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THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

Approved  
SNA  
31/7/24

DIRECTORATE OF DEPARTMENTAL COMMITTEES


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DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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**REPORT ON:**

**THE CONSIDERATION OF THE TRIBUNALS BILL, 2023**  
*(NATIONAL ASSEMBLY BILL NO. 45 OF 2023)*

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 31 JUL 2024	DAY: WEDNESDAY
TABLED BY:	CHAIRPERSON, J LAC
CLERK-AT-THE-TABLE:	HON. GEORGE MURUGA TRACEY CHEBET

CLERK'S CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

JULY 2024



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## LIST OF ABBREVIATIONS AND ACRONYMS

BPRT	-	Business Premises Rent Tribunal
CKRC	-	Constitution of Kenya Review Commission
CRJ	-	Chief Registrar of the Judiciary
JSC	-	Judicial Service Commission
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
ODM	-	Orange Democratic Movement
OAG	-	Office of the Attorney-General
PPARB	-	Public Procurement Administrative Review Board
PPDT	-	Political Parties Dispute Tribunal
PSC	-	Public Service Commission
TLB	-	Transport Licensing Board
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

## **ANNEXURES**

Annexure 1: Adoption Schedule

Annexure 2: Minutes

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

Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to submit memoranda on the Bill

Annexure 6: Memoranda by Stakeholders

## CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Tribunals Bill (*National Assembly Bill No. 45 of 2023*) which was published on 11<sup>th</sup> August 2023. The Bill seeks to reform the Tribunal system in Kenya by rationalizing and regulating the administration and function of membership and administration of Tribunals.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on 6<sup>th</sup> October 2023 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee vide letter Ref. No. *NA/DDC/JLAC/2023/105* dated 5<sup>th</sup> October 2023 invited key stakeholders to submit views on the Bill, and attend public participation forums on 12<sup>th</sup> October 2023, 19<sup>th</sup> October 2023 and 19<sup>th</sup> March 2024. By the close of the submission deadline, the Committee had received fourteen (14) memoranda.

The OAG, the Judiciary, the KLRC, the LSK, the National Council for Law Reporting, the BPRT and Land Acquisition Tribunal jointly, the Competition Tribunal, the PPARB, the Refugee Status Appeals Committee, the State Corporations Appeal Tribunal, the Transport Licensing Appeals Board, the Public Administrative Officers Caucus and the *Katiba* Institute gave their views on the Bill which the Committee considered in the preparation of this report.

The Cooperatives Tribunal, the Energy Tribunal, the Legal Education Appeals Tribunal and the PPDT attended the public participation forums and associated themselves with the views of the BPRT and Land Acquisition Tribunal as submitted by the Chairperson of the latter.

While considering the Bill, the Committee observed that following the promulgation of the Constitution, tribunals were incorporated into the mainstream administration of justice system. Article 169(1) provides a list of subordinate courts which includes local tribunals. Therefore, the affairs of the local tribunals ought to be managed by the Judiciary through JSC. In doing so, the constitutional dictates would be achieved.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the OAG, the Judiciary, the KLRC, the LSK, the National Council for Law Reporting, the BPRT and Land Acquisition Tribunal, the Competition Tribunal, the Cooperatives Tribunal, the Energy Tribunal, the Legal Education Appeals Tribunal, the PPARB, the PPDT, the Refugee Status Appeals Committee, the State Corporations Appeal Tribunal, the Transport Licensing Appeals Board, the Public Administrative Officers Caucus and the *Katiba* Institute for submitting views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Tribunals Bill (*National Assembly Bill No. 45 of 2023*).

It is my pleasure to report that the Committee has considered the Tribunals Bill (*National Assembly Bill No. 45 of 2023*) and have the honour to report back to the National Assembly with the recommendation that **the House approves the Bill with the amendments in the Schedule of Amendments forming Chapter Six of this report.**



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

## CHAPTER ONE

### 1 PREFACE

#### 1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows:
  - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
  - iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - iv. *To study and review all legislation referred to it;*
  - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
  - viii. *To examine treaties, agreements and conventions;*
  - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
  - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - xi. *To examine any questions raised by Members on a matter within its mandate.*

#### 1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider<sup>1</sup>:-
  - a) The Judiciary;
  - b) Tribunals;
  - c) Access to Justice;
  - d) Public prosecutions;
  - e) Ethics, Integrity and Anti-corruption;
  - f) Correctional services;
  - g) Community service orders and witness protection;
  - h) Constitutional Affairs;
  - i) Sovereign immunity;
  - j) Elections including referenda;

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

- k) Human rights;
- l) Political parties; and
- m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

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

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

### 1.3 Committee Membership

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

#### **Chairperson**

Hon. Murugara George Gitonga, MP  
Tharaka Constituency  
**UDA Party**

#### **Vice-Chairperson**

Hon. Mutuse Eckomas Mwengi, OGW, MP  
Kibwezi West Constituency  
**MCCP Party**

#### **Members**

Hon. Maalim Farah, MP  
Dadaab Constituency  
**WDM-Kenya**

Hon. Muriu Wakili Edward, MP  
Gatanga Constituency  
**UDA Party**

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

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

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

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

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

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

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

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

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

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

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

#### 1.4 Committee Secretariat

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

Mr. Ahmed Salim Abdalla  
**Clerk Assistant I /Head of Secretariat**

Mr. Ronald Walala  
**Senior Legal Counsel**

Ms. Vivienne Ogega  
**Research Officer III**

Ms. Jael Ayiego  
**Clerk Assistant III**

Ms. Mary Kamande  
**Public Communications Officer III**

Mr. Abdikafar Abdi  
**Clerk Assistant III**

Mr. John Nduaci  
**Serjeant-At-Arms**

Mr. Omar Abdirahim  
**Fiscal Analyst II**

Mr. Calvin Karung'o  
**Media Relations Officer III**

Mr. Isaac Nabiswa  
**Legal Counsel II**

Mr. Peter Mutethia  
**Audio Officer III**

Mr. Silas Opanga  
**Hansard Reporter III**



## CHAPTER TWO

### 2 OVERVIEW OF THE TRIBUNALS BILL (*NATIONAL ASSEMBLY BILL NO. 45 OF 2023*)

#### 2.1 Background

6. The Bill which is sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, EGH, MP, was published on 11<sup>th</sup> August 2023 and read a First Time in the House on 26<sup>th</sup> September 2023. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3).

