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Rt. Hon. Speaker*
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J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 09/05/24

Eg 09/05/2024

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS

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



09/05/24

PAPERS LAID	
DATE	14/05/2024
TABLED BY	Committee Chair
COMMITTEE	JLAHRC
CLERK AT THE TABLE	Ms. Cherop

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

May, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

CoE -- The Committee of Experts

eKLR -- Electronic Kenya Law Reports

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 228 of the Senate Standing Orders and is mandated *'to consider all matters relating to constitutional affairs, the organisation and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights'*.

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Ali Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica Maina, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

Minutes of the Committee in considering the Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) are attached to this Report as *Annex 1*.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) seeks to provide for how joint resolutions of questions relating to the nature of bills under Article 110(3) are to be made, as well as how disagreements arising between the two Houses of Parliament are to be dealt with. The Bill also deals with matters relating to co-sponsorship of Bills and conduct of joint proceedings, including joint sittings of the Houses, joint committees, and mediation committees. It is therefore a key legislation that affects the conduct of core legislative business in and relations between the two Houses of Parliament.

The subject Bill was published on 28th July, 2023 and introduced in the National Assembly on 17th August, 2023. It was considered by the National Assembly and passed, with amendments, on 21st March, 2024, following which it was referred to the Senate for its consideration. In the Senate, the Bill was read a First Time on 28th March, 2024, and stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

Honourable Speaker,

Pursuant to 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. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* Newspapers on Tuesday, 2nd April, 2024 inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Following this call, the Committee did not receive any comments from stakeholders and members of the public.

Honourable Speaker,

The Committee proceeded to consider the Bill at length, which informed its observations and recommendation and set out at Chapters Three and Four, respectively, of this Report.

In summary, the Committee observed that –

- a) the Bill seeks to fundamentally restrict the legislative and representative mandate of the Senate as provided at Articles 94, 96, 109, 110, 112 and 114 of the Constitution;
- b) the Bill violates the Constitution by derogating from provisions of the Constitution and judicial pronouncements on the procedure for introduction and processing of legislation in the two Houses of Parliament;
- c) the Bill violates Article 118 of the Constitution by proposing that a Committee of the Second House of Parliament can elect not to conduct public participation on account

- of public participation conducted by a Committee of the other House of Parliament;
and
- d) the Bill further contains provisions that seek to restrict access to judicial intervention, as well as punish state and public officers by introducing fetters and punitive measures to officers who would be deemed to have advised a House to pursue judicial intervention in a matter, contrary to Article 236 of the Constitution.

The Committee further found that there had been efforts, both in the previous and current term of Parliament, to have the two Houses negotiate and adopt an agreed version of a Bill on bicameral relations and the processing of legislation between the two Houses. These efforts had, however, not yielded fruit. Indeed, during the 12th Parliament, the Senate had developed, considered, and passed the Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018), and referred it to the National Assembly for concurrence. However, the Bill was not considered by the National Assembly.

The Senate improved on the said Bill and submitted it to the mediation process during the 13th Parliament that was spearheaded by the Office of the Prime Cabinet Secretary. This process stalled at some point, following which the National Assembly introduced and passed **its version** of the Bill, which has now been referred to the Senate for concurrence.

The Committee was also alive to the fact that the Supreme Court has, on several occasions, stayed proceeding with hearing and determination of *Petition No. 19 of 2021: The Senate of the Republic of Kenya vs the Speaker of the National Assembly of Kenya and others*, which seeks to, among others, resolve the question of the concurrence procedure on Bills. This has been done to allow the two Houses to consult, engage and reach consensus on bicameral relations between the two Houses.

Honourable Speaker,

Once the Committee resolved that, for the foregoing reasons, this Bill must be rejected by the Senate, the next question it faced was on whether to recommend that the Bills goes through the complete legislative process in the Senate, including debate at Second Reading stage, Committee of the Whole and Third Reading, or whether to recommend that the Senate rejects the Bill at Second Reading stage. The Committee was persuaded that, if the Senate takes the first option of considering the Bill and proposing amendments clause-by-clause, these amendments would no doubt be rejected by the National Assembly, due to fundamental differences between the understanding, by the two Houses, of the questions –

- i) at what stage should the determination of the nature of bills be done, and is it to be done for all bills being considered by either House?
- ii) what is a bill concerning counties?
- iii) what is a money bill?

Thus, in both instances, the end result would be mediation on the Bill. In one case, a lot of time would have been taken subjecting the Bill through the entire legislative process in the Senate while, in the other case, significant time would be saved by sending the Bill to mediation at the earliest possible opportunity.

Consequently, at Chapter Four of the Report, the Committee recommends that the Senate rejects the Bill at the Second Reading stage, **to pave way** for mediation on the Bill as contemplated under Article 113 of the Constitution. This will allow the two Houses a time-bound window within which to hammer out these questions, harmonize the two versions of the Bill, and come up with a version of the Bill that may be passed by both Houses of Parliament.

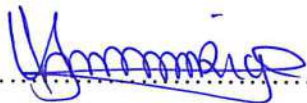
Honourable Speaker,

May I take this opportunity to commend the Members of the Committee 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 support extended to the Committee in undertaking this assignment.

Honourable Speaker,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023).

Signed




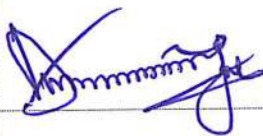


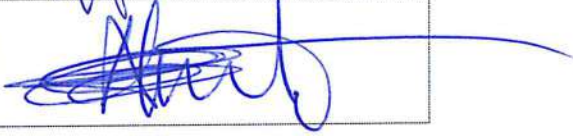
Date.....

9/5/2024

**SEN. WAKILI HILLARY SIGEL, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 44 OF 2023)

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human rights, do hereby append our signatures to adopt this Report.

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP (<i>Chairperson</i>)	
2.	Sen. Raphael Chimera Mwinzagu, MP (<i>Vice-Chairperson</i>)	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Maina, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.0 Introduction

1. The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) was published *vide* Kenya Gazette Supplement No. 130 of 28th July, 2023. The Bill was read a First Time in the National Assembly on Thursday, 17th August, 2023. It was thereafter passed by the Assembly on Thursday, 21st March, 2024 and was committed to the Senate.
2. In the Senate, the Bill was read for a First Time on 28th March, 2024, following which it was referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Bill is annexed to this Report as *Annex 2*.

1.1. Background

3. During the 12th Parliament, the Senate had developed, considered, and passed the Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018), and referred it to the National Assembly for concurrence. However, the Bill was not considered by the National Assembly. A copy of the Bill, as passed by the Senate, is attached to this Report as *Annex 3*.
4. On commencement of the 13th Parliament, efforts were made to have the two Houses negotiate a legislative framework governing relations and processing of legislative business between the two Houses. Each House was tasked to submit its version of the Bill, whereupon the two would be harmonized to one Bill agreeable to the two Houses. The Senate submitted an improved version of the Bill passed by the Senate during the previous Parliament. However, the process was not completed. A copy of the improved version of the Senate Bill is attached to this Report as *Annex 4*.
5. Thereafter, the National Assembly proceeded to publish its version of the Bill, which it passed and referred to the Senate for concurrence.

1.2. Objects of the Bill

6. The principal object of the Bill is to provide for how joint resolutions of questions relating to the nature of bills under Article 110(3) are to be made, as well as how disagreements arising between the two Houses of Parliament are to be dealt with. The Bill also deals with matters relating to co-sponsorship of Bills and conduct of joint proceedings, including joint sittings of the Houses, joint committees and mediation

committees, and is therefore a key legislation that affects the conduct of core legislative business in both Houses.

1.3. Overview of the Bill

7. Clause 4 proposes that there be a publication of any Bill proposed by a member or committee of a House of Parliament in the Gazette, pursuant to Article 109(5) of the Constitution and the same be done in accordance with the appropriate House's Standing Orders. It further proposes that once the respective Clerk submits a request to the Government Printer for the publication of the said Bill, the Government Printer should cause the same to be published in the Gazette within seven days of receiving the request.
8. Clause 5 provides that once a Bill is passed by both Houses of Parliament or by the National Assembly under Article 109(3) of the Constitution is assented to by the President, the same shall be published in the Gazette as an Act of Parliament in accordance with Article 116(1) of the Constitution. The Bill shall be styled as "An Act of Parliament" and the words of enactment shall be "Enacted by the Parliament of Kenya".
9. Clauses 6 - 11 propose an outline of the procedures to be followed in the joint resolution of a question under Article 110(3) of the Constitution, from the point of notification of the existence of such a question, to the joint resolution of it; and further what takes place in the event of a disagreement.
10. Clause 6 proposes that whenever a Bill is published in the Gazette, a Speaker may at any time before the period specified for the Second Reading of such Bill in the Standing Orders of the respective House, become seized of a question as to whether the Bill concerns counties and shall as soon as is practicable, notify the Speaker of the second House of the question.
11. Clause 7 lists Bills on which no question can arise for joint resolution. They are:
 - (a) a Bill to amend the Constitution which is considered by both Houses;
 - (b) a Bill relating to the election of members of a county assembly or a county executive which is considered by both Houses;
 - (c) the annual County Allocation of Revenue Bill which is considered by both Houses;
 - (d) an Appropriation Bill which is considered only by the National Assembly;
 - (e) a Finance Bill introduced pursuant to Articles 95(4)(c), 114, 209(1), 210 and 221(1) of the Constitution which is considered only by the National Assembly;

- (f) any Bill providing for taxation and other revenue- raising powers of the national government which is considered only by the National Assembly; and
- (g) a Bill not concerning county governments which is considered only in the National Assembly.

12. Once the Speaker of the Second House receives a notification of a question under Article 110(3) of the Constitution, they shall consider the said question and either agree or disagree with it as raised.
13. If in agreement, the Speaker of the Second House shall prepare and transmit a Certificate of Joint Resolution for endorsement by the Speaker of the originating House, who will in turn indicate their resolution as soon as is practicably possible and convey a copy of the Certificate to the Speaker of the second House.
14. In the event of disagreement by the Speaker of the Second House, Clause 10 proposes that the Speaker immediately refers back the question to the Speaker of the originating House for reconsideration noting the specific clauses of the Bill subject to the disagreement and the specific reasons for the disagreement.
15. Once this is done, the Speaker of the originating House, guided by the appropriate procedures laid out in the respective Standing Orders may either:
 - (a) cause the Bill to be modified taking into account the observations and recommendations of the Speaker of the second House; or
 - (b) further disagree with the observations and recommendations of the Speaker of the second House on the question.
16. If modification of the bill as presented in the first option is preferred and duly implemented, the question shall be deemed to have been resolved and the House shall be notified of the said modification and the procedure for its consideration as modified.
17. However, if the Speaker of the originating House further disagrees with the observations and recommendations of the Speaker of the second House on the question, they may either refer the Bill to its sponsor for further consideration or jointly appoint any person or body of persons to make recommendations on the way forward as may be appropriate.
18. If the disagreement persists beyond the above recommendations, Clause 11 proposes that the Speaker of the originating House proceeds with the consideration of the Bill notwithstanding such continued disagreement.
19. Clause 12 proposes that a money Bill or motion be introduced only in the National

Assembly and in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.

20. It is intended that where a money Bill or motion originates from the Senate, the relevant committee of the Assembly be allowed to make recommendations that:
 - (a) the Bill or motion be not proceeded with by the Assembly for want of compliance with the procedure set out in Article 109(5) of the Constitution; or
 - (b) the relevant departmental committee of the Assembly or a Member be at liberty to adopt the Bill and that the Bill be deemed to have originated in the Assembly pursuant to the provisions of Article 109(5) of the Constitution.
21. Clause 13 proposes that where a Member in charge of a Bill intends that his or her Bill be adopted by a Member of the other House, that Member shall include in the memorandum of objects of the Bill, a statement indicating the name of the Member of the other House who shall be in charge of the Bill upon its passage by the originating House.
22. A certified copy of that Bill shall thereafter be signed by the relevant Clerk and endorsed by the Speaker, after which the same shall be forwarded to the Clerk of the other House together with a Message-
 - (a) requesting the consideration of the Bill by the other House in accordance with the respective Standing Orders; and
 - (b) notifying the other House of the name of any Member of the House nominated to adopt the Bill.
23. Clause 13 is however, not intended to apply to a Bill which, in terms of Article 109(3) of the Constitution, is considered only in the National Assembly.
24. Clause 14 outlines the mediation procedures to be followed in the event a dispute arises on the account of one House passing an ordinary Bill concerning county governments that after rejection and subsequent reconsideration by the second House, is rejected a second time.
25. These procedures apply from the time a mediation committee is appointed by the Speakers of both Houses, to the resolution of the differences, subsequently occasioning a mediation report with an agreed version of the Bill.
26. Clause 14 proposes the marking as defeated, a Bill whose appropriate version the mediation committee fails to agree on.

