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THE NATIONAL ASSEMBLY PAPERS LAID	
REPUBLIC OF KENYA	
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TABLED BY:	<i>Chairperson JLAC</i>
CLERK AT THE TABLE:	<i>Moses L...</i>



**THE NATIONAL ASSEMBLY**

**TWELFTH PARLIAMENT – FOURTH SESSION – 2020**

**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**REPORT**

**ON THE CONSIDERATION OF THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY  
BILL NO.15 OF 2020)**

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DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

OCTOBER, 2020

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## CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendments) (National Assembly Bill No.15 of 2020) was published vide *Kenya Gazette Supplement* No.89 of June 5, 2020 to effect various amendments to various Statutes. The Bill is sponsored by the Leader of the Majority Party and proposed amendments to thirty eight (38) statutes and was read a First Time on Tuesday, June 23, 2020. Thereafter, the Bill was committed to various Departmental Committees for consideration in accordance with their respective mandates vide the Speaker's communication of Thursday June 25<sup>th</sup>, 2020.

The Leader of the Majority Party wrote to the Speaker vide a letter dated July 14, 2020 requesting the Speaker's consent for the withdrawal of proposed amendments to the following eight (8) statutes contained in the Bill; the Criminal Procedure Code (Cap.75); the Evidence Act (Cap 80); the Anti-Corruption and Economic Crimes Act, 2003; the Public Officers Ethics Act, 2003; the Proceeds of Crime and Anti-Money Laundering Act, 2009; the Counter-Trafficking in Persons Act, 2012; the Leadership and Integrity Act, 2012; and the Bribery Act, 2016.

The Speaker acceded to the request by the Leader of the Majority Party to withdraw the above listed statutes and allow for further inter-agency consultations within Government. The Departmental Committees reviewing the Bill proceeded as though the withdrawn Statutes were not part of the Bill as published.

The Bill contains amendments seeking to amend the following laws; the Interpretation and General Provisions Act (Cap 2); Records Disposal Act (Cap.14); Penal Code (Cap 63); Judicial Service Act (No.1 of 2011); Political Parties Act (No.11 of 2011); Kenya National Commission on Human Rights Act (No.14 of 2011); Employment and Labour Relations Court Act (No.20 of 2011); Ethics and Anti-Corruption Act (No.22 of 2011), Public Appointments (Parliamentary Approval) Act (No.33 of 2011); Kenya Law Reform Commission Act (No.19 of 2013); Court of Appeal Organization and Administration Act (No.28 of 2015); Witness Protection Act (No.16 of 2018); Firearms Act (Cap 14); Official Secrets Act (Cap 187); National Police Service Commission Act (No.30 of 2011); Kenya Coast Guard Service Act (No.11 of 2018); Energy Act, 2019 (No. 1 of 2019); Procurement and Asset Disposal Act, 2015 (No. 33 of 2015); Investment and Financial Analysts Act, 2015 (No. 13 of 2015); Retirement Benefits (Deputy President and Designated State Officers) Act, 2015; Scrap Metal Act, 2015 (No. 1 of 2015); Universities Act, 2012 (No. 42 of 2012); Statistics Act, 2006 (No.4 of 2006); Employment Act, 2007 (No.11 of 2007); Kenya Roads Board Act, 1999 (No.7 of 199); Public Holidays Act (Cap 1090); Firearms Act (Cap 114); and Housing Act (Cap. 117).

The Report contains the proceedings of seven (7) Departmental Committees of the National Assembly namely; Justice and Legal Affairs, Administration and National Security, Finance and National Planning, Labour and Social Welfare, Transport, Public Works and Housing, Education and Research, Communication, Information and Innovation and Energy, Trade, Industry and Cooperatives.

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) the Departmental Committee on Justice and Legal Affairs through an advertisement in the local daily newspapers of 30<sup>th</sup> June, 2020 invited the public to make representations on the Bill. The Committee received views from the public following the advertisement for public participation.

The Committee held one sitting during which it considered the Bill clause by clause and unanimously adopted its report.

This report was compiled by the Departmental Committee on Justice and Legal Affairs on behalf of the other seven (7) Departmental Committees. Pursuant to the provisions of Standing Order 199 (6), it's my pleasant privilege and duty to present to the House a report of the Committee on the Statute Law (Miscellaneous Amendments) Bill, 2020 (National Assembly Bills No. 15)

May I appreciate the Speaker and Clerk of the National Assembly for always providing guidance and direction to Committees in the discharge of their mandate. I am also grateful to all the stakeholders and members of the public who took keen interest and participated in the scrutiny of the Bill.

My gratitude goes to the Honourable members of the Departmental Committees for their resilience and devotion to duty which made consideration of the Bill successful.

Finally, I commend the secretariat for exemplary performance in providing technical and logistical support to the Committee.

**Hon. Muturi Kigano, M.P.**

## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees 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 their 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 enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
  - (g) examine treaties, agreements and conventions;
  - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
  - (j) Examine any questions raised by Members on a matter within its mandate.
  
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
  - (a) Constitutional affairs;
  - (b) The administration of law and Justice
  - (c) The Judiciary;
  - (d) Public prosecutions;
  - (e) Elections;
  - (f) Ethics, integrity and anti-corruption; and
  - (g) Human rights.

#### **1.4 Committee Membership**

3. The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017. The current membership is as follows-

##### **Chairperson**

Hon. Clement Muturi Kigano, M.P.

**Kangema Constituency**

**Jubilee Party**

##### **Vice Chairperson**

Hon. (Dr.) Paul Otiende Amollo, M.P

**Rarieda Constituency**

**ODM Party**

Hon. Emmanuel Wangwe, M.P.

**Navakholo Constituency**

**Jubilee Party**

Hon. Junet Sheikh Nuh Mohamed, M.P

**Suna East Constituency**

**ODM-Party**

Hon. John Olago Aluoch, M.P.

**Kisumu West Constituency**

**FORD-Kenya**

Hon. George Peter Kaluma, M.P.

**Homa Bay Town Constituency**

**ODM-Party**

Hon. Roselinda SoipanTuya, M.P.

**Narok County**

**Jubilee Party**

Hon. Josephine Naisula Lesuuda, M.P

**Samburu West Constituency**

**KANU-Kenya**

Hon. W. Kamoti Mwamkale, M.P.

**Rabai Constituency**

**ODM-Party**

Hon. Zuleikha Hassan, M.P.

**Kwale County**

**ODM-Party**

Hon. Jennifer Shamalla, M.P.

**Nominated MP**

**Jubilee Party**

Hon. Adan Haji Yussuf, M.P.

**Mandera West Constituency**

**Economic Freedom Party (EFP)**

Hon. John Munene Wambugu, M.P.

**Kirinyaga Central**

**Jubilee -Party**

Hon. George Gitonga Murugara, M.P.

**Tharaka Constituency**

**Democratic Party (DP)**

Hon. Anthony Githiaka Kiai, M.P.

**Mukurueni Constituency**

**Jubilee-Party**

Hon. Japheth Mutai, M.P.

**Bureti Constituency**

**Jubilee-Party**

Hon. John Kiarie Waweru, M.P.

**Dagoretti South Constituency**

**Jubilee-Party**

Hon. Anthony Oluoch, M.P.

**Mathare Constituency**

**ODM-Party**

Hon. Robert Gichimu Githinji, M.P.  
**Gichugu Constituency**  
**Jubilee-Party**



### **1.5 Committee Secretariat**

4. The Committee secretariat is as follows--

**Mr. Aberayo Wasike**  
**Senior Clerk Assistant**  
**Lead Clerk**

**Mr. Denis Abisai**  
**Principal Legal Counsel I**

**Ms. Halima Hussein**  
**Clerk Assistant II**

**Mr. Ahmed Hassan Odhwa**  
**Principal Research Officer**

**Mr. Omar Abdirahim**  
**Fiscal Analyst III**

**Ms. Roselyne Ndegi**  
**Serjeant-at-Arms I**

**Mr. Joseph Okongo**  
**Media Liaison Officer**

5. Minutes of sittings of the Committee on the consideration of the Bill are attached to this report as **annexure 1**

## CHAPTER TWO

### **2.0 OVERVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL**

#### **(NATIONAL ASSEMBLY BILLS NO.15 OF 2020)**

6. The Statute Law (Miscellaneous Amendments) Bill (National Assembly No.15 of 2020) seeks to amend the following Thirty Eight (38) statutes;

#### **Interpretation and General Provisions Act (Cap.2)**

7. The Bill proposes to amend the Interpretation and General Provisions Act (Cap.2) to harmonize the definition of “Kenya Defence Forces” with the one contained in the Kenya Defence Forces Act, 2012. It also proposes to recognise the office of the Attorney General as the office to administer the matters relating to the legal sector.

#### **The Records Disposal Act (Cap.14)**

8. The Bill proposes to amend the Records Disposal Act to make provisions empowering the Chief Justice to make rules to on the disposal records of the Employment and Labour Relations Court.

#### **The Penal Code (Cap. 63)**

9. The part proposes to amend the Penal Code to replace the reference to the Commissioner – General of Police with the Inspector General of Police in line with the National Police Service Act, 2011.

#### **The Public Holidays Act (Cap. 109)**

10. The part proposes to amend the Public Holidays Act to harmonize the terms applied therein with the Constitution and to rename Moi Day as Utamaduni Day.

#### **The Firearms Act (Cap. 114)**

11. The part proposes to amend the Firearms Act to replace the reference to the Commissioner of Police with the Inspector General in line with the National Police Service Act, 2011.

#### **The Housing Act (Cap. 117)**

12. The part proposes to amend the Housing Act to provide for voluntary contributions to the National Housing Development Fund.

#### **The Official Secrets Act (Cap. 187)**

13. The part proposes to amend the Official Secrets Act to harmonize its provisions with the structure of courts and other State offices established by the Constitution. It also proposes to amend the Act to harmonize it with advances in technology.

#### **The Films and Stage Plays Act (Cap. 222)**

14. The part proposes to amend the Films and Stage Plays Act to empower the Kenya Film Classification Board to regulate and manage matters touching on classification of films, commercials and other advertisements, and online film content.

#### **The Kenya Roads Board Act, 1999 (No. 7 of 1999)**

15. The part seeks to amend the Act to provide for the minimum number of meetings the Board can hold in any given year, and depart from the current situation where the Board must hold a meeting every month.

#### **The Statistics Act, 2006 (No. 4 of 2006)**

16. The part proposes to amend the Statistics Act to give the Board the power to cancel or revise data if data is found to be inaccurate

**The Employment Act, 2007 (No. 11 of 2007)**

17. The part proposes to amend the Employment Act, 2007 to remove references to contributions to the National Housing Fund and also to harmonise the reference to the armed forces with the terms applied in the Kenya Defence Forces Act, 2007 and also to exclude the Coast Guard Service from its provisions.

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

18. The part seeks to amend the Accountants Act to introduce trainee accountants as a category of persons to be subject to the Act and make some additional provisions in that respect.

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

19. The part proposes to amend the Judicial Service Act to reduce the post-qualification years of experience required for recruitment as a legal researcher from two years to one year.

**The Political Parties Act 2011 (No. 11 of 2011)**

20. The part proposes to amend the Political Parties Act to clarify the amount of money payable by Government into the Political Parties Fund.

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

21. The part proposes to amend the KNCHR Act 2011 to elaborate on the functions of the Commission and to update the provisions relating to appointment of members of the Selection Panel to nominate members of the Commission.

**The Employment and Labour Relations Court Act, 2011 (No. 20 of 2011)**

22. The part proposes to amend the Employment and Labour Relations Court Act, 2011 to empower the Chief Justice to make rules for the delegation of specified powers to the Registrar for purposes of the Civil Procedure Act (Cap. 21).

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

23. The part proposes to amend the Act to allow the Ethics and Anti-Corruption Commission to institute proceedings for the recovery of corruptly acquired assets located outside Kenya. It further proposes to amend the Act to allow the Ethics and Anti-Corruption Commission to institute proceedings for the recovery of corruptly acquired assets located outside Kenya.

**The Public Appointments (Parliamentary Approval) Act, 2011 (No. 33 of 2011)**

24. The part proposes to amend the Public Appointments (Parliamentary Approval) Act, 2011 to increase the period during which a House of Parliament shall consider a nomination and table its report, from fourteen to twenty-eight days.

**The Universities Act, 2012 (No. 42 of 2012)**

25. The part proposes to amend the Act to provide for the establishment by Charter of degree-awarding institutions specialising in national security issues, and to apply the provisions of the Act relating to administration and management of universities to those institutions.

**The Basic Education Act, 2013 (No. 14 of 2013)**

26. The part proposes to amend Basic Education Act, 2013 to harmonise the provisions relating to membership of the County Education Boards, Boards of Management and the Education Appeals Tribunal.

**The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)**

27. The part proposes to amend the Kenya Law Reform Commission Act, 2013 to provide for the powers of the Attorney-General with respect to the Commission and to streamline membership by *ex officio* members in the Commission.

**The Scrap Metal Act, 2015 (No. 1 of 2015)**

28. The part proposes to amend the Scrap Metal Act, 2015 to provide for the powers of a police officer during investigations under the Act.

**The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015**

29. The part proposes to amend the Act to provide for, firstly, the administration of benefits due to retired Deputy-President, Vice-President, Prime Minister, Speakers of Parliament, Chief Justice and Deputy Chief Justice, and, secondly, for such benefits to be factored in the respective estimates of the national government, the parliamentary service and the Judiciary, submitted for approval by the National Assembly. However, the administration of pension, lump sum payment upon retirement, and gratuity provided for in the Act shall not be affected by this amendment, and will continue being administered by the relevant office in the National Treasury.

**The Investment and Financial Analysts Act, 2015 (No. 13 of 2015)**

30. The part proposes to amend the Investment and Financial Analysts Act to streamline the day to day operations of the Institute with the Act.

**The Court of Appeal (Organisation and Administration) Act, 2015 (No. 28 of 2015)**

31. The part proposes to amend the of Appeal (Organisation and Administration) Act, 2015 to provide for the vacation dates of the Court to harmonise them with those applying in other courts.

**The Procurement and Asset Disposal Act, 2015 (No. 33 of 2015)**

32. The part proposes to amend the Act to address the challenges faced by procuring entities in implementing multiple awards of contracts in the wake of sections 82 and 86 of the Act.

**The Kenya Coast Guard Act, 2018 (No. 11 of 2018)**

33. The part proposed to amend the Kenya Coast Guard Act, 2018 to include the Kenya Wildlife Service and the Kenya Forest Service as bodies from which the Service can recruit officers. It also proposes to expand the Technical Committee of the Service and to standardize the ranks in the Service with the Defence Forces.

**The Energy Act, 2019 (No. 1 of 2019)**

34. The part proposes to amend the Energy Act to cure ambiguity and typographical errors, and to streamline membership to various bodies created in the statute.

