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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 MAR 2024	DAY: TUESDAY
TABLED BY: Hon George Nung'ara, MP Chairperson, JLAC	
BY: Inzoyi mwale	

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

MARCH 2024

TABLE OF CONTENTS

Table of Contents.....	1
LIST OF ABBREVIATIONS AND ACRONYMS	2
ANNEXURES	3
CHAIRPERSON'S FOREWORD.....	4
CHAPTER ONE.....	6
1 Additional Stakeholder Engagement and Public Participation on the Bill	6
1.1 Legal Framework on Public Participation.....	6
1.2 Memoranda Received on the Bill	6
1.3 Minority/Dissenting Opinion on the Proposed Amendments to the National Government Coordination Bill, 2023 to Establish the Office of the Chief Administrative Secretary	9
CHAPTER TWO.....	11
2 Committee Recommendations	11
CHAPTER THREE	12
3 Schedule of Amendments.....	12
ANNEXURES	16

LIST OF ABBREVIATIONS AND ACRONYMS

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

ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: Memoranda from Stakeholders

CHAIRPERSON'S FOREWORD

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

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

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

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

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


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

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

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

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

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


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

CHAPTER ONE

1 ADDITIONAL STAKEHOLDER ENGAGEMENT AND PUBLIC PARTICIPATION ON THE BILL

1.1 Legal Framework on Public Participation

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

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

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

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

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

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

1.2 Memoranda Received on the Bill

3. The Committee received additional submissions from the PSC. The memorandum is annexed to this report as *Annexure 3*.

4. The PSC submitted memoranda in support of the Bill with some reservations.

National Government Coordination Act, 2013

On the Establishment of the Head of Public Service

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

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

(i) is a citizen of Kenya;

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

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

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

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

“The Head of the Public Service shall –

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

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

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

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

Committee Observation

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

On the Establishment of the Office of the Chief Administrative Secretary

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

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

Committee Observation

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

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

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

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

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

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

CHAPTER TWO

2 COMMITTEE RECOMMENDATIONS

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

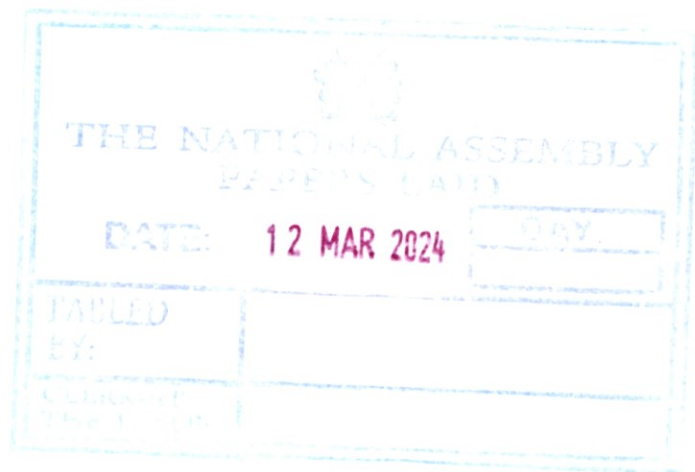
(a) approves the provisions of the Bill relating to the Assumption of Office of the President Act, 2012 and the National Government Co-ordination Act, 2013 with amendments as proposed in the Schedule of Amendments; and

(b) deletes the provisions of the Bill relating to the National Security Council Act, 2012 and the Office of the Attorney-General Act, 2012.

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

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

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER THREE

3 SCHEDULE OF AMENDMENTS

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

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

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

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

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

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

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

Delete paragraph (h);

Delete paragraph (j);

Delete paragraph (t)

