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**THE DEPARTMENTAL COMMITTEE ON
HOUSING, URBAN PLANNING AND PUBLIC WORKS**

REPORT

ON CONSIDERATION OF

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	DAY: TUESDAY
TABLED BY:	HON. GEORGE MURUGARA, MP, CHAIRPERSON SHAC
CLERK AT THE TABLE:	RUTHEN NGINYO

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS - NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MARCH 2023

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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Housing, Urban Planning and Public Works on its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, M.P. The Bill was published on 22nd November 2022 and read a First Time on 8th December 2022. Pursuant to Standing Order 127, the Bill was thereafter committed to the Departmental Housing, Urban Planning and Public Works to consider the proposed amendments to the Housing Act, Cap. 117 and the Architects and Quantity Surveyors Act, Cap. 525.

Following the placement of advertisements in the print media on 16th December 2022 requesting for comments on the Bill from members of the public and relevant stakeholders in accordance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received memoranda from the Kenya Law Reform Commission, the Ministry of Lands, Public Works, Housing and Urban Development, the National Housing Corporation and the Board of Registration of Architects and Quantity Surveyors (BORAQS) Kenya. The Committee thanks all the stakeholders who submitted their views to the Committee for consideration.

The Committee considered the views from the stakeholders on Thursday, 23rd and Tuesday, 28th February, 2023. Both the Ministry and the NHC were in support of the proposed amendment to the Housing Act, Cap. 117 while the BORAQS had a further amendment to the Architects and Quantity Surveyors Act (Cap. 525). The Kenya Law Reform Commission noted that there was no explanation in the Memorandum of objects and reasons on why the Housing Act, Cap. 117 was being amended. The Committee considered all the submissions and made its determination regarding the amendments to the two statutes.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also take this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and commitment towards the production of this Report. The Committee further wishes to record its appreciation for services rendered by the Committee Secretariat. Their efforts and input made the work of the Committee and production of this Report possible.

On behalf of the Departmental Committee on Housing, Urban Planning and Public Works, and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), with the recommendation that the proposed amendment to Section 3(3) of the Architects and Quantity Surveyors Act, Cap. 525 be passed as proposed, while the proposed amendment to Section 2 of the Housing Act, Cap. 117 be amended by deleting it in its entirety.

HON. JOHANA NG'ENO KIPYEGON, MP.

Chairperson - Departmental Committee on Housing, Urban Planning and Public Works

1.0 PREFACE

1. The Bill was Read a First Time on 8th December 2022 and consequently committed to the relevant Departmental Committees for consideration and reporting to the House pursuant to Standing Order 127(1). The Departmental Committee on Housing, Urban Planning and Public Works considered the amendments proposed to the Architects and Quantity Surveyors Act, Cap. 525 and the amendments to the Housing Act, Cap. 117.

1.1 Committee Mandate

2. The Departmental Committee on Housing, Urban Planning and Public Works is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;
 - 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 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 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. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - f(a). *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *(deleted).*
 - i. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within its mandate.*
3. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:
 - a) Housing;
 - b) Public Works;
 - c) Urban Planning;
 - d) Metropolitan Affairs;
 - e) Housing Development; and
 - f) Built Environment.
4. In executing this mandate, the Committee oversees various State Departments, namely:
 - a) The State Department of Housing and Urban Development; and
 - b) The State Department of Public Works.

The two State Departments are domiciled under the Ministry of Lands, Public Works, Housing and Urban Development.

1.2 Committee Membership

5. The Committee on Housing, Urban Planning and Public Works as constituted by the House comprises of the following members:

Chairperson

Hon. Johana Ng'eno Kipyegon, MP
Emurua Dikirr Constituency
UDA Party

Vice-Chairperson

Hon. Mugambi Murwithania Rindikiri, MP
Buuri Constituency
UDA Party

Members:

Hon. John Waluke Koyi, MP
Sirisia Constituency
Jubilee Party

Hon. Esther Muthoni Passaris, OGW, MP
Nairobi County Women Representative
ODM Party

Hon. Innocent Obiri Momanyi, MP
Bobasi Constituency
WDM-K Party

Hon. Joshua Kivinda Kimilu, MP
Kaiti Constituency
WDM-K Party

Hon. Samuel Kinuthia Gachobe, MP
Subukia Constituency
UDA Party

Hon. Abraham Kipsang Kirwa, MP
Mosop Constituency
UDA Party

Hon. Caleb Mutiso Mule, MP
Machakos Town Constituency
MCCP Party

Hon. (Dr.) Daniel Ogwoka Manduku, MP
Nyaribari Masaba Constituency
ODM Party

Hon. Irene Njoki Mrembo, MP
Bahati Constituency
Jubilee Party

Hon. Jane Wangechi Kagiri, MP
Laikipia County Women Representative.
UDA Party

Hon. John G. Mwaniki Mukunji, MP
Manyatta Constituency
UDA Party

Hon. Maurice Kakai Bisau, MP
Kiminini Constituency
DAP-K Party

Hon. Ronald Kamwiko Karauri, MP
Kasarani Constituency
Independent

1.3 Committee Secretariat

6. The Committee is facilitated by the following secretariat:

Mr. Ahmed Salim Abdalla
Clerk Assistant II/Head of Secretariat

Mr. Dickson Mogeni Gekara
Clerk Assistant III

Mr. Sisto Gichuhi Macharia
Clerk Assistant III

Ms. Emma Essendi
Senior Legal Counsel

Mr. James Muguna
Research Officer II

Mr. Abdinasir Moge
Fiscal Analyst II

Ms. Esther Ngechu
Senior Serjeant-At-Arms

Mr. Joshua Lenambeti
Serjeant-At-Arms

Ms. Deborah Mupusi
Media Relations Officer II

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. Kelvin Lengasi
Audio Recording Officer

2.0 OVERVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

2.1 Analysis of the Bill

7. The Bill seeks to make various amendments to various statutes. It is in keeping with the practice of consolidating minor amendments which do not merit the publication of separate Bills, into one Bill.
8. Clause 1: Provides for the short title.
9. Clause 2: Provides a schedule of amendments, as proposed to various statutes.
10. The Departmental Committee on Housing, Urban Planning and Public Works considered the amendments to the Architects and Quantity Surveyors Act (Cap. 525) and the Housing Act (Cap. 117), while the rest of the amendments were committed to other relevant Departmental Committees for consideration.

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

11. Following the call for memoranda from the public through the placement of advertisements in the print media on 16th December 2022 inviting stakeholders to submit their views on the Bill, the Committee received memoranda from the Kenya Law Reform Commission, the Ministry of Lands, Public Works, Housing and Urban Development, the National Housing Corporation and the Board of Registration of Architects and Quantity Surveyors (BORAQS) Kenya.
12. On 28th February 2023, the Committee considered its report on the Bill and adopted it in the same sitting.

3.1 Submissions by the Kenya Law Reform Commission

13. In their submission to the Committee, the Kenya Law Reform Commission noted that there is no explanation in the Memorandum of objects and reasons on why the Housing Act, Cap. 117 is being amended. The Committee took note of the omission.

3.2 Submissions by the Ministry of Lands, Public Works, Housing and Urban Development

14. In their submission to the Committee, the State Department for Housing and Urban Development, on behalf of the Ministry, explained that the definition of “affordable housing” was meant to provide clarity on the definition of “Affordable Housing” based on the universal definition and in line with the Kenyan housing policy and cognizant of the Kenyan context.
15. The State Department submitted that according to the Ministry’s policy, there is need to peg the definition of affordability to income and the ability to access other needs required for a decent quality of life.

16. They submitted that there was also a need to provide clarity on the definition of “affordable housing development projects” as distinct from the definition of “affordable housing” but appropriately related.
17. The Committee noted that the terms that the Bill sought to define have not been used anywhere in the Act and thus introducing the definition without any mention of the subject matter in the main body is not in line with the drafting practice of defining only terms that have been used in the Act.

3.3 Submissions by the National Housing Corporation

18. In their submission to the Committee, the National Housing Corporation (NHC) noted that the proposed definition of “affordable housing” means housing that is adequate, targeted for the population whose income is below the median individual or **housing** income, and whose cost does not exceed more than thirty per cent of household or individual income per month to rent or acquire”. They proposed to delete the word “housing” and substitute therefor the word “household” to capture the correct wording.
19. In addition, just like the Committee observed, the NHC noted that the term “affordable housing” is not used elsewhere in the Act. The Committee was therefore of the view that it was not necessary to introduce a definition of a term which is not used anywhere in the entire body of the Act.
20. The Committee resolved to engage the Ministry of Lands, Public Works, Housing and Urban Development at an appropriate time, so that the affordable housing concept is properly captured and explained in law, both in terms of its definition and its content.
21. Further, NHC proposed that the Committee proposes to insert a new paragraph (f) to include “voluntary contributions” as a source of funding for the National Housing Development Fund (NHDF). This is for purposes of expanding the sources of income for the National Housing Development Fund.
22. The Committee noted that NHDF is not the subject matter of the Bill and thus the amendment would contravene S. O. 133 (5). Further, it would be subject to the provisions of Article 114 of the Constitution and S. O. 114 as it introduces money Bill aspects.
23. The NHC also proposed the deletion of the words “local authorities” and substitute therefor with the words “county governments”, deletion of the words “local government” and substitute therefor with the words “devolved government” and deletion of the word “Minister” and substitute therefor with the words “Cabinet Secretary”. This is to align the Act with the current constitutional dispensation and structure of government.
24. The Committee was in agreement with these proposals. However, it was of the view that it would be best to incorporate these amendments during the general review of the Act.

3.4 Submissions by the Board of Registration of Architects and Quantity Surveyors (BORAQS) Kenya

25. In their submission to the Committee, BORAQS stated that the Act is old as it was enacted in 1934 and therefore provides a very low penalty of a fine of five thousand shillings only in case a person masquerades as a professional (including foreigners). They proposed to delete the expression “five thousand shillings” and substitute therefor the expression “one million shillings or imprisonment for a term not exceeding two years, or both”. The enhanced penalty is to safeguard the public interest and enable the Director of Public Prosecutions and BORAQS to effectively deter the practice of masquerading.
26. The Committee agreed that there was need to enhance the fine but further noted that the amendment as contained in the Statute Law was on a different subject matter, which was meant to harmonise the provisions of the Architects and Quantity Surveyors Act (Cap. 525) with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution. The Committee noted that widening the scope of the amendment, no matter how well intentioned, may subject the House to unnecessary legal challenges because the proposed amendment by BORAQS needed to be subjected to public participation, as it introduces a new subject matter.
27. The Committee noted that Standing Order 133 (5) expressly provides that no amendment shall be permitted to be moved *if the amendment deals with a different subject* or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.
28. The Committee was in agreement with the proposal and resolved that it will consider sponsoring an amendment to the Act which would be subjected to the various stages of enacting a Bill to ensure that the proposal is not lost due to legal technicalities.

4.0 COMMITTEE'S OBSERVATIONS

29. The Committee observed as follows:

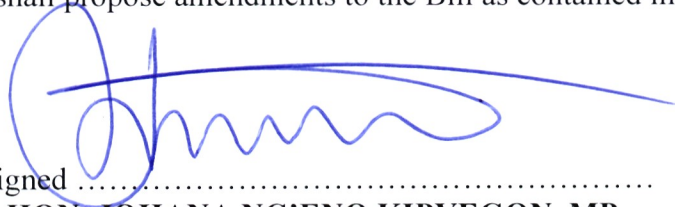
- i. The proposed amendment to the Architects and Quantity Surveyors Act (Cap. 525) was in order as it was meant to harmonise the provisions in the Act with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.
- ii. The proposed amendment to the Housing Act (Cap. 117) was well meant but would not serve the intended purpose. The Committee was of the view that any definition to Section 2 of the Housing Act, Cap. 117 or any other Act, should be accompanied with further or detailed provisions in the body of the Act. It was the Committee's view that one cannot define what has not been used in the Act.

5.0 COMMITTEE’S RECOMMENDATION

30. The Committee having considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), the stakeholders’ comments on the Bill and the observations on the memoranda recommends that the House:

- (i) Approves the proposed amendment to the Architects and Quantity Surveyors Act (Cap. 525); and
- (ii) Deletes the proposed amendments to the Housing Act (Cap. 117).

The Committee shall propose amendments to the Bill as contained in the Schedule.



Signed

HON. JOHANA NG’ENO KIPYEGON, MP.

Chairperson

**DEPARTMENTAL COMMITTEE ON
HOUSING, URBAN PLANNING AND PUBLIC WORKS**

Date *22/3/2023*

SCHEDULE

THAT the Schedule to the Bill be amended by deleting the proposed amendments to section 2 of the Housing Act, Cap. 117.

MINUTES OF THE ELEVENTH (11TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING AND PUBLIC WORKS HELD ON TUESDAY, 28TH FEBRUARY 2023 AT NOON, AT 5TH FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Johana Ng'eno Kipyegon, M.P. - *Chairperson*
2. Hon. Mugambi Murwithania Rindikiri, M.P. - *Vice Chairperson*
3. Hon. John Waluke Koyi, M.P.
4. Hon. Esther Muthoni Passaris, OGW, M.P.
5. Hon. Innocent Obiri Momanyi, M.P.
6. Hon. Joshua Kivinda Kimilu, M.P.
7. Hon. Abraham Kipsang Kirwa, M.P.
8. Hon. Irene Njoki Mrembo, M.P.
9. Hon. Ronald Kamwiko Karauri, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Samuel Kinuthia Gachobe, M.P.
2. Hon. Caleb Mutiso Mule, M.P.
3. Hon. Daniel Ogwoka Manduku, M.P.
4. Hon. Jane Wangechi Kagiri, M.P.
5. Hon. John G. Mwaniki Mukunji, M.P.
6. Hon. Maurice Kakai Bisau, M.P.

SECRETARIAT

1. Mr. Ahmed Salim Abdalla - Clerk Assistant II
2. Mr. Sisto Gichuhi Macharia - Clerk Assistant III
3. Mr. Dickson Mogeni Gekara - Clerk Assistant III
4. Ms. Emma Esendi - Senior Legal Counsel
5. Mr. Murimi Mwangi - Media Relations Officer III
6. Mr. Nelson Odida - Research Officer

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Consideration and Adoption of the Report on the Statute Law (Miscellaneous Amendments) Bill, 2022
5. Any Other Business
6. Adjournment

MIN No. HUPPW 046/2023: PRELIMINARIES

The meeting was called to order at 12:29 p.m. by the Chairperson followed by a word of prayer. The session chairperson then requested the members present to introduce themselves. The agenda of the meeting was subsequently adopted after being proposed by Hon. Esther Muthoni Passaris, OGW, M.P. and seconded by Hon. Abraham Kipsang Kirwa, M.P.

MIN No. HUPPW 047/2023:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred.

MIN No. HUPPW 048/2023:

CONSIDERATION AND ADOPTION OF THE REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

The Committee noted that the Bill was read a First Time on 8th December 2022 and consequently committed to the relevant Departmental Committees for consideration and reporting to the House pursuant to Standing Order 127(1). The Departmental Committee on Housing, Urban Planning and Public Works considered the amendments proposed to the Architects and Quantity Surveyors Act, Cap. 525 and the amendments to the Housing Act, Cap. 117. The Bill sought to make various amendments to various statutes. It is in keeping with the practice of consolidating minor amendments which do not merit the publication of separate Bills into one Bill. The Committee took note of submissions from stakeholders on the Bill.

Submissions by the Kenya Law Reform Commission

In their submission to the Committee, the Kenya Law Reform Commission noted that there is no explanation in the Memorandum of objects and reasons on why the Housing Act, Cap. 117 is being amended. The Committee took note of the omission.

Submissions by the Ministry of Lands, Public Works, Housing and Urban Development

1. In their submission to the Committee, the State Department for Housing and Urban Development, on behalf of the Ministry, explained that the definition of “affordable housing” was meant to provide clarity on the definition of “Affordable Housing” based on the universal definition and in line with the Kenyan housing policy and cognizant of the Kenyan context.
2. The State Department submitted that according to the Ministry’s policy, there is need to peg the definition of affordability to income and the ability to access other needs required for a decent quality of life.
3. They submitted that there was also a need to provide clarity on the definition of “affordable housing development projects” as distinct from the definition of “affordable housing” but appropriately related.
4. The Committee noted that the terms that the Bill sought to define have not been used anywhere in the Act and thus introducing the definition without any mention of the subject matter in the main body is not in line with the drafting practice of defining only terms that have been used in the Act.

Submissions by the National Housing Corporation

1. In their submission to the Committee, the National Housing Corporation (NHC) noted that the proposed definition of “affordable housing” means housing that is adequate, targeted for the population whose income is below the median individual or **housing** income, and whose cost does not exceed more than thirty per cent of household or individual income per month to rent or acquire”. They proposed to delete the word “housing” and substitute therefor the word “household” to capture the correct wording.
2. In addition, just like the Committee observed, the NHC noted that the term “affordable housing” is not used elsewhere in the Act. The Committee was therefore of the view that it

was not necessary to introduce a definition of a term which is not used anywhere in the entire body of the Act.

3. The Committee resolved to engage the Ministry of Lands, Public Works, Housing and Urban Development at an appropriate time, so that the affordable housing concept is properly captured and explained in law, both in terms of its definition and its content.
4. The NHC also proposed that the Committee proposes to insert a new paragraph (f) to include “voluntary contributions” as a source of funding for the National Housing Development Fund (NHDF). This is for purposes of expanding the sources of income for the National Housing Development Fund.
5. The Committee noted that NHDF is not the subject matter of the Bill and thus the amendment would contravene S. O. 133 (5). Further, it would be subject to the provisions of Article 114 of the Constitution and S. O. 114 as it introduces money Bill aspects.
6. The NHC also proposed the deletion of the words “local authorities” and substitute therefor with the words “county governments”, deletion of the words “local government” and substitute therefor with the words “devolved government” and deletion of the word “Minister” and substitute therefor with the words “Cabinet Secretary”. This is to align the Act with the current constitutional dispensation and structure of government.
7. The Committee was in agreement with these proposals. However, it was of the view that it would be best to incorporate these amendments during the general review of the Act.

Submissions by the Board of Registration of Architects and Quantity Surveyors (BORAQS) Kenya

1. In their submission to the Committee, BORAQS stated that the Act is old as it was enacted in 1934 and therefore provides a very low penalty of a fine of five thousand shillings only in case a person masquerades as a professional (including foreigners). They proposed to delete the expression “five thousand shillings” and substitute therefor the expression “one million shillings or imprisonment for a term not exceeding two years, or both”. The enhanced penalty is to safeguard the public interest and enable the Director of Public Prosecutions and BORAQS to effectively deter the practice of masquerading.
2. The Committee agreed that there was need to enhance the fine but further noted that the amendment as contained in the Statute Law was on a different subject matter, which was meant to harmonise the provisions of the Architects and Quantity Surveyors Act (Cap. 525) with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution. The Committee noted that widening the scope of the amendment, no matter how well intentioned, may subject the House to unnecessary legal challenges because the proposed amendment by BORAQS needed to be subjected to public participation, as it introduces a new subject matter.
3. The Committee noted that Standing Order 133 (5) expressly provides that no amendment shall be permitted to be moved *if the amendment deals with a different subject* or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.
4. The Committee was in agreement with the proposal and resolved that it will consider sponsoring an amendment to the Act which would be subjected to the various stages of enacting a Bill to ensure that the proposal is not lost due to legal technicalities.

Committee’s Observations

- i. The Committee observed that the proposed amendment to the Architects and Quantity Surveyors Act (Cap. 525) was in order as it was meant to harmonize the provisions in the

Act with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

- ii. The Committee further observed that the proposed amendment to the Housing Act (Cap. 117) was well meant but would not serve the intended purpose. The Committee was of the view that any definition to Section 2 of the Housing Act, Cap. 117 or any other Act, should be accompanied with further or detailed provisions in the body of the Act. It was the Committee's view that one cannot define what has not been used in the Act.

Committee's Recommendation

The Committee, having considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), the stakeholders' comments on the Bill and the observations on the memoranda resolved to recommend that the House approves the proposed amendment to the Architects and Quantity Surveyors Act (Cap. 525); and deletes the proposed amendments to the Housing Act (Cap. 117).

Adoption of the Committee Report

The Committee adopted its report on consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022). Adoption proposed by Hon. John Waluke, M.P. and seconded by Hon. Abraham Kirwa, M.P.

MIN No. HUPPW 049/2023

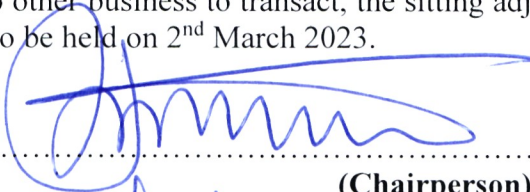
ANY OTHER BUSINESS

- 1. The committee proposed to undertake field visits to various projects being undertaken in the country. A proposed schedule of activities was adopted.
- 2. Members proposed that the committee considers arranging for virtual sittings to be especially for Members who are away on official duties.
- 3. In executing its mandate of oversight in the State Departments under the purview of the committee, members were of the view that the committee should be actively involved in all projects and activities happening.
- 4. Members resolved that during short recess, committee should not organize any activity or meetings to afford Members time to attend to their constituents.

MIN No. HUPPW 050/2023:

ADJOURNMENT

There being no other business to transact, the sitting adjourned at forty minutes past one o'clock. Next meeting to be held on 2nd March 2023.

Signed.....

(Chairperson)

Date.....

MINUTES OF THE TENTH (10TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING AND PUBLIC WORKS HELD ON THURSDAY, 23RD FEBRUARY 2023 AT NOON, ON 2ND FLOOR, CONTINENTAL HOUSE

MEMBERS PRESENT

1. Hon. Johana Ng'eno Kipyegon, M.P. - *Chairperson*
2. Hon. John Waluke Koyi, M.P.
3. Hon. Esther Muthoni Passaris, OGW, M.P.
4. Hon. Innocent Obiri Momanyi, M.P.
5. Hon. Joshua Kivinda Kimilu, M.P.
6. Hon. Abraham Kipsang Kirwa, M.P.
7. Hon. Daniel Ogwoka Manduku, M.P.
8. Hon. Maurice Kakai Bisau, M.P.

MEMBERS ABSENT WITH APOLOGY

9. Hon. Mugambi Murwithania Rindikiri, M.P. - *Vice Chairperson*
10. Hon. Samuel Kinuthia Gachobe, M.P.
11. Hon. Caleb Mutiso Mule, M.P.
12. Hon. Irene Njoki Mrembo, M.P.
13. Hon. Jane Wangechi Kagiri, M.P.
14. Hon. John G. Mwaniki Mukunji, M.P.
15. Hon. Ronald Kamwiko Karauri, M.P.

SECRETARIAT

1. Mr. Ahmed Salim Abdalla - Clerk Assistant II
2. Mr. Sisto Gichuhi Macharia - Clerk Assistant III
3. Mr. Dickson Mogeni Gekara - Clerk Assistant III
4. Ms. Emma Essendi - Senior Legal Counsel
5. Mr. George Ndenjeshe - Fiscal Analyst III
6. Mr. Kelvin Lengasi - Hansard Officer III
7. Mr. Murimi Mwangi - Media Relations Officer III
8. Ms. Florence Wanja - Protocol Officer
9. Ms. Esther Ngechu - Serjeant at Arms
10. Ms. Ruth Wanjiku - Media Relations - *Attachee*

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Legal Brief on the Statute Law (Miscellaneous Amendments) Bill, 2022
5. PBO Briefing on 2023 Budget Policy Statement
6. Adjournment

MIN No. HUPPW 041/2023: PRELIMINARIES

The meeting was called to order at 12.20 p.m. by the Chairperson followed by a word of prayer. The agenda of the meeting was subsequently adopted after being proposed by Hon. Joshua Kimilu, M.P. and seconded by Hon. Daniel Manduku, M.P.

MIN No. HUPPW 042/2023:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN No. HUPPW 043/2023:

LEGAL BRIEF ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

The Legal Officer briefed the committee on the proposed amendments to the architects and quantity surveyors act (cap. 525) and the housing act (cap. 117) as contained in the statute law (miscellaneous amendments) bill, 2022 (national assembly bill no. 60 of 2022). The proposed amendments to the Architects and Quantity Surveyors Act (Cap. 525) and the Housing Act (Cap. 117) referred to the Committee propose the following amendments:

1. The Architects and Quantity Surveyors Act (Cap. 525)

The Bill proposed to amend section 3 (3) of the Act by deleting the expression “Attorney-General” and substituting therefor the expression “Director of Public Prosecutions”. Section (3) of the Act provides as follows:

(3) Without prejudice to the powers of the Attorney-General, proceedings for an offence under this section may be instituted by any person who is authorized in that behalf, whether generally or specially, by the Board in writing.

This was in compliance with the functions of the Director of Public Prosecutions to exercise state powers of prosecutions under Article 157 (8) of the Constitution. The committee unanimously supported the amendment.

The Committee noted that there was one submission from the BORAQS on the amendment to Section 3 of the Architects and Quantity Surveyors Act (Cap. 525) i.e., A proposal to delete the expression “five thousand shillings” and substitute therefor the expression one million shillings or imprisonment for a term not exceeding two years, or both”.

It was noted that the amendment proposed by BORAQS was good and long overdue, but further noted that the said proposal was not on the main subject matter of the original proposal as published.

Way Forward

The Committee to sponsor a stand-alone amendment to accommodate the proposal by BORAQS and to subject it thorough public participation.

2. The Housing Act (Cap. 117)

The Bill proposed to amend section 2 of the Act by inserting the following new definitions in the proper alphabetical sequence:

“affordable housing” means housing that is adequate, targeted for the population whose income is below the median individual or housing income, and whose cost does not exceed more than thirty per cent of household or individual income per month to rent or acquire.

“affordable housing development project” means a housing development project targeted to construct and deliver affordable housing and approved by the Cabinet Secretary responsible for matters relating to housing.

The committee noted that these terms have not been used in the Act and thus there is need for further elaboration on the need for their introduction.

Way Forward

The Committee to meet on 28th February 2023 for further deliberations.

MIN No. HUPPW 044/2023:

BRIEF ANALYSIS OF THE BUDGET POLICY STATEMENT (BPS) FOR THE FINANCIAL YEAR 2023/24 AND OVER THE MEDIUM TERM

The Fiscal Analyst submitted that the Budget Policy Statement (BPS) 2023 laid out the broad strategic priorities and policy goals that will guide the National Government and County Governments in developing budgets for the next financial year (FY2023/24) and over the medium term. The Committee was further informed that by processing the BPS it had an opportunity to engage with the Ministries, Departments and Agencies (MDAs) it oversees and other stakeholders and make recommendations for submission to the Budget and Appropriation Committee for further processing and decisions before laying the report in the House for approval. The Theme of the Budget Policy Statement is “*Bottom-Up Economic Transformation Agenda for Inclusive Growth*”, which was in line with the manifesto of the new administration. The Fiscal Analyst presented the legal framework for processing the BPS 2023 and the key highlights of the 2023 BPS.

Highlights of Overall Expenditure Ceilings in 2023 BPS

It was noted that the proposed budget ceiling for 2023/24 was KSh. 3.6 trillion, representing an 8% increase over the approved budget for 2022/23, with CFS expenditures expected to increase by 14%. The main drivers of the increase in the CFS ceiling for the 2023/24 fiscal year are an increase in interest payments on domestic debt of KSh. 74.9 billion, an increase in pension payments of KSh. 19.9 billion, and an increase in payments of guaranteed loans of KSh. 14.9 billion.

Revenue Projection

Total revenue collection, including Appropriation-in-Aid (A.I.A), was expected to increase to KSh 2,894.9 billion (17.8 percent of GDP) in FY 2023/24, up from KSh 2,528.8 billion (17.4 percent of GDP) in FY 2022/23. This will be necessitated by the proposed tax administrative measures, such as rolling out the electronic Tax Invoice Management System (TIMS), integrating the KRA tax system with telecommunication companies, mapping of rental properties, and enhanced compliance by reducing the prevalence of counterfeit excisable product stamps in the market and if well implemented, may slightly boost revenue collection in the short run.

Projected Expenditure

Overall nominal expenditure and net lending were projected to be KSh 3,663.1 billion, up from KSh 3,394.1 billion (23.4 percent of GDP) in the FY 2022/23 budget. This includes recurring expenditure of KSh 2,459.3 billion (15.1 percent of GDP) and development expenditure of KSh 769.3 billion (4.7 percent of GDP). The National Treasury projects that total expenditure net lending will decrease from 23.4 percent in 2022/23 to 22.5 percent in 2023/24 as share of GDP. The proposed strategies aimed at slowing down the growth in expenditure include the elimination of non-priority expenditures, the elimination of consumption subsidies, the use of public-private partnerships (PPPs) in commercially viable projects, rolling out of e-procurement system, the implementation of the superannuation pension scheme and rolling out of the Public Investment Management System (PIMIS).

Way forward

The committee noted that the proposals aimed at improving efficiency are laudable and if implemented well may contribute to curtailing expenditure growth over the medium term.

Deficit and Financing

The combined impact of the policies aimed at increasing tax revenue collection and curtailing the growth in expenditures, if fully implemented, was expected to reduce the fiscal deficit including grants from KSh. 833.9 billion (5.7 percent of GDP) in 2022/23 to KSh. 720.1 billion (4.4 percent of GDP) in 2023/24., hence this will lower growth of public debt and improving debt sustainability. In that regard, the government plans to finance the fiscal deficit with net external and net domestic resources totaling KSh198.6 billion (1.2 percent of GDP) and KSh521.5 billion (3.2% of GDP), respectively.

Broad Policies

The committee was informed that the Budget Policy Statement was anchored on five pillars and twelve enablers that are broadly expected to contribute to six broad objectives. These pillars include Agriculture, MSME Economy, Housing and Settlement, Healthcare, and Digital and Creative Economy. The choice of these sectors as the key pillars is informed by their potential to turnaround the economy given their impact on growth, household welfare and their interlinkages with other sectors and on enablers the turnaround strategy include Infrastructure; Manufacturing; Blue Economy; the Services Economy, Environment and Climate Change; Education and Training; Women Agenda; Social Protection; Sports, Culture and Arts; and Governance.

Way Forward

The committee noted that some of the strategic interventions in infrastructure, manufacturing, blue economy, environment, climate change, education and training, women's agenda, youth empowerment and development agenda, social protection, sports, culture, and arts that the Government plans to implement are broadly stated and not very specific in nature. The location and intended beneficiaries of many of the interventions are not clearly stated and the implementation framework isn't very clear and may be highlighted in the Medium-Term Plan 4 which the government is finalizing.

Policy Prioritization trends in Past BPSs

The committee noted that in the most recent BPS policy priorities, the government prioritized social housing and affordable housing programs to address housing challenges and limit the spread of slums in urban areas. Since the Affordable Housing Pillar was unveiled as part of the Big Four Agenda, the previous government intended to mobilize resources through the National Housing Development Fund and foster Public-Private Partnerships to fund 500,000 affordable housing units between 2017-2022.

Review of Past Budget Performance

The committee noted that the exchequer performance under development expenditure was 93.2% in FY2021/22, implying that 6.8% was not absorbed during the period under review. As a result, any low resource uptake for each fiscal year could be due to MDA making a commitment and the resource not arriving or MDA delaying payments or delay of exchequer release as a result of lack of enough revenue to implement 100%, resulting in a low absorption rate and pending bills.

Committee Observation

The committee observed that Pending bills will always have an impact on future budget implementation because their accumulation will always have an effect on the next fiscal year, affecting liquidity in the economy, particularly in the private sector, and thus negatively impacting overall economic growth.

The Fiscal Analyst also presented the sectoral expenditure ceilings in the State Departments for Housing Urban Development and Public Works. The increase in ceiling of the State Department for Housing and Urban Development is primarily attributed to an increase in the ceilings in the Urban and Metropolitan Development program, which is proposed to increase from KSh. 5,720million in the FY2022/23 approved budget to KSh. 11,205million. This was on account of increase in donor funding for the Kenya Urban Support Program from KSh.2.1 billion to KSh.7.2 billion for FY2022/23.

The proposed increase under development expenditure was on account of increase in donor funding project that is Kenya Urban Support Program from KSh. 2.1 billion to KSh.7.2 billion in the FY2022/23.

In addition, the State Department for Public Works, on the other hand, is proposed to have a ceiling of KSh. 4,701 million. This comprises recurrent and development expenditures of KSh.3, 557 million and KSh.1, 144 million, respectively. However, the development expenditure is proposed to be reduced by KSh. 166 million. The reduction is on account of reduction in Appropriation in Aid for the state department in next financial year.

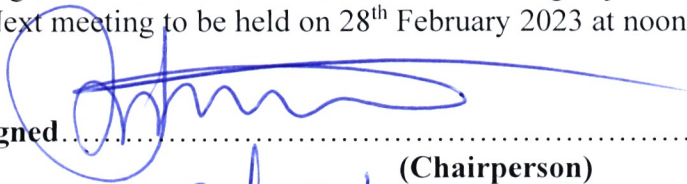
Way forward

In view of the 2023 BPS summary of analysis the committee made the following policy options that maybe considered:

- i. To approve the BPS as presented including the ceilings as proposed: This can be done if the 2023 BPS is fully in line with the Committees views including that of stakeholders. The National Assembly has power to review policies and ceilings put forward in the BPS (Option2).
- ii. To propose adjustments to the policy, programmes and ceilings: this process will be a culmination of analysis and engagement of the relevant agencies by the Committee and proposing requisite amendments to the BPS.

MIN No. HUPPW 045/2023: ADJOURNMENT

There being no other business to transact, the sitting adjourned at forty-three minutes past two o'clock. Next meeting to be held on 28th February 2023 at noon.

Signed 
 (Chairperson)

Date 22/3/2023



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT (FIRST SESSION) 2022
THE NATIONAL ASSEMBLY

In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'uwa, CRS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes:-

1. The Appellate Jurisdiction Act (Cap 9)
2. The Vexatious Proceedings Act (Cap 41)
3. The National Flag, Emblems and Names Act (Cap 77)
4. The Official Secrets Act (Cap 187)
5. The Geneva Conventions Act (Cap 198)
6. The Pharmacy and Poisons Act (Cap 244)
7. The Mental Health Act (Cap 246)
8. The Land Consolidation Act (Cap 283)
9. The Land Adjudication Act (Cap 284)
10. The Marine Insurance Act (Cap 380)
11. The Local Manufacturers (Export Compensation) Act (Cap 482)
12. The Capital Markets Act, 1997 (No. 3 of 1997)
13. The Architects and Quantity Surveyors Act (Cap 525)
14. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)
15. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
16. The Retirement Benefits Act, 1997 (No. 9 of 1997)
17. The Co-operative Societies Act, 1997 (No. 12 of 1997)
18. The Central Depositories Act, 2000 (No. 4 of 2000)
19. The Sexual Offences Act, 2008 (No. 3 of 2008)
20. The National Gender and Equality Commission Act, 2011 (No. 10 of 2011)
21. The Labour Institutions Act, 2007 (No. 12 of 2007)
22. The Accountants Act, 2008 (No. 15 of 2008)
23. The International Crimes Act, 2008 (No. 16 of 2008)
24. The Biosafety Act, 2009 (No. 2 of 2009)
25. The Counter-Trafficking in Persons Act, 2010 (No. 9 of 2010)
26. The Tourism Act, 2011 (No. 28 of 2011)
27. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)

The Bill seeks to amend these Acts in order to harmonize their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

29. The Judicial Service Commission Act, 2011 (No. 1 of 2011)

30. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)

31. The Safarics and Reinsurance Commission Act, 2011 (No. 10 of 2011)

32. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)

33. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)

34. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)

35. The National Police Service Commission Act, 2011 (No. 30 of 2011)

36. The National Land Commission Act, 2012 (No. 5 of 2012)

37. The Teachers Service Commission Act, 2012 (No. 20 of 2012)

38. The Controller of Budget Act, 2016 (No. 28 of 2016)

39. The Public Service Commission Act, 2017 (No. 17 of 2017)

The Bill seeks to amend these Acts to require the presentation of Annual Reports by the Commissions/Offices within six (6) months after the end of the year to which they relate.

The Excise Duty Act, 2015 (No. 23 of 2015)

a Bill seeks to amend the First Schedule to the Excise Duty Act to correct mistakes in a tariff number.

42. The Judiciary Act (Cap 8)
43. The Penal Code (Cap 83)
44. The Criminal Procedure Code (Cap 75)
45. The Evidence Act (Cap 80)
46. The Public Holidays Act (Cap 110)
47. The Copyright Act 2001 (No. 12 of 2001)
48. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)
49. The Merchant Shipping Act, 2008 (No. 3 of 2008)

50. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)
51. Leadership and Integrity Act, 2012 (No. 19 of 2012)
52. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)
53. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)
54. The Water Act, 2016 (No. 43 of 2016)
55. The Bribery Act, 2016 (No. 47 of 2016)
56. The Scrap Metal Act, 2015 (No. 1 of 2015)
57. The Energy Act, 2019 (No. 14 of 2019)
58. The Housing Act (Cap 17)

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22nd November 2022 and read a First Time in the House on 8th December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE	
i. The Vexatious Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii. The Extradition (Commonwealth Countries) Act (Cap 77)	
iii. The Official Secrets Act (Cap 187)	
iv. The Sexual Offences Act, 2008 (No. 3 of 2008)	
v. The International Crimes Act, 2008 (No. 16 of 2008)	
vi. The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	
x. The Penal Code (Cap 83)	
xi. The Criminal Procedure Code (Cap 75)	
xii. The Evidence Act (Cap 80)	
xiii. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv. Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi. The Bribery Act, 2016 (No. 47 of 2016)	
xvii. The Judiciary Act (Cap 8)	
xviii. The Appellate Jurisdiction Act (Cap 9)	
i. The Capital Markets Act (Cap 485A)	Departmental Committee on Finance and National Planning
ii. The Retirement Benefits Act, 1997 (No. 9 of 1997)	
iii. The Central Depositories Act, 2000 (No. 4 of 2000)	
iv. The Accountants Act, 2008 (No. 15 of 2008)	
v. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)	
vi. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)	
vii. The Controller of Budget Act, 2016 (No. 28 of 2016)	
viii. The Excise Duty Act, 2015 (No. 23 of 2015)	

i. The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii. The Public Holidays Act (Cap 110)	
iii. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)	
iv. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)	
v. The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i. The Marine Insurance Act (Cap 380)	Departmental Committee on Transport and Infrastructure
ii. The Kenya Roads Board Act, 1999 (No. 7 of 1999)	
iii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv. The Merchant Shipping Act, 2008 (No. 4 of 2008)	
i. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii. The Teachers Service Commission Act, 2012 (No. 20 of 2012)	
i. The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii. The Land Adjudication Act (Cap 284)	
iii. The National Land Commission Act, 2012 (No. 5 of 2012)	
i. The Co-operative Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii. The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii. The Local Manufacturers (Export Compensation) Act (Cap 482)	
i. The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii. The Mental Health Act (Cap 246)	
i. The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii. The Public Service Commission Act, 2017 (No. 17 of 2017)	
i. The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii. The Housing Act (Cap 17)	
i. The National Museums and Heritage Act, 2006 (No. 6 of 2006)	Departmental Committee on Sports and Culture
ii. The Copyright Act 2001 (No. 12 of 2001)	
The Tourism Act, 2011 (No. 28 of 2011)	Departmental Committee on Tourism and Wildlife
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)	Departmental Committee on Social Protection
The Geneva Conventions Act (Cap 198)	Departmental Committee on Defence, Intelligence and Foreign Relations
The Energy Act, 2019 (No. 14 of 2019)	Departmental Committee on Energy
The Water Act, 2016 (No. 43 of 2016)	Departmental Committee on Blue Economy and Irrigation
The Biosafety Act, 2009 (No. 2 of 2009)	Departmental Committee on Agriculture and Livestock

IN COMPLIANCE with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committee hereby invite the public and interested stakeholders to submit memoranda on the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke/the-national-assembly/doing-business/calls.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41962-00100, Nairobi or hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to enq@parliament.go.ke to be received on or before Friday, 6th January, 2023 by 5.00 pm.

SAMUEL NJIROGGE
CLERK OF THE NATIONAL ASSEMBLY
10th December, 2022

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote
Ref. No. **KLRC/RES/93 VOL.VI (30)**
and Date

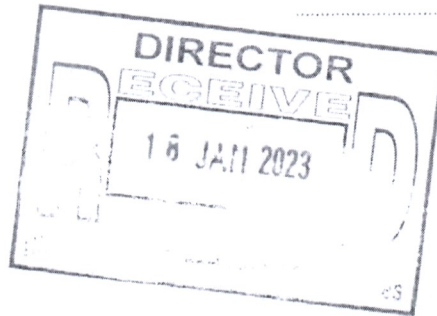
D/DC
Please deal
17/01/23



KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

9th January, 2023

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi



(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear *Jerem,*

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

We acknowledge with thanks receipt of your letter Ref.NA/DDC/HUPPW/GEN/2022/009 dated 23rd December, 2022.

The Kenya Law Reform Commission has studied the proposed Bill and prepared comments in the attached matrix.

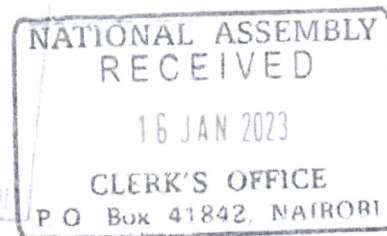
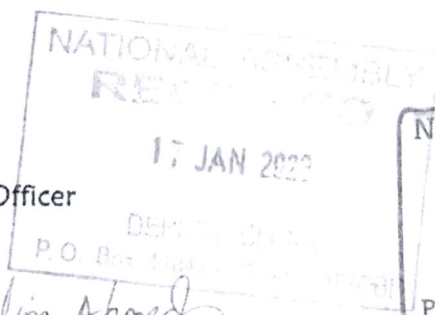
The Commission looks forward to a fruitful engagement with the relevant Committees of the 13th House.

As always, we are grateful for your continued support and collaboration.

Yours *Sincerely,*
[Signature]

Joash Dache, MBS
Secretary/Chief Executive Officer

Encls.



Ms. Salim Ahmed
Pls take
15/01/23



KENYA LAW REFORM COMMISSION COMMENTS ON THE PROPOSED STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2022 (NATIONAL ASSEMBLY BILL NO 60 OF 2022)

General Comments

1. The contents of the Schedule differ from the objects and reasons contained in the Memorandum in the following instances:
 - a) The Memorandum of objects and reasons states the Bill seeks to amend the Kenya Law Reform Commission Act to clarify the provisions on the attendance of ex-officio members at meetings of the Commission, yet the Schedule does not have any proposal to amend the Kenya Law Reform Commission Act.
 - b) The proposals to amend the Housing Act Cap 117 are contained in the Schedule but no explanation is offered in the Memorandum of objects and reasons.
 - c) In virtually all the proposals seeking to delete the words "Attorney-General" and substitute therefor the words "Director of Public Prosecutions", the justification in the Memorandum is given as "...harmonize provision with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution." Article 157 (2) of the Constitution relates to the nomination, approval and appointment of the DPP and not to the functions of the office.
 - d) No reasons are offered for the proposed amendment to the Vetting of Judges and Magistrates Act, 2011.
2. It is generally accepted that the purpose of Miscellaneous Amendments across many jurisdictions is to introduce minor, non-controversial amendments or to repeal spent or redundant legislation with the intention to avoid many small amendment Bills. If proposals are substantive and affect broader public, they must be contained in a

separate Bill and subjected to stakeholder/public consultations. The proposals relating to amend some laws like the Copyright Act No 12 of 2001, Water Act, 2016 and the Energy Act, 2019 are, in our view, substantive and ought to be contained in a separate Amendment Bills.

Specific comments

S/No	Statute/Act	Provisions	Rationale for Amendment Recommendation	Proposed Amendment
1.	Citation	This Act may be cited as the Statute Law (Miscellaneous Amendments), Act 2022.	This Bill was published on 22 November, 2022. There was a Bill before the National Assembly bearing a similar name published on 10 th May, 2022. In order to differentiate the two for purposes of reference they should bear distinct citations.	This Act may be cited as the Statute Law (Miscellaneous Amendments), Act, No 2 of 2022.
2.	S. 146 of the Penal Code	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities"	The elements of this offence are all provided for under the Sexual Offences Act so the section may no longer be useful. Secondly, the amendment as proposed does not achieve the purpose stated in the Memorandum of objects and reasons. It should be recast as shown in the next column.	Either: Delete the entire section 146 of the Penal Code. OR In the alternative redraft the proposals as follows— Delete the marginal note and substitute therefor the following— "Defilement of persons with mental disabilities"

				Delete the words "an idiot of imbecile" and substitute therefor the words "a person with mental disability".
3.	S 83 of the Criminal Procedure Code, Cap 75	Deletion and substitution as proposed in the Bill	<p>First, it is not necessary to list by title the offices to which the Director can delegate.</p> <p>It suffices to give a general power to delegate without further restrictions and complexities.</p> <p>Secondly, the clause as proposed the conflicts with section 22 of the Office of the Director of Public Prosecutions Act which deals with delegation of powers by the DPP.</p>	<p>Either delete section 83 in its entirety or recast it as follows:</p> <p>(1) The Director of Public Prosecutions may, in writing, delegate any power and assign any duty conferred terms of this Act or any other law to a subordinate officer.</p> <p>(2) Any power exercised or functions performed under this Act by a member of staff of the Office shall be deemed to have been exercised or performed by the Director.</p> <p>(3) A delegation or assignment under subsection (1) does not prevent the Director from exercising the power in question.</p>

4.	Copyright Act, no. 12 of 2001	Proposed insertion of new sections as contained in the Bill	The proposals are too substantive to be contained in a miscellaneous Bill.	Delete and prepare a separate Copyright (Amendment) Bill, 2023
5.	Water Act, 2016	Proposed insertion of new sections as contained in the Bill	The proposals are too substantive to be contained in a miscellaneous Bill.	Delete and prepare a separate Water (Amendment) Bill, 2023
6.	Energy Act, No 1 of 2019	Proposed insertion of new sections as contained in the Bill	The proposals are too substantive to be contained in a miscellaneous Bill.	Delete and prepare a separate Energy (Amendment) Bill, 2023

NB: KLRC does not have alternative views on the rest of the proposals to the extent that they represent policy position of the respective MDAs.



Mr. Salim
Take necessary action
5/1/23

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

State Department for Housing and Urban Development

6th Floor,
Ardhi House
1st Ngong Avenue
Email: ps@housingandurban.go.ke

OFFICE OF THE PRINCIPAL SECRETARY
P.O. Box 30119-00100
Tel: +254 (0) 20 2734886
NAIROBI

REF: MLPWHUD/HUD/ADM/1/1/1 VOL.I(145)

DATE: 3rd January 2023

Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Mr. Salim
The attention of
committee on
housing
5/1/23

Dear Mr. Njoroge,

INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

We refer to the above-captioned matter and more particularly to your letter Ref: NA/DDC/HUPPW/GEN/2022/009 dated 22nd December 2022.

As requested we enclose herein, as Annexure 1 in matrix format, the proposed amendment, and justification to the Housing Act, Cap 117 in 20 hard copies. We are also sharing a soft copy of the matrix with cna@parliament.go.ke.

Yours Sincerely,

Charles M. Hinga, CBS, CA(SA)
PRINCIPAL SECRETARY

Encl.

c.c **Zachariah M. Njeru**
Cabinet Secretary
Ministry of Lands, Public Works, Housing
and Urban Development
NAIROBI

DIRECTOR
RECEIVED
05 JAN 2023
Directorate of Departmental Control

NATIONAL ASSEMBLY
RECEIVED
04 JAN 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

Hon. Justin B. N. Muturi, EGH
Attorney General of the Republic of Kenya,
Office of the Attorney General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

QS. David Mathu Njuguna
CEO & Managing Director
National Housing Corporation
NHC House, 10th Floor, Aga Khan Walk
NAIROBI

Joash Dache, MBS
Secretary/Chief Executive Officer
Kenya Law Reform Commission (KLRC)
Reinsurance Plaza, 3rd Floor, Taifa Road
NAIROBI

ANNEXURE 1

REPUBLIC OF KENYA



MINISTRY OF LANDS, PUBLIC WORKS, HOUSING, AND URBAN
DEVELOPMENT

State Department for Housing and Urban Development

PROPOSED LEGISLATIVE CHANGES TO THE HOUSING ACT
CAP 117, LAWS OF KENYA

3RD JANUARY 2023

ITEM	REQUEST	PROPOSED CHANGE	JUSTIFICATION
1.	<u>HOUSING ACT</u>		
	<p>Section 2 This section provides for definitions in the Housing Act.</p>	<p>Section 2 of the Act should be amended to include the definition of affordable housing as follows:</p>	<p>This is to provide clarity on the definition of Affordable Housing based on the universal definition and in line with the Kenyan housing policy and cognizant of the Kenyan context.</p>
	<p>There is now need to define "affordable housing" under Section 2</p>	<p>"affordable housing" means housing that is adequate, targeted for the population whose income is below the median individual or household income, and whose cost does not exceed more than 30% of household or individual income per month to rent or acquire.</p>	<p>According to our policy, we need to peg the definition of affordability to income and the ability to access other needs required for a decent quality of life.</p>
	<p>Section 2 This section provides for definitions in the Housing Act.</p>	<p>Section 2 of the Act should be amended to include the definition of affordable housing development projects as follows:</p>	<p>This is to provide clarity on the definition of affordable housing development projects as distinct from the definition of affordable housing but appropriately related.</p>
	<p>There is now need to define "affordable housing development projects" under Section 2</p>	<p>"affordable housing development projects" means a housing development project targeted to construct and deliver affordable housing and approved by the Cabinet Secretary responsible for matters relating to housing."</p>	

① D/DC
Please deal
11/01/23



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

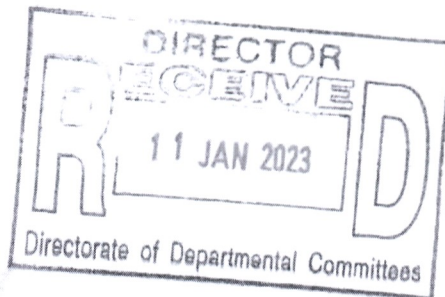
② Mr Ahmed Salim
Please deal
11/1/23

Our Ref: AG/LDD/190/1/84

10th January, 2023

Your Ref. NA/DDC/HUPPW/GEN/2022/009

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI



(Attn: Mr. Jeremiah Ndombi MBS)

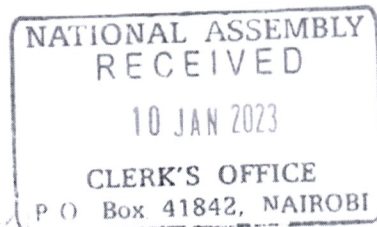
RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DDC/HUPPW/GEN/2022/009 requesting our views on the proposed amendments to the Housing Act (Cap. 117) and Architects and Quantity Surveyors Act (Cap. 525) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Lands, Public Works, Housing and Urban Development, which is responsible for the policy relating to the aforementioned statutes and the same is annexed hereto for your consideration and further necessary action.

Samson Davies Maundu
Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

Copies to: Hon. J.B.N. Muturi EGH
Attorney-General



NATIONAL ASSEMBLY RECEIVED

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 222001/2/3/4/5 1355-07119445555-0732529995
E-MAIL: info.state.law.office@kenya.go.ke WEB: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELASSIE AVENUE, P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029, 2240337
E-MAIL: legal@justice.go.ke WEB: www.justice.go.ke

P. O. Box 41542
1561-9001-2008 Certified



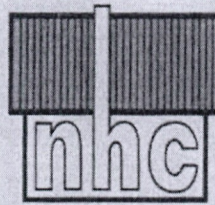
Mr. Kennedy Ogeto CBS
Solicitor-General

M.N. Nzioka (Mrs.)
Deputy Solicitor-General



NATIONAL HOUSING CORPORATION

From the office of the
Managing Director



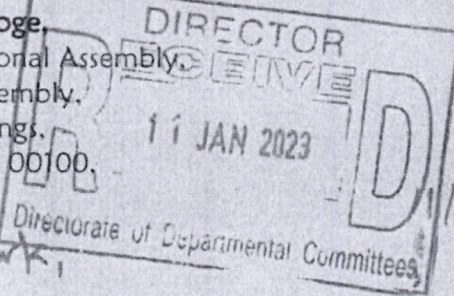
NHC House
Aga Khan Walk
P. O. Box 30257-00100 NAIROBI
Tel: +254 3312147/3312149
E-mail: info@nhckeny.go.ke
Website: www.nhckeny.go.ke

Your Ref: NA/DDC/HUPPW/GEN/2022/009

Date: 6th January, 2023

Our Ref: NHC/CONF/GEN/1/319.III (29) DM

Mr. Samuel Njoroge,
Clerk of the National Assembly,
The National Assembly,
Parliament Buildings,
P.O. Box 41842 - 00100,
NAIROBI.



D/DC
Please deal.
11/01/23

②
Ahmed
Sahin
2023
11/01/23

Dear Clerk,

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No. 60 OF 2022).

The above subject and your letter Reference No. NA/DDC/HUPPW/GEN/2022/009 dated 22nd December 2022 refers.

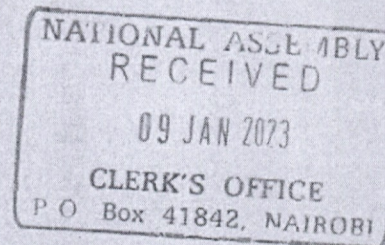
The Corporation has reviewed the proposed amendment to the Housing Act (Cap 117) and the Architects and Quantity Surveyors Act (Cap 525), and hereby presents written submissions on further proposed amendments as captured in the table matrix format and attached hereto as Appendix 1; in 20 hard copies. Further, we have emailed a soft copy of our submissions to cna@parliament.go.ke

Kindly acknowledge receipt hereof.

Yours

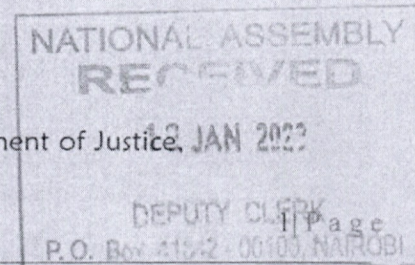
Sincerely,

Q.S. DAVID MATHU
MANAGING DIRECTOR



Copy to: **Mr. Zachariah M. Njeru,**
Cabinet Secretary
Ministry of Lands, Public Works, Housing
and Urban Development
NAIROBI

Hon. Justin B. N. Muturi, EGH,
Attorney General of the Republic of Kenya,
Office of the Attorney General and Department of Justice,
Sheria House, Harambee Avenue,
NAIROBI.



Mr. Charles M. Hinga, CBS, CA(SA),
Principal Secretary,
State Department for Housing and Urban Development,
Ministry of Lands, Public Works, Housing and Urban Development,
P O Box 30119 - 00100,
NAIROBI.

Mr. Joash Dache, MBS,
Secretary/Chief Executive Officer,
Kenya Law reform Commission (KLRC),
Reinsurance Plaza, 3rd floor, Taifa road,
NAIROBI.

Encl.

DM/knn

APPENDIX 1

**SUBMISSIONS ON PROPOSED AMENDMENTS AND OR COMMENTS BY
NATIONAL HOUSING CORPORATION**

Act	Provision	Proposed amendment	Justification
Housing Act (Cap 117)	Section 2	Revise the proposed definition of "Affordable Housing" to read; means housing that is adequate, targeted for the population whose income is below the median individual or household income, and whose cost does not exceed more than thirty per cent of the household or individual income per month to rent or acquire. However, Affordable Housing is not appearing elsewhere in the body of the Act; other than in the proposed definition.	To capture the correct wording.
Housing Act (Cap 117)	Section 7	Introduce "Voluntary contribution" as one of the sources of NHDF, under 7 (3)(f).	To expand the sources of NHDF.
Housing Act (Cap 117)	Sections 2, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 28 and 31.	Substitute "County Government" in place of Local Authority.	To align with present Constitutional dispensation and devolved Government, by recognizing and referring to County Government as successor to the Local Authority.
Housing Act (Cap 117)	Sections 14, 15 and 29.	Substitute "County Governments" in place of Local Authorities.	To align with present Constitutional dispensation and devolved Government, by recognizing and referring to County Governments as successors to the Local Authorities.
Housing Act (Cap 117)	Section 22.	Substitute "Devolved Government" in place of Local Government.	To align with present Constitutional dispensation and devolved Government.
Housing Act (Cap 117)	Sections 3, 5, 6, 8, 9, 10, 16, 22, 23, 24, 25, 26, 27 and 28	Substitute "Cabinet Secretary" in place of Minister	To align with present Constitutional dispensation.

 06/01/2023

BORNO

② Mr Ahmed Salim
Please deal
2/1/23



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

① D/Departmental Committees
4/1/23

Our Ref: AG/LDD/190/1/84

30th December, 2022

Your Ref. NA/DDC/HUPPW/GEN/2022/009

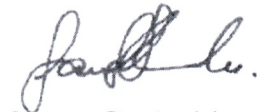
The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

(Attn: Mr. Jeremiah Ndombi MBS)

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DDC/HUPPW/GEN/2022/009 requesting our views on the proposed amendments to the Housing Act (Cap. 117) and Architects and Quantity Surveyors Act (Cap. 525) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Lands, Public Works, Housing and Urban Development, which is responsible for the policy relating to the aforementioned statutes and shall share the results of that guidance as and when we receive it.


Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

NATIONAL ASSEMBLY
RECEIVED
04 JAN 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

DIRECTOR
RECEIVED
06 JAN 2023
Directorate of Departmental Committees

Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461 2251355/07119445555-0732529995
E-MAIL: info.statelaw.office@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASHIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029; 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



Mr. Kennedy Ogeto CBS
Solicitor-General

M.N. Nzioka (Mrs.)
Deputy Solicitor-General

① FIDC
Please deal
13/01

② Ahmed Salim
TNA
16/1/23



OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/84
Your Ref. NA/DDC/HUPPW/GEN/2022/009

12th January 2023

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI



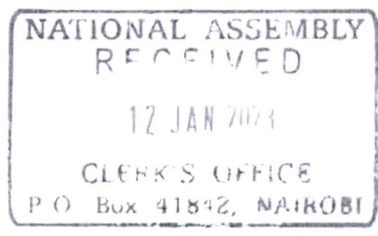
(Attn: Mr. Jeremiah Ndombi MBS)

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DDC/HUPPW/GEN/2022/009 requesting our views on the proposed amendments to the Housing Act (Cap. 117) and Architects and Quantity Surveyors Act (Cap. 525) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Lands, Public Works, Housing and Urban Development, which is responsible for the policy relating to the aforementioned statutes and are in receipt of representations from the Board of Registration of Architects and Quantity Surveyors, which is an entity in the Ministry. The same is attached hereto for your consideration and further necessary action.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

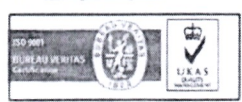


Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

SHERIA HOUSE HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355 07119445555 0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASHI AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



Mr. Kennedy Ogeto CBS
Solicitor-General

M.N. Nzioka (Mrs.)
Deputy Solicitor-General



**Board of Registration of Architects and Quantity Surveyors
(BORAQS) Kenya**

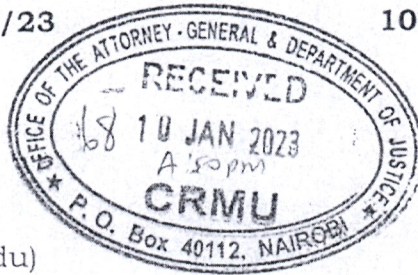
Ngong Road
Transcom House Annexe
Ground Floor

P. O. Box 40866 – 00100
Nairobi, Kenya
Tel/Fax: 2728444/0726243005
Email: info@boraqs.or.ke
boraqs@gmail.com
www.boraqs.or.ke

REF: BORAQS/AG/SLB/01/23

10th January, 2023

The Hon. Attorney General
Sheria House,
NAIROBI



(Attn: Samson Davies Maundu)

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS
NO. 60 OF 2022)**

Please refer to your letter dated 30th December, 2022 Ref. No. AG/LDD/190/1/84 on the above captioned matter.

We have perused the contents of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 60 of 2022) and your request for our views and/or policy guidance in respect of the proposed amendments to the Architects and Quantity Surveyors Act (Cap. 525) of the Laws of Kenya.

Attached herewith, please find a matrix specifying our proposals and/or views in respect of the same, for your further necessary action.

Yours faithfully,

QS. George C. Omondi
REGISTRAR



Encl.

CC: The Principal Secretary
State Department of Public Works

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No. 60 OF 2022)

<i>Written Law</i>	<i>Provision</i>	<i>Proposed Amendment</i>	<i>Justification</i>
The Architects and Quantity Surveyors Act (Cap. 525)	s. 3 (2)	Delete the expression “five thousand shillings” and substitute therefor the expression “one million shillings or imprisonment for a term not exceeding two (2) years, or both”.	<p>The Architects and Quantity Surveyors Act (Cap. 525) was enacted in 1934 during the colonial times.</p> <p>The practice of architecture and quantity surveying has faced considerable changes and challenges over time, owing to the mushrooming of non-registered persons (quacks) and collapsing of buildings, among others.</p> <p>The current Act provides very low penalties for contravention of the Act where any person masquerading as a professional (including foreigners), gets away with a fine as low as five thousand shillings!</p> <p>The proposed stiff penalty is meant to safeguard public interest and to enable the Director of Public Prosecutions and the Board of Registration of Architects and Quantity Surveyors, to effectively prosecute all the transgressions under the Act especially quacks and other persons found practicing in Kenya illegally.</p>

BOARD OF REGISTRATION
OF ARCHITECTS AND
QUANTITY SURVEYORS OF KENYA
P.O. BOX 42400
NAIROBI, KENYA