## CHAPTER THREE

### 3.0 CONSIDERATION OF THE BILL

35. The Bill is an omnibus Bill proposing amendments to various statutes. The proposed amendments were considered by Departmental Committees under whose mandate the statutes to be amended fall and the report was compiled by the Departmental Committee on Justice and Legal Affairs. The proposed amendments were considered by the following Committees:-

#### **3.1. Departmental Committee on Justice and Legal Affairs**

36. The Committee Considered the proposed amendments to the following Statutes;
- (a) The Interpretation and General Provisions Act (Cap 2)
  - (b) The Records Disposal (Cap 14)
  - (c) The Penal Code (Cap 63)
  - (d) The Judicial Service Act (No.1 of 2011)
  - (e) The Political Parties Act 2011 (No.11 of 2011)
  - (f) The Kenya National Commission on Human Rights Act (No.14 of 2011)
  - (g) The Employment and Labour Relations Act (No.20 of 2011)
  - (h) The Ethics and Anti-Corruption Act (No.22 of 2011)
  - (i) The Public Appointments (Parliamentary Approval) Act No.33 of 2011
  - (j) The Kenya Law Reform Commission Act (No.19 of 2013)
  - (k) The Court of Appeal (Organisation and Administration) Act No.28 of 2015
  - (l) The Witness Protection Act (No.16 of 2018)

#### **3.2 Departmental Committee on Administration and National Security**

37. Considered the proposed amendments to the following Statutes;
- (a) The Firearms Act (Cap. 114)
  - (b) The Official Secrets Act (Cap. 187)
  - (c) The Kenya Coast Guard Act, 2018 (No. 11 of 2018)
  - (d) The National Police Service Commission Act (No.30 of 2011)

#### **3.3 Departmental Committee on Finance and National Planning**

38. Considered the proposed amendments to the following Statutes;
- a) The Statistics Act, 2006 (No. 4 of 2006)
  - b) The Accountants Act, 2008 (No. 15 of 2008)
  - c) The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015
  - d) The Investment and Financial Analysts Act, 2015 (No. 13 of 2015)
  - e) The Procurement and Asset Disposal Act, 2015 (No. 33 of 2015)

#### **3.4 Departmental Committee on Labour and Social Welfare**

39. Considered the proposed amendments to the following Statutes;
- a) The Public Holidays Act (Cap. 109)
  - b) The Employment Act, 2007 (No. 11 of 2007)

### **3.5 Departmental Committee on Transport, Public Works and Housing**

40. Considered the proposed amendments to the following Statutes;
- (a) The Kenya Roads Board Act, 1999 (No. 7 of 1999)
  - (b) The Housing Act (Cap. 117)

### **3.6 Departmental Committee Education and Research**

41. Considered the proposed amendments to the following Statutes;
- (a) The Universities Act, 2012 (No. 42 of 2012)
  - (b) The Basic Education Act, 2013 (No. 14 of 2013)

### **3.7 The Departmental Committee on Communication, Information and Innovation**

Considered the proposed amendments to the Films and Stage Plays Act (Cap. 222)

### **3.8 The Departmental Committee on Trade, Industry and Cooperatives**

Considered the proposed amendments to the Scrap Metal Act, 2015 (No. 1 of 2015).

### **3.9 The Departmental Committee on Energy**

Considered the proposed amendments to the Energy Act, 2019 (No. 1 of 2019)

## CHAPTER FOUR

### 4.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

42. Through an advertisement on 30<sup>th</sup> June, 2020 the Committee pursuant to the provisions of Article 118 (1) (b) of the Constitution as read together with Standing Order 127 (3) invited the public to make submissions regarding the proposed amendments in the Bill. A copy of the newspaper advertisement is attached as **annexure 3**.
43. Following the advertisement in the print media for public participation, memoranda were received from the following stakeholders:- (**Annexure 4-JLAC Stakeholders**)
- (a) The International Commission of Jurists (ICJ) Kenya chapter
  - (b) The Office of the Registrar of Political Parties
  - (c) Transparency International, Kenya Chapter
  - (d) The Ethics and Anti-Corruption Commission (EACC)
  - (e) The National Treasury and Planning;
  - (f) Hon. Farah Maalim, Sen. (Amb.) Kembi Gitura, MGH and Sen. David Musila, MGH;
  - (g) Institute of Certified Public Accountants of Kenya (ICPAK);
  - (h) Salaries and Remuneration Commission (SRC);
  - (i) Kenya National Highways Authority (KENHA);
  - (j) E. Kinyanjui and Co. Advocates;
  - (k) ICEA Lion Asset Management Limited;
  - (l) Coalition on Violence Against Women (COVAW)
  - (m) Standard Investment Bank; and
  - (n) Institute of Certified Investment and Financial Analysts (ICIFA)

## CHAPTER FIVE

### **5.0 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL**

#### **5.1 THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

44. This part deals with the clause by clause consideration of the Bill by the Departmental Committees after taking into consideration the views of the aforementioned stakeholders.

##### **Clause 1 on Short Title of the Bill**

This section sets out the short title of the proposed Act as the Statute Law (Miscellaneous Amendments) Act, 2020.

45. **Committee comments:** The Committee observed that there were no stakeholder comments received on this provision and recommends that the Clause be agreed to as it appears in the Bill.

##### **Clause 2 on amendment of written laws**

46. This section deals with the amendment of the several laws specified in the columns of the Schedule of Bill.

47. **Committee comments:** The Committee observed that there were no stakeholder comments received on this provision and recommends that the Clause be agreed to as it appears in the Bill.

##### **Interpretation and General Provisions Act (Cap.2)**

48. The part provides for the amendment of the Interpretation and General Provisions Act (Cap.2) to harmonize the definition of “Kenya Defence Forces” with the one contained in the Kenya Defence Forces Act, 2012. The amendment also seeks to clarify that the Attorney-General is responsible for administering matters relating to the legal sector where there is no Cabinet Secretary assigned for the same.

49. **Committee comments:** The Committee observed that there were no stakeholder comments received on this provision and recommends that the provision be agreed to as it appears in the Bill.

##### **The Records Disposal Act (Cap.14)**

50. The part provides for the amendment of section 2 (1) the Records Disposal Act to make provisions empowering the Chief Justice to make rules to on the disposal records of the Employment and Labour Relations Court.

51. **Committee comments:** The Committee observed that there were no stakeholder comments received on this provision.

52. The Committee recommends that the provision be agreed to subject to the insertion of an amendment to include the “Environment and Land Court” in the proposed amendment to section 2(1) of the Act..



### **The Penal Code (Cap. 63)**

53. The Bill proposes to amend the Penal Code to replace the reference to the Commissioner –General of Police with the Inspector General of Police in line with the National Police Service Act, 2011.
54. **Committee comments:** The Committee observed that there were no stakeholder comments received on this provision and recommends that the provision be agreed to as it appears in the Bill.

#### **Stakeholder views**

55. The Committee received submissions from the Coalition on Violence Against Women (COVAW) that the provisions of the Schedule relating to the proposed amendments to the Penal Code should be amended to insert a new proposal for the repeal of section 146 of the Penal Code. COVAW submitted that section 146 of the Penal Code relates to the defilement of “idiots or imbeciles” a term used to refer to individuals with mental and intellectual challenges. COVAW was of the view that the section should be repealed in its entirety. COVAW further stated that ‘referring to mentally and intellectually challenged persons including women and girls as idiots or imbeciles is derogatory, demeaning and discriminative based on the health status, disability and birth of such persons contrary to Article 27( 4) of the Constitution’. COVAW further stated that there would be no lacuna in the law if section 146 of the Penal Code were repealed as offenders will still be prosecuted under section 7 of the Sexual Offences Act, No 3 of 2006, which provides as follows-

*7. A person who intentionally commits rape or an indecent act with another within the view of a family member, a child or a person with mental disabilities is guilty of an offence and is liable upon conviction to imprisonment for a term which shall not be less than ten years. "*

56. The Committee observed that indeed section 146 of the Penal Code provides as follows-  
*"Any person who, knowing a person to be an idiot or imbecile has or attempts to have unlawful carnal connection with him or her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person was an idiot or imbecile is guilty of a felony and is liable to imprisonment with hard labour for fourteen years."*
57. **Committee comments:** The Committee noted the submissions by COVAW that it was derogatory to refer to mentally and intellectually challenged persons as “idiots and imbeciles” and that section 146 of the Penal Code should be repealed. The Committee observed that the proposal by COVAW could not be included in this Bill as it had not yet been subjected to public participation hearings as required under Article 118 of the Constitution. The Committee was also of the view that section 7 of the Sexual Offences Act is not an adequate replacement for section 146 of the Penal Code and there is need for further consultations with the office of the Director of Public Prosecutions and the Attorney-General before the provision could be expunged from the Penal Code.

### **The Judicial Service Act, 2011 (No. 1 of 2011)**

58. The part provides for the amendment of section 7 the Judicial Service Act to reduce the post-qualification years of experience required for recruitment as a legal researcher from two years to one year.

#### **Stakeholder views**

59. **International Commission of Jurists (ICJ Kenya)** submitted that its supports the amendment as it will allow for more persons to apply for the positions and enhance human resources in the Judiciary.

**Committee comments:** The Committee recommends that the provision be agreed to as it appears in the Bill.

### **The Political Parties Act 2011 (No. 11 of 2011)**

60. The part provides for the amendment of section 24 (1) of the Political Parties Act to clarify the amount of money payable by Government into the Political Parties Fund.

**Proposed amendment: Delete paragraph (a) and substitute therefor the following new paragraph-**

**“(a) such funds, not being less than zero point here percent of the National Government shareable revenues net of mandatory and non-discretionary expenditures of the Government”**

#### **Stakeholder views**

61. **The Office of the Registrar of Political Parties** submitted that it does not support the amendment for the following reasons; **THAT**

- (a) With the proposed amendment there shall be uncertainty of the amount a Political Party shall receive and a possibility of the fund being depleted and this will lead to difficulty in planning by the parties themselves in line with their work plans.
- (b) The amendment shall it itself defeat the fundamental intention and purposes of the Political Parties Fund as outlined in section 26 of the Political Parties Act, 2011 and Article 92 of the Constitution.
- (c) The proposal intends to amend a substantive provision of the Act that ought not to be done through a miscellaneous amendment.
- (d) The Attorney General provided a legal advisory to the National Treasury and Parliament on the issue whether it was discretionary to allocate, appropriate and disburse the Political Parties Funds for purposes of disbursement to the eligible Political Parties. The legal advisory of the AG stated that it is mandatory to allocate and appropriate funds to the Political Parties Fund.
- (e) The High Court pronounced itself on the matter of the Political Parties Fund in the case of **ODM vs National Treasury and 5 others (2017) eKLR** on the importance of funding Political Parties and why it is anchored in law.

**Committee comments:** The Committee observed that there was a typographical error in the proposed amendment whereby the amendment appears as.....”zero point here percent instead of zero point three percent”....The Committee further observed that the effect of the amendment was to introduce the words “shareable revenue net of mandatory and non-discretionary expenditures of the Government” in the formula used to allocate funds to the Political Parties Fund.

The Committee noted the submissions by the Registrar of Political Parties that the proposed amendment will bring uncertainty on the amount of funds a Political Party shall receive every financial year and a possibility of the Fund being depleted leading to difficulty in planning by the parties themselves in line with their work plans. The Committee also observed that the amendment would lead to reduced allocations to the Political Parties Fund and should be rejected.

**Committee recommendation:** The Committee recommends that the proposed amendment to section 24(1) of the Political Parties Act, No.11 of 2011, be deleted from the Bill.

### **The Kenya National Commission on Human Rights Act 2011 (No. 14 of 2011)**

The part provides for the amendment of sections 8, 11 (2) and 11 (14) of the Kenya National Commission on Human Rights Act, 2011 to elaborate on the functions of the Commission and to update the provisions relating to appointment of members of the Selection Panel to nominate members of the Commission.

#### **(i) Proposed amendment to section 8 of the Act**

Insert the following new paragraph immediately after paragraph immediately after paragraph (e)-

"(ea) to advise the state on the ratification of, or accession to, international and regional treaties relating to human rights."

### **Stakeholder views**

62. **International Commission of Jurists (ICJ Kenya)** submitted that it supports the proposed amendment for the reason that the introduction of the clause seeks to create and add the responsibility of the Commission to advise the state on the ratification of and accession to international and human rights principle, this broadens the Commission’s mandate to ensure the compliance on human rights standards with relevant instruments, a function that was not spelt out but implied in the function of the Commission.
63. **Committee comments:** The Committee observed that the function of advising the state on the ratification and accession to international and regional treaties relating to human rights should be done by the Attorney-General who is the principal legal advisor to the Government under Article 156(4)(a) of the Constitution. The Committee further noted that the Treaty Making and Ratification Act, No. 45 of 2012 recognized the Attorney-General and the responsible Cabinet Secretaries as the persons responsible for advising the Cabinet on matters relating to ratification and accession to Treaties. The Committee was of the view that the Kenya National Commission on Human Rights had a wide mandate under section 8 of the Act and there was, therefore, no need for them to seek to perform a function bestowed on the Attorney-General by existing law.

64. **Committee recommendation:** The Committee recommends that the proposed amendment to section 8 of the Kenya National Commission on Human Rights Act 2011, No. 14 of 2011, be deleted from the Bill.

**(ii) Proposed amendment to section 11(2) of the Act**

65. **Committee recommendation:** The Committee recommends that the provision be agreed to as it appears in the Bill.

**(iii) Proposed amendment to section 11(14) of the Act**

66. **Committee comments:** The Committee observed that the amendment sought to remove the representative of the Public Service Commission from the Selection Panel to recommend persons the appointment as members of the Kenya National Commission on Human Rights. The Committee was of the view that the proposed removal is not justifiable since the Public Service Commission has the mandate to promote the values and principles of public service under Article 232 of the Constitution.

67. **Committee recommendation:** The Committee recommends that the proposed amendment to section 11(14) of the Kenya National Commission on Human Rights Act 2011, No. 14 of 2011, be deleted from the Bill.

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

68. The part provides for the amendment of section 11(1)(j) the Ethics and Anti-Corruption Commission Act, 2011 to allow the Ethics and Anti-Corruption Commission to institute proceedings for the recovery of corruptly acquired assets located outside Kenya. It further proposes to amend the Act to allow the Ethics and Anti-Corruption Commission to institute proceedings for the recovery of corruptly acquired assets located outside Kenya.

**Stakeholder views**

69. **Transparency International, Kenya** submitted that it welcomes and supports the proposed amendments as it will allow the EACC to institute proceedings for the recovery of corruptly acquired assets located outside Kenya under the Mutual Legal Assistance Act, 2012.

70. **Committee comments:** The Committee was of the view the war on corruption will be enhanced if the EACC is given additional mandate to institute proceedings for recovery of property or proceeds of corruption located outside Kenya.

71. **Committee recommendation:** The Committee recommends that the provision be agreed to as it appears in the Bill.

**The Public Appointments (Parliamentary Approval) Act, 2011 (No. 33 of 2011)**

72. The part provides for the amendment of section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 to increase the period during which a House of Parliament shall consider a nomination and table its report, from fourteen to twenty-eight days.

**Stakeholder views**

73. **Transparency International, Kenya** submitted that it supports the proposed amendment for the reason that the amendment gives more time to the Committee considering the suitability of a candidate from 14 days to 28 days. It would further allow more time for public participation. **Transparency International, Kenya** further submitted the following new amendments should be made to the Public Appointments (Parliamentary Approval) Act, 2011;

- (a) Introduction of a new sub section (5) in Section 5 of the Act to allow the appointing authority to rescind its decision any time before the approval hearings commence;
- (b) Section 9 of the Act be deleted and new provision introduced to the effect that if Parliament does not approve or reject a nominee, the notification lapses and the Clerk should direct the relevant Committee or the appointing authority to issue a report or re-issue a fresh notification or rescind the notification as would be appropriate.

74. **Committee comments:** The Committee observed that the proposal by Transparency International that section 5 of the Public Appointments (Parliamentary Approval) Act, 2011 be amended to allow nominating authorities to rescind their decisions will undermine the oversight role of Parliament and should be rejected. Nominating agencies are required to comply with all legal requirements before forwarding the same to Parliament and failure to do so should lead to rejection by Parliament rather than rescission of the nomination by the agencies.