#### 2.2 Summary of Legal Provisions

7. The Tribunals Bill, 2023 seeks to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1), and 169 of the Constitution regarding Tribunals; to establish the Office of the Registrar of Tribunals; to provide for the functions of the Registrar of Tribunals; and to rationalize and regulate the administration and operations of Tribunals. Additionally, the Bill sets appropriate qualifications for all Chairpersons and members of Tribunals
8. **Clause 5** of the Bill apportions the Judicial Service Commission (JSC) the additional functions of developing policies for the regulation of Tribunals; ensuring the enhancement of a fair, efficient, and accessible Tribunal system and jurisprudence; evaluating, rationalizing, and recommending to Parliament the Tribunals to be established, merged or abolished; regulate and oversee the functioning of Tribunals; set standards and monitor compliance with the standards by Tribunals; develop a Code of Conduct for Tribunals; ensure Tribunals adhere to the provisions of the law, regulations, policies, Code of Conduct, rules or guidelines; provide strategic direction to Tribunals; facilitate training programmes for members and staff of Tribunals; facilitate law reporting on decisions of Tribunals in consultation with the National Council for Law Reporting; and facilitate public education on the role of Tribunals.
9. The Clause further requires the JSC to, within two years, formulate and adopt guidelines for the evaluation and rationalization of Tribunals, undertake the first evaluation and rationalization exercise, and recommend to Parliament the Tribunals to be established, merged, or abolished.
10. **Clause 6** of the Bill establishes the office of the Registrar of Tribunals to be supported by an appropriate number of Deputy Registrars. To qualify for appointment as a Registrar or Deputy, a person must possess a law degree and have at least ten years post-qualification experience and at least five years post-qualification experience, respectively. Under Clause 7 of the Bill, the Registrar is to perform duties as directed by the Chief Registrar of the Judiciary.
11. **Clause 10** of the Bill establishes the Tribunals Secretariat, headed by the Registrar.
12. **Clause 11** of the Bill provides for the modalities of establishment of Tribunals. Under the Clause, a Ministry, Department, or Agency that intends to establish a Tribunal must submit a written request to the JSC accompanied by a statement of justification and a feasibility assessment report for consideration within sixty days of receipt of the information. Where

the JSC recommends the establishment of the Tribunal, the Cabinet Secretary must submit the request together with the views of the National Treasury on the financial implications of establishing the Tribunal and the decision of the JSC to the Cabinet for consideration and approval. Upon approval by the Cabinet, a Tribunal shall be established through an Act of Parliament.

13. **Clauses 12 and 13** of the Bill provide for the mode of appointment and qualifications required of Tribunal members. A Tribunal is to consist of a minimum of three members appointed through a competitive process. To be appointed Chairperson, a person must be a Kenyan citizen, hold a degree in law from a university recognized in Kenya, and be admitted as an advocate of the High Court of Kenya with not less than ten years' post-qualification experience. To be appointed as a member, a person must be a Kenyan citizen, hold a degree from a university recognized in Kenya, and have knowledge and experience of not less than five years in the respective field.
14. **Clause 15** of the Bill provides for the term of office for the Chairperson and members of a Tribunal as five years, renewable once. Their appointment is to be done in a staggered fashion to ensure continuity in the affairs of the Tribunal.
15. **Clause 39** of the Bill empowers the Chief Justice to make regulations, including measures to rationalization, clustering, or classification of Tribunals according to specialization; decentralization of services of Tribunals; terms of and conditions of service of staff of Tribunals; and procedural matters, among others.
16. **Clauses 43 to 48** of the Bill contain transitional provisions. Under **Clause 43**, every person who is currently a Chairperson or a Member of a Tribunal is to remain in office for their unexpired term or a period of eighteen months after the passage of the Bill, whichever is earlier.
17. **Clause 44** of the Bill requires the JSC to, within eighteen months of the enactment of the Bill, employ staff to Tribunals from amongst persons who, immediately before the commencement of the Bill, were public officers serving in Tribunals.
18. **Clause 48** of the Bill, as read together with the Third Schedule to the Bill, makes consequential amendments to the following **thirty-seven (37) Acts of Parliament** touching on provisions establishing Tribunals that have to be aligned to the provisions of the Bill—
  - (1) The Rent Restriction Act with respect to the Rent Tribunals;
  - (2) The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act with respect to the Tribunal under the Act;
  - (3) The Standards Act is with respect to the Standards Tribunal;
  - (4) The Seeds and Plant Varieties Act is with respect to the Tribunal under the Act;
  - (5) The Insurance Act with respect to the Tribunal under the Act;
  - (6) The State Corporations Act with respect to the Standards Tribunal;
  - (7) The Capital Markets Act with respect to the Capital Markets Tribunal
  - (8) The Retirement Benefits Act with respect to the Appeals Tribunal
  - (9) The Co-operatives Societies Act with respect to the Co-operative Tribunal
  - (10) The Kenya Information and Communications Act with respect to the Communications and Multimedia Appeals Tribunal;
  - (11) The Environmental Management and Co-ordination Act with respect to the National Environment Tribunal;

- (12) The Industrial Property Act is with respect to the Industrial Property Tribunal;
- (13) The Copyright Act is with respect to the Copyright Tribunal;
- (14) The Privatization Act with respect to the Privatization Appeals Tribunal;
- (15) The HIV and AIDS Prevention and Control Act with respect to the HIV and AIDS Tribunal
- (16) The Competition Act is with respect to the Competition Tribunal;
- (17) The Political Parties Act with respect to the Political Parties Disputes Tribunal;
- (18) The Tourism Act with respect to the Tourism Tribunal;
- (19) The Kenya Citizens and Foreign Nationals Management Service Act with respect to the Kenya Citizenship and Immigration Service Appeals Tribunal;
- (20) The National Construction Authority Act with respect to the Appeals Board under the Act;
- (21) The Land Act with respect to the Tribunal under the Act;
- (22) The Legal Education Act with respect to the Legal Education Appeals Tribunal;
- (23) The Kenya National Examinations Council Act with respect to the National Examinations Appeals Tribunal;
- (24) The National Transport and Safety Authority Act with respect to Transport Licensing Appeals Board;
- (25) The Micro and Small Enterprises Act with respect to the Micro and Small Enterprises Tribunal;
- (26) The Basic Education Act with respect to the Education Appeals Tribunal;
- (27) The Public Benefits Organizations with respect to the Public Benefits Organizations Disputes Tribunal
- (28) The Civil Aviation Act with respect to the National Civil Aviation Administrative Review Tribunal;
- (29) The Sports Act with respect to the Sports Disputes Tribunal;
- (30) The Tax Appeals Tribunal Act;
- (31) The Water Act with respect to the Water Tribunal;
- (32) The Public Procurement and Asset Disposal Act with respect to the Review Board under the Act;
- (33) The Nairobi International Financial Centre Act with respect to the Financial Centre Tribunal;
- (34) The Energy Act with respect to the Energy Tribunal;
- (35) The Kenya Accreditation Service Act with respect to the Accreditation Appeals Tribunal;
- (36) The Refugees Act with respect to the Refugee Status Appeals Committee; and
- (37) The Public-Private Partnerships Act with respect to the Petition Committee under the Act.

