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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

THE DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

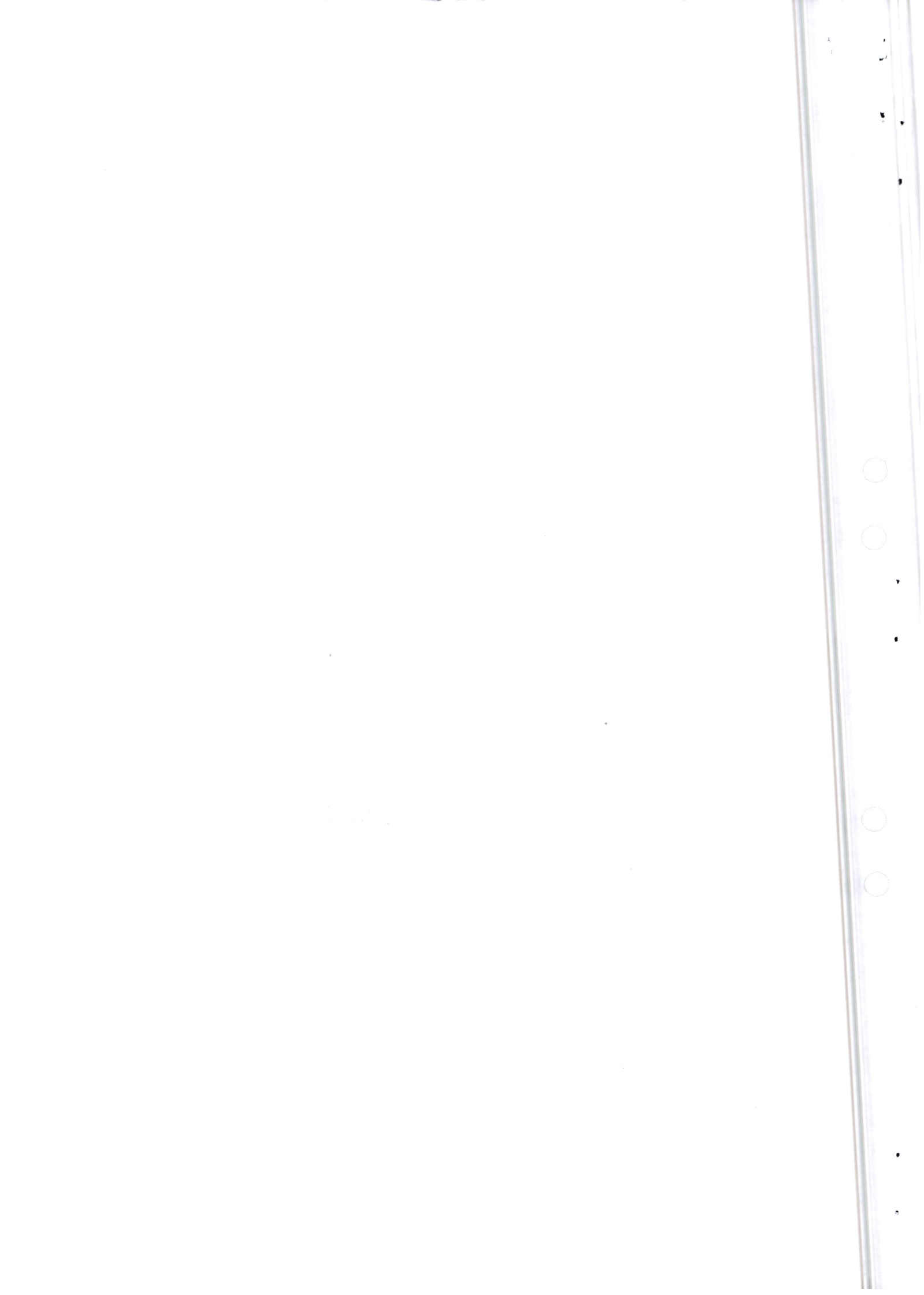
REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL
NATIONAL ASSEMBLY NO. 60 OF 2022

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	DAY: TUESDAY
TABLED BY:	HON. GEORGE MURUGARA MP, CHAIRPERSON / S.L.A.C.
CLERK AT THE TABLE:	ESTHER NGINYO

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PART I

1.0 PREFACE

1.1 Introduction

Legal Provision on Public Participation

1. Article 118 (1) (b) of the Constitution of Kenya provides as follows —

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

2. Standing Order 127(3) provides that –

“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

- (a) inviting submission of memoranda;
- (b) holding public hearings;
- (c) consulting relevant stakeholders in a sector; and
- (d) Consulting experts on technical subjects.

3. Standing Order 127(3A) further provides that—

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

1.2 Methodology used by the Committee in Public Participation

4. The Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 was published on 1st December 2022. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Lands for consideration having been read **for** a First Time on 8th December 2022.
5. Pursuant to the aforementioned provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Friday, 16th December 2022 published an advertisement inviting the public to submit memoranda. Further, in a letter dated 9th December 2022, the Committee invited various stakeholders including the Office of the Attorney General, Kenya Law Reform Commission to submit a memorandum on the Bill.
6. The Report contains the analysis of the public submissions on the Bill, written submissions received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.
7. The Report also contains an adoption schedule, a copy of the newspaper advertisements of Monday, 9th December 2022 inviting the public to submit memoranda on the Bill and a

letter inviting the relevant stakeholders for memoranda and the minutes of the Committee sittings during the consideration of the Bill.

8. The Bill proposes to amend 56 Acts of Parliament. The proposed amendments committed to the Committee are to the following Acts—
- (i) The Capital Markets Act (Cap. 485A)
 - (ii) The Retirement Benefits Act, 1997 (No. 3 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 Excise Duty Act, 2015 (No. 23 of 2015)
 - (vii) The Controller of Budget Act, 2016 (No. 26 of 2016)

1.3 Mandate of the Committee

9. The Departmental Committee on Finance and National Planning is one of the twenty Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
 - iii. on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - iv. To study and review all legislation referred to it;
 - v. To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
 - viii. To examine treaties, agreements and conventions;

- ix. To make reports and recommendations to the House as often as possible, including the recommendation of proposed legislation;
 - x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - xi. To examine any questions raised by Members on a matter within its mandate.
10. In executing its mandate, the Committee oversees the State Department for National Treasury, State Department for Economic Planning, Commission on Revenue Allocation and Office of the Controller of Budget.

1.4 Membership of the Committee

11. The Committee comprises the following Members

Chairperson

Hon. CPA. Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. Amb. Benjamin Langat, CBS, MP
Ainamoi Constituency

UDA Party

Hon. Adan Keynan, MP
Eldas Constituency

Jubilee Party

Hon Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joseph Kipkoros Makilap, MP
Baringo North Constituency

UDA Party

Hon. Umul Ker Kassim, MP
Mandera County

UDM Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

Hon. Shadrack Ithinji, MP
South Imenti Constituency

Jubilee Party

Hon. Paul Biego, MP
Chesumei Constituency

UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Dr. John Ariko, MP
Turkana South Constituency

ODM Party

Hon. Mohamed Machele, MP
Mvita Constituency

ODM Party

Hon. George Sunkuya, MP
Kajiado West Constituency

UDA Party

1.5 Committee Secretariat

12. The Committee is facilitated by the following staff

Mr. Benjamin Magut

Senior Clerk Assistant /Head of Secretariat

Mr. Joshua Ondari
Clerk Assistant II

Mr. Benson Kamande
Clerk Assistant III

Mr. Salem Lorot
Legal Counsel I

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Ms. Shamsa A. Abdi
Research Officer III

Mr. Josephat Motonu
Senior Fiscal Analyst

Ms. Terry Ondiko
Fiscal Analyst III

Mr. Simon Ouko
Assistant Serjeant-At-Arms

Ms. Nelly W.N Ondieki
Research Officer III

PART III

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

The Capital Markets Act (Cap. 485A)

13. The Bill proposes to amend section 38 of the Capital Markets Act by deleting the expression “Attorney-General” and substituting therefor the expression “Director of Public Prosecutions”.

14. Section 38 of the Act provides as follows—

The Attorney-General may, on the request of the Authority, appoint any officer of the Authority or advocate of the High Court to be a public prosecutor for the purposes of offences under the provisions of this Act.

15. Article 157(6) of the Constitution provides as follows—

157. (6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—

(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and

(c) subject to clauses (7) and (8), discontinue at any stage before judgment is delivered on any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

16. Similar functions of the Director of Public Prosecutions are provided for in section 5 of the Office of the Director of Public Prosecutions Act (No. 2 of 2013). It provides as follows—

5. Powers and functions of the Director

(1) Pursuant to Article 157 of the Constitution the Director shall—

a. have power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction;

b. exercise State powers of prosecution and may—

(i) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(ii) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and

(iii) subject to Article 157(7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions;

c. formulate and keep under review public prosecution policy;

d. perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution and this Act.

17. Section 85 of the Criminal Procedure Code provides for the power of the Director of Public Prosecutions to appoint public prosecutors. It provides as follows—

85. Power to appoint public prosecutors

(1) The Director of Public Prosecutions, by notice in the Gazette, may appoint public prosecutors for Kenya or for any specified area thereof, and either generally or for any specified case or class of cases.

(2) The Director of Public Prosecutions, by writing under his hand, may appoint any advocate of the High Court or person employed in the public service, to be a public prosecutor for the purposes of any case.

(3) Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.

18. Section 86 of the Criminal Procedure Code provides for the powers of public prosecutors. It provides as follows—

86. Powers of public prosecutors

A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under trial or appeal; and if a private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed shall act therein under his directions.

19. The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

The Retirement Benefits Act, 1997 (No. 3 of 1997)

20. The Bill proposes to amend section 54(1) of the Retirement Benefits Act by deleting the expression “Attorney-General” and substituting therefor the expression “Director of Public Prosecutions”.

21. We note that there was an error in this proposed amendment. The right provision to be amended was supposed to be section 54A (1) and not section 54(1). Section 54 provides for offences by corporate bodies, partnerships, principals and employees whereas section 54A provides for the conduct of prosecutions.

22. Section 54 provides as follows—

54. Offences by corporate bodies, partnerships, principals and employees

(1) When an offence under the provisions of this Act is committed by a body corporate, the body corporate and every director or officer thereof who had knowledge or should have had knowledge of the commission of the offence and who did not exercise due diligence to ensure compliance with this Act commits an offence.

(2) Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or who should have had knowledge of the commission of the offence commits an offence.

(3) A person shall be personally liable for an offence against this Act whether committed by him on his own account or as an agent or servant of another person.

(4) An employer or principal shall be liable for an offence committed by an employee or agent against this Act unless the employer or principal proves that the offence was committed against his express or standing directions.

23. Section 54A provides as follows—

54A. Conduct of prosecutions

(1) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for the purposes of cases arising under this Act.

(2) The Authority shall, for the purposes of the Criminal Procedure Code (Cap. 75), be deemed to be a public authority.

24. The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

The Central Depositories Act, 2000 (No. 4 of 2000)

25. The Bill proposes to amend section 63 of the Central Depositories Act by deleting the expression “Attorney-General” and substituting therefor the expression “Director of Public Prosecutions”.

26. Section 63 of the Act provides as follows—

63. Prosecution

The Attorney-General may on the request of the Authority appoint any officer of the Authority or advocate of the High Court to be a prosecutor in respect of any offence under this Act.

27. The proposed amendment is proper as it is aligned with the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

The Accountants Act, 2008 (No. 15 of 2008)

28. The Bill proposes to amend section 43 of the Accountants Act by deleting the expression “Attorney-General” and substituting therefor the expression “Director of Public Prosecutions”.

29. Section 43 of the Act provides as follows—

43. Conduct of prosecutions

The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for purposes of this Act.

30. The proposed amendment is proper as it is aligned with the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act. Since the word “pursuant” is misspelt, the Committee may propose an amendment to correct it.

The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)

31. The Bill seeks to amend section 23 of the Commission on Revenue Allocation Act to require the presentation of its annual report within six months to the end of the year to which it relates.

32. The proposed amendment inserts a new subsection (1A) as follows—

(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.

33. Article 254 of the Constitution provides as follows—

254. Reporting by commissions and independent offices

(1) As soon as practicable after the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament.

(2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.

(3) Every report required from a commission or holder of an independent office under this Article shall be published and publicised.

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

34. The Bill proposes to amend the First Schedule to the Excise Duty Act to correct a mistake in a tariff number.

35. The Bill, therefore, proposes to delete—

(a) the expression “3905.91.00 Emulsion VAM” and substitute therefor the expression “3905.91.00 Imported copolymers”;

(b) the expression “3905.19.00 Homopolymers” and substitute therefor the expression “3905.19.00 Imported polymers”; and

(c) the expression “3906.90.00 Emulsion B.A.M.” and substitute therefor the expression “3906.90.00 Imported acrylic polymers”.

36. Section 35 of the Finance Act, 2022 provides for the deletion of the following tariff descriptions and the corresponding rates and substituting therefor the following—

Commodity code	Raw Materials	Excise duty
3907.91.00	Imported Unsaturated polyster	10%
3907.50.00	Imported Alkyd	10%
3905.91.00	Imported Emulsion VAM	10%
3903.20.00	Imported Emulsion styrene Acrylic	10%
3905.19.00	Imported Homopolymers	10%
3906.90.00	Imported Emulsion B.A.M	10%

The Controller of Budget Act, 2016 (No. 26 of 2016)

37. The Bill proposes to amend section 19 of the Controller of Budget Act to require the presentation of the annual report within six months after the expiry of the year to which it relates.

38. Article 254 of the Constitution provides as follows—

254. Reporting by commissions and independent offices

(1) As soon as practicable after the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament.

(2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.

(3) Every report required from a commission or holder of an independent office under this Article shall be published and publicised.

PART III

3.0 PUBLIC PARTICIPATION

41. The Committee is required, pursuant to Standing Order 127(3), to facilitate public participation in the Bill through an appropriate mechanism including-
- (a) Inviting submission of memoranda;
 - (b) Holding public hearings;
 - (c) Consulting relevant stakeholders in the sector;
 - (d) Consulting experts on technical subjects.

39. The requirement for the Committee to conduct public participation in the Bill is a constitutional imperative flowing from Article 118 of the Constitution which provides that Parliament shall—

- (a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
- (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

40. It is important to note that Standing Order 127(4) requires the Chairperson of the Departmental Committee to which a Bill is committed or a Member designated for that purpose by the Committee to present the Committee's report to the House to inform debate within thirty calendar days of such committal and upon such presentation, or if the Committee's report is not presented when it becomes due, the Bill shall be ordered to be read a Second Time on such day as the House Business Committee shall, in consultation with the Member or the Committee in charge of the Bill, appoint.

41. The Members of the public had been invited through a newspaper advertisement to submit their comments on the Bill. The following stakeholders submitted their comments-

PricewaterhouseCoopers Limited

42. In their submission, they propose that the Value Added Tax Act be amended in paragraph 23 of the Second Schedule by deleting the words "in respect of business process outsourcing," and retaining the provision as zero rating of exportation of taxable services.

43. They noted that the Finance Act, 2022 introduced changes to the VAT Act, 2013 (the "VAT Act") and amended First Schedule to the VAT Act in Part II by deleting paragraph 32 which exempted the imposition of VAT on the exportation of taxable services.

44. They further note that the Finance Act, 2022 amended the Second Schedule to the Act by introducing exportation of taxable services in respect of business process outsourcing under paragraph 23 of Part II of the Second (Zero Rating) Schedule to the VAT Act.

45. They state that the introduction of the above changes had the effect that from 1 July 2022, the exportation of taxable services that are not Business Process Outsourcing services (“BPO”) are subject to VAT at the standard rate of 16 percent. Further, BPO services are not defined in the VAT legislation. They state that in their view this has led to great uncertainty with regard to the VAT treatment of exported taxable services from Kenya.
46. They further state that the intention of the Members of Parliament and the Committee of Finance and National Planning as evidenced by parliamentary Hansard Report during the third reading of the Finance Bill, 2022 and reiterated in the report prepared by the Committee indicates that the proposal to zero rate the exportation of taxable services in entirety was to be adopted without amendment or any other qualification. The introduction of the words “in respect to business process outsourcing” without defining the nature of these services makes the provision ambiguous.
47. In justifying the proposed amendment, they state that the Departmental Committee on Finance and National Planning previously adopted the amendment as proposed, subjecting exported services to VAT at 16% goes against the destination principle on taxation of cross-border supplies and tax neutrality.

Committee observation

It is the Committee's opinion that these are substantive amendments which may be considered in the Finance Bill as opposed to through omnibus legislation, to ensure consistency of our tax policy.

The Retirement Benefits Authority

48. The Authority submitted indicating that there were in concurrence with the proposed amendments to Section 54A (1) of the Retirement Benefits Act, substituting a reference to the Hon. Attorney General with the Director of Public Prosecutions, in line with Article 157(2) of the Constitution.

The Ministry of the National Treasury and Economic Planning

Excise Duty Act, 2015

49. The proposed amendment is meant to correct tariff descriptions of the polymers subject to excise duty at 10%. The proposed description for Tariff No. 3905.91.00 imported copolymers were okay. However, the proposed descriptions for the other two tariffs were not correct and required to be amended as follows-
- a) 3905.19.00 imported other poly (vinyl acetate)
 - b) 3906.90.00 imported other acrylic polymers in primary form

50. They were in support to the proposed amendments to the following Acts as it sought to ensure that the mandate of public prosecution lies with the Director of Public Prosecution-

- i) The Capital Markets Act
- ii) The Retirement Benefits Act
- iii) The Central Depositories Act
- iv) The Local Manufacturers (Export Compensation) Act
- v) The Accountants Act
- vi) The Marine Insurance Act

Office of the Controller of Budget

51. They were in support of the proposed amendment to the Office of Controller of Budget Act. However, the word Commission should be deleted and replacing it with the Controller of Budget.

Commission on Revenue Allocation

52. They were in support of the proposed amendment to the Commission on Revenue Allocation Act.

PART IV

4.0 COMMITTEE OBSERVATIONS

53. The Committee made the following observations:

Proposed Amendments to the Capital Markets Act (Cap. 485A)

The Committee agreed to the proposed amendment.

Committee justification: The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Retirement Benefits Act, 1997 (No. 3 of 1997)

The Committee agreed to the proposed amendment. However, the Committee noted that there was an error in this proposed amendment. The right provision to be amended was supposed to be section 54A (1) and not section 54(1). Section 54 provides for offences by corporate bodies, partnerships, principals and employees whereas section 54A provides for the conduct of prosecutions. The Committee therefore recommends an amendment of the provision to correct this error.

Committee justification: The proposed amendment, subject to an amendment to correct an error on the provision to be amended, is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Central Depositories Act, 2000 (No. 4 of 2000)

The Committee agreed to the proposed amendment.

Committee justification: The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Accountants Act, 2008 (No. 15 of 2008)

The Committee agreed to the proposed amendment.

Committee justification: *The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.*

Proposed Amendments to the Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)

The Committee observed that the proposed amendment seeks to amend section 23 of the Commission on Revenue Allocation Act to require the presentation of its annual report within six months to the end of the year to which it relates. Article 254(1) of the Constitution does not specify the timelines but provides for submission of the reports “as soon as practicable after the end of each financial year”. This clarity is therefore important.

However, the Committee recommended that the proposed amendment be amended to provide for three months and not six months within which the Commission is to submit its annual reports.

Further, the Committee recommended that since Article 254(1) of the Constitution refers to Parliament, the proposed amendment should be amended to provide for Parliament and not National Assembly.

Proposed Amendments to the Excise Duty Act, 2015 (No. 23 of 2015)

The Committee rejected the proposed amendment to the Excise Duty Act.

Committee justification: *The Committee was of the opinion that these were substantive amendments which may be considered in the Finance Bill as. An amendment to the tax legislation should be effected only through the Finance Bill to ensure consistency in Tax Legislation.*

Proposed Amendments to the Controller of Budget Act, 2016 (No. 26 of 2016)

The Committee observed that the proposed amendment seeks to amend section 19 of the Controller of Budget Act to require the presentation of the annual report within six months after the expiry of the year to which it relates. Article 254(1) of the Constitution does not specify the timelines but provides for submission of the reports “as soon as practicable after the end of each financial year”. This clarity is therefore important.

However, the Committee recommended that the proposed amendment be amended to provide for three months and not six months within which the Office is to submit its annual reports. Further, the proposed new subsection (2A) refers to “the Commission” and not “the Controller of Budget” and the Committee recommends an amendment to correct this.

Further, the Committee recommended that since Article 254(1) of the Constitution refers to Parliament, the proposed amendment should be amended to provide for Parliament and not National Assembly.

PART V

4.0 COMMITTEE RECOMMENDATION

56. The Committee, having reviewed the Bill to the extent of proposed amendments to Acts committed to it, recommends that the House approves the Bill with amendments as proposed in the schedule in chapter 6.

Signed.......... Date: 23rd March, 2023

**HON. CPA KURIA KIMANI, MP
(CHAIRPERSON)
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNI**

PART VI

SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposes the following amendments to be considered by the House in the Committee Stage:

SCHEDULE

THAT the Schedule to the Bill be amended—

- (a) in the proposed amendments to the Retirement Benefits Act by deleting the expression “54(1) and substituting therefor the expression “54A (1);

Justification: The right provision to be amended was supposed to be section 54A (1) and not section 54(1). Section 54 provides for offences by corporate bodies, partnerships, principals and employees whereas section 54A provides for the conduct of prosecutions.

- (b) in the proposed amendment to Commission on Revenue Allocation Act by deleting the proposed amendment to section 23 and substituting therefor the following—

s. 23 Insert the following new subsection immediately after subsection (1)—

(1A) The Commission shall submit the annual report in subsection (1) to the President and Parliament within three months after the end of the year to which it relates.

Justification:

The proposed amendment for submission of annual reports within three months and not six months as proposed will enable Parliament to receive timely reports for its consideration. Further, the amendment to provide for the submission of the

reports to Parliament and not the National Assembly is aligned to Article 254(1) of the Constitution.

- (c) by deleting the proposed amendments to the Excise Duty Act;

Justification: These are substantive amendments which may be considered in the Finance Bill.

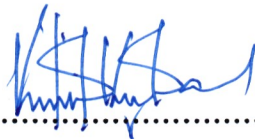
- (d) in the proposed amendments to the Controller of Budget Act by deleting the proposed amendment to section 19 and substituting therefor the following—

S. 19 Insert the following new subsection immediately after subsection (2)—

(2A) The Controller of Budget shall submit the annual report in subsection (2) to the President and Parliament within three months after the end of the year to which it relates.

Justification: The proposed amendment for submission of annual reports within three months and not six months as proposed will enable Parliament to receive timely reports for its consideration. Further, the amendment to provide for the submission of the reports to Parliament and not the National Assembly is aligned to Article 254(1) of the Constitution. Finally, the amendment corrects an error where the proposed amendment had referred to the Commission and not the Controller of Budget.

Signed.....



Date:

23rd March, 2023

HON. CPA. KURIA KIMANI, MP
(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

**MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 16TH MARCH 2023
AT NOON AT NORFOLK HOTEL, NAIROBI.**

PRESENT

1. Hon. CPA. Kuria Kimani, MP - Chairperson
2. Hon. Amb. Benjamin Kipkirui Langat, CBS, MP - Vice- Chairperson
3. Hon. Dr. Adan Keynan Wehliye, MP
4. Hon. David Mwalika Mboni, MP
5. Hon. CPA. Joseph Maero Oyula, MP
6. Hon. Joseph Makilap Kipkoros, MP
7. Hon. CPA. Julius Kipletting Ruto, MP
8. Hon. Umul Ker Sheikh Kassim, MP
9. Hon. George Sunguiya Risa, MP
10. Hon. Dr. John Ariko Namoit, MP
11. Hon. Joseph Kamau Munyoro, MP
12. Hon. Mohamed Soud Machele, MP
13. Hon. Dr. Shadrack Mwiti Ithinji, MP
14. Hon. Paul Kibichiy Biego, MP

ABSENT WITH APOLOGY

1. Hon. Andrew Adipo Okuome, MP

IN-ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Joshua Ondari | - | Clerk Assistant II |
| 2. Mr. Benson Kamande | - | Clerk Assistant III |
| 3. Mr. Chelang'a Maiyo | - | Researcher Officer II |
| 4. Mr. Mabuti Mutua | - | Legal Counsel II |
| 5. Mr. James Macharia | - | Media Relations Officer |
| 6. Mr. Simon Ouko | - | Sargent-at-arms |

MIN. NO. 55/2023: PRELIMINARIES

The Chairperson called the meeting to order at noon with a word of prayer.

MIN No. 56/2023:-

**ADOPTION OF THE REPORT ON STATUTE LAW
(MISCELLANEOUS AMENDMENT) NATIONAL
ASSEMBLY BILL NO. 60 OF 2022**

The Committee considered the said report and came up with the following observations and recommendations-

Observations

Proposed Amendments to the Capital Markets Act (Cap. 485A)

The Committee agreed to the proposed amendment.

Committee justification: The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Retirement Benefits Act, 1997 (No. 3 of 1997)

The Committee agreed to the proposed amendment. However, the Committee noted that there was an error in this proposed amendment. The right provision to be amended was supposed to be section 54A (1) and not section 54(1). Section 54 provides for offences by corporate bodies, partnerships, principals and employees whereas section 54A provides for the conduct of prosecutions. The Committee therefore recommends an amendment of the provision to correct this error.

Committee justification: The proposed amendment, subject to an amendment to correct an error on the provision to be amended, is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Central Depositories Act, 2000 (No. 4 of 2000)

The Committee agreed to the proposed amendment.

Committee justification: The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Accountants Act, 2008 (No. 15 of 2008)

The Committee agreed to the proposed amendment.

Committee justification: The proposed amendment is proper as it is aligned to the provisions of Article 157 of the Constitution, section 85 of the Criminal Procedure Code, and section 5 of the Office of the Director of Public Prosecutions Act.

Proposed Amendments to the Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)

The Committee observed that the proposed amendment seeks to amend section 23 of the Commission on Revenue Allocation Act to require the presentation of its annual report within

six months to the end of the year to which it relates. Article 254(1) of the Constitution does not specify the timelines but provides for submission of the reports “as soon as practicable after the end of each financial year”. This clarity is therefore important.

However, the Committee recommended that the proposed amendment be amended to provide for three months and not six months within which the Commission is to submit its annual reports.

Further, the Committee recommended that since Article 254(1) of the Constitution refers to Parliament, the proposed amendment should be amended to provide for Parliament and not National Assembly.

Proposed Amendments to the Excise Duty Act, 2015 (No. 23 of 2015)

The Committee rejected the proposed amendment to the Excise Duty Act.

Committee justification: The Committee was of the opinion that these were substantive amendments which may be considered in the Finance Bill. An amendment to the tax legislation should be effected only through the Finance Bill to ensure consistency in Tax Legislation.

Proposed Amendments to the Controller of Budget Act, 2016 (No. 26 of 2016)

The Committee observed that the proposed amendment seeks to amend section 19 of the Controller of Budget Act to require the presentation of the annual report within six months after the expiry of the year to which it relates. Article 254(1) of the Constitution does not specify the timelines but provides for submission of the reports “as soon as practicable after the end of each financial year”. This clarity is therefore important.

However, the Committee recommended that the proposed amendment be amended to provide for three months and not six months within which the Office is to submit its annual reports. Further, the proposed new subsection (2A) refers to “the Commission” and not “the Controller of Budget” and the Committee recommends an amendment to correct this.

Further, the Committee recommended that since Article 254(1) of the Constitution refers to Parliament, the proposed amendment should be amended to provide for Parliament and not National Assembly.

Recommendations-

THAT the Schedule to the Bill be amended—

- (a) in the proposed amendments to the Retirement Benefits Act by deleting the expression “54(1) and substituting therefor the expression “54A (1);

Justification: The right provision to be amended was supposed to be section 54A (1) and not section 54(1). Section 54 provides for offences by corporate bodies, partnerships, principals and employees whereas section 54A provides for the conduct of prosecutions.

- (b) in the proposed amendment to Commission on Revenue Allocation Act by deleting the proposed amendment to section 23 and substituting therefor the following—

s. 23 Insert the following new subsection immediately after subsection (1)—

(1A) The Commission shall submit the annual report in subsection (1) to the President and Parliament within three months after the end of the year to which it relates.

Justification: The proposed amendment for submission of annual reports within three months and not six months as proposed will enable Parliament to receive timely reports for its consideration. Further, the amendment to provide for submission of the reports to Parliament and not National Assembly is aligned to Article 254(1) of the Constitution.

- (c) by deleting the proposed amendments to the Excise Duty Act;

Justification: These are substantive amendments which may be considered in the Finance Bill.

- (d) in the proposed amendments to the Controller of Budget Act by deleting the proposed amendment to section 19 and substituting therefor the following—

S. 19 Insert the following new subsection immediately after subsection (2)—

(2A) The Controller of Budget shall submit the annual report in subsection (2) to the President and Parliament within three months after the end of the year to which it relates.

Justification: The proposed amendment for submission of annual reports within three months and not six months as proposed will enable Parliament to receive timely reports for its consideration. Further, the amendment to provide for submission of the reports to Parliament and not National Assembly is aligned to Article 254(1) of the Constitution. Finally, the amendment corrects an error where the proposed amendment had referred to the Commission and not the Controller of Budget.

The Report was adopted after being proposed and seconded by Hon. Joseph Kamau Munyoro, MP and Hon. CPA. Joseph Maero Oyula, MP respectively.

MIN. NO. 57/2023:

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty-three minutes past one o'clock

Signed.....

Chairperson

Date.....23rd March, 2023





THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION (2023)
COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION LIST

Date: 16/03/2023

Venue: NORFOLK HOTEL

Time Started: 12:00 PM

Time Ended: 1:23 PM

AGENDA: ADOPTION OF THE REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT BILL) 2022

No.	NAME	SIGNATURE
1.	Hon. CPA. Kuria Kimani, MP - Chairperson	
2.	Hon. Amb. Benjamin Kipkirui Langat, MP - Vice Chairperson	
3.	Hon. Dr. Adan Keynan Wehliye, MP	
4.	Hon. George Sunkuyia Risa, MP	
5.	Hon. CPA. Joseph Maero Oyula, MP	
6.	Hon. Andrew Adipo Okuome, MP	
7.	Hon. David Mwalika Mboni, MP	
8.	Hon. Joseph Makilap Kipkoros, MP	
9.	Hon. Joseph Kamau Munyoro, MP	
10.	Hon. CPA. Julius Kipletting Rutto, MP	
11.	Hon. Paul Kibichiy Biego, MP	
12.	Hon. Umul Ker Sheikh Kassim, MP	
13.	Hon. Dr. Shadrack Mwiti Ithinji, MP	
14.	Hon. Dr. John Ariko Namoit, MP	
15.	Hon. Mohamed Soud Machele, MP	

Submitted by: _____ Signature: _____ Date: _____

Approved by: _____ Date: _____

DIRECTOR - DEPARTMENTAL COMMITTEES

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