27. Clause 15 proposes to give the Houses of Parliament authority to resolve to establish joint committees comprising of an equal number of Members of the National Assembly and the Senate.
28. Clause 16 makes provision for the manner of conducting joint sittings of the committees in their deliberation of matters of mutual interest and concern. It provides that a committee of one House may, with the written permission of the Speakers of the National Assembly and the Senate, hold a joint sitting with the corresponding committee of the other House to deliberate on matters of mutual interest and concern.
29. Clause 17 provides for the conduct of joint sitting of the Houses of Parliament. It mandates that the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate. The Clause proposes that at any Joint Sitting of the Houses, the Standing Orders of the National Assembly to apply with modifications and variations as the Speaker of the National Assembly may consider necessary or appropriate. It further proposes that the Speakers of the Houses of Parliament to be allowed to enforce any directions given during a joint sitting in relation to the conduct of a Member of Parliament in accordance with the applicable provision of the National Assembly Standing Orders.
30. Clause 18 on address of Parliament by visiting dignitaries, intends to allow the Speakers of the Houses of Parliament in consultation with the Leaders of the Majority and Minority Party, to arrange for a joint Parliamentary sitting for purposes of such address.
31. Clause 19 outlines public participation processes to be followed by each House of Parliament and its committees to facilitate conformity with Article 118 of the Constitution.
32. Clause 20 seeks to encourage the use of alternative dispute resolution by the Houses of Parliament before the formal declaration of the existence of a dispute between the Houses. The Clause provides that the Houses of Parliament should, in good faith, make every reasonable effort and take all necessary steps to amicably resolve their disputes by initiating direct negotiations with each other or through an intermediary. The Clause proposes a procedure to be followed in exercise of its recommendation for the exhaustive use of alternative dispute resolution mechanisms with the objective of having the Courts be the measure of last resort. It also proposes to surcharge state and public officers for advising a House to pursue judicial action.

1.4. Consequences of the Bill

33. If enacted, the Bill will extensively claw back on the Senate's legislative mandate as well as expose public and state officers to punitive measures for undertaking their functions.

CHAPTER TWO: CONSIDERATION BY THE COMMITTEE

2.0 Introduction

34. The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) was read a First Time in the Senate on Thursday, 28th March, 2024, following which it stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
35. The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Tuesday, 2nd April, 2024 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Annex 5*.
36. In response to the advertisement, the Committee did not receive any submissions from stakeholders or members of the public.
37. The Committee therefore held several meetings to consider the Bill and identified the following issues for its consideration:
 - (a) at what stage should the determination of the nature of bills be done, and is it to be done for all bills being considered by either House?
 - (b) what is a bill concerning counties?
 - (c) what is a money bill?
38. In considering the above issues, the Committee identified the relevant provisions of the Constitution, as well as various court decisions on the matters under consideration.

2.1. Determination of the nature of bills

39. Article 110(3) of the Constitution states as follows—
 - (3) *Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.*
40. A plain reading of Article 110(3) of the Constitution is that **BEFORE** either Houses considers a Bill, the Speakers must resolve whether the Bill concerns counties.

41. This issue was conclusively settled by the Supreme Court in 2013 in *Advisory Opinion Reference No. 2 of 2013; In the Matter of the Speaker of the Senate & Another [2013] eKLR*. However, the National Assembly claimed that the decision of the Supreme Court was merely advisory and not binding and therefore continued to bypass the Senate in enacting legislation.

42. The Supreme Court in *Advisory Opinion Reference No. 2 of 2013* held that the joint resolution of the Speakers is a mandatory condition precedent before a Bill is considered in the originating House. The Supreme Court stated as follows:

"[141] It is quite clear, though some of the counsel appearing before us appeared to overlook this, that the business of considering and passing of any Bill is not to be embarked upon and concluded before the two Chambers, acting through their Speakers, address and find an answer for a certain particular question: What is the nature of the Bill in question? The two Speakers, in answering that question, must settle three sub-questions – before a Bill that has been published, goes through the motions of debate, passage, and final assent by the President. The sub-questions are:

a. is this a Bill concerning county government? And if it is, is it a special or an ordinary bill?

b. is this a bill not concerning county government?

c. is this a money Bill?

[142] How do the two Speakers proceed, in answering those questions or sub-questions? They must consider the content of the Bill. They must reflect upon the objectives of the Bill. This, by the Constitution, is not a unilateral exercise. And on this principle, it is obvious that the Speaker of the National Assembly by abandoning all engagement or consultation with the Speaker of the Senate, and proceeding as he did in the matter before this Court, had acted contrary to the Constitution and its fundamental principles regarding the harmonious motion of State institutions.

[143] Neither Speaker may, to the exclusion of the other, "determine the

nature of a Bill”: for that would inevitably result in usurpations of jurisdiction, to the prejudice of the constitutional principle of the harmonious interplay of State institutions.

[144] It is evident that the Senate, though entrusted with a less expansive legislative role than the National Assembly, stands as the Constitution’s safeguard for the principle of devolved government. This purpose would be negated if the Senate were not to participate in the enactment of legislation pertaining to the devolved units, the counties [Article 96(1), (2) and (3)].

2.2. Bills concerning counties

43. Article 110 of the Constitution provides as follows:

“110. Bills concerning county government

*(1) In this Constitution, “a **Bill concerning county government**” means—*

- (a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;*
- (b) a Bill relating to the election of members of a county assembly or a county executive; and*
- (c) a Bill referred to in Chapter Twelve affecting the finances of county governments.*

(2) A Bill concerning county governments is—

(a) a special Bill, which shall be considered under Article 111, if it—

- (i) relates to the election of members of a county assembly or a county executive; or*
 - (ii) is the annual County Allocation of Revenue Bill referred to in Article 218;*
- or*

(b) an ordinary Bill, which shall be considered under Article 112, in any other case.

44. The Supreme Court in *Advisory Opinion Reference No. 2 of 2013* (supra) stated as follows:

“[102] The Court’s observation in Re the Matter of the Interim Independent Electoral Commission is borne out in an official publication, Final Report of the Task Force on Devolved Government Vol. 1: A Report on the Implementation of Devolved Government in Kenya [page. 18]:

“The extent of the legislative role of the Senate can only be fully appreciated if the meaning of the phrase ‘concerning counties’ is examined. Article 110 of the Constitution defines bills concerning counties as being bills which contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule; bills which relate to the election of members of the county assembly or county executive; and bills referred to in Chapter Twelve as affecting finances of the county governments.

This is a very broad definition which creates room for the Senate to participate in the passing of bills in the exclusive functional areas of the national government, for as long as it can be shown that such bills have provisions affecting the functional areas of the county governments. For instance, it may be argued that although security and policing are national functions, how security and policing services are provided affects how county governments discharge their agricultural functions. As such, a bill on security and policing would be a bill concerning counties....With a good Speaker, the Senate should be able to find something that affects the functions of the counties in almost every bill that comes to Parliament, making it a bill that must be considered and passed by both Houses.”

45. The Supreme Court has held that any matters touching on county government should be so interpreted as to incorporate any national-level process bearing a significant impact on the conduct of county government. In *Supreme Court Petition 1 of 2018; Institute for Social Accountability & Another v National Assembly & 3 Others &*

5 Others (Petition 1 of 2018) [2022] KESC 39 (KLR) (8 August 2022) (Judgment), the Supreme Court held:

“70. In Re the Matter of the Interim Independent Electoral Commission, Sup Ct Const Appl No 2 of 2011 [2011] eKLR at para 40 we stated:

“We consider that the expression ‘any matters touching on county government’ should be so interpreted as to incorporate any national-level process bearing a significant impact on the conduct of county government.” [emphasis added]

71. This court’s jurisprudence is to the effect that a matter touching on county government incorporates any national-level process bearing significant impact on the conduct of county government.”

46. In *HC Petition 272 of 2016; Council of County Governors v Attorney General & 2 others; Commission on Revenue Allocation & 15 others (Interested Parties) [2019] eKLR*, the High Court applied a holistic reading of the Constitution. In this regard, the High Court found that the role of the national government under Article 204 of the Constitution (Equalisation Fund) as read with section 18 of the Public Finance Management Act is limited to the operational aspects of establishment and maintenance of an account for the Equalisation Fund but the basic services for which the Equalisation Fund is to be used under Article 204(2) of the Constitution such as water, roads, health facilities and electricity at the local level, are county government functions under Part 2 of the Fourth Schedule to the Constitution. For that reason, they can only be implemented by the County Governments.

47. In *High Court Petition 252 of 2016; Council of County Governors v Attorney General & 4 others; Controller of Budget (Interested Party) [2020] eKLR* the High Court considered conditional grants granted to county governments by the national government under Article 202 (2) of the Constitution. The High Court held that the purpose of conditional or unconditional grants is to enable the national government to meet its policy objectives at the county level of government. However, while

allocating such grants, the national government is expected to adhere to the provisions of Article 189(1) of the Constitution by firstly, performing its functions and exercising its powers in a manner that respects the functional and institutional integrity of the county level of government. Secondly, the High Court held that the national government must respect the constitutional status of the county level of government. The High Court found that the national government violated the provisions of Article 187 of the Constitution by allocating money intended for functions of the county level of government without liaising with the county level of government.

48. These two decisions of the High Court are further buttressed by the Supreme Court finding in *Supreme Court Petition 1 of 2018; Institute for Social Accountability & Another v National Assembly & 3 Others (supra)* that a Bill which affects the allocation of revenue to the county governments is a Bill concerning county governments as it affects the powers and functions of the county governments. The Supreme Court stated as follows:

“Drawing from the above analysis, we fault the appellate court’s restrictive approach in interpreting the law to hold that the Bill in its objects indicated that it did not concern county governments or affect the powers and functions of the county governments. It is our considered view, that the replacement of article 202 of Constitution with article 206(2) had an effect on the allocation of revenue to the county governments. Consequently, we find that the CDF (Amendment) Act, 2013 had an effect on the functioning of county governments.” (emphasis added)

49. Further, Bills touching on the mandate, powers and functions of the Senate directly affect the Senate’s ability to undertake its constitutional mandate including its ability to consider bills that affect counties and therefore are Bills concerning county governments. This is consistent with the findings of the Court of Appeal in *Nairobi Civil Appeal; E084/2021; National Assembly Another vs Senate of Kenya & Others* and the High Court in *Nairobi High Court Petition Number 284 of 2019*

consolidated with Nairobi High Court Petition Number 353 of 2019; Senate of Kenya and Others vs The National Assembly & Another.

50. The Court of Appeal in *Nairobi Civil Appeal; E084/2021; National Assembly Another vs Senate of Kenya & Others* held:

“176. But having said that, it is necessary to observe that at the time of enactment of the 2002 Act, there was only one House of Parliament, the National Assembly. And at the time, it had the sole mandate to enact such legislation. Following the promulgation of the 2010 Constitution, and with the establishment of two Houses of Parliament, the situation changed. Any bills enacted to govern the administration and operations of the Houses of Parliament would of necessity require to take into account the existence of the two Houses. This is particularly because of, and we discussed this earlier, the establishment of a bicameral Parliament with two Houses of Parliament where each was accorded its own separate and distinct role to play at the national and county levels of government.

177. Indeed, if special attention was made to ensure that the composition of the members of the Parliamentary Service Commission established by Article 127 of the Constitution equally represented both Houses, it would follow that both Houses required to be provided with an equal opportunity to enact legislation that would affect their joint and several operations. It was not possible for the Senate to be reduced to a bystander in the enactment of a bill that would have such a profound impact on its administrative operations.