## CHAPTER THREE

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

#### 3.1 Legal Framework on Public Participation

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

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

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

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

*(a) inviting submission of memoranda;*

*(b) holding public hearings;*

*(c) consulting relevant stakeholders in a sector; and*

*(d) consulting experts on technical subjects.*

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

#### 3.2 Memoranda Received on the Bill

21. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on 6<sup>th</sup> October 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letters Ref. No. NA/DDC/JLAC/2023/105 dated 5<sup>th</sup> October 2023 invited key stakeholders to submit views on the Bill and attend public participation forums on 12<sup>th</sup> and 19<sup>th</sup> October 2023, and on 19<sup>th</sup> March 2024.

22. To this end, the Committee received fourteen (14) memoranda from the OAG, the Judiciary, the LSK, the National Council for Law Reporting, the BPRT and Land Acquisition Tribunal jointly, the Competition Tribunal, the PPARB, the PPDT, the Refugee Status Appeals Committee, the State Corporations Appeal Tribunal, the TLB, the Public Administrative Officers Caucus and the *Katiba* Institute. The memoranda are annexed to this report as *Annexure 6*.

23. The Committee received memoranda from the OAG and the Judiciary which were largely in agreement with the proposals referred to the Committee. However, the Committee received reservations from the KLRC, LSK, BPRT and Land Acquisition Tribunal, the Competition Tribunal, the Cooperatives Tribunal, the PPARB, the PPDT, the Refugee Status Appeal Committee, the State Corporations Appeal Tribunal, the TLB, the Public Administrative Officer Caucus and the *Katiba* Institute relating to the proposed amendments.

24. On 19<sup>th</sup> October 2023, the Cooperatives Tribunal, the Energy Tribunal, the Legal Education Appeals Tribunal, the Communications and the Multimedia Tribunal appeared before the Committee and indicated their association with the views of the BPRT and Land Acquisition Tribunal as submitted by the Chairperson of the Land Acquisition Tribunal vide letter dated 18<sup>th</sup> October 2023.

25. The stakeholders submitted as follows:

**Long title**

26. The **State Corporations Appeal Tribunal** submitted that Article 169 providing anchorage for local Tribunals should be cited in full as Article 169(1)(d) in the long title.

**Committee Observation**

27. The Committee observed that Article 169(1)(d) of the Constitution provides that any other courts or local tribunals as may be established by an Act of Parliament, other than the courts established by Article 162(2). Therefore, the long title may be amended to specifically state that the Bill seeks to give effect to Article 169(1)(d) of the Constitution.

**Clause 1**

28. The **Competition Tribunal** submitted that the title of the Bill be amended to Administrative Tribunals Support Serviced of Kenya Act as the Bill should be responsible for the provision of the support services and the facilities required by each of the administrative tribunals to exercise their powers and perform their duties and functions accordingly.

**Committee Observation**

29. The Committee observed that the Bill seeks to give effect to the tribunals referred in Article 169(1)(d) of the Constitution. These tribunals are subordinate courts that must be transited to the Judiciary as it was decided in the case of *Okiya Omtatah Okiiti v Judicial Service Commission & 2 others [2021] eKLR*.

**Clause 2**

30. The **KLRC** submitted orally on Thursday, 12<sup>th</sup> October 2023, that the definition of a Tribunal as provided in the Bill is too broad. Thus, it recommended that it be amended to read, *“a body established through an Act of Parliament to settle disputes of a specific nature.”*

31. The **State Corporations Appeal Tribunal** proposed the inclusion of the definition of ‘Local Tribunal’ since Article 169(1)(d) of the Constitution refers to a local tribunal. It added that there is a material distinction between a Tribunal and a Local Tribunal and raises fundamental questions as to the precise intent of the drafters of the Constitution to determine the place of domicile and nature of the Tribunal system in Kenya whether hybrid or not due to the ambiguity of the definition of Tribunal.

32. Furthermore, the State Corporations Appeal Tribunal noted that the Constitution mentions three typologies of Tribunal including independent Tribunals, local Tribunals and Tribunals established under the Constitution to investigate the conduct of State Officers as provided in Articles 158(4), 168(5)(a) and 251(4)(b) of the Constitution.

33. Additionally, it relied on the legal advisory of the Attorney General dated 23<sup>rd</sup> July 2020 that interpreted a local Tribunal in a very restrictive sense so as not to include all administrative Tribunals which should be domiciled in the Executive. Similarly, it referenced the KLRC’s Inter-Agency Report on Review of the Rationale for Establishment of Tribunals in Kenya of 2015 where the Commission observed as follows:

*“Discussions with some of the Tribunals during the stakeholder engagements revealed that there was the general perception that the technical nature and independence of the*

*Tribunals would be threatened by bringing Tribunals under the ambit of the Judiciary...”*

34. Moreover, the State Corporations Appeal Tribunal cited the draft 2002 CKRC Constitution that seemed to have been alive to the restricted interpretation of a local Tribunal. Similarly, by application of the rule of interpretation, *Noscitur a Sociis*, explained in G.P Singh's Principles of Statutory Interpretation (8<sup>th</sup> Edition Wadhwa and Company Nagpur), the meaning of a local Tribunal is to be given a restricted meaning:

*“associated words take their meaning from one another... the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of the words associated with it.”*

35. From the foregoing, it was the State Corporations Appeal Tribunal's view that a Local Tribunal may be construed as a Tribunal dealing with matters of local notoriety such as customary or land matters.

36. The State Corporations Appeal Tribunal also submitted that the Bill seeks to pre-empt the judicial cases awaiting determination of the proper domicile of the Tribunals in the case of ***Bernard Odera Okello & Another v Cabinet Secretary for Industrialization Trade and Enterprise Development & Another; Cyprian Mugambi Ngutari & 5 Others (Interested Parties) [2020] eKLR*** pending appeal at the Court of Appeal where the court stayed the High Court's decision and framed the following main question for determination:

*“Whether the appointment of members of the Tribunal is exclusively in the province of the Judicial Service Commission.”*

37. The State Corporations also quoted the case of ***Okiya Omtatah Okoiti v Judicial Service Commission and 2 Others; Katiba Institute (Interested Party) [2021] eKLR*** where the court held that all Tribunals under the Executive are local Tribunals within the meaning of Article 169(1)(d) of the Constitution and should, therefore, be transited to the Judiciary. The court further held that *“any new appointment or removal of a member of Tribunal should be undertaken by the Judicial Service Commission.”* This decision is also subject to the pending appeal discussed above.

