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13/3/18

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by Hon. ^{Limo} ~~person~~
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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

12TH PARLIAMENT – SECOND SESSION - 2018

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE STATUTE LAW MISCELLANEOUS AMENDMENT BILL (NO. 3) OF 2017

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

MARCH, 2018

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1.0 CHAIRPERSON'S FOREWORD

Mr. Speaker,

The Committee wishes to thank the Offices of the Speaker and the Clerk for the logistical support accorded to it during the sittings of the Committees. Further, the Committee wishes to thank all the stakeholders for their participation in the consideration of the Statute Law (Miscellaneous Amendments) (No.3) N.A Bill, 2017. The Committee is also thankful to the media for their coverage of the proceedings, thus enhancing accountability and transparency in the legislative process.

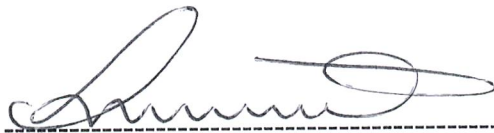
Mr. Speaker,

On behalf of the Departmental Committee on Finance and National Planning, it is my pleasant duty to table the Report on the Statute Law (Miscellaneous Amendments) (No.3) N.A Bill, 2017 for adoption by the House.

THE HON. JOSEPH K. LIMO, MP,

CHAIRPERSON

SIGNED: _____



DATE: _____

13/3/2018

2.0 EXECUTIVE SUMMARY

This report contains the consideration of the Statute Law (Miscellaneous Amendments) (No.3) N.A Bill, 2017 which is considering amendments to several laws including the Pensions Act (Cap 189), the Pharmacy and Poisons Act (Cap. 244), the Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017, the Environmental Management and Coordination Act, 1999(No. 8 of 1999), the Salaries and Remuneration Commission Act (No. 10 of 2011), the Statutory Instruments Act (No. 23 of 2013), the Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017.

The Bill was published on **13th November, 2017** and read a First Time on **30th November, 2017**. On **Tuesday, 20th February, 2018** The Speaker made a Communication to the House regarding the manner in which the Statute Law (Miscellaneous Amendments) (No.3) N.A Bill, 2017 was to be considered and subsequently presented to the House. In the Speaker's direction the seven pieces of amendments to laws were to be considered by the respective departmental committees with the Committee on Finance taking the lead role in the Bill.

The memorandum of objects and reasons for the Bill is as follows: -

1. Pensions Act (Cap 189) – the Bill proposes to amend the Pensions Act to insert a new definition of the term Minister.
2. The Pharmacy and Poisons Act (Cap. 244) – the Bill seeks to amend the Pharmacy and Poisons Act so as to provide for a Chief Executive Officer of the Board who shall be competitively recruited and appointed to the Board
3. The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 – the Bill proposes to amend the Clinical Officers (Training, Registration and Licensing) Act, 1988 to make consequential changes to the terminologies arising out of the enactment of the Constitution of Kenya, 2010
4. The Environmental Management and Coordination Act, 1999 (No. 8 of 1999) - the Bill seeks to amend the Environmental Management and Coordination Act, 1999 firstly to provide for the election of the Chairperson of Tribunal and secondly to clarify the issue of the grant of a stay in proceedings before the Tribunal.

5. The Salaries and Remuneration Commission Act (No. 11 of 2011) – the Bill seeks to amend the SRC Act no. 11 of 2011 to provide for the Commissioners to be full times and also allow the President choice in making his nomination of the Chairperson as contemplated by Article 230 (2)(a) of the Constitution of Kenya, 2010.

6. The Occupational Therapist’s Training, Registration and Licensing Act No. 31 of 2017 -

Summary of the Bill is as follows

1. Pensions Act (Cap 189) Section 2, Insert the following new definition in proper alphabetical sequence- “Minister” means the Cabinet Secretary responsible for matters relating to finance

Section 5(3) Delete the word “five” and substitute therefor the word “ten”.

2. The Pharmacy and Poisons Act (Cap. 244) Section 5 (1) by deleting the words “Chief Pharmacist” and substitute therefor the words “the chief executive officer of the Board competitively recruited and appointed by the Board upon such terms and conditions of service as shall be determined by the Board upon the advice of the Salaries and Remuneration Commission”.

3. The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 Sections 3, 7 (4), 13 (6), 16 and 17: By deleting the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”.

4. The Occupational Therapist’s Training, Registration and Licensing Act No. 31 of 2017

Section 4(1)(a) By deleting the expression “paragraph (i) and substitute therefor the expression “paragraph (g)”.

Section 4(1) (g) By renumbering paragraphs (a), (b), (c), (d) and (e) as (i), (ii), (iii), (iv) and (v) respectively

3.0 DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

3.1 Mandate

The Departmental Committee on Finance & National Planning is one of the twelve Departmental Committees of the National Assembly established under *Standing Order 216* and is mandated, pursuant to the *Standing Order 216 (5)* to:

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) study and review all the legislation referred to it;**
- d) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) 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;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) examine treaties, agreements and conventions;
- g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) examine any questions raised by Members on a matter within its mandate.

3.1 Committee Membership

The Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members: -

1. The Hon. Joseph K. Limo, MP – Chairperson
2. The Hon. Isaac W. Ndirangu – Vice-Chairperson
3. The Hon. Jimmy O. Angwenyi, MP
4. The Hon. Alfred W. Sambu, MP
5. The Hon. Enoch Kibunguchy, MP
6. The Hon. Shakeel Shabbir, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Kuria Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed Ali, MP
16. The Hon. Purity Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP

3.3 Committee Secretariat

- | | |
|------------------------|------------------------------------|
| 1. Ms. Leah W. Mwaura | - First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | - Third Clerk Assistant |
| 3. Mr. Josephat Motonu | - Fiscal Analyst I |
| 4. Ms. Lynette Otieno | - Legal Counsel II |
| 5. Mr. Chelang'a Maiyo | - Research & Policy Analyst III |
| 6. Mr. Collins Mahamba | - Audio Officer |

4.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

4.1 DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

The amendments relating to the Committee on Finance and National Planning included: -

1. The Pensions Act (Cap 189)
2. The Salaries and Remuneration Commission Act (No. 10 of 2011)

4.1.1 Public Participation

In accordance with Article 118(1)(a) of the Constitution that provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees, an advertisement was published on **4th December, 2017** inviting for public participation and submission of memoranda.

The Committee did not receive any memorandum on the Pensions Act (Cap 89) but received memoranda from the following stakeholders with respect to the Salaries and Remuneration Act (No. 10 of 2011):-

1. Salaries and Remuneration Commission (SRC)
2. Trade Unions Congress of Kenya (TUC-KE)
3. Ms. Lydia Da Costa
4. Central Organization of Trade Unions (COTU)
5. Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA)
6. Federation of Kenya Employers (FKE)
7. Mr. Donald Odera

4.1.2 Consideration of the of the amendments and memoranda from stakeholders

Pensions Act (Cap 189)

The Committee held a sitting on 27th February, 2018 where it considered the following two amendment Bills relating to the pensions Act (Cap.189) and as contained in the Statute Law (Miscellaneous Amendments) Bill as follows:-

Pensions Act (Cap 189)

Section 2

Amendment

Insert the following new definition “Minister” which means the Cabinet Secretary responsible for matters relating to finance.

Committee Recommendation

The Committee therefore agreed to the proposed amendment

Justification

The amendment seeks to clarify the relevant Minister being referred to in the Act.

Section 5 (3)

Amendment

Deletes the word “five” and substitutes therefore the word “ten-”

Committee Recommendation

The Committee rejected the amendment

Justification

The Committee noted that the said amendment was not a minor amendment. Further, the Committee took into consideration the High Court’s ruling in Constitutional **Petition No. 3 of 2016** concerning the Statute Law (Miscellaneous Amendments) Act, 2015 where it held that *Statute Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*

The Committee subsequently resolved that increasing the number of years a public officer ought to complete from five to ten years in order to qualify for any pensionable benefits was a substantial amendment that ought to be subjected to further stakeholder consultation.

1. The Salaries Remuneration Commission Act (No.10 of 2011)

The Committee considered the following amendment relating to the SRC Act (No. 10 of 2011) and as contained in the Statute Law (Miscellaneous Amendments) Bill as follows:- Sections 4(3), Section 7 (3), (4), (5), (6), (7), (8), (9) and (11)

Section 4(3)

Amendment

Delete the words “shall serve on a part-time basis” and substitutes therefor the words “other than those appointed under article 230(2) (d) shall full time basis”

There were several memoranda that had been submitted relating to this particular amendment. The Stakeholders had submitted as follows:-

A. Salaries and Remuneration Commission

The Commission was not in support of this amendment on the basis that:-

- (i) Under Article 230(2) the Commission is a fourteen member body which is a deviation from Article 250(1) that provides that “Each commission shall consist of at least three but not more than nine members.”
- (ii) Further, an eleven member commission working on a full time basis would increase the wage bill;
- (iii) Additionally, full time Commissioners will compromise the quality of representation from bodies representing trade unions and professional bodies. These persons nominated by professional bodies are ordinarily engaged in other commitments that relate to the nominating body.
- (iv) Additionally, as full time commissioners, persons nominated by professional bodies would be unable to practice their professions thereby denying the Commission the benefit of their professional interactions and the perspectives they bring.

B. Trade Unions Congress of Kenya (TUC-KE)

They objected to the amendments on the basis that:-

- i) All Commissioners are persons employed by Organizations that nominate them and unless rules are changed, the persons so nominated will be unable to serve as full time Commissioners while they owe allegiance to their nominating bodies.
- ii) Upon the amendment, the future Commissioners will cease to be answerable to the nominating bodies and will transfer their allegiance to the Executive.

C. Ms. Lydia Da Costa

She submitted that the amendment is necessary as it provided for the opportunity to gain through continuous experience.

D. Central Organization of Trade Unions (COTU)

They objected to the amendment on the basis that:-

- i) nominees are picked by the interested groups that have a big stake in issues of sustainability of the wage bill.
- ii) it would create a mismatch between wage bill and annual domestic revenue and this will have negative impact on tax levels, job creation and the country's infrastructure and social development.
- iii) they are not aware of any person who wanted SRC to be a full time Commission, more so through a miscellaneous amendment.
- iv) the amendment would create challenges because the trade unionist would be compelled to nominate retired persons who have no trade union background.
- v) an appointment from without the union will suppress the views of the labour movement.
- vi) there was no need for full-time commission in the second tenure now that there is a vibrant secretariat.
- vii) the independence of the nominees will also be compromised as the nominees will have no further attachment to the nominating bodies.
- viii) there was duplication of roles of large body of commissioners and the secretariat.
- ix) it would be very expensive to maintain eleven full time commissioners.

- x) it would be difficult for part time commissioners from the National Treasury, Office of the Attorney General and Public Service to keep pace with the rest of the full time commissioners.

E. Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA)

They were proposing to have the inclusion of a labour official as a member of the Commission since the nominee would play an advisory role towards addressing issues of industrial harmony.

The Committee noted that workers union were well represented in SRC as per Article 230 (c) (i)

F. Federation of Kenya Employers (FKE)

They objected to the amendment on the basis that:-

- (i) persons appointed were to be part time due to the fact that they were already actively involved with the activities of their umbrella bodies; inactive persons if appointed may compromise quality of representation.
- (ii) the Bill does not take into consideration cost implications of having full time commissioners.
- (iii) full time status denies nominees their daily practice and interaction with their professional colleagues and limiting quality of decisions made by the Commission.
- (iv) there were no recorded complaints on any inefficiency demanding the need for the Bill. SRC had a full time Secretariat that carries out instructions of the Commissions; there is therefore no justification for the proposed amendments.

Committee's Recommendation on the SRC Act (No.10 of 2011) Section 4(3)

The Committee rejected the amendments on the following grounds: That;

- (i) although the Constitution envisions the possibility of having a part-time or full-time Commission as espoused in Article 250(5) of the Constitution. The SRC is an exception to the general rule on composition of constitutional commissions as set out under Article 250(1) that provides that each

commission shall consist of at least three but not more than nine members, whereas under article 230 SRC is composed of fourteen members. Therefore the change to a full time commission would significantly increase the wage bill.

- (ii) the general policy direction should be to strengthen the Secretariat as opposed to making the Commission full time. The Commission should offer the policy direction and in-turn the Secretariat would be expected to implement it.
- (iii) the High Court's ruling in **Constitutional Petition No. 3 of 2016** concerning the Statute Law (Miscellaneous Amendments) Act, 2015 held that *Statute Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*
- (iv) the various memoranda received from the relevant stakeholders including the SRC were opposed to the amendments which should therefore be subjected to further consultations.

The Salaries Remuneration Commission Act (No.10 of 2011) Section 7

Amendments

Delete subsections (3, (4), (5), (6), (7), (8), (9)

and

Delete subsection (10) and substitute therefor the following-

(10) The President shall, within seven days receipt of the names forwarded under subsection (2) nominate the members of the Commission from each category and forward the names.

There were several memoranda submitted relating to this particular amendment. The Stakeholders had submitted as follows:-

1. Salaries and Remuneration Commission

They objected to the amendment on the basis that:-

- (i) it removes the independence of the Chairperson as he/she would become an appointee of the President and compromises the independence of the Commission as provided in Chapter 15 that provides that Commissions are independent and not subject to direct or control by any person or authority and

this independence is tied to the procedure on appointment. The amendment would therefore be unconstitutional.

- (ii) it will affect the ability of the Commission to perform its Constitutional function as Chairperson will be seen to be beholden to the appointing authority.
- (iii) it will adversely affect the process of selecting the Chairperson on the basis that :-
 - a) the Chairperson shall become a direct appointee of the President and compromises the independence of the Commission.
 - b) the amendments will serve to impair SRC's ability to execute its constitutional mandate due to lack of independence starting from the process of appointing the Chairperson and Commissioners.

2. Trade Unions Congress of Kenya (TUC)

They objected to the amendment on the basis that:-

- (i) the Commission as currently constituted is independent and performs mandate better due to this autonomy.
- (ii) the amendment would expose the Commission to vulnerability by the executive, hence reducing its ability to function.
- (iii) the executive having appointing authority would exert undue influence on the Chairperson and the Commission as whole who would no longer listen to public views.

3. Central Organization of Trade Unions (COTU)

They objected to the amendment on the basis that:-

- (i) Commissions and independent office holders were only subject to the Constitution and law and were not subject to any direction or control of any person or authority.
- (ii) the National Assembly had prescribed the manner of appointment of Chairperson through a selection panel that recommends to H.E the President for nomination before approval by the National Assembly.

4. Mr. Donald Odera

He rejected to the amendment by submitting in his memorandum to the Committee that:-

- (i) there was a critical importance for checks and balances and hence it is important for a body of professionals to undertake review, selection and recommendation for appointment of the Chairperson and other Commissioners.
- (ii) amendments would erode the gains made in ensuring independence of the Chairperson as they will be beholden to H.E the President.
- (iii) the amendment provides protection to H.E the President by enabling him have a panel of qualified individuals to assess and propose for appointment suitable persons to the position of Chair and other Commissioners.

Committee's Recommendation on Salaries Remuneration Commission Act (No.10 of 2011) Section 7

The Committee rejected the amendments on the following grounds that:-

- (i) the provision for a selection panel affords the public the opportunity to participate in the process of interview and selection of the Chairperson in line with the principles of national values espoused under Article 10 of the Constitution and therefore the selection panel should be retained.
- (ii) the current provision provides for a selection panel that shall be convened by the H.E the President. Therefore the Executive's interests are not only catered for in the selection panel but also at the instance where he has the discretion of choosing one individual from the three nominees that are submitted to H.E the President.
- (iii) the Committee took into consideration the various memorandums received from the relevant stakeholders including the SRC who were opposed to the amendments and were of the opinion the amendments may be subjected to further consultations

The Salaries Remuneration Commission Act (No.10 of 2011) Section 7 (11)

amendment

~~Deletes the words "twenty one days" and substitute therefor the word "fourteen"~~

Committee's Recommendation

The Committee did not receive any memoranda on the amendment.

The Committee rejected the amendments on the basis that twenty days affords Parliament adequate time to conduct a more efficient approval process.

4.1.3 Committee Stage Amendments

Having considered the Statute Law (Miscellaneous Amendments) Bill (N.A. Bill No.3 of 2017) the Committee agreed to the following amendments for the Committee stage: -

SCHEDULE

(1) **THAT** the Schedule to the Bill be amended in—

- (a) the proposed amendments to the Pensions Act, Cap. 189 by deleting the proposed amendments to section 5(3); and
- (b) the proposed amendments to the Salaries and Remuneration Commission Act, No. 10 of 2011 by deleting—
 - (i) the proposed amendment to section 4(3);
 - (ii) the proposed amendment to section 7;
 - (iii) the proposed amendment to section 7(10); and
 - (iv) the proposed amendment to section 7(11).

5.0 DEPARTMENTAL COMMITTEE ON HEALTH

The Departmental Committee on Health considered the following Acts;

1. Act of Parliament to amend the Pharmacy and Poisons Act (Cap. 244) and seeks to change the title of the registrar of the Pharmacy and Poisons Board from the Chief Pharmacist to the Chief Executive Officer.
2. The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 to change the title of Ministers to Cabinet Secretaries so as to align it with the Constitution.
3. Amendments to The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017 seeking to correct referencing errors.

5.1 Situational Review

4.2.2.1 The Pharmacy and Poisons Act (Cap. 244) Section 5 (1)

The Pharmacy and Poisons Act (Cap. 244) is Act of Parliament to make better provision for the control of the profession of pharmacy and the trade in drugs and poisons. The Act's Section 5 provides for the position of a Registrar of the Board who shall be the Chief Pharmacist. The Registrar shall perform such duties and exercise such powers, in addition to those required under the provisions of the Act to be performed and exercised, as the Board may from time to time direct.

4.2.2.2 The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 Sections 3, 7 (4), 13 (6), 16 and 17

This is an Act of Parliament to make provision for the training, registration and licensing of clinical officers; to regulate their practice and for connected purposes.

- i. Section 3 provides for a Clinical Officers Council
- ii. Section 7 (4) provides for the registration and effect of registration
- iii. Section 13 (6) provides for powers of the Minister to amend 1st, 2nd, 3rd and 4th schedules in relation to limitations of private practise
- iv. Section 16 refers to powers of the Minister to make in consultation with the Board, regulations generally for the better carrying out of the provisions of the Act.
- v. Section 17 refers to powers of the Minister in charge over finances

4.2.2.3 The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017

This is an Act of Parliament to make provision for the training, registration and licensing of occupational therapists; to regulate their practice; to provide for the establishment, powers and functions of the Occupational Therapy Council of Kenya and for connected purposes.

Sections 4(1)(a) and 4(1)(g) provide for composition of the council.

5.2 Public Participation

In considering the Bill, the Committee received submissions from the following eight (8) stakeholders:-

- i. Pharmacy and Poisons Board
- ii. Federation of Kenya Pharmaceutical Manufacturers
- iii. Kenya Pharmaceuticals Distributors Association
- iv. Sospeter Otuya Katiechi
- v. James Wathigo
- vi. Pharmaceutical Society of Kenya
- vii. Dr. Pius Wanjala
- viii. Kenya Union of Clinical Officers

Details of their proposals are annexed to the report.

Committee's Observations

The Committee made the following observations;

5.2.1 Under the Pharmacy and Poisons Act

- i. Section 62 of the recently enacted Health Act provides for the enactment of legislation to provide for a single regulatory body for the regulation of health products and health technologies. Section 63 further provided for the functions of the regulatory body, which include licensing and control among others.

The Committee was therefore of the view that once this regulatory body is created, it will have a Chief Executive Officer who shall be the overall head to oversee the regulation of various health products and technologies, which include pharmacy and poisons. There is therefore need to avoid duplication of roles, and ensure smooth transition when the Act is operationalized.

- ii. Further, the stakeholders proposed various qualifications for the position of the Chief Executive Officer, which would require further deliberations at the stage of implementation of the Health Act.

5.2.2 Under the Clinical Officers (Training, Registration and Licensing) Act

The Committee observed that the Act is out of date with provisions of the Constitution.

5.2.3 Under the Occupational Therapist's Training, Registration and Licensing Act

- i. Under Section 4 (1) (a), the amendment corrects a referencing error. The said sub-section (1) does not contain paragraph (i), and the persons nominated are contained in paragraph (g)
- ii. Under Section 4 (1) (g) proposed amendment is not necessary since the paragraphs in section 4(1)(g) are already numbered as (i), (ii), (iii), (iv) and (v).

5.3 Committee's Recommendation

The Committee having considered the Bill and the submissions from the stakeholders, made the following recommendations;

(i) The Pharmacy and Poisons Act (Cap. 244)

The Committee proposes that the amendment to section 5(1) be deleted.

Justification

Section 62 of the recently enacted Health Act provides for the enactment of legislation to provide for a single regulatory body for the regulation of health products and health technologies. Section 63 further provided for the functions of the regulatory body, which include licensing and control among others.

The Committee was therefore of the view that once this regulatory body is created, it will have a Chief Executive Officer who shall be the overall head to oversee the regulation of various health products and technologies, which include pharmacy and

poisons. There is therefore need to avoid duplication of roles, and ensure smooth transition when the Act is operationalized.

Further, the stakeholders proposed various qualifications for the position of the Chief Executive Officer, which would require further deliberations at the stage of implementation of the Health Act.

(ii) The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017

The Committee accepts and adopts the proposed amendments

The Committee further proposes an amendment to the Bill to correctly reference the Act as Cap. 260 and not Act No. 9 of 1988.

Justification

The previous Act No. 9 of 1988 has since been repealed and the correct Act in force is the Cap. 260.

(iii) The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017

- a) The Committee accepts proposed amendments of Section 4 (1) (a)
- b) The Committee proposes that the amendment to section 4(1)(g) be deleted

Justification

This amendment is not necessary since the paragraphs in section 4(1)(g) of the Act are already numbered as (i), (ii), (iii), (iv) and (v) respectively.

6.0 DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

The Committee considered the amendments to the Environmental Management and Coordination Act, 1999 (No. 8) of 1999 for submission to the Departmental Committee on Finance and National Planning pursuant to the Communication by the Hon. Speaker issued on **20th February, 2018**.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend the Environmental Management and Co-ordination Act, 1999 so as to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal and secondly to clarify the issue of the grant of stay in proceedings before the Tribunal.

The Committee observed that although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 125(1)(a) to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal, no justification for the same has been provided in the Memorandum of Objects and Reasons in the Bill. However, it was noted that proposal to elect the Chairperson from among the three Members under paragraph (a), (b) and (c) in the Tribunal was agreeable as they all hold the same qualifications as lawyers.

The Committee further observed that the amendment to section 125(1)(b) on the composition of the Tribunal to correctly indicate an Advocate of the High Court instead of the Advocate of the Environment and Land Court is also proper.

6.1 Public Participation

The Committee received memoranda from institutions and stakeholders as follows:

- (i) Memorandum from the Judiciary (by the Chief Registrar of the Judiciary and Secretary of the Judicial Service Commission)
- (ii) Memorandum from Cytonn Real Estate, LLP
- (iii) Memorandum from the Institute for Social Accountability (TISA)

- (iv) Memorandum from the Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org ad Kenya Oil and Gas Working Group
- (v) Memorandum from the Office of the Attorney-General and Department of Justice dated 6th February 2018 and received by the office of the Clerk on 7th February 2018;
- (vi) Memorandum from the Kenya Coalition for Wildlife Conservation and Management dated 8th December 2017 and received by the office of the Clerk on 11th December 2017.

Details of their proposals are annexed to the report.

6.2 Committee's Observations

The Committee on Environment and Natural Resources made the following observations, that;

- i. although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 125(1)(a) to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal, no justification for the same has been provided in the Memorandum of Objects and Reasons in the Bill. However, it was noted that the proposal to elect the Chairperson from among the three Members under paragraph (a), (b) and (c) in the Tribunal was agreeable as they all hold the same qualifications as lawyers.
- ii. The amendment to section 125(1)(b) on the composition of the Tribunal to correctly indicate an Advocate of the High Court instead of the Advocate of the Environment and Land Court is also proper.
- iii. The proposed amendment to section 129 is proper since it corrects the anomaly that occurred where the amendment was incorrectly done by the House in the Prevention to Torture Act and the matter was litigated upon.

6.3 Committee's Recommendation

The Committee having considered the Bill and the submissions from the stakeholders made the following recommendations;

SECTION 125

Amendment

Section 125(1)

Delete the words "chairperson" appearing in paragraph (a) and substitute therefor the word "person"

Committee Resolution

Agreed to

Justification

Any member of the Tribunal under paragraph (a), (b) and (c) and not necessarily one nominated by the Judicial Service Commission would be a Chairperson of the Tribunal. It opens up the opportunity to other candidates to be elected as chairperson.

Amendment

Section 125(1)(b)

Delete the words "Environment and Land" appearing in paragraph (b) and substitute therefor the word "High"

Committee Resolution

Agreed to

Justification

The amendment corrects an error in paragraph (b) which currently provides for an advocate of the Environment and Land Court of Kenya. There is no advocate of the Environment and Land Court of Kenya but an advocate of the High Court of Kenya.

Amendment

Section. 125(5)

Delete the words "a Vice-Chairperson to the Tribunal" and substitute therefor the words "a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson from to the Tribunal amongst all members".

Committee Resolution

Agreed to

Justification

That the Chairperson shall be elected by the persons under paragraphs (a), (b), and (c) who essentially have a legal background. The provision is tied up the proposed amendment to section 125(1) of EMCA in regard to the mechanism of electing the chairperson. Since the Committee has agreed to the proposed amendment to section 125(1) of the Environment Management and Coordination Act, this proposed amendment is a resultant amendment that should also be made.

SECTION 129

Amendment

Section 129

Delete and substitute therefor the following new section

129. (1) Any person who is aggrieved by—

- a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;
- b) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;
- c) the revocation, suspension or variation of the persons a licence under this Act or its regulations;
- d) the amount of money required to paid as a fee under this Act or its regulations;
- e) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its regulations, may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- a) confirm, set aside or vary the order or decision in question;

- b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
 - c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
 - d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
 - e) if satisfied upon application by any party, review any orders made under paragraph (a).
- (4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3) (a).

Committee Resolution

Agreed to

Justification

The proposed amendment to section 129 of the Environment Management and Coordination Act corrects the anomaly that occurred last year in the House where the same amendments were enacted under section 29 of the Prevention of Torture Act 2017. Although the matter has been litigated upon, the challenge was not on the substance of the amendments but the procedure and lack of opportunity for the public to give their input.

7.0 COMMITTEE ON DELEGATED LEGISLATION

The Select Committee on Delegated Legislation considered the amendments to the Statutory Instruments Act (No. 23 of 2013) for submission to the Departmental Committee on Finance and National Planning pursuant to the Communication by the Hon. Speaker issued on 20th February, 2018.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend sections 11 (1) and (4) on laying of statutory instruments before the relevant House.

7.2 Committee Observations

The Committee observed –

- (i) **THAT, although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend sections 11 (1) and (4) on laying of statutory instruments before Parliament, it was imperative that the Bill amends section (2) of the Act to provide for clarity in the definition of “an explanatory memorandum” to indicate the details to be included in the contents of the explanatory memorandum thereof, and to further provide for the insertion of the definition of the “Clerk” to mean the Clerk of the National Assembly;**
- (ii) **THAT, there is need to amend the Bill to provide for insertion of a new section 5A to the principal Act to provide for the requirements that every statutory instrument submitted to the House be accompanied by an explanatory memorandum and sets out certain conditions precedent to the submission of the explanatory memorandum;**
- (iii) **THAT, the proposed amendment to section 11 (1) and (4) is proper since it corrects the ambiguity for transmitting instruments to the responsible Clerk for tabling before the relevant House of Parliament.**

The Committee proposed further amendments to section 11 of the Act to remove the requirement that a regulation-making authority may submit a statutory instrument to the respective Clerk of the House and specifies that the statutory instruments be first submitted to the National Assembly so as to minimize the confusion caused to the regulation-making authorities in respect to submission of statutory instruments and

that the submission to be made to the House where the parent legislation under which the Statutory instrument is made, was passed.

- (iv) **THAT, a further amendment be made for insertion of a new section 11A to the principal Act on the procedure for concurrence of statutory instruments between the Houses of Parliament in order to streamline parliamentary scrutiny of statutory instruments and ensure that the process is clear and consistent.**
- (v) **THAT, further amendments be made to section 15 of the Act to extend the time granted to the committee for considering various statutory instruments from twenty-eight (28) calendar days to twenty-eight sitting days to give the committee adequate time for considering the instruments before it.**

The Committee having considered the proposed amendments to the Statutory Instruments Act (No. 23 of 2013) resolved that amendments as proposed in the Statute Law (Miscellaneous Amendment) No. 3 Bill, 2017, be deleted and that the further amendments proposed by the committee be passed by the House.

7.3 Committee Recommendations

The Committee having considered the Bill and the legal advice from the Directorate of Legal Services makes the following recommendations;

- (i) **THAT, the deletion of provisions relating to Statutory Instruments Act,2013 and insertion of the proposed further amendments as set out in the annexure to this Report.**
- (ii) **THAT, a draft request be sent to the Clerk of National Assembly incorporating the proposed further amendments to the provisions relating to the Statutory Instruments Act in the Statute Law (Miscellaneous) (Amendments) (No. 3) Bill, 2017, for the Chairperson's signature in the manner set out in the schedule.**

*** MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 27TH FEBRUARY, 2018
.. IN THE NEW MEMBERS' LOUNGE, MAIN PARLIAMENT BUILDINGS AT 9.00 AM**

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MP
3. Hon. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. David M. Mboni, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Lydia H. Mizighi, MP
10. Hon. Mohamed A. Mohamed, MP
11. Hon. Purity W. Ngirici, MP
12. Hon. Samuel Atandi, MP

ABSENT WITH APOLOGY

1. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
2. Hon. Alfred Sambu, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Francis K. Kimani, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura | – | First Clerk Assistant/ Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 3. Ms. Lynette Otieno | – | Legal Counsel II |
| 4. Mr. John Njoro | – | Sergeant-At-Arms |
| 5. Mr. Collins Mahamba | – | Audio Officer |

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills

5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. i) **Consideration and adoption of the report on vetting of nominees for the position of Principal Secretary Planning and Principal Secretary Devolution**
 - ii) **Consideration of the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017**
11. Adjournment

MIN.NO.039/DC-F/2018: PRELIMINARY/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:25 a.m with prayer from Chairperson. He then invited the meeting to deliberate on the day's agenda.

MIN.NO.040/DC-F/2018: CONFIRMATION OF MINUTES

Minutes of the 7th sitting were adopted as true records of the sittings. They were then proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. Joshua Kandie respectively.

MIN.NO.041/DC-F/2018: MATTERS ARISING

There were no matters arising from the confirmed minutes.

MIN.NO.042/DC-F/2018: CONSIDERATION AND ADOPTION OF THE REPORT VETTING OF NOMINEES FOR THE POSITION OF PRINCIPAL SECRETARY PLANNING AND PRINCIPAL SECRETARY DEVOLUTION

The meeting discussed and agreed on the following observations and recommendations;

Observations

1. Dr. Julius Muia

The Committee having considered his curriculum vitae and heard his submission during the vetting exercise, made the following observations: -

- (i) He is a Kenyan citizen born in Makueni County in 1959
- (ii) He holds a PhD in Finance (2012 and a Master of Business Administration (1984). He attained his Bachelor of Commerce in Accounting in 1981 at the University of Nairobi.
- (iii) He has a wealth of experience in the planning sector especially having worked as the Secretary to the National Economic and Social Council and also being the Director General Vision 2030 Delivery Board. He was also involved in the formulation of the

Vision 2030.

- (iv) The nominee had acquired requisite statutory clearances from the KRA, HELB, EACC, DCI and ORPP.
- (v) He has never been charged in a court of law and has no potential conflict of interest.
- (vi) He has never been dismissed from office on contravention of the provisions of Article 75 of the constitution that deals with conduct of state officer and has never been adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

The Committee noted that the nominee exhibited capacity to serve as PS in the Ministry of Planning and had impressive knowledge on topical issues touching on planning sector that will be invaluable while discharging his duties as the Accounting Officer in the Ministry of Planning.

2. Mr. Nelson Sospeter Marwa

- (i) He is a Kenyan citizen born in Migori County in 1960
- (ii) He holds a Masters of Public Administration from the South Gujarat University, India and a Bachelor of Arts (Economics/Sociology/Public Administration) Degree from the Mohanlal Sukhadia University, India. He is currently pursuing his Masters of Arts in Governance and Ethics at Mt. Kenya University.
- (iii) He has a wealth of experience in the Public Administration where he has worked in most parts of the country.
- (iv) The nominee had acquired requisite statutory clearances from KRA, HELB, EACC, DCI and ORPP.
- (v) He has never been charged in a court of law and has no potential conflict of interest.
- (vi) He has never been dismissed from office on contravention of the provisions of Article 75 of the constitution that deals with conduct of state officer and has never been adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

The Committee noted that the nominee exhibited capacity to serve as PS in the Ministry of Devolution and ASAL and had impressive knowledge on topical issues

touching on Devolution that will be invaluable while discharging his duties as the Accounting Officer.

GENERAL OBSERVATIONS AND FINDINGS

The Committee having considered the nominees' curriculum vitae and heard oral submissions during the vetting exercise made the following observations and findings. That:-

- 1. Dr. Julius Monzi Muia - nominee for the position of Principal Secretary Planning, the National Treasury and**
- 2. Mr. Nelson Marwa Sospeter - nominee for the Principal Secretary for Devolution, Ministry of Devolution and ASAL.**

- i. had satisfied the requirement of chapter six of the Constitution of Kenya on Leadership and Integrity.
- ii. had been cleared by the Criminal Investigation Department (CID), Kenya Revenue Authority on Tax Compliance, Higher Educations Loans Board (HELB), Ethics and Anti Corruption Commission and the Office of the Registrar of Political Parties (ORPP).
- iii. have never been charged with a criminal offence in a court of Law and have no conflict of interest.
- iv. have never been dismissed from office for contravention of the provisions of article 75 of the constitution which deals with conduct of State Officers that are adversely mentioned in any investigatory report of Parliament or any commission of inquiry.
- v. have the necessary academic qualifications and experience as seen from the documents presented to the Committee.
- vi. exhibited the right attitude to work in the position for which they have been nominated as observed from the way they responded to the Members' questions during vetting.

RECOMMENDATION

The Committee made the following recommendation: -

Having considered the suitability, capacity and integrity of the nominees, and pursuant to Article 155(3) of the Constitution and Section 8 (2) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, the Committee recommends that the National Assembly approves the nomination and subsequent appointment of;

1. **Dr. Julius Monzi Muia - nominee for the position of Principal Secretary Planning, the National Treasury and Planning**
2. **Mr. Nelson Marwa Sospeter - nominee for the Principal Secretary for Devolution, Ministry of Devolution and ASAL.**

MIN.NO.043/DC-F/2018: CONSIDERATION OF THE STATUTE LAW (MISCELENOUS AMENDMENTS) BILL (NA. BILL NO.3 OF 2017)

The Committee was taken through the Statute Law (Miscellaneous Amendments) Bill (N.A. Bill No.3 of 2017). The Committee was informed that the Bill was an omnibus Bill containing amendments to several laws including the Pensions Act (Cap 189), the Pharmacy and Poisons Act (Cap. 244), the Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017, the Environmental Management and Coordination Act, 1999(No. 8 of 1999), the Salaries and Remuneration Commission Act (No. 10 of 2011), the Statutory Instruments Act (No. 23 of 2013), the Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017.

The ones relating to the Committee on Finance and National Planning included: -

1. The Pensions Act (Cap 189)
2. The Salaries and Remuneration Commission Act (No. 10 of 2011)

The Pensions Act (Cap.189) Section 2

The amendment read as follows:-

Insert the following new definition "Minister" which means the Cabinet Secretary responsible for matters relating to finance

The Committee noted that there was no memorandum from the public in support or against the proposed amendment. The Committee therefore agreed with the proposed amendment as it seeks to clarify the relevant Minister being referred to in the Act.

The Pensions Act (Cap.189) Section 5 (3)

The amendment read as follows:-

Deletes the word "five" and substitutes therefore the word "ten-"

The Committee noted that there was no memorandum from the public in support or against the proposed amendment. However, the Committee rejected the amendments having noted that the said amendment was not a minor amendment. Further the Committee took into consideration the

High Court's ruling in Constitutional **Petition No. 3 of 2016** concerning the Statute Law (Miscellaneous Amendments) Act, 2015 where it held that *Statute Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*

The Committee subsequently resolved that increasing the number of years a public officer ought to complete from five to ten years in order to qualify for any pensionable benefits was a substantial amendment that ought to be subjected to further stakeholder consultation.

The Salaries Remuneration Commission Act (No.10 of 2011)

Section 4(3)

The amendment read as follows:-

Delete the words "shall serve on a part-time basis" and substitutes therefor the words "other than those appointed under article 230(2) (d) shall full time basis"

The Committee was informed that there were several memoranda that had been submitted relating to this particular amendment. The Stakeholders had submitted as follows:-

1. SALARIES AND REMUNERATION COMMISSION

The Commission was not in support of this amendment on the basis that:-

- (i) Under Article 230(2) the Commission is a fourteen member body which is a deviation from Article 250(1) that provides that "Each commission shall consist of at least three but not more than nine members."
- (ii) Further, an eleven member commission working on a full time basis would increase the wage bill;
- (iii) Additionally, full time Commissioners will compromise the quality of representation from bodies representing trade unions and professional bodies. These persons nominated by professional bodies are ordinarily engaged in other commitments that relate to the nominating body.
- (iv) Additionally, as full time commissioners, persons nominated by professional bodies would be unable to practice their professions thereby denying the Commission the benefit of their professional interactions and the perspectives they bring.

2. TRADE UNION TRADE UNIONS CONGRESS OF KENYA (TUC-KE)

They objected to the amendments on the basis that:-

- (i) All Commissioners are persons employed by Organizations that nominate them and unless rules are changed, the persons so nominated will be unable to serve as full time Commissioners while they owe allegiance to their nominating bodies.
- (ii) Upon the amendment, the future Commissioners will cease to be answerable to the nominating bodies and will transfer their allegiance to the Executive.

3. LYDIA DA COSTA

She submitted as follows, that:-

The amendment is necessary as it provided for the opportunity to gain through continuous experience.

4. CENTRAL ORGANIZATION OF TRADE UNIONS

They objected to the amendment on the basis that:-

- (i) Nominees are picked by the interested groups that have a big stake in issues of sustainability of the wage bill.
- (ii) It would create a mismatch between wage bill and annual domestic revenue and this will have negative impact on tax levels, job creation and the country's infrastructure and social development.
- (iii) They are not aware of any person who wanted SRC to be a full time Commission, more so through a miscellaneous amendment.
- (iv) The amendment would create challenges because the trade unionist would be compelled to nominate retired persons who have no trade union background.
- (v) An appointment from without the union will suppress the views of the labour movement.
- (vi) There was no need for full-time commission in the second tenure now that there is a vibrant secretariat.
- (vii) The independence of the nominees will also be compromised as the nominees will have no further attachment to the nominating bodies.
- (viii) There was duplication of roles of large body of commissioners and the secretariat.
- (ix) It would be very expensive to maintain eleven full time commissioners.

- (x) It would be difficult for part time commissioners from the National Treasury, Office of the Attorney General and Public Service to keep pace with the rest of the full time commissioners.

5. KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS (KUDHEIHA)

They were proposing to have the inclusion of the labour official as a member of the Commission since the nominee would play an advisory role towards addressing issues of industrial harmony.

The Committee noted that workers union were well represented in SRC as per Article 230 (c) (i)

6. FEDERATION OF KENYA EMPLOYERS (FKE)

They objected to the amendment on the basis that:-

- (i) Persons appointed were to be part time due to the fact that they were already actively involved with the activities of their umbrella bodies; inactive persons if appointed may compromise quality of representation.
- (ii) The Bill does not take into consideration cost implications of having full time commissioners.
- (iii) Full time status denies nominees their daily practice and interaction with their professional colleagues and limiting quality of decisions made by the Commission.
- (iv) There were no recorded complaints on any inefficiency demanding the need for the Bill. SRC had a full time Secretariat that carries out instructions of the Commissions; there is therefore no justification for the proposed amendments.

Committee's Recommendation on the SRC Act (No.10 of 2011) Section 4(3)

The Committee rejected the amendments on the following grounds:-

- (i) Although the Constitution envisions the possibility of having a part-time or full-time Commission as espoused in Article 250(5) of the Constitution. The SRC is an exception to the general rule on composition of constitutional commissions as set out under Article 250(1) that provides that each commission shall consist of at least three but not more than

nine members, whereas under article 230 SRC is composed of fourteen members. Therefore the change to a full time commission would significantly increase the wage bill.

- (ii) Further the general policy direction should be to strengthen the Secretariat as opposed to making the Commission full time. The Commission should offer the policy direction and in-turn the Secretariat would be expected to implement it.
- (iii) The Committee also took into consideration the High Court's ruling in **Constitutional No. Petition 3 of 2016** concerning the Statute Law (Miscellaneous Amendments) Act, 2015 where it held that *Statute Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*
- (iv) Further based on the various memorandums received from the relevant stakeholders including the SRC who were opposed to the amendments which should therefore be subjected to further consultations.

The Salaries Remuneration Commission Act (No.10 of 2011) Section 7

The amendment read as follows:-

Delete subsections (3, (4), (5), (6), (7), (8), (9)

and

Delete subsection (10) and substitute therefor the following-

(10) The President shall, within seven days receipt of the names forwarded under subsection (2) nominate the members of the Commission from each category and forward the names.

The Committee was informed that there were several memoranda that had been submitted relating to this particular amendment. The Stakeholders had submitted as follows:-

1. SALARIES AND REMUNERATION COMMISSION

They objected to the amendment on the basis that:-

- (i) The amendment removes the independence of the Chairperson as he /she would become an appointee of the President and compromises the independence of the Commission as provided in Chapter 15 that provides that Commissions are independent and not subject to direct or control by any person or authority and this independence is tied to the procedure on appointment. The amendment would therefore be unconstitutional.

- (ii) It will affect the ability of the Commission to perform its Constitutional function as Chairperson will be seen to be beholden to the appointing authority.
- (iii) It will adversely affect the process of selecting the Chairperson on the basis that :-
 - a) The Chairperson shall become a direct appointee of the President and compromises the independence of the Commission.
 - b) The amendments will serve to impair SRC's ability to execute its constitutional mandate due to lack of independence starting from the process of appointing the Chairperson and Commissioners.

2. TRADE UNIONS CONGRESS OF KENYA (TUC)

They objected to the amendment on the basis that:-

- (i) The Commission as currently constituted is independent and performs mandate better due to this autonomy.
- (ii) The amendment would expose the Commission to vulnerability by the executive, hence reducing its ability to function.
- (iii) Executive having appointing authority would exert undue influence on the Chairperson and the Commission as whole who would no longer listen to public views.

3. CENTRAL ORGANIZATION OF TRADE UNIONS

They objected to the amendment on the basis that:-

- (i) Commissions and independent office holders were only subject to the Constitution and law and were not subject to any direction or control of any person or authority.
- (ii) The National Assembly had prescribed the manner of appointment of Chairperson through a selection panel that recommends to H.E the President for nomination before approval by the National Assembly.

4. DONALD ODERA

He rejected to the amendment by submitting in his memorandum to the Committee that:-

- (i) There was a critical importance for checks and balances and hence it is important for a body of professionals to undertake review, selection and recommendation for appointment of the Chairperson and other Commissioners.

- (ii) Amendments would erode the gains made in ensuring independence of the Chairperson as they will be beholden to H.E the President.
- (iii) The amendment provides protection to H.E the President by enabling him have a panel of qualified individuals to assess and propose for appointment suitable persons to the position of Chair and other Commissioners.

Committee's Recommendation on Salaries Remuneration Commission Act (No.10 of 2011)

Section 7

The Committee rejected the amendments on the following grounds that:-

- (i) The provision for a selection panel affords the public the opportunity to participate in the process of interview and selection of the Chairperson in line with the principles of national values espoused under Article 10 of the Constitution and therefore the selection panel should be retained.
- (ii) The current provision provides for a selection panel that shall be convened by the H.E the President. Therefore the Executive's interests are not only catered for in the selection panel but also at the instance where he has the discretion of choosing one individual from the three nominees that are submitted to H.E the President.
- (iii) The Committee took into consideration the various memorandums received from the relevant stakeholders including the SRC who were opposed to the amendments and were of the opinion the amendments may be subjected to further consultations

The Salaries Remuneration Commission Act (No.10 of 2011) Section 7 (11)

Deletes the words "twenty one days" and substitute therefor the word "fourteen"

The Committee did not receive any memoranda on the amendment.

The Committee rejected the amendments on the basis that twenty days affords Parliament adequate time to conduct a more efficient approval process.

Having considered the Statute Law (Miscellaneous Amendments) Bill (N.A. Bill No.3 of 2017) the Committee agreed to the following amendments for the Committee stage: -

To be continued once the Committee stage amendments are read.

MIN.NO.044/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 01.20 pm. The next meeting will be held on Thursday, 1st March, 2018.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED  DATE ^{1st} MARCH, 2018

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT
SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON HEALTH
REPORT ON THE STATUTE LAW MISCELLANEOUS AMENDMENT BILL (NO. 3) OF
2017

DIRECTORATE OF COMMITTEE SERVICES,
THE NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
NAIROBI.

FEBRUARY 2018

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CHAIRMAN'S FOREWORD

The Statute Law (Miscellaneous Amendments) (No. 3) National Assembly Bill No. 44 of 2017 was published on 13th November, 2017 and thereafter committed to the Departmental Committee on Health pursuant to Standing Order 143 vide the Speaker's communication No. 01 of 2018 on 20th February, 2018.

In considering the bill, the Committee received submissions from the following eight (8) institutions and persons;

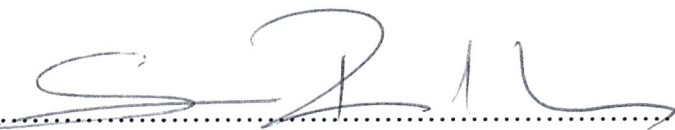
- i. Pharmacy and Poisons Board
- ii. Federation of Kenya Pharmaceutical Manufacturers
- iii. Kenya Pharmaceuticals Distributors Association
- iv. Sospeter Otuya Katiechi
- v. James Wathigo
- vi. Pharmaceutical Society of Kenya
- vii. Dr. Pius Wanjala
- viii. Kenya Union of Clinical Officers

The Committee sincerely thanks the Offices of the Speaker and the Clerk of the National Assembly for the immense and timely technical and logistical support accorded to it in the execution of its mandate. I also thank all the Members of the Committee for their commitment and hard work which enabled us to complete the tasks related to the scrutiny of the proposed amendments and compilation of this report.

The Committee is also grateful to stakeholders who made submissions in relation to the Consideration of the Bill.

On behalf of the Departmental Committee on Health and pursuant to provisions of Standing Order 127, it is my pleasant privilege and honor to present the Report of the

Committee on its consideration of the Statute Law (Miscellaneous Amendments) (No. 3)
National Assembly Bill No. 44 of 2017.

SIGNED 

HON. SWARUP R. MISHRA, MP

(VICE-CHAIRPERSON)

DATE.....

COMMITTEE MANDATE

Mr. Speaker Sir,

The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216(5) of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee is to;

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments:*
- b) Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
- c) Study and review all legislation referred to it;*
- d) Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) 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;*
- f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and*
- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Departmental Committee is mandated to cover the functions of the Ministry of Health alongside its Semi-autonomous Government Agencies (SAGAs) namely;

- i. Kenyatta National Hospital;
- ii. Moi Teaching and Referral Hospital;
- iii. Kenya Medical Training College;
- iv. Kenya Medical Supplies Authority;
- v. National Hospital Insurance Fund;

- vi. Kenya Medical Research institute;
- vii. Pharmacy and Poisons Board;
- viii. National Aids and Control Council.

Committee Membership

The Committee comprises the following Honourable Members;

1. Hon. Sabina Chege, MP – Chairperson
2. Hon. Swarup Ranjan Mishra, MP – Vice Chairperson
3. Hon. (Dr.) Eseli Simiyu, MP
4. Hon. (Dr.) James Nyikal, MP
5. Hon. Alfred Agoi Masadia, MP
6. Hon. (Dr.) James Kipkosgei Murgor, MP
7. Hon. Muriuki Njagagua, MP
8. Hon. (Dr.) Mohamed Dahir Duale, MP
9. Hon. Stephen Mule, MP
10. Hon. Chris Karan, MP
11. Hon. Esther M. Passaris, MP
12. Hon. Gladwell Jesire Cheruiyot
13. Hon. Kipsengeret Koros, MP
14. Hon. Martin Peters Owino, MP
15. Hon. Mercy Wanjiku Gakuya, MP
16. Hon. Prof. Mohamud Sheikh Mohamed, MP
17. Hon. Patrick Munene Ntwiga, MP
18. Hon. Tongoyo Gabriel Koshal, MP
19. Hon. Zachary Kwenya Thuku, MP

The Committee is supported by the following members of the Secretariat;

- | | | |
|--------------------------------|---|----------------------------|
| 1. Mr. Victor Weke | - | Clerk Assistant II |
| 2. Mr. Muyodi Meldaki Emmanuel | - | Clerk Assistant III |
| 3. Mr. Ahmed Hassan Odhowa | - | Principal Research Officer |

4. Ms. Christine Odhiambo - Legal Counsel II
5. Mr. Eric Kanyi - Fiscal Analyst
6. Ms. Winnie Kiziah - Media Officer

EXECUTIVE SUMMARY

Mr. Speaker Sir,

This report details the Consideration of the Statute Law (Miscellaneous Amendments) (No. 3) National Assembly Bill No. 44 of 2017. The Bill's main objective is to amend the following:

1. **The Pharmacy and Poisons Act (Cap. 244) Section 5 (1)** by deleting the words "Chief Pharmacist" and substitute therefor the words "the chief executive officer of the Board competitively recruited and appointed by the Board upon such terms and conditions of service as shall be determined by the Board upon the advice of the Salaries and Remuneration Commission".
2. **The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 Sections 3, 7 (4), 13 (6), 16 and 17:** By deleting the word "Minister" wherever it occurs and substitute therefor the words "Cabinet Secretary".
3. **The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017**
Section 4(1)(a) By deleting the expression "paragraph (i) and substitute therefor the expression "paragraph (g)".

Section 4(1)(g) By renumbering paragraphs (a), (b), (c), (d) and (e) as (i), (ii), (iii), (iv) and (v) respectively

The Committee considered the amendment proposals in the Bill during its sitting of Tuesday 27th February, 2018.

The Committee's decisions on the amendments were based on the Constitutional requirements and views from the relevant stakeholders. The Committee has deliberated on the Bill and considering the views from the stakeholders, recommends that the House approves the amendments as below;

- i. The Pharmacy and Poisons Act (Cap. 244) Section 5 (1) proposed amendments be DROPPED. Reasons justifying this proposal are detailed later on in this report.
- ii. The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 Sections 3, 7 (4), 13 (6), 16 and 17 proposed amendments be APPROVED by the House as proposed.

The Committee further proposes an amendment to the Bill to correctly reference the Act as Cap. 260 and not Act No. 9 of 1988.

- iii. The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017 Section 4(1)(a) proposed amendments be APPROVED by the House as proposed.
- iv. The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017 Section 4(1)(g) proposed amendments be DROPPED. Reasons justifying this proposal are detailed later on in this report.

1.0 INTRODUCTION

The Statute Law (Miscellaneous Amendments) (No. 3) National Assembly Bill No. 44 of 2017 was published on 13th November 2017 and thereafter committed to the Departmental Committee on Health.

It is a Bill for an Act of Parliament to amend **The Pharmacy and Poisons Act (Cap. 244)** and seeks to change the title of the registrar of the Pharmacy and Poisons Board from the Chief Pharmacist to the Chief Executive Officer.

It also seeks to amend **The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017** to change the title of Ministers to Cabinet Secretaries so as to align it with the Constitution.

Further, amendments to **The Occupational Therapists' Training, Registration and Licensing Act No. 31 of 2017** seeks to correct referencing errors.

2.0 SITUATIONAL REVIEW

2.1 The Pharmacy and Poisons Act (Cap. 244) Section 5 (1)

The Pharmacy and Poisons Act (Cap. 244) is Act of Parliament to make better provision for the control of the profession of pharmacy and the trade in drugs and poisons. The Act's Section 5 provides for the position of a Registrar of the Board who shall be the Chief Pharmacist. The Registrar shall perform such duties and exercise such powers, in addition to those required under the provisions of the Act to be performed and exercised, as the Board may from time to time direct.

2.2 The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017 Sections 3, 7 (4), 13 (6), 16 and 17

This is an Act of Parliament to make provision for the training, registration and licensing of clinical officers; to regulate their practice and for connected purposes.

- i. Section 3 provides for a Clinical Officers Council
- ii. Section 7 (4) provides for the registration and effect of registration
- iii. Section 13 (6) provides for powers of the Minister to amend 1st, 2nd, 3rd and 4th schedules in relation to limitations of private practise
- iv. Section 16 refers to powers of the Minister to make in consultation with the Board, regulations generally for the better carrying out of the provisions of the Act.
- v. Section 17 refers to powers of the Minister in charge over finances

2.3 The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017

This is an Act of Parliament to make provision for the training, registration and licensing of occupational therapists; to regulate their practice; to provide for the establishment, powers and functions of the Occupational Therapy Council of Kenya and for connected purposes.

Sections 4(1)(a) and 4(1)(g) provide for composition of the council.

3.0 PUBLIC PARTICIPATION

The Committee received various memoranda from institutions and persons who are stakeholders. Their proposals are presented in a concise manner in the table below;

Act	Amendment	Stakeholder	Stakeholder Comments
The Pharmacy and Poisons Act (Cap. 244)	<p><u>Section 5(1)</u></p> <p>Delete the words “Chief Pharmacist” and substitute therefor the words “the chief executive officer of the Board competitively recruited and appointed by the Board upon such terms and conditions of service as shall be determined by the Board upon the advice of the Salaries and Remuneration Commission”.</p>	Pharmacy and Poisons Board	Supports the amendment as it will enable the Board to have a substantive CEO.
		Federation of Kenya Pharmaceutical Manufacturers	Supports the amendment for the similar reasons given by the Pharmacy and Poisons Board.
		Kenya Pharmaceuticals Distributors Association	Supports the amendment as it will serve to strengthen the regulatory capacity and promote good governance at the Pharmacy and Poisons Board.
		Sospeter Otuya Katiechi	<p>Gives views in respect of other sections of the Act ie. sections 4, 10, 16, 24 and 28.</p> <p>(Standing Order 133(5) provides that no amendment shall be permitted to be moved if it unduly</p>

			expands the subject of the Bill.)
		James Wathigo	<p>Introduces additional qualifications for the CEO of the Board, ie–</p> <ul style="list-style-type: none"> a) A Bachelor of Pharmacy degree by an institution recognized by the Pharmacy and Poisons Board and the Council of universities in Kenya; b) Executive post-graduate education by an institution recognized by the Council of universities in Kenya; c) A registered pharmacist by the Pharmacy and Poisons Board of Kenya; d) Active member of a professional organization and clearance certificate by the professional body; e) Must have both private and public experience.
		Pharmaceutical Society of Kenya	<p>Introduces additional qualifications for the CEO, ie–</p> <ul style="list-style-type: none"> a) Registered with the Pharmacy and Poisons Board; b) A bona fide member of the Pharmaceutical Society of Kenya;

			<p>c) Ten years post-registration experience with at least three years in a management position;</p> <p>d) A post-graduate degree in any of the Pharmspecialization categories;</p> <p>e) Meets the requirements of Chapter 6 of the Constitution.</p> <p>Also proposes the introduction of new subsections into section 5, ie—</p> <p>(2) The registrar shall perform such duties and exercise such powers, in addition to those required under the provisions of this Act to be performed and exercised, as the Board may from time to time direct.</p> <p>(3) The registrar shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.</p>
		Dr. Pius Wanjala	Proposes a deletion of the amendment and the introduction of a Bill for the regulation of

			health products and technologies. (Standing Order 133(5) provides that no amendment shall be permitted to be moved if it deals with a different subject.)
The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017	<u>Section 3</u> Delete the word "Minister" wherever it occurs and substitute therefor the words "Cabinet Secretary".	Kenya Union of Clinical Officers	Proposes that the name of the Act to be amended be changed from Clinical Officers Act No. 9 of 1988, to the Clinical Officers Act Cap. 260.
	<u>Section 7(4)</u> Delete the word "Minister" and substitute therefor the words "Cabinet Secretary".		
	<u>Section 13(6)</u> Delete the word "Minister" and substitute therefor the words "Cabinet Secretary".		
	<u>Section 16</u>		

	Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”.		
	<u>Section 17</u> Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”.		
The Occupational Therapist’s Training, Registration and Licensing Act No. 31 of 2017	<u>Section 4(1)(a)</u> Delete the expression “paragraph (i) and substitute therefor the expression “paragraph (g)”.		
	<u>Section 4(1)(g)</u> Re-number paragraphs (a), (b), (c), (d) and (e) as (i), (ii), (iii), (iv) and (v) respectively.		

4.0 COMMITTEE'S OBSERVATIONS

The Committee made the following observations;

Under the Pharmacy and Poisons Act,

- i. Section 62 of the recently enacted Health Act provides for the enactment of legislation to provide for a single regulatory body for the regulation of health products and health technologies. Section 63 further provided for the functions of the regulatory body, which include licensing and control among others.

The Committee is therefore of the view that once this regulatory body is created, it will have a Chief Executive Officer who shall be the overall head to oversee the regulation of various health products and technologies, which include pharmacy and poisons. There is therefore need to avoid duplication of roles, and ensure smooth transition when the Act is operationalized.

- ii. Further, the stakeholders proposed various qualifications for the position of the Chief Executive Officer, which would require further deliberations at the stage of implementation of the Health Act.

Under The Clinical Officers (Training, Registration and Licensing) Act,

- i. The Committee observes that the Act is out of date with provisions of the Constitution

Under The Occupational Therapist's Training, Registration and Licensing Act

- i. Under Section 4 (1) (a), the amendment corrects a referencing error. The said subsection (1) does not contain paragraph (i), and the persons nominated are contained in paragraph (g)
- ii. Under Section 4 (1) (g) proposed amendment is not necessary since the paragraphs in section 4(1)(g) are already numbered as (i), (ii), (iii), (iv) and (v).

5.0 COMMITTEE'S RECOMMENDATION

The Committee having considered the Bill and the submissions from the stakeholders, makes the following recommendations;

1) The Pharmacy and Poisons Act (Cap. 244)

The Committee proposes that the amendment to section 5(1) be deleted.

Justification (as observed above)

Section 62 of the recently enacted Health Act provides for the enactment of legislation to provide for a single regulatory body for the regulation of health products and health technologies. Section 63 further provided for the functions of the regulatory body, which include licensing and control among others.

The Committee is therefore of the view that once this regulatory body is created, it will have a Chief Executive Officer who shall be the overall head to oversee the regulation of various health products and technologies, which include pharmacy and poisons. There is therefore need to avoid duplication of roles, and ensure smooth transition when the Act is operationalized.

Further, the stakeholders proposed various qualifications for the position of the Chief Executive Officer, which would require further deliberations at the stage of implementation of the Health Act.

2) The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017

The Committee accepts and adopts the proposed amendments

The Committee further proposes an amendment to the Bill to correctly reference the Act as Cap. 260 and not Act No. 9 of 1988.

Justification

The previous Act No. 9 of 1988 has since been repealed and the correct Act in force is the Cap. 260.

3) The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017

- a) The Committee accepts proposed amendments of Section 4 (1) (a)
- b) The Committee proposes that the amendment to section 4(1)(g) be deleted

Justification

This amendment is not necessary since the paragraphs in section 4(1)(g) of the Act are already numbered as (i), (ii), (iii), (iv) and (v) respectively.

MINUTES OF THE TENTH (10TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 27TH FEBRUARY, 2018 IN BOARD ROOM, 4TH FLOOR, PROTECTION HOUSE, AT 10.00 AM

PRESENT

1. Hon. (Dr.) Swarup Ranjan Mishra, MP – **Vice Chairperson**
2. Hon. (Dr.) James Nyikal, MP
3. Hon. (Dr.) Eseli Simiyu, MP
4. Hon. (Dr.) James Kipkosgei Murgor, MP
5. Hon. Alfred Agoi Masadia, MP
6. Hon. Muriuki Njagagua, MP
7. Hon. (Dr.) Mohamed Dahir Duale, MP
8. Hon. Stephen Mule, MP
9. Hon. Gladwell Jesire Cheruiyot, MP
10. Hon. Zachary Kwenya Thuku, MP

ABSENT WITH APOLOGIES

1. Hon. Sabina Chege, MP - **Chairperson**
2. Hon. Kipsengeret Koros, MP
3. Hon. Chris Karan, MP
4. Hon. Martin Peters Owino, MP
5. Hon. Prof. Mohamud Sheikh Mohamed, MP
6. Hon. Esther M. Passaris, MP
7. Hon. Mercy Wanjiku Gakuya, MP
8. Hon. Patrick Munene Ntwiga, MP
9. Hon. Tongoyo Gabriel Koshal, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|--------------------------------|---|---------------------|
| 1. Mr. Victor Weke | - | Clerk Assistant II |
| 2. Mr. Muyodi Meldaki Emmanuel | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Legal Counsel |
| 4. Ms. Fatuma Abdi | - | Audio Officer |

MIN. NO. 42/2018:

PRELIMINARIES

The Vice-chairperson called the meeting to order at 10.25 am and requested Hon. Stephen Mule, MP to say a prayer. The agenda was confirmed as proposed by Hon. Stephen Mule, MP and seconded by Hon. (Dr.) Julius Murgor, MP.

MIN. NO. 43/2018:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda item was deferred to the next sitting. There were thus no matters arising.

MIN. NO. 44/2018:

CONSIDERATION OF STATUTE LAW MISC. AMENDMENTS BILL NO. 3 OF 2017

The Legal Counsel took the Committee through the proposed amendments and memoranda received from stakeholders.

The committee passed the following resolutions on the proposed amendments with justifications;

- 1) **The Pharmacy and Poisons Act (Cap. 244):** The proposed amendment to section 5(1) be deleted.

Justification: Section 62 of the recently enacted Health Act provides for the enactment of legislation to provide for a single regulatory body for the regulation of health products and health technologies. Section 63 further provided for the functions of the regulatory body, which include licensing and control among others. Once this regulatory body is created, it will have a Chief Executive Officer who shall be the overall head to oversee the regulation of various health products and technologies, which include pharmacy and poisons. There is therefore need to avoid duplication of roles, and ensure smooth transition when the Act is operationalized.

Further, the stakeholders proposed various qualifications for the position of the Chief Executive Officer, which would require further deliberations at the stage of implementation of the Health Act.

- 2) **The Clinical Officers (Training, Registration and Licensing) Act No. 9 of 2017**

The Committee accepts and adopts the proposed amendments. The Committee further proposes an amendment to the Bill to correctly reference the Act as Cap 260 and not Act No. 9 of 1988.

Justification: The previous Act No. 9 of 1988 has since been repealed and the correct Act in force is the Cap 260

- 3) **The Occupational Therapist's Training, Registration and Licensing Act No. 31 of 2017**

- a) The Committee accepts proposed amendments of Section 4 (1) (a)
- b) The Committee proposes that the amendment to section 4(1)(g) be deleted

Justification: This amendment is not necessary since the paragraphs in section 4(1)(g) of the Act are already numbered as (i), (ii), (iii), (iv) and (v) respectively.

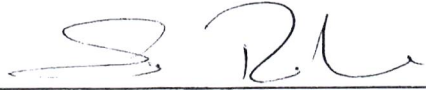
The Vice-chairperson undertook to engage the Leader of Majority and canvas the adoption of the Committee's proposal on the Pharmacy and Poisons Act (Cap. 244) amendment.

MIN. NO. 45/2018:

ADJOURNMENT

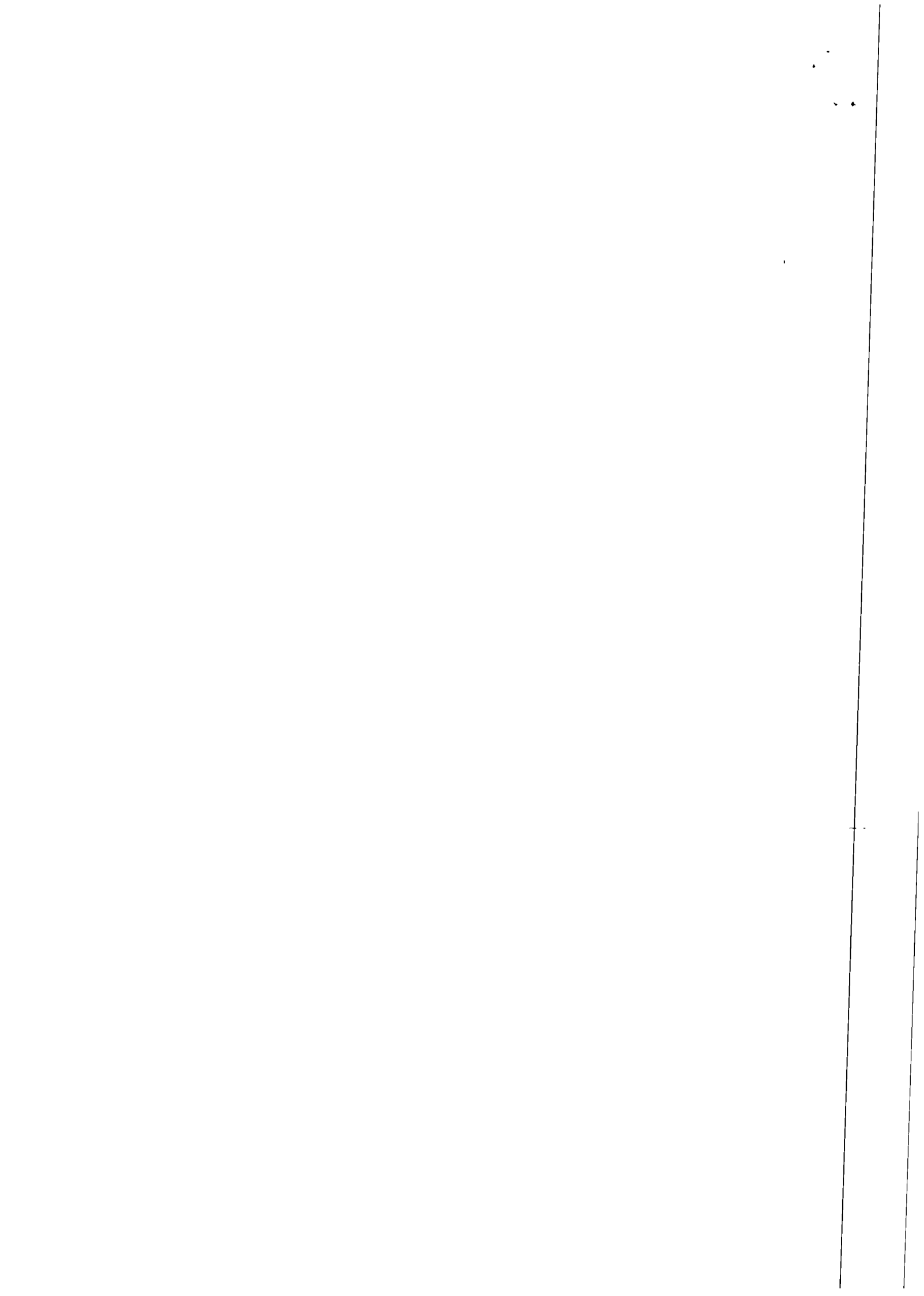
There being no other business, the Vice-chairperson adjourned the meeting at 11.30 am. Next sitting would be on Thursday 1st March, 2018.

SIGNED



DATE:

1/3/2018



REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE CONSIDERATION OF
THE STATUE LAW (MISCELLANEOUS AMENDMENTS)(NO. 3) BILL, 2017

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBER
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY, 2018

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CHAIRPERSON'S FORWARD

The Statute Law (Miscellaneous Amendments)(No.3) Bill, 2017 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party, and it seeks to amend the following laws:

- The Pensions Act (Cap. 189)
- The Pharmacy and Poisons Act (Cap. 244)
- The Clinical Officers (Training, Registration and Licensing) Act, 1988 (No. 9 of 1988)
- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Salaries and Remuneration Commission Act (No. 10 of 2011)
- The Statutory Instruments Act (No. 23 of 2013)
- The Occupational Therapists (Training, Registration and Licensing) Act No. 31 of 2017

The Committee considered the amendments to the Environmental Management and Coordination Act, 1999 (No. 8 of 1999 for submission the Departmental Committee on Finance and National Planning pursuant to the Communication by the Hon. Speaker issued on 20th February, 2018.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend the Environmental Management and Coordination Act, 1999 firstly so as to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal and secondly to clarify the issue of the grant of a stay in proceedings before the Tribunal.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sitting. Further, I wish to express my appreciation to the Committee Members for the immense contributions towards the preparation and production of the report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Environment and Natural Resources, to submit its report on the consideration of the Statute Law (Miscellaneous Amendment) No. 3 Bill, 2017 for consideration Pursuant to Standing Order 127

Signed.....Date.....

(HON. JAPHET KAREKE MBIUKI, MP

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

EXECUTIVE SUMMARY

On 30th November 2017, the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 was read a First Time and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. The Departmental Committee on Environment and Natural Resources held a meeting to consider the Bill.

On 4th December, 2017, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from the Judicial Service Commission, Cyntonn Real Estate, LLP, The Institute for Social Accountability (TISA), a joint submission by Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org and Kenya Oil and Gas Working Group, the Office of the Attorney General and Department of Justice, and Kenya Coalition for Wildlife Conservation and Management.

The Committee observed although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 125(1)(a) to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal, no justification for the same has been provided in the Memorandum of Objects and Reasons in the Bill. However, it was noted that proposal to elect the Chairperson from among the three Members under paragraph (a), (b) and (c) in the Tribunal was agreeable as they all hold the same qualifications as lawyers.

The Committee further observed that the amendment to section 125(1)(b) on the composition of the Tribunal to correctly indicate an Advocate of the High Court instead of the Advocate of the Environment and Land Court is also proper.

The Committee in addition observed that the proposed amendment to section 129 is proper since it corrects the anomaly that occurred where the amendment was incorrectly done by the House in the Prevention to Torture Act and the matter was litigated upon.

The Committee having considered the proposed amendments to the Environmental Management and Coordination Act, 1999 (No. 8 of 1999) and the views from all the stakeholders, resolved that the amendments be passed by the House as proposed in the Statute Law (Miscellaneous Amendment) No. 3 Bill, 2017.

1.0 PREFACE

1.1 Establishment of the Committee

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates, pursuant to the *Standing Order 216 (5)*, are as follows:

- a) 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;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) 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;
- f) **To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);**
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to:

- i) Climate Change
- ii) Environment Management and Conservation
- iii) Forestry
- iv) Water Resource Management
- v) Wildlife
- vi) Mining and Natural Resources
- vii) Pollution and Waste Management

In executing its mandate, the Committee oversees the following State Departments, namely:

- The State Department for Water Services;
- The State Department of Environment and Climate Change;
- The State Department for Natural Resources Management; and
- The State Department of Wildlife
- The State Department of Mining

1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

1. **The Hon. Kareke Mbiuki, M.P.** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.** **Vice Chairperson**
3. The Hon. Benjamin Jomo Washiali, M.P.
4. The Hon. David Kangogo Bowen, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Ali Wario Guyo, M.P.
7. The Hon. Beatrice Cheron Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P.
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. Peter Kimari Kihara, M.P.
11. The Hon. Benjamin Dalu Tayari, MP.
12. The Hon. Charles Ong'ondo Were, M.P.
13. The Hon. Nasri Sahal Ibrahim, M.P.
14. The Hon. Rossa Buyu. M.P.
15. The Hon. Said Hiribae, M.P.
16. The Hon. Hassan Oda Hulufu, M.P.
17. The Hon. Amin Deddy Mohamed Ali, M.P.
18. The Hon. Rehema Hassan, M.P.
19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

1.4 Committee Secretariat

1. Ms. Esther Nginyo - Clerk Assistant/Lead Clerk
2. Mr. Dennis Mogare Ogechi - Third Clerk Assistant
3. Mr. Salem Lorot - Legal Counsel II
4. Ms. Winnie Kulei - Researcher
5. Ms. Yunis Amran - Fiscal Analyst III

2.0 BACKGROUND

The Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party. It was read a First Time on 30th November, 2017 and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. It seeks to amend the following laws:

- The Pensions Act (Cap. 189)
- The Pharmacy and Poisons Act (Cap. 244)
- The Clinical Officers (Training, Registration and Licensing) Act, 1988 (No. 9 of 1988)
- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Salaries and Remuneration Commission Act (No. 10 of 2011)
- The Statutory Instruments Act (No. 23 of 2013)
- The Occupational Therapists (Training, Registration and Licensing) Act No. 31 of 2017

The Departmental Committee on Environment and Natural Resources considered the amendments to the Environmental Management and Coordination Act, 1999 (No. 8 of 1999) for submission the Departmental Committee on Finance and National Planning pursuant to the Communication by the Hon. Speaker issued on 20th February, 2018.

The Statute Law (Miscellaneous Amendment) No. 3, Bill, 2017 seeks to amend the Environmental Management and Coordination Act, 1999 (No. 8 of 1999) so as to provide for election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal and also to clarify the issue of grant of stay in proceedings before the Tribunal.

On 4th December, 2017, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from the following stakeholders:-

- Judicial Service Commission,
- Cytonn Real Estate, LLP,
- The Institute for Social Accountability (TISA),
- a joint submission by Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org and Kenya Oil and Gas Working Group,
- the Office of the Attorney General and Department of Justice; and
- Kenya Coalition for Wildlife Conservation and Management.

THE PROPOSED AMENDMENT	ANALYSIS
<p>s. 125(1) Delete the words “chairperson” appearing in paragraph (a) and substitute therefor the word “person”</p>	<ul style="list-style-type: none"> • Section 125 (1) (a) of the EMCA provides that— <p>There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members—</p> <p>(a) a Chairperson nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the Environment and Land Court of Kenya;</p> <ul style="list-style-type: none"> • The amendment deletes the term “chairperson” and substitutes with “person” • What does it mean? Any member of the Tribunal (and not necessarily one nominated by the Judicial Service Commission) would be a Chairperson of the Tribunal
<p>Delete the words “Environment and Land” appearing in paragraph (b) and substitute therefor the word “High”</p>	<p>The amendment corrects an error in paragraph (b) which currently provides for an advocate of the Environment and Land Court of Kenya. There is no advocate of the Environment and Land Court of Kenya but an advocate of the High Court of Kenya.</p>
<p>s. 125(5) Delete the words “a Vice-Chairperson to the Tribunal” and substitute therefor the words “a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson from to the</p>	<p>Section 125 (5) provides as follows—</p> <p>The members of the Tribunal shall, in their first meeting, elect from amongst themselves the Vice-Chairperson to the Tribunal.</p> <p>The amendment proposes that the members of the Tribunal shall, in their first meeting, elect</p>

<p>Tribunal amongst all members”.</p>	<p>from amongst themselves a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson to the Tribunal amongst all members.</p> <p>What does it mean?</p> <ul style="list-style-type: none"> • That the Chairperson shall not be elected by non-lawyers i.e. three persons with demonstrated competence in environmental matters, including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs; under section 125(1) (d)) • The Vice-Chairperson shall be elected by all members of the Tribunal
<p>s. 129 Delete and substitute therefor the following new section</p> <p>129. (1) Any person who is aggrieved by—</p> <p>(a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;</p> <p>(b) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;</p> <p>(c) the revocation, suspension or variation of the persons a licence under this Act or its regulations;</p> <p>(d) the amount of money required to paid as a fee under this Act or its regulations;</p> <p>(e) the imposition against the person of an</p>	<p>What are the amendments?</p> <p>129. (1) Any person who is aggrieved by—</p> <p>(a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or regulations made thereunder its regulations;</p> <p>(b) the imposition of any condition, limitation or restriction on his the persons licence under this Act or regulations—made—thereunder its regulations;</p> <p>(c) the revocation, suspension or variation of his the persons a licence under this Act or regulations made thereunder its regulations;</p>

environmental restoration order or environmental improvement order by the Authority under this Act or its regulations, may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
- (d) if satisfied upon application by any party, issue orders maintaining

(d) the amount of money required to pay ~~paid~~ as a fee under this Act or ~~regulations made thereunder~~ **its regulations;**

(e) the imposition against ~~him~~ **the person** of an environmental restoration order or environmental improvement order by the Authority under this Act or ~~regulations made thereunder~~ **its regulations,**

may within sixty days after the occurrence of the event against which ~~he~~ **the person** is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just.

<p>the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;</p> <p>(e) if satisfied upon application by any party, review any orders made under paragraph (a).</p> <p>(4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3) (a).</p>	<p>(d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;</p> <p>(e) if satisfied upon application by any party, review any orders made under paragraph (a).</p> <p>(4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3) (a).</p> <p>(4) Upon any appeal to the Tribunal under this section, the Tribunal may if satisfied—</p> <p style="padding-left: 40px;">(a) upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;</p> <p style="padding-left: 40px;">(b) upon application by any party, review any orders made under paragraph(a).</p> <p>(5) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (4) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issues fresh orders maintaining the status quo in accordance with subsection (4)(a).</p> <p>What are the effects of the amendments?</p> <p>1. Deletion of ‘regulations made thereunder’</p>
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and substitution with 'its regulation'. This uses plain language and makes the sentence easier to understand unlike jargons such as 'thereunder'.

2. Deletion of 'him' and substitution with 'the person'. This conforms to gender neutral language.
3. Addition of further paragraphs (d) and (e) to subsection (3). Therefore, the effect of the amendment is to give the Tribunal power to issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined.
4. Subsection (4) of section 129 has been moved to paragraphs (d) and (e) in subsection (3). It is our observation that this is a rearrangement of subsection (4) so as to fit neatly under subsection (3).
5. The proposed subsection 4 mirrors the existing subsection (5) under the existing section 129 of the Act. The effect of this amendment is that if this Bill is enacted and comes into force, any status quo automatically maintained by virtue of the filing of any appeal before the coming into effect of subsection (3) (on appeals to the Tribunal) shall **end** when the section comes into effect. However, if a party applies to the Tribunal, the Tribunal may issue fresh orders maintaining the status quo.

3.0 SUBMISSION FROM THE STAKEHOLDERS (PUBLIC PARTICIPATION)

The Committee received various memoranda from institutions and stakeholders as follows:

- (i) Memorandum from the Judiciary (by the Chief Registrar of the Judiciary and Secretary of the Judicial Service Commission) dated 6th December 2017 and received by the office of the Clerk on 7th December 2017;
- (ii) Memorandum from Cytonn Real Estate, LLP dated 8th December 2017 and received by the office of the Clerk on 8th December 2017;
- (iii) Memorandum from the Institute for Social Accountability (TISA) received by the office of the Clerk on 21st December 2017;
- (iv) Memorandum from the Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org ad Kenya Oil and Gas Working Group dated 8th December 2017 and received by the office of the Clerk on 11th December 2017;
- (v) Memorandum from the Office of the Attorney-General and Department of Justice dated 6th February 2018 and received by the office of the Clerk on 7th February 2018;
- (vi) Memorandum from the Kenya Coalition for Wildlife Conservation and Management dated 8th December 2017 and received by the office of the Clerk on 11th December 2017.

Below is a matrix with a summary of the issues raised by the stakeholders and initial analysis.

PROVISION	GROUP/ PERSON	PROPOSAL/ AMENDMENT	RATIONALE
s. 125(1)	The Judiciary	The whole of section 125 of EMCA should be amended to provide that the Chairperson and members of the Tribunal shall be appointed and gazette by the Judicial Service Commission through a competitive process in order to create harmony in the operations of Tribunals	<ul style="list-style-type: none"> • The proposed amendments go against the spirit of the Constitution and public governance principles as well as the proposed Draft Tribunals Bill which brings all Tribunals under the umbrella of the Judiciary. • The National Environment Tribunal (NET) is under the Judiciary and the Judiciary oversees the core operations of the Tribunal, which are dispute resolution. The Bill proposes to give power to persons not appointed by the Judicial Service Commission to appoint the Chairperson. • The amendments will result in lack of accountability to the public for decisions and actions carried out by the Tribunal • The proposed amendments take away the oversight role and leave the Tribunal in the same state as they were in before the promulgation of the Constitution where there was no oversight or

			accountability in their operations
	Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org and Kenya Oil and Gas Working Group	The proposed amendment to section 125(1) in relation to deleting the words “chairperson” appearing in paragraph (a) and substituting therefor the word “person” be deleted.	<ul style="list-style-type: none"> The Chairperson of the National Environment Tribunal should be appointed by the Judicial Service Commission and should have the requisite qualifications as those of a Judge of the Environment and Land Court
	The Institute for Social Accountability (TISA)	The proposed amendment to s. 125(1) was rejected.	<p>These amendments are retrogressive in the sense that it takes away the discretion of the Judicial Service Commission to nominate the Chairperson to the National Environment Tribunal.</p> <p>Tribunals are part of the Judiciary and fall under subordinate courts as provided for in the Constitution Article 169(1) (d). Tribunals are bodies established by Acts of Parliament to exercise judicial or quasi-judicial functions. They supplement ordinary courts in the administration of justice</p>
	The Office of	The proposed	The Attorney-General made reference to

<p>the Attorney-General and Department of Justice</p>	<p>amendments to section 125 was rejected</p>	<p>to</p>	<p>the letter Ref. No. CRJ 28/8 dated 6th December 2017 from the Chief Registrar of the Judiciary to the Clerk of the National Assembly and copied to Hon. Attorney-General.</p> <p>Reasons for opposition of the amendments:</p> <ul style="list-style-type: none"> (i) The proposed changes relate to the power of the Judicial Service Commission (JSC) to appoint the Chairperson of the National Environment Tribunal. The current provision requires that the JSC nominate the Chairperson while the members of the Tribunal elect a vice-chairperson (ii) Under the Constitution, the tribunals have been included in the Court system and that the relevant operational budget has been transferred to the Judiciary by the National Treasury, and that accordingly the JSC should have overall authority over the operations of the tribunals (iii) The main task of the tribunals is dispute resolution which is a judicial function. Under
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			<p>Article 171 of the Constitution the functions of the JSC are set out as, among other things, to promote and facilitate the efficient, effective and transparent administration of justice</p> <p>(iv) The judiciary achieves administration of justice by overseeing the appointment of judges and judicial officers who are accountable to it in the performance of their functions;</p> <p>(v) Following the inclusion of tribunals in the Court system, the JSC has similar responsibilities as far as their operations are concerned;</p> <p>(vi) The memorandum of objects and reasons to the Bill does not set out the rationale for the proposed changes, other than to provide for the election of the chairperson from amongst the three other lawyers in the tribunal</p> <p>(vii) The other lawyers are nominated by bodies other than the JSC, and will represent the interests of their nominating bodies. The</p>
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			<p>nominee of the JSC will be a judicial officer who will espouse the policies of the JSC with regard to the operations of the Tribunal;</p> <p>(viii) Other tribunals, e.g. the Political Parties Tribunal, have all their members appointed by the JSC</p> <p>(ix) The Attorney General concurred with the Registrar that the proposed amendments are unsuitable and not in keeping with the Constitution</p>
s. 125(5)	The Judiciary	The whole of section 125 of EMCA should be amended to provide that the Chairperson and members of the Tribunal shall be appointed and gazette by the Judicial Service Commission through a competitive process in order to create harmony in the operations of Tribunals	<p>The proposed amendment has the effect of removing the nominating function of the Judicial Service Commission and vest nomination and appointment functions solely on the members of the Tribunal appointed by other bodies under section 125(1). The proposed amendments are unconstitutional and unsuitable for good governance, integrity and accountability.</p> <ul style="list-style-type: none"> • The Judicial Service Act provides for the establishment of the JSC and its Secretariat. The JSC is an independent and appropriately qualified body, formed to appoint Judges of the High Court. • The National Environment Tribunal is often called upon,

			<p>through appeals and requests for directions, to balance the right to a clean and healthy environment with the importance of sustainable development. Such a role demands that the Chairperson have the requisite skills, experience and knowledge to guide the Tribunal. These are, in fact, the same competencies that the nation also demands of its High Court Judges.</p>
s. 129	<p>Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org ad Kenya Oil and Gas Working Group</p>	<p>They reject the proposed amendment.</p>	<ul style="list-style-type: none"> • This will result in irreversible environmental degradation thereby imposing a huge financial and social burden on the national and county governments in the event of environmental disaster. • The proposed amendment will undermine the right to a healthy environment, the right to public participation in environmental decision-making and the entire nature and purpose appeal process • The proposed amendment requires the appellant to file a separate and additional application for stay order after filing an appeal. The effect of this amendment could result in the following: environmental injury, time-lapse in Tribunal hearing, the proposed

			<p>clause has a retrospective effect to the rights of the appellant, unfair financial burden on appellants, the sub-clause is silent on the standards that need to be proved to obtain the order and safeguard the status quo, irreparable harm and monetary value and finally the lack of an automatic stay order runs the risk of invalidating Tribunal orders and rulings due to the lapse of time between filing and determination of an appeal and the proposed amendment fails to provide the balance required for sustainable development.</p>
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General Comments from the stakeholders

1. One stakeholder, Cytonn Real Estate, LLP, did not specifically agree or reject the proposed amendments but made general amendments to the Environmental Management and Co-ordination Act. This is listed below:

PROPOSED AMENDMENT	REASON	PROPOSED TEXT OF THE AMENDMENT
An amendment to the Act recognizing that decisions subject to an appeal to National Environment	This is in recognition of the fact that NET is a quasi-judicial body charged with the review of an administrative action (NEMA's action). This	Section 129(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or

Tribunal be determined in accordance with the provisions of the Fair Administrative Action Act 2015	would then provide clarity that matter before NET must be heard and determined within a ninety (90) day period as provided by the Fair Administrative Action Act and indeed our Constitution	its agents to make decisions may be subject to an appeal to the Tribunal in accordance with the provisions of the Fair Administrative Action Act 2015 with such procedures as may be established by the Tribunal for that purpose
Implementation of a system of retirement or lapse of tenor by rotation of NET members	To prevent a situation where NET lacks the quorum to commence the hearing of a matter as currently two thirds of its members' terms have lapsed	Section 125(3) The members of the Tribunal shall be appointed at different times, with intervals of at least one (1) to three (3) months, so that the respective expiry dates of their terms of office shall fall at different times.

2. The Kenya Coalition for Wildlife Conservation and Management (KCWCM), through their Memorandum dated 8th December 2017, opposes the amendments *in toto* indicating that the proposed amendments were a subject of an ongoing litigation, that is, *Okiya Omtatah and Another-versus- The National Assembly of Kenya and Others* (Nairobi High Court Petition Number 251 of 2017).
3. KCWCM also indicates that the court issued orders in June 6th suspending the implementation of amendments to section 129(4) of the Environmental Management and Co-ordination Act, 1999 because of “dubious amendments in section 29 of the Prevention of Torture Act 2017 contrary to Article 93(2) of the Constitution of Kenya 2010”. Article 93 (2) of the Constitution provides that the National Assembly and the Senate shall perform their respective functions in accordance with the Constitution.
4. KCWCM therefore strongly objects the amendments as it is in clear violation and is in contempt of Petition No. 251 of 2017 before Justice David Mativo pending hearing and determination.

4.0 COMMITTEE'S OBSERVATIONS

The Committee made the following observations, that;

- i. Although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 125(1)(a) to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal, no justification for the same has been provided in the Memorandum of Objects and Reasons in the Bill. However, it was noted that the proposal to elect the Chairperson from among the three Members under paragraph (a), (b) and (c) in the Tribunal was agreeable as they all hold the same qualifications as lawyers.
- ii. The amendment to section 125(1)(b) on the composition of the Tribunal to correctly indicate an Advocate of the High Court instead of the Advocate of the Environment and Land Court is also proper.
- iii. The proposed amendment to section 129 is proper since it corrects the anomaly that occurred where the amendment was incorrectly done by the House in the Prevention to Torture Act and the matter was litigated upon.

5.0 COMMITTEE'S RECOMMENDATION

The Committee having considered the Bill and the submissions from the stakeholders makes the following recommendations;

SECTION 125

Amendment

Section 125(1)

Delete the words "chairperson" appearing in paragraph (a) and substitute therefor the word "person"

Committee Resolution

Agreed to

Justification

Any member of the Tribunal under paragraph (a), (b) and (c) and not necessarily one nominated by the Judicial Service Commission would be a Chairperson of the Tribunal. It opens up the opportunity to other candidates to be elected as chairperson.

Amendment

Section 125(1)(b)

Delete the words "Environment and Land" appearing in paragraph (b) and substitute therefor the word "High"

Committee Resolution

Agreed to

Justification

The amendment corrects an error in paragraph (b) which currently provides for an advocate of the Environment and Land Court of Kenya. There is no advocate of the Environment and Land Court of Kenya but an advocate of the High Court of Kenya.

Amendment

Section. 125(5)

Delete the words “a Vice-Chairperson to the Tribunal” and substitute therefor the words “a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson from to the Tribunal amongst all members”.

Committee Resolution

Agreed to

Justification

That the Chairperson shall be elected by the persons under paragraphs (a), (b), and (c) who essentially have a legal background. The provision is tied up the proposed amendment to section 125(1) of EMCA in regard to the mechanism of electing the chairperson. Since the Committee has agreed to the proposed amendment to section 125(1) of the Environment Management and Coordination Act, this proposed amendment is a resultant amendment that should also be made.

SECTION 129

Amendment

Section 129

Delete and substitute therefor the following new section

129. (1) Any person who is aggrieved by—

(a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;

(b) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;

(c) the revocation, suspension or variation of the persons a licence under this Act or its regulations;

(d) the amount of money required to paid as a fee under this Act or its regulations;

(e) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its regulations,

may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

(a) confirm, set aside or vary the order or decision in question;

(b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or

(c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;

(d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;

(e) if satisfied upon application by any party, review any orders made under paragraph

(a).

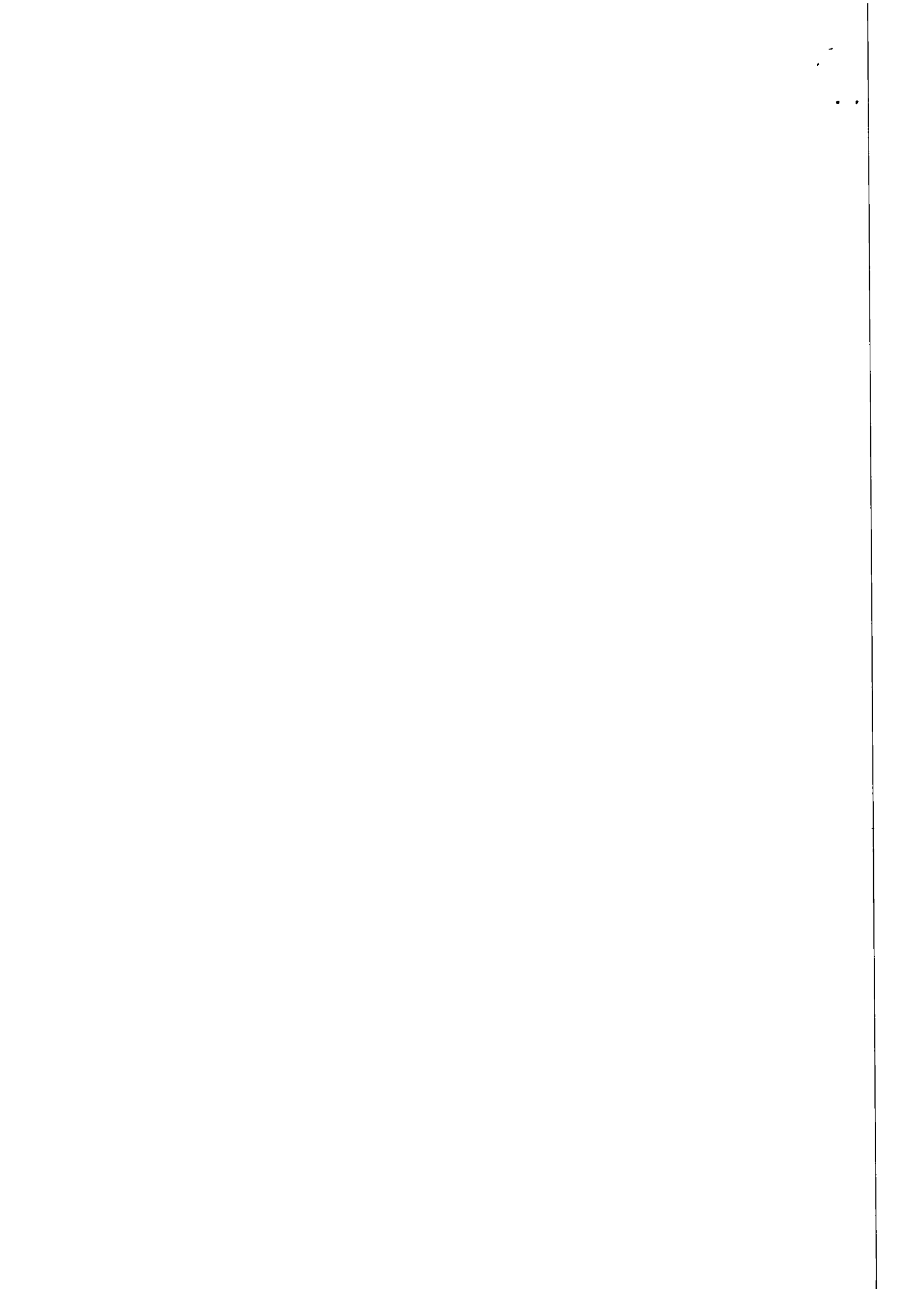
(4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3) (a).

Committee Resolution

Agreed to

Justification

The proposed amendment to section 129 of the Environment Management and Coordination Act corrects the anomaly that occurred last year in the House where the same amendments were enacted under section 29 of the Prevention of Torture Act 2017. Although the matter has been litigated upon, the challenge was not on the substance of the amendments but the procedure and lack of opportunity for the public to give their input.



MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 27TH FEBRUARY, 2018 AT 10.30 AM IN THE CPA ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. The Hon. Hassan Oda Hulufu, M.P. - Chairing
2. The Hon. Benjamin Jomo Washiali, M.P.
3. The Hon. Ali Wario Guyo, M.P.
4. The Hon. Beatrice Cheronu Kones, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Hilary Kiplang'at Kosgei, M.P.
7. The Hon. Charles Ong'ondo Were, M.P.
8. The Hon. Said Hiribae, M.P.
9. The Hon. Rehema Hassan, M.P.
10. The Hon. Rozaah Buyu. M.P.
11. The Hon. Amin Dedy Mohamed Ali, M.P.

APOLOGIES

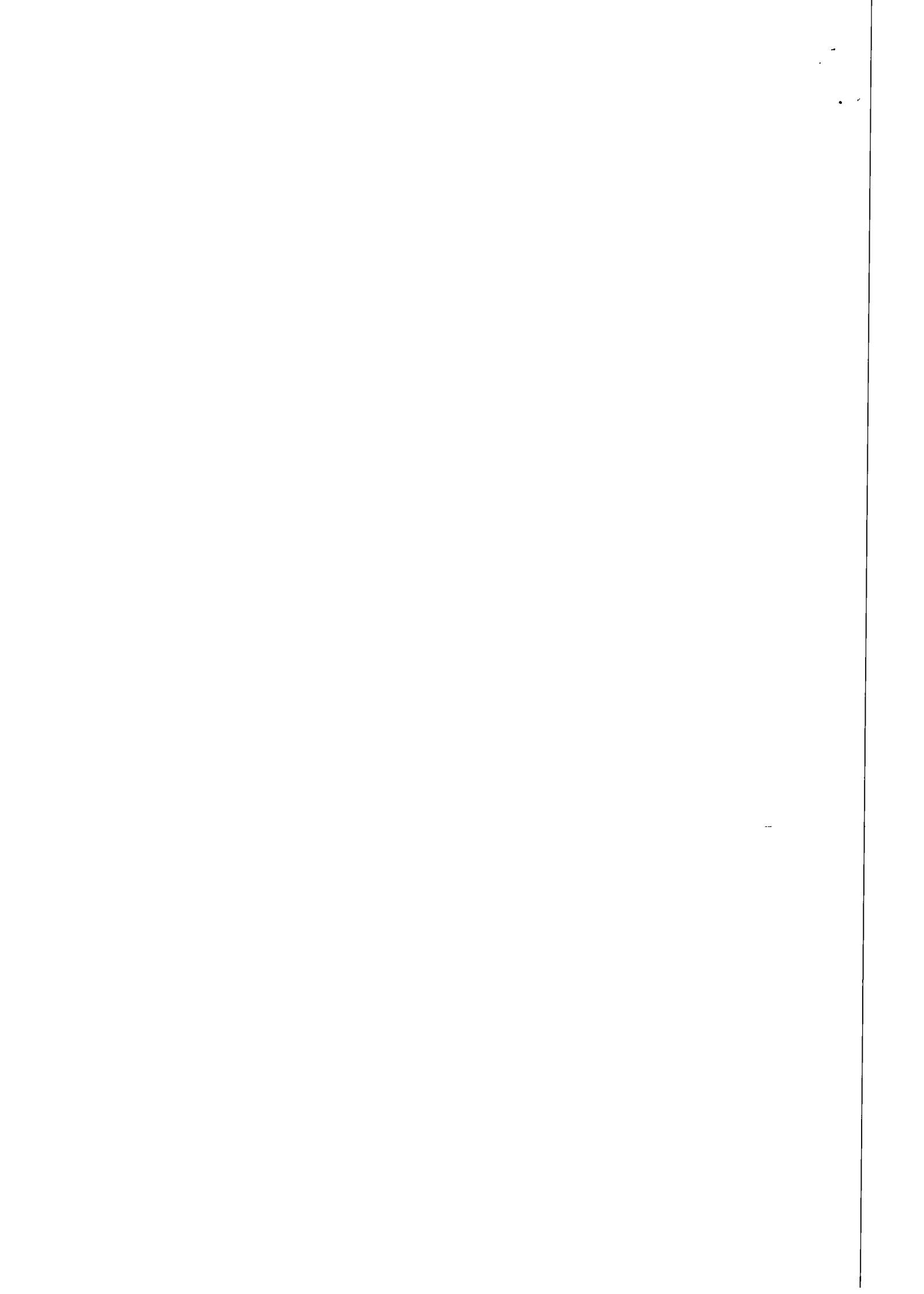
1. **The Hon. Kareke Mbiuki, M.P.** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.** **Vice Chairperson**
3. The Hon. David Kangogo Bowen, M.P.
4. The Hon. Benjamin Dalu Tayari, MP.
5. The Hon. Charity Kathambi Chepkwony, M.P
6. The Hon. Peter Kimari Kihara, M.P
7. The Hon. Nasri Sahal Ibrahim, M.P.
8. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

THE NATIONAL ASSEMBLY

- | | | |
|----------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant III |
| 2. Mr. Dennis Mogare | - | Clerk Assistant III |
| 3. Mr. Salem Lorot | - | Legal Counsel II |
| 4. Mr. Simon Muinde | - | Audio Recording Officer |
| 5. Mr. Joe Okongo | - | Media Relations Officer I |
| 6. Mr. Stanley Lagat | - | Serjeant At Arm II |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2017.**
- v) Any Other Business



vi) Date of the next Sitting

MIN.NO.DC/ENR/089/2018:

- PRELIMINARIES

The meeting was called to order at 11.00 am after which prayers were said. The Acting Chairperson having been elected pursuant to Standing Order 188 stated that the main agenda of the meeting was Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2017.

The Members adopted the agenda of the meeting as was proposed by the Hon. Said Hiribae, MP and seconded by the Hon. Amin Deddy Mohamed Ali, MP.

MIN.NO.DC/ENR/090/2018:

- CONFIRMATION OF MINUTES

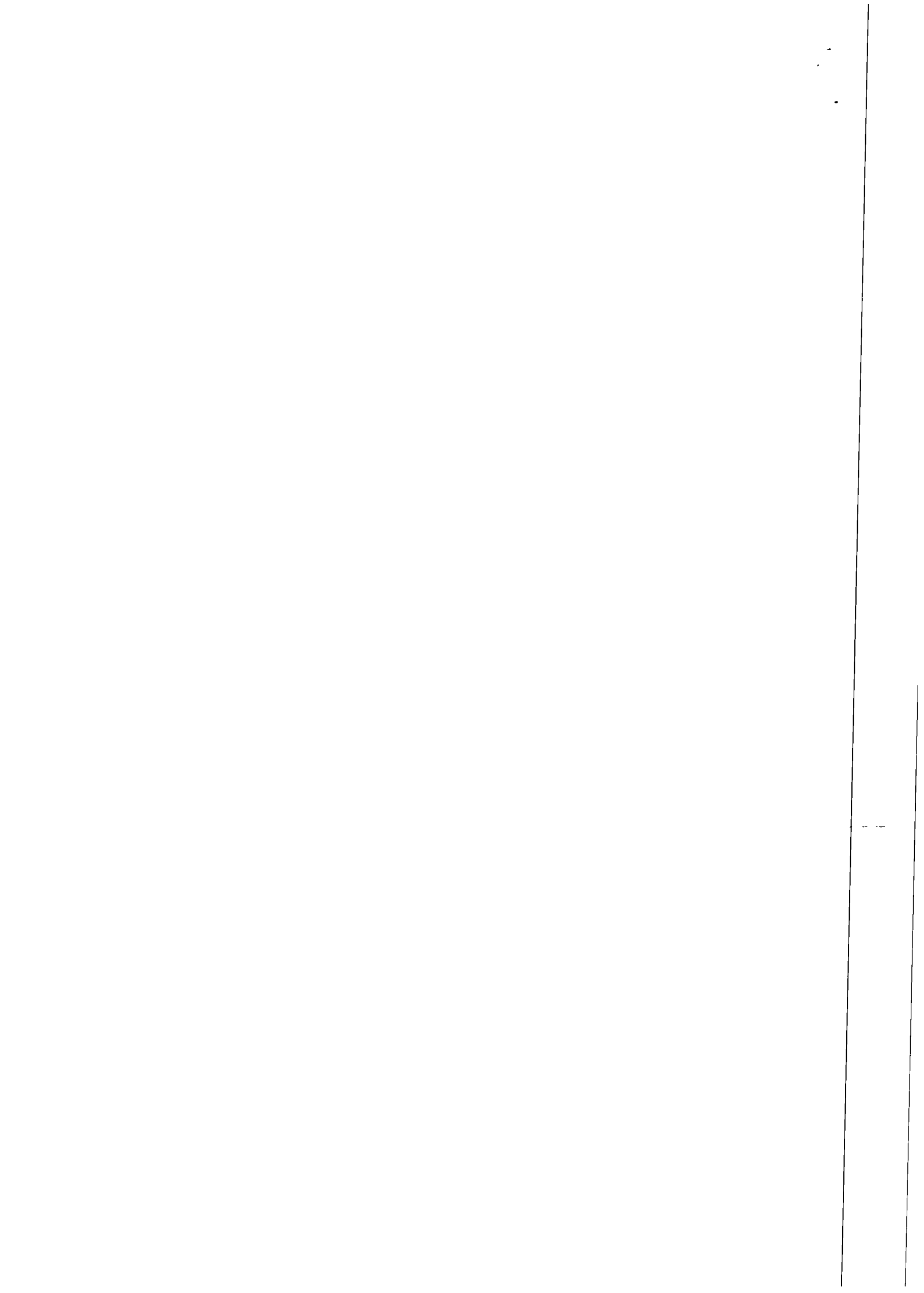
The confirmation of the Minutes of the previous Sitting was deferred to the next meeting.

MIN.NO.DC/ENR/091/2018:

**- CONSIDERATION OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2017**

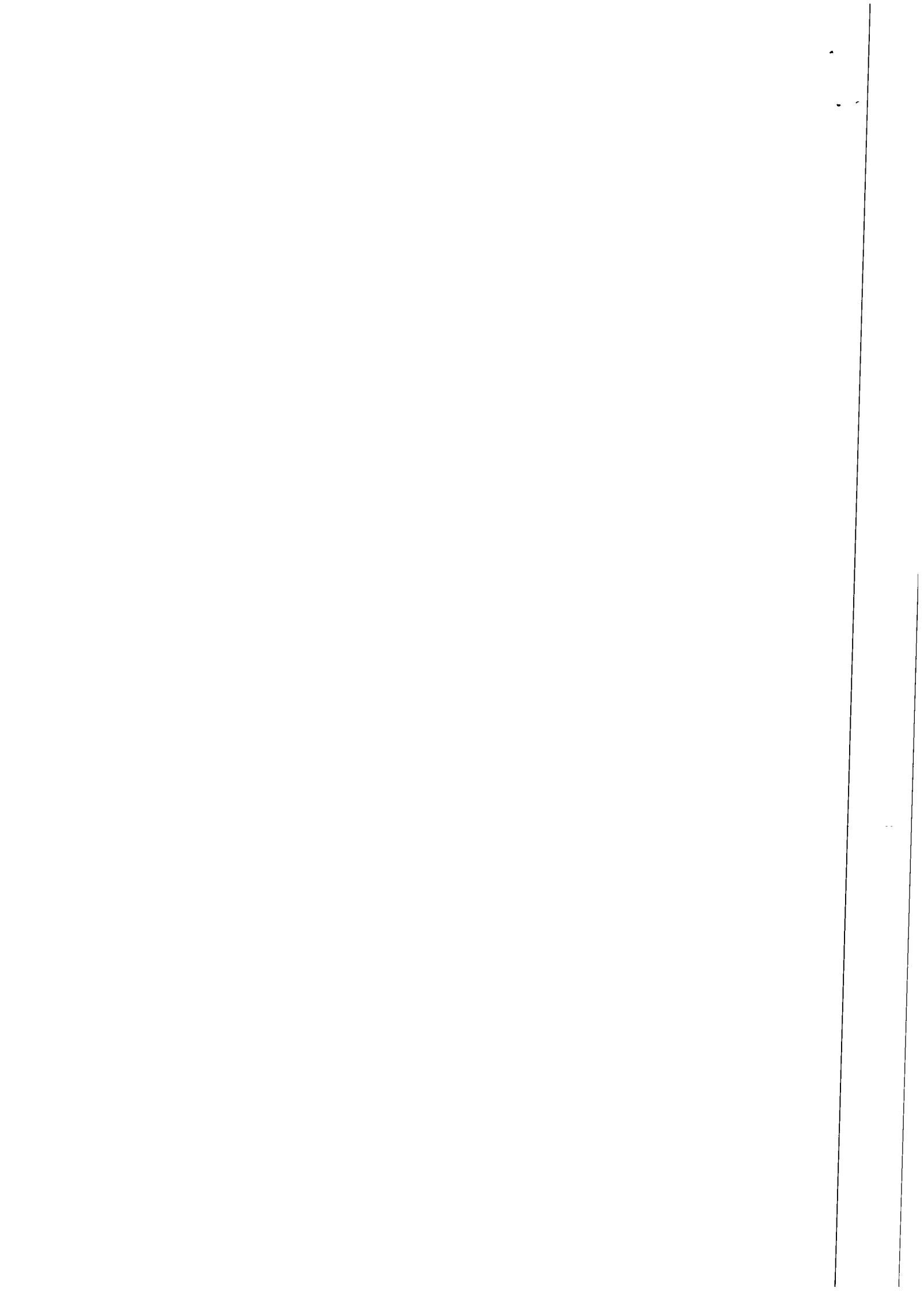
The Legal Counsel briefed the Members on the Statute Law (Miscellaneous Amendments) Bill, 2017 and informed them that:

1. The Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 was a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party, and it seeks to amend various laws among them the Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999);
2. The Committee was expected to deal with the amendments to the Environmental Management and Coordination Act, 1999 (No. 8 of 1999) and submit its resolution to the relevant Committee directed by the Speaker to the Departmental Committee of Finance which was to deal with the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 holistically before the House on behalf of all the relevant Committees in this process.
3. In the Memorandum of Objects and Reasons, the Bill sought to amend the Environmental Management and Coordination Act, 1999 firstly so as to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal and secondly to clarify the issue of the grant of a stay in proceedings before the Tribunal.
4. The bill was seeking to amend Section 125 of the Environmental Management and Coordination Act, 1999 by proposing that the members of the Tribunal shall, in their first meeting, elect from amongst themselves a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson



to the Tribunal amongst all members. It was further seeking to amend section 129 to corrects the anomaly that occurred where the amendment was incorrectly done by the House in the Prevention to Torture Act and the matter was litigated upon.

5. On 4th December, 2017, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. Submissions were received from the following stakeholders;
 - i. Memorandum from the Judiciary (by the Chief Registrar of the Judiciary and Secretary of the Judicial Service Commission) dated 6th December 2017 and received by the office of the Clerk on 7th December 2017. The Judiciary was opposed to the proposed amendment to Section 125 of EMCA.;
 - ii. Memorandum from Cytonn Real Estate, LLP dated 8th December 2017 and received by the office of the Clerk on 8th December 2017. They were proposing general amendments to the Environmental Management and Co-ordination Act;
 - iii. Memorandum from the Institute for Social Accountability (TISA) received by the office of the Clerk on 21st December 2017. They opposed the proposed amendment to Section 125 of EMCA;
 - iv. Memorandum from the Natural Justice, Kenya Natural Resource Alliance, Save Lamu, Friends of Lake Turkana, 350.org ad Kenya Oil and Gas Working Group dated 8th December 2017 and received by the office of the Clerk on 11th December 2017. They opposed the proposed amendment to Section 125 of EMCA;
 - v. Memorandum from the Office of the Attorney-General and Department of Justice dated 6th February 2018 and received by the office of the Clerk on 7th February 2018. The AG was opposed to the proposed amendment to Section 125 of EMCA;
 - vi. Memorandum from the Kenya Coalition for Wildlife Conservation and Management dated 8th December 2017 and received by the office of the Clerk on 11th December 2017. They opposed the amendments *in*



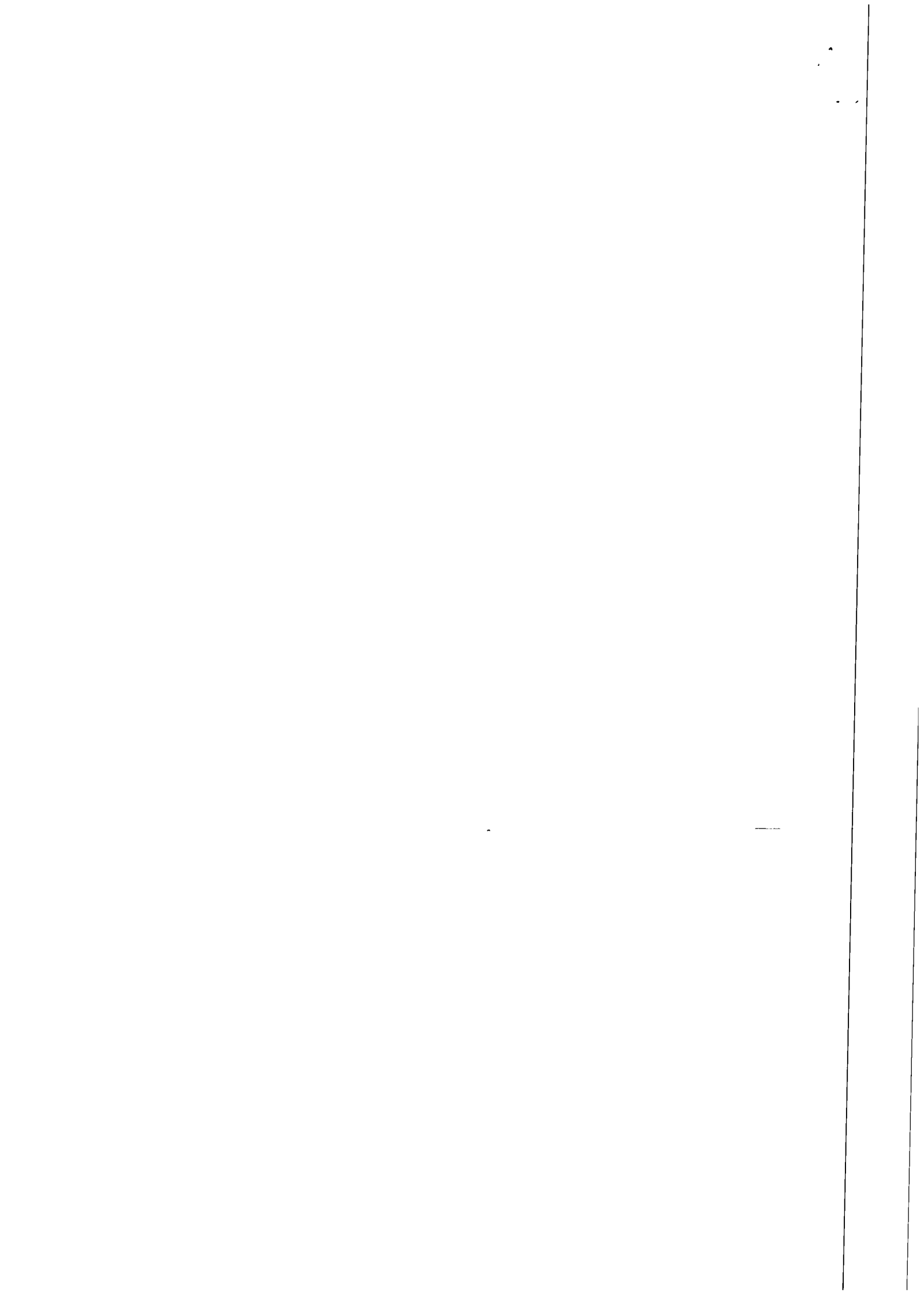
toto indicating that the proposed amendments were a subject of an ongoing litigation, that is, *Okiya Omtatah and Another-versus- The National Assembly of Kenya and Others* (Nairobi High Court Petition Number 251 of 2017)

6. The Legal Counsel gave the following opinion on the proposed amendment to EMCA that;
 - i. The proposed amendment to section 125(1) deleting the words “chairperson” appearing in paragraph (a) and substituting therefor the word “person” was unconstitutional as it contravenes Article 169(1) (d) of the Constitution since tribunals are part of the subordinate courts. There was no justification for the amendment in the Memorandum of Objects and Reasons in the Bill.
 - ii. The proposed amendment to section 129 was proper since it corrects the anomaly that occurred last year where the amendment was incorrectly done by the House in the Prevention to Torture Act and the matter was litigated upon.
 - iii. The amendment to section 125(1) on the composition of the Tribunal to correctly indicate an Advocate of the High Court instead of the Advocate of the Environment and Land Court was also proper.

Committee’s Observations

The Committee after a lengthy deliberation on the matter made the following observations, that;

- i. Although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 125(1)(a) to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal, no justification for the same has been provided in the Memorandum of Objects and Reasons in the Bill. However, it was noted that the proposal to elect the Chairperson from among the three Members under paragraph (a), (b) and (c) in the Tribunal was agreeable as they all hold the same qualifications as lawyers.
- ii. The amendment to section 125(1)(b) on the composition of the Tribunal to correctly indicate an Advocate of the High Court instead of the Advocate of the Environment and Land Court is also proper.
- iii. The proposed amendment to section 129 is proper since it corrects the anomaly that occurred where the amendment was incorrectly done by the House in the Prevention to Torture Act and the matter was litigated upon.



Committee's Resolutions

The Committee having considered the Bill and the submissions from the stakeholders makes the following resolutions;

SECTION 125

Amendment

Section 125(1)

Delete the words "chairperson" appearing in paragraph (a) and substitute therefor the word "person"

Committee Resolution

Agreed to

Justification

Any member of the Tribunal under paragraph (a), (b) and (c) and not necessarily one nominated by the Judicial Service Commission would be a Chairperson of the Tribunal. It opens up the opportunity to other candidates to be elected as chairperson.

Amendment

Section 125(1)(b)

Delete the words "Environment and Land" appearing in paragraph (b) and substitute therefor the word "High"

Committee Resolution

Agreed to

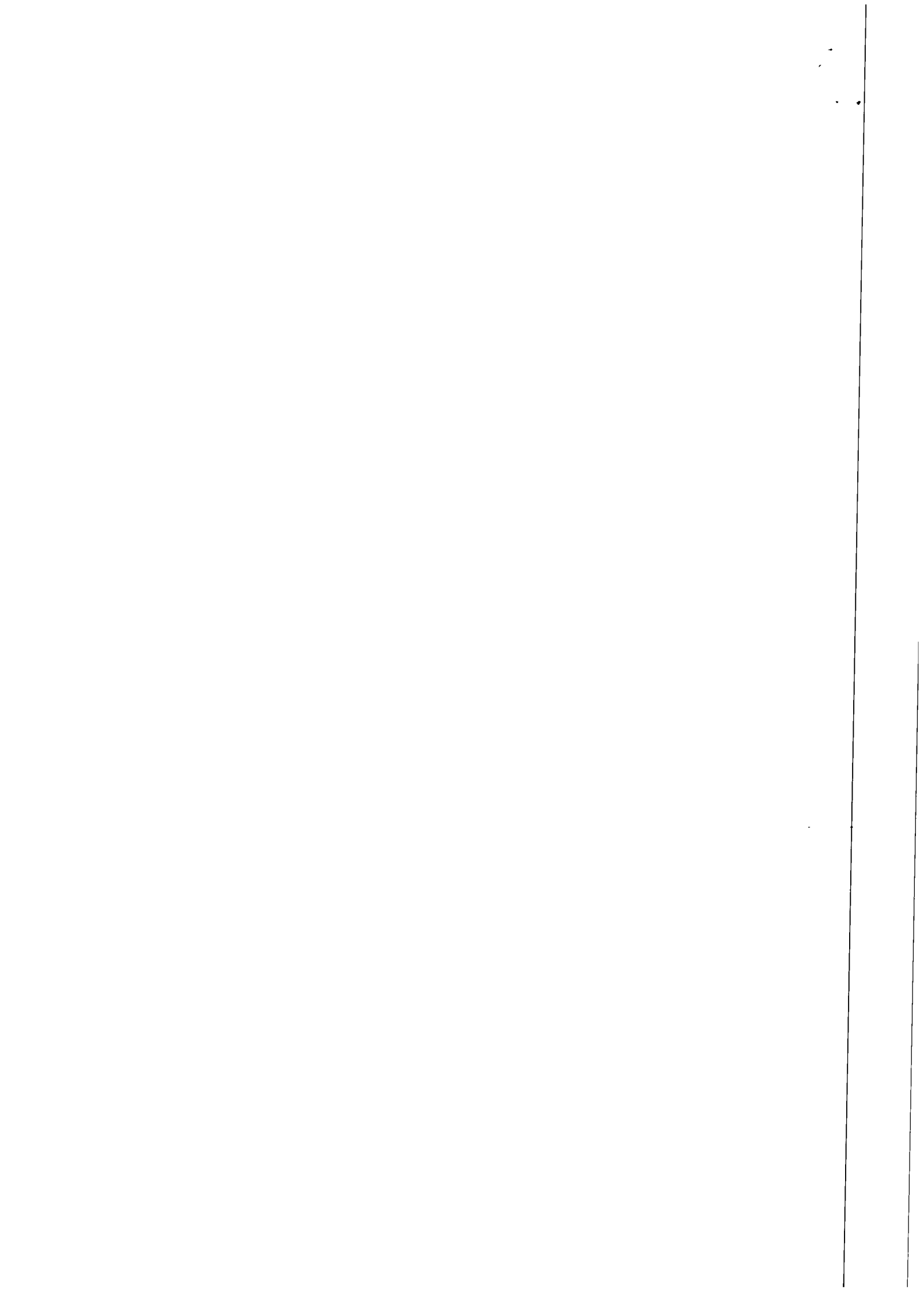
Justification

The amendment corrects an error in paragraph (b) which currently provides for an advocate of the Environment and Land Court of Kenya. There is no advocate of the Environment and Land Court of Kenya but an advocate of the High Court of Kenya.

Amendment

Section. 125(5)

Delete the words "a Vice-Chairperson to the Tribunal" and substitute therefor the words "a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson from to the Tribunal amongst all members".



Committee Resolution

Agreed to

Justification

That the Chairperson shall be elected by the persons under paragraphs (a), (b), and (c) who essentially have a legal background. The provision is tied up the proposed amendment to section 125(1) of EMCA in regard to the mechanism of electing the chairperson. Since the Committee has agreed to the proposed amendment to section 125(1) of the Environment Management and Coordination Act, this proposed amendment is a resultant amendment that should also be made.

SECTION 129

Amendment

Section 129

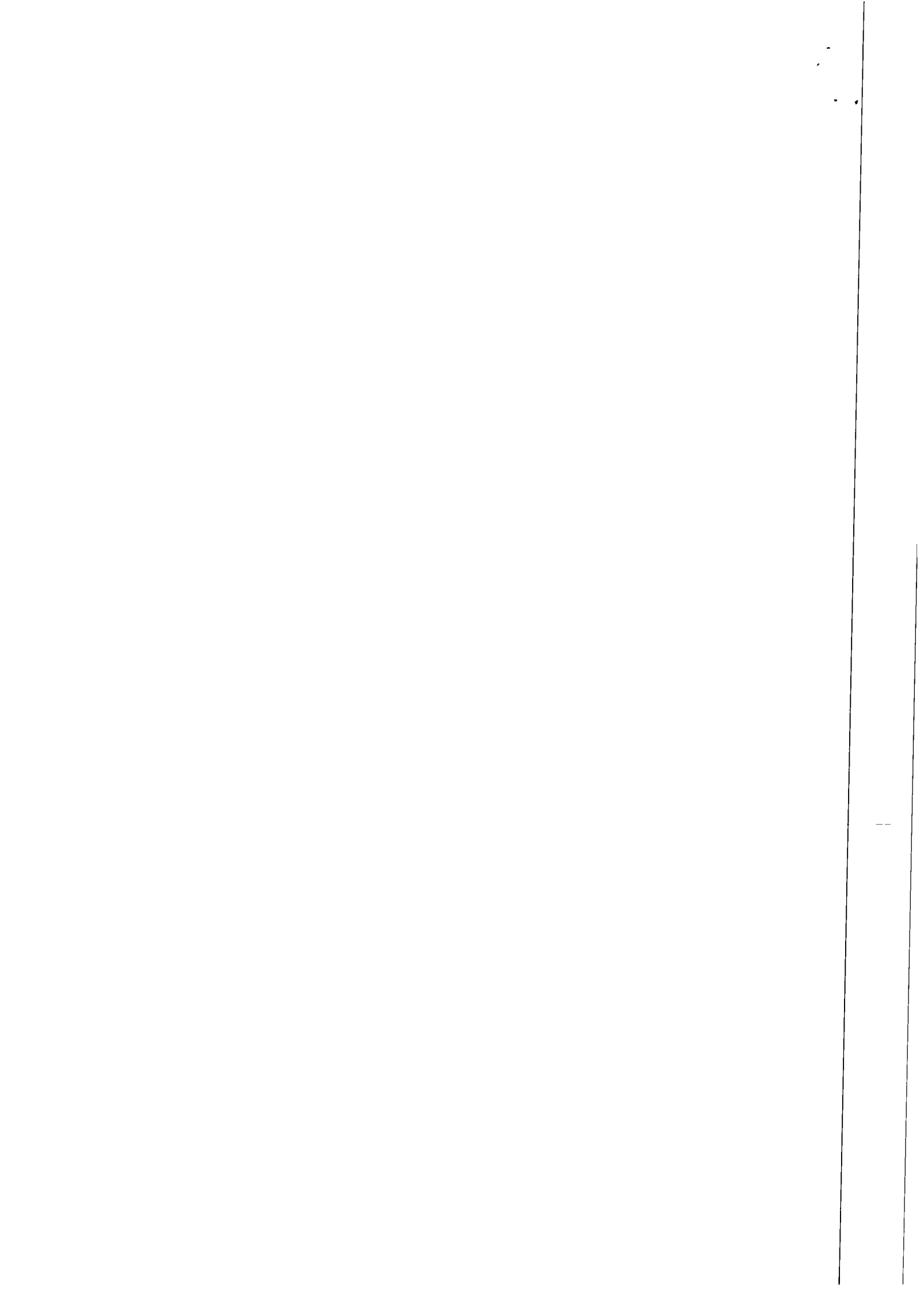
Delete and substitute therefor the following new section

129. (1) Any person who is aggrieved by—

- (a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;
- (b) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;
- (c) the revocation, suspension or variation of the persons a licence under this Act or its regulations;
- (d) the amount of money required to paid as a fee under this Act or its regulations;
- (e) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its regulations,

may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such



decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
- (d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
- (e) if satisfied upon application by any party, review any orders made under paragraph (a).

(4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3) (a).

Committee Resolution

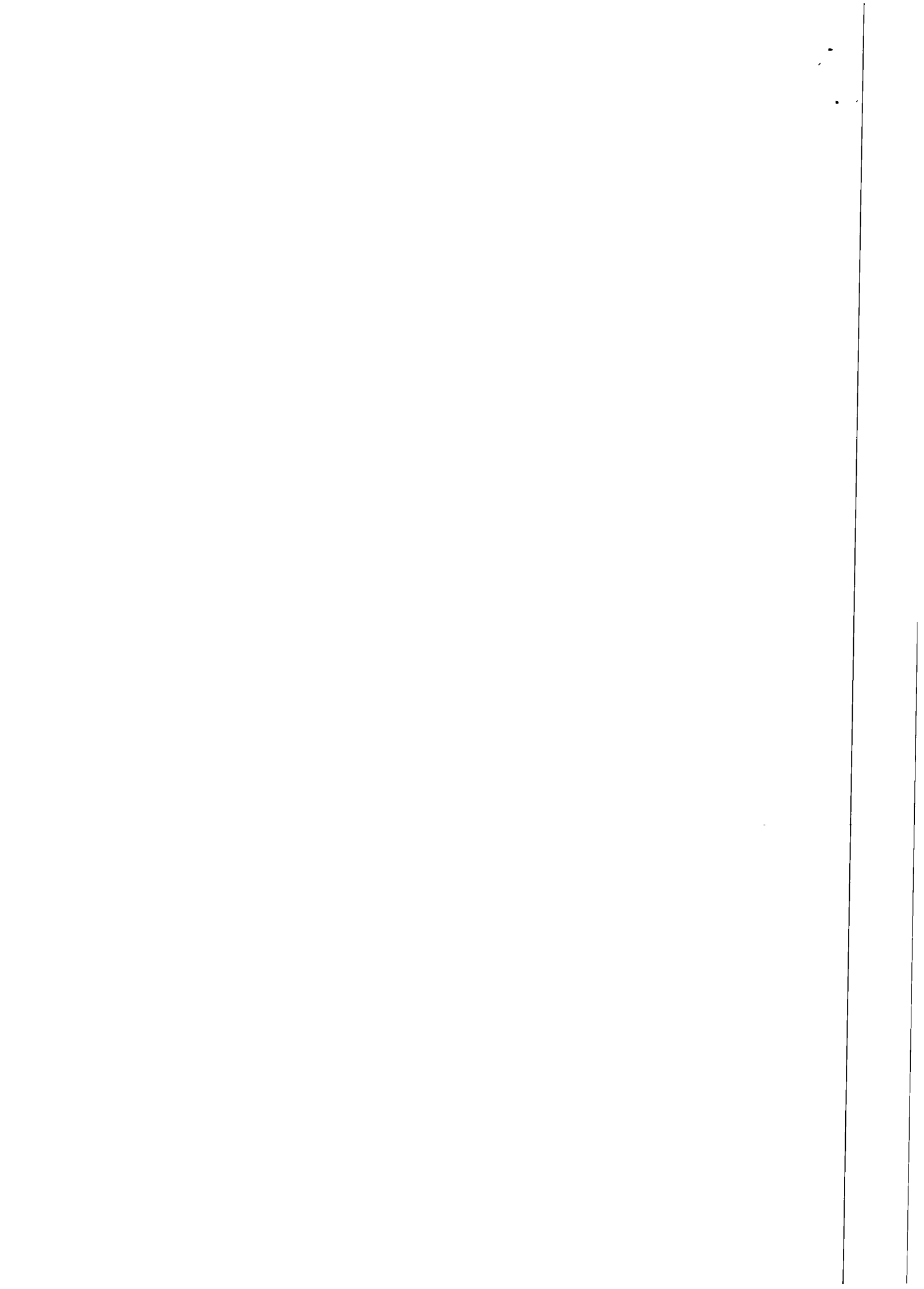
Agreed to

Justification

The proposed amendment to section 129 of the Environment Management and Coordination Act corrects the anomaly that occurred last year in the House where the same amendments were enacted under section 29 of the Prevention of Torture Act 2017. Although the matter has been litigated upon, the challenge was not on the substance of the amendments but the procedure and lack of opportunity for the public to give their input.

MIN.NO. DC/ENR/092/2018: - AOB

Having considered the amendments to Environment Management and Coordination Act in the Statute Law (Miscellaneous Amendments) No.3 bill, 2017, the Committee resolved to forward its recommendations to the Departmental Committee on Finance and National Planning as directed by the Hon. Speaker. The Committee recommendations were proposed and seconded by the Hon. Rehema Hassan, MP and the Hon. Beatrice Kones, MP respectively.

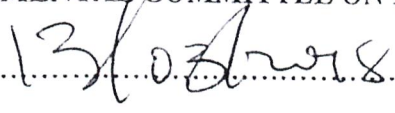


MIN.NO. DC/ENR/093/2018: - ADJOURNMENT

There being no other business the meeting was adjourned at 12.21 pm.

SIGNED:


THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE:


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PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)

(NO. 3) BILL, 2017

MARCH, 2018

Directorate of Committee Services

The National Assembly,

Parliament Buildings, Continental House, Room 402

NAIROBI

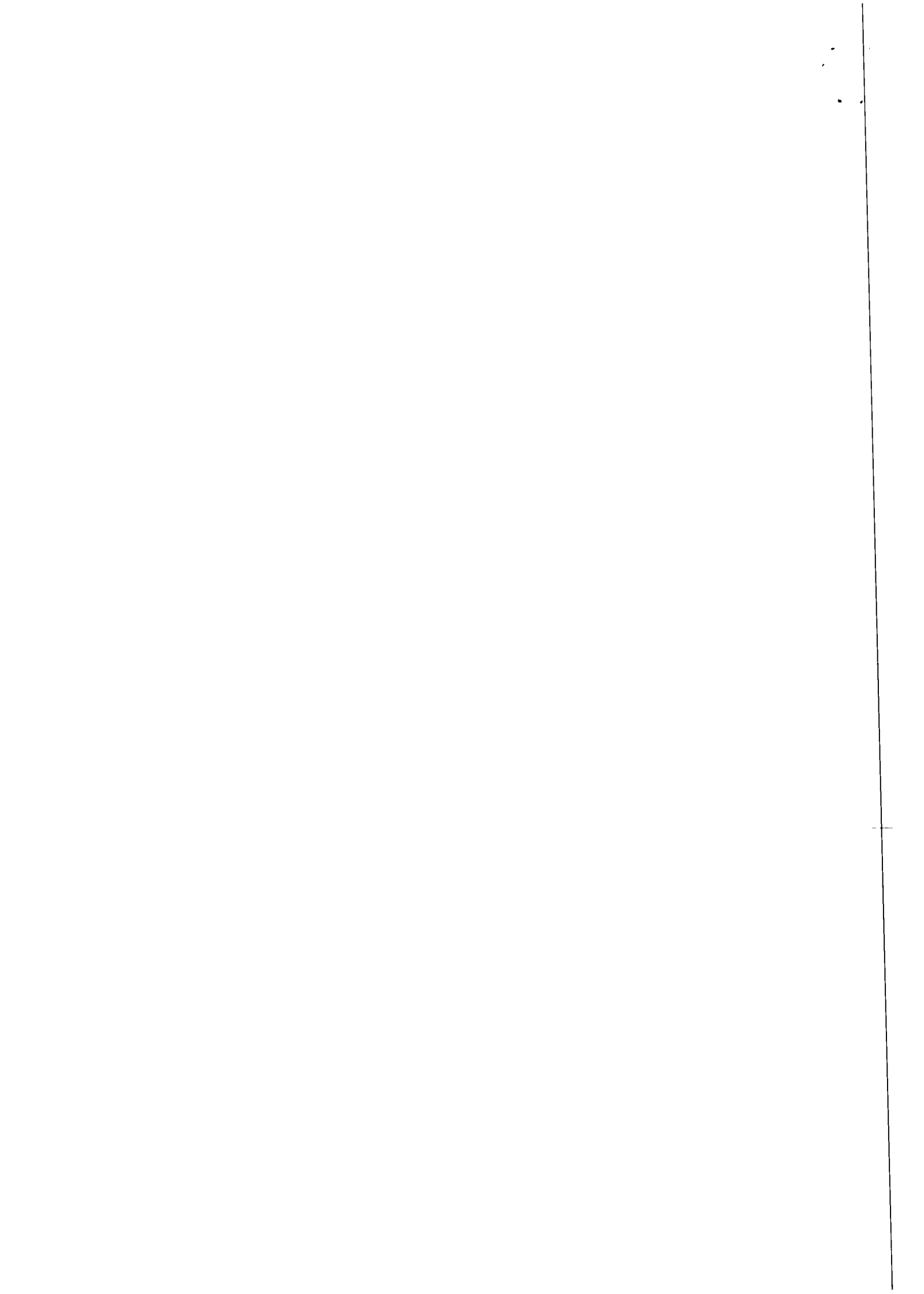
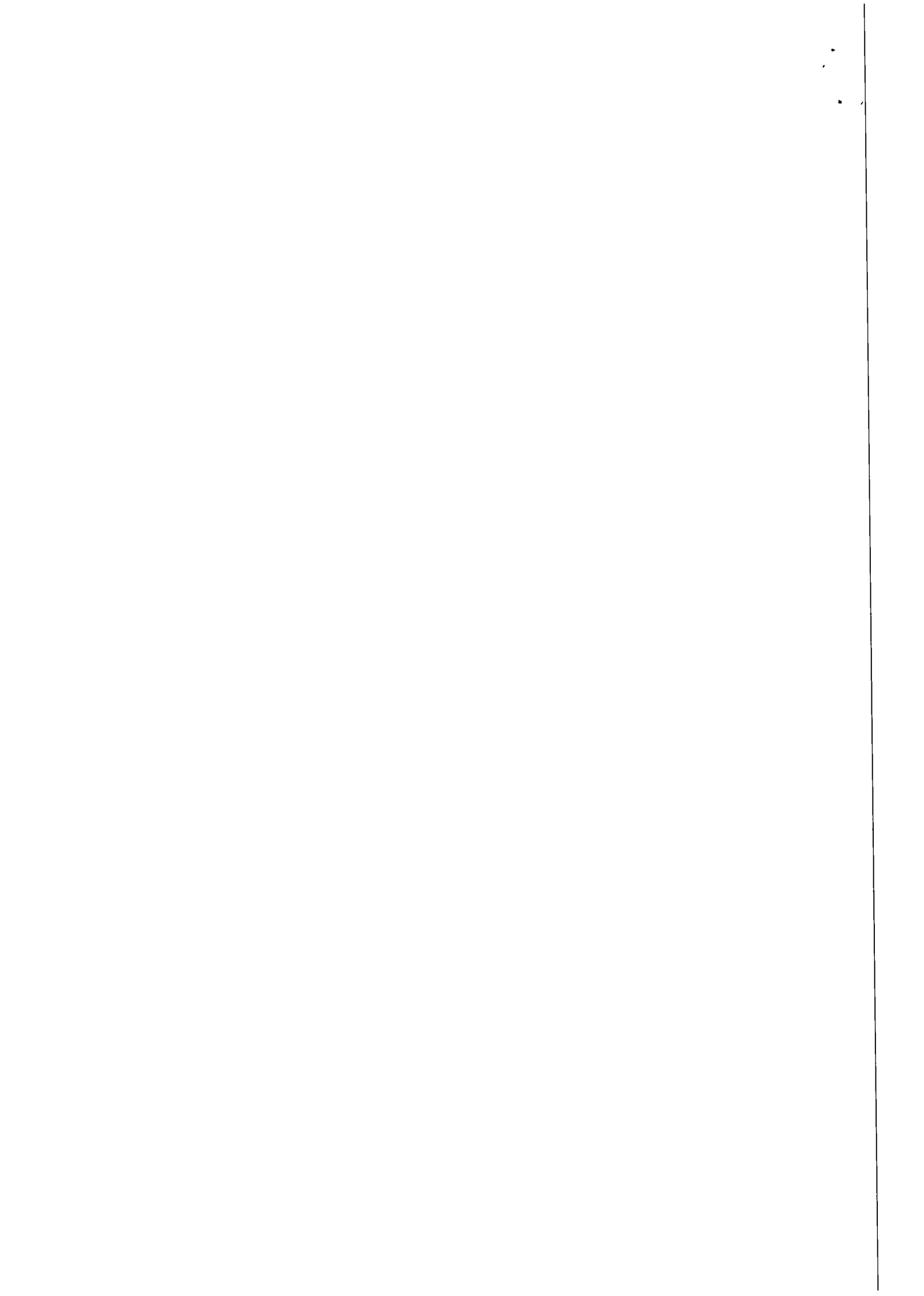


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CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendments) (No.3) Bill, 2017 is a Bill sponsored by Hon. Aden Duale, EGH, MP, Leader of the Majority Party, and it seeks to amend the following laws:

- The Pensions Act (Cap. 189)
- The Pharmacy and Poisons Act (Cap. 244)
- The Clinical Officers (Training, Registration and Licensing) Act, 1988 (No. 9 of 1988)
- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Salaries and Remuneration Commission Act (No. 10 of 2011)
- The Statutory Instruments Act (No. 23 of 2013)
- The Occupational Therapists (Training, Registration and Licensing) Act No. 31 of 2017.

The Committee considered the amendments relating to the Statutory Instruments Act (*No. 23 of 2013*) and proposed the deletion of the existing provisions and substitution therefor the proposed further amendments as annexed in the schedule to this report, for submission to the Departmental Committee on Finance and National Planning, pursuant to the Communication by the Hon. Speaker issued on 20th February, 2018.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend sections 11 (1) and (4) on laying of statutory instruments before the relevant House.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sitting. Further, I wish to express my appreciation to the Committee Members for the immense contributions towards the preparation and production of the report.

It is therefore my pleasant duty and privilege, on behalf of the select Committee on Delegated Legislation, to submit its report on the consideration of the Statute Law (Miscellaneous) (Amendment) (No. 3) Bill, 2017 for consideration Pursuant to Standing Order 127.

Signed.....

Date.....12/3/2018.....

HON. GLADYS BOSS SHOLLEI, CBS, MP
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

EXECUTIVE SUMMARY

The Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 was read the First Time on 30th November 2017, and thereafter committed to the various Committees for consideration pursuant to Standing Order No. 127.

The Select Committee on Delegated Legislation held a meeting on 27th February 2018 to consider the sections of the Bill relating to the Statutory Instruments Act.

The Committee observed that although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 11 (1) and (4) on Laying of statutory instruments before Parliament, it was imperative that the Bill amends section (2) of the Act to provide for a clarity in the definition of “an explanatory memorandum” to indicate the details to be included in the contents of the explanatory memorandum thereof, and to further provide for the insertion of the definition of the “Clerk” to mean the Clerk of the National Assembly.

The Committee further observed the need to amend the Bill to provide for an insertion of a new section 5A to the principal Act to provide for the requirements that every statutory instrument submitted to the House be accompanied by an explanatory memorandum and sets out certain conditions precedent to the submission of the explanatory memorandum.

The Committee, in addition, observed that the proposed amendments to section 11 (1) and (4) is proper since it corrects the anomaly for transmitting instrument to the responsible Clerk for tabling before the relevant House of Parliament.

The Committee also resolved to propose amendments to section 15 of the Act to extend the time granted to the committee for considering various Statutory Instruments from twenty-eight calendar days to twenty-eight sitting days to give the committee adequate time for considering the Statutory Instruments before it.

The Committee having considered the proposed amendments to the Statutory Instruments Act (No. 23 of 2013) resolved that amendments as proposed in the Statute Law (Miscellaneous Amendment) No. 3 Bill, 2017, be deleted and that the further amendments proposed by the Committee be passed by the House.

1.0 PREFACE

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

1.1. Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;

The Committee is equally tasked with the responsibility of scrutinizing statutory instruments, whether: -

- (i) it involves expenditure from the consolidated fund or other public revenues;
- (ii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (iii) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (iv) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (v) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (vi) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (vii) inappropriately delegates legislative powers;

- (viii) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (ix) appears for any reason to infringe on the rule of law;
- (x) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- (xi) accords to any other reason that the Committee considers fit to examine.

1.2. Committee Membership

The Committee on Delegated Legislation as constituted by the House in December 2017 comprises of the following Members: -

- 1) **Hon. Gladys Boss Shollei, MP - Chairperson**
- 2) **Hon. Fatuma Gedi, MP - Vice- Chairperson**
- 3) Hon. Alice Wahome, MP
- 4) Hon. Robert Mbui, MP
- 5) Hon. Daniel Maanzo, MP
- 6) Hon. Muriuki Njagagua, M.P
- 7) Hon. Isaac Waihenya Ndirangu, MP
- 8) Hon. Alfred Bernard Wekesa Sambu, MP
- 9) Hon. William Kamket Kassait, MP
- 10) Hon. Ronald Kiprotich Tonui, MP
- 11) Hon. Munene Wambugu, MP
- 12) Hon. Charles Gimose, MP
- 13) Hon. Abdi Koropu Tepo, MP
- 14) Hon. George Gitonga Murugara, MP
- 15) Hon. Jennifer Shamalla, MP
- 16) Hon. Muturi Kigano, MP
- 17) Hon. Martha Wangari, MP
- 18) Hon. Patrick Kariuki Mariru, MP
- 19) Hon. Timothy Wanyonyi, MP
- 20) Hon. William Kamoti, MP
- 21) Hon. Wilberforce Oundo, MP
- 22) Hon. Sammy Scroney, MP

1.3. Committee Secretariat

The secretariat comprises of the following members of staff;

- | | |
|-----------------------|----------------------------------------|
| 1) Mr. Susan Maritim | Clerk Assistant I (Team Leader) |
| 2) Mr. Jimale Mohamed | Clerk Assistant |
| 3) Mr. Wilson Dima | Senior Legal Counsel |
| 4) Ms. Mugure Gituto | Legal Counsel |
| 5) Ms. Anne N. Kigoro | Research & Policy Analyst |
| 6) Mr. Stanley Lagat | Serjeant-at-Arms |

2.0 CONSIDERATION OF THE BILL

2.1 Background

The Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 is sponsored by Hon. Aden Duale, Leader of the Majority Party. It was read a First Time on 30th November, 2017 and thereafter committed to the various Committees for consideration pursuant to Standing Order No. 127. It seeks to amend the following laws:

- The Pensions Act (Cap. 189)
- The Pharmacy and Poisons Act (Cap. 244)
- The Clinical Officers (Training, Registration and Licensing) Act, 1988 (No. 9 of 1988)
- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Salaries and Remuneration Commission Act (No. 10 of 2011)
- The Statutory Instruments Act (No. 23 of 2013)
- The Occupational Therapists (Training, Registration and Licensing) Act No. 31 of 2017

The Select Committee on Delegated Legislation considered the amendments to the Statutory Instruments Act (No. 23 of 2013) for submission to the Departmental Committee on Finance and National Planning pursuant to the Communication by the Hon. Speaker issued on 20th February, 2018.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend sections 11 (1) and (4) on laying of statutory instruments before the relevant House.

2.2 Committee Observations

The Committee observed –

- (i) **THAT, although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend sections 11 (1) and (4) on laying of statutory instruments before Parliament, it was imperative that the Bill amends section (2) of the Act to provide for clarity in the definition of “an explanatory memorandum” to indicate the details to be included in the contents of the explanatory memorandum thereof, and to further provide for the insertion of the definition of the “Clerk” to mean the Clerk of the National Assembly;**

- (ii) THAT, there is need to amend the Bill to provide for insertion of a new section 5A to the principal Act to provide for the requirements that every statutory instrument submitted to the House be accompanied by an explanatory memorandum and sets out certain conditions precedent to the submission of the explanatory memorandum;
- (iii) THAT, the proposed amendment to section 11 (1) and (4) is proper since it corrects the ambiguity for transmitting instruments to the responsible Clerk for tabling before the relevant House of Parliament.

The Committee proposed further amendments to section 11 of the Act to remove the requirement that a regulation-making authority may submit a statutory instrument to the respective Clerk of the House and specifies that the statutory instruments be first submitted to the National Assembly so as to minimize the confusion caused to the regulation-making authorities in respect to submission of statutory instruments and that the submission to be made to the House where the parent legislation under which the Statutory instrument is made, was passed.

- (iv) THAT, a further amendment be made for insertion of a new section 11A to the principal Act on the procedure for concurrence of statutory instruments between the Houses of Parliament in order to streamline parliamentary scrutiny of statutory instruments and ensure that the process is clear and consistent.
- (v) THAT, further amendments be made to section 15 of the Act to extend the time granted to the committee for considering various statutory instruments from twenty-eight (28) calendar days to twenty-eight sitting days to give the committee adequate time for considering the instruments before it.

The Committee having considered the proposed amendments to the Statutory Instruments Act (No. 23 of 2013) resolved that amendments as proposed in the Statute Law (Miscellaneous Amendment) No. 3 Bill, 2017, be deleted and that the further amendments proposed by the committee be passed by the House.

2.3 Committee Recommendations

The Committee having considered the Bill and the legal advice from the Directorate of Legal Services makes the following recommendations;

- (i) THAT, the deletion of provisions relating to Statutory Instruments Act, 2013 and insertion of the proposed further amendments as set out in the annexure to this Report.
- (ii) THAT, a draft request be sent to the Clerk of National Assembly incorporating the proposed further amendments to the provisions relating to the Statutory Instruments Act in the Statute Law (Miscellaneous) (Amendments) (No. 3) Bill, 2017, for the Chairperson's signature in the manner set out in the schedule.

ANNEXURES

- (i) Minutes of Committee sittings
- (ii) Adoption List



KENYA NATIONAL ASSEMBLY:

DIRECTORATE OF LEGAL SERVICES

INTERNAL MEMO

TO: THE CHAIRPERSON, NATIONAL ASSEMBLY SELECT
COMMITTEE ON DELAGATED LEGISLATION

DATE: 1ST, MARCH, 2018

SUBJECT: STATUTE LAW (MISCELLENEOUS) (AMENDMENTS) (No.3)
BILL, 2017

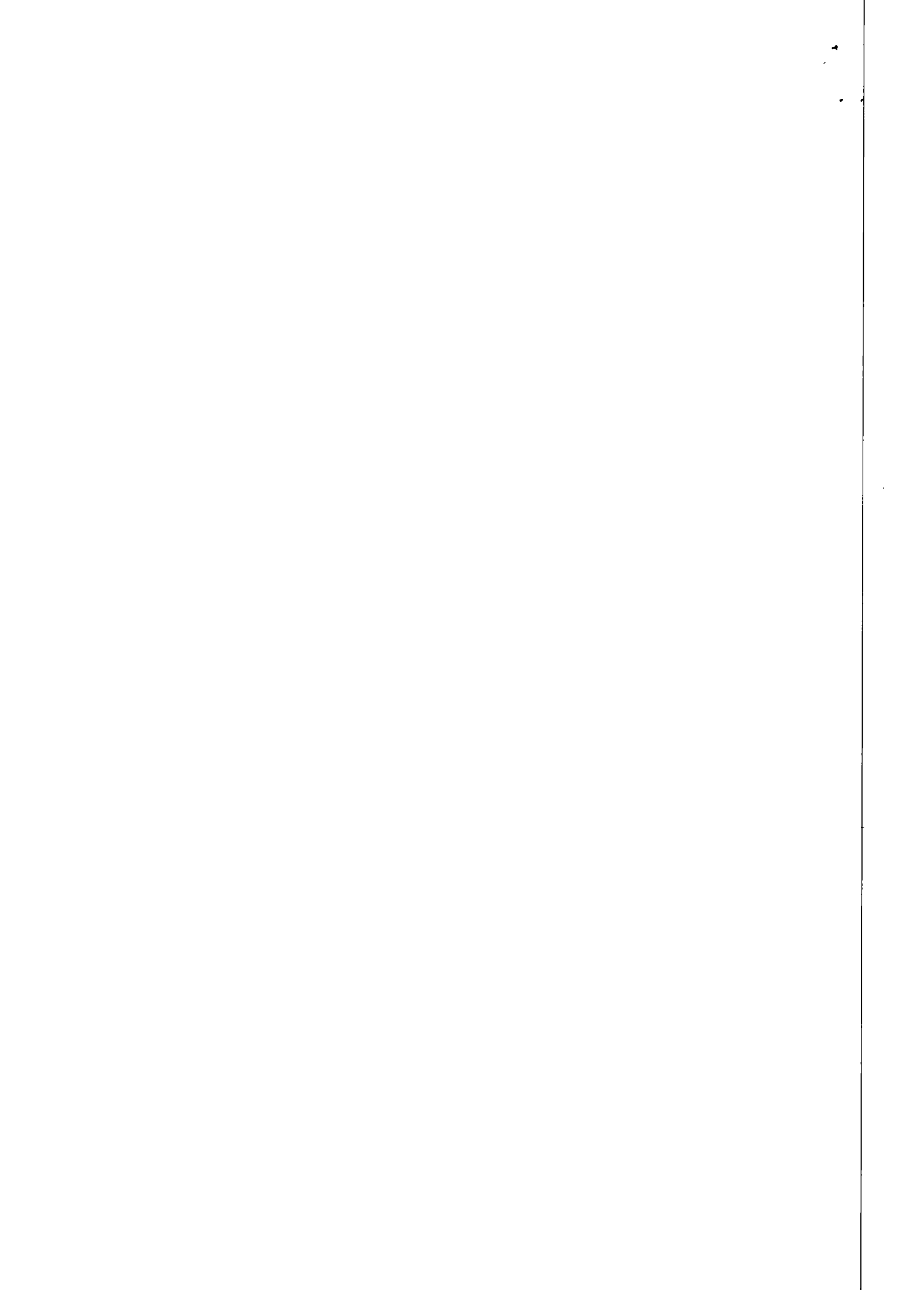
We refer to the above matter and the deliberations of the committee at its sitting held on Tuesday 27th February, 2018, in respect to the proposed amendments to the provisions relating to the **Statutory Instruments Act, 2013** as contained in the **Statute Law Miscellaneous Amendment (No.3) Bill, of 2017**.

Attached herewith please find a draft request to the Clerk, National Assembly containing the further amendments to the provisions, as proposed by the committee, prepared by the Directorate of Legal Services. as per your instructions, for your signature, if you approve.

Submitted for further directions.



DIMA DIMA W.
SENIOR LEGAL COUNSEL



28th February 2018

The Clerk of the National Assembly,
Parliament Buildings,
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE STATUTE LAW
(MISCELLENOUS) (AMENDMENTS)(No. 3) BILL, 2017

NOTICE is given that the Chairperson of the Committee on Delegated Legislation Hon. Gladys Boss Shollei, M.P., intends to move the following amendments to the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 at the Committee Stage—

SCHEDULE

THAT the Schedule to the Bill be amended in the proposed amendment to the Statutory Instruments Act, (No. 23 of 2013) by deleting the proposed amendments to section 11 and inserting the following items in their proper chronological sequence—

Provision

Amendment

s. 2

- (a) Insert the following new definition in their proper alphabetical sequence —

“Clerk” means the Clerk of the National Assembly;

“Public participation” means involvement by the regulation making authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to;

- (b) delete the definition of “explanatory memorandum” and substitute therefor the following new definition—

“explanatory memorandum” means a statement, prepared by the regulation-making authority that explains the purpose and operation of the statutory instrument and it includes any documents incorporated in the statutory instrument by reference and indicates how they may be obtained;”

GBS

Insert the following new section immediately after section 5 —

An explanatory memorandum to accompany every statutory instrument.

5A. (1) Every statutory instrument shall be accompanied by an explanatory memorandum which shall contain—

- (a) a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution;
- (b) a brief statement of all the consultations undertaken before the statutory instrument was made;
- (c) a brief statement of the way the consultation was carried out;
- (d) an outline of the results of the consultation;
- (e) a brief explanation of any changes made to the legislation as a result of the consultation.

(2) Where no such consultations are undertaken as contemplated in subsection (1), the regulation-making authority shall explain why no such consultation was undertaken.

(3) The explanatory memorandum shall contain such other information in the manner specified in the Schedule and may be accompanied by the regulatory impact statement prepared for the statutory instrument.

Provision

Amendment

s.11(1) Delete the words "responsible" appearing immediately after the words "transmitted to the"

s.11(2) Delete subsection (2);


s.11(3) (a) Delete the word "responsible" appearing immediately before the word "Clerk"
(b) Delete the word "respective" appearing immediately before the word "House"

s.11(4) Delete the word "Parliament" and substitute therefor the words "National Assembly".

s.11 Insert the following new provision immediately after section 11

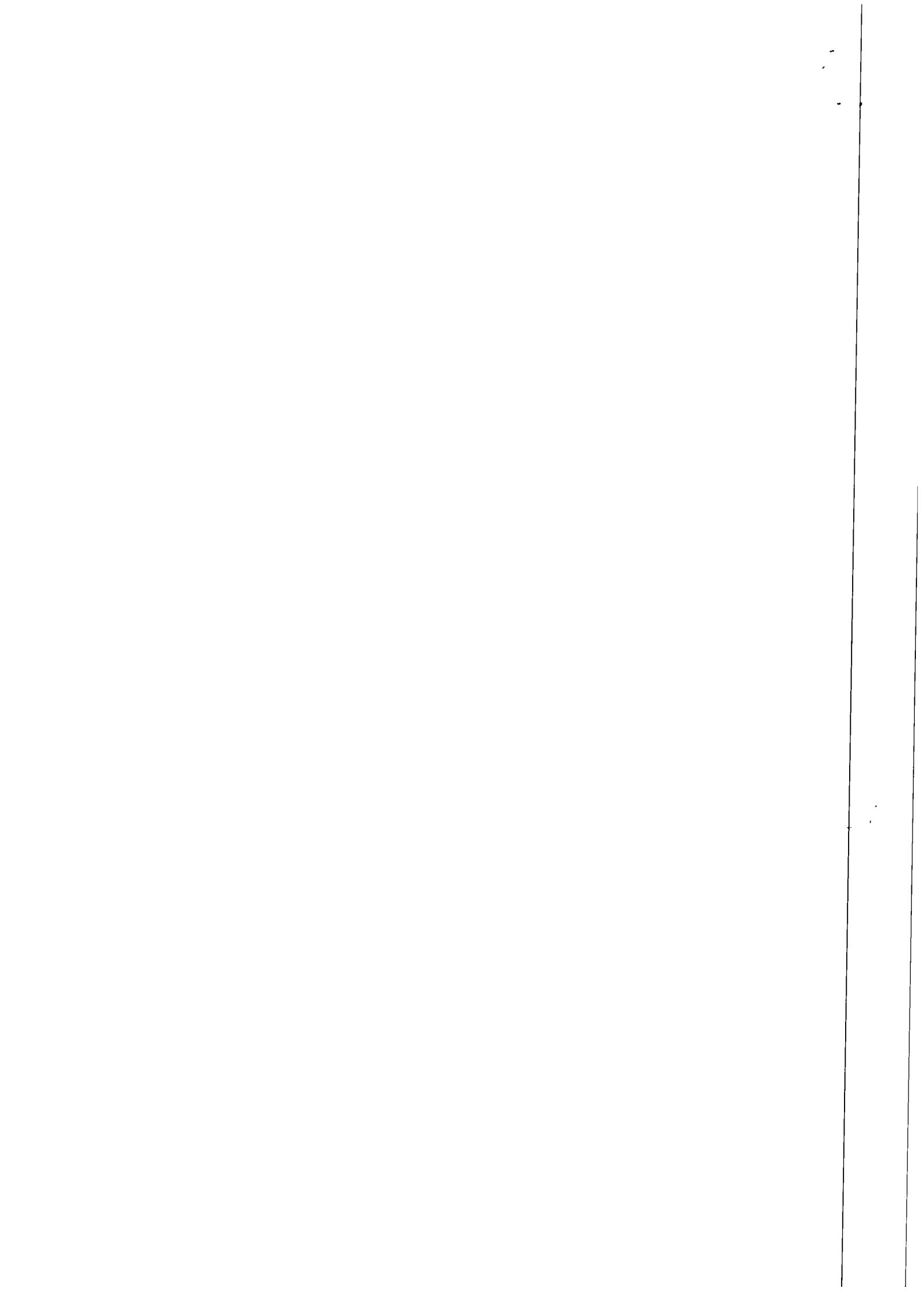
Concurrence of the other House. 11A. Where the committee is of the opinion that a particular Statutory Instrument is made pursuant to a legislation concerning counties, the committee shall, by resolution request the Clerk to forward a certified copy of the report accompanied by a copy of the Statutory Instrument to the Clerk of the Senate together with a message requesting for concurrence of the Senate.

s.15 Insert the word "sitting" immediately after the words "twenty eight".



HON. GLADYS BOSS SHOLLEI, M.P.,
Chairperson, Committee on Delegated Legislation





IN-ATTENDANCE

National Assembly Secretariat

Mr. Jimale Mohamed	-	Third Clerk Assistant
Mr. Dima Wilson	-	Senior Legal Counsel
Ms. Mugure Gituto	-	Legal Counsel II
Mr. Charles Ayari	-	Audio Officer

AGENDA

1. Prayers & Preliminaries Consideration of: -

- a) *Consideration of Amendments to the Statutory Instruments Act contained in the Statute Law (Miscellaneous Amendments) (No.3) Bill, 2017*
- b) *Capital Market Authority (Securities, Lending, Borrowing and Short-Selling) Regulations, 2017*
- c) *Legal Notices 44 & 45 relating to Income Tax Act (Exemption from Tax)*
- d) *National Construction Authority (Amendment), 2017*

2. Any Other Business

3. Adjournment

MIN.NO. CDL/062/2018: PRELIMINARIES

The meeting was called to order at 9.15 a.m. followed by prayers. The chair further informed the Committee that the Committee was considering the following Instruments tabled in February 2018.

- (i) *Consideration of Amendments to the Statutory Instruments Act contained in the Statute Law (Miscellaneous Amendments) (No 3) Bill, 2017*
- (ii) *Capital Market Authority (Securities, Lending, Borrowing and Short-Selling) Regulations, 2017*
- (iii) *Legal Notices 44 & 45 relating to Income Tax Act (Exemption from Tax)*

(iv) *National Construction Authority (Amendment), 2017*

MIN.NO. CDL/063/2018: CONFIRMATION OF MINUTES

Confirmation of Minutes was deferred to the next sitting.

MIN.NO. CDL/064/2018: ADOPTION OF THE PROGRAMME/AGENDA

The Committee unanimously adopted the agenda for the meeting without amendments.

**MIN.NO. CDL/065/2018: CONSIDERATION OF AMENDMENTS TO THE
STATUTORY INSTRUMENTS ACT CONTAINED IN
THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) (NO.3) BILL, 2017**

The Legal Counsel took Members through the amendment Bill being proposed as follows:-

- s. 11(1) “insert the words ‘ relevant House of’ before the word “Parliament”
- s. 11(4) “ insert the words “ the relevant House of” before the word “Parliament

Recommendation: Dropped

Justification: The Committee considered the amendments relating to the Statutory Instruments Act (*No. 23 of 2013*) and proposed the deletion of the existing provisions to section 11 and substitution therefor the proposed further amendments.

COMMITTEE’S OBSERVATIONS

The Committee made the following observations, that;

- i. although the Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 seeks to amend section 11 (1) and (4) on Laying of statutory instruments before Parliament, it was imperative that the Bill amends section (2) of the Act to provide for a clarity in the definition of “an explanatory memorandum” to indicate the details to be included in the contents of the explanatory memorandum thereof, and to further provide for the insertion

- of the definition of the “Clerk” to mean the Clerk of the National Assembly;
- ii. the need to amend the Bill to provide for an insertion of a new section 5A to the principal Act to provide for the requirements that every statutory instrument submitted to the House be accompanied by an explanatory memorandum and sets out certain conditions precedent to the submission of the explanatory memorandum.
 - iii. the proposed amendment to section 11 (1) and (4) was proper since it corrects the anomaly for transmitting instrument to the responsible Clerk for tabling before the relevant House of Parliament but proposed further amendments to section 11 of the Act to remove the requirement that a regulation making authority may submit a statutory instrument to a respective clerk of the House and specifies that the statutory instruments be first submitted to the National Assembly so as to minimize the confusion caused to the regulation making authorities in respect to submission of statutory instruments and that the submission to be made to the House where the parent legislation under which the Statutory instrument is made, was passed.
 - iv. The Committee proposed further amendment to provisions in the Bill relating to section 11 seek to provide for insertion of a new section 11A to the principal Act on the procedure for concurrence of statutory instruments between the Houses of Parliament in order to streamline parliamentary scrutiny of statutory instruments and ensure that the process is clear and consistent.
 - v. The Committee further observed the need to amend the Bill to provide for an insertion of a new section 5A to the principal Act to provide for the requirements that every statutory instrument submitted to the House be accompanied by an explanatory memorandum and sets out certain conditions precedent to the submission of the explanatory memorandum.

COMMITTEE’S RECOMMENDATION

The Committee having considered the Bill and the legal advice from the Directorate of Legal Services makes the following recommendations;

1. The deletion of provisions relating to Statutory Instrument Act, 2013 and insertion of the proposed further amendments as set out in the annexure to the minute.

2. The Committee also resolved to propose amendments to section 15 of the Act to extend the time granted to the committee for considering various Statutory Instruments from twenty eight calendar days to twenty eight sitting days to give the committee adequate time for considering the Statutory Instruments before it.
3. Further, the Committee directed the secretariat to prepare a draft request to the clerk of National Assembly incorporating the proposed further amendments to the provisions relating to the Statutory Instruments Act in the Statute Law (Miscellaneous) (Amendments) (No. 3) Bill, 2017, for the Chairperson's signature in the manner set out in the schedule.

**MIN.NO. CDL/066/2018: CONSIDERATION OF LEGAL NOTICES 44 & 45
RELATING TO INCOME TAX ACT (EXEMPTION
FROM TAX)**

The Committee considered the Legal Notice 44 and 45 of 2018 relating to Income Tax Act on exemption from interest and capital gains in respect of sovereign Bonds outside the country by the Government. The Legal notices were laid before the floor of the National Assembly on the 14th of February, 2018 and pursuant to section 12 (1) of the Statutory Instrument Act, (*No 23 of 2013*) the Legal Notices were referred to the Select Committee on Delegated Legislation.

The Chairperson thereafter welcomed the Fiscal Analyst from the Parliamentary Budget Office to present on the Legal Notice 44 and 45 of 2018 relating to Income Tax Act on exemption from interest and capital gains in respect of sovereign Bonds outside the country by the Government.

The Fiscal analyst briefed the Committee and stated analysis of the Legal Notices No 44 and 45 of 2018 – Amendment to Income Tax Act, seeking to exempt interest and gains from Bond issued outside Kenya as follows:-

1. The Legal Notice Number 44 was issued in accordance with Section 13(2) of the Income Tax Act which provides for exemption of certain income from taxation. The tax exemption granted by this notice is the gains that may accrue due to transfer of any bonds by the National Government that was issued outside the country.

2. Similarly, the Legal Notice Number 45 seeks to amend the legal Notice Number 86 of 2014 to exempt from the income tax, interest in respect of any bonds issued by the national government outside the country. The Legal Notice Number 86 happens to have exempted the sovereign bond that was issued outside Kenya in 2014. Therefore, this amendment opens the exemption window for any other bond that may be issued.
3. In 2014, the government successfully floated the first sovereign bond outside Kenya and it netted KSh. 176 billion. Hitherto, there has been increased interest to venture into the international debt market to raise loans to finance the country's mega infrastructure development and fiscal deficit. The most recent focus has been on the second sovereign bond of KSh. 202 billion that has already been contracted, the Samurai bond in the Japanese market as well as the *Sukuk*.

The Committee was further informed on the Analysis to the Legal Notices 44 & 45 Relating to Income Tax Act (Exemption from Tax)

- (i) Section 13(2) of the Income Tax act empowers the Cabinet Secretary for the National Treasury to exempt certain income from tax, through a gazette notice. Subsequently, the Statutory Instruments Act, 2013 provides that Subsidiary Legislations should be tabled in Parliament, with the objective of guaranteeing a comprehensive regime for making, scrutiny, publication and operation of the subsidiary legislations. Only a report containing a resolution on annulment of the notice, if any, is to be tabled in the House for adoption, within 20/28 days after it has been laid.
- (ii) It is worth noting that whenever the government issues a bond outside the country, the money received may benefit from foreign exchange gains and/or interest upon custody and subsequent transfer into the country. This interest and gain are automatically subjected to the provisions of the Income Tax Act.
- (iii) Similarly, the entire chain of the application of the debt instrument outside the country entails contracting the services of international transaction advisors, conveyance attorneys, financial analysts, custodians among others. This requires payment of management or professional fees, which is subjected to taxation.
- (iv) Therefore, it means that the revenue agency in the country should ideally incur administrative expenses in taxing this income in respect of interest, gains and

management or professional fees for bonds issued outside Kenya by the national government. As a result, the two legal Notices Number 44 and 45 of 8th February, 2018, which are currently under the consideration in the National Assembly, as well as the existing Legal Notice Number 87 of 18th June, 2014 - which exempted management or professional fees payable to non-resident persons in relation to any national government security issued outside Kenya - are utilized so as to avoid incurring tax administration expenses in taxing the government.

Committee's observations

- 1) Members observed that the main thrust of the Legal Notices Number 44 and 45 of February, 2018 was to exempt the gains and interest that may accrue out of transfer of any bonds issued outside the country by the national government, from the Income Tax.
- 2) The Committee further observed that the Legal Notices were intended to reduce unnecessary administrative cost on account of taxing the income of the government by the same government and for the same government.

Members' Resolutions

The Committee resolved the following:-

The Committee considered the two Legal Notices and approved the same for implementation on by the Cabinet Secretary for The National Treasury. The Committee, therefore, directed the Clerk of the National Assembly to convey the decision of the Committee on Delegated Legislation to the effect that Legal Notice Number 44 of 2018, (The Income Tax Act – Exemptions) and Legal Notice Number 45 of 2018 (The Income Tax Act – amendment to LN. 86 of 2014), were approved for implementation.

**MIN.NO. CDL/067/2018: CONSIDERATION OF CAPITAL MARKET
AUTHORITY (SECURITIES, LENDING,
BORROWING AND SHORT-SELLING)
REGULATIONS, 2017**

The Committee Considered the Capital Market Authority (Securities, Lending, Borrowing and Short-Selling) Regulations, 2017. The Committee noted the regulation was tabled in the floor of the House on the 13th February 2018.

The Capital Markets Authority was established by the Capital Markets Act Cap485A to create incentives for longer investments and remove impediments in productive enterprise, enable wider participation of the general public in the securities market and derivatives market, create, maintain and regulate for securities to be traded in an orderly, fair and efficient manner, protect investor interests and facilitate the development of a framework to facilitate the use of electronic commerce for the development of capital markets.

On 29th December, 2017, the Cabinet Secretary for The National Treasury gazetted the Capital Markets (Securities Lending, Borrowing and Short-Selling) Regulations, 2017 in exercise of the power to make Regulations vide section 12. The Regulations provides that the:

1. Authority may exempt securities lending and borrowing upon the receipt of a written request stating the reasons for which the exemption is being applied for.
2. The Regulations further provide that securities lending and borrowing transaction shall
 - (a) be carried out by a regulated person;
 - (b) comply with these Regulations;
 - (c) comply with additional requirements imposed by the authority or its primary regulators;
3. A regulated person may act as an intermediary for a securities borrower or lender provided potential conflict of interest is disclosed.
4. Securities lending and borrowing shall be in the form of an agreement comprising the details provided for in Regulation 6(2).
5. A market intermediary shall submit to the Authority a securities lending and borrowing transaction once every month or such frequency as shall be determined by the Authority.
6. Each regulated person may be required by the Authority to report the net securities lending and borrowing position.

7. A borrower shall provide the lender with collateral of 100% of the borrowed value of the borrowed securities. Borrowed securities may include cash, government securities or other type of security specified by the Authority.
8. The lent securities and the collateral shall be reviewed daily and where this is not possible weekly and shall be adjusted in relation to the revaluation.
9. The collateral provided by the borrower may be used by the lender as:
 - (a) Cash- may be deposited in an interest bearing account
 - (b) Government security- overnight repo transactions;
 - (c) As the Authority may prescribe.
10. The lender shall be entitled to a lending fee from the borrower.
11. The borrower shall be entitled to full legal title of the securities borrowed and all economic benefits associated with the securities given as collateral including dividends and interest.
12. The Regulations further provide for short selling transactions which shall only be carried out by persons regulated by the Authority. A securities exchange shall for the purpose of formulating short transactions, formulate rules to provide for buying in. the Authority may impose a suspension on the prices that may be input on short sales of a security.

Committee Observations

The Committee observed the following:-

- (i) The Capital Markets (Securities Lending, Borrowing and Short-Selling) Regulations, 2017 (the Regulations) provides for the criteria for identifying securities to be lent and borrowed, the persons who can undertake securities lending and borrowing and the content of the securities lending agreement. The Regulations are made pursuant to the powers conferred by section 12 (1) of the Capital Markets Act, Cap 485A. However section 12(1) does not seem to expressly indicate the nature and scope of the Regulations as proposed contrary to Article 94(6) of the Constitution.

- (ii) The Regulations were published on 29th December, 2017 and were submitted to the National Assembly on 7th February, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act.
- (iii) The Regulations are unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.
- (iv) Annexed to the Rules was an explanatory memorandum which specifies that the Capital Market Authority uploaded the draft Regulations in the Authority's website, organized workshops and stakeholder sessions and occasionally posted updates on capital markets products and services including securities landing on Facebook.
- (v) Regulation 15(3) empowers a securities exchange or trading platform to formulate rules as: "15 (3) A securities exchange or a trading platform shall, for the purposes of facilitating short-selling transactions, formulate rules to provide for buying in.

Committee Resolution

The Committee resolved to urgently confer with the regulatory-making authority, The National Treasury, Capital Markets Authority pursuant to section 16 of the Statutory Instruments Act, before reporting to the House on its consideration of the Regulations. The meeting further directed that the National Treasury and Capital Markets Authority appear before the Committee to highlight more regarding the Capital Market Authority (Securities, Lending, Borrowing and Short-Selling) Regulations.

**MIN.NO. CDL/068/2018: CONSIDERATION OF NATIONAL
CONSTRUCTION AUTHORITY (AMENDMENT),
2017**

1. The Committee considered the National Construction Authority the Regulations, 2017. The Committee noted the regulation was tabled in the floor of the House on the 13th February 2018.
2. The National Construction Authority is established by the National Construction Authority Act No. 41 of 2011 to oversee the construction industry and coordinate its development. On 6th June, 2014, the Cabinet Secretary for Lands, Housing and Urban Development

gazetted the National Construction Authority Regulation, 2014 in exercise of the power to make Regulations vide section 42.

3. The Regulations provide for the registration of contractors including the application and evaluation, certification, exemption, renewal of registration and registration of foreign contractors.
4. The Regulations further provide for registration of all construction works, contracts or projects in the public or private sector with the Authority, the certification and accreditation of skilled construction workers and the collection and payment of construction levy.
5. On 20th November, 2017, the Cabinet Secretary for Lands, Housing and Urban Development gazetted the National Construction Authority (Amendment) Regulation, 2017 to amend provisions of the National Construction Authority Regulation, 2014 to delete the first, second and third schedule and provide for a stakeholder driven contractor evaluation criteria that reflects best practises in the construction industry.
6. The revised evaluation criteria will assist the Authority to validate the technical competencies of applicants; fragments construction works according to their technical differentiations and a comprehensive outline of the industry.

Committee Observations

1. The Committee observed that the National Construction Authority (Amendment) Regulation, 2017 (the Regulations) seek to amend existing Regulations that were made pursuant to sections 5(2) and 42 of the National Construction Authority Act No. 41 of 2011 which is the section that empowers the Cabinet Secretary to make Regulations.
2. It was also noted that the Regulations were published on 20th November, 2017 and were submitted to the National Assembly on 11th of January, 2018. This was outside the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act.
3. The Regulations were unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.
4. It was further noted that the an explanatory memorandum was annexed to the Rules which specifies the agencies and institutions consulted in four counties,

5. The Committee also observed that the NCA Regulations conform to all the requirements set out in section 13 of the Statutory Instruments Act.
6. Members also observed measures that the National Construction Authority has taken to implement the rule that deals with Collection and Payment of Construction Levy.

Committee Recommendations


The Committee recommended that National Construction Authority appear before the Committee to respond to Members queries regarding the regulation pursuant to section 16 of the Statutory Instruments Act, before reporting to the House on its consideration of the Regulations.

The meeting was scheduled for Thursday 1st March, 2018 at 12.00 p.m in Parliament Buildings.

The Committee also directed that technical officers who may assist in the technical issues may accompany the CEO National Construction Authority.

MIN.NO. CDL /069/2018: ADJOURNMENT

The meeting was adjourned at 11.10 am.

Signed:.......... Date: 13/3/2018.....

FOR HON. GLADYS BOSS-SHOLLEI, CBS, M.P.

(CHAIRPERSON)


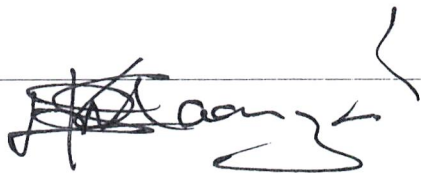
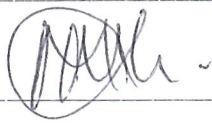
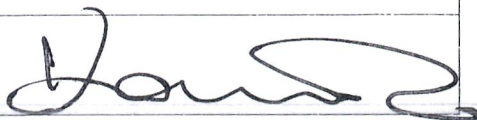
COMMITTEE ON DELEGATED LEGISLATION

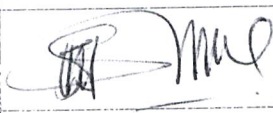

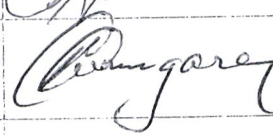
ADOPTION LIST

REPORT ON THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) (NO. 3) BILL, 2017

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 13/03/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	

	HON. MEMBER	SIGNATURE
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	