75. **International Commission of Jurists (ICJ Kenya)** submitted that it supports the amendment because it seeks to increase the period during which a House of Parliament shall consider a nomination and table its report. The increased duration will give the relevant Committee sufficient time to determine the suitability of any nominee.

76. **Committee recommendation:** The Committee recommends that the provision be agreed to as it appears in the Bill

#### **The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)**

- 77. The part provides for the amendment of sections 8 (1) (b) (c), 8 (3), 9(2) and 12(2) of the Kenya Law Reform Commission Act, 2013 to provide for the powers of the Attorney-General with respect to the Commission and to streamline membership by *ex officio* members in the Commission.
- 78. Proposed amendment to section 8(1) (b): Delete the expression “Cabinet Secretary” and substitute therefor the expression “Attorney-General”
- 79. **Committee comments:** The Committee was of the view that the proposed amendment be amended to read as follows:
- 80. **Section 8(1)(b): Delete and substitute therefor the following new paragraph-**  
**(b) one member appointed by the Attorney-General through a competitive process**
- 81. **Justification:** The Committee was of the view the amendment be redrafted to reduce the number of members the Attorney-General is to appoint competitively from two to one. The Committee observed that the current voting members of the Commission are six and they need to be reduced to five for effective decision making, in case of a tie during the voting process.

**(ii) Proposed amendment to section 8(1)(c) : Delete and substitute therefor the following new paragraph-**

**(c) a representative of the Law Society of Kenya.**

82. **Committee comments:** The Committee was of the view that the proposed amendment be amended by inserting the words “who shall be an advocate of the High Court of Kenya” at the end of the proposed new paragraph.
83. **Justifications:** The Committee was of the view that it is important for the provision to clarify that the representative of the Law Society of Kenya should be an advocate of the High Court of Kenya to avoid the possibility of an unqualified person being appointed to represent the society in the Commission.

**(iii) Proposed amendment to section 8(3): Delete and substitute therefore the following new sub-section-**

**“(3) The representatives of the Attorney-General, the Director of Public Prosecutions and the Chief Justice, respectively shall be ex officio members of the Commission”**

84. **Committee comments:** The Committee was of the view that the proposed new sub-section (3) be amended by inserting the words “appointed under sub-section (1) (ca) (d), and (e)” immediately after the words Chief Justice.
85. **Justification:** The amendment seeks to clarify that the public officers appointed as members of the Commission under those provisions are the ones being designated as ex officio members.

**The Court of Appeal (Organization and Administration) Act, 2015 (No. 28 of 2015)**

86. The part provides for the amendment of section 26 (1) of the of the Court of Appeal (Organization and Administration) Act, 2015 to provide for the recess dates of the Court of the Court of Appeal to harmonize them with those applying in other courts.

**Stakeholder views**

87. **The Law Society of Kenya** proposed that the recess just like the one for Parliament should remain a calendar event with flexible dates to be set in the Annual Schedule of the Judiciary as it will give the Judiciary the latitude to adjust the recess according to its balance of convenience.
88. **International Commission of Jurists (ICJ Kenya)** submitted that it supports the amendment because it gives effect to Article 164 (1) (a) and (b) of the Constitution and provides for the organization and administration of the Court of Appeal and provides for the recess dates of the Courts to harmonize with these applying in other superior Courts.
89. **Committee comments:** The Committee observed that the proposed amendment sought increase the duration during which the Judges serving in the Court of Appeal shall be in statutory recess in addition to their normal leave days. The Committee was of the view that increasing the duration of the Court recess will lead to increased case backlog in the judiciary leading to additional costs to litigants and other stakeholders in the law and justice sector.

The Committee also agreed with the submissions by the Law Society of Kenya that the recess period for the Court of Appeal should be set in a flexible Judiciary Calendar rather than in statute.

90. **Committee recommendation:** The Committee recommends that the proposed amendments to section 26 (1) of the of the Court of Appeal (Organization and Administration) Act, 2015, be deleted from the Bill.

## 5.2 DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

The stakeholders submitted memoranda on the Bill to the Departmental Committees on Finance as follows:-

91. **Hon. Farah Maalim, Sen. (Amb.) Kembi Gitura, and Sen. David Musila** in their memoranda, the two former Deputy Speakers submitted that the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 should be amended to include Deputy Speakers of Parliament as beneficiaries of retirement benefits as is the case with the Executive and Judiciary where the Deputy President and Deputy Chief Justice are included in the list of persons entitled to retirement benefits. **(This proposal was adopted by the Committee).**
92. **The Institute of Certified Public Accountants of Kenya (ICPAK)** in their memorandum Ref: ICPAK/CE-PPR/07/2020 dated 16<sup>th</sup> July, 2020, proposed the following amendments:-

### **Accountants Act, 2018**

93. Clause 8(a) be amended by deleting the words, "*amongst members of the Institute*" and replacing with the words, "*in accountancy*". This is to align the section with the requirement of the Companies Act to prescribe standards in accountancy and also to enhance regulation of the accountancy profession by prescribing the required international standards.
94. Clause 19(2) amended by inserting the following new section; "19(2)(a)(i) Subject to the provisions of the Public Audit Act and any other written law, an employed or salaried employee shall be deemed to practice accountancy by reason of doing, in his capacity as such employee, any of the acts referred to in subsection (1); (ii) The Cabinet Secretary on advice from the Institute shall prescribe regulations to govern the practice of accountancy for salaried employee in the private or public sector". This to recognise the vital role that professionals in employment play in financial management and reporting on whose work the auditors rely on and to enable the Institute to enhance compliance and regulation.
95. The Bill be amended by inserting the following subsections immediately after subsection 19(3), "1) No person or a public or private entity shall employ a person to practice accountancy unless the person to be employed is a member of the Institute; 2) No person holding foreign qualifications shall practice accountancy in Kenya unless he or she satisfies the requirement of section 26(3) and is registered with the Institute; 3) A trainee accountant or associate accountants shall not hold themselves as accountants or use the designation accountant while in gainful employment; 4) The Institute shall prescribe guidelines for the practice of accountancy by associate accountants; and 5) The Institute shall in consultation with the Examination Board, prescribe guidelines for the practice of accountancy by trainee accountants". The proposal will enable members and the Institute to tame quacks operating as accountants and encourage the use of qualified accountants in the discharge of the finance, auditing and accounts functions in both private and public sector.



96. The Bill be amended by inserting the following new section before 19(3), “3)(i) An entity in either the private or public sector shall not employ a person to practice accountancy unless the person is a member of the Institute; (ii) Trainee and associate accountants employed in either private or public sector, the Institute shall prescribe their roles in the practice of accountancy from time to time. For trainee accountants, the Council jointly with the Examination Board shall prescribe their roles in the practice of accountancy; (iii) Persons performing the role of accountancy in either the private or public sector prior to June 2019 and have at the time of commencement of the Act, no requisite qualifications under the Act, shall register with the Institute as shall be prescribed by Council under 4(d)(a); and Persons with foreign qualifications in accountancy shall be registered with the Institute in accordance with prescribed guidelines issued by the Council from time to time and shall be deemed to be members of the Institute subject to section 26(3) of the Act”. This will ensure that the whole spectrum of accountants is regulated including persons currently discharging the roles but have no professional qualification.
97. The Bill be amended by inserting the following new section, “19A. (1) A foreigner who intends to practice accountancy in Kenya for the purpose of performing a specific assignment shall apply to the Institute for registration and shall satisfy the Institute of his or her qualifications. (2) The Institute may register the person to practice accountancy in Kenya for a period not exceeding one year or for the duration of the assignment”. This is because persons from other jurisdictions undertaking short term assignments in the country in accountancy will also be required to satisfy the Institute of their competence in order to be allowed to practice accountancy in Kenya.
98. The Bill be amended by deleting section 19(3) of the Act because the mandates and responsibilities of Advocates and Certified Public Secretaries are adequately provided for in their respective legal and regulatory frameworks.
99. Clause 30 of the Bill be amended by inserting the following subsection between (r) and (s), “(r)(a) employed in the private or public sector engages in- (i) embezzlement of funds or acts of corrupt practices; (ii) falsification of the financial statements or reports of an entity; (iii) fails to disclose any acts of fraudulent activities known to him/her in the discharge of his/her duties; and (iv) becomes an accomplice to embezzlement of funds or acts of corrupt practices”. This is to recognise the vital role that professionals in employment play in the financial management and reporting on whose work the auditors rely on and it will enable the Institute to enhance compliance and regulation.
100. Clause 32 of the Bill be amended by inserting between subsection (1) and (2) the following new paragraphs, “(i) The Disciplinary Committee and Secretary to Council shall enforce compliance to the provisions of this Act with the Assistance of relevant government organs and have powers to enforce and investigate accountancy matters; (ii) Pursuant to subsection (i) above, where the Disciplinary Committee or Secretary to Council has reasonable cause to believe, either on its own motion or as a result of a complaint received from any person that- (a) an offence has been committed under this Act; or (b) a registered or licensed or approved person may have engaged in

embezzlement, fraud, misfeasance or other misconduct in connection with its regulated activity; or (c) the manner in which a registered or licensed or approved person has engaged or is engaging in the regulated activity is not in the interest of the person's clients or in the public interest; An investigation shall be commenced on the matter and the report thereof made public subject to due process being followed. (a) A person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine not exceeding Kenya shillings ten million-or five years imprisonment or both". This is to give the Institute powers to investigate matters of public interest and provide a report therefore in order to deal with the increasing number of cases of professional malpractice and economy wide vice.

101. The Seventh Schedule of the Act be amended by inserting the following paragraphs immediately after paragraph 12, "13) Subject to section 19(4), any person who at the commencement of this Act was employed or was performing functions which may be deemed to be the practice of accountancy shall register with the Institute; 14) The Council shall establish a class for registration of the persons under paragraph 12; and 15) Any person who at the commencement of this Act was practicing accountancy in Kenya contrary to the provisions of section 19A shall apply for registration within twenty four months".

102. **The Committee's Observation on Retirement Benefits Submissions** was that the proposal will align the Legislature on retirement benefits with the Executive and Judiciary where the Deputy President and Deputy Chief Justice are included in the list of persons entitled to retirement benefits.

103. The Committee observed that amendments proposed by ICPAK to the Accountants Act, 2018 need to be subjected to public participation as they seek to expand the scope of the miscellaneous amendments Bill.

#### **Public Procurement and Asset Disposal Act, 2015**

104. Clause 43(8) of the Bill be amended to be 43(8)(a) and add another paragraph to read as follows, "43(8)(a) Where contraventions are discovered in the course of an inspection, the Authority may direct the procuring entity to take such actions as are necessary to rectify the contravention; (b) The final report on a State Organ or public entity by the Authority shall be copied to the Auditor-General". This is because there has been duplication on the assessment and officers of the Authority are only used to record statements in case of further investigations.

105. Clause 46(8) of the Bill be amended by inserting the words, "on professional opinion of procurement officer" immediately after the word "threshold". This is to caution against prescribing other procedures for evaluating low value procurements by accounting officer without consulting procurement professional.

106. Clause 61(2) of the Bill be amended by inserting the following paragraph (d) immediately after paragraph (c), "(d) The form of tender security attached shall be in original in each bid". This will eliminate one form of tender security applied for multiple tender bids.

107. Clause 84 of the Bill be amended by deleting subsection (3) and replacing it as follows, “84(3) Upon receipt of the evaluation report and professional opinion, the accounting officer shall take into account the contents of the professional opinion and shall within a specified period make a decision in writing”. This is because all procurement procedures and approvals should start and end early and no procurement approvals shall be made to operate retrospectively which may be currently the case.
108. Clause 184 of the Bill be amended immediately after clause 183 to read as follows, “184. Financial officers shall carry out independent market survey where to verify justification of price levels where price levels are suspicious. Accountants and financial officers to have absolute right of approval of financial transactions. Any defects in contracts be rectified before financial dispatch”. This is to prevent overstatement of tender values.
109. **Committee’s Observation** on Submissions by ICPAK on the Procurement and Asset Disposal Act, 2015 was that the amendments proposed had not been subjected to public participation.

#### **Salaries and Remuneration Commission (SRC)**

110. In their letter Ref. No. SRC/TS/NA/3/4 dated 16<sup>th</sup> July, 2020, the Commission submitted that they had no opposition to the amendments proposed to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 because they are administrative in nature and therefore do not have a financial implication and neither do they affect SRC’s mandate.

#### **Kenya National Highways Authority (KENHA)**

111. In their memorandum, they proposed that Clause 141(2) of the Public Procurement and Asset Disposal Act, 2015 should be amended to take into consideration that framework contracts where multiple awards are made to different bidders for the same item should have a rationale for the selection of the said bidders unless the bidders tied in their prices.

#### **Kinyanjui and Co. Advocates:**

In his memorandum dated 2<sup>nd</sup> July, 2020, Mr. Kinyanjui proposed the following amendments:-

112. **The Statistics Act, 2006:** He proposed that the amendment proposed to section 23 of the Act should be deleted because the proposal to allow the Director General to revise or adjust data is contrary to the requirement under sub-section (2) which requires that statistical data collected by the Bureau should be disseminated to the public after ascertaining its accuracy and safeguarding the confidentiality with respect to the information.

### **The Investment and Financial Analysts, 2015**

113. He proposed that the amendment proposed to section 18(1)(e) of the Act should be deleted because the effect is to bring into the purview of the secretary, private firms whose objects include investing. The amendment will lead to all private firms having to register and their proprietors disclosed. He also proposed that the amendment proposed to section 32 of the Act should be deleted because the amendment will cause additional expenditure of public funds. ***(This proposal was adopted by the Committee).***

### **The Procurement and Asset Disposal Act, 2015**

114. The amendment proposed to section 82 of the Act be deleted because the proposed amendment allowing for correction, revision or adjustment of tender sums after opening when it comes to direct procurement, competitive negotiations and framework consulting is a recipe for disaster.

115. He further proposed that the amendment proposed to section 86(1) of the Act should be deleted because the amendment seeking to exempt framework contracting from meeting the basic criteria for assessing what constitutes a successful tender is untenable as it creates a situation that is ripe for circumvention.

### **ICEA Lion Asset Management Limited**

116. In their memorandum, Ref: ICIFA/NA/SL/7/20 dated 6<sup>th</sup> July, 2020, ICEA Lion supported the amendment proposed to section 20 of the Financial Analysts Act, 2015 because it will ensure that with the rising rate of corruption in the investment and finance industry, the key decision makers are held accountable for any allegations of professional misconduct to protect investor's wealth.

### **Standard Investments Bank (SIB)**

117. In their memorandum, SIB supported the amendment proposed to section 18(1)(e) of the Financial Analysts Act, 2015.

### **Institute of Certified Investment and Financial Analysts (ICIFA)**

118. In their memorandum, Ref: ICIFA/NA/SL/7/20 dated 6<sup>th</sup> July, 2020, ICIFA submitted as follows:-

### **The Financial Analysts Act (No. 13 of 2015)**

119. They supported the amendment proposed to section 18(1)(e) of the Act because it will ensure that all firms engaged in the practice of investment and financial analysis are regulated to promote ethics and integrity in the private and public sectors. ***(This proposal was adopted by the Committee).***

120. The institute supported the amendment proposed to section 20 of the Act because it will ensure that with the rising rate of corruption in the investment and finance industry, the key decision makers are held accountable for any allegations of professional misconduct to protect investor's wealth. ***(This proposal was adopted by the Committee).***

121. The institute also supported the amendment proposed to section 32 of the Act because It will ensure that the Act is in line with other Acts of Parliament relating to any money appropriated by the National Assembly. The institute further supported the amendment proposed to section 34 of the Act because it will ensure that the Act is in line with other Acts of Parliament requiring accountability and auditing of monies appropriated by the National Assembly.