38. In addition, the State Corporations Tribunal cited the National Treasury's advice in a letter dated 6<sup>th</sup> October 2020 against the wholesome transfer of Tribunals to the Judiciary citing S.H Bailey on Cases, Materials and Commentary on Administrative Law (4<sup>th</sup> Edition):

*“Any wholesale transfer to the courts of the work of tribunals would be undesirable... this would make the Judiciary grossly overburdened...”*

*“We have not excluded from consideration whether the jurisdiction of any existing tribunal of any existing tribunal should be transferred to the ordinary courts, though we make no such recommendations. We therefore proceed to consider what improvements and safeguards, including appeals to the courts, should be introduced into the present structure.”*

39. From the foregoing, it was the State Corporations Appeal Tribunal's submission that the determination of the meaning of 'Local Tribunal' will help in ascertaining whether the drafters intended to introduce a hybrid Tribunal system domiciled in both the Executive and the Judiciary or not depending on the extent of judicial function.



### **Committee Observation**

40. The Committee observed that Article 169(1)(d) of the Constitution lists local tribunals as subordinate courts. However, the Constitution does not define what a local tribunal is. In the case of *Okiyah Omtatah Okoiti v. Judicial Service Commission & 2 others*, the court applied the *ejus dem generis* rule of interpretation which seeks to give effect to both specific and general words by treating particular words as indicating the class and general words as extending the provisions of statute to everything embraced in that class, though not specifically named by the particular words. Article 169(1) enumerated a class of entities as subordinate courts before mentioning the local tribunals. Subordinate courts were courts subordinate to the superior courts.

### **Clause 3**

41. The **Refugee Status Appeals Committee** noted that the object of the Bill is to establish Tribunals contemplated under Article 47(3)(a) of the Constitution to ensure adherence to the constitutional requirements of the right to fair administrative action guaranteed under Article 47(1). Thus, it proposed the addition of a new paragraph (h) to read as follows:  
*“enhance the public right to fair administrative action.”*

### **Committee Observation**

42. The Committee observed that Article 47(3)(a) provides that Parliament shall enact legislation to give effect to the rights of fair administrative action and the legislation shall provide for the review of administrative action by a court or independent and impartial tribunal. In that regard, there exists the Fair Administrative Action Act (Cap. 7L) which applies to tribunals in their performance of administrative action.

### **Clause 5**

43. The **KLRC** and **LSK** proposed the deletion of sub-clause (2)(b) because under Article 94, legislative power is unfettered, and Parliament does not need any recommendation from any source to determine which bodies, including Tribunals, are to be established.

### **Committee Observation**

44. The Committee noted that the Bill's requirement that the JSC recommend the establishment, merger, and abolishment of tribunals to Parliament does not amount to fettering Parliament's legislative power. The legislative authority still remains with Parliament.

### **Clause 6**

45. The **Competition Tribunal** proposed that the “Registrar of Tribunals” be amended to the “Registrar of Administrative Support Service”. It further submitted that the qualifications for the position of Registrar be widened in scope to include other professionals in other fields, not necessarily in law.
46. The **Refugee Status Appeals Committee** submitted that the roles of the Deputy Registrar as contemplated in clause 8(1)(b) and (d) of the Bill require specific training and exposure as an advocate of the High Court including case management and other judicial functions. Further, clause 6(3)(b) provides for the requirement of post-qualification experience which ordinarily refers to qualifications post admission to the Bar. It, therefore, proposed amending clause 6(3)(b) to include ‘is admitted as an Advocate of the High Court of Kenya.

### **Committee Observation**

47. The Committee observed that under the Bill, the Registrar of Tribunals would be the person in charge of administering Tribunals, which includes overseeing support services for Tribunals.
48. The Committee observed that the exercise of functions of the Registrar and the Deputy Registrars, as contemplated under clauses 7 and 8 of the Bill, would require the expertise of an advocate of Kenya.

### **Clause 7**

49. The **Competition Tribunal** proposed an amendment of sub-clause (1) to provide that the Registrar shall perform his/her duties as required by the Bill and as an independent office instead of as may be directed by the Chief Registrar.
50. On sub-clause (2), the Competition Tribunal proposed the deletion of “Deputy Registrars” and the substitution therefor with “directors”.
51. The **National Council for Law Reporting** proposed the introduction of a provision establishing a framework for the management of Tribunals to allow the Tribunals to appoint a principal chairperson to coordinate judicial functions of the Tribunals because in their view, the functions of the Registrar appear to be just administrative.

### **Committee Observation**

52. The Committee observed that, pursuant to Article 161(2)(c), the Chief Registrar of the Judiciary is the chief administrator of the Judiciary. Therefore, the CRJ has powers to delegate other duties to the Registrar of Tribunals.

### **Clause 8**

53. The **Competition Tribunal** proposed the deletion of “Deputy Registrar” and the substitution therefor with “director”.
54. Regarding sub-clause (1)(g), the **National Council for Law Reporting** noted that Tribunals are largely sector specific and with varying budgetary demands. It, therefore, proposed the introduction of a provision to provide for the preparation of Tribunals’ budgets and forwarding to the Registrar for consolidation and further forwarding. It added that a secretary be appointed to head its secretariat and to manage and account for its budgetary allocation.

### **Committee Observation**

55. The Committee observed that since the Chief Registrar is the accounting officer of the Judiciary, a deputy registrar responsible for administration of a tribunal should be responsible for planning, preparing, implementing and monitoring the budget and accounting for revenue of a tribunal.

### **Clause 10**

56. The **Competition Tribunal** proposed deletion of sub-clause (2) and substitution therefor with the following—

*“(2) The Secretariat under subsection (1) shall consist of—*

*“ (a) such Directors as provided for in the organization structure of the Administrative Support Services of Kenya and a proposed scheme of service for Tribunals; and*



(b) *such technical, administrative and support staff as may be provided for in the organization structure who may be deployed from the Public Service Commission or the Judicial Service Commission.*"

#### **Committee Observation**

57. The Committee observed that the Chief Registrar of the Judiciary performs the administrative functions in the judiciary and that JSC may establish other offices of the registrar as may be necessary. Therefore, the appropriate nomenclature is the use of the "Deputy Registrars".

#### **Clause 11**

58. The **Competition Tribunal** proposed the deletion of sub-clause (1) and the substitution therefor with *"The Cabinet Secretary to write to the Attorney General who shall convene a committee consisting of the Attorney General, National Treasury, Public Service Commission or Office of the President, and the Judicial Service Commission who shall consider the assessment of establishing another Tribunal and the findings be presented before the Cabinet."*
59. The Competition Tribunal added that sub-clause (8) be amended to include the Public Service Commission to give a recommendation(s) for the establishment of a Tribunal.
60. The Cooperatives Tribunal proposed the deletion of sub-section 1 on the premise that the JSC will be exercising overriding powers over a ministry and this would be beyond their mandate. It also proposed the deletion of sub-section 6. It was its view that the provision is too open and can be subjected to abuse, it added that in the absence of a competent tribunal, there are courts of law that can handle matters of emergency.
61. The **KLRC** and **LSK** proposed the deletion of this clause on the premise that the procedure takes away Parliament's legislative authority as contemplated under Article 94 of the Constitution and that sub-clause 6 takes away the independence of Tribunals.
62. **Katiba Institute** was of the view that sub-clause (1) should not limit anyone from proposing the establishment of a Tribunal. It also submitted that sub-clause (2)(4) does not provide for public participation and involvement of other state and non-state actors on the proposal to form a Tribunal and proposed amendment to allow for Parliament to lead the process.
63. Additionally, **Katiba Institute** noted that sub-clause (6) is vague as there is no definition of what constitutes an emergency. Further, there is no justification for the creation of the panel since where there is no Tribunal of competent jurisdiction, the High Court has competent jurisdiction. It also noted that sub-clause (8), as drafted, is unconstitutional and ought to be struck out as it suggests that Parliament is to seek permission from the Commission which makes it subservient to the Commission in carrying out its mandate. Consequently, **Katiba Institute** proposed amending the sub-clause to provide for Parliament to seek out the opinion of the Commission as part of its consultative process on the viability of forming a Tribunal to address the vagueness

#### **Committee Observation**

64. The Committee took note of the High Court decision in **Okiya Omtatah Okoiti v JSC & 2 Others** which held that local tribunals are subordinate courts which ought to be managed by the Judiciary through JSC.

#### **Clause 12**

65. The **Competition Tribunal** proposed that sub-clause (2) be deleted and replaced with, *"The respective Cabinet secretaries through the Public Service Commission or Judicial Service Commission through a competitive process appoint the Chairpersons, the members of a Tribunal and Tribunals Administrator."*
66. The **KLRC** and **LSK** proposed harmonization of sub-clause (1) with paragraph 8 of the Second Schedule on the proposed composition of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Tribunal on the minimum number of members of a Tribunal.
67. The **National Council for Law Reporting** submitted that the Commission should determine the number of members of each Tribunal on a need basis.
68. **Katiba Institute** noted that while JSC is mandated to appoint all Chairpersons and members of Tribunals, the Bill should also have a harmonised list of requirements that incorporates the requirements under Article 27(6) of the Constitution for affirmative action measures to promote appointments of women, persons with disabilities, the youth, minorities and marginalized communities.

#### **Committee Observation**

69. The Committee observed that, pursuant to the decision of the High Court in the case *Okiya Omtatah Okiiti v JSC & 2 others*, since the local tribunals are subordinate courts, then their affairs, just like the other subordinate courts, ought to be managed by the Judiciary through JSC.

#### **Clauses 13 and 14**

70. The **KLRC** and **LSK** proposed the deletion of the clauses for not referring to the qualifications in the current statutes and the proposed amendments under the Second Schedule of the Bill.

#### **Committee Observation**

71. The Committee observed that most Acts of Parliament that establish tribunals do not exhaustively provide for the qualifications and disqualifications for appointment as a chairperson or member of the tribunals. Therefore, there is need to anchor these provisions in the Act that will regulate tribunals. Further qualifications may be provided for under the separate Acts of Parliament.

#### **Clause 15**

72. The **State Corporations Appeal Tribunal** submitted the need for a proper definition and cautious approach to the lateral transition of the Tribunals noting that most Tribunals are adjudicatory bodies dependent on the technical competence of experts in the areas of the Tribunals' jurisdiction and which is mostly lacking in the mainstream Judiciary except where specialized divisions have been created. Hence, the need to provide for the criteria for the appointment of members of a Tribunal.

#### **Committee Observation**

73. The Committee observed that, in appointing the chairperson and members of a Tribunal, the appointed persons by JSC ought to have knowledge and experience in the respective sector of the Tribunal.

#### **Clause 16**

74. The **BPRT** and the **Land Acquisition Tribunal** were of the view that sub-clause (1)(e) be deleted as the removal of any member of a Tribunal is adequately addressed under sub-clause (1)(f).
75. The **KLRC** and **LSK** proposed the deletion of the clause as it is drafted without any reference to the clauses on vacancy in the current statutes and the proposed amendments under the Second Schedule.

#### **Committee Observation**

76. The Committee noted that clause 12(4) already adequately provides that the discipline and removal of members of a Tribunal shall be conducted in accordance with the Judicial Service Act, Cap 8A.

#### **Clause 18**

77. The **Competition Tribunal** proposed amending sub-clause (1) to read, “The Chairperson shall be in charge of the designate Tribunal and shall be responsible for”.
78. The **National Council for Law Reporting** stated that there is need for a provision on the general workings of the Tribunal by enacting a Third Schedule on Arrangement of Business to provide for the conduct of meetings, minutes and voting issues of the Tribunal.
79. The National Council for Law Reporting further noted drafting issues where sub-clause 2 should appear as an independent paragraph.

#### **Committee Observation**

80. The Committee observed that the marginal note sufficiently brings out the summary of the provision.

#### **Clause 19**

81. Concerning sub-clause (1), the **BPRT** and **Land Acquisition Tribunal** submitted the need to streamline the question of quorum with the specific parent Act to address the different needs of different tribunals. It added that the membership of tribunals varies with some at three thus the provision, as drafted, may occasion quorum hitches for such tribunals. Therefore, they proposed its deletion and substitution with the following:

*“Except as provided by law, the quorum of a Tribunal shall be three members provided that where a Tribunal consists of only three members, the quorum shall be two members.”*

82. **Katiba Institute** proposed to have the quorum of the Tribunal consist of at least one advocate for every decision made by the Tribunal. It was also its submission that quorum complies with the two-thirds gender principle.

#### **Committee Observation**

83. With respect to the submission by the **BPRT** and **Land Acquisition Tribunal**, the Committee noted that clause 12 of the Bill provides for three as the minimum number of members of a Tribunal. Hence, it noted that in such instances quorum should be two and that the provision on quorum should be provided for under the specific parent Acts.

#### **Clause 20**

84. **Katiba Institute** recommended a harmonised system of salaries, allowances and benefits for all Tribunal Chairpersons and members.

#### **Committee Observation**

85. The Committee observed that since the tribunals are being transited to the Judiciary, the remuneration of the members of the should be determined by the JSC in consultation with SRC.

#### **Clause 27**

86. The **KLRC** and **LSK** noted that no justification to limit an appeal to the High Court or court of equal status has been provided contrary to Article 164(3) of the Constitution hence, their proposals to delete the clause.

87. **Katiba Institute** noted that the provision infringes on the right to appeal to the Court of Appeal when there are legal and constitutional grounds to challenge a High Court judgement. Foreclosing such appeals violates Article 164(3) of the Constitution and will create judicial inefficiency and cause conflicting jurisprudence as a result of filling separate matters before the High Court. Resultantly, it proposed an amendment to sub-clause (2) to read as follows:

*“The Court in subsection (1) shall within one year of the filing of the appeal, dispense with any appeal filed under this section and the decision of the Court shall be final regarding questions of fact but there shall be a right to appeal on legal and constitutional grounds.*

88. Additionally, **Katiba Institute** proposed that an appeal from the High Court must certify that the appeal arises from a legitimate dispute regarding a question of law that has not been settled by either the Court of Appeal or the Supreme Court and involves a misapplication of the law that is apparent from the record. This would allow the Court of Appeal to determine as a preliminary application, whether the appeals meet the criteria, ensuring that parties do the work upfront to justify the grounds of appeal rather than simply file appeals and make arguments later.

