

SPECIAL ISSUE

Kenya Gazette Supplement No. 220 (Senate Bills No. 33)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2020

NAIROBI, 8th December, 2020

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**THE PARLIAMENTARY POWERS AND
PRIVILEGES (AMENDMENT) BILL, 2020**

A Bill for

AN ACT of Parliament to amend the Parliamentary Powers and Privileges Act to provide a structured mechanism through which Parliament is able to receive reports from public officers on the resolutions passed by Parliament; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Parliamentary Powers and Privileges (Amendment) Act, 2020. Short title.

2. The Parliamentary Powers and Privileges Act, hereinafter referred to as the “principal Act” is amended by inserting the following new Part immediately after Part VI— Insertion of new Part to No. 29 of 2017.

**PART VIA— REPORTS ON ACTION
TAKEN ON PARLIAMENTARY
RESOLUTIONS**

23A. In this Part, “responsible officer” means the relevant public officer to whom a resolution or report of a House or a Committee of Parliament is submitted in accordance with this Act. Interpretation

23B. (1) The Clerk of the relevant House shall, within seven days of a resolution of the House or of the tabling of a report of a Committee of the House, convey the resolution or a copy of the report, as the case may be, to the responsible officer under whose portfolio the implementation of the resolution or recommendation of the Committee falls. Reports on Parliamentary Resolutions.

(2) The responsible officer shall submit a status report to the relevant Committee within the period specified in the standing orders of the relevant House.

(3) A report under subsection (2) shall contain information on—

- (a) the action taken to give effect to the resolution or recommendation of a report submitted under subsection (1); and
- (b) where no action has been taken on a resolution or recommendation of a report, the reason for such inaction.

(4) The relevant Committee may, upon the written request of the responsible officer, extend the period for submission of a report under subsection (2) by such days and on such conditions as the Committee may consider necessary.

Penalty for failure to report to Parliament.

23C. A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Consolidated report.

23D. Where a response is sought on the implementation of more than one resolution of a House of Parliament, the relevant Speaker may direct that the responsible officer submits a single report on the status of implementation of all the resolutions.

Provision not to limit discretion of Parliament.

23E. This Part does not limit the power of Parliament to require information from any public officer in accordance with the Constitution or any other law.

3. The principal Act is amended by deleting section 7 and substituting therefor the following new section.

Amendment of section 7 of No. 29 of 2017.

Service of civil processes.

7 (1) No process issued by any court in the exercise of its civil

jurisdiction shall be served or executed—

- (a) within the precincts of Parliament while a House of Parliament is sitting;
- (b) through the Speaker or any member of staff—
 - (i) unless it relates to the attachment of a Member's salary; or
 - (ii) if the subject matter relates to a Member exercising their personal duty.

(2) Subsection (1)(a) shall not apply to service made to a member of staff of Parliament authorised to receive service on behalf of—

- (a) either House of Parliament; or
- (b) the Parliamentary Service Commission.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

4. The principal Act is amended by deleting section 11.

Deletion of section 11 of No. 29 of 2017.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The accountability of other arms of Government to Parliament is necessary for democratic governance and is anchored on the fundamental principle that Parliament represents the will of the people and exercises their sovereignty.

Reporting requirements are one of the oversight mechanisms that Parliament employs to monitor the actions of the Executive and other independent offices to ensure accountability, transparency and responsibility in the performance of their duties.

In addition, parliamentary committee reports contain important policy recommendations and perspectives that reflect the will of the people and insights from the legislators and other stakeholders. A lot of time and resources go into the work of Committees and the resultant reports that are tabled and adopted in Parliament. It is therefore antithetical to good governance for those resolutions to be submitted to the Executive and other offices with no action taken or feedback given.

This Bill imposes a specific obligation on officials of the Executive, constitutional commissions and independent offices to comply with the requirement to give feedback to Parliament's resolutions. This has been difficult to achieve through the Standing Orders of the Houses of Parliament since they are rules for the "orderly and effective discharge of the business of Parliament", unlike legislation which has a binding effect on those to whom it applies. Although the current Standing Orders provide for reporting on resolutions, very few reports are ever submitted on action taken on the resolutions passed by Parliament.

The Bill will therefore ensure that feedback on Parliament's resolutions and reports is not only given but given in a timely manner as delays or failure to submit reports undermine the ability of Parliament to undertake its oversight mandate.

The Bill provides a structured mechanism through which the Executive and the independent commissions and offices are required to give greater consideration to the issues raised and the recommendations made by Parliament.

The Bill further amends section 7 of the Parliamentary Powers and Privileges Act to comply with the decision of the High Court (Justice J.M. Mativo) in *Apollo Mboya v Attorney General & 2 others* (2018). The High Court declared the provision unconstitutional to the extent that it restricts service of Civil Process to the staff working in Parliament,

among them legal officers authorized to receive service on behalf of Parliament.

The Bill further deletes section 11 of the Parliamentary Powers and Privileges Act to comply with the same High Court decision. The High Court declared the provision an ouster clause and determined that ouster clauses are antithetical to a just society. It found that ouster clauses offend the constitutional principle of the rule of law because an aggrieved citizen is denied the possibility of access to the courts to challenge the decision affecting them. In this respect, the provision was declared an ouster clause and therefore unconstitutional in its entirety.

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

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

Statement on how the Bill concerns county governments

This Bill provides for a structured mechanism through which Parliament is able to receive reports from the Executive, constitutional commissions and independent offices and on its resolutions. These reports enable Parliament to hold the relevant offices accountable on various matters, including matters touching on the functions and powers of county governments and to require these offices to give regard to input given by Parliament.

Further, the Bill is in line with Articles 153(4)(b) and 254(2) of the Constitution which requires the Executive, constitutional commissions and independent offices to report to both Houses of Parliament on matters falling within their respective jurisdictions. This is necessary for the Senate in the exercise of its mandate under Articles 94 and 96 of the Constitution.

The Bill therefore concerns county governments in terms of Article 110(1)(a) of the Constitution as it affects the functions and powers of county governments set out in the Fourth Schedule.

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 2nd December, 2020.

AGNES P. ZANI,
Senator.

Section 7 of No. 29 of 2017 which it is proposed to amend—**Service of civil process**

7. (1) No process issued by any court in Kenya in the exercise of its civil jurisdiction shall be served or executed—

- (a) within the precincts of Parliament while either one or both Houses are sitting; or
- (b) through the Speaker or any officer of Parliament—
 - (i) unless it relates to a person employed within the precincts of Parliament or to the attachment of a member's salary; or
 - (ii) if the subject matter relates to a member or members exercising their personal duties.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

Section 11 of No. 29 of 2017 which it is proposed to delete—**Proceedings not to be questioned in courts**

11. No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court.