

**MEMORANDUM ON THE PROPOSED ESTABLISHMENT OF THE POSITION OF
THE CHIEF ADMINISTRATIVE SECRETARY**

Submitted to:

**The Secretary
Public Service Commission
P.O Box 30095-00100
Nairobi**



10th October 2022

Introduction

Transparency International Kenya is a non-state, not-for-profit organization with over 20 years' existence and experience in Kenya. Our core mandate is the promotion of good governance and a corruption-free Kenya through legislative, institutional, jurisprudential and social reforms. We have been at the core of the civil society movement's clarion call for transparent and accountable government and hereby submit our response to the call for public input into the establishment of the referenced position. We give our feedback as below.

1. Jurisprudence on the position of CAS

On 26th January 2018, former President Uhuru Kenyatta, announced the names of persons proposed for appointment as Chief Administrative Secretaries. This was a new position that up until then, did not exist in the country's legislative framework. It is trite law that every government position has to find footing in law.

The decision was challenged in the High Court in **Petition 33 & 42 of 2018** (Okoiti & another v Public Service Commission & 73 others; Law Society of Kenya & another (Interested Party) (Petition 33 & 42 of 2018 (Consolidated)) [2021] KEHC 464 (KLR)). The court held that due process had not been followed in establishing the position and thereby declared the position unconstitutional.

Firstly, your advert requested for public input for the "ESTABLISHMENT" of the position of CAS. We make the assumption that the wording used was intentional and infers to no previous position of CAS or lack of recognition of the previous decision.

Secondly, the above judgement relied on failure to follow due process in the establishment of the office. We make a reasonable assumption that your request for public input is part of a procedural

requirement as by law to initiate or support the establishment of the office of CAS. We hold that any public participation effort needs to be meaningful and meet legal and jurisprudential thresholds.

Non-disclosure of material facts to warrant meaningful public participation

Any meaningful public participation efforts need to meet basic minimum requirements which include disclosure of all material facts. Without such disclosure, the public will be unable to make informed submissions on the issue. This is a principle that is firmly grounded and repeatedly elaborated in fact, law and jurisprudence.

We note that material information was left out in the call for public input and have already communicated the same vide an official Access to Information request and a letter to the PSC dated 30th September 2022. We make reference to Section 27 of the Public Service Commission Act which states as follows;

27. Conditions for establishment of offices

(1) The Commission may establish an office in the public service after receipt of a written request by an authorized officer of a public body if the Commission is satisfied that:

- a) The request is based on comprehensive plans informed by the public body's workload analysis;
- b) the financial implications of creating the office are indicated;
- c) the office to be created relates to or supports the core functions of the public body;
- d) the office to be created is to be domiciled in the requesting public body;
- e) information on the current authorized establishment, level of grading, designation, extra posts required and evidence of optimum utilization of existing posts has been submitted

This information is material for the public to make input on the establishment of the office.

The requirement for comprehensive plans informed by the institutions workload is premised on the constitutional requirement for efficient use of public resources. It is imperative that public offices should not be created primarily for the sake of appointments. There has to be a clear assessment which finds a workload that cannot be reasonably carried out by the existing personnel. Such workload needs to be clear, distinct, relevant and central to the effective administration and dispensation of government functions. However, this analysis is not accessible to the public which leads to the assumption that either it has not been conducted or, has not been shared with the public.

There is also no documentation provided on the financial implications of creating the office as required by S 27 of the PSC Act. There is no indication on the number of CASs that the president intends to appoint nor their remuneration which has to be established by the SRC.

This is material information that is needed for public input to meet constitutional criteria for meaningful participation. We reiterate that any public participation effort without full disclosure of material information is improper. For this reason, we cannot support the establishment of the office of the CAS for lack of this critical piece of information.

Possible duplicity or overlap of functions

Going by the functions that have been outlined in the advert that the proposed CASs will be tasked with, we note the likelihood of overlaps and duplicity between their functions and the functions of Cabinet Secretaries and those of Principle Secretaries. The proposed functions of the CASs as per the advert are as follows;

- a. Respond to issues touching on the portfolio assigned to the office
- b. Provide liaison with Parliament
- c. Provide liaison with County Governments on matters of concurrent mandate and common interest
- d. Provide inter-ministerial/sector coordination
- e. Represent the CS at any meeting as instructed
- f. Executing any other duties and responsibilities specifically assigned to the CS

All these functions fall within functions of either a CS or PS and can be comfortably conducted by either as has been in practice over the past years. Functions b & c for instance are well known to be conducted by CSs and PSs who appear before Parliament to respond to critical issues in person as the policy heads and PSs as accounting officers. It is also expected that ministries and key departments employ liaison officers solely for such functions. The other functions can be comfortably carried out by PSs.

Huge government wage bill

Several reports indicate Kenya suffers from a very high public wage bill and is currently spending five times on consumption compared to the funding of development activities. A huge wage bill, a growing public debt, pending bills and pensions are some of the factors that have left the state draining 82% of its resources on recurrent activities. With the proposed reestablishment of the CAS position, a position which is yet to justify its existence based on available information, the President will be contradicting his proposal of reducing government spending and enhancing austerity measures to cut down on unnecessary government expenses. The Chief Administrative Secretary position in the former government cost the taxpayer an additional Ksh. 1.2 billion to the wage bill for the last five years. The net effect of this to the improvement of government service delivery to the taxpayer was not felt at all, as the position seemed to duplicate tasks of the Cabinet Secretary and Principal Secretary.

We advise against the establishment of this office on the above basis and ask the President to demonstrate commitment to cut down government recurrent expenditure by Ksh. 300 billion as mentioned in his speech during the opening of the Parliament on 29th October 2022.

Conclusion

Article 232 of the Constitution provides for values and principles of public service. They include efficient, effective and economic use of resources. Article 234 (2) (e) also requires the Public Service Commission to ensure that the public service is efficient and effective. These provisions exist to ensure public resources are not used to pay for redundant positions.

It is our considered view that the establishment of the CAS position does not meet legal and constitutional provisions on public participation, principles of public finance and public service. The proposed functions are not only manageable by existing offices, they are also not technical in nature to support the establishment of a standalone office which has other colossal financial implications including office space and support personnel. It is a well-known fact that Kenyans are burdened by a very high public wage bill and wastage, and a workforce lacking efficiency and optimum utilisation of human resources. Furthermore, creating more offices will only increase the financial burden on a population that is caving in to a poor-performing economy.

Signed



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Sheila Masinde

Executive Director

Transparency International Kenya