178. With the result that in the interest of ensuring that both Houses have an equal opportunity to chart their respective destinies, it was right and just that before the bill was passed into law that the Senate was provided an opportunity to consider and pass the Parliamentary Service bill. Since the Appellants conceded that because the bill affected the workings of both Houses, that the Senate had the right to consider and pass the bill, by passing the bill into law without the Senate having had an opportunity to consider it, we find its passage

to be unconstitutional for want of the Senate's consideration."

51. Under Article 110 (1) (a) of the Constitution, a Bill is a Bill containing provisions affecting the functions of a county government if the Bill:

- (a) directly or indirectly affects the operations of the county governments;
- (b) would have a direct or indirect impact on the functions of county governments under Part 2 of the Fourth Schedule to the Constitution;
- (c) would have an impact on the exercise by any person upon whom a function or power is conferred under the Bill on any institution or office of the county government, the finances of the county government or the property held by or vested in the county government;
- (d) contains provisions which the county governments are required to implement or are binding on county governments;
- (e) confers a function or power on a person that would affect the exercise of the functions and the powers of the county governments under the Fourth Schedule to the Constitution;
- (f) seeks to transfer a function or power between the National Government and the county governments under Article 187 of the Constitution;
- (g) that affects the ability of the Senate to carry out its functions under Article 96 of the Constitution; or
- (h) provides for any other matter that would directly or indirectly affect the functions and powers of the county governments.

52. Under Article 110(1)(c) of the Constitution, a Bill is a Bill concerning county governments if the Bill is referred to in Chapter Twelve affecting the finances of county governments. These Bills are as follows:

- (a) the equitable sharing of revenue under Article 202(1) of the Constitution;
- (b) the additional allocation of funds from the National Government's share of revenue to county governments under Article 202(2) of the Constitution;

- (c) the additional allocation of funds to county governments under Article 190(1) of the Constitution including proceeds of loans and grants from development partners;
- (d) a matter relating to the appropriation and administration of the Equalisation Fund under Article 204 of the Constitution;
- (e) the sharing of revenue or any financial matter concerning county governments as contemplated in Article 205(1) of the Constitution;
- (f) the transfer of equitable share to the county governments pursuant to Article 219 of the Constitution;
- (g) the withdrawal of money from the Consolidated Fund under Article 206 of the Constitution that affects the finances of county governments;
- (h) the withdrawal of money from a County Revenue Fund;
- (i) the establishment of public funds by counties and the management of those funds;
- (j) the establishment of a fund by Parliament for the benefit of a county government or a county government entity;
- (k) advances from the Contingencies Fund under Article 208 of the Constitution that affect the finances of county governments;
- (l) the imposition of a tax, duty or charge under Article 209(3)(c) of the Constitution;
- (m) borrowing by the National Government under Article 211 of the Constitution;
- (n) public debt under Article 214 of the Constitution that is to be charged on a public fund established for the benefit of county governments;
- (o) borrowing by counties including the terms and conditions under which the National Government may guarantee a loan under Article 212(a) of the Constitution;

- (p) any matter concerning the Commission on Revenue Allocation under Articles 215 and 216 of the Constitution;
- (q) the form, content and timing of budgets for National and county governments prepared pursuant to Article 220 of the Constitution;
- (r) estimates for expenditure from the Equalisation Fund prepared pursuant to Article 221(2)(a);
- (s) an appropriation under Article 223(4) of the Constitution that affects the finances of a county government;
- (t) the form and procedure for processing county budgets and appropriation Bills prepared pursuant to Article 224 of the Constitution;
- (u) financial control measures and mechanisms under Article 225 of the Constitution;
- (v) the keeping of financial records and auditing of accounts of county governments and the designation of accounting officers in the county governments under to Article 226 of the Constitution;
- (w) the procurement of public goods and services under Article 227 of the Constitution;
- (x) the powers and functions of the Salaries and Remuneration Commission to set, review and advise on the remuneration and benefits of public officers in the county governments under Article 230(4) of the Constitution; or
- (y) any other matter referred to in Chapter Twelve of the Constitution affecting the finances of county governments; or
- (z) the Bill is –
 - (i) the annual Division of Revenue Bill under Article 218(1)(a) of the Constitution; or
 - (ii) the annual County Allocation of Revenue Bill under Article 218(1)(b) of the Constitution.

53. The Constitution does not define what a bill not concerning county governments is, and it may therefore be considered as any Bill that is not “a bill concerning county governments” upon joint determination by the Speakers of the two Houses.

2.3. Money Bills

54. ‘Money Bills’ are subject to the concurrence process as provided for under Article 110(3) of the Constitution. The Supreme Court in *Advisory Reference No. 2 of 2013* held that the Speakers, in addressing the nature of the Bill in question must settle three sub-questions, that is:
- “a. is this a Bill concerning county government? And if it is, is it a **special** or an **ordinary** bill?*
 - b. is this a bill **not** concerning county government?*
 - c. is this a **money Bill**?”*
55. Where the two Speakers have jointly resolved that a Bill concerns counties, the issue of ‘money Bill’ does not arise.
56. What constitutes a money bill is a matter of strict interpretation as such a Bill must solely deal with the matters specified in Article 114 (3) of the Constitution. This is in line with the provision in Article 114 (1) of the Constitution which provides:
- “114. (1) A money Bill may not deal with any matter other than those listed in the definition of a money bill” in clause (3).”*
57. Where a Bill deals with matters other than those listed in Article 114 (3) of the Constitution, the Bill is not a money Bill, that is, a bill may contain financial provisions but where the contents of the bill are outside the ambit of the matters listed in Article 114(3) of the Constitution, such a bill is a bill concerning county governments and not a money bill and therefore such a bill-
- (a) can originate in the Senate pursuant to Article 109(4) of the Constitution; and
 - (b) must be considered by both Houses of Parliament pursuant to Articles 110 to 113 of the Constitution.
58. Moreover, unlike Article 109 (3) which provides that a Bill not concerning county governments may only be **considered** in the National Assembly, Article 109(4) only restricts **introduction** of money Bills in the Senate, not the consideration of the same. Introduction of a Bill in this context means the same as origination of a Bill, while consideration would refer to debate, voting, public participation and other processes that a Bill goes through before it becomes law.

59. Further, Article 114 (3) of the Constitution cannot be read in isolation. It must be read harmoniously with Articles, 96 (1), 96 (2), 109 and 110 of the Constitution. Where the Speakers of both Houses concur that a Bill is one that concerns counties, pursuant to Article 109 (4), it must be passed in accordance with Articles 110 to 113, 122 and 123 of the Constitution and the Standing Orders of both Houses.
60. In addition, a conjunctive reading of Article 114 (3), Article 110 (c) and Chapter 12 of the Constitution, all of which provide for financial matters, would lead to the conclusion that where a Bill deals with financial matters and such matters affect the finances of county governments, such Bill affects counties and must be considered by the Senate.
61. Article 249(3) also provides that Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions therefore meaning that the Senate, as one of the Houses of Parliament, has a role to play in annual appropriation of funds to commissions and independent offices.
62. Consequently, Article 114 (3) of the Constitution cannot be read in isolation to limit the mandate of the Senate as set out specifically under Articles 96 (1) and (2) of the Constitution.
63. Additionally, the Committee of Experts on Constitutional Review considered the need for efficiency of processing money bills and the need to strike a balance between the potential risk of burdening the Executive and the Executive unduly constraining Parliament. The Committee of Experts observed as follows –

“While the CoE appreciated the potential risk of appropriations that could overburden the exchequer, it also noted that provisions on money bills should not enable the executive to unduly constrain the legislature’s independence and thus erode its oversight function. ... control of “the purse” is an important check on the executive in a presidential system.”
64. The matter of the Senate’s participation in consideration of these Bills has been conclusively determined by the Supreme Court in *Advisory Reference No. 2 of 2013: The Speaker of the Senate and Another v the Attorney-General and 3 Others (In the Matter of the Speaker of the Senate & Another [2013] eKLR)*, and as restated in *Supreme Court Reference No. 3 of 2019: Council of Governors & 47 Others v. the Attorney-General & 3 others [2020] eKLR*. The Supreme Court, at paragraph 148(a) of *Advisory Reference No. 2 of 2013* observed as follows –

“(a) The Division of Revenue Bill, 2013 was an instrument essential to the due operations of county governments, as contemplated under the

Constitution, and so was a matter requiring the Senate's legislative contribution. Consequently, the Speaker of the National Assembly was under duty to comply with the terms of Articles 110(3), 112 and 113 of the Constitution, and should have co-operated with the speaker of the Senate, as necessary, to engage the mediation forum for resolution of the disagreement."

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.0 Committee Observations on the Bill

65. Having considered the Bill, the Committee made the following observations, that –
- (a) during the 12th Parliament, the Senate had developed, considered, and passed the Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018), and referred it to the National Assembly for concurrence. However, the Bill was not considered by the National Assembly;
 - (b) on commencement of the 13th Parliament, there have been a few initiatives seeking to have the two Houses negotiate a legislative framework governing relations and processing of legislative business between the two Houses, but the initiatives have so far not been successful. One of the initiatives involved the establishment of a joint team to come up with recommendations on implementation of Article 110(3) of the Constitution with a view of reaching an amicable solution and recording a consent in *Supreme Court Petition No. 19 of 2021: The Senate of the Republic of Kenya vs the Speaker of the National Assembly of Kenya and others*. A second initiative was led by the Prime Cabinet Secretary, and each of the Houses was expected to prepare a draft Bill and submit it to the Attorney General, who would then prepare a harmonised draft for consideration. The Senate submitted an improved version of the Bill passed by the Senate during the previous Parliament;
 - (c) there has been no progress in the negotiations spearheaded by the Office of the Prime Cabinet Secretary towards agreeing on a version of the Bill that could be passed by the two Houses;
 - (d) thereafter, the National Assembly proceeded to publish its version of the Bill in August 2023, which had now been passed and referred to the Senate for concurrence;
 - (e) the Supreme Court has stayed making a determination on the Petition before it, regarding the concurrence procedure under Article 110 of the Constitution, to await the outcome of the negotiations between the two Houses;
66. The Committee further observes that –
- (a) the current Bill seeks to restrict the legislative mandate of the Senate contrary to Articles 1, 94, 96, 109, 110, 112 and 114 of the Constitution;
 - (b) Article 1 of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution, and that the people may exercise their sovereign power either directly or through their democratically elected representatives. Parliament is one of the organs to which this people is to be delegated, and it may be exercised at national or at

- county level;
- (c) Article 94 (1) of the Constitution provides that the legislative authority of the Republic is derived from the people and, at the national level, is vested and exercised by Parliament, which under Article 93, comprises the Senate and the National Assembly. The exercise of the legislative authority that is contemplated under Article 94 as read with Articles 109 to 113 of the Constitution, therefore requires the participation of both Houses in the legislative process which constitutes the following two limbs—
 - (i) pursuant to Article 110 (3), through their respective Speakers, determining whether a Bill is one that concerns counties and if it is, whether it is a Special or an ordinary Bill; and
 - (ii) pursuant to Articles 96 (1) and (2), 109 and 110 (4) where the Bill concerns counties, considering such Bill in accordance with Articles 110 to 113, 122 and 123 and the standing orders of the Houses; and where it does not concern counties, it is considered by the National Assembly only, in accordance with Article 122 and the standing orders of the National Assembly;
 - (d) in each instance therefore, both Houses “ACT” or participate in the legislative process and the final product becomes an Act of Parliament. Where any of the two limbs is omitted, the final product is not an Act of Parliament but an Act of one House. Pursuant to Article 2 (4) of the Constitution, any act or omission in contravention of the Constitution is invalid; and
 - (e) the role of the Senate under Article 96 of the Constitution is to represent the counties and to protect the interests of the counties and their governments. The exclusion of the Senate from the legislative process in respect of Bills that concern counties is a breach of Article 110 of the Constitution and undermines the Senate’s ability to represent the counties and to protect the interests of the counties and their governments through the legislative process.

