolution and Intergovernmental Relations
Annex 2	Letter dated 22 nd June, 2023 by the Speaker of the Senate referring the Bill to the Committee for pre-publication scrutiny.
Annex 3	The County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023)
Annex 4	Advertisement published in the <i>Daily Nation</i> and <i>Standard</i> newspapers.
Annex 5	Matrix of the stakeholder submissions on the Bill received by the Committee on each clause of the Bill.
Annex 6	Copies of stakeholder submissions on the Bill

Annex 1:

***Minutes of the Standing
Committee on Devolution and
Intergovernmental Relations***



MINUTES OF THE NINETY FIRST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON MONDAY, 26TH FEBRUARY, 2024 AT 10 AM.

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. David Wafula Wakoli, MP | - Member |
| 6. Sen. George Mungai Mbugua, MP | - Member |
| 7. Sen. Mohamed Chute, MP | - Member |
| 8. Sen. Hezena Lemaletian, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|----------|
| 1. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
|------------------------------------|----------|

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Ms. Sylvia Nasambu | - Clerk Assistant I |
| 2. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 3. Mr. Walters Omondi | - Legal Counsel II |
| 4. Ms. Mwanamisi Mwachasi | - Research Officer III |
| 5. Ms. Celestine Jepkosgey | - Public Communications Officer |
| 6. Mr. John Lenkampule | - Serjeant-at-Arms |
| 7. Mr. Johnstone Simuyu | - Audio Officer III |

MIN/SEN/DEVIR/460/2024: PRAYER

The meeting was called to order by the Chairperson at 10:08 am followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/461/2024: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Richard Onyonka, EBS, MP and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the Previous Meetings; (5 sets)
4. Consideration of Matters Arising from the Minutes;
5. Consideration of the draft report of the County Governments (Amendment), Bill (Senate Bills No. 25 of 2023);
6. Consideration of submissions from the public on the County Assembly Services (Amendment) Bill, 2023 (Senate Bills No. 34 of 2023);
7. Consideration of matters concerning the proposed removal from office by impeachment of Hon. (Dr.) Robert Monda, Deputy Governor of Kisii County;
8. Any Other Business; and
9. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/462/2024: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

1. The minutes of the eighty-sixth sitting of the Committee held on Thursday, 16th November, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP;
2. The minutes of the eighty-seventh sitting of the Committee held on Monday, 20th November, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. George Mbugua, MP and seconded by Sen. David Wakoli, MP;
3. The minutes of the eighty-eighth sitting of the Committee held on Monday, 27th November, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP;
4. The minutes of the eighty-ninth sitting of the Committee held on Monday 12th February, 2024 were confirmed to be a true record of the proceedings after being proposed by Sen. (Dr.) Oburu Oginga, MGH, MP and seconded by Sen. David Wakoli, MP;
5. The Minutes of the ninetieth sitting that was held on Thursday, 22nd February, 2024 were confirmed to be a true record of the proceedings after being proposed by Sen. (Dr) Oburu Oginga, MGH, MP seconded by Sen. David Wakoli MP;

MIN/SEN/DEVIR/463/2024: **CONSIDERATION OF THE REPORT OF THE**
COUNTY GOVERNMENTS (AMENDMENT),
BILL 2023 (SENATE BILLS NO. 25 OF 2023)

1. The Committee was taken through the County Governments Amendment Bill (Senate Bills No. 25 of 2023) sponsored by Sen. Samson Cherargei, MP. The Bill seeks to amend Section 40 of the County Governments Act, 2012 to increase the threshold for removal of a member of a county executive committee. The Bill increases the threshold for removal of such a member from the required “one-third” of the members of the County Assembly to “two-thirds” of the members of the County Assembly;
2. The Committee observed that the Bill will ensure that a high threshold is met before impeaching a member of the County executive committee. This will safeguard the county executive committee members ensuring that they can carry out their responsibilities without the constant threat of easy impeachment, considering that they manage important public resources. This will ensure the stability and functioning of county governments hence strengthening devolution;
3. The Committee further noted of the submissions received from the County Assemblies Forum and the State Department for Devolution who were the only stakeholders who submitted their views about their Bill;
4. The Committee agreed with the sponsor of the bill that the amendment does not undermine the oversight authority of the County Assembly and that oversight can still be done effectively;
5. Further, the Committee observed that The County Governments Act, 2012 is a county legislation and doesn’t necessarily have to mirror the national legislation, hence the procedure for removal of a county executive committee member by the County Assembly doesn’t have to mirror removal of a Cabinet Secretary by the National Assembly. The Bill mainly aims to ensure the functionality and stability of County governments;
6. After deliberating on the key issues on the report including the submissions received thereon from the public, the Committee recommended that the Senate passes the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) without amendments.

7. Consequently, the Committee unanimously adopted the report as presented.

MIN/SEN/DEVIR/464/2024:

**CONSIDERATION OF SUBMISSIONS FROM
THE PUBLIC ON THE COUNTY ASSEMBLY
SERVICES (AMENDMENT) BILL, 2023
(SENATE BILLS NO. 34 OF 2023)**

1. The Committee considered the Matrix of submissions received from the public on the County Assembly Services (Amendment) Bill, Senate Bills No. 34 of 2023 which is sponsored by Sen. Mohamed Chute, MP. The Bill proposes to provide for a procedure for the suspension of a Clerk of the County Assembly taking into account the principles of fair administration action. The Bill further seeks to ensure that the Clerk of a County Assembly exercises effective control over the staff of the Assembly in order to ensure the efficient running of the respective legislature.
2. The Committee considered every clause that each stakeholder submitted views on indicating the justification for each proposal. The submissions were received from the County Assemblies Forum, Society of Clerks at Table (SOCATT) and Mr. Mbaka Omwoyo;
3. After deliberations, the Committee resolved to support clause 2, 3, 6, 7, 8, 9, and 10. The Committee however rejected proposals on clause 4 and 5 of the Amendment Bill.
4. The Committee unanimously resolved to adopt the report on the Bill.

MIN/SEN/DEVIR/465/2024

**CONSIDERATION OF MATTERS CONCERNING
THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF HON. DR. ROBERT MONDA
DEPUTY GOVERNOR, KISII COUNTY**

1. The Committee deliberated on the proposed removal from office by impeachment of the Deputy Governor for Kisii County by the Members of the County Assembly of Kisii. The Committee noted that the motion for the impeachment of the Deputy Governor had already been tabled in the County Assembly of Kisii.

2. The motion was debated and thereafter, debate was adjourned for public participation on the matter to commence. An advertisement to this effect was also published in the dailies on Thursday, 24th February, 2024.
3. With the foregoing, the Committee resolved not to intervene in the matter and allow the due legal process of the impeachment of a Deputy Governor to take its course;
4. The Committee, however, noted with concern that many other Counties are experiencing similar feuds, with Deputy Governors increasingly reporting frustrations from the Governors.
5. As a measure to cure these wrangles that are curtailing the effective relations between the county organs and weakening Devolution in general, the Members resolved to make the following recommendations to the report of the National Dialogue Committee that is before the Senate -
 - a) there be an established ward fund for all the wards in the country to enable members of the county assemblies to implement development projects and programmes in the wards;
 - b) that Deputy Governors to have specific official duties and responsibilities spelt out in the law; and
 - c) amend the law to grant financial autonomy to County Assemblies so that they do not have to depend on the Executive to utilize and implement the budgets allocated to them.

MIN/SEN/DEVIR/466/2024

ANY OTHER BUSINESS

Invitation to the 2nd Intergovernmental Relations Symposium

The Committee deliberated on the invitation by IGRTC TO attend the 2nd Intergovernmental Relations symposium to be held from 4th - 6th March, 2024 in Naivasha, Nakuru County. However, noting that the House shall be having its plenary sittings during the said days, the Committee resolved not to honor the invitation but plan to hold consultative engagements with IGRTC at a more appropriate time.