s. 5(3) Delete

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

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

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

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

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

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

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

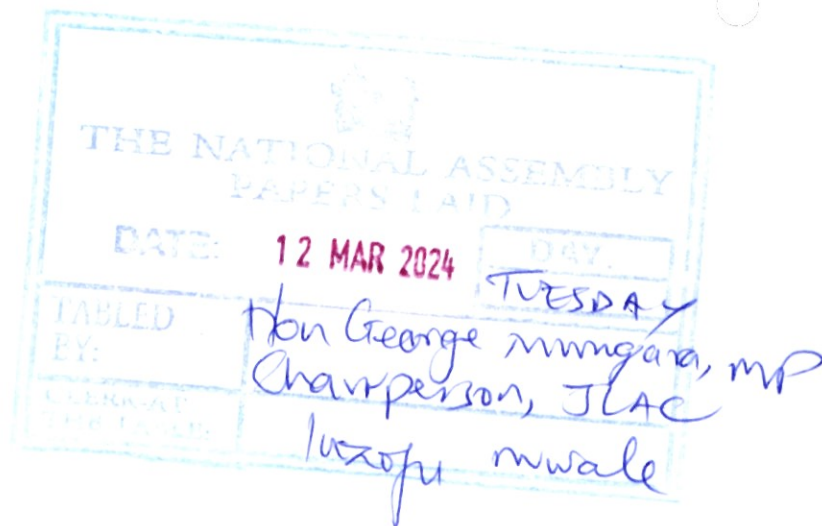
(d) by deleting the proposed amendments to the **National Government Co-ordination Act, 2013 (No. 1 of 2013)** and substituting therefor the following amendments—

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

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

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

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



ANNEXURES

Annexure 1: Adoption Schedule



THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION - 2024
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

AGENDA: Addendum report to the report on the consideration of the National Government Administration Laws (amendment) Bill, 2023 sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, MP

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, CBS, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

Annexure 2: Minutes



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION - 2024
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 23rd SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY 6TH MARCH, 2024 AT 10:00AM IN NG-CDF BOARDROOM, HARAMBEE SACCO PLAZA, PARLIAMENT BUILDINGS

PRESENT

1. Hon. Murugara George Gitonga, EBS, MP - **Chairperson**
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - **Vice- Chairperson**
3. Hon. Onyiego Silvanus Osoro, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Aden Daud, EBS MP
6. Hon. Makali John Okwisia, MP
7. Hon. Gichohi Kaguchia John Philip, MP
8. Hon. Muchira Michael Mwangi, MP
9. Hon. Maina Jane Njeri, MP

APOLOGIES

1. Hon. Maalim Farah, MP
2. Hon. Junet Mohamed, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. Muriu Wakili Edward, MP
5. Hon. Siyad Amina Udgoon, MP
6. Hon. Mogaka Stephen M, MP

SECRETARIAT

1. Mr. Ronald Walala - Senior Legal Counsel
2. Mr. Abdikafar Abdi - Clerk Assistant III
3. Mr. Abdirahim Omar - Fiscal Analyst II
4. Ms. Vivienne Ogega - Research Officer III
5. Mr. Peter Mutethia - Audio Officer III
6. Mr. Calvin Karung'o - Media Relations Officer

7. Ms. Mary Kamande - Public Communications Officer
8. Mr. John Nduaci - Serjeant-at-arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Adoption of the Addendum report on the consideration of the National Government Administration Laws (amendment) Bill, 2023 sponsored by the Majority Leader Hon. Kimani Ichung'wah, MP**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2024/113: PRELIMINARIES

The meeting was called to order at ten o'clock by the Chairperson of the Committee on Justice and Legal Affairs followed by a word of prayer and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2024/114: CONFIRMATION OF MINUTES

The agenda was deferred

MIN.NO/DC/JLAC/2024/115: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Maina Jane Njeri, MP.

MIN.NO/DC/JLAC/2024/116: ADOPTION OF THE ADDENDUM REPORT ON THE CONSIDERATION OF THE NATIONAL GOVERNMENT ADMINISTRATION LAWS (AMENDMENT) BILL, 2023 SPONSORED BY THE MAJORITY LEADER HON. KIMANI ICHUNG'WAH, MP

COMMITTEE OBSERVATIONS

Under National Government Coordination Act, 2013

On the Establishment of the Head of Public Service

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

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

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

Additionally, the PSC stated that the proposed amendment to Section 8(3) be made as a stand-alone Section 8A because it relates to the establishment of the office of the Head of Public Service. The PSC was of the view that the Head of the Public Service should not also be the Chief of Staff to the President since the two offices have different responsibilities and hence should be separate. It also noted that the Chief of Staff is personal and private to the President hence serving in the capacity of a Head of Public Service defeats the public nature of that office. Therefore, it proposed the deletion of Section 8(7)(a) and substitution with the following paragraph:

“The Head of the Public Service shall –

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

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

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

Consequently, the PSC submitted that Section 28 of the Office of the Attorney General Act, 2012 should not be deleted because the Public Seal should remain in the custody of the AG, Chief Legal Advisor to the Government.

The PSC proposed the deletion of Section 8(7)(d) noting that the Act should clearly state the functions of the Office as leaving it open-ended may lead to it being assigned functions already assigned to other bodies by the Constitution or legislation.

Committee Observation

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

On the Establishment of the Office of the Chief Administrative Secretary

The PSC stated that it is in support of the proposed Section 12A(1) as it is in line with its recommendation to the President on the establishment of the Office of CAS in accordance with Article 132(4)(a) of the Constitution.

In view of the fact that the Office of CAS is a senior position in the public service, the PSC proposed the addition of a new sub-clause (c) to Section 12A(4) to provide for years of professional experience as follows:

“has at least ten years relevant professional experience, five years of which should have been in a leadership position or a top management level in the public service or private sector;”

It also submitted that the current sub-clause (c) be amended to be a new sub-clause (d).

The PSC also noted that the proposed role of the CAS in Section 12A(6)(b) will conflict with Section 9(4) of the current Act on the responsibility of a CS. Thus, it proposed that it instead, be amended to provide for liaising with Parliament on behalf of the CS

Committee Observation

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

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

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

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

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

Consequently, the Hon. Member **proposed the deletion of new clause 12A in the provisions of the Bill relating to the National Government Co-ordination Act, 2013.**

The Hon. (Dr.) Otiende Amollo, SC, EBS, MP further noted that the proposal to entrench the Head of the Public Service is in conflict with the Constitution for the following reasons:

- a) The architecture of the Constitution places the PSC, as the head of the public service contrary to the proposal.
- b) The Constitution places clear boundaries between the Executive (political and transitory) and the public service (permanent and non-political). Introducing an office to head the public service, politically appointed, conflates the issues.
- c) Lastly, for purposes of the Executive, the Constitution recognizes the Office of the Secretary to Cabinet. Therefore, introducing a Head of Public Service undermines the Office of the Secretary to the Cabinet.

COMMITTEE RECOMMENDATION

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

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

SCHEDULE OF AMENDMENTS

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

1. THAT the Schedule to the Bill be amended —

- (a) in the proposed amendments to the **Assumption of the Office of the President Act, 2012 (No. 21 of 2012)** by—
 - (i) deleting the proposed new paragraph (ca) appearing in the proposed amendment to section 5(2);

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

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

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

Delete paragraph (h);

Delete paragraph (j);

Delete paragraph (t)

s. 5(3) Delete

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

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

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

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

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

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

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

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

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
National Government Co-ordination Act, 2013 (No. 1 of 2013)	s. 2	Insert the following new definition in proper alphabetical sequence— “Chief Administrative Secretary” means a Chief Administrative Secretary appointed under section 12A.
	s. 7(2)	Insert the following new paragraph immediately after paragraph (c)— “(ca) Chief Administrative Secretary;”
	s. 8	Delete the marginal note and substitute therefor the following new marginal note— “The Executive Office of the President.”
		Add the following new subsections immediately after subsection (2)—
		(3) There is established the office of the Head of Public Service in the Executive Office of the President which shall be an office in the public service.
		(4) The President shall, on the recommendation of the Public Service Commission and with the approval of the National Assembly, appoint the Head of the Public Service.
		(5) The Head of the Public Service shall serve at the pleasure of the President.
		(6) The Head of the Public Service shall—
		(a) support the President in facilitating the organization and execution of Government business;
		(b) be the administrative head of the Executive Office of the President; and
		(c) perform such other functions as may be assigned by the President.
		(7) A person shall be qualified for appointment as the Head of the Public Service if he or she—
		(a) holds a degree from a university recognized in Kenya;
		(b) has at least ten years’ proven experience in public administration, leadership or public affairs; and

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

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

Rationale: (1) To amend the provisions governing the nature, functions and qualifications applicable to the post of the Head of Public Service; and

(2) To streamline the functions of CASSs.

The Report was adopted having been proposed by Hon. Mutuse Eckomas Mwangi, OGW, MP and seconded by Hon. Maina Jane Njeri, MP.

MIN. NO/DC/JLAC/2024/117:

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past twelve o'clock. The next meeting will be held on notice.

SIGNED..........DATE...12.3.024...

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

Annexure 3: Submissions from the PSC and
the Hon. (Dr.) Otiende Amollo,
SC, EBS, MP



PUBLIC SERVICE COMMISSION

Our Ref: PSC/LEG/019/14/158/VII (11)

13th February, 2024

The Chairperson
Departmental Committee on Justice & Legal Affairs
National Assembly
Parliament Building
NAIROBI

**RE: VIEWS ON THE NATIONAL GOVERNMENT ADMINISTRATION
GOVERNMENT LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.
73 OF 2023).**

The Commission is in receipt of the letter dated 30th January, 2024 Ref No: NA/DDC/JLAC/2024/007 and 12th February, 2024 Ref No: NA/DDC/JLAC/2024/034 from the Office of the Clerk of the National Assembly, inviting views on the National Government Administration Laws (Amendment) Bill (National Assembly Bill No. 73 of 2023).

The Commission is grateful to the Committee for acceding to our request for an extension of time to make our submissions.

The views of the Commission are as follows:-

S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
1.	The Assumption of Office of the President Act, 2012 (No. 21 of 2012)	Add a new clause (CC) Chairperson of Public Service Commission	• The President Elect need to be briefed and advised on the structure of Government <i>Why not Secretary</i> ✓
2.	Section 5 of the National Security Council Act, 2012 (No. 23 of 2012)	There should be no amendment to Section 5 of the Act. The provisions of the Act as currently subsisting should remain as is.	• The proposed amendment is unconstitutional as it purports to establish a standing committee with several members who are not members of the National Security Council. The effect of the amendment would be to expand the membership of the Council which cannot be

S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
			<p>done without a constitutional amendment.</p> <ul style="list-style-type: none"> The current provisions of the Act are sufficient to give room for the Council to establish relevant committees as necessary and to co-opt members to the committees. A co-opted member cannot chair a Committee of the Council for this reason, the Head of Public Service, who is not a member of the National Security Council under Article 240 of the Constitution, cannot be made the chairperson of a committee of the Council through legislation as the same would be unconstitutional.
3.	National Security Advisor 7	delete	<ul style="list-style-type: none"> Appointments of advisors are at the discretion of the State Officer requesting based on the kind of advisory that is required. Each administration determines the kind of advisors it requires. Legislating the position of an advisors would tie the hands of subsequent administrations as they would be bound to appoint the legislated advisors which may not be necessary for them at the time. Legislation should not provide for the position of specific advisors as the President should have free hand to determine the kind of advisors he requires.

S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
			<ul style="list-style-type: none"> • Legislating this position will open up a pandorax box as other persons holding positions of advisors may also seek to amend various laws to establish the positions of advisors. • Clause 7(4) of the Bill as proposed conflicts with Article 240(5) of the Constitution, which requires the appointment of the Secretary to the National Security Council to be done by the Council. • We however propose that Clause 7 of the Bill be deleted, and in its place, provisions on the office of the Secretary to the National Security Council be made. The same should also include qualifications for appointment to the said position, the functions of the office, (which may include being an advisor to the Council) the tenure for holding the office, and the mode of appointment pursuant to Article 240(5) of the Constitution of Kenya, 2010. The appointment should be subject to approval by National Assembly.
4	Section 8 - of National Government Co-ordination Act, 2013(No 1 of 2013)	<p>add a new sub clause as follows:</p> <p>(2) A person is eligible for appointment as Head of Public Service if the person—</p>	<ul style="list-style-type: none"> • Being an Office in the public service, qualification should be included and the appointment be done on recommendation from the Public Service Commission

S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
		<ul style="list-style-type: none"> <li data-bbox="683 255 938 331">(i) Is a citizen of Kenya; <li data-bbox="683 344 1043 510">(ii) holds a degree from a university recognized in Kenya; <li data-bbox="683 524 1043 958">(iii) has at least fifteen years relevant professional experience, ten years of which should have been in a leadership position or at a top management level in the public service; <li data-bbox="683 972 1011 1160">(iv) possesses general knowledge of the organization and functions of Government; <li data-bbox="683 1173 1027 1397">(v) demonstrates an understanding of the goals, policies and developmental objectives of the nation; <li data-bbox="683 1411 1011 1756">(vi) has demonstrable leadership and management capacity including knowledge of financial management and strategic people management; and <li data-bbox="683 1769 1011 1926">(vii) meets the requirements of Chapter Six of the Constitution. 	<p data-bbox="1139 246 1490 322">and subjected to parliamentary approval</p>

S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
		<ul style="list-style-type: none"> The President shall appoint the Head of the Public Service on recommendation from the Public Service Commission; subject to parliamentary approval 	
5.	Section 8 (3)	<ul style="list-style-type: none"> This should be made as stand-alone section, section 8A 	<ul style="list-style-type: none"> This establishes the Office of the Head of Public Service and its should be a section on its own
6.	Section 8(7) (a)	<ul style="list-style-type: none"> Delete and add a new clause (7) to read as follows; <p>The Head of the Public Service shall</p> <ul style="list-style-type: none"> (a) be the administrative head of the Executive Office of the President; (b) be the custodian of the presidential Seal; (c) transmit Executive Directives, Orders and Presidential Proclamations to Ministries, State Organs, State Departments and State Agencies for their information, implementation or other action. (d) perform such other function ancillary to the functions provided in this section as may be assigned by the President. 	<ul style="list-style-type: none"> Under Section 8(3) and 8(7)(a), the Head of Public Service should not be the Chief of staff to the President as well. The two offices should be separate as they carry different responsibilities. The Chief of staff is personal and private to the President hence serving in that capacity defeats the public nature of the office of Head of Public Service. The functions of the Head of Public Service should be specifically stated in legislation to avoid an overlap of functions that sometime arises from functions assigned to the office through Executive Orders.
	Section 8(7)(c)	<ul style="list-style-type: none"> delete 	<ul style="list-style-type: none"> Considering the fact that the Public Seal is a national symbol as per Article 9 of the Constitution, the same should not be placed under the

S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
			<p>custody of the Head of Public Service who shall be serving at the President's discretion. This in turn takes away the approval that is required from the Attorney General before the seal is affixed on important Government documents for their authentication.</p> <ul style="list-style-type: none"> • There should also be clarification on the difference between the Presidential seal and the Public seal. Seeing as the Head of Public Service shall serve as the administrative head of the Executive Office of the President. It is our view therefore that the Head of Public Service should be the custodian of the Presidential seal as envisaged by Article 135 of the Constitution of Kenya, 2010 and not the Public Seal.
	Section 8(7)(d)	<ul style="list-style-type: none"> • delete 	<ul style="list-style-type: none"> • The Act should clearly state the functions of the Office, leaving it open-ended may lead to the Office being assigned functions assigned to other bodies by the Constitution or Legislation
7.	Section 12A(1)		<ul style="list-style-type: none"> • With regard to establishing the office of Chief Administrative Secretary, the Commission does not oppose the same as it is in line with the Commission's recommendation to the President on the establishment of the Office of Chief Administrative Secretary. The said recommendation was issued pursuant to Article 132(4)(a) of the Constitution of Kenya.

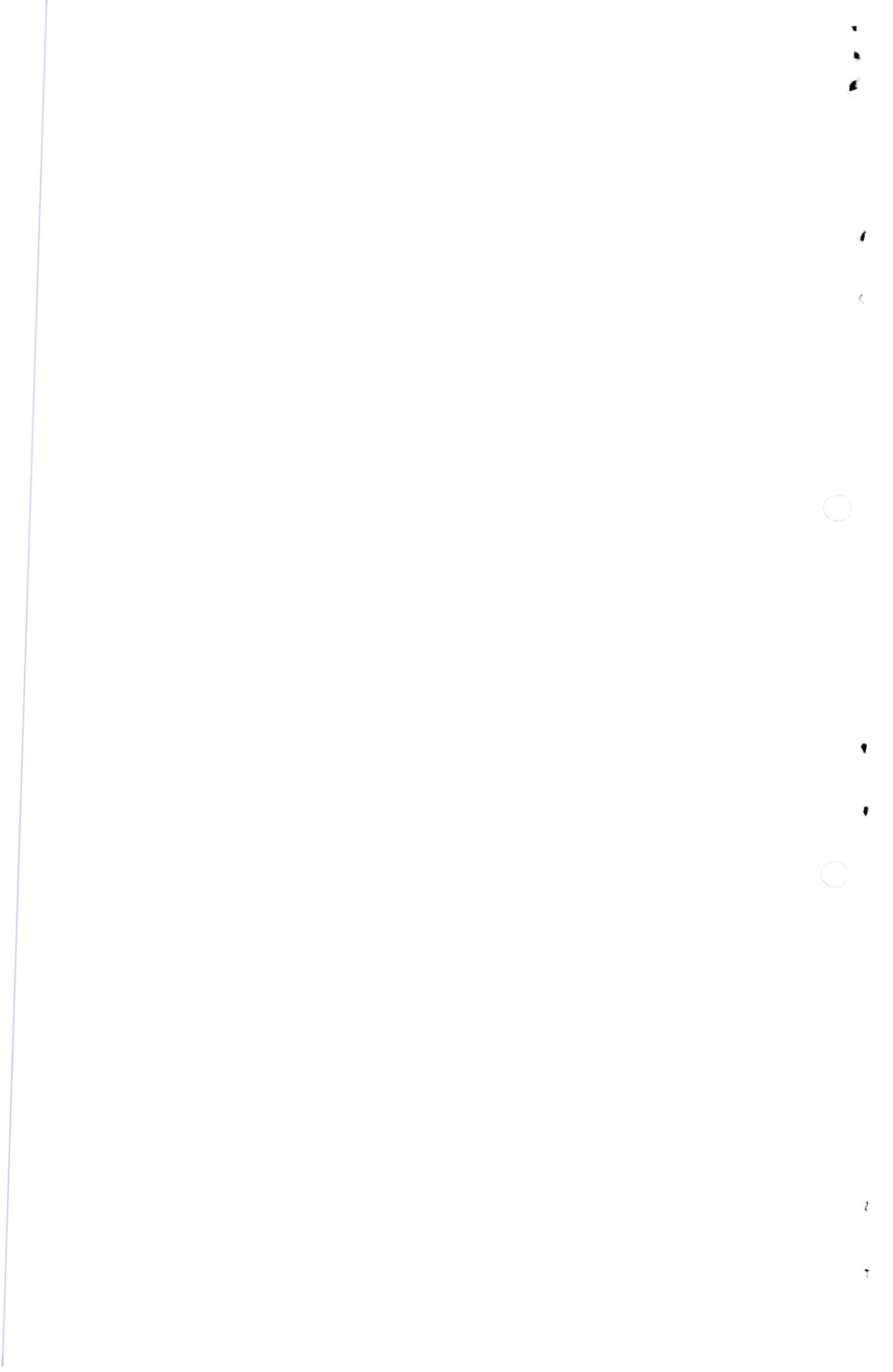
S/No	CLAUSE	PROPOSED AMENDMENT	REMARKS
8.	Section 12 A (4)	<p>Add a new sub clause(c) to read as follows:</p> <p>has at least ten years relevant professional experience, five years of which should have been in a leadership position or at a top management level in the public service or private sector;</p> <ul style="list-style-type: none"> Subclause (c) be amended to be a new sub-clause (d) 	<ul style="list-style-type: none"> There is need to provide for years of professional experience in view of the fact that this is a senior position in the public service.
9.	Section 12A(6)(b)	<ul style="list-style-type: none"> Liasing with parliament on behalf of the Cabinet Secretary 	<ul style="list-style-type: none"> The proposed role of Chief Administrative Secretary will be in conflict with Section 9(4) of the current Act on the responsibility of a Cabinet Secretary.
10.	Section 28 The Office of the Attorney-General Act (No 49 of 2012)	<ul style="list-style-type: none"> Do not delete 	<ul style="list-style-type: none"> As indicated in 6 above. The public seal should remain with the Chief Legal Advisor to the Government, who is the Attorney-General.

Thank you for the opportunity to present the Commission views on the Bill.



ANTHONY M. MUCHIRI (AMB)
CHAIRPERSON

Copy to: Clerk to the National Assembly
P O Box 41842 – 00100
Main Parliament Buildings
NAIROBI





REPUBLIC OF KENYA
PARLIAMENT

Hon. Dr. Otiende Amollo, S.C., E.B.S., MP.

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6th March, 2024

To

The Rt. Hon. (Dr.) Moses M. Wetang'ula EGH, MP

Speaker of the National Assembly

Main Parliament Buildings

NAIROBI.

VERY
URGENT

"Delivered by Hand"

Dear *Hon Speaker,*

RE: OBJECTION TO THE REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSIDERATION OF THE NATIONAL GOVERNMENT ADMINISTRATION LAWS (AMMENDMENT) BILL, 2023

Kindly receive warm greetings from the good people of Rarieda Constituency and myself as their elected Representative.

Honourable Speaker, I am writing to register my formal objection to the Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the National Government Administration Laws (Amendment) Bill (*National Assembly Bill No. 73 of 2023*), as tabled on February 21st, 2024, as well as to the Committee's decision to exclude the Minority Opinion from the final report.

Honourable Speaker, during the Committee's deliberations, I clearly indicated the need to capture the Minority/Dissenting Opinion within the report as per the established procedures as was done in the draft of the report. However, the final report tabled to the House for consideration inexplicably omitted this crucial

section. Honourable Speaker, excluding Minority/Dissenting Opinion not only undermines democratic process and prevents a full and transparent view of the Committee's work, it also deprives the House of a comprehensive understanding of the issues at stake thereby hindering informed debate.

During the Committee's discussions I raised the following points, which became the Minority Opinion:

1.

- a) That the functions ascribed to the office of the Cabinet Administrative Secretaries (CAS) are a duplication of those already assigned to Cabinet Secretaries and Principal Secretaries. Establishment of the office was therefore likely to result a conflict of roles.
- b) That, having been a member of the Committee of Experts on Constitutional Review and having undertaken public participation around the country, it was my view that Kenyans intended to do away with the position of Assistant Ministers. The office of the CAS is akin to that of Assistant Ministers thus, the proposal offends the spirit of the Constitution of Kenya and the will of the Kenyan people.
- c) That even the courts have pronounced themselves on the unconstitutionality of the office of the CAS as was determined in *Matindi & 3 others v The National Assembly of Kenya & 4 others; Controller of Budget & 50 others (Interested Parties) (Petition E080, E084 & E150 of 2023 (Consolidated)) [2023] KEHC 19534 (KLR) (Constitutional and Human Rights) (3 July 2023) (Judgment) (with dissent - HI Ong'udi, J)*
- d) That the Constitution under Article 152(1)(d) limits the number of Cabinet Secretaries to Twenty-Two (22). Consequently, the proposal to introduce an uncapped number of CASs is indeed an affront to the Constitution and would occasion additional expense on public finances and pose an unnecessary burden on Kenyan taxpayers.

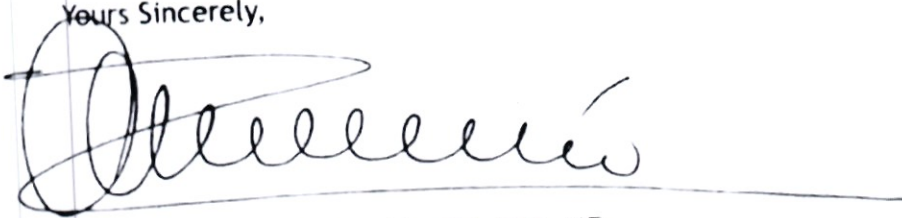
2. In respect of the proposal to entrench the Office of the Head of Public Service, I made the following observations:

- a) The architecture of the Constitution places a Commission, the Public Service Commission, as the head of the Public Service. The idea of introducing an individual as the head of public service therefore runs contrary to the Constitution
- b) The Constitution places clear boundaries between the Executive (political and transitory), and the Public Service (permanent and non-political). Introducing an office to head the public service, politically appointed, conflates the issues.
- c) For purposes of the Executive, the Constitution recognizes the Office of Secretary to the Cabinet. Introducing a Head of Public Service undermines the Office of Secretary to the Cabinet.

Therefore, Honourable Speaker, I kindly request your intervention to ensure that the points outlined above be shared with all Members of the House when the Bill is brought forward for Second Reading.

I look forward to your consideration and assure you of my highest regards.

Yours Sincerely,

A handwritten signature in black ink, consisting of a large initial 'O' followed by a series of loops and a long horizontal stroke extending to the right.

Hon. (Dr.) Otiende Amollo, SC, EBS, MP

RARIEDA CONSTITUENCY.

CC:

Hon. George Gitonga Murugara, HSC, MP
Chairperson
Departmental Committee on Justice and Legal Affairs
The National Assembly