#### **Committee Observation**

89. The Committee observed that Article 165(5) grants the High Court supervisory powers over subordinate courts which includes tribunals.

#### **Clause 29**

90. The **Competition Tribunal** proposed the amendment of sub-clause (1) to read, *“The expenses of the Administrative Support Services and Tribunals shall be a charge from the Exchequer in line with the current allocation of each Tribunal.”*

91. Regarding sub-clause (2), the Competition Tribunal proposed its amendment to read, *“At least three months before the commencement of each financial year, the Tribunal Chairs and the AI holder/Administrators of Tribunals shall prepare estimates of all expenditure required for their respective Tribunals for the next financial year, and submit them to Registrar Administrative Support Service to present it to Parliament.”*

#### **Committee Observation**

92. The Committee observed that the Judiciary Fund, established under Article 173 of the Constitution, shall be used for administrative expenses of the Judiciary. By virtue of this Bill, the tribunals shall fall under the Judiciary and therefore, the expenses of the tribunals ought to be a charge on the Judiciary Fund.

#### **Clause 30**

93. The **Competition Tribunal** proposed an amendment to sub-clause (1) to read, "At the end of each financial year, the Registrar shall prepare and submit an annual report on the activities of Tribunals to Parliament.

#### **Committee Observation**

94. The Committee observed that the CRJ is the chief administrator of the Judiciary, which includes tribunals as subordinate courts.

#### **Clause 31**

95. The **Competition Tribunal** proposed the deletion and substitution therefor, "*In accordance with Public Finance Management Act, the administrative Support Service office and each fully constituted Tribunal shall be facilitated through the National Treasury to open a bank account and annual grants sent directly to the respective accounts of Administrative Support Services Office and to each Tribunals account.*"

#### **Committee Observation**

96. The Committee observed that the CRJ is the chief administrator and accounting officer of the Judiciary. Since tribunals ought to be under the Judiciary, the CRJ ought to be responsible for opening bank accounts on behalf of tribunals.

#### **Clause 32**

97. The **Competition Tribunal** proposed an amendment of the clause to read, "*A Chairperson, a member or the Administrator of a Tribunal shall on appointment, subscribe to the oath contained in the First Schedule.*"

#### **Committee Observation**

98. The Committee observed that the Bill seeks to regulate the appointment of a chairperson and members of a tribunal who are responsible for hearing and determining disputes.

#### **Clause 35**

99. **Katiba Institute** was of the view that sub-clause (1) should be balanced with the understanding that Tribunals are courts and that all court documents are public documents, unless sealed, and should be accessible to all. It, therefore recommended that the provision be amended to make it clear what information must be published and publicised.

#### **Committee Observation**

100. The Committee observed that the right of access to information is not an absolute right. Therefore, the right may be limited as contemplated under clause 35 of the Bill and in accordance with Article 24 of the Constitution.

#### **Clause 36**

101. The **Refugee Appeal Board** noted that compliance with directions and orders of the Tribunal is a fundamental and necessary duty of the parties for the effective and efficient

disposal of disputes. Consequently, it proposed the addition of a new paragraph (c) as follows:

*“Comply with all such orders and directions as may be issued by the Tribunal for the purposes of the expeditious, efficient and just determination of the proceedings before the Tribunal.”*

#### **Committee Observation**

102. The Committee observed that Clause 38 of the Bill provides that for certain offences including disregard of an order of a Tribunal.

#### **Clause 39**

103. The **Competition Tribunal** proposed an amendment to sub-clause (1) to read, *“The Attorney General in consultation with key stakeholders may make regulations for the better carrying into effect of the provisions of this Act.”*

104. The **KLRC** and **LSK** proposed merging clauses 39 and 40 since they both refer to Regulations and Rules which are both subsidiary instruments in accordance with the Statutory Instruments Act, Cap 2A.

#### **Committee Observation**

105. The Committee observed that the Chief Justice should be the one responsible for making rules for the better carrying into effect the provisions of the Act.

106. The Committee further observed that the provisions of clauses 39 and 40 are both on delegated powers. These clauses may not be merged as they contain separate and distinct ideas.

#### **Clause 40**

107. The **Competition Tribunal** proposed an amendment to sub-clause (1) to read, *“The Attorney General may make rules to govern the procedures of Tribunals generally.”*

108. **Katiba Institute** submitted that the clause should clearly set out that even while each Tribunal may make rules to govern its procedures, the rules must undergo meaningful public participation.

#### **Committee Observation**

109. The Committee further observed that the provisions of clauses 39 and 40 are both on delegated powers. These clauses may not be merged as they contain separate and distinct ideas.

#### **Clause 43**

110. The **BPRT** and **Land Acquisition Tribunal** submitted that it is important to ensure continuity and institutional memory by allowing the current membership of tribunals to complete their terms. They proposed the deletion of the words “or a period of eighteen months whichever is earlier” immediately after the word ‘term’.

111. For continuity and institutional memory, the **National Council for Law Reporting** proposed that the current Tribunal members and Chairpersons remain in office for their unexpired term rather than requiring them to leave office after eighteen months as the 18



months will come sooner than the expiry of their term of office. This will safeguard against grounding Tribunals to a halt pending recruitment of new tribunal members.

112. The **Refugee Appeal Board** stated that it is necessary to give the Chief Justice some discretion to mitigate hardship and undue delay of justice pending completion of the process of substantive appointments to the Tribunal. Hence, proposed the addition of the following proviso as follows:

*“Provided that to avoid undue hardship to the parties or undue delay of justice the Chief Justice may by Gazette Notice extend the terms of the Chairman and members of the Tribunal for such further time as shall be necessary for the Commission to complete the substantive appointments to the Tribunal under Section 12.”*

#### **Committee Observation**

113. The Committee observed that a chairperson or a member of a Tribunal ought to remain until their respective terms of office expire.

#### **Clause 44**

114. The **Competition Tribunal** proposed an amendment to read, “The Attorney General may make Rules on the procedure to be followed with regard to pending cases before Tribunals.

#### **Committee Observation**

115. The Committee observed that it is important to provide for the fate of cases that are yet to be determined by a Tribunal.

#### **Clause 45**

116. The **Competition Tribunal** proposed an amendment to sub-clause (1) to read as follows—

“Subject to subsection (2), the Public Service Commission and Judicial Service Commission shall within eighteen months from the commencement of this Act recognize both Judiciary and Public Officers deployed in Tribunals including the current CEOs/Secretaries of Tribunals as permanent staff of their respective Tribunals but deployed from Judiciary and their respective Ministries. The disparities that exist between the Judicial staff and the Public Officers be addressed by the Public Service Commission within three months.”

117. The **State Corporations Appeal Tribunal** proposed the deletion of sub-clause (2)(b) as it may be used to victimize and hound out of office present staff of the Tribunals. Instead, the current staff should be allowed to elect whether to join the Judiciary or be redeployed to MDAs.

#### **Committee Observation**

118. The Committee observed that the members of staff of a Tribunal ought to be given an opportunity to be re-employed by the JSC or re-deployed to the respective ministries, departments or agencies.

#### **Clause 46**

119. The **Competition Tribunal** proposed an amendment to read, “A Committee to be chaired by the Attorney General and with membership from the National Treasury, Judicial Service Commission, Public Service Commission and Office of the President to oversee the

*creation of new Tribunals and its budget implications and merging or disbanding Tribunals.”*

#### **Committee Observation**

120. The Committee observed that it is the function of JSC to promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice,

#### **Second Schedule**

##### **Paragraphs 6, 11 and 28**

121. The **KLRC** and **LSK** proposed the general harmonization of the paragraphs with the relevant clauses in the Bill.

##### **Paragraph 8**

122. The **BPRT and Land Acquisition Tribunal** stated that it is necessary to retain the current practice of the tribunal of sitting as a one-member panel in view of clearing the backlog and management of many applications filed per day approximated at fifty (50) and where a matter arises requiring a panel then the Chairperson can form such a panel. Consequently, they proposed the deletion of the new Section 11(7) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act and substitution with the following to enhance the efficiency of the Tribunal:

*“The quorum of the Tribunal shall be one member. Provided that where the Chairman deems appropriate, or upon application by a party, the Chairman may form a panel of three members to hear and determine a matter before the Tribunal.”*

#### **Committee Observation**

123. Section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act establishes a Tribunal whose membership are persons appointed by the Cabinet Secretary in the ministry responsible for trade. Paragraph 8 of the Bill seeks to amend section 11 of the Act in line with the objective of streamlining the governance and operations of Tribunals.

##### **Paragraph 26**

124. The **State Corporations Appeal Tribunal** noted that the State Corporations Act, Cap 446 establishes the State Corporations Tribunal and not the Standards Tribunal. The latter is established under the Standards Act, Cap 496. Moreover, the proposal to amend Section 22 of the State Corporations Act to empower the Judicial Service Commission to deploy staff to the Tribunal is only applicable to a Local Tribunal. Moreover, it was the State Corporations Appeal Tribunal's view that it is a self-serving peculiar provision only applicable to populating the State Corporations Appeal Tribunal and does not apply to other existing Tribunals to which the Bill applies.

#### **Committee Observation**

125. The Committee noted that the proposed section 22(1) of the State Corporation Act is erroneously drafted and may be amended by deleting the word “Standard” and substituting therefor the words “State Corporations Appeal Tribunal”.



#### **Paragraph 50**

126. The **BPRT and the Land Acquisition Tribunal** submitted that to avoid quorum hitches and streamline the composition of Tribunals as provided in clause 12(1) of the Bill, the new Section 44(2)(b) of the Privatization Act, Cap 485B be deleted and substituted therefor with *“not less than two persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience and knowledge in matters related to privatization or management.”*

#### **Committee Observation**

127. The Committee observed that the Privatization Act (Cap. 485B) was repealed by the Privatisation Act (No. 11 of 2023) which establishes the Privatisation Review Board. Therefore, paragraph 50 of the Bill may be re-drafted in light of the enactment of the Privatisation Act (No. 11 of 2023).

#### **Paragraph 68**

128. To avoid quorum hitches, the **BPRT and Land Acquisition Tribunal** proposed the deletion of the new Section 23(2)(b) of the Kenya Citizens and Foreign Nationals Management Service Act, Cap 171 and substitution therefor with *“not less than two persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience in matters relating to public administration, immigration and demography.”*

#### **Committee Observation**

129. The Committee observed that section 23 of the Kenya Citizens and Foreign Nationals Management Service Act provides for the establishment and membership of the Kenya Citizenship and Immigration Service Appeals Tribunal. Therefore, the proposed membership is in line with the provisions of the Act.

#### **Paragraph 70**

130. To avoid quorum hitches, the **BPRT and Land Acquisition Tribunal** proposed the deletion of the new Section 27(2)(b) of the National Construction Authority Act, Cap 118 and substitution therefor with *“not less than two persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience in architecture, quantity surveying, engineering, building surveying or project management”*.

#### **Committee Observation**

131. The Committee noted that the proposed membership of the Tribunal is in line with the provisions of the Act.

#### **Paragraph 72**

132. To avoid quorum hitches, the **BPRT and Land Acquisition Tribunal** proposed the deletion of the new Section 133A(2)(b) of the Land Act, Cap 280 and substitution therefor with *“not less than two persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience in the relevant field.”*

#### **Committee Observation**

133. The Committee noted that the proposed membership of the Tribunal is in line with the provisions of the Act.

#### **Paragraph 142**

134. The **Refugee Appeal Board** proposed the addition of the following new sub-paragraph (e) to delete the word 'Committee' and substitution therefor with the word 'Tribunal'. This is to maintain consistency with the description and definition of 'Tribunal' under clause 2 of the Bill as read with Articles 1(c), 47(3)(a) and 169(1)(d) of the Constitution.
135. Additionally, it proposed the addition of a new sub-paragraph (f) to the effect that Sections 11(10) and 14(1) of the Refugees Act, Cap 173 be amended by deleting the words 'of being notified' and substituting therefor the words 'from the date of such decision'. This is to maintain consistency with provisions of clause 27(1) of the Bill that the time to appeal to the High Court shall run from the date of the decision. Ordinarily, parties are duly notified of the date that the decision is delivered and time runs from the said date.

#### **Committee Observation**

136. The Committee observed that the Act establishes a Refugee Status Appeals Committee to hear and determine the appeals against a decision of the Commissioner for Refugee Affairs. The nomenclature of the entity may be maintained since the functions performed by the Refugee Status Appeals Committee are those contemplated to be performed by a Tribunal.

#### **Paragraph 144**

137. The **National Council for Law Reporting** noted the duplication under the new Section 76(b) and (c) and hence recommended correction of the paragraph to ensure clarity and conformity with the guidelines of legislative drafting.

#### **Committee Observation**

138. The Committee agreed with the submission on the amendment of the new section 76 to delete paragraph (c) which is similar to paragraph (b).

#### **General Submissions and Consequential Amendments**

139. The **BPRT** orally submitted on Thursday, 12<sup>th</sup> October 2023 recommending that the National Assembly amends Section 2(1)(c) of the Rent Restriction Act, Cap 296 through consequential amendments to increase the standard rent from two thousand five hundred shillings per month to a reasonable figure in line with the current economic landscape.
140. The **Competition Tribunal** stated that tribunals are administrative, autonomous and comprises shared responsibilities between the Executive and the Judicial Service Commission. It added that there ought to be a sectoral-based committee headed by the Attorney General and comprising members from the JSC, National Treasury, PSC, Office of the President and Cabinet to sanitize and oversee the creation of new tribunals and its budgetary allocation.
141. The Competition Tribunal also submitted that there is a need to ensure the seamless transition of staff from JSC and PSC in the tribunals. They, furthermore, informed the Committee that it should take note that some tribunals are still in their operationalization stage such as the Competition Tribunal hence the need to review the Competition Act, Cap 504 to include the emerging trends before the transition is done to the Judiciary or enactment.

142. The **KLRC** described Tribunals as statutory bodies established to deal with particular types of cases or a number of closely related types of cases on a permanent basis contrary to being set up for a one-off inquiry covering much wider range of subject matters like courts do. Further, that their members do not serve full-time and they adopt a procedure similar but more flexible and simpler than a court of law. Noting that the essence of Tribunals is to offer administrative justice to aggrieved citizens which may not be obtained from the regular courts, it submitted that there is a need for a clear demarcation between the Tribunals and the Judiciary on one hand and the Executive on the other.
143. The **Public Administrative Officers Caucus** and the **TLB** opposed the Bill in its entirety and recommended that the Committee withdraw it from the legislative process. It was the Caucus' view that the Bill is a backdoor amendment to the Constitution seeking to expand the JSC's mandate contrary to Articles 255, 256 and 257 of the Constitution.
144. The Public Administrative Officers Caucus and the TLB, further, stated that the Bill seeks to place all tribunals under one governance regime contrary to the historical understanding and contextual meaning of local tribunals under Article 169 of the Constitution as read with Article 1(3)(c) whose conjecture implies that independent tribunals are distinct from the Judiciary.
145. Additionally, the Public Administrative Officers Caucus and the TLB submitted that the Bill creates and prefers suitability for only degrees in law for the position of registrars and deputy registrars contrary to Article 234 (2)(a) and (g) of the Constitution.
146. The **State Corporations Appeal Tribunal** submitted that the Constitution contemplates a hybrid Tribunal system comprising local Tribunals domiciled in the Judiciary and administrative Tribunals domiciled in the Executive. Hence, the term Local Tribunal should be restricted in its application to matters of local notoriety involving rights determination including community land disputes, customary rights disputes and local disputes of an international nature governed by international legal instruments. Furthermore, administrative Tribunals should remain in the Executive governed by specific legislation governed by a Council of Tribunals, an advisory non-departmental public body, similar to the UK's administrative Justice and Tribunals Council established under the Tribunals Courts and Enforcement Act 2007.
147. The **PPARB** submitted that the Public Procurement Administrative Board is an independent administrative tribunal which does not fall under the ambit of Article 169(1)(d) of the Constitution. Therefore, the provisions of the Bill should not apply to the Tribunal
148. The **National Council for Law Reporting** proposed an amendment to the Judicial Service Commission Act, Cap 8A to allow Tribunals to have representation in the Commission just like the other cadres of courts from the Supreme Court to the Magistrates Courts. Moreover, it also proposed an amendment to Sections 19 and 20 of the National Council for Law Reporting Act, Cap 19A to include Tribunals and other quasi-judicial bodies to require them to supply their judgements, rulings and opinions to Kenya Law. It proposed the following section:
- "(a) Tribunals shall, subject to the direction of the Chief Justice, as soon as practicable after delivering a judgement, ruling or an opinion cause to be furnished to the Editor of the National Council for Law Reporting (Kenya Law) a certified copy of the judgement, ruling or opinion."*

*(b) Every Registrar of a Tribunal shall at the end of each month furnish the Editor with a list of all judgements, rulings or opinions delivered by the Tribunal."*

149. Another proposal by the Council was to amend Section 3 of the National Council for Law Reporting Act to provide for the reporting of the decisions of Tribunals for publication and dissemination as follows:

***"Functions of the Council***

*The Council shall—*

- (a) be responsible for the preparation and publication of the reports to be known as the Kenya Law Reports, which shall contain judgements, rulings and opinions of superior courts of record, tribunals and other quasi-judicial bodies."*

**Committee Observation**

150. The Committee noted that following the promulgation of the Constitution, tribunals were incorporated into the mainstream administration of justice system. Article 169(1) provides a list of subordinate courts which includes local tribunals. Therefore, the affairs of the local tribunals ought to be managed by the Judiciary through JSC.

## CHAPTER FOUR

### 4 COMMITTEE OBSERVATIONS


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

- (1) Following the promulgation of the Constitution, tribunals were incorporated into the mainstream system of administration of justice. Article 159 provides that judicial authority is derived from the people. The judicial authority is vested in and shall be exercised by the courts and tribunals established by or under the Constitution.
- (2) Article 169(1) provides that subordinate courts are the Magistrates' courts, the Kadhi's courts, the Courts Martial and any other court or local tribunal as may be established by an Act of Parliament.
- (3) The Bill seeks to give effect to Articles 1(3)(c) 20(4), 47(3), 159(1) and 169 of the Constitution by regulating the administration of tribunals in Kenya. The Committee observed that Article 169 (2) gives Parliament the power to enact legislation conferring jurisdiction, functions and powers of subordinate courts which includes local tribunals. However, the Constitution does not define a local tribunal.
- (4) In *Okiyah Omtatah Okoiti v. Judicial Service Commission & 2 others*, the court applied the *ejus dem generis* rule of interpretation which seeks to give effect to both specific and general words by treating particular words as indicating the class and general words as extending the provisions of statute to everything embraced in that class, though not specifically named by the particular words. Article 169(1) enumerated a class of entities as subordinate courts before mentioning the local tribunals. Subordinate courts were courts subordinate to the superior courts.
- (5) Pursuant to the court decision in *Okiyah Omtatah Okoiti v. Judicial Service Commission & 2 others*, members of tribunals fall within the category of 'other judicial officers' under Article 172(1)(c) of the Constitution and shall be appointed by the JSC. In order to enable such appointments to be undertaken by JSC, there is no doubt that the Tribunals must be transited to the Judiciary. Therefore, this Bill aids in such transition.

## CHAPTER FIVE

### 5 COMMITTEE RECOMMENDATIONS

152. The Committee, having considered the Tribunals Bill (*National Assembly No. 45 of 2023*) recommends **that the House approves the Bill with the amendments in the Schedule of Amendments forming Chapter Six of this report.**

SIGNED.......... DATE.....31.7.2024.....

HON. GEORGE GITONGA MURUGARA, CBS, MP  
CHAIRPERSON  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