### **5.3 DEPARTMENTAL COMMITTEE ON TRANSPORT,PUBLIC WORKS AND HOUSING**

122. The stakeholders submitted memoranda on the Bill to the Departmental Committees on Transport, Public Works and Housing as follows:-

#### **State Department for Housing and Urban Development**

123. The State Department supported the proposed amendments in the Housing Act Cap 117 and further proposed amendment to section 2 of the Act in the definition of the term “voluntary contribution” be amended by deleting the words “**National Housing Fund**” and substituting with the words “**National Housing Development Fund**”. Further that s.7(3) (aa) be amended by deleting the words “**National Housing Fund**” and substituting with the words “ **National Housing Development Fund**”. **This was for purposes of correct referencing to the National Housing Development Fund as provided for in the Act.**

#### **The Office of the Cabinet Secretary Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works**

124. In their written submissions, the Ministry proposed that the Kenya Roads Board Act, 1999 (Act no.7 of 1999) be amended by replacing the use of the term “Executive Director” in the Act with the term “Director General”. This, as submitted was in order to conform with the road agencies.

125. The Ministry proposed the provision of a term limit for the Executive Director of the Kenya Roads Board. That currently, the Executive Director does not have a term limit in the Act and serves at the discretion of the Minister. It was proposed that the Act be amended to provide that the Director the Director General shall hold office for a term of office years and shall be eligible for appointment for one more term.

#### **The Kenya National Highway Authority (KeNHA)**

126. In their written submissions, the Agency proposed that the Kenya Roads Board Act, 1999 (Act no.7 of 1999 be amended in paragraph 3 of the second schedule to the Act on meetings of the Board by providing that the Board should meet as often as necessary for the transaction of business at such places and at such times as may be decided upon by the Board, but it shall meet at least once every three months.

### **Committee's Observations on the Bill**

127. Contributions to the National Housing Development Fund would be voluntary and not Mandatory contributions by the employer and employee at one point five per centum of the employee's monthly basic salary as were provided for in section 31A of the Employment Act No.11 of 2007.
128. There is need to limit the number of meetings the Kenya Roads Board from the current provision of meeting at least once in every month in line with the State Corporations Act, Cap 446.
129. There is need to expressly provide for a term limit of the Executive Director of the Kenya Roads Board in line with the State Corporations Act, Cap 446.

### **Recommendations by the Departmental Committee on Finance**

130. Having considered the Bill and the views by different stakeholders, the Committee proposed that:

#### **Schedule to the Housing Act**

131. The Schedule to the Bill be amended in the proposed amendment to the Housing Act,(Cap 117)—
132. In the proposed amendment to section 2 in the definition of the term “voluntary contribution” by inserting the word “Development” immediately after the word “Housing”; and
133. In the proposed amendment to s.7 (3) by inserting the word “Development” immediately after the word “Housing” appearing in the proposed new paragraph (aa).

### **5.4 DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

134. The stakeholders submitted memoranda on the Bill to the Departmental Committee on Labour and Social Welfare as follows:-

#### **Submissions by the Central Organization of Trade Unions (COTU)**

135. COTU forwarded a memorandum on the proposed amendment to the Employment Act, 2007. They submitted as follows:-

- a) They had no objection to the proposed amendment to section 2, 3 and 31A.
- b) The trade Union proposed additional amendments to the Labour Relations Act of 2007 (Act No. 14 of 2007) to Part VII on Collective Bargaining Agreements, CBA Article 56 whereby as currently constituted, only employees directly employed by the cited company (Read Employer) are legible to benefit from the CBA and any employee or worker that is outsourced does not enjoy any benefits as per the provision of the CBA. The amendment seeks to ensure that there is no

discrimination among workers working for the same employer and same company as per the requirements of our National Constitution as well as the ILO Conventions 87 and 88.

- c) This means that all those workers who are outsourced and working for a company or/and institution where a trade union exists and there is a valid CBA, such outsourced workers enjoy their terms and conditions of service as provided for in the CBA just like the rest of the workers.

### **Committee's observations on amendment to clause 2 of the Bill**

136. The purpose of the amendment is to delete the definition of “basic salary”, “employee contribution”, and “National Housing Development Fund” in line with the subsequent proposal to delete the section of the Act that relates to the National Housing Development Fund. The definitions only appear in clause 2 and once repealed there would be no need to have the definitions.

137. The committee observed that deletion of the definition of “basic salary” will create a lacuna in law and it is important for clarity on what amounts to the basic salary. It noted this should be left to the discretion of employers to determine what amounted to basic salary.

138. **Committee's recommendation:** The Schedule to the Bill be amended in the proposed amendments to the Employment Act, 2007 by deleting the words “basic salary” appearing in the proposed amendment to Clause 2.

139. **Justification:** Deletion of “basic salary” will create a lacuna in the law as to what amounts to basic salary and give the employer discretion to determine the basic salary of employees.

### **Amendment to section 3(2) of the Employment Act, 2007**

140. The Schedule to the Bill provides that section 3 be amended by deleting paragraph (a) and substituting therefor with a new paragraph as follows;

a) “(a) the Kenya Defence Forces or the reserve as respectively defined in the Kenya Defence Forces Act, 2012.

b) Insert the following new paragraph—(ba) the Kenya Coast Guard Service.

141. The Committee noted that COTU supported the above amendments.

### **Committee's observations on amendments to section 31(2)**

142. The amendment seeks to align the Act with the terminology contained in the Constitution which makes reference to the Kenya Defence Forces and not Armed forces as currently contained in the Act.

143. The amendment further takes cognizance of the newly enacted Kenya Coast Guard Service Act and its officers thereunder and seeks to incorporate them in the list of officers the Act shall not apply to.

144. **Committee's recommendation on section 3(2):** The Committee recommends that the amendment to section 3(2) be proceeded with.

#### **Committee's observation on amendments to section 31A**

145. The amendment seeks to delete the provision that provides for mandatory payment to the National Housing Development Fund. Contribution to the Fund will be a voluntary contribution under the Housing Act which shall be made in accordance with regulations under the Housing Act.
146. The Committee noted this Amendment was timely and would help to resolve the various court matters opposing the mandatory payment to the National Housing Development Fund.
147. **Committee's recommendation on section 31 A:** The Committee recommends that the amendment to section 31A be proceeded with.

#### **Observations on the Bill**

148. The purpose of the amendment to section 2 is to delete the definition of "basic salary", "employee contribution", and "National Housing Development Fund" in line with the subsequent proposal to delete the section of the Act that relates to the National Housing Development Fund. These definitions only appear in that section therefore once repealed there would be no need to have the definitions. However, the committee noted that the deletion of the definition of "basic salary" as it would create a lacuna in law and it is important for there to be clarity in what amounts to basic salary and this should not be left to the discretion of employers to determine what amounted to basic salary.
149. The amendment to section 3(2) seeks to align the Act with the terminology contained in the Constitution which makes reference to the Kenya Defence Forces and not Armed forces as currently contained in the Act. The amendment further takes cognizance of the newly enacted Kenya Coast Guard Service Act and its officers thereunder and seeks to incorporate them in the list of officers to whom the act shall not apply to.
150. The amendment to section 31A seeks to delete the provision that provides for mandatory payment to the National Housing Development Fund. Contribution to the Fund will be a voluntary contribution under the Housing Act which shall be made in accordance with regulations under the Housing Act. The Amendment is timely as it would help to resolve the various court matters opposing the mandatory payment to the National Housing Development Fund.
151. **Committee's recommendation:** The Schedule to the Bill be amended in the proposed amendments to the Employment Act, 2007 by deleting the words "basic salary" appearing in the proposed amendment to section 2.



## **5.5 DEPARTMENTAL COMMITTEE ON ENERGY**

152. The Committee received oral and written submissions from the Ministry of Energy, memoranda from the Natural Justice and Advocate Kevin Michuki of E. Kinyanjui & Co. Advocates).

### **Submissions by the Natural Justice**

153. The institution on Natural Justice submitted that the Statute Law (Miscellaneous Amendments) Bill, 2020 (The 'Bill') proposes the following significant amendments;

- a) Deletion of Section 12 (1) (e) and removal of the County Executive Committee Member nominated by the Council of Governors from the Board of the Energy Petroleum Regulatory Authority.
- b) Deletion of Section 45 (1) (f) and removal of four members appointed by the Council of Governors from the Board of the Rural Electrification and Renewable Energy Corporation.

154. They proposed the inclusion of members appointed by the Council of Governors on the following reasons:

- a) Part 1 of the Fourth Schedule of the Constitution outlines the functions of the national government to include formulation of energy policies including electrical and gas reticulation and energy regulation. Part 2 of the Schedule similarly provides for the functions of the county government to include county planning and development including electrical and gas reticulation and energy regulation.
- b) The aim of the Energy Act is to consolidate laws relating to energy and provide for functions of the national and county governments in relation to energy. Under Section 7(2) the obligation to provide energy is shared between the national and county governments. The Act is therefore one concerning county governments.
- c) Section 44 (1) of the Act outlines the functions and powers of the Rural Electrification and Renewable Energy Corporation to include developing rural electrification master plans in consultation with county governments, developing the renewable energy master plan taking into account county specific needs and the principle of equity in the development of renewable energy resources, establishing a framework for collaboration with County Governments in the discharge of its mandate and providing technical and other capacity building support to County Governments in the discharge of the function of electricity reticulation and energy regulation.
- d) Section 85 (3) provides for division of royalties from geothermal energy production between the national and county government.
- e) Sections 193 to 196 of the Act highlight functions and powers of county governments in relation to ensuring efficient use and conservation of energy, establishing a fund for the purposes of promotion of efficient use of energy and its conservation within the County, conducting inspections of equipment or appliances to ensure compliance

with minimum energy efficiency performance standards set out in the Act; and to issue directions and enforce regulations of norms for process and energy consumption standards in any industry or building complex and regulations of the energy consumption standards for equipment and appliances.

- f) The Fifth Schedule of the Act outlines functions of the county government in relation to energy to include county energy planning, county energy regulation and county operations and development.

#### **Submission by Advocate Kevin Michuki (E. Kinyanjui & Co. Advocates)**

155. Advocate Kevin Michuki submitted that;

- a) The proposed amendment to section 20(1) (a) will occasion additional expenditure of public funds as it seeks to increase the amount levied. Further, it seeks to limit oversight of the additional expenditure by exempting the increased levies from being paid into the Consolidated Fund.
- b) The proposed amendments to section 166 seeks to absolve a licensee of liability for failure and defect in electricity supply contrary to the express purpose of the Act to regulate electricity distributors. The proposed amendment to section 208 with regards to the role of the Board and the Cabinet Secretary in the making of regulations under the Act is liable to abuse as what constitutes consultation is not defined. As enacted the provision seems to adequately stipulate the roles of the respective parties.
- c) He recommended that the amendment to section 20(1) (a) which shall increase expenditure should be jettisoned as it will only lead to further financial strain on an already financial depressed citizenry. The amendment seeking to absolve licensees from liability is also untenable as it limits any recourse that may be available to consumers.

#### **Submission by the Ministry of Energy**

156. Eng. Joseph Njoroge, Principal Secretary, Ministry of Energy, Mr. Bernard Mr. William Mbaka, Senior Deputy Director, Budget, Chairperson the Taskforce on the Operationalization of the Energy Act, 2019 and other Ministry officials appeared before the Energy Committee and made the following submissions on the proposed amendments:

- a) There is a proposed amendment to enhance the levies that EPRA may charge on the sale of electricity and petroleum products from the present percentage of 0.5 to a maximum of one percent (1%). Further that the levies are paid into a Consolidated Energy Fund as provided in the Act instead of into the Consolidated Fund.
- b) A few of the amendments are tailored to remove the representative of county governments from the EPRA Board leaving it with nine (9) voting Members since the DG is an ex-officio as provided under section 14(5) of the Act.

- c) Other proposed amendments require the Boards under the Energy Act to recommend three names to the Cabinet Secretary in charge of Energy for appointment as a Director General to the Agencies under the Purview of the Ministry.
  - d) Some amendments propose to replace the word “Board” with the words “Corporation or Agency” for purposes of clarity as there are three Boards set out in the body of the Energy Act.
  - e) That the bulk of the proposed amendments are meant to cure editorial errors in the Energy Act 2019.
157. **Consideration of the proposed amendments by the Energy Committee:** The Committee considered the amendments based on Constitutional requirements as follows;
158. **Section 2 of the Energy Act is proposed for amendment by deleting the definition of the term “distribution licence”** appearing immediately after the definition of the term “distribution”. **Recommendation on amendment to Section 2-**The Committee recommended that the amendment be proceeded with.
159. **Justification** - Two definitions are given, however the second definition is more comprehensive and all-inclusive for the term 'distribution license. The deletion does not affect the remaining provisions of the Act.
160. **Section 10(a) (ii) of the Energy Act** is proposed for amendment by deleting the phrase “with the exception of crude oil”.
161. **Recommendation on the amendment** -The Committee recommends that the amendment be proceeded with.
162. **Justification** -The regulation of crude oil falls under the stated functions of the Energy and Petroleum Regulatory Authority to regulate petroleum and petroleum products.
163. **Section 12(1) (e) of the Energy Act** is proposed for amendment by deletion of the section in the Act.
164. **Recommendation on amendment to section 12(1) (e):** The Committee recommends that the amendment be proceeded with.
165. **Justification** -The amendment removes the representative of the Council of Governors from the EPRA Board leaving it with nine (9) voting Members since the DG is an ex-officio as provided under s. 14(5) of the Act. There is no need for representation of the Council of Governors in the Board because EPRA is a National Regulator.
166. **Section 13(1) of the Energy Act** is proposed for deletion and substitution with the following new subsection;“(1) The Cabinet Secretary shall, on the recommendation of the Board, appoint a Director-General, from a list of three names submitted by the Board, who shall be the chief executive officer of the Authority, and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.”
167. **Recommendation** -The Committee recommends that the amendment be proceeded with.
168. **Justification** -The amendment requires the Board to recommend three names to the Cabinet Secretary (CS) for appointment as EPRA Director General. Currently, there is no requirement on the number of names that the Board may recommend to the CS.
169. **Section 20(1) (a) of the Energy Act** is proposed for amendment by deleting the phrase “half of a”.

170. **Recommendation** -The Committee recommends that the amendment be proceeded with.
171. **Justification** -The amendment enhances the levies that EPRA may charge on the sale of electricity and petroleum products to a maximum of one percent (1%). The current maximum chargeable by EPRA is zero decimal five percent (0.5%). The increase of the levies on electricity and petroleum products means an increase in the monies available to it for its operations.
172. **Proviso to Section 20(1) of the Energy Act** is proposed for amendment by deleting the word “levies”.
173. **Recommendation** -The Committee recommends that the amendment be proceeded with.
174. **Justification** -The levies charged by EPRA on electricity and petroleum products will be paid directly to EPRA and not the Consolidated Fund.
175. **Section 26(4) of the Energy Act** is proposed for amendment by inserting the word “in” immediately after the word “terms”.
176. **Recommendation** -Committee recommends that the amendment be proceeded with.
177. **Justification** -The amendment provides clarity as the word proposed for insertion is missing from the text of the Section.
178. **Section 45(1) (e) of the Energy Act** is proposed for amendment by deleting the word “three” and substituting therefor the word “seven”.
179. **Recommendation** -The Committee recommends that the amendment be proceeded with.
180. **Justification** - The proposed amendment allows the CS to appoint seven (7) Members to the REREC Board. Currently the CS only appoints three (3) Members. The proposed amendment, when considered with the proposed deletion of section 45(1) (f) removes representatives of the Council of Governors from the Board to streamline its operations.
181. **Section 45(1) (f) of the Energy Act** is proposed for deletion.
182. **Recommendation** - The Committee recommends that the amendment be proceeded with.
183. **Justification** -The amendment proposes to remove all the four (4) representatives of county governments from the REREC Board. The REREC is a national government entity and the deletion will streamline its operations.
184. **Section 46(1) of the Energy Act** is proposed for amendment by deleting and substituting therefor the following new subsection;
- “The Cabinet Secretary shall, on the recommendation of the Board, appoint a Chief Executive Officer, from a list of three names submitted by the Board, who shall be the chief executive of the Corporation and shall, subject to the directions of the Board, be responsible for the day to day management of the Corporation.”*
185. **Recommendation** -The Committee recommends that the amendment be proceeded with.
186. **Justification** - The amendment requires the Board to recommend three names to the CS for appointment as Rural Electrification and Renewable Energy Corporation (REREC) Chief Executive Officer. Currently, there is no requirement on the number of names that the Board may recommend to the CS.