67. Additionally, the Committee observes that—

- (a) the Bill, as framed, violates the provisions of the Constitution by derogating from provisions of the Constitution and various judicial pronouncements on the procedure for introduction and processing of legislation in the two Houses as provided for in Article 110 of the Constitution, as follows –

- (i) it purports to restrict joint determination of the nature of a Bill, which Article 110(3) considers to be mandatory and a condition precedent before consideration of any Bill, to instances where a Speaker is “seized” of a question as to whether the Bill concerns county governments;
 - (ii) it purports to introduce a definition of what a Bill not concerning county governments is, and in the process, attempts to exempt a large category of Bills from the joint determination of the nature of the Bills by the Speakers of the two Houses of Parliament under Article 110(3), thus limiting the Senate’s role in legislating on matters concerning counties and therefore threatening the interests of counties and devolution in general;
 - (iii) the First Reading stage of a Bill is considered, in Commonwealth and Kenyan Parliamentary practice, as the first stage in the legislative process. It is at this stage that the joint determination of the nature of a Bill should be done, and not the Second Reading, as suggested in this Bill. This is because the Bill is considered by the relevant Committee of the House and subjected to public participation after the First Reading and before the Second Reading, hence consideration of the Bill will already have commenced if joint determination is done after the First Reading; and
 - (iv) it purports to subject Bills which have been passed by the Senate and thereafter referred to the National Assembly under Article 110 (4) to an additional process of determining if it is a money Bill or not. Further, Bills originating from the Senate have been held in abeyance citing the “money Bill” argument. This process has led to uncertainty in the legislative process by taking Bills through a process that is unknown to the Constitution, which process was previously declared to be unconstitutional and expunged from the National Assembly’s standing orders. This has ensured the continued erosion of the legislative mandate of the Senate and weakening of devolution;
- (b) the Bill also violates Article 118 of the Constitution by proposing that a Committee of the Second House of Parliament can elect not to conduct public participation on account of public participation conducted by a Committee of the other House of Parliament; and
 - (c) the Bill further contains provisions that seek to restrict access to judicial intervention, as well as punish state and public officers by introducing fetters and punitive measures to officers who would be deemed to have advised a House to

pursue judicial intervention in a matter, contrary to Article 236 of the Constitution.

68. The Committee therefore observed that proposing amendments would not cure the inherent defects in the Bill, and it would be better if the Bill were rejected at Second Reading and thereafter subjected to the mediation process under Article 113 without further delay so that a version of the Bill that does not violate the various constitutional provisions and claw back on the Senate's legislative mandate is negotiated and passed.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

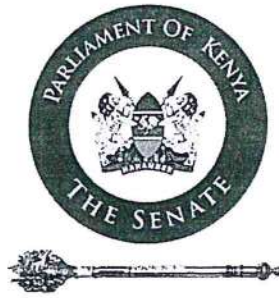
4.0 Committee Recommendations on the Bill

69. Arising from its Observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) **be rejected** by the Senate at Second Reading stage, to pave way for mediation on the Bill as contemplated under Article 113 of the Constitution.

LIST OF ANNEXES

- Annex 1:* Minutes of the sittings of the Committee in considering the Bill
- Annex 2:* The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023)
- Annex 3:* The Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018), as passed by the Senate and referred to the National Assembly
- Annex 4:* The Senate version of the Bill as submitted for mediation and harmonization with the National Assembly Bill
- Annex 5:* Advertisement published in the *Daily Nation* and *Standard* Newspapers on Tuesday, 2nd April, 2024.

ANNEX 1: Minutes of the sittings of the Committee in
considering the Bill



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 121ST MEETING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 18TH APRIL, 2024 AT 8.00AM AT BILATERAL ROOM 1, 1ST FLOOR, KICC BUILDING, NAIROBI

PRESENT

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Hamida Ali Kibwana, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Dr. Johnson Okello | - Director, Legal Services |
| 2. Mr. Charles Munyua | - Senior Clerk Assistant |
| 3. Ms. Mercy Thanji | - Senior Legal Counsel |
| 4. Mr. Moses Kenyanchui | - Legal Counsel I |
| 5. Ms. Lilian Waweru | - Legal Counsel II |
| 6. Ms. Lynn Aseka | - Clerk Assistant III |
| 7. Ms. Angela Bonaya | - Clerk Assistant III (<i>taking minutes</i>) |
| 8. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 9. Ms. Judith Aoka | - Assistant Audio Officer |
| 10. Mr. Abadallah Mbore | - Serjeant-At-Arms |

MIN. NO. 96/2024

PRELIMINARIES

The Chairperson called the meeting to order at thirty-eight minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 97/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by by Sen. Catherine Muyeka Mumma, MP.

MIN. NO. 98/2024

THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 44 OF 2023)

The Committee commenced consideration of the Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) and was taken through a brief on its implications on the role and functions of the Senate.

During deliberations, Members observed that –

- i) the Bill, as framed, derogated from provisions of the Constitution and various judicial pronouncements on the procedure for introduction and processing of legislation in the two Houses; and
- ii) the Bill further contained provisions that sought to restrict access to judicial intervention by introducing fetters and punitive measures to officers who would be deemed to have advised a House to pursue judicial intervention in a matter.

Members were further informed that -

- a) during the 12th Parliament, the Senate had developed, considered, and passed the Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018), and referred it to the National Assembly for concurrence. However, the Bill was not considered by the National Assembly;
- b) on commencement of the 13th Parliament, efforts were made to have the two Houses negotiate a legislative framework governing relations and processing of legislative business between the two Houses. Each House was tasked to submit its version of the Bill, whereupon the two would be harmonized to one Bill agreeable to the two Houses. The Senate submitted an improved version of the Bill passed by the Senate during the previous Parliament. However, the process was not completed.
- c) Thereafter, the National Assembly proceeded to publish its version of the Bill, which had now been passed and referred to the Senate for concurrence.

Following deliberations, it was resolved that –

- i) copies of the Senate version of the Bill together the Explanatory Memorandum thereon be circulated to Members;
- ii) Members to study the Bill alongside the proposals contained in the Bill from the National Assembly; and
- iii) the Bill be scheduled for consideration at the next meeting, for Members to make a decision on the next steps regarding the Bill.

MIN. NO. 99/2024

ADJOURNMENT

The Chairperson adjourned the meeting at fifty-six minutes past nine O'clock. The next meeting was scheduled to be held on Tuesday, 23rd April, 2024 at eight O'clock.

SIGNED: 

DATE: 04/05/2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 122ND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 23RD APRIL, 2024 AT 08.00 A.M IN COMMITTEE ROOM 5, 1ST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Veronica W. Maina, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 6. Ms. Judith Aoka | - Assistant Audio Officer |
| 7. Mr. Abadallah Mbore | - Serjeant-At-Arms |

MIN. NO. 100/2024

PRELIMINARIES

The Chairperson called the meeting to order at fourteen minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 101/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 102/2024

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

The Committee resumed its consideration of the Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023).

With the Committee having resolved at its previous meeting to reject the Bill, Members deliberated on the two options available to the Committee, namely –

- i) the Committee could either recommend to the Senate to reject the Bill in totality at second reading stage; or
- ii) the Committee could consider the Bill clause-by-clause and propose amendments thereon, following which, upon passage by the Senate, the Bill with amendments would be transmitted to the National Assembly for concurrence.

Members further observed that -

- a) there had been no progress in the negotiations spearheaded by the Office of the Prime Cabinet Secretary towards agreeing on a version of the Bill that could be passed by the two Houses; and
- b) the Supreme Court had stayed making a determination on the Petition before it, regarding the concurrence procedure under Article 110 of the Constitution, to await the outcome of the negotiations between the two Houses.

Thereupon, the Committee resolved to recommend that the Senate rejects the Bill at Second Reading stage, to pave way for mediation on the Bill as contemplated under Article 113 of the Constitution. The Secretariat was directed to draft a Report in this regard for consideration and adoption by the Committee.

MIN. NO. 103/2024

ANY OTHER BUSINESS

- i) *Request by the National Council for Law Reporting for a meeting with the Committee*

The Committee was informed of a request by the National Council for Law Reporting to meet with the Committee to discuss the 24th Annual Supplement to the Laws of Kenya. The Committee acceded to the request, and resolved that the meeting be scheduled in the month of May.

- ii) *Request by the Kenya Human Rights Commission for a meeting with the Committee*

The Committee was informed of a request by the Kenya Human Rights Commission to meet with the Committee, to discuss the framework for reparations for historical injustices and gross human rights violations. The Committee acceded to the request, and resolved that the meeting be scheduled in the month of May.

iii) *Invitation to the Launch of the Report on Strengthening Gender Equality in Law: Mapping Discriminatory Laws Against Women and Girls in Kenya*

The Committee was informed of an invitation by the Kenya Law Reform Commission to the launch of a Report on 'Strengthening Gender Equality in Law: Mapping Discriminatory Laws Against Women and Girls in Kenya'. The launch was scheduled for Wednesday, 24th April, 2024 in Nairobi. Members were asked to advise on their availability in the course of the day.

iv) *Meetings scheduled for Wednesday, 24th April, 2024 and Thursday, 25th April, 2024*

Members noted that a significant number would not be able to attend the meeting scheduled for the following day physically, and resolved that it be held virtually instead.

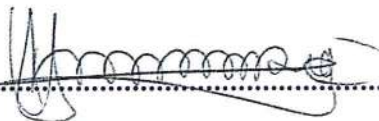
Members further noted that the official opening of *Bunge Tower* was scheduled for Thursday, 25th April, 2024, and that this might impact the scheduled Committee meeting for that day.

MIN. NO. 104/2024

ADJOURNMENT

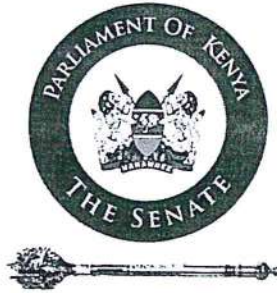
The Chairperson adjourned the meeting at fifty-five minutes past eight O'clock. The next meeting was scheduled to be held on Wednesday, 24th April, 2024 at eight O'clock.

SIGNED:



DATE:

04/05/2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 128TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON SATURDAY, 4TH MAY, 2024 AT 9.00 A.M AT THE SERENA RESORT & SPA HOTEL, MOMBASA COUNTY

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3. Sen. Veronica W. Maina, MP | - Member |
| 4. Sen. Karen Njeri Nyamu, MP | - Member |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |

SECRETARIAT

- | | |
|------------------------|--|
| 1. Mr. Njenga Njuguna | - Director, Governance & Accountability Committees |
| 2. Mr. Hassan Odhowa | - Head of Department, Governance Committees |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |
| 8. Mr. Abadallah Mbore | - Serjeant-At-Arms |

MIN. NO. 133/2024

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past nine O'clock and opened with a word of prayer.

MIN. NO. 134/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 135/2024

CONSIDERATION OF THE DRAFT COMMITTEE
REPORT ON THE CONSTITUTION OF KENYA
(AMENDMENT) (NO. 2) BILL, 2023 (SENATE BILLS
NO. 52 OF 2023)

The Committee was taken through the draft Report the Constitution of Kenya (Amendment) (No. 2) Bill, 2023 (Senate Bills No. 52 of 2023) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 136/2024

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

The Committee was taken through the draft Report on the Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Raphael Chimera and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 137/2024

ADJOURNMENT

The Chairperson adjourned the meeting at thirty minutes past twelve O'clock. The next meeting was scheduled to be held on the same day, 4th May, 2024 at two O'clock at the Serena Resort & Spa Hotel, in Mombasa County.

SIGNED:

DATE:

ANNEX 2: Copy of The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023)

SPECIAL ISSUE

Kenya Gazette Supplement No. 130 (National Assembly Bills No. 44)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 28th July, 2023

CONTENT

Bill for Introduction into the National Assembly—

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The Houses of Parliament (Bicameral Relations) Bill, 2023 1309



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

**THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS)
BILL, 2023**

ARRANGEMENT OF CLAUSES

Clause

PREAMBLE

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of the Act.

PART II—PUBLICATION AND ENACTING FORMULA

- 4—Publication of Bills.
- 5—Publication of Acts.

**PART III—JOINT RESOLUTION OF A QUESTION UNDER
ARTICLE 110(3) OF THE CONSTITUTION**

- 6—Notification of question arising.
- 7—Bills on which no question can arise for joint resolution.
- 8—Consideration of a question arising.
- 9—Agreement over the question raised.
- 10—Disagreement over the question raised.
- 11—Conciliation in the event of disagreement.
- 12—Consideration of money Bills.
- 13—Co-sponsorship of Bills.

**PART IV—CONDUCT OF JOINT PROCEEDINGS AND
COMMITTEES**

- 14—Mediation Committees.
- 15—Joint committees.
- 16—Joint sittings of committees.
- 17—Joint sittings of Parliament.

PART V—MISCELLANEOUS

- 18—Address of Parliament by visiting dignitaries.

19—Public participation processes.

20—Use of alternative dispute resolution mechanism to resolve disputes.

FIRST SCHEDULE —Notification of Question Arising Under
Article 110(3)

SECOND SCHEDULE —Certificate of Joint Resolution

1

PREAMBLE

AWARE that Article 1 of the Constitution provides that sovereign power belongs to the people of Kenya and is exercised either directly or indirectly through democratically elected representatives in Parliament;

FURTHER AWARE that Article 93(1) and (2) of the Constitution establishes the Parliament of Kenya comprising the National Assembly and the Senate to perform their respective functions in accordance with the Constitution;

WHEREAS Articles 94, 95(3), 95(4)(b), 109(2), (3), (4) and (5); 114; 209, 210, 221 and 223 of the Constitution provides for the legislative powers and the manner of exercising those powers by the National Assembly and the exclusive role of the National Assembly in revenue raising and appropriation of funds for expenditure by the national government;

FURTHER WHEREAS Articles 94, 96(2); 96(3); 109(4); and 110(1) of the Constitution provides for the legislative powers and the manner of exercising those powers by the Senate and the determination of the allocation of national revenue among counties and oversight of such revenue by the Senate;

NOTING that Article 186 of the Constitution as read with the Fourth Schedule to the Constitution sets out the respective functions and powers of the national government and the county governments.

FURTHER NOTING that Article 109(3) of Constitution as read together with Article 109(4) of the Constitution confers upon the National Assembly the exclusive mandate of enacting Bills not concerning county governments and excludes the Senate from participation in the enactment of such Bills;

RECOGNIZING that Article 110(1) and (2) of the Constitution defines a Bill concerning county governments and Article 110(3) of the Constitution requires the Speakers of Parliament to jointly resolve any question arising on whether a Bill concerns counties;

FURTHER RECOGNIZING the need to establish procedures for processing legislation, public participation, joint sittings, joint committees, mediation committees, and other matters related to the functions of the bicameral legislature under Article 94 of the Constitution;

ACKNOWLEDGING that engagements between the Houses of Parliament should be based on consultation and cooperation to promote a harmonious mechanism for democratic governance;

COMMITTED to creating a framework that enables both Houses of Parliament to perform their respective functions and enhance seamless bicameral relations;

NOW THEREFORE, Parliament enacts the following

**THE HOUSES OF PARLIAMENT
(BICAMERAL RELATIONS) BILL, 2023**

A Bill for

AN ACT of Parliament to give further effect to the procedures relating to matters of bicameral nature between the Houses of Parliament as contemplated in Chapter Eight of the Constitution of Kenya and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Houses of Parliament (Bicameral Relations) Act, 2023. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

“Bill concerning county governments” has the meaning assigned to it by Article 110 of the Constitution;

“Bill not concerning county governments” means a Bill—

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

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

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

“Clerk” means the Clerk of the National Assembly or the Senate;

“Houses of Parliament” means the National Assembly and the Senate;

“mediation committee” means a mediation committee established under Article 113 of the Constitution;

“money Bill” has the meaning assigned to it by Article 114 of the Constitution; and

“Speaker” means the Speaker of the National Assembly or of the Senate.

3. The objects of this Act are to—

Objects of the Act.

- (a)!provide a seamless framework for the manner of conducting matters of bicameral nature;
- (b)!provide for the publication in the *Gazette* of all Bills to be introduced in either of the Houses of Parliament pursuant to Article 109(4) of the Constitution;
- (c)!provide for the enacting formula to be included in all Bills and Acts passed by Houses of Parliament;
- (d)!outline the Bills on which no question can arise for joint resolution by the Speakers under Article 110(3) of the Constitution;
- (e)!outline the manner in which a question can arise for resolution by the Speakers under Article 110(3) of the Constitution;
- (f)!define what constitutes consideration of a Bill for purposes of Article 110(3) of the Constitution;
- (g)!provide for the manner of jointly resolving a question that arises on a Bill under Article 110(3) of the Constitution;
- (h)!outline what constitutes a Bill not concerning county governments as contemplated by the Constitution for purposes of Article 109(3) of the Constitution;
- (i)!provide for the mode of originating and considering a money Bill as contemplated under Article 109(5) of the Constitution;
- (j)!provide a framework for the conduct of joint processes including—
 - (i)! the conduct of a joint sitting of Parliament under Article 107(2) of the Constitution;
 - (ii)! the procedure applicable to the chairing, quorum, voting and timelines in respect of a mediation committee established under Article 113 of the Constitution;

- (iii)! facilitation of public participation under Article 118 of the Constitution; and
- (iv)! establishment and the procedure applicable to a joint committee under Article 124(2) of the Constitution; and
- (k)! provide a framework for amicable resolution of disputes arising from the discharge by the Houses of Parliament their respective functions.

PART II—PUBLICATION AND ENACTING FORMULA

4. (1) A Bill to be introduced by any member or committee of a House of Parliament pursuant to Article 109(5) of the Constitution shall be published in the *Gazette* in such a manner as may be specified in the Standing Orders of the respective House.

Publication of Bills.

(2) Where a request is submitted to the Government printer by the respective Clerk for the publication of a Bill under subsection (1), the Government Printer shall cause to be published in the *Gazette* the Bill within a period not exceeding seven days after the date of receipt of the request.

5. (1) A Bill passed by both Houses of Parliament or by the National Assembly under Article 109(3) of the Constitution shall be published in the *Gazette* as an Act of Parliament in accordance with Article 116(1) of the Constitution.

Publication of Acts.

(2) A Bill passed by both Houses of Parliament or by the National Assembly under Article 109(3) of the Constitution, shall be styled "An Act of Parliament" and the words of enactment shall be "Enacted by the Parliament of Kenya".

PART III—JOINT RESOLUTION OF A QUESTION UNDER ARTICLE 110(3) OF THE CONSTITUTION

6. (1) A question under Article 110(3) of the Constitution may arise in the manner provided for under this Part.

Notification of question arising.

(2) Whenever a Bill is published in the *Gazette*, in accordance with section 4 of this Act, a Speaker may, subject to section 7 and at any time before the period

specified for the Second Reading of such Bill in the Standing Orders of the respective House, become seized of a question as to whether the Bill concerns county governments.

(3) Whenever the Speaker becomes seized of a question under subsection (2), the Speaker shall as soon as is practicable, notify the Speaker of the second House of the question.

(4) The notification under subsection (3) shall be in the form set out in the First Schedule.

(5) In determining whether a question has arisen under Article 110 (3) of the Constitution, a Speaker shall for the purposes of subsection (2)—

- (a) consider the Bill's true purpose, intent and legal effect;
- (b) examine the contents of the Bill and the memorandum of objects and reasons to ascertain its inherent nature; and
- (c) consider whether the Bill falls under the exclusive mandate of the National Assembly pursuant to Article 109(3) of the Constitution;
- (d) consider whether the provisions of the Bill specifically affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.

7. The provisions of section 6 shall not apply to—

Bills on which no question can arise for joint resolution.

- (a) a Bill to amend the Constitution as provided for under Article 255, 256 and 257 which is considered by both Houses;
- (b) a Bill relating to the election of members of a county assembly or a county executive under Article 110(1)(b) of the Constitution which is considered by both Houses;
- (c) the annual County Allocation of Revenue Bill as provided for under Article 218 of the Constitution which is considered by both Houses;

(d) an Appropriation Bill as provided for under Articles 95(4) (b), 221, 222, and 223 of the Constitution which is considered only by the National Assembly;

(e) a Finance Bill introduced pursuant to Articles 95(4)(c), 114, 209(1), 210 and 221(1) of the Constitution which is considered only by the National Assembly;

(f) any Bill providing for taxation and other revenue-raising powers of the national government introduced pursuant to the provisions of Part 3 of Chapter Twelve of the Constitution which is considered only by the National Assembly; and

(g) a Bill not concerning county governments which pursuant Article 109(3) of the Constitution is considered only in the National Assembly and passed in accordance with Article 122 and the Standing Orders of the Assembly.

8. (1) Upon receipt of a notification of a question under section 6(3), the Speaker of the second House shall within a period not exceeding seven days, consider the question raised.

Consideration of a question arising.

(2) Upon consideration of the question, the Speaker may—

(a) agree with the question as raised; or

(b) disagree with the question as raised.

9. (1) Whenever a Speaker of the second House agrees with the question raised as contemplated under section 8(2)(a), the Speaker shall prepare and transmit a Certificate of Joint Resolution in duplicate, for endorsement by the Speaker of the originating House.

Agreement over the question raised.

(2) Upon receipt of a Certificate of Joint Resolution on a question as to whether a Bill concerns counties, the Speaker of the originating House shall, as soon as is practicable indicate their resolution and convey a copy of the Certificate to the Speaker of the second House.

(3) The Certificate of Joint Resolution shall be in the form set out in the Second Schedule and shall be deemed to be evidence of the resolution of the particular question.

10. (1) Whenever the Speaker of the second House disagrees with the question raised as contemplated under section 8(2)(b), the Speaker shall immediately refer back the question to the Speaker of the originating House for reconsideration noting the specific clauses of the Bill subject to the disagreement and the specific reasons for the disagreement.

Disagreement
over the question
raised.

(2) If the Speaker of the second House refers a question back to the Speaker of the originating House for reconsideration, the Speaker of the originating House may, following the appropriate procedures as set out under the respective Standing Orders—

(a) cause the Bill to be modified taking into account the observations and recommendations of the Speaker of the second House; or

(b) further disagree with the observations and recommendations of the Speaker of the second House on the question.

(3) If the originating Speaker causes the Bill to be modified to accommodate the observations and recommendations of the Speaker of the second House, the question shall be deemed to have been resolved for purposes of Article 110(3) of the Constitution.

(4) The Speaker of the originating House shall notify the House on the modification of the Bill and the procedure for its consideration as modified.

(5) Where the Speaker of the originating House further disagrees with the observations and recommendations of the Speaker of the second House on the question, the provisions of section 11 shall apply.

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

Conciliation in the
event of
disagreement.

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

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

(2) Where the Speakers of the Houses of Parliament are unable to reach a joint resolution on a question after

invoking the provisions of subsection (1), the originating House may proceed with the consideration of the Bill notwithstanding the disagreement.

12. (1) A money Bill or motion shall be introduced only in the National Assembly in accordance with Article 114 of the Constitution.

Consideration of money Bills.

(2) If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of "a money Bill", the Assembly shall, pursuant to Article 114(2) of the Constitution proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.

(3) Where the matter under consideration under subsection (2) relates to a Bill or motion originating from the Senate, the relevant committee of the Assembly may recommend that—

(a) the Bill or motion be not proceeded with by the Assembly for want of compliance with the procedure set out in Articles 109(5) of the Constitution;

(b) the relevant departmental committee of the Assembly is at liberty to take up the origination of the Bill or motion in question in co-sponsorship with the Senator who sponsored the Bill or motion and the process of consideration of the Bill be deemed to begin afresh in the Assembly pursuant to the provisions of Article 109(5) of the Constitution.

13. (1) Where a Member in charge of a Bill intends to co-sponsor a Bill with a Member of the other House, the Member shall include in the memorandum of objects of the Bill a statement indicating the name of the Member of the other House who shall be in charge of the Bill upon its passage of the Bill by the originating House.

Co-sponsorship of Bills.

(2) The relevant Clerk, shall upon passage of the Bill under paragraph (1), forward a certified copy of the Bill, signed by the Clerk and endorsed by the Speaker, to the Clerk of the other House together with a Message—

(a)!requesting the consideration of the Bill by the other House in accordance with the respective Standing Orders; and

(b)!notifying the other House of the name of any Member of the House nominated to co-sponsor the Bill.

(3) This section shall not apply to a Bill which, in terms of Article 109(3) of the Constitution, is considered only in the National Assembly.

PART IV—CONDUCT OF JOINT PROCEEDINGS AND COMMITTEES

14. (1) If one House passes an ordinary Bill concerning county governments, and the second House—

Mediation
committees.

(a)!rejects the Bill, it shall be referred to a mediation committee appointed under Article 113 of the Constitution; or

(b)!if after the originating House has reconsidered a Bill referred back to it under Article 112(1)(b) of the Constitution, that House rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113 of the Constitution.

(2) The Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of Members of each House, to attempt to develop a version of the Bill that both Houses will pass.

(3) The quorum of a mediation committee shall be a third of its members from the National Assembly and a third of its members from the Senate.

(4) The Chairperson and Vice-Chairperson of a mediation committee shall be appointed by the majority of the Members of the committee present at its first meeting.

(5) The Chairperson and the vice-chairperson of a mediation committee shall not be Members of the same House.

(6) unless a decision is reached by consensus, any vote to be taken in a mediation committee shall be by separate Houses.

(7) The report of a mediation committee on a Bill prepared in terms of Article 113 of the Constitution shall be laid on the Table of each House by a Member of the mediation committee authorized by the committee in that behalf.

(8) Where the report of a mediation committee includes an agreed version of the Bill in terms of Article 113(2) of the Constitution, the Houses shall consider the report of the mediation committee and the Houses shall vote to approve or reject the report of the Committee.

(9) Where the report of a mediation committee is to the effect that the committee has failed to agree on a version of the Bill or where the mediation committee fails to agree on a version of the Bill within thirty days from the date the Bill was referred to it, the Bill shall stand defeated in terms of Article 113(4) of the Constitution.

15. (1) The Houses may, by resolution establish Committees to be designated as joint committees of Parliament stating the mandate and objects of such committee and the number of members to be appointed to the committee.

Joint committees.

(2) A joint committee of Parliament shall comprise an equal number of Members of the National Assembly and Senators.

(3) The quorum of a joint committee shall be a third of its members from the National Assembly and a third of its members from the Senate.

(4) Unless a decision is reached by consensus, any decision by the committee shall be by resolution supported by at least two-thirds or more of all the members of the committee.

16. (1) A committee of one House may hold a joint sitting with the corresponding committee of the other House to deliberate on matters of mutual interest and concern.

Joint sittings of committees.

(2) The National Assembly and the Senate shall, upon commencement of this Act prescribe under their respective Standing Orders joint rules for the conduct of the sittings under subsection (1).

(3) In the absence of the rules under subsection (2)—

- (a) the Houses may, on a motion, prescribe rules for the conduct of a proposed joint sitting by committees of the Houses;
- (b) the Speakers may issue joint guidelines for the conduct of a proposed joint sitting by committees of the Houses.

17. (1) Pursuant to Article 107(2) of the Constitution, at a joint sitting of the Houses of Parliament, the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate.

Joint sittings of Parliament.

(2) At any Joint Sitting of the Houses, the Standing Orders of the National Assembly shall apply with such modifications and variations as the Speaker of the National Assembly may consider necessary or appropriate.

(3) The Speakers of the Houses of Parliament shall enforce any directions given during a joint sitting in relation to the conduct of a Member of Parliament in accordance with the applicable provision of the National Assembly Standing Orders.

18. The Speakers of the Houses of Parliament may, in consultation with the Leaders of the Majority Party and the Minority Party, arrange for a joint sitting of Parliament for purposes of an address by a visiting Head of State or dignitary.

Address of Parliament by visiting dignitaries.

PART V—MISCELLANEOUS

19. (1) Each House of Parliament and its committees shall facilitate public participation under Article 118 of the Constitution.

Public participation processes.

(2) The public participation under subsection (1) shall be conducted through any of the following—

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

(3) A committee of a House of Parliament shall have a broad measure of discretion in conducting public

participation on a matter referred for its consideration and shall—

- (a) endeavour to avoid duplication of any related exercise conducted on the matter;
- (b) embrace modern means of engagement, including the use of information communication technology;
- (c) give reasonable notice of the exercise and afford the public a reasonable opportunity to participate;
- (d) adopt a clear and simple medium of engagement with wide reach for the exercise;
- (e) target specific stakeholders, where appropriate;
- (f) ensure reasonable access and participation of persons with disabilities in the exercise;
- (g) maintain a record of the submissions received from the exercise.

(4) When a Bill under Article 109(4) of the Constitution has been passed in one House, the Clerk shall forward a certified copy of the Bill, signed by the Clerk and endorsed by the Speaker, to the Clerk of the other House together with the public participation report on the Bill.

(5) A committee of one House may hold a joint public participation exercise with the corresponding committee of the other House.

(6) In considering a Bill or a matter on which a committee of a House of Parliament has conducted public participation, a committee of the second House may—

- (a) elect not to undertake a similar exercise and rely on the findings of the committee of the first House; or
- (b) seek additional views on the Bill or matter—
 - (i) with respect to substantive amendments made to a Bill during its consideration;
 - (ii) from persons or stakeholders who did not participate in the exercise conducted in the first House;

- (iii)! from persons or stakeholder whose submissions were not taken into account by the first House.

(7) A committee of Parliament shall consider the views received from public participation broadly.

(8) An Act of Parliament is not invalid on account of the failure to incorporate any view submitted during public participation.

20. (1) Before formally declaring the existence of a dispute between the Houses of Parliament, the Houses of Parliament shall, in good faith, make every reasonable effort and take all necessary steps to amicably resolve the matter by initiating direct negotiations with each other or through an intermediary.

Use of alternative dispute resolution mechanism to resolve disputes.

(2) Where the negotiations under subsection (1) fail, the Leadership of a House of Parliament may formally declare a dispute by referring the matter for resolution by the Speakers of the Houses.

(3) Within twenty-one days of the formal declaration of a dispute, the Speakers of the Houses of Parliament shall convene a meeting inviting the Leadership of the Houses or their designated representatives —

(a)!to determine the nature of the dispute, including —

- (i)! the precise issues in dispute; and
- (ii)! any material issues which are not in dispute; and

(b)!to—

- (i)! identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist in settling the dispute; or
- (ii)! agree on an appropriate mechanism or procedure for resolving the dispute, including mediation or arbitration.

(4) A party in court shall demonstrate that all efforts of amicably resolving a dispute between the Houses of Parliament under this section have failed.

FIRST SCHEDULE

**NOTIFICATION OF QUESTION ARISING UNDER ARTICLE
110(3) [s. 6(3)]**

REPUBLIC OF KENYA



PARLIAMENT

WHEREAS theBill, 20... (National
Assembly/Senate Bills No.....of 20....) was published on the
.....day of, 20....

A question as to whether the.....Bill, 20....
(National Assembly/Senate Bills No.....of 20....) concerns county
governments has arisen as follows—

(indicate the details relating to the question)

NOW THEREFORE, this is to request your view on the question.

DATED this day of.....20...

.....
Speaker of the National Assembly/Senate

SECOND SCHEDULE
CERTIFICATE OF JOINT RESOLUTION [s. 9(3)]
REPUBLIC OF KENYA



PARLIAMENT

WHEREAS the Bill, 20.....
 (National Assembly/Senate Bills No.....of 20...) was published on the
day of, 20....

AND having considered the provisions of Article 109(3) of the Constitution

NOW THEREFORE,

Pursuant to Article 110(3) of the Constitution, I hereby certify that the

..... Bill, 20.... (National Assembly/Senate Bills

No. ...of 20) is—

- (a) a Bill concerning county governments ☐ ; or a Bill not concerning county governments ☐ ; and
- (b) a special Bill within the meaning of Article 110(2) of the Constitution ☐ ; or an ordinary Bill within the meaning of Article 110(2) of the Constitution ☐

This..... day of....., 20....

.....
Speaker of the National Assembly/Senate

Pursuant to Article 110(3) of the Constitution, I hereby certify that the
 Bill, 20.... (National Assembly/Senate Bills No.of 20
) is—

- (a) a Bill concerning county governments ☐ ; or a Bill not concerning county governments ☐ ; and
- (b) a special Bill within the meaning of Article 110(2) of the Constitution ☐ ; or an ordinary Bill within the meaning of Article 110(2) of the Constitution ☐

This..... day of.....20...

.....
Speaker of the National Assembly/Senate

*This Certificate does not apply with regard to the Bills specified under section 7 of the Act

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons of the Bill

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

ART I—outlines the Preliminary provisions

Clause 1 of the Bill is the short title.

Clause 2 of the Bill provides for the interpretation of terms as used in the Bill.

Clause 3 of the Bill provides for the objects of the Bill which include to provide a framework for determining the nature of a Bill; define the Bills that do not require a joint resolution by the Speakers under Article 110(3) of the Constitution; define the Bills that are considered only by the National Assembly; define Bills that are Bills not concerning county governments and define Bills concerning county governments.

ART II—outlines matters relating to publication and the enacting formula for Bills and Acts of Parliament so as to standardize the practice between the Houses. These matters were previously expressly provided for in the Constitution prior to 2010.

Clause 4 of the Bill provides for the publication of Bills originating from either House of Parliament, the enacting formula and imposes timelines for such publication to cure scenarios where the Government printer at times delays in the printing of Bill requests.

Clause 5 of the Bill provides for the publication of Acts of Parliament after assent by the President,

ART III—contains provisions relating to the joint resolution of a question under Article 110(3) of the Constitution

Clause 6 of the Bill provides for the manner in which the question arises for purposes of Article 110(3) of the Constitution and the matter in which the Speaker notifies the other of the question arising.

Clause 7 of the Bill outlines the instances where no question can be deemed to arise under Article 110(3) as the Constitution has in itself expressly provided for the mode of enactment of the Bills in question.

Clause 8 of the Bill provides for consideration of a question arising and the options available to the Speaker upon such consideration.

Clause 9 of the Bill provides for agreement over the question raised in which case a Certificate of joint Resolution is issued.

Clause 10 of the Bill provides for disagreement over the question raised and the options available to the Speaker upon such disagreement.

Clause 11 of the Bill provides for conciliation in the event of disagreement.

Clause 12 of the Bill provides for consideration of money Bills especially where such a finding is arrived at under Article 114(2) in respect of Bills emanating from the Senate.

Clause 13 of the Bill provides for co-sponsorship of Bills.

PART IV provides for the conduct of joint proceedings and committees.

Clause 14 of the Bill provides for Mediation Committees and includes provisions on the chairing, voting and conduct of such committees

Clause 15 of the Bill provided for Joint committees and their procedures.

Clause 16 of the Bill provides for Joint sittings of the Houses and the enforcement of the Standing Orders of the House presiding over such sittings.

Clause 17 of the Bill provides for an Address of Parliament by visiting dignitaries.

PART V—provides for miscellaneous provisions on matters of mutual interest to the two Houses of Parliament.

Clause 18 of the Bill provides for address of Parliament by visiting dignitaries.

Clause 19 of the Bill provides for public participation processes.

Clause 20 of the Bill provides for use of alternative dispute resolution mechanisms to resolve disputes in keeping with the judicial principles outlined under Article 159(2)(c) of the Constitution. The clause further provides that where a dispute arises between the Houses relating to the discharge of their respective functions, the Houses shall use alternative forms of dispute resolution in seeking to resolve the dispute and shall before seeking redress in court on any dispute relating to the discharge of their respective functions, first exhaust the alternative dispute resolution mechanisms.

THE FIRST SCHEDULE provides for the notification of question arising under Article 110(3) of the Constitution.

THE SECOND SCHEDULE provides for the Certificate of Joint Resolution.

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

The Bill does not delegate legislative powers or limit any fundamental rights and freedoms.

Consideration of the Bill by both Houses

This Bill provides for the seamless processing of matters of a bicameral nature by the Houses of Parliament and a mode of resolving any disputes that may arise between the Houses. The Bill shall be considered by both Houses.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill may not occasion additional public expenditure.

Dated the 28th July, 2023

SAMUEL CHEPKONGA,
Member of Parliament.

ANNEX 3: Copy of The Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018), as passed by the Senate and referred to the National Assembly

SPECIAL ISSUE

Kenya Gazette Supplement No. 129 (Senate Bills No. 30)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2018

NAIROBI, 17th October, 2018

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**THE DETERMINATION OF THE NATURE OF
BILLS (PROCEDURE) BILL, 2018
ARRANGEMENT OF CLAUSES**

Clause

- 1—Short title.
- 2— Interpretation.
- 3— Object.
- 4— Application.
- 5— Procedure upon publication.
- 6—Joint committee.
- 7— Determination of nature of a Bill
- 8—Criteria for a Bill concerning county government.
- 9—Criteria for determining a special or ordinary Bill.
- 10—Criteria for determining a money Bill.
- 11—Report of the joint Committee.
- 12—Reference to the Supreme Court.
- 13—Concurrence on the nature of a Bill.
- 14—Mediation committees.
- 15—Presidential assent.
- 16—Joint Committees of Parliament.

SCHEDULE

**THE DETERMINATION OF THE NATURE OF
BILLS (PROCEDURE) BILL, 2018**

A Bill for

AN ACT of Parliament to give effect to Articles 109 (5), 110 (3) and 114 of the Constitution; to provide procedure for the Speakers of the National Assembly and the Senate to determine the nature of a Bill; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Determination of the Nature of Bills (Procedure) Act, 2018. Short title.

2. In this Act—

Interpretation.

“Houses” means the National Assembly and the Senate;

“Joint Committee” means the joint committee established under section 6;

“mediation committee” means a mediation committee established under Article 113 of the Constitution;

“Session” means the sittings of either the National Assembly or the Senate commencing when either House first meets after a General Election or on a day provided for in the relevant Standing Orders on the Regular Sessions of the relevant House and terminating when either House adjourns at the end of a calendar year or at the expiry of the term of Parliament; and

“Speaker” means the Speaker of the National Assembly or the Senate.

3. The object of this Act is to provide— Object.

- (a) a framework for determining the nature of a Bill;
- (b) for the procedure for determining whether a Bill concerns counties; and
- (c) a framework for resolving a dispute as to whether a Bill concerns counties.

4. This Act applies to all Bills originating in the National Assembly and the Senate. Application.

5. (1) Upon the publication of a Bill, and before the Bill is read a First Time in the House originating the Bill, the Speaker of that House shall, pursuant to Article 110 (3) Procedure upon publication.

of the Constitution, seek the concurrence of the Speaker of the other House on whether the Bill-

- (a) is a Bill concerning counties: and
- (b) if it concerns counties, whether it is a special or an ordinary Bill.

(2) The Speaker from whom concurrence is sought under subsection (1) shall respond to the request for concurrence within a period of seven days from the date of receipt of the request.

(3) Where no response is received within the period specified under subsection (2), the Speaker of the House originating the Bill may direct that the Bill be Read a First time.

6. (1) Where the Speakers of both Houses fail to concur on the nature of a Bill as provided in section 5, the Speakers shall refer the Bill to a Joint Committee established to determine the nature of the Bill.

Joint Committee.

(2) Each Speaker shall appoint, from amongst members of the respective House, three members to sit in the Joint Committee.

(3) The Joint Committee shall, at its first meeting, elect a chairperson and a vice-chairperson from amongst its members.

(4) The chairperson and vice-chairperson shall not be members of the same House.

(5) In the absence of the chairperson or the vice-chairperson at a meeting of the Joint Committee, the members of the Joint Committee shall elect, from amongst its membership, a person to chair that meeting.

(6) The quorum of any meeting of the Joint Committee shall be at least two members from the National Assembly and two members from the Senate.

(7) The Clerks of the Houses of Parliament shall be the joint secretaries to the Joint Committee.

7. (1) The Joint Committee shall, within seven days of its constitution consider the Bill and submit a report to each of the Speakers with its recommendations on whether the Bill is—

Determination of
the nature of a
Bill.

- (a) a Bill concerning counties;
- (b) if it is a Bill concerning counties, whether it is a special or an ordinary Bill; or
- (c) a money Bill.

(2) The Joint Committee shall be guided by the criteria set out under sections 8, 9 and 10 in determining whether a Bill –

- (a) contains provisions affecting the functions and powers of the county governments set out in the Fourth Schedule to the Constitution; and
- (b) is a Bill referred to in Chapter Twelve of the Constitution affecting the finances of county governments.

8. (1) A Bill shall be a Bill concerning county governments under Article 110(1)(a) of the Constitution if the Bill –

Criteria for a Bill concerning county government.

- (a) directly or indirectly affects the operations of the county governments;
- (b) would have a direct or indirect impact on the functions of county governments under part 2 of the Fourth Schedule to the Constitution;
- (c) would have an impact on the exercise by any person upon whom a function or power is conferred under the Bill on any institution or office of the county government, the finances of the county government or the property held by or vested in the county government;
- (d) confers a function or power on a person that would affect the exercise of the functions and the powers of the county governments;
- (e) seeks to transfer a function or power between the national government and the county governments under Article 187 of the Constitution; or
- (f) provides for any other matter that would affect the functions and powers of the county governments.

(2) A Bill shall be a Bill that affects the finances of a county government under Article 110(1)(c) of the Constitution if –

(a) the Bill provides for –

- (i) the equitable sharing of revenue under Article 202(1) of the Constitution;
- (ii) a matter set out under Article 204 of the Constitution;
- (iii) the withdrawal of money from the Consolidated Fund under Article 206 of the Constitution that affects the finances of county governments;
- (iv) the withdrawal of money from a County Revenue Fund;
- (v) of public funds by counties and the management of those funds;
- (vi) advances from the Contingencies Fund under Article 208 of the Constitution that affects the finances of county governments;
- (vii) the imposition of a tax, duty or charge by the national government;
- (viii) borrowing by the national government that affects the finances of county governments;
- (ix) the terms and conditions under which the national government may guarantee a loan under Article 212 (a) of the Constitution.; or
- (x) any other matter referred to in Chapter Twelve of the Constitution affecting the finances of county governments.

(b) the Bill is –

- (i) the annual Division of Revenue Bill; or
- (ii) the annual County Allocation of Revenue Bill.

9. A Bill shall be a Special Bill if the Bill –

- (a) provides for the election of members of a county assembly or a county executive; or
- (b) is a County Allocation of Revenue Bill.

Criteria for determining a special or ordinary Bill.

10. (1) A Bill shall be a money Bill within the definition of Article 114 of the Constitution if the primary object of the Bill is to provide for–

Criteria for determining a money Bill.

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or;
- (e) matters incidental to any of the matters specified under paragraphs (a) to (d).

(2) A Bill shall not be a money Bill if the Bill provides for—

- (a) the imposition of taxes by a county government;
- (b) the imposition of charges on a public fund or the variation or repeal of such charges by a county government;
- (c) the appropriation, receipt, custody, investment or issue of public money by a county government; or
- (d) the raising or guaranteeing of any loan or its repayment by a county government.

11. Within five days of receipt of a report of the Joint Committee under section 7 (1), the Speakers of the respective Houses shall each signify on a certificate of joint concurrence in the form set out under the Schedule on whether they concur with the recommendations contained in the report of the Joint Committee on the nature of the Bill.

Report of the Joint Committee.

12. (1) Where the Speakers of both Houses fail to concur with the recommendations of the report of the Joint Committee on whether—

Reference to the Supreme Court

- (a) a Bill concerns counties; or
- (b) a Bill is a money Bill,

the Joint Committee shall prepare a report to the Speakers requesting Parliament to refer the Bill to the Supreme Court for advisory opinion on the matter.

13. Where the two Speakers concur on the nature of the Bill, the Bill shall be introduced in the originating

Concurrence on the nature of the Bill.

House and shall be processed in accordance with the Constitution and the standing orders of that House.

14. When a Bill concerning county governments is referred to a House of Parliament pursuant to Article 110 (4) of the Constitution, and the relevant House fails to pass the Bill in one Session, the Bill shall be processed in accordance with Article 113 of the Constitution.

Mediation
committees.

15. A Bill presented for presidential assent shall be accompanied with a certificate of joint concurrence by the Speakers of both houses on the Bill.

Presidential
assent.

16. A Select Committee of the Senate may hold a joint sitting with the corresponding Select Committee of the National Assembly to deliberate on matters of mutual interest and concern.

Joint Committees
of Parliament

SCHEDULE**(Section 8)****CERTIFICATE OF CONCURRENCE**

Pursuant to Article 110(3) of the Constitution, I hereby certify that the
..... Bill is –

- (a) a Bill concerning/not concerning counties; and
- (b) a special/an ordinary Bill.

Speaker of the [originating House]

Pursuant to Article 110(3) of the Constitution, I hereby certify that the
..... Bill is –

- (a) a Bill concerning/not concerning counties; and
- (b) a special/an ordinary Bill.

Speaker of the [other House]

FORM A: Where the Bill concerns county governments

I certify that this printed impression is a true copy of the Bill as passed by the [Originating House] onand by the [other House] on and that the two Speakers concurred, pursuant to Article 110(3) of the Constitution, that this is a Bill concerning county governments.

Clerk of the [originating House]

Speaker of the [originating House]

Clerk of the [other House]

Speaker of the [other House]

Presented for assent in accordance with the provisions of the Constitution of Kenya on theday of at the hour of

Speaker of the [originating House]

FORM B: Where the Bill does not concern county governments

I certify that this printed impression is a true copy of the Bill as passed by the [Originating House] onand by the [other House] on and that the two Speakers concurred, pursuant to Article 110(3) of the Constitution, that this is not a Bill concerning county governments in terms of Article 110(1) of the Constitution.

Clerk of the [originating House]

Speaker of the [originating House]

Clerk of the [other House]

Speaker of the [other House]

Presented for assent in accordance with the provisions of the Constitution of Kenya on theday of at the hour of

Speaker of the [originating House]

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to give effect to Article 110 (3) of the Constitution which provides—

Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.

The Bill provides a framework through which both Houses of Parliament can resolve issues on whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill. Presently there is no legal framework on how the Speakers of both Houses of Parliament are to enforce concurrence on all the Bills presented to both Houses of Parliament.

The Bill therefore provides for the procedure for concurrence on all Bills tabled in either House of Parliament, the dispute resolution on concurrence, and the consequences of non-concurrence on a Bill.

The Bill provides for nomination of a joint committee by the Speakers of both Houses of Parliament to resolve any dispute on concurrence on a Bill. The resolution of a joint committee shall bind the Speakers of both Houses of Parliament.

The Bill provides that for a Bill to be published in the *gazette*, the Bill has to be accompanied by a certificate of concurrence from the Speakers of both Houses of Parliament.

The Bill also provides for referral of an ordinary Bill concerning counties, after the Bill has been passed by one House and transmitted to the other House, to a mediation committee established under Article 113 of the Constitution if a session elapses from the date of the reception of the Bill by the other House without the Bill being passed by it.

The Bill also provides for referral of a Bill to the Supreme Court for advisory opinion in instances where the two Speakers fail to concur on whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.

The Bill also provides that a Bill taken for Presidential Assent has to be accompanied with certificate of concurrence from Speakers of both Houses of Parliament.

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

The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

The Bill is expected to provide a framework for determining the Bills that concern counties and therefore ensure that devolution, and powers and functions of counties are protected during the law-making process in Parliament

The Bill is therefore a Bill concerning 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 27th September, 2018.

KILONZO MUTULA JUNIOR,
Senator.

SAKAJA JOHNSON ARTHUR,
Senator.

ANNEX 4: Copy of The Senate version of the Bill as
submitted for mediation and harmonization with
the National Assembly Bill

**THE DETERMINATION OF THE NATURE OF A BILL (PROCEDURE) BILL,
2023**

ARRANGEMENT OF CLAUSES

Clause

PART I - PRELIMINARY

- 1 — Short title.
- 2 — Interpretation.
- 3 — Object.
- 4 — Application.

**PART II - DETERMINATION UNDER ARTICLE 110(3) OF THE
CONSTITUTION**

- 5 — Procedure upon publication.
- 6 — Determination of the nature of a Bill.
- 7 — Criteria for a Bill concerning counties.
- 8 — Criteria for determining a special or ordinary Bill.

**PART III - DETERMINATION UNDER ARTICLE 114 OF THE
CONSTITUTION**

- 9 — Concurrence on money Bill.
- 10 — Criteria for determining a money Bill.
- 11 — Consideration of money Bill.
- 12 — Concurrent determination.

PART IV - JOINT RESOLUTION

- 13 — Joint resolution on the nature of a Bill.
- 14 — Presidential assent.

SCHEDULE – CERTIFICATE OF JOINT RESOLUTION

**THE DETERMINATION OF THE NATURE OF A BILL (PROCEDURE)
BILL, 2023**

A Bill for

AN ACT of Parliament to give effect to Articles 109(5), 110(3) and 114 of the Constitution; to provide the procedure for the Speakers of the National Assembly and the Senate to determine the nature of a Bill; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I - PRELIMINARY

Short title.

1. This Act may be cited as the Determination of the Nature of a Bill (Procedure) Act, 2023.

Interpretation.

2. In this Act —

“Houses” means the National Assembly and the Senate; and

“Speaker” means the Speaker of the National Assembly or the Senate.

Object.

3. The object of this Act is to provide—

- (a) a framework for determining the nature of a Bill; and
- (b) for the procedure for determining whether a Bill concerns counties.

Application.

4. This Act applies to all Bills originating in the National Assembly and the Senate.

**PART II - DETERMINATION UNDER ARTICLE 110(3) OF
THE CONSTITUTION**



Procedure
upon
publication.

5. (1) Before a Bill is read a First Time in the House originating the Bill, the Speaker of that House shall, pursuant to Article 110(3) of the Constitution, seek the concurrence of the Speaker of the other House on whether the Bill is —

(a) a Bill concerning counties; and

(b) a special or an ordinary Bill.

(2) The Speaker from whom concurrence is sought under subsection (1) shall respond to the request for concurrence within a period of seven days from the date of receipt of the request.

(3) Where a response is not received within the period specified under subsection (2), the Speaker of the House originating the Bill may direct that the Bill be Read a First Time.

Determination
of the nature of
a Bill.

6. The Speakers shall, in making a determination under section 5(1), take into account the criteria set out under sections 7 and 8.

Criteria for a
Bill concerning
county
government.

7. (1) A Bill is a Bill containing provisions affecting the functions of a county government under Article 110(1)(a) of the Constitution if the Bill —

(a) directly or indirectly affects the operations of the county governments;

(b) would have a direct or indirect impact on the functions of county governments under Part 2 of the Fourth Schedule to the Constitution;

(c) would have an impact on the exercise by any person upon whom a function or power is conferred under the Bill on any institution or office of the county government, the finances of the county government or the property held by or vested in the county government;

(d) contains provisions which the county governments are required to implement or are binding on county governments;

(e) confers a function or power on a person that would affect the exercise of the functions and the powers of

the county governments under the Fourth Schedule to the Constitution;

- (f) seeks to transfer a function or power between the National Government and the county governments under Article 187 of the Constitution;
- (g) that affects the ability of the Senate to carry out its functions under Article 96 of the Constitution; or
- (h) provides for any other matter that would directly or indirectly affect the functions and powers of the county governments.

(2) A Bill is a Bill affecting the finances of a county government under Article 110(1)(c) of the Constitution if—

(a) the Bill provides for —

- (i) the equitable sharing of revenue under Article 202(1) of the Constitution;
- (ii) the additional allocation of funds from the National Government's share of revenue to county governments under Article 202(2) of the Constitution;
- (iii) the additional allocation of funds to county governments under Article 190(1) of the Constitution including proceeds of loans and grants from development partners;
- (iv) a matter relating to the appropriation and administration of the Equalisation Fund under Article 204 of the Constitution;
- (v) the sharing of revenue or any financial matter concerning county governments as contemplated in Article 205(1) of the Constitution;
- (vi) the transfer of equitable share to the county governments pursuant to Article 219 of the Constitution;

- (vii) the withdrawal of money from the Consolidated Fund under Article 206 of the Constitution that affects the finances of county governments;
- (viii) the withdrawal of money from a County Revenue Fund;
- (ix) the establishment of public funds by counties and the management of those funds;
- (x) the establishment of a fund by Parliament for the benefit of a county government or a county government entity;
- (xi) advances from the Contingencies Fund under Article 208 of the Constitution that affect the finances of county governments;
- (xii) the imposition of a tax, duty or charge under Article 209(3)(c) of the Constitution;
- (xiii) borrowing by the National Government under Article 211 of the Constitution;
- (xiv) public debt under Article 214 of the Constitution that is to be charged on a public fund established for the benefit of county governments;
- (xv) borrowing by counties including the terms and conditions under which the National Government may guarantee a loan under Article 212(a) of the Constitution;
- (xvi) any matter concerning the Commission on Revenue Allocation under Articles 215 and 216 of the Constitution;
- (xvii) the form, content and timing of budgets for National and county governments prepared pursuant to Article 220 of the Constitution;
- (xviii) estimates for expenditure from the Equalisation Fund prepared pursuant to Article 221(2)(a);

- (xix) an appropriation under Article 223(4) of the Constitution that affects the finances of a county government;
 - (xx) the form and procedure for processing county budgets and appropriation Bills prepared pursuant to Article 224 of the Constitution;
 - (xxi) financial control measures and mechanisms under Article 225 of the Constitution;
 - (xxii) the keeping of financial records and auditing of accounts of county governments and the designation of accounting officers in the county governments under to Article 226 of the Constitution;
 - (xxiii) the procurement of public goods and services under Article 227 of the Constitution;
 - (xxiv) the powers and functions of the Salaries and Remuneration Commission to set, review and advise on the remuneration and benefits of public officers in the county governments under Article 230(4) of the Constitution; or
 - (xxv) any other matter referred to in Chapter Twelve of the Constitution affecting the finances of county governments; or
- (b) the Bill is –
- (i) the annual Division of Revenue Bill under Article 218(1)(a) of the Constitution; or
 - (ii) the annual County Allocation of Revenue Bill under Article 218(1)(b) of the Constitution.

Criteria for
determining a special
or ordinary Bill.

8. A Bill is a special Bill if the Bill –

- (a) relates to, affects or concerns the election of members of a county assembly or a county executive including-



- (i) the continuous registration of citizens as voters under Articles 82(1)(c) and 88(4)(a) of the Constitution;
- (ii) the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of county assemblies under Article 82(1)(a) of the Constitution;
- (iii) the monitoring of compliance with the legislation required by Article 82(1)(b) relating to nomination of candidates by parties under Article 88(4)(k) of the Constitution;
- (iv) the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, including the nomination of candidates for elections 82(1)(d) of the Constitution;
- (v) the registration as voters of citizens residing outside Kenya under Article 82(1)(e) of the Constitution;
- (vi) the establishment of mechanisms for electoral disputes under Article 87(1) of the Constitution;
- (vii) the functions of the Independent Electoral and Boundaries Commission under Article 88 of the Constitution directly or indirectly affecting the election of members of a county assembly;
- (viii) the review of the names and boundaries of constituencies and wards under Article 89 of the Constitution;
- (ix) the conduct and supervision of elections for the members of county assemblies under 177(1)(b) and (c) of the Constitution conducted by the Independent Electoral and Boundaries Commission under Article 90(2) of the Constitution;
- (x) the allocation of airtime to political parties under Article 92(a) of the Constitution;

- (xi) the regulation of freedom to broadcast for fair election campaigning under Article 92(b) of the Constitution;
 - (xii) the regulation of political parties under Article 92(c) of the Constitution;
 - (xiii) the roles and functions of political parties under Article 92(d) of the Constitution;
 - (xiv) the registration and supervision of political parties under Article 92(e) of the Constitution;
 - (xv) the establishment and management of a political parties fund under Article 92(f) of the Constitution;
 - (xvi) the accounts and audit of political parties under Article 92(g) of the Constitution;
 - (xvii) restrictions on the use of public resources to promote the interests of political parties under Article 92(h) of the Constitution; and
 - (xviii) any other matter affecting the management of political parties; or
- (b) is a County Allocation of Revenue Bill under Article 218(1)(b) of the Constitution.

PART III - DETERMINATION UNDER ARTICLE 114 OF THE CONSTITUTION

Concurrence
on money Bill.

9. (1) Before a Bill is read a First Time in the House originating the Bill, the Speaker of that House shall seek the concurrence of the Speaker of the other House on whether the Bill is a money Bill.

(2) The Speaker from whom concurrence is sought under subsection (1) shall respond to the request for concurrence within a period of seven days from the date of receipt of the request.

(3) Where no response is received within the period specified under subsection (2), the Speaker of the House originating the Bill may direct that the Bill be Read a First Time.

Criteria for
determining a
money Bill.

10. (1) A Bill is a money Bill within the definition of Article 114 of the Constitution if the Bill contains provisions dealing only with-

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of the matters specified under paragraphs (a) to (d).

(2) A Bill is not a money Bill if the Bill contains provisions that —

- (a) concern county governments as set out in section 8;
- (b) the imposition of taxes by a county government;
- (c) provides for the appropriation of funds by Parliament but does not appropriate money;
- (d) the imposition of charges on a public fund or the variation or repeal of such charges by a county government;
- (e) the appropriation, receipt, custody, investment or issue of public money by a county government; or
- (f) the raising or guaranteeing of any loan or its repayment by a county government.

Consideration
of a money
Bill.

11. (1) A Bill that meets the criteria under section 10(1) may be introduced only in the National Assembly in accordance with Article 109(5) of the Constitution.

(2) A Bill that meets the criteria under section 10(2) may be introduced in the National Assembly or the Senate and passed in accordance with Articles 110 to 113, Articles 122 and 123 and 109(4) of the Constitution and the Standing Orders of the Houses.

Concurrent
determination.

12. The determination of the nature of a Bill under section 5(1) shall be concurrent to the determination of the nature of a Bill under section 10(1).

PART IV - JOINT RESOLUTION

Joint resolution
on the nature
of the Bill.

13. Where the Speakers agree on the nature of a Bill in terms of Articles 109(5), 110(3) and 114 of the Constitution, the Bill shall be introduced in the originating House in accordance with the Constitution and the standing orders of the respective House.

(2) Where the Speakers fail to agree on the nature of a Bill as provided in subsection (1) within twenty-one days from the date of the request for concurrence from the originating House under sections 5(1) and 10(1) the Bill shall not be introduced in Parliament.

Presidential
assent.

14. A Bill presented for presidential assent shall be accompanied by a certificate of joint resolution signed by the Speakers of the Houses in the form set out in the Schedule.



SCHEDULE

(s.14)

CERTIFICATE OF JOINT RESOLUTION

FORM A: Where the Bill concerns county governments

I certify that this printed impression is a true copy of the Bill as passed by the [Originating House] onand by the [other House] on and that the Speakers concurred, pursuant to Article 110(3) of the Constitution, that this is a Bill concerning county governments.

Clerk of the [originating House]

Speaker of the [originating House]

Clerk of the [other House]

Speaker of the [other House]

Presented for assent in accordance with the provisions of the Constitution of Kenya on theday of at the hour of

Speaker of the [originating House]

FORM B: Where the Bill does not concern county governments

I certify that this printed impression is a true copy of the Bill as passed by the [Originating House] onand by the [other House] on and that the Speakers concurred, pursuant to



Article 110(3) of the Constitution, that this is not a Bill concerning county governments in terms of Article 110(1) of the Constitution.

Clerk of the [originating House]

Speaker of the [originating House]

Clerk of the [other House]

Speaker of the [other House]

Presented for assent in accordance with the provisions of the Constitution of Kenya on theday of at the hour of

Speaker of the [originating House]



MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to give effect to Articles 109(5), 110(3) and 114 of the Constitution. The Bill proposes a framework and procedure through which the Speakers of the two Houses of Parliament arrive at a joint resolution on the nature of a Bill. In this respect, the Bill sets out criteria to guide the Speakers in determining whether a Bill concerns counties; is a special or ordinary Bill; and is a money Bill. The Bill further provides for timelines within which the determination of the nature of a Bill must be made.

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

The Bill does not delegate legislative powers nor does it limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

The Bill proposes to give effect to the provisions of Article 109(5), 110(3) and 114 of the Constitution in determining the nature of a Bill. This determination takes into account whether a Bill contains provisions affecting the functions of county governments under Part 2 of the Fourth Schedule to the Constitution. The Bill is therefore a Bill concerning 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.



ANNEX 5: Advertisement Published in the *Daily Nation* and
Standard Newspapers on Tuesday, 2nd April, 2024

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 26th March, 2024, Wednesday, 27th March, 2024 and Thursday 28th March 2024, 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 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 **Tuesday, 16th April, 2024 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Cancer Prevention and Control (Amendment) (No.2) Bill, 2022 (National Assembly Bills No.45 of 2022)	Standing Committee on Health	healthcommittee.senate@parliament.go.ke
b)	The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No.44 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
c)	The Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
d)	The Local Content Bill, 2023 (Senate Bills No.50 of 2023)	Standing Committee on Energy	energycommittee.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.**