MIN/SEN/DEVIR/467/2024

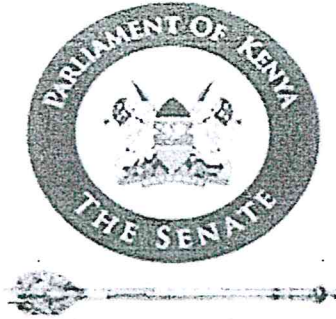
**ADJOURNMENT AND DATE OF NEXT
MEETING.**

The Chairperson adjourned the meeting at 12:35 pm. The next meeting to be held on Thursday, 29th February, 2024.

SIGNED.....

DATE...26/02/2024.

**SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.**



**MINUTES OF THE SEVENTY SEVENTH SITTING OF THE SENATE
STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY 21ST
SEPTEMBER, 2023 IN COMMISSION BOARD ROOM, FIRST FLOOR,
COUNTY HALL, AT 10.00 AM.**

PRESENT

- | | |
|------------------------------------|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. George Mungai Mbugua, MP | - Member |
| 4. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. Mohamed Chute, MP | - Member |
| 5. Sen. Hezena Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Ms. Sylvia Nasambu | - Clerk Assistant I (taking minutes) |
| 2. Ms. Lucianne Limo | - Ag. Chief Media Relations Officer |
| 3. Ms. Yunis Amran | - Fiscal Analyst I |
| 4. Ms. Anne Kigoro | - Research Officer I |
| 5. Mr. Walters Omondi | - Legal Counsel II |
| 6. Ms. Mwanaamisi mwachasi | - Research Officer III |
| 7. Mr. Johnstone Simiyu | - Audio Officer III |
| 8. Mr. John Lekampule | - Serjeant-at-Arms |
| 9. Ms. Celestine Jepkosgey | - Public Communications Officer III |

MIN/SEN/DEVIR/381/2023

PRAYER

The meeting was called to order by the Chairperson at 10:15 am followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/382/2023: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by the Vice Chairperson, Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Meeting with various stakeholders to receive submissions on the County Governments (Amendment) Bill, 2023 (Senate Bills No. 25 of 2023);
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/ 383/2023: RECEIVING OF SUBMISSIONS BY VARIOUS STAKEHOLDERS

The Committee met with representatives of the County Assemblies Forum to receive their views that were, in summary, against the proposed amendments as espoused in the Bill. These are the only stakeholders who honored the invitation to present their memorandum.

Furthermore, the Committee was informed of the following key issues:

1. That the Intergovernmental Relations Technical Committee felt that the proposed amendments concerned intra-governmental relations and therefore had no views (since they deal with intergovernmental relations, that is national government to county government relations);
2. That the State Department of Devolution indicated in their memorandum that they opposed the amendments on the basis of the provisions of Article 191 of the Constitution and Section 40 of the County Governments Act, stating that the current provisions of Section 40 mirror the removal process of Cabinet Secretaries, and therefore should remain as is; and
3. That the Council of Governors were desirous to present their memorandum before the Committee but were unable to appear today, and therefore request for a date after Senate Mashinani.

Following considerations of the deliberations, the Committee resolved to undertake a retreat with all relevant stakeholders on the Bill in order to harmonize their views; and to consider enacting a fresh Bill that additionally considers Speakers and Clerks of County Assemblies.

MIN/SEN/DEVIR/384/2023 ANY OTHER BUSINESS

- a) That the Secretariat should prepare a Statement under Standing order 52(1) for the Chair to issue during Plenary sessions in the Turkana Edition of Senate Mashinani;

- b) That the Secretariat should plan for upcoming meetings and prepare a comprehensive workplan on all upcoming activities; and
- c) That the Senators shall agree on which Members shall travel for the upcoming Committee Foreign Activity.

MIN/SEN/DEVIR/ 385 /2023

ADJOURNMENT AND DATE OF NEXT MEETING.

The Chairperson adjourned the meeting at 10:50 am. The next meeting to be held on notice.

SIGNED.....

DATE..... 30/10/23.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE SIXTY FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON TUESDAY, 18TH JULY, 2023 AT CAUCUS 110, FIRST FLOOR BOARDROOM, AT 12.00 PM

PRESENT

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 3. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 4. Sen. Mohamed Chute, MP | - Member |
| 5. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|--------------------|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 2. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 3. Sen. George Mungai Mbugua, MP | - Member |
| 4. Sen. Hezena Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|--|
| 1. Ms. Lucianne Limo | - Media Relations Officer |
| 2. Mr. Jonathan Lemurut | - Fiscal Analyst I |
| 3. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 4. Mr. Walters Omondi | - Legal Counsel II |
| 5. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 6. Ms. Mwanaamisi mwachasi | - Research Officer III |
| 7. Mr. John Lenkampule | - Serjeant-at-Arms |
| 8. Mr. Elijah Ichwara | - Audio Officer III |

MIN/SEN/DEVIR/320/2023:**PRAYER**

The meeting was called to order at 12:15 pm by the Chairperson followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/321/2023**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as presented after being proposed by Sen. Mohamed Chute, MP and seconded by Sen. (Dr) Oburu Oginga, MGH, MP as follows:

1. Prayer
2. Adoption of the Agenda
3. Confirmation of the Minutes of the Previous Meetings (9 sets)
4. Matters Arising from the Minutes of the Previous Meetings.
5. Consideration of the Legislative Proposal on the County Assembly Service (Amendment) Bill, 2023.
6. Consideration of the Statement sought by Sen. Mohamed Chute, MP concerning the acquisition and distribution of relief supplies by the County Government of Marsabit and neighbouring counties sourced from the Counties' Development Fund.
7. Any Other Business.
8. Date of the Next Meeting and Adjournment

MIN/SEN/DEVIR/322/2023**CONFIRMATION OF THE MINUTES THE
PREVIOUS MEETINGS (9SETS)**

1. The minutes of the meeting that was held on Tuesday, 27th June, 2023 at 10.00 am were confirmed as a true record of the proceedings after being proposed by Sen. Mohamed Chute, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP.
2. The minutes of the meeting that was held on Friday, 27th June, 2023 at 9.00 am were confirmed as a true record of the proceedings after being proposed by Sen. Richard Onyonka, EBS, MP and seconded by Sen. Mohamed Chute, MP.
3. The minutes of the meeting that was held on Friday, 27th June, 2023 at 11.00 am were confirmed as a true record of the proceedings after being proposed by Sen. Mohamed Chute, MP and Sen. Richard Onyonka, EBS, MP.

4. The minutes of the meeting that was held on Tuesday, 4th July, 2023 at 10.00 am were confirmed as a true record of the proceedings after being proposed by Sen. Mohamed Chute, MP and Sen. (Dr) Oburu Oginga, MGH, MP
5. The minutes of the meeting that was held on Thursday, 6th July 2023 at 9.00 am were confirmed as a true record of the proceedings after being proposed by Sen. Mohamed Chute, MP and Sen. (Dr) Oburu Oginga, MGH, MP.

MIN/SEN/DEVIR/323/2023

**MATTERS ARISING FROM THE MINUTES
OF THE PREVIOUS MEETINGS**

Ext/min 312/2023

A query was raised on the plans for the Committee proposed Visit to Kajiado County for inspection of the Kajiado Municipality market. The members were informed that the visit to the County was scheduled for Monday, 24th July, 2023.

MIN/SEN/DEVIR/324/2023

**CONSIDERATION OF THE LEGISLATIVE
PROPOSAL ON THE COUNTY ASSEMBLY
SERVICE (AMENDMENT), BILL 2023**

The Legal Counsel took the members through the brief on the legislative proposal by Sen. Mohamed Chute, MP on the County Assembly Service (Amendment), Bill 2023. He stated that the principal objective of the bill is to;

- a) provide clarity in the process of removal of a member of County Assembly Service Board;
- b) provide for the administrative role of the Clerk of the Assembly;
- c) provide for the procedure for the suspension of the Clerk of County Assembly;
- d) Provide for the pendency of the said suspension; and
- e) To ensure that the Clerk of the County Assembly has effective control of the staff of the County Assembly.

The brief additionally outlined the salient parts of the amendment Bill for all the proposals. The sponsor of the legislative proposal Sen. Mohamed Chute, MP explained to the Committee the proposed bill seeks to;

- a) Empower the County Assembly Service Board to approve the membership of the Assembly to any national, regional or international organization;
- b) Make the secretary of the county Assembly Service Board responsible to the Board and not to the Chairperson of the Board; and
- c) Enhance the functions of the Clerk of the County Assembly to include excising supervisory role over the staff of the county assembly.

He further explained that the rationale for the amendments was to bring normalcy to the to the County Assembly Service Board by mirroring its operations and structures to those of the Parliamentary Service Commission.

Resolution;

After considering the reasoned view of the sponsor of the bill, the Committee unanimously concurred with the legislative proposal and consequently resolved that the Bill proceeds for publication.

MIN/SEN/DEVIR/325/2023:

CONSIDERATION OF THE STATEMENT SOGHT BY SEN. MOHAMED CHUTE, MP CONCERNING THE ACQUISITION AND DISTRIBUTION OF RELIEF SUPPLIES BY THE COUNTY GOVERNMENT OF MARSABIT AND NEIGHBOURING COUNTIES SOURCED FROM COUNTIES' DEVEOPMENT FUND

The Fiscal Analyst took the committee through the brief on the Statement by Sen. Mohamed Chute, MP regarding the acquisition and distribution of relief supplies by the County Government of Marsabit and neighboring counties. The brief reported on the salient issues for noting on the responses submitted on all the concerns raised in the statement by the six counties that were mentioned, namely; Marsabit, Turkana, Mandera, Wajir, Isiolo, and Samburu Counties.

The committee noted with concern that the Counties had purchased the relief supplies using funds that were being sourced from the Counties' Development Fund which is a serious irregularity under the Public Finance Management Act (PFMA). It was further noted that reallocation of these funds is the reason leading to the Counties breaching the 65% -35% expenditure of the PFM Act 2012.

Resolution;

Upon deliberation of the agenda, the Committee resolved to report its findings to the County Public Accounts Committee (CPAC) recommending that the sessional committee investigates the matter and takes the necessary action.

MIN/SEN/DEVIR/326/2023

ANY OTHER BUSSINESS

The committee was informed that the Committee's County Visit to Kajiado County to ascertain the status of the construction of the Kajiado Municipality market, was scheduled for Monday, 24th July, 2023. The Chairperson urged all the Committee members to purpose to participate in the activity.

MIN/SEN/DEVIR/327/2023

ADJOURNMENT AND DATE OF NEXT
MEETING.

The Chairperson adjourned the meeting at 1:35 pm. The next meeting to be held on Monday, 24th July, 2023 in Kajiado County.

SIGNED.....

DATE.....18/09/2023

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.

Annex 2:

**Letter by the Speaker of the
Senate referring the Bill to the
Committee**

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: ssenate@parliament.go.ke



Speaker's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

PARLIAMENT
OFFICE OF THE SPEAKER OF THE SENATE

REF: DLS(S)/GEN. CORR/VOL I/2023/240

22nd June, 2023

Sen. Mohamed Abass, MP,
Chairperson,
Standing Committee on Devolution and Intergovernmental Relations,
NAIROBI.

Dear

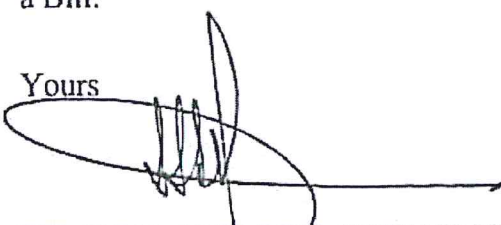
**RE: PRE-PUBLICATION SCRUTINY OF THE COUNTY ASSEMBLY
SERVICES (AMENDMENT) BILL, 2023**

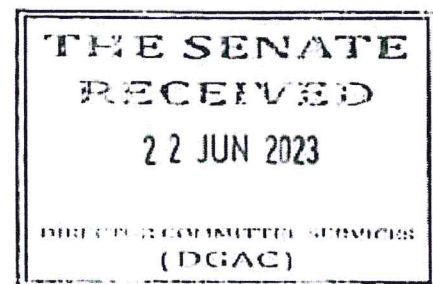
The above refers.

Pursuant to standing order 130(3)(a) of the Senate Standing Orders, I hereby refer to the Standing Committee on Devolution and Intergovernmental Relations, a legislative proposal, the proposed County Assembly Services (Amendment) Bill, 2023, for pre-publication scrutiny and comments by the Committee. The legislative proposal has been drafted by the Directorate of Legal Services on the instructions of Sen. Mohamed Chute, MP.

In terms of standing order 130(3)(a) of the Senate Standing Orders, the Standing Committee on Devolution and Intergovernmental Relations is required to submit its comments to the Speaker within **fourteen days** of the referral of the proposal to the Committee following which the Speaker may, in terms of standing order 131(2) of the Senate Standing Orders, direct that the legislative proposal be accepted and published as a Bill.

Yours


**RT. HON. AMASON JEFFAH KINGI, EGH, MP,
SPEAKER OF THE SENATE.**



Copy to: 1. Sen. Mohamed Chute, MP,
Senator, Marsabit County,
Parliament Buildings,
NAIROBI.

2. ~~Director, Governance and Accountability Committees.~~

HOD - Governance
Kindly send noting timeline
cc C/Asst - Dev
22/06/2023

Annex 3:

**The County Assembly Services
(Amendment) Bill, 2023 (Senate
Bills No. 34 of 2023)**

SPECIAL ISSUE

Kenya Gazette Supplement No. 134 (Senate Bills No. 34)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 11th August, 2023

CONTENT

Bill for Introduction into the Senate—

PAGE

The County Assembly Services (Amendment) Bill, 2023 797

**THE COUNTY ASSEMBLY SERVICES
(AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the County Assembly Services Act; and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the County Assembly Services (Amendment) Act, 2023.

Short title.

2. Section 3 of the County Assembly Services Act, in this Act referred to as “the principal Act” is amended in paragraph (e) by inserting the words “and administrative” immediately after the words “provide for the procedural”.

Amendment of section 3 of No. 24 of 2017.

3. Section 10 of the principal Act is amended—

Amendment of section 10 of No. 24 of 2017.

(a) in subsection (2) by inserting the words “by submitting a petition to the office of the respective Clerk, in the prescribed form” immediately after the words “specified under subsection (1)”;

(b) by deleting subsection 3 and substituting therefor the following new subsection—

(3) Upon receipt of a petition under subsection (2), the Speaker shall report the petition to the Assembly within seven days.

(c) by inserting the following new subsections immediately after subsection (3)—

(4) Upon reporting of the petition under subsection (3), the Speaker shall refer the petition to a select committee of the county assembly to investigate the matter.

(5) The committee referred to in subsection (4) shall consist of eleven members and shall be established in accordance with the Standing Orders of the respective county assembly.

(6) The select committee shall investigate the matter within ten days of the receipt of the petition and report to the assembly whether it finds the allegations against the member of the Board to be substantiated.

(7) The member of the Board shall have the right to appear and be represented by an Advocate before the select committee during its investigations.

(8) If the Committee find that the allegations against the member are unsubstantiated, no further proceedings shall be taken further proceedings shall not be in respect of that allegation.

(9) The assembly shall consider the report of the select committee and resolve whether to approve the motion.

(10) If the assembly approves a motion filed under this section, the member of the Board against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved.

(11) The Clerk shall inform, in writing, a member who is removed under this section, of the resolution of the county assembly.

4. Section 11 of the principal Act is amended in subsection (1)—

Amendment of
section 11 of No.
24 of 2017.

(a) by deleting paragraph (a); and

(b) inserting the following new paragraph immediately after paragraph (c)—

(ca) The Board shall approve the membership of the assembly to any national, regional or international organization.

5. Section 12 of the principal Act is amended by inserting the following new paragraph after paragraph (c)
—

Amendment of
section 12 of No.
24 of 2017.

(ca) by resolution, subscribe or join the membership of national, regional or international organizations that promote the well-being of members of the county assembly and undertake programs that promote the ideals of parliamentary democracy.

6. Section 17 of the principal Act is amended in subsection (2) by deleting the words “chairperson of the

Amendment of
section 17 of No.
24 of 2017.

Board and the” appearing immediately after the words “responsible to the”.

7. Section 19 of the principal Act is amended—

Amendment of section 17 of No. 24 of 2017.

(a) in paragraph (a) by deleting the word “and” appearing immediately after the words “the county assembly;” and;

(b) inserting the following new paragraph after paragraph (a)—

(aa) exercise supervisory control over the staff of the County Assembly; and

8. The principal Act is amended by inserting the following new section immediately after section 22—

Insertion of new section in No. 24 of 2017.

Procedure for suspension of Clerk.

22A. (1) Where the Board considers it necessary to suspend the Clerk under section 22, the Board shall—

(a) inform the Clerk in writing of the reasons for the suspension;

(b) invite the Clerk to respond within seven days, in writing, to the reasons set out under paragraph (a);

(c) invite the Clerk to appear before the Board on a specified date to exculpate himself or herself.

(2) The Board shall not suspend a Clerk under section 22 for a period exceeding six months.

9. Section 23 of the principal Act is amended—

Amendment of section 23 of No. 24 of 2017.

(a) in subsection (1)—

(i) by deleting the words “section 20” appearing immediately after the words “the Clerk under” in the introductory phrase and substituting therefor the words “section 22”;

(ii) by inserting the words “within fourteen days” immediately after the words “allegations in writing” appearing in paragraph (c);

- (iii) by inserting the words “within fourteen days of the lapse of the period of response under paragraph (c)” immediately after the words invite the Clerk” appearing in paragraph (d).
- (b) in subsection (8) by inserting the words “two-thirds of the members of” immediately after the word “if”.

10. Section 25 of the principal Act is amended by inserting the following new subsections immediately after subsection (1)—

Amendment of
section 25 of No.
24 of 2017.

(1A) The County Assembly Service Board shall put in place measures to protect its officers on secondment from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.

(1B) Unless there is an agreement to the contrary, it shall be the responsibility of the Board to pay the salaries, remuneration, allowances and other benefits due to the staff on secondment.

(1C) An employee on secondment shall not lose any of their benefits.

(1D) If for any reason it is not necessary for an officer on secondment to remain seconded and the secondment period has not lapsed, the officer shall be entitled to revert back to the position the public officer held before secondment.

(1E) The Board shall not second an officer of the service without the officer’s consent.

(1F) The Board shall not allow the secondment of an officer unless it has considered representation by the concerned authorized officer or head of department of the officer proposed to be seconded.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The purpose of this Bill is to amend the County Assembly Services Act, No. 24 of 2017 to clarify on the procedure for removal of a member of the County Assembly Service Board. Additionally, the Bill proposes to provide for a procedure for the suspension of a Clerk of the County Assembly taking into account principles of fair administrative action. In this respect, the Bill proposes to set out the pendency of a suspension.

Further, the Bill seeks to ensure that the Clerk of a County Assembly exercises effective control over the staff of the Assembly in order to ensure the efficient running of the respective legislature.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative power nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill proposes amendments to the County Assembly Services Act which provides for the efficient management of county assemblies. Article 176 (1) provides that there shall be a county government for each county comprising of a county assembly and a county executive. The Bill is therefore one that concerns county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 15th June, 2023.

MOHAMED CHUTE,
Senator.

Annex 4:

**Advertisement published in the
Daily Nation and Standard
Newspapers on Wednesday 8th
November, 2023**

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 19th October, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi; or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Wednesday, 22nd November, 2023 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The County Assembly Services (Amendment) Bill, 2023 (Senate Bills No. 34 of 2023)	Standing Committee on Devolution and Intergovernmental Relations.	senate.devolution@parliament.go.ke
b)	The Real Estate Regulation Bill, 2023 (Senate Bills No. 35 of 2023)	Standing Committee on Land, Environment and Natural Resources	landenvironcommittee.senate@parliament.go.ke

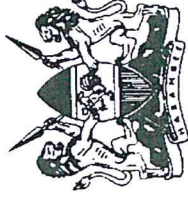
The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Annex 5:

Matrix of Stakeholder
Submissions

THE SENATE



PUBLIC PARTICIPATION MATRIX

THE COUNTY ASSEMBLY SERVICES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 34 OF 2023)

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
Clause 2	SOCATT (K)	Support the amendment	This recognizes the administrative role of the Clerk of a County Assembly	Committee accepted the proposal as contained in the amendment Bill to anchor the role of the Clerk in County Public Service Role.

Clause 3	SOCATT (K)	Support the amendment	This provides uniformity in the procedure for removal of a Member of the CASB across the 47 counties, through having a statutory procedure rather than the current uneven provision in each respective Assemblies' Standing Orders	Committee accepted the proposal as contained in the amendment Bill to provide for clarity of the procedure of removal of the members of CASB
Clause 4	COUNTY ASSEMBLIES FORUM	Delete the amendment	the County Assemblies Forum vehemently opposes the proposed amendment, as it undermines critical oversight functions of the Board and encroaches upon the democratic rights of MCAs. The suggested changes not only weaken the structure of the County Assembly Service Board but also pose a threat to the constitutional principles	Committee accepted the proposal as contained in the amendment Bill on grounds that CASB works to facilitate the Assembly but should not be the ultimate decision maker.

			that underpin the functioning of County Assemblies across the country. CAF strongly urges a reconsideration of these amendments in the interest of upholding democratic values and the effective functioning of County Assemblies.	
	SOCATT (K)		Support the amendment	<p>This streamlines the mandates of the CASB by eliminating overlap of roles shared with other State/Public Officers. This maintains the CASB role of oversight over the general performance and management of the Assembly.</p> <p>Committee rejected the proposal. The role of the Board is not to oversee the Assembly but to facilitate the Assembly</p>
Clause 5	COUNTY ASSEMBLIES FORUM		Delete the amendment	<p>Accepted the proposal on grounds that CASB works to facilitate the Assembly but should not be the ultimate decision</p> <p>the County Assemblies Forum vehemently opposes the proposed amendment, as it undermines critical</p>

			oversight functions of the Board and encroaches upon the democratic rights of MCAs. The suggested changes not only weaken the structure of the County Assembly Service Board but also pose a threat to the constitutional principles that underpin the functioning of County Assemblies across the country. CAF strongly urges a reconsideration of these amendments in the interest of upholding democratic values and the effective functioning of County Assemblies.	maker.
	SOCATT (K)	Support the amendment We propose to add the following:	Enables the CASB as a body corporate just like the case of	Committee rejected the proposal. The role of the

		<p>Insert the word “staff” between the words “members and of”</p>	<p>Parliament (sec. 24 of the PSC Act) to enjoin the Assembly into the membership of national, regional or international organizations; this will enhance Intergovernmental relations among County Assemblies and with other Intergovernmental organs at national, regional and international level.</p> <p>This will further strengthen legislative partnership with other legislatures locally, regional level and within the commonwealth.</p> <p>The additional amendment is to indicate that the programs cater for the welfare of both members and staff of the</p>	<p>Board is not to oversight the Assembly but to facilitate the Assembly</p>
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			Assembly	
<p>Clause 6</p>	<p>COUNTY ASSEMBLIES FORUM</p>	<p>Delete Amendment</p>	<p>1. Altered Reporting Structure: The amendment in question deletes the phrase "chairperson of the Board and the" from Section 17(2), thereby making the Secretary responsible solely to the Board. This modification fundamentally changes the reporting structure, eliminating the dual accountability of the Secretary to both the chairperson and the Board.</p> <p>2. Absence of Oversight:</p>	<p>Committee rejected the proposal. The Clerk of the Assembly is the Secretary to the Board and not to the Chairperson. He should be answerable to the board and not the Chairperson</p>

			<p>By eliminating the reporting responsibility to the chairperson, the amendment risks creating a scenario where the Secretary operates without direct oversight from the chairperson. This absence of oversight could lead to potential imbalances and unchecked decision-making within the County Assembly Service Board.</p> <p>3. Unprecedented Reporting Structure: The proposed amendment suggests an</p>	
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				<p>unprecedented reporting structure where the Secretary does not answer or report to the Chairperson of the Board. This departure from established norms and practices raises concerns about the effectiveness and efficiency of the County Assembly Service Board.</p> <p>4. Potential for Unilateral Decision-Making: The modification places a significant amount of authority in the hands of the Board, potentially allowing for unilateral</p>
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			<p>decision-making without the necessary checks from the chairperson. This concentration of power could have far-reaching implications for the overall governance and functioning of the County Assembly</p>	
	SOCATT (K)	Support the proposed amendment.	<p>This emphasizes the CASB role of oversight over the general performance and management of the Assembly.</p>	Committee accepted the proposal as contained in the amendment Bill
Clause 7		Support the proposed amendment.	<p>This recognizes the function of the Clerk in supervising the staff of the County Assembly,</p>	Committee accepted the proposal as contained in the amendment Bill

				as an important aspect of the Clerks mandate as administrative head of the Assembly. This further serves to support professional ethics within the County Assembly Service similar to administrative function of Clerks of Parliament in section 28 (c) of the PSC Act, 2019	
Clause 8	SOCATT (K)		Support the proposed amendment.	This is to provide a process of suspicion of a Clerk of the County Assembly since the Act has not provided one	Committee accepted the proposal as contained in the amendment Bill
Clause 9	COUNTY ASSEMBLIES FORUM	Delete the Amendment	1. Removal Grounds Undermined: The amendment in		Committee rejected the proposal. Suspension or removal of the Clerk is

			<p>question alters the wording in Section 23(1), replacing "section 20" with "section 22." This modification directly</p> <p>2. impacts the grounds for the removal of a Clerk as outlined in Section 20. One of these grounds is the Clerk's obligation to operate under the direction of the Speaker, a critical aspect of maintaining the constitutional balance of powers.</p> <p>3. Weakening</p>	<p>provided for under Section 22 of the Principal Act.</p>
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				<p>Speaker's Authority:</p> <p>The proposed amendment, by removing the reference to "section 20," weakens the Speaker's authority over the Clerk. This compromises the established hierarchical structure within the County Assembly, where the Speaker plays a central role in directing the Clerk's actions.</p> <p>4. Constitutional Implications: The amendment seeks to</p>
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				place the Clerk under the direction of the Board rather than the Speaker, contrary to the constitutional framework that establishes the authority and independence of the County Assembly Speaker. 5. Potential for Unilateral Decision-Making: The amendment introduces a more detailed process for the removal of the Clerk, involving
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				charges, responses, and a select committee. While transparency is crucial, the changes may open the door to potentially arbitrary actions without sufficient checks and balances.	
	SOCATT (K)	Support the proposed amendment.	The proposed amendments provide clarity in the procedures and timelines for the removal of a Clerk from office.	Committee accepted the proposal as contained in the amendment Bill	
Clause 10	SOCATT (K)	Support the proposed amendment.	This extends labour/employee protections to County Assembly officers being considered for secondment, and during the extent of their	Committee accepted the proposal as contained in the amendment Bill	

			secondment. It encourages the movement of staff within the public service without denying them benefits due to them	
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Other Comments

Mbaka Omwoyo

1. Section 23 as protected the clerks not to serve suspension for more than six months. similar clause should be introduced under section 27 to similarly protect other members of staff.
2. Section 24 of the Principal Act should be amended to clarify how the Board shall establish and abolish offices in a manner similar to the provisions of the Public Service Commission Act.
3. Section 29 of the Principal Act is not clear. Amend it so as to clarify on through which committee the Staff Advisory Committee should advise the Board.
4. Section 29 should also be amended to address the mischief whereby the Boards persistently ignore the staff advisory committees, hence rendering them moribund.

SOCATT (K)

1. Amend Section 28 on Establishment of the Management Committee. They propose the Act should establish the Committee, rather than have this as a prerogative of the Board.

26th February, 2024

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

**RE: COMMITTEE STAGE AMENDMENTS TO THE COUNTY ASSEMBLY
SERVICES (AMENDMENT) BILL, SENATE BILLS NO. 34 OF 2023**

NOTICE is given that Sen. Sheikh Mohamed Abass, MP Chairperson, Standing Committee on Devolution and Intergovernmental Relations intends to move the following amendments to the County Assembly Services (Amendment) Bill, Senate Bills No. 34 of 2023, at the Committee Stage—

CLAUSE 4

THAT the Bill be amended by deleting Clause 4.

CLAUSE 5

THAT the Bill be amended by deleting Clause 5.

Dated.....*26/02/24*.....

[Signature]
Sen. Sheikh Mohamed Abass, MP,
Chairperson,

Standing Committee on Devolution and Intergovernmental Relations.

Annex 6: Copies of Stakeholder Submissions

REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933
Email: communication@countyassembliesforum.org www.countyassembliesforum.org

CAF MEMORANDUM ON THE COUNTY ASSEMBLY SERVICES (AMENDMENT) BILL, 2023 (SENATE BILLS NO.34 OF 2023)

TO: Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate, Parliament of Kenya.

FROM: The County Assemblies Forum.

DATE: 22th November 2023.

SUBJECT: CAF Memorandum on The County Assembly Services (Amendment) Bill, 2023

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that lead to enhance the Strengthening of the devolved system of Governance.

2.0. BACKGROUND

- 2.1. The purpose of this Bill is to amend the County Assembly Services Act, No. 24 of 2017 to clarify on the procedure for removal of a member of the County Assembly Service Board. Additionally, the Bill proposes to provide for a procedure for the suspension of a Clerk of the County Assembly taking into account principles of fair administrative action. In this respect, the Bill proposes to set out the pendency of a suspension.
- 2.2. Further, the Bill seeks to ensure that the Clerk of a County Assembly exercises effective control over the staff of the Assembly in order to ensure the efficient running of the respective legislature.
- 2.3. The Bill affects the powers and functions of the county government and it is therefore a Bill that concerns counties in terms of Article 110 (1) (a) of the Constitution

3.0. GENERAL COMMENTS.

- 3.1. County Assemblies Forum expresses concern over the proposed amendments that shift the oversight of the Clerk of the County Assembly from the Speaker to the County Assembly Public Service Board. The current system, where the Clerk answers to the Speaker, has been effective in ensuring a smooth functioning of the assembly. The proposed change may introduce complexities in the administrative structure and decision-making process.
- 3.2. The Forum acknowledges the need for fair administrative action and procedures for the suspension of clerks. However, the proposed amendments, particularly the involvement of the County Assembly Public Service Board, may inadvertently lead to delays and bureaucratic processes in addressing issues related to clerks' suspension. This could potentially hinder the administrative efficiency of the County Assembly.
- 3.3. The County Assemblies Forum appreciates and recognizes the positive amendments proposed in the County Assembly Services (Amendment) Bill, 2023. Specifically, the clarification of procedures for the removal of members of the County Assembly Service Board is seen as a step towards enhancing transparency and accountability within the assembly.
- 3.4. The County Assemblies Forum urges the Senate to engage in further consultation with relevant stakeholders, including the Speakers of County Assembly, MCAs, and CASB Members to thoroughly assess the potential implications of the proposed amendments. Such consultations will ensure that any changes made align with the practical needs and dynamics of county assemblies while upholding principles of fairness and efficiency.
- 3.5. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

	CLAUSE	AMENDMENT	JUSTIFICATION
1.	<p>Clause 4 of the Amendment Bill</p> <p>“Section 11 of the principal Act is amended in subsection (1)— (a) by deleting paragraph (a); and (b) inserting the following new paragraph immediately after paragraph (c)— (ca) The Board shall approve the membership of the assembly to any national, regional or international organization.”</p> <p>Section 11 (1) (a) of the Principal Act</p> <p>Section 11 of the Principal Act.</p> <p>Functions of the Board (1)</p>	No Amendment	<p>The proposed amendment in Clause 4 of the County Assembly Services (Amendment) Bill, 2023, which seeks to modify Section 11 of the Principal Act, has raised significant concerns for the County Assemblies Forum (CAF). Below is a detailed justification for CAF's vehement opposition to this amendment:</p> <p>1. Weakening Oversight and Supervision</p> <p>Role: The deletion of Section 11(1)(a) in the proposed amendment removes the Board's explicit responsibility to "direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service." This alteration fundamentally weakens the oversight and supervision role of the County Assembly Service Board (the</p>

	<p>The Board shall—</p> <p>(a) direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;</p> <p>(b) determine and review the terms and conditions of service of persons holding or acting in the offices of the Service;</p> <p>(c) initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;</p> <p>(d) initiate programmes—</p>	<p>Board). Empowering the Board to directly supervise the Office of the Clerk of the Assembly and the County Assembly Staff, as well as exercising budgetary control, is essential for the effective functioning of the Board.</p> <p>Justification:</p> <ul style="list-style-type: none"> • The oversight and supervision functions are crucial for ensuring accountability and efficient administration within the County Assembly. • Budgetary control is a key tool for the Board to allocate resources effectively and make informed decisions, contributing to the overall success of the County Assembly. <p>2. Diminishing Representation Power of MCAs: The addition of Section 11(1)(ca), which states, "The Board shall approve the membership of the assembly to any national, regional or international</p>
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	<p>(i) for training and capacity building of members and staff of the county assembly and other persons;</p> <p>(ii) that promote ideals of parliamentary democracy as set out in Article 127 (6)(d) of the Constitution; and</p> <p>(iii) that promote public awareness and participation in the activities of the county assembly; and</p> <p>(e) do such other things as may be necessary for the well-being of the members and staff of the county assembly.</p> <p>(2)</p>	<p>organization," raises serious concerns about diminishing the power of representation vested in Members of County Assembly (MCAs). Granting the Board the authority to approve the assembly's membership to external organizations encroaches upon the autonomy of MCAs in deciding affiliations.</p> <p>Justification:</p> <ul style="list-style-type: none"> • MCAs are elected representatives, and their autonomy in deciding on organizational affiliations reflects the democratic principle of self-determination. • This proposed amendment contradicts the constitutional right of freedom of association, infringing upon the MCAs' ability to independently choose the organizations they wish to join. <p>3. Constitutional Implications: The proposed amendment conflicts with constitutional principles, specifically</p>
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	<p>In the performance of its functions under this Act, the Board shall apply—</p> <p>(a) the national values and principles of governance set out in Article 10 of the Constitution; and</p> <p>(b) the values and principles of public service set out in Article 232(1) of the Constitution.</p>	<p>undermining the values and principles of governance set out in Article 10 of the Constitution and the values and principles of public service outlined in Article 232(1). It jeopardizes the democratic ideals of parliamentary democracy and the constitutional mandate for public servants to uphold the highest standards of integrity and accountability.</p> <p>Justification:</p> <ul style="list-style-type: none"> • The Constitution places a premium on transparency, accountability, and adherence to democratic principles, all of which are at risk with the proposed amendments. • Granting the Board unchecked authority over the assembly's membership to external organizations is contrary to constitutional principles.
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		<p>Conclusion:</p> <p>In summary, the County Assemblies Forum vehemently opposes the proposed amendment in Clause 4 of the County Assembly Services (Amendment) Bill, 2023, as it undermines critical oversight functions of the Board and encroaches upon the democratic rights of MCAs. The suggested changes not only weaken the structure of the County Assembly Service Board but also pose a threat to the constitutional principles that underpin the functioning of County Assemblies across the country. CAF strongly urges a reconsideration of these amendments in the interest of upholding democratic values and the effective functioning of County Assemblies.</p>
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3.	<p>Clause 5 of the Amendment Bill</p> <p>Section 12 of the principal Act is amended by inserting the following new paragraph after paragraph (c)</p> <p>_____</p> <p>(ca) by resolution, subscribe or join the membership of national, regional or international organizations that promote the well-being of members of the county assembly and undertake programs that promote the ideals of parliamentary democracy.</p> <p>Section 12 of the Principal Act</p> <p>Powers of the Board as a body corporate</p> <p>In addition to the powers of the Board under <u>section 12(2)</u> of the</p>	No Amendment	Same concern with this amendment as raised under section 11
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	<p>County Governments Act (No. 17 of 2012), the Board shall have the power to—</p> <p>(a) acquire, hold, charge and dispose of movable and immovable property;</p> <p>(b) sue and be sued;</p> <p>(c) despite the provision of any other written law, establish a pension scheme for officers of the Service and, from time to time, determine—</p> <p>(i) the rates of contribution to the scheme; and</p> <p>(ii) the multiple of the annual</p>		
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	(d)	basic salary for the group life and group personal accident benefits; and do or perform all such other things or acts for the proper discharge of its functions under this Act and any written law, as may lawfully be		
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	done or performed by a body corporate.		
	<p>Clause 6 of the Amendment Bill</p> <p>Section 17 of the principal Act is amended in subsection (2) by deleting the words “chairperson of the Board and the” appearing immediately after the words “responsible to the”.</p> <p>Section 17 of principal act</p> <p>Functions of the Secretary</p> <p>(1) The Secretary shall be—</p> <p>(a) the chief executive officer of the Board;</p>	No Amendment	<p>The proposed amendment in Clause 6 of the County Assembly Services (Amendment) Bill, 2023, which aims to modify Section 17(2) of the Principal Act, has raised significant concerns for the County Assemblies Forum (CAF). Here's a detailed justification for CAF's vehement opposition to this amendment:</p> <p>1. Altered Reporting Structure: The amendment in question deletes the phrase "chairperson of the Board and the" from Section 17(2), thereby making the Secretary responsible solely to the Board. This modification fundamentally changes the reporting structure, eliminating the dual</p>

	<p>(b) the accounting officer of the Board;</p> <p>(c) the administrative head of the Service;</p> <p>(d) the custodian of the Board's records;</p> <p>(e) responsible for—</p> <p>(i) the execution of the decisions of the Board; and</p> <p>(ii) assignment of duties and supervision of the staff of the Board;</p>	<p>accountability of the Secretary to both the chairperson and the Board.</p> <p>Justification:</p> <ul style="list-style-type: none"> • The dual accountability structure is a vital check and balance mechanism, ensuring transparency and preventing the concentration of power within the Board. • Making the Secretary accountable only to the Board diminishes the checks and balances within the organizational hierarchy. <p>2. Absence of Oversight: By eliminating the reporting responsibility to the chairperson, the amendment risks creating a scenario where the Secretary operates without direct oversight from the chairperson. This absence of oversight could lead to potential imbalances and unchecked decision-making within the County Assembly Service Board.</p> <p>Justification:</p> <ul style="list-style-type: none"> • Oversight from the chairperson is
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	<p>(f) the preparation and submission of the programmes necessary for the achievement of the Board's mandate for approval by the Board;</p> <p>(g) causing to be kept records of the proceedings and minutes of the meetings of the Board and such other records as the Board may direct;</p> <p>(h) ensuring staff compliance with public service values, principles</p>		<p>crucial for ensuring that the Secretary's actions align with the overall goals and objectives of the Board.</p> <ul style="list-style-type: none"> Without this oversight, there is a risk of unilateral decision-making that may not be in the best interest of the County Assembly. <p>3. Unprecedented Reporting Structure: The proposed amendment suggests an unprecedented reporting structure where the Secretary does not answer or report to the Chairperson of the Board. This departure from established norms and practices raises concerns about the effectiveness and efficiency of the County Assembly Service Board.</p> <p>Justification:</p> <ul style="list-style-type: none"> Established governance practices often involve a reporting structure where the chief executive or administrative officer reports to both
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	<p>and ethics; and</p> <p>(i) the performance of such other duties as may be assigned by the Board or any other written law.</p> <p>(2) The Secretary shall be responsible to the chairperson of the Board and the Board for the general working and efficient conduct of business of the Service.</p> <p>(3) The Board may delegate to the Secretary such of its functions as are necessary to carry out the day-to-day management of the Service, and subject to such</p>		<p>the board and its chairperson.</p> <ul style="list-style-type: none"> The proposed change deviates from widely accepted governance structures and introduces an unconventional reporting arrangement. <p>4. Potential for Unilateral Decision-Making: The modification places a significant amount of authority in the hands of the Board, potentially allowing for unilateral decision-making without the necessary checks from the chairperson. This concentration of power could have far-reaching implications for the overall governance and functioning of the County Assembly.</p> <p>5. Justification:</p> <ul style="list-style-type: none"> Checks and balances are fundamental to good governance, and the proposed amendment threatens to
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	<p>directions as may be given by the Board.</p> <p>(4) The Secretary may, in consultation with the Board, assign or delegate any of the functions under this section to an employee of the Service.</p>		<p>upset this balance by concentrating power within the Board.</p> <p>The suggested change to the reporting structure poses serious risks to transparency, accountability, and the established norms of governance within County Assemblies. CAF urges reconsideration of this amendment to maintain a robust and balanced reporting structure within the County Assembly Service Board.</p>
<p>Clause 9 of the Amendment Bill</p> <p>Section 23 of the principal Act is amended— (a) in subsection (1)— (i) by deleting the words “section 20” appearing immediately after the words “the Clerk under” in the introductory phrase and substituting therefor the words “section 22”; (ii) by inserting the words “within fourteen days” immediately after the</p>	No Amendment	<p>The proposed amendment in Clause 9 of the County Assembly Services (Amendment) Bill, 2023, which seeks to modify Section 23 of the Principal Act, has drawn strong opposition from the County Assemblies Forum (CAF). Below is a detailed justification for CAF's dissent:</p> <p>1. Removal Grounds Undermined: The amendment in question alters the wording in Section 23(1), replacing "section 20" with "section 22." This modification directly</p>	

	<p>words “allegations in writing” appearing in paragraph (c); (iii) by inserting the words “within fourteen days of the lapse of the period of response under paragraph (c)” immediately after the words “invite the Clerk” appearing in paragraph (d). (b) in subsection (8) by inserting the words “twothirds of the members of” immediately after the word “if”.</p> <p>Section 23 of the principal Act</p> <p>Procedure for removal of the Clerk</p> <p>(1) Where the Board considers it necessary to remove the Clerk under <u>section 20</u>, the Board shall—</p>	<p>impacts the grounds for the removal of a Clerk as outlined in Section 20. One of these grounds is the Clerk's obligation to operate under the direction of the Speaker, a critical aspect of maintaining the constitutional balance of powers.</p> <p>Justification:</p> <ul style="list-style-type: none"> • Removal of the reference to "section 20" eliminates a crucial ground for the Clerk's removal, specifically related to their obligation to follow the Speaker's direction. • This undermines the constitutional authority and powers of the Speaker, as articulated in Article 178 of the Kenyan Constitution (2010). • <p>2. Weakening Speaker's Authority: The proposed amendment, by removing the reference to "section 20," weakens the Speaker's authority over the Clerk. This compromises the established hierarchical</p>
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	<p>(a) frame a charge or charges against the Clerk;</p> <p>(b) forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges;</p> <p>(c) invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself; and</p>	<p>structure within the County Assembly, where the Speaker plays a central role in directing the Clerk's actions.</p> <p>Justification:</p> <ul style="list-style-type: none"> • The Speaker's authority is a constitutional mandate that ensures the smooth functioning of the County Assembly. Weakening this authority may lead to disruptions in the legislative process. • The Speaker's role is not just a matter of convention but is enshrined in the Constitution to maintain the separation of powers. <p>3. Constitutional Implications: The amendment seeks to place the Clerk under the direction of the Board rather than the Speaker, contrary to the constitutional framework that establishes the authority and independence of the County Assembly Speaker.</p> <p>Justification:</p>
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	<p>(d) invite the Clerk to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.</p> <p>(2) If the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the</p>		<ul style="list-style-type: none"> • The Constitution provides a clear framework for the roles and responsibilities of various actors within the County Assembly. The proposed change disrupts this constitutional balance. • Undermining the constitutional authority of the Speaker may lead to conflicts and challenges in the functioning of the County Assembly. <p>4. Potential for Unilateral Decision-Making: The amendment introduces a more detailed process for the removal of the Clerk, involving charges, responses, and a select committee. While transparency is crucial, the changes may open the door to potentially arbitrary actions without sufficient checks and balances.</p> <p>Justification:</p> <ul style="list-style-type: none"> • While enhancing due process is commendable, the specific alterations risk introducing
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	<p>Board shall submit a notice of a motion to the Speaker seeking that the county assembly revokes the appointment of the Clerk.</p> <p>(3) A motion under subsection (1) shall specify—</p> <p>(a) the grounds set out in <u>section 21</u> in which the Clerk is in breach; and</p> <p>(b) the facts constituting that ground.</p> <p>(4) Upon notice of the motion under subsection (2), the Speaker shall refer the matter to a select committee of the assembly consisting of eleven members and established in</p>		<p>complexities that could be exploited for arbitrary actions against the Clerk without adequate safeguards.</p> <p>Conclusion: In conclusion, the County Assemblies Forum strongly opposes the proposed amendment in Clause 9 of the County Assembly Services (Amendment) Bill, 2023. The alteration to Section 23 undermines the constitutional authority of the Speaker and risks upsetting the delicate balance of powers within the County Assembly. CAF calls for a reconsideration of this amendment to ensure that the constitutional framework is preserved, and the Speaker's role is upheld without compromise.</p>
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	<p>accordance with the Standing Orders of the assembly to investigate the matter within ten days of receipt of the motion.</p> <p>(5) The select committee shall, within ten days, report to the assembly whether it finds the allegations against the Clerk to be substantiated.</p> <p>(6) The Clerk shall have the right to appear and be represented before the select committee during its investigations.</p> <p>(7) The assembly shall consider the report of the select committee and resolve whether to approve the motion.</p>		
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	(8) If the assembly approves a motion filed under this section, the Clerk against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved.		
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Thank you.
Yours sincerely,



HON. PHILEMON SABULEI
CHAIRPERSON, CAF



Introduction & Background

The Society of Clerks at the Table in Kenyan County Legislatures - SOCATT (K) is a membership organization of all the County Assembly Services (CAS) across the 47 County Assemblies in Kenya. Our objective is to facilitate the harmonization of procedure and practice while creating platforms that enhance experience sharing, collaboration and networking for the County Assembly Service.

The County Assembly Services appreciate the continuous successful engagements with the Senate, and specifically its Standing Committee of Devolution and Intergovernmental Relations which is mandated to consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments.

General Comments

The principal object of this Bill is to provide stability in the management of County Assemblies through clarification of the procedure for removal of a Member of the County Assembly Service Board; and on the processes of suspension or removal of the Clerk of a County Assembly.

In line with Article 10 of the Constitution (Public Participation), SOCATT(K) appreciates the opportunity to contribute to this Bill and looks forward to the impact of the Bill on the governance and management of County Assemblies by:

- a) Clarifying on the procedure for removal of a member of the County Assembly Service Board;
- b) Providing for the procedure for the suspension or removal of a Clerk of the County Assembly taking into account principles of fair administrative action including the pendency of a suspension; and
- c) Enabling the Clerk of a County Assembly to exercise effective control over the staff of the Assembly for efficient running of the respective legislature.

SOCATT(K) concurs and commends this Amendment Bill as expounded below:



Clause	Current Provision in Bill	SOCATT proposal	Rationale
2 (proposed amendment to section 3(e))	The object and purpose of this Act is to provide for the procedural and administrative functions of the Clerk and his or her functions as the Secretary to the Board	We Support the proposed amendment	This recognizes the administrative role of the Clerk of a County Assembly
3 (proposed amendment to section 10 on procedure for removal of external member of the CASB	<p>(2) Any person may petition the County Assembly for the removal of the member of the Board on the grounds specified under subsection (1) by submitting a petition to the office of the respective Clerk, in the prescribed form.</p> <p>(3) Upon receipt of a petition under subsection (2), the Speaker shall report the petition to the Assembly within seven days.</p> <p>(4) Upon reporting of the petition under subsection (3), the Speaker shall refer the petition to a select committee of the County Assembly to investigate the matter.</p> <p>(5) The committee referred to in subsection (4) shall consist of eleven members and shall be established in accordance with the Standing Orders of the respective County Assembly.</p> <p>(6) The select committee shall investigate the matter within ten days of the receipt of the petition and report to the assembly whether it finds the allegations against the member of the Board to be substantiated.</p> <p>(7) The member of the Board shall have the right to appear and be represented by an Advocate before the select committee during its investigations.</p> <p>(8) If the Committee find that the allegations against the member are unsubstantiated, no further proceedings shall be taken further proceedings shall not be in respect of that allegation.</p> <p>(9) The assembly shall consider the report of the</p>	We Support the proposed amendments	This provides uniformity in the procedure for removal of a Member of the CASB across the 47 counties, through having a statutory procedure rather than the current uneven provision in each respective Assemblies' Standing Orders



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	select committee and resolve whether to approve the motion. (10) If the assembly approves a motion filed under this section, the member of the Board against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved. (11) The Clerk shall inform, in writing, a member who is removed under this section, of the resolution of the County Assembly.		
4 (proposed amendment to section 11(1) on functions of the CASB	The Board shall direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over the Service; The Board shall approve the membership of the assembly to any national, regional or international organization.	We Support the proposed amendments	<p>This streamlines the mandates of the CASB by eliminating overlap of roles shared with other State/Public Officers.</p> <p>This maintains the CASB role of oversight over the general performance and management of the Assembly.</p> <p>By enabling the CASB as a body corporate to enjoin the Assembly into the membership of national, regional or international organizations; this will enhance Intergovernmental relations among County Assemblies and with other Intergovernmental organs at national, regional and international level.</p>
5 (proposed amendment to section 12 on powers of the	In addition to the powers of the Board under section 12(2) of the County Governments Act (No. 17 of 2012), the Board shall have the power to by resolution, subscribe or join the membership of	We Support the proposed amendment.	Enables the CASB as a body corporate just like the case of Parliament (sec. 24 of the PSC Act) to enjoin the Assembly into the



CASB as a body corporate	national, regional or international organizations that promote the well-being of members of the county assembly and undertake programs that promote the ideals of parliamentary democracy.	We propose to add the following: Insert the word "staff" between the words "members and of"	membership of national, regional or international organizations; this will enhance Intergovernmental relations among County Assemblies and with other Intergovernmental organs at national, regional and international level. This will further strengthen legislative partnership with other legislatures locally, regional level and within the commonwealth. The additional amendment is to indicate that the programs cater for the welfare of both members and staff of the Assembly
6 (proposed amendment to section 17 on role of Secretary	The Secretary shall be responsible to the Board for the general working and efficient conduct of business of the Service.	We Support the proposed amendment.	This emphasizes the CASB role of oversight over the general performance and management of the Assembly.
7 (proposed amendment to section 19 on role of the Clerk	In addition to the functions conferred under section 16 as Secretary to the Board, the Clerk shall be the chief administrative officer of the county assembly; (a)(a) exercise supervisory control over the staff of the County Assembly; and	We Support the proposed amendment.	This recognizes the function of the Clerk in supervising the staff of the County Assembly, as an important aspect of the Clerks mandate as administrative head of the Assembly. This further serves to support professional ethics within the County Assembly Service similar to Administrative function of Clerks of Parliament in section 28 (c) of the PSC Act, 2019
8 (inserting new section after	1. Where the Board considers it necessary to suspend the Clerk under section 22, the Board	We Support the proposed	This is to provide a process of suspicion of a Clerk of the County Assembly since the Act has not



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sec. 22 on process of suspension of Clerk	shall- (a) inform the Clerk in writing of the reasons for the suspension; (b) invite the Clerk to respond within seven days, in writing, to the reasons set out under paragraph (a); (c) invite the Clerk to appear before the Board on a specified date to exculpate himself or herself. 2. The Board shall not suspend a Clerk under section 22 for a period exceeding six months	amendment.	provided one
9 (proposed amendment to section 23 on process of removal of the Clerk	Where the Board considers it necessary to remove the Clerk under section 22 , the Board shall-	We Support the proposed amendment.	Corrects the reference to the right section on removal of Clerk as Section 22 not 20
	(1)(c) Where the Board considers it necessary to remove the Clerk under section 22, the Board shall invite the Clerk to respond to the allegations in writing within fourteen days setting out the grounds on which the Clerk relies to exculpate himself or herself; and	We Support the proposed amendment.	The proposed amendments provide clarity in the procedures and timelines for the removal of a Clerk from office.
	(1)(d) Where the Board considers it necessary to remove the Clerk under section 22, the Board shall invite the Clerk within fourteen days of the lapse of the period of response under paragraph (c) to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.	We Support the proposed amendment.	It further provides fairness in the procedure of removal from office of the Clerk, in line with principles of fair administrative action. It also clarifies the threshold of removal of Clerk from office and raises the same so as to provide some stability in the Assembly administration
	(8) If two-thirds of the members of the assembly approves a motion filed under this section, the Clerk against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved.	We Support the proposed amendment.	



10 (proposed amendment to section 25 on the Assembly schemes of service)	1A The County Assembly Service Board shall put in place measures to protect its officers on secondment from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.	We Support the proposed amendment.	This extends labour/employee protections to County Assembly officers being considered for secondment, and during the extent of their secondment. It encourages the movement of staff within the public service without denying them benefits due to them
	1B Unless there is an agreement to the contrary, it shall be the responsibility of the Board to pay the salaries, remuneration, allowances and other benefits due to the staff on secondment.	We Support the proposed amendment.	
	1C An employee on secondment shall not lose any of their benefits.	We Support the proposed amendment.	
	1D If for any reason it is not necessary for an officer on secondment to remain seconded and the secondment period has not lapsed, the officer shall be entitled to revert back to the position the public officer held before secondment.	We Support the proposed amendment.	
	1E The Board shall not second an officer of the service without the officer's consent.	We Support the proposed amendment.	
	1F The Board shall not allow the secondment of an officer unless it has considered representation by the concerned authorized officer or head of department of the officer proposed to be seconded.	We Support the proposed amendment.	

Proposals on further Amendments

Amend the sections on the County Assembly Management Committee as follows:

- 1) **Section 28: Establishment of the Management Committee.**



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The Board shall establish a committee to be known as the management Committee.

Recommendation: The Act should establish the Committee, rather than have this as a prerogative of the Board.

Proposed amendment:

Section 28 be amended to read as follows:

There's established a committee to be known as the Management Committee which shall be responsible for advising the Board on matters relating to functions and powers of the Board under sections 11, 12 and 27.

Justification: Section 27 which deals with the disciplinary matters of officers and the proposed amendment above will allow for the committee to be responsible for advising the board on such matters provided therein.



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Devolution and Intergovernmental Relations <senate.devolution@parliament.go.ke>
to desmondrasugu, me

Colleagues please find this forwarded email for your consideration.

From: Mbaka <mbakaomwoyo@gmail.com>
To: senate <senate.devolution@parliament.go.ke>; clerk <clerk.senate@parliament.go.ke>
Date: Wednesday, 8 November 2023 1:38 PM EAT
Subject: MEMORANDUM ON THE COUNTY ASSEMBLY SERVICES (AMENDMENT) BILL, 2023

The amendments are timely. Kindly consider the following:

1. Section 24 of the Principal Act should be amended to clarify how the Board shall establish and abolish
2. Section 29 of the Principal Act is not clear. Amend it so as to clarify on through which committee the
3. Section 29 should also be amended to address the mischief whereby the Boards persistently ignore
4. Section 23 as protected the clerks not to serve suspension for more than six months. similar clause

Mbaka Omwoyo

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