187. **Section 61(1) of the Act** is proposed for amendment by deleting and substituting therefor the following new subsection;  
*“(1) The Cabinet Secretary shall, on the recommendation of the Board, appoint a Director-General, from a list of three names submitted by the Board, who shall be the chief executive officer of the Agency, and shall, subject to the directions of the Board, be responsible for the day to day management of the Agency.”*
188. **Recommendation** - The Committee recommends that the amendment be proceeded with.
189. **Justification** -The amendment requires the Board to recommend three names to the CS for appointment as NuPEA Director General. Currently, there is no requirement on the number of names that the Board may recommend to the Cabinet Secretary.
190. **Section 82 of the Energy Act** is proposed for amendment by deleting the word “Authority” and substituting therefor the phrase “Renewable Energy Resource Advisory Committee”.
191. **Recommendation** -The Committee recommends that the amendment be proceeded with.
192. **Justification** - The amendment obliges the CS to only renew or accept the surrender of a license relating to renewable energy resources on the advice of the Renewable Energy Resource Advisory Committee. Currently, the Act obliges the CS to rely on the advice of EPRA for any renewal or surrender of a licence relating to renewable energy resources whereas the role is performed by Renewable Energy Resource Advisory Committee.
193. **Section 98(1) (d) of the Energy Act** is proposed for amendment by inserting the word “with “immediately after the word “compliance”.
194. **Recommendation** -The Committee recommends the amendment be proceeded with.
195. **Justification** -The amendment inserts a missing word and provides clarity to the provisions of the section and cures an editorial error.
196. **Section 100 (1) (b) of the Energy Act** is proposed for amendment by inserting the word “of” immediately after the word “type”.
197. **Recommendation** -The Committee recommends that the amendment be proceeded with.
198. **Justification** -The amendment inserts a missing word and provides clarity to the provisions of the Section and cures an editorial error.
199. **Section 129(2) of the Energy Act** is proposed for amendment by deleting the word “three” and substituting therefor the word “four”.
200. **Recommendation** - The Committee recommends that the amendment be proceeded with.
201. **Justification** -The amendment increases the period within which a person licensed to deal in electrical energy is required to submit its audited accounts to EPRA from three (3) months after the end of a financial year to four (4) months after the end of the financial year to align with current Capital Markets Authority requirements.
202. **Sections 149(3) of the Energy Act is proposed for amendment by deleting the word “license” and substitute** therefor the word “certificate”.
203. **Recommendation** -The Committee recommends that the amendment be proceeded with.

204. **Justification** - The amendment replaces the word “license” with the word “certificate”. The section generally deals with the certification of electrical workers. The certificate is for electrical workers and not for electrical installation work.
205. **Section 166(3) of the Energy Act** is proposed for amendment by inserting the phrase “to any penalty or” immediately after the word “liable” and inserting the word “or” immediately after the word “majeure”.
206. **Recommendation** -The Committee recommends that the amendment be proceeded with.
207. **Justification** -The amendment clarifies the exception to the payment of penalties and compensation for default in supplying electrical energy or damage cause by electricity supply. A licensee shall not be liable to pay any penalty or compensation if the licensee can attribute the fault to either third party interference to its electricity supply lines, inevitable accident; or force majeure. The licensee shall also not be liable if the alleged fault was so minimal that it did not materially affect the quality or value of its electrical energy it supplied to the consumer.
208. **Section 166(4) of the Energy Act** is proposed for amendment by deleting the word “six” and substituting therefor the word “eighteen” to increase the period within which the Cabinet Secretary is to make Regulations under the Act.
209. **Recommendation** - The Committee recommends that the amendment be proceeded with
210. **Justification**- This increases the period within which the CS is required to make regulations under the Act. The Act commenced on 28<sup>th</sup> March 2019. Regulations were required to have been made by end of September 2019. The making of Regulations and stakeholder consultations may have been adversely affected by the current COVID-19 restrictions. The extension will allow adequate time for the finalization of the regulations.

#### **Section 167(o) of the Energy Act**

211. Section 167(o) of the Act is proposed for amendment by deleting the word “electrician” and substituting therefor the words “electrical worker”
212. **Recommendation** - The Committee recommends that the amendment be proceeded with.
213. **Justification** -The amendment replaces the term “electrician” with the term “electrical worker” for consistency in the Act. The Act has defined the term “electrical worker” and used it in sections 148, 149, 151 and 152 of the Act and Paragraph 2 of the Fifth Schedule to the Act.
214. **Section 169(2) of the Energy Act** is proposed for amendment by inserting the words “or stolen” immediately after the word “vandalized” and by deleting the phrase “in the attempted vandalism” and substituting therefor the word “as”.
215. **Recommendation** - The Committee recommends that the amendment be proceeded with.
216. **Justification** - The amendment clarifies the requirement of the forfeiture of any vessel used to transport any vandalized energy installations and infrastructure and any stolen energy equipment or appliance.
217. **Section 199(1) of the Energy Act** is proposed for amendment by inserting the word “Gazette” immediately after the phrase “by notification in the”.

218. **Recommendation** - The Committee recommends that the amendment be proceeded with.
219. **Justification** - The amendment inserts a missing word in the section and clarifies the requirement for a county government to notify the public of any rules made under the Act through the Gazette.
220. **Section 208(1) of the Energy Act** is proposed for amendment by deleting the phrase “on the recommendation of” and substitute therefor the phrase “in consultation with”.
221. **Recommendation** -The Committee recommends that the amendment be proceeded with.
222. **Justification**-The amendment obliges the Cabinet Secretary (CS) to consult with Energy and Petroleum Regulatory Authority (EPRA) when making regulations. Currently, the Cabinet Secretary is required to make regulations recommended to him or her by EPRA which may inordinately limit the making of regulations.

### **5.5.1 SECOND SCHEDULE TO THE ENERGY ACT**

223. **Paragraph 4(1) (d) of the Schedule** is proposed for amendment by deleting the words “or Board” and substituting therefor the words “Corporation or Agency”.
224. **Recommendation**-The Committee recommends that the amendment be agreed with.
225. **Justification** -The amendment replaces the word “Board” with the words “Corporation or Agency” for purposes of clarity. There are three Boards set out in the body of the Act. It provides consistency.
226. **Paragraph 4(1) (e) of the Schedule** is proposed amendment by deleting the words “or Board” and substituting therefor the word “Corporation or Agency”.
227. **Recommendation** -The Committee recommends the amendment be proceeded with.
228. **Justification**-The amendment replaces the word “Board” with the words “Corporation or Agency” for purposes of clarity. There are three Boards set out in the body of the Act. It provides consistency.
229. **Paragraph 5(2) of the Schedule** is proposed for amendment by deleting the word “Director General” appearing immediately after the phrase “subparagraph (1)”.
230. **Recommendation** - The Committee recommends that the amendment be proceeded with.
231. **Justification** - The amendment deletes a repeated phrase.
232. **Paragraph 7(1) of the Schedule** is proposed for amendment by inserting the words “the Corporation” immediately before the phrase “or the Agency for that year”.
233. **Recommendation**- The Committee recommends that the amendment be proceeded with.
234. **Justification** -The amendment inserts a missing word.
235. **Paragraph 7(2) (a) of the Schedule** is proposed for amendment by inserting the words “the Corporation” immediately after the word “Tribunal”.
236. **Recommendation**-The Committee recommends that the amendment be proceeded with.
237. **Justification** - The amendment inserts a missing word.
238. **Paragraph 7(3) of the Schedule** is proposed for amendment by inserting the word “Corporation” immediately after the word “Tribunal”.
239. **Recommendation** - The Committee recommends that the amendment be proceeded with.

240. **Justification** - The amendment inserts a missing word.
241. **Paragraph 7(4) of the Schedule** is proposed for amendment by inserting the word “, the Corporation” immediately after the word “Tribunal”.
242. **Recommendation** - The Committee recommends that the amendment be proceeded with.
243. **Justification** -The amendment is for clarity of the provision.
244. **Paragraph 8(1) of the Schedule** is proposed for amendment by deleting the word “Authority” appearing after the word “Tribunal” and replacing it with the word “Corporation”.
245. **Recommendation** - The Committee recommends that the amendment be proceeded with.
246. **Justification** - The amendment is for clarity of the provision.
247. **Paragraph 8(9) of the Schedule** is proposed for amendment by replacing the word “Authority” with the word “Authority's”
248. **Recommendation** - The Committee recommends that the amendment be proceeded with.
249. **Justification** -The amendment is for clarity of the provision.
250. **Paragraph 9(1) of the Schedule** is proposed for amendment by deleting the words “or the Board” and replacing them with the words “, Corporation or Agency”.
251. **Recommendation** -The Committee recommends that the amendment be proceeded with.
252. **Justification** -The amendment will provide consistency.
253. **Paragraph 9(2) of the Schedule** is proposed for amendment by deleting the words “or the Board” and replacing them with the words “, Corporation or Agency”.
254. **Recommendation** -The Committee recommends that the amendment be proceeded with.
255. **Justification** -The amendment will provide for consistency.
256. **Paragraph 9(3) of the Schedule**- is proposed for amendment by deleting the words “or the Board” and replacing them with the words “, Corporation or Agency”.
257. **Recommendation** - The Committee recommends that the amendment be proceeded with **Justification** -The amendment will provide for consistency.

#### **5.5.2 AMENDMENTS BY THE MINISTRY OF ENERGY**

258. The Ministry of Energy proposed the following additional amendments to the Energy Act,2019 for inclusion in the Bill:-
259. **Section 20(1) of the Energy Act is proposed for amendment** by inserting the word "Energy" between the words "Consolidated" and "Fund".
260. **Recommendation** -The Committee recommends that the proposal be proceeded with.
261. **Justification**-To cure the editorial error. Under section 216(1) the Cabinet Secretary is required to establish the Consolidated Energy Fund. The sources of funds for the Consolidated Energy Fund under section 216(2) include among others monetary sanctions imposed by the Authority.
262. **Section 45(1) (d) of the Energy Act** be amended by deleting the words “who shall be the Secretary to the Board”



263. **Recommendation** -The Committee recommends that the proposal be included in the Bill.
264. **Justification**- Board secretarial duties are undertaken by the Corporation Secretary as per 'Mwongozo' Code of Conduct. There should be a clear segregation between the role of the CEO and the Company Secretary. Further, it opens up the position of CEO to other professions instead of just the legal profession.
265. **Section 49 of the Energy Act** be amended by deleting the words "in consultation with the Public Service Commission"
266. **Recommendation** -The Committee recommends that the proposal be included in the Bill.
267. **Justification**-The Corporation recruits its own staff without consultation with the Public Service Commission (PSC). This has been the custom and the practice. PSC is only involved in the recruitment for the Government ministries and departments.
268. **Section 54- Title** -That Section 54 of the Act be amended by including the words "of Kenya" to the title "Establishment of the Nuclear Power & Energy Agency'.
269. **Recommendation** -The Committee recommends that the proposal be included in the Bill.
270. **Justification** -To bring clarity that the Agency is the one under the jurisdiction of Kenya. The word "Kenya" in the name is to distinguish NuPEA from other agencies.
271. **Section 54(1)** be amended by including the words 'of Kenya' to the title 'Establishment of the Nuclear Power & Energy Agency'
272. **Recommendation**-The Committee recommends that the proposal be included in the Bill.
273. **Justification**-To bring clarity that the Agency is the one under the jurisdiction of Kenya. The word "Kenya" in the name is to distinguish NuPEA from other agencies.
274. **Section 66** of the Act be amended by deleting the words "in consultation with the Public Service Commission".
275. **Recommendation** -The Committee recommends that the proposal be included in the Bill.
276. **Justification**-The Agency recruits its own staff without consultation with the Public Service Commission (PSC). This has been the custom and the practice. PSC is only involved in the recruitment for Government ministries and departments.
277. **Section 79(2)** of the Act be amended by deleting the numeral "VIII" and replace with the numeral "VII"
278. **Recommendation**-The Committee recommends that the proposal be included in the Bill.
279. **Justification** -To cure the editorial error. Part VII is the correct cross-reference.
280. **Section 154(2)** of the Act be amended by replacing the word "metre" appearing between the words "private" and "belonging" with the word "meter".
281. **Recommendation** - The Committee recommends that the proposal be included in the Bill.
282. **Justification** -\_This is to cure the editorial error. The word "metre" is unit of measurement. The word "meter" is a type of machine, device or instrument used for measurement. The section refers to machine, device or instrument.
283. **Section 166 of the Act** be amended by deleting the word "six" and substituting it with the word "thirty-six" as the average period for developing new regulations and consulting

relevant stakeholders is 18 months and its efforts had been hampered by COVID-19. The Committee considered this proposal in its recommendation on the amendments proposed in the Bill.

284. **Section 167(1)** of the Act be amended by deleting the numeral '(1)' appearing after the numeral "167"

285. **Recommendation** - The Committee recommends that the proposal be included in the Bill.

286. **Justification** -The section does not have any subsequent subsections. The sections only has paragraphs (a) to (o).It is intended to align the section with the structure of other sections and to cure editorial error.

287. **Section 167(1)** of the Act is amended by inserting (p) "prescribing the penalties for breach of the Act or conditions of the licence granted under this Act"

288. **Recommendation** -The Committee recommends that the proposal should not be proceeded with.

289. **Justification**-The inclusion of the section would offend Article 94 of the Constitution which vests law - making powers only in Parliament. The Constitution further requires that when Parliament delegates law-making, it must state the purpose for the delegation and the limits applicable to the delegation. The Ministry has not defined the offences and the penalties for which it seeks a general power to legislate. A general and vague delegation of power may be liable to abuse and arbitrary application.

#### **Other Headings**

290. The Ministry proposed that the words "Tariffs and contracts for supply of electrical energy and network services" appearing immediately before the provision be italicize as a sub-title.

291. **Recommendation** - The Committee recommends that the proposal be included in the Bill.

292. **Justification** - To cure the editorial error. The heading ought to be italicized so that it is not construed as part of section 162. Those words as they are before section 163 are floating.

### 5.5.3 ENERGY COMMITTEE'S OBSERVATIONS

293. In its consideration of the proposed amendments, the Committee observed that
- Stakeholders submissions on proposed amendments were received on Clauses 12(1) (e); 20(1) (a); 45(1) (f); 166 and 208.
  - The Ministry of Energy proposed more amendments to the Energy Act 2019 in addition to those contained in the Statute Law ( Miscellaneous Amendments), Bill, 2020

### 5.5.4 ENERGY COMMITTEE'S RECOMMENDATIONS

294. Having considered the proposed amendments to the Energy Act 2019 as contained in the Statute Law (Miscellaneous Amendments) Bill, 2020 as well as the memoranda from the public and the Ministry of Energy and recommends that the National Assembly:
- Approves** the amendments to Sections 2; 10(a)(ii); 12(1)( e); 13(1);20(1); 20(1) proviso; 26(4); 45(1)( e); 45(1)(f); 46(1); 61(1); 82; 98(1)(d); 100(1)(b); 129(2); 149(3); 154(2); 166(3); 166(4); 167(1) (o); 169(2); 199(1); and 208(1) of the Energy Act, 2019 and its Second Schedule as contained in the Bill; and
  - Approves** the inclusion of further amendments to Section 20(1); 45(1)(d); 49; 54; 66; 79(2); 154(2); 166; and 167 of the Energy Act, 2019 as contained in the Schedule to this Report.

### 5.5.5 SCHEDULE OF AMENDMENTS

295. The Committee recommends that the Schedule to the Bill be amended in the proposed amendments to the Energy Act, 2019 by inserting the following new amendments—

<i>Provision</i>	<i>Amendment</i>
s.20(1), proviso	Insert the word “Energy” immediately after the word “Consolidated”.
s.45(1)(d)	Delete the words “who shall be the Secretary to the Board”.
s.49	Delete the words “shall in consultation with the Public Service Commission” appearing immediately after the word “Corporation”.
s.54(1)	Insert the words “of Kenya” immediately after the word “Agency”.
s.66	Delete the words “in consultation with the Public Service Commission” appearing immediately after the word “may”.
s.79(2)	Delete the expression “Part VIII” appearing immediately after the words “provisions of” and substitute therefor the expression “Part VII”.
s.154(2), proviso	Delete the word “metre” appearing immediately after the word “private” and substitute therefor the word “meter”.
s.167	Delete the expression “(1)”.

### 5.6 DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

296. The Committee on Trade, Industry and Co-operatives proposes the following amendment to the Statute Law (Miscellaneous Amendments) Bill, 2020, National Assembly Bills No. 15, at the Committee Stage—

### **5.6.1 SCHEDULE OF AMENDMENTS**


297. *THAT the Schedule to the Bill be amended in the proposed amendment to the Scrap Metal Act, 2015 by deleting the proposed amendment to section 30.*

298. **Justification-** The Bill proposes to delete the word “**inspector**” and substitute it with the words “**police officer not below the rank of inspector**”. However, the word “**inspector**” as used in the Act is not related and does not refer to a police inspector as defined under the National Police Service Act, 2011. An inspector as defined under section 29 (1) of the Scrap Metal Act, 2015 refers to a person appointed by the Cabinet Secretary and who has adequate training in metallurgy or a related field of study. The proposed amendment is thus misplaced and should be deleted.

## CHAPTER 6

### 6.1 COMMITTEE RECOMMENDATIONS

299. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders proposes that the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.15 of 2020) be passed subject to the inclusion of the proposed amendments as captured by the respective Departmental Committees under Chapter 5 of the report.

Signed..........Date.....15/10/2020.....

Hon. Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs



# **ANEEXURE 1**

## **MINUTES**





**MINUTES OF THE TWENTY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY 10<sup>TH</sup> SEPTEMBER, 2020 AT 9:00 A.M IN OAK ROOM, WINDSOR GOLF AND CLUB HOTEL**

**PRESENT-**

1. Hon. Clement Muturi Kigano, M.P. - **Chairperson**
2. Hon. (Dr.) Paul Otiende Amollo, M.P - **Vice Chairperson**
3. Hon. John Olago Aluoch, M.P.
4. Hon. Peter Opondo Kaluma, M.P.
5. Hon. William K. Mwamkale, M.P
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Robert Gichimu Githinji, M.P
8. Hon. Adan Haji Yussuf, M.P
9. Hon. Jennifer Shamalla, M.P.
10. Hon. George G. Murugara, M.P
11. Hon. Anthony G. Kiai, M.P.
12. Hon. Japheth Mutai, M.P.
13. Hon. Anthony Oluoch, M.P.
14. Hon. John M. Wambugu, M.P.

**ABSENT WITH APOLOGIES-**

1. Hon. Junet Sheikh Nuh Mohamed, M.P
2. Hon. Emmanuel Wangwe, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Josephine Naisula Lesuuda, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

- |                       |   |                                      |
|-----------------------|---|--------------------------------------|
| 1. Mr. Abenayo Wasike | - | <b><u>COMMITTEE SECRETARIAT-</u></b> |
| 2. Ms. Halima Hussein | - | Senior Clerk Assistant               |
| 3. Mr. Denis Abisai   | - | Second Clerk Assistant               |
| 4. Mr. Job Owaga      | - | Principal Legal Counsel              |
|                       |   | Audio Officer                        |

**MIN No. 01/2020:-**

**PRELIMINARIES**

The meeting commenced at 9:30 a.m with a word of prayer from Chairperson and the agenda was adopted as filed.

**MIN No.02/2020:-**

**CONFIRMATION OF MINUTES**

Agenda was deferred.

MIN No.03/2020:-

REPORT ON THE STATUTE LAW  
MISCELLANEOUS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY NO.15 OF 2020)

The Committee considered and unanimously adopted its draft report on the Statute Law Miscellaneous (Amendment) Bill, 2020 with the following recommendations. The adoption was proposed by Hon. William Kamoti and seconded by Hon Anthony Kiai.

1) **The Political Parties Act 2011 (No. 11 of 2011)**

The Committee recommended that the proposed amendment to section 24(1) of the Political Parties Act, No.11 of 2011, be deleted from the Bill.

**Justification:** the amendment would lead to reduced allocations to the Political Parties Fund and should be rejected

2) **The Kenya National Commission on Human Rights Act 2011 (No. 14 of 2011)**

- a) The Committee recommended that the proposed amendment to section 8 of the Kenya National Commission on Human Rights Act 2011, No. 14 of 2011, be deleted from the Bill.

**Justification:** The Committee was of the view that the Kenya National Commission on Human Rights had a wide mandate under section 8 of the Act and there was, therefore, no need for them to seek to perform a function bestowed on the Attorney-General by existing law.

- b) The Committee further recommended that the proposed amendment to section 11(14) of the Kenya National Commission on Human Rights Act 2011, No. 14 of 2011, be deleted from the Bill.

**Justification:** The Committee was of the view that the proposal to remove Public Service Commission was not justifiable since the Commission has the mandate to promote the values and principles of public service under Article 232 of the Constitution

3) **The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)**

- a) The Committee recommended the proposed amendment be amended to read as follows:

Section 8(1)(b): Delete and substitute therefor the following new paragraph-“(b) One member appointed by the Attorney-General through a competitive process”

**Justification:** The Committee was of the view the amendment will reduce the number of members the Attorney-General was to appoint competitively from two to one since the current voting members of the Kenya Law Reform Commission are six and they need to be reduced to five for effective decision making, in case of a tie during the voting process.

- b) Proposed amendment to section 8(1)(c) : Delete and substitute therefor the following new paragraph- “(c) a representative of the Law Society of Kenya”

**Justification:** The Committee noted that it was important for the provision to clarify that the representative of the Law Society of Kenya should be an advocate of the High Court of Kenya to avoid the possibility of an unqualified person being appointed to represent the society in the Commission.

- c) Proposed amendment to section 8(3): Delete and substitute therefore the following new sub-section- *“(3) the representatives of the Attorney-General, the Director of Public Prosecutions and the Chief Justice, respectively shall be ex officio members of the Commission”*

**Justification:** The amendment sought to clarify that the public officers appointed as members of the Commission under those provisions are the ones being designated as ex officio members.

4) **The Court of Appeal (Organization and Administration) Act, 2015 (No. 28 of 2015)**

The Committee recommended that the proposed amendments to section 26 (1) of the of the Court of Appeal (Organization and Administration) Act, 2015, be deleted from the Bill.

**Justification:** The Committee observed that the proposed amendment sought increase the duration during which the Judges serving in the Court of Appeal shall be in statutory recess in addition to their normal leave days. The Committee was of the view that increasing the duration of the Court recess will lead to increased case backlog in the judiciary leading to additional costs to litigants and other stakeholders in the law and justice sector.

**MIN No. 04/2020:**

**REPORT ON IMPEACHMENT PROCEDURE BIL(SENATE BILL NO.15), 2018**

The Committee considered and unanimously adopted its draft report on the Impeachment Procedure Bill (Senate Bill No. 15 of 2018) with the following recommendations. The adoption was proposed by Hon. Adan Haji and seconded by Hon Otiende Amollo

- 1) Clauses 4, 9 and 14 of the Bill be amended
  - (a) by deleting sub-clause (3);
  - (b) in sub-clause (4) by inserting the word “immediately” after the word “shall”;
  - (c) by deleting sub-clause (5) and substituting therefor the following new sub-clause-
    - (5) The Speaker shall examine and confirm that the proposed motion-
      - (i) specifies the grounds and particulars upon which the proposed motion is made;
      - (ii) is signed by the Member; and
      - (iii) Is signed by at least a third of all the Members of the National Assembly.

(d) by inserting the following new sub-clause immediately after the proposed new sub-clause (5)-(6) If the Speaker is satisfied that the proposed motion-

- (i) complies with sub-section (5), the Speaker shall approve the motion and inform the Member within three days; or
- (ii) Does not comply with sub-section (5), the Speaker shall refuse to approve the motion and inform the Member within three days giving reasons for the refusal.

(e) By renumbering the other sub-clauses accordingly.

2) The Bill be amended by deleting Clause 21 and substituting therefor the following new Clause-

*Introduction of motions*      21. Where a vote in the Senate under section 19 fails to result in the removal of a Governor, the Senate shall not hear any motion for the removal of the Governor until after the expiry of a period of at least six months from the date of the vote in the Senate.

3) The Bill be amended by deleting Clause 22 and substituting therefor the following new Clause-

*Vacancies arising under the Act*      22. A vacancy in the office of the President, Deputy President, Cabinet Secretary, Governor or Deputy Governor arising under this Act shall be filled as provided for in the Constitution or this Act.

4) The Bill be amended by deleting Part V-Procedure for Removal from Office of a County Executive Committee Member (Clauses 27, 28 And 29)

**MIN No. 05/2020:**

No matter arose

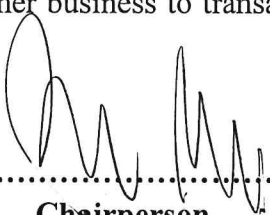
**ANY OTHER BUSINESS**

**MIN No. 06/2020:**

**ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at 1:00 p.m. Next Meeting at 2.30 p.m.

Signed.....

  
Chairperson

Date.....

1<sup>st</sup> October, 2020

**ANEEXURE 2**  
**ADOPTION LIST**



KENYA NATIONAL ASSEMBLY

Annexure 2



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


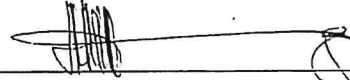


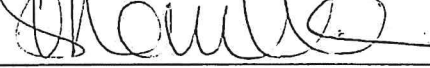
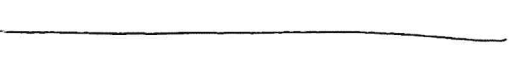



ATTENDANCE REGISTER FOR MEMBERS

DATE: 10/09/2020 ..... START TIME: 2:30pm ..... END TIME: 4pm .....

VENUE: WINDSOR GOLF HOTEL .....

AGENDA: Adoption of the Report on the Statute Law Miscellaneous (Amendment) Bill, 2020

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - <b>Chairperson</b>	
2.	Hon. (Dr.) Paul Otiende Amollo, M.P. - <b>Vice-Chairperson</b>	
3.	Hon. Emmanuel Wangwe, M.P.	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P.	
5.	Hon. John Olago Aluoch, MP.	
5.	Hon. Roselinda Soipan Tuya, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	
10.	Hon. Josephine Naisula Lesuuda, M.P.	

11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	
15.	Hon. Jennifer Shamalla, MP.	
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	
19.	Hon. Robert Gichimu Githinji, M.P.	

**COMMITTEE CLERK**

  
.....

**DIRECTOR COMMITTEE SERVICES**

.....



## **ANEEXURE 3**

# **NEWSPAPER ADVERTISEMENT**






Annexure 3

NEWS GENERAL

**REPUBLIC OF KENYA**



**THE NATIONAL ASSEMBLY**  
TWELFTH PARLIAMENT – FOURTH SESSION

**In the matter of consideration by the National Assembly:-  
The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020)**

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020) was published on 5th June, 2020 and read a First Time on Tuesday, 23rd June, 2020. The Bill is in keeping with the practice of making various amendments which do not merit the publication of separate Bills and consolidating them into one omnibus Bill. The Bill proposes amendments to Thirty-Eight (38) Acts of Parliament.

Pursuant to the provisions of Standing Order 127(1) of the National Assembly which provides that, a Bill having been read a First Time shall stand committed to the relevant Departmental Committee and Standing Order 216(5)(b) which mandates Departmental Committees, to study and review all legislation referred to it, the proposed amendments to various Acts of Parliament in the said omnibus Bill stand committed to the following Departmental Committees:-

NO.	ACTS TO BE AMENDED	DEPARTMENTAL COMMITTEE
1.	(a) The Firearms Act (Cap. 114) (b) The Official Secrets Act (Cap. 187) (c) The Counter-Trafficking in Persons Act (No. 8 of 2010) (d) The National Police Service Commission Act (No. 30 of 2011) (e) The Kenya Coast Guard Service Act (No. 11 of 2018)	Administration & National Security
2.	(a) The Statistics Act, 2006 (Act No. 4 of 2006) (b) The Accountants Act, 2008 (Act No. 15 of 2008) (c) The Retirement Benefits (Deputy President & Designated State Officers) Act (No. 8 of 2015) (d) The Investment and Financial Analysts Act (No. 13 of 2015) (e) The Public Procurement & Asset Disposal Act (No. 33 of 2015)	Finance & National Planning
3.	(a) The Public Holidays Act (Cap. 109) (b) The Employment Act (No. 11 of 2007)	Labour & Social Welfare
4.	(a) The Housing Act (Cap. 117) (b) The Kenya Roads Board Act, 1999 (Act No. 7 of 1999)	Transport, Public Works & Housing
5.	(a) The Universities Act (No. 42 of 2012) (b) The Basic Education Act (No. 14 of 2013)	Education & Research
6.	The Films and Stage Plays Act (Cap. 222)	Communication, Information & Innovation
7.	The Scrap Metal Act (No. 1 of 2015)	Trade, Industry & Cooperatives
8.	The Energy Act (No. 1 of 2019)	DC: Energy
9.	(a) The Interpretation and General Provisions Act (Cap. 2) (b) The Records Disposal Act (Cap. 14) (c) The Penal Code (Cap. 63) (d) The Criminal Procedure Code (Cap. 75) (e) The Evidence Act (Cap. 80) (f) The Anti-Corruption & Economic Crimes Act (No. 3 of 2003) (g) The Public Officer Ethics Act (No. 4 of 2003) (h) The Proceeds of Crime & Anti-Money Laundering Act (No. 9 of 2009) (i) The Judicial Service Act (No. 1 of 2011) (j) The Political Parties Act 2011 (No. 11 of 2011) (k) The Kenya National Commission on Human Rights Act (No. 14 of 2011) (l) The Employment and Labour Relations Court Act (No. 20 of 2011) (m) The Ethics and Anti-Corruption Commission Act (No. 22 of 2011) (n) The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) (o) The Leadership and Integrity Act (No. 19 of 2012) (p) The Kenya Law Reform Commission Act (No. 19 of 2013) (q) The Court of Appeal (Organisation & Administration) Act (No. 28 of 2015) (r) The Bribery Act (No. 47 of 2016) (s) The Witness Protection Act (No. 16 of 2018)	Justice & Legal Affairs

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly invites members of the Public to submit any representations they may have on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020). The Bill can be accessed from the parliamentary website at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke) to be received on or before Monday, 6th July, 2020 at 5:00 pm.

**MICHAEL R. SIALAI, EBS**  
**CLERK OF THE NATIONAL ASSEMBLY**



**PHOTO STORY**  
Kenya Revenue Authority support centre at Railway Club, Nairobi, yesterday as Kenyans rushed to beat the June 30 deadline for filing tax returns. /DOUGLAS OKIDIO

REDUCING BACKLOG

# Mediators likely to hear civil cases

State proposes Mediation Bill to make alternative dispute resolution the norm; courts to focus on crime



**MOSES ODHIAMBO**  
@AlwaMoses

Most civil disputes are likely to be heard by mediators under a Bill proposed by government.

The aim is to reduce the mounting case backlog so the courts can focus on criminal cases. At this time, mediation is not mandatory though it is encouraged. The Bill would establish a legal framework.

Mediation Bill, 2020, would establish a mediation committee to appoint mediators to hear and determine civil disputes.

The government-sponsored Bill was signed by former Majority leader Aden Duale. The Bill says that a court before which a civil dispute is filed or is pending may refer it for mediation at any time before the final judgment is read.

Mediation is called for if the court believes it would facilitate a resolution of the dispute or part of it.

A referral to mediation will stay and discontinue court proceedings.

The alarming backlog of cases was among issues that featured in the recent public dispute pitting Chief Justice David Maraga against President Uhuru Kenyatta.

The CJ said the shortage of judges – owing to the President's delayed

appointment of 41 nominees of the Judicial Service Commission – was exacerbating the situation and delaying justice in both criminal and civil cases.

The state denies the President is obliged to approve all nominees and the President said some nominees had unspecified integrity issues.

President Kenyatta cited inefficiencies by the Judiciary and, by extension, the Chief Justice.

Government sources told the Star the proposed alternative dispute infrastructure aims to reduce the case backlog and make the Judiciary more efficient. Under the Bill, the Attorney General would appoint a mediation committee comprising nine members seconded by various bodies or agencies.

The members would be nominated by the Chief Justice, the Attorney General, the Law Society of Kenya, the International Association of Women Lawyers-Kenya, Dispute and Conflict Resolution International, Institute of Certified Public Secretaries, Kenya Private Sector Alliance, Central Organisation of Trade Unions and the Federation of Kenya Employers.

"The AG shall appoint a Registrar and other officers as may be necessary," the Bill reads.

Members would serve for a three-year term, renewable once.

LUHYA POLITICS

## Malala states why Mudavadi wants him out

LUKE AWICH/ Kakamega Senator Cleophas Malala attributes his differences with ANC boss Musalla Mudavadi to the endorsement of two key Western leaders as Luhya spokesmen.

Malala backed Devolution CS Eugene Wamalwa and Kakamega Governor Wycliffe Oparanya to speak on behalf of the Mulembani nation.

He spoke at the weekend days after the party's special national governing council expelled him.

The lawmaker said the expulsion had nothing to do with his purported failure to toe the party line but everything to do with his role in Luhya community leadership.

"We met in Kajjado – 34 MPs, five governors, three senators and CS Wamalwa. I was given the opportunity to read the resolution. "Little did I know that my reading of the resolution will be the start of my problems. The resolution is not my own, but what the meeting agreed."

**SENATOR SAYS EXPULSION HAS NOTHING TO DO WITH HIS PURPORTED FAILURE TO TOE THE PARTY LINE**



REPUBLIC OF KENYA



**NATIONAL ASSEMBLY**  
TWELFTH PARLIAMENT - FOURTH SESSION

- In the matters of consideration by the National Assembly:-
1. The Referendum (No.2) Bill (National Assembly Bill No.14 of 2020)
  2. The County Law Compliance and Enforcement Bill (Senate Bill No.25 of 2018)

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Referendum (No.2) Bill (National Assembly Bill No.14 of 2020) seeks to consolidate the law relating to conduct of referenda, to provide for a transparent and fair process in order to obtain a clear expression of the will of people, by establishing the procedures for the conduct of referendums, providing for the referendum committees and establishing a level playing field for the opposers and supporters of the referendum question, by providing for equal public funding and by limiting expenditure in a reasonable manner for the public good, to afford the people an opportunity to make decisions based on information from both points of view.

The County Law Compliance and Enforcement Bill (Senate Bill No. 25 of 2018) seeks to provide for the establishment of law enforcement and inspectorate units in each county and to provide for the administration and management of the units. Further, it will provide for a legal framework for the appointment, functions and a uniform code of conduct for the enforcement officers to ensure compliance with laws enacted by County Assemblies.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Bills can be accessed from the parliamentary website at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Monday, 6<sup>th</sup> July, 2020 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

**NAKURTO LUKUNY PRIMARY SCHOOL**

**TENDER INVITATION NOTICE**

Nakurto Lukuny Primary School is a Public School in Suswa Ward of Narok East Constituency.

The school invites bids from interested and eligible bidders/firms for construction and equipping of girls dormitory.

Tenderers may inspect and obtain a complete set of tender documents upon payment of a non-refundable fee of Kenya Shillings One Thousand (1,000/-) only, either in bankers cheque or cash payable to the school office during normal working hours. The details of the tender are as follows:

S/N	Tender No	Description	Target grade
1	N.L.P.S/01/2019-2020	Proposed construction and equipping of girls dormitory	Open

Interested tenderers who meet the following mandatory requirements supported by certified copies of requisite documents at submission will be considered for further evaluation:

1. Provide certificate of Incorporation.
2. Provide valid National Construction Authority (NCA) Certificate under categories NCA 7 and above.
3. Provide PIN/VAT registration certificate.
4. Provide tax compliance certificate.
5. Provide a bid bond of Kshs.80,000 which must remain valid for 120 days (After the expiry of tender validity period) in form of a bank guarantee from a reputable bank or approved insurance by Public Procurement Regulatory Authority.
6. Duly filled form of tender.
7. Duly filled confidential business questionnaire.
8. Valid CR12 from the Registrar of Companies

In addition, interested bidders must show proof of the following:

- a) Adequate equipment holding for the specified type of work.
- b) Key technical staff to be engaged.
- c) Audited accounts for the last three years.
- d) Bank account in the name of the company (Attach six month's bank statement).
- e) Works of similar magnitude and complexity undertaken in the last three years.
- f) Litigation history of the company (Both court and arbitration cases).
- g) Evidence of sound financial standing and access to bank credit line.
- h) Copy of receipt

Completed set of tender documents, in plain sealed envelopes, clearly marked with the respective Tender Number, description and bearing the name and address to:

The Head teacher,  
Nakurto Lukuny Primary School,  
P.O BOX 122, 20504, N/ENKARE

should be deposited in the Tender Box at the entrance of the School on or before Monday 13<sup>th</sup> July 2020 at 10.00AM. Tenders will be opened immediately thereafter in the presence of tenderers and/or their representatives who choose to attend.

The Head teacher,  
NAKURTO LUKUNY PRIMARY SCHOOL

REPUBLIC OF KENYA



**NATIONAL ASSEMBLY**  
TWELFTH PARLIAMENT - FOURTH SESSION

- In the matter of consideration by the National Assembly:-
- The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020)

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020) was published on 5<sup>th</sup> June, 2020 and read a First time on Tuesday, 23<sup>rd</sup> June, 2020. The Bill is in keeping with the practice of making various amendments which do not merit the publication of separate Bills and consolidating them into one omnibus Bill. The Bill proposes amendments to Thirty-Eight (38) Acts of Parliament.

Pursuant to the provisions of Standing Order 127(1) of the National Assembly which provides that, a Bill having been read a First Time shall stand committed to the relevant Departmental Committee and Standing Order 216(5)(b) which mandates Departmental Committees, to study and review all legislation referred to it, the proposed amendments to various Acts of Parliament in the said omnibus Bill stand committed to the following Departmental Committees:-

No.	ACT TO BE AMENDED	DEPARTMENTAL COMMITTEE
1.	(a) The Firearms Act (Cap. 114) (b) The Official Secrets Act (Cap. 187) (c) The Counter-Trafficking in Persons Act (No. 8 of 2010) (d) The National Police Service Commission Act (No. 30 of 2011) (e) The Kenya Coast Guard Service Act (No. 11 of 2018)	Administration & National Security
2.	(a) The Statistics Act, 2006 (Act No. 4 of 2006) (b) The Accountants Act, 2008 (Act No. 15 of 2008) (c) The Retirement Benefits (Deputy President & Designated State Officers) Act (No. 8 of 2015) (d) The Investment and Financial Analysts Act (No. 13 of 2015) (e) The Public Procurement & Asset Disposal Act (No. 33 of 2015)	Finance & National Planning
3.	(a) The Public Holidays Act (Cap. 109) (b) The Employment Act (No. 11 of 2007)	Labour & Social Welfare
4.	(a) The Housing Act (Cap. 117) (b) The Kenya Roads Board Act, 1999 (Act No. 7 of 1999)	Transport, Public Works & Housing
5.	(a) The Universities Act (No. 42 of 2012) (b) The Basic Education Act (No. 14 of 2013)	Education & Research
6.	The Films and Stage Plays Act (Cap. 222)	Communication, Information & Innovation
7.	The Scrap Metal Act (No. 1 of 2015)	Trade, Industry & Cooperatives
8.	The Energy Act (No. 1 of 2019)	DC - Energy
9.	(a) The Interpretation and General Provisions Act (Cap. 2) (b) The Records Disposal Act (Cap. 14) (c) The Penal Code (Cap. 63) (d) The Criminal Procedure Code (Cap. 75) (e) The Evidence Act (Cap. 80) (f) The Anti-Corruption & Economic Crimes Act (No. 3 of 2003) (g) The Public Officer Ethics Act (No. 4 of 2003) (h) The Proceeds of Crime & Anti-Money Laundering Act (No. 9 of 2009) (i) The Judicial Service Act (No. 1 of 2011) (j) The Political Parties Act 2011 (No. 11 of 2011) (k) The Kenya National Commission on Human Rights Act (No. 14 of 2011) (l) The Employment and Labour Relations Court Act (No. 20 of 2011) (m) The Ethics and Anti-Corruption Commission Act (No. 22 of 2011) (n) The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) (o) The Leadership and Integrity Act (No. 19 of 2012) (p) The Kenya Law Reform Commission Act (No. 19 of 2013) (q) The Court of Appeal (Organisation & Administration) Act (No. 28 of 2015) (r) The Bribery Act (No. 47 of 2016) (s) The Witness Protection Act (No. 16 of 2018)	Justice & Legal Affairs

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3); the Clerk of the National Assembly invites members of the public to submit any representations they may have on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020). The Bill can be accessed from the parliamentary website at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Monday, 6<sup>th</sup> July, 2020 at 5:00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY



# **ANEEXURE 4**

## **STAKEHOLDERS SUBMISSIONS**





① Bloms 949  
 Please deal  
 02/07/20

② WASIKE  
 please deal  
 FAA  
 08/7/20  
 Annexure 4



ICJ KENYA MEMORANDUM OF VIEWS ON THE STATUTE LAW  
 (MISCELLANEOUS AMENDMENTS) BILL, 2020 PC-JUSTICE

1. BACKGROUND

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) presents this Memorandum of views on the Statute Law (Miscellaneous Amendments) Bill, 2020 to the National Assembly in respect of select laws that touch on principles of good governance, accountability and rule of law. ICJ Kenya's mission is to promote human rights, justice and democracy in Kenya and around Africa through the application of legal expertise and international best practice.

This memorandum analyses select proposed amendments in the Bill against the backdrop of the Constitution of Kenya 2010, international human rights standards and principles. In our analysis, we were guided further by the judicial pronouncement delivered on the 27<sup>th</sup> September 2019 in the *Civil Appeal No.96 of 2014*<sup>1</sup> case that reiterated that the intentions of any statute law miscellaneous amendments are "to correct anomalies, inconsistencies and outdated terminologies or errors which are minor and non-controversial". The overriding guiding principle we rely on as restated by the Court of Appeal is that "the amendments do not create, define, regulate or confer any powers to any parties, for if they did, they would not be said to be minor or inconsequential"

It is on this basis that we present the following observations and recommendations;

2. THE MATRIX

Legislation	Proposed Amendment	Reasons/Rationale	Recommendations
Counter-Trafficking in Persons Act	Section 19(2)	ICJ Kenya welcomes this amendment. The section seeks to incorporate the Director of Public Prosecutions to the steering committee of Counter Trafficking in Persons Advisory Committee. The Committee advises the Minister on inter-agency activities aimed at combating trafficking and	

RECEIVED  
 07 JUL 2020  
 DIRECTOR OF LEGISLATIVE SERVICES  
 Time:.....Sec:.....

<sup>1</sup> *Law Society of Kenya v Attorney General & 2 others [2019] eKLR*

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 07 JUL 2020  
 SENIOR DEPUTY CLERK  
 LEGISLATIVE & PROCEDURAL SERVICES  
 P. O. Box 41842 - 00100, NAIROBI


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 RECEIVED  
 07 JUL 2020  
 CLERK'S OFFICE  
 P. O. Box 41842, NAIROBI

		the implementation of preventive, protective and rehabilitative programmes for trafficked persons. The Office of the ODPP is therefore a key stakeholder.	
✓ The Kenya National Commission on Human Rights Act	Section 8	ICJ Kenya welcomes this amendment. The introduction of the clause seeks to create and add the responsibility of Commission to advise the state on the ratification of and accession to international and human rights principles. This broadens the Commission's mandate to ensure the compliance human rights standards with relevant instruments, a function that was not spelt out but implied in the function of the Commission.	
✓ The Judicial Service Act	Section 7	ICJ Kenya welcomes this amendment. The section seeks to reduce the qualifications of legal researchers from two years to one year. This will allow for more persons to apply for the position and enhance human resource in the judiciary.	
✗ The Anti-Corruption and Economic Crimes Act	Section 4(4)	This is a welcome amendment. The amendment proscribes time limit of prosecution of anti-corruption cases from date of filing for a maximum period of 2 years. From practice, the prosecution of anticorruption cases has taken far too long in the court cases raising public concern regarding political	

		will on combating corruption.	
	Section 62	ICJ Kenya does not support this amendment. It proposes that where a case concerning a public officer is not concluded within the proscribed 2 year time limit, public officer may apply to trial court for reinstatement	We would recommend that the proposed amendment to s.62 is not adopted. The rationale for providing a time limit for trial of cases is reasonable and therefore all parties must adhere to the timelines. Otherwise the intended cure of delays in prosecution of cases will be circumvented. A public officer who has been charged with economic crimes cannot make an application for reinstatement if the matter is pending in court. In our considered view, this would go against public expectation, public policy and international best practices in particular, in the event the officer convicted.
	Section 64	ICJ Kenya welcomes this provision as it seeks to confer the EACC with right to apply to bar a public officer, under investigation or charged from being appointed to public officer	This amendment is welcome and is in tandem with the constitutional provisions on Leadership and Integrity Act as well as decision of the court in the case of <i>Moses Kasaine Lenolkulal v Director of Public Prosecutions</i> [2019] eKLR <sup>2</sup> .

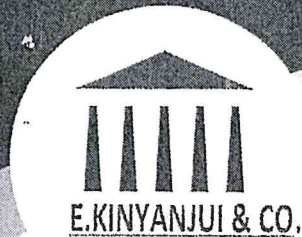
<sup>2</sup> Criminal Revision No. 25 of 2019

The Ethics and Anti-Corruption Commission Act	Section 11(1)(j)	<p>ICJ Kenya welcomes the amendment for additional recovery of proceeds of crime located outside Kenya.</p> <p>This provision would be in tandem and reinforce the provisions contained in the Mutual Legal Assistance law and public policy to recover proceeds of economic crime</p>	
The Leadership and Integrity Act	Section 12A	<p>This section proscribes a period which the EACC can scrutinize self-declaration forms within 7 days to parliament or panel constituted to short list</p> <p>We welcome this provision as it is intended to cure any gaps in the appointment process. It will also strengthen the implementation of the letter and spirit of the constitutional imperatives on leadership and integrity.</p>	
	Section 19(6)	The section provides for offence of failure to declare holding of a foreign bank account or approved statement of accounts.	We welcome both provisions as they seek to strengthen the implementation of the Act and cure subsisting enforcement loopholes.
	Section 40	This additional provision provides for the opportunity to challenge the assumption of office of a public officer for failing to sign specific officers Leadership and Integrity Code.	
The Public Office Ethic Act	Section 3	ICJ Kenya welcomes this amendment. The section	

		<p>seeks to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers, among others.</p> <p>The amendments seek to clarify the responsible commissions public officers in accordance with the Act.</p> <p>It has proposed additional bodies such as the committee of the Senate and County Assembly Committee to deal with the public officers in the counties, County Public Service Board, the Board of Directors of the Central Bank of Kenya and the Commission for University Education.</p>	
<p>The Court of Appeal (organization &amp; Administration) Act, 2015</p> 	<p>Section 26</p>	<p>The section proposes to give effect to Article 164 (1) (a) and (b) of the Constitution; and provides for the organization and administration of the Court of Appeal.</p> <p>It proposes to amend to provide for the vacation dates of the courts to harmonize them with those applying in other superior courts.</p>	<p>We contend that vacation is important in Judicial officers' lives. Working for long hours and handling more than 30 cases in a day overburdens Judges. In the absence of sufficient breaks, they will suffer a burnout. Also, many judges still use the breaks to write judgments that are pending and also catch up on research, which is essential for them to maintain the quality of justice.</p>

<p>The Political Parties Act</p>	<p>Section 24 (1)</p>	<p>ICJ Kenya welcomes this amendment. The session provides for the registration, regulation and funding of political parties, among others.</p> <p>The amendment clarifies the amount of money payable by Government into the Political Parties Fund. The percentage of the money remains at not less than 0.3% National Government Revenue.</p>	
<p>Public Appointment (Parliamentary Approval) Act, 2011.</p>	<p>Section 8 (1)</p>	<p>ICJ Kenya welcomes this amendment. The section provides for procedures for parliamentary approval of constitutional and statutory appointments.</p> <p>The proposed amendments seek to increase the period during which a House of Parliament shall consider a nomination and table its report, from 14 to 28 days.</p> <p>The period for consideration of nominations and tabling of reports has been extended to give the relevant committee sufficient time to determine the suitability of any candidate before they're appointed to the office to which they have been nominated.</p>	

Annexure 4



**E. KINYANJUI & CO.**

ADVOCATES

Suraj Plaza, 5th Floor, Suite 501, Limuru Rd, P.O. Box 50842-00100 Nairobi. [kevin@ekinyanjuiadvocates.co.ke](mailto:kevin@ekinyanjuiadvocates.co.ke); +254716028457.

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08 JUL 2020  
DIRECTOR COMMITTEE SERVICES  
Time: ..... Date: .....

NATIONAL ASSEMBLY  
**RECEIVED**  
07 JUL 2020  
CLERK'S OFFICE  
P. O. Box 41842, NAIROBI

In the matter of consideration by National Assembly:-

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020)

TO: MICHAEL R. SIALAI, EBS.  
CLERK OF THE NATIONAL ASSEMBLY.

FROM: W. KEVIN MICHUKI  
ADVOCATE OF THE HIGH COURT.

LSK/2020/03066

DATE: 2<sup>ND</sup> JULY, 2020.

(i) D/cons  
Please deal.  
07/07/20

(ii)  
1. LEAH  
2. CINDY  
3. H. KINA  
4. W. ASIKI  
5. ROSE  
6. GRICK  
Please deal  
FAA 08/7/20

RE: SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL.

INTRODUCTION:

The subject legislation was published on 5<sup>th</sup> June, 2020 and after its first reading the Clerk of the National Assembly published notification seeking submissions on the intended legislative impact of the intended amendments.

SUBMISSIONS:

- a. THE STATISTICS ACT, 2006: DC - FINANCE

The proposed amendment seeks to grant the Director General mandate to recall data on account of its inaccuracy notwithstanding his paramount duty under Section 23(2) to ascertain accuracy of all data before disseminating it.

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LEGISLATIVE DEPARTMENT

I submit that the oversight afforded by the enactment will be lost if the Director General is granted leave to disseminate and recall data at will give that some of the data has huge ramifications on the revenue allocation.

I recommend that the amendment proposed be expunged from the Bill given the concerns raised.

b. THE INVESTMENT AND FINANCIAL ANALYSTS ACT, 2015: DC - FINANCE

The proposed amendment of Section 18(1)(e) shall have the effect of bringing into the purview of the Secretary of the Registration Committee private firms whose objects include investing. The amendments will lead to all private firms that have may have an investment object being registered by the Secretary and their proprietors disclosed.

Further, proposed amendments to Section 32 and 34 of the Act will cause additional expenditure of public funds contrary to the objects of the Bill.

I submit that the amendments in question should be re-examined given the far reaching ramifications of enacting them and given that the Country is currently enacting austerity measures.

c. THE PUBLIC PROCUREMENT AND ASSETS DISPOSAL ACT, 2015: DC - FINANCE

The proposed amendment of Section 82 of the Act allowing for the correction, revision, adjustment or amendment of tender sums after the opening when it comes to direct procurement, competitive negotiations and framework consulting is a recipe for disaster and unwarranted given the lack of competitive bidding that characterizes this three forms of procurement.

The Proposed amendment to Section 86 seeking to exempt framework contracting from meeting the basic criteria for assessing what constitutes a successful tender is untenable as it creates a situation that is ripe for circumvention to meet nefarious ends, like corruption and abuse of office, since it grants the procurement officers unfettered discretion to choose a tendered of their choice notwithstanding their failure to meet basis requirements.

I recommend that the proposed amendments be jettisoned as they seek to create loopholes to public procurement, prevent oversight and will likely lead to increased public expenditure from murky procurement under these already unsavoury forms of procurement.



d. THE EMPLOYMENT ACT, 2007: DC - LABOUR

The proposed amendments to section 2 of the Act seek to remove key definitions in the employment and labour relations sector in a vacuum are untenable and their own effect would be to muddle this important area of law.

The proposed amendment to Section 31 is also uncalled for as it removes an alternative that was available to employees and employers and seeks to forcibly enrol them into the National Housing Development Fund. This amendment violates employee rights to choose how they enjoy their right to property as stipulated by Article 40 of the Constitution. Further, it creates limbo as employees are not instantly granted loans from the Fund yet they are expected to forego their rent allowance, which shall be paid into the Fund. The amendment is not clearly thought through.

I submit that the proposed amendment should be reconsidered and the rights of employees to choose whether to rent or join the Housing Fund upheld. To do otherwise would cause unimaginable damage to the livelihoods of employees.

e. THE FILM AND STAGE PLAYS ACT: DC - ICT

The proposed amendment of the long title of the Act has the effect of varying its objects and purposes in a very substantial manner. Such an amendment cannot be passed under the guise of a miscellaneous bill.

Further, the related amendments to the act are also of such nature as to fundamentally change the purpose of the Act.

The proposed changes should be the subject of a substantive bill.

We submit that raft of changes proposed be dispensed with to form the basis of a substantive amendment bill given the enormity of the changes.

f. THE SCRAP METAL ACT, 2015: DC - TRADE

The proposed amendment to section 30(1) seeks to donate the power of carrying out inspections to police officers contrary to the express provisions of the Act which defines an inspector under Section 29 as *inter alia* an officer with knowledge in metallurgy appointed by the Cabinet Secretary.

I submit the proposed amendment should be reconsidered as it will only lead to the enforcement of an illegality.

g. THE ENERGY ACT, 2019: DC - ENERGY

The proposed amendment to section 20(1)(a) will occasion additional expenditure of public funds as it seeks to increase the amount levied. Further, it seeks to limit oversight of this additional expenditure by exempting the increased levies from being paid into the consolidated fund.

The proposed amendment to section 166 seeks to absolve a licensee of liability for failure and defect in electricity supply contrary to the express purpose of the Act to regulate electricity distributors.

The proposed amendment to section 208 with regards to the role of the Board and Cabinet Secretary in the making of regulations under the Act is liable to abuse as what constitutes consultation is not defined. As enacted the provision seems to adequately stipulate the roles of the respective parties.

I recommend that the proposed amendment to section 20(1)(a) which shall increase expenditure should be jettisoned as it will only lead to further financial strain on an already financially depressed citizenry. The amendment seeking to absolve licensees from liability is also untenable as it limits any recourse that may be available to consumers.

h. THE RECORDS DISPOSAL ACT: DC - JUSTICE

The proposed amendment to section 2(1) should also include the Environment and Land Court which is also a court of equal stature with the High Court.

I recommend that the amendment be revised to include the Environment and Land Court.

i. CRIMINAL PROCEDURE CODE: DC - JUSTICE

The proposed amendment to Section 89(2) of the Act is unwarranted and further seeks to entrench the role of public prosecutors in the criminal justice system. The section as set out caters to informal complaints by lay persons and there is no reason public

prosecutors should be elevated when they have the authority to bring formal charges before the Magistrate.

The proposed amendments to delete sections 184 and 186 are untenable as they seek to remove the power granted to the Court to convict for alternative offences under the Sexual Offences Act where the charges of rape and defilement are charged and not proved. These amendments will simply engender sexual violence.

Further, propose amendment to Section 186 as follows:

**186. Charge of defilement.**

**Where a person is charged of the offence of defilement and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under the Sexual Offences Act, he may be convicted of the offence although not charged with it."**

I submit that subject to our recommendation above the amendments to sections 36A (7), 89(2), 184 and 186 of the Act be rethought and possibly abandoned.

j. **THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003:** DC-JUSTICE

The proposed amendment to Section 4(4) seeks to curtail the court's powers to control its processes and is liable for abuse by accused persons. Further, the proposed amendment is antithetical to the amendment proposed to Section 62.

I submit that the amendment to section 4(4) is immediately abandoned as it will clearly hamper the war against corruption.

k. **THE WITNESS PROTECTION ACT, 2016:** DC-JUSTICE

The amendment to Section 3J(4) seeks to have oversight of the Agency's funds removed which has the potential to increase the expenditure of the public.

The proposed amendment to section 3K(2) is welcome but I propose its altered to include the words 2003 appearing before the phrase to be replaced.

**CONCLUSION:**

We urge your esteemed office to pass our submissions on the proposed legislation to the relevant committees. Further, I would like to critique the continued use of miscellaneous amendment bills to enact substantive changes to legislation. We point to the egregious attempts to so fundamentally amend The Film and Stage Plays Act through a miscellaneous amendment as a clear example of this blatant disregard for legislative norms.

Further, the submission by the Leader of the Majority that the amendments in question would not impact expenditure is clearly disingenuous in light of the foregoing submissions and calls into question the Office's adherence to the responsibilities of leadership enumerated under Article 72 of the Constitution.

**W. KEVIN MICHUKI**

**ADVOCATE OF THE HIGH COURT OF KENYA.**

**LSK/2020/03066.**

# WITNESS PROTECTION AGENCY

Telephone: (020) 7121337/8, 0770909207  
Hotline: 0711222441, 0725222442  
Toll Free No: 0800720460  
Email: [info@wpa.go.ke](mailto:info@wpa.go.ke); [director@wpa.go.ke](mailto:director@wpa.go.ke)  
When replying please quote



Liaison Office – Milimani Law Courts  
4<sup>th</sup> Floor, Room No. 413  
P.O. Box 28801 GPO  
NAIROBI, 00100  
KENYA

Ref: WPA/ADM/AWA/003/BE

Date: 2<sup>nd</sup> July 2020

The Clerk of the National Assembly  
P.O. Box 41842-00100  
NAIROBI

Email: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

**RE: STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2020**

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We refer to the above matter.

The Agency has reviewed the Bill that was published on 5<sup>th</sup> June, 2020, and proposes the following changes to the proposed amendments to Section 3 of the Public Officers Ethics Act, 2003 for your kind consideration.

Include a new subsection immediately after the proposed sub section 16 in the following terms; *(17). The Witness Protection Advisory Board established under the Witness Protection Act, 2006 shall be the responsible commission for the Staff of the Witness Protection Agency established under that Act.*

The amendment to Section 3 as proposed in the Bill, will omit the provisions of Section 3(9A). Section 3(9A) was intended to provide an express statutory provision reinforcing the Witness Protection Advisory Board as the responsible commission for Witness Protection staff. This was intended to enable the Agency fully implement and comply with Part IV of the Public Officer Ethics Act in accordance with the provisions of the Witness Protection Act 2006 and the already established Witness Protection Agency Procedures for the Administration of Part IV gazetted vide Legal Notice No. 6 of 2019, without constraining the practice of witness protection.

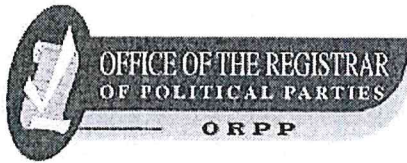
We thank you for your continued cooperation and support.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Alice Ondieki'. The signature is written in a cursive style with a large, stylized initial 'A'.

Alice Ondieki (Mrs.)

DIRECTOR / CHIEF EXECUTIVE



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When replying please quote



Republic of Kenya

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Off Waiyaki Way  
P.O Box 1131-00606  
Sarit Centre, Nairobi.

TO: THE CLERK OF THE NATIONAL ASSEMBLY  
MAIN PARLIAMENT BUILDING  
NAIROBI

**MEMORANDA IN REFERENCE TO THE PROPOSED AMENDMENT TO THE POLITICAL PARTIES ACT, 2011 AS CONTAINED IN STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO2) BILL, 2020**

**INTRODUCTION**

This is in reference to the proposals towards the amendment to Section 24(1) (a) of the Political Parties Act, 2011 and the Justification thereunder. The Bill proposes an amendment of that Section to read:

***'Such funds not being less than zero point three per cent of the National Government sharable revenue net of mandatory and no-discretionary expenditure of the Government'***

Currently the Section Provide as follows;

***'Such funds not being less than zero point three per cent of the revenue, collected by the national government as may be provided by Parliament'***

The Office of Registrar of Political Parties is established under the Political Parties Act 2011 with the mandate and responsibility to administer the said Fund. Upon reading the proposal and the justification there under the office would like to note that the Political Parties Fund is established under the Act pursuant to Article 92(f) of the Constitution which mandates Parliament to enact legislation to provide for the establishment and management of a Political Parties Fund. This is the basis on which the Act establishes the fund and further outlines its sources and purposes therein.

It is our submission that;

- a. The importance of this fund in the promotion and compatible with democracy cannot be overemphasized and that is the reason Parliament in its wisdom enacted Section 24(1)(a) as it is currently to provide that such fund shall be from the revenue collected directly by the national government as may be provided by Parliament but not on the sharable revenue net of mandatory and discretionary expenditure of the Government and cannot be categorized under net sharable.

- b. In response to the justification to amend the Section on the basis to have it clarify the amount of money payable by the government into the fund we humbly submit that The Intended Bill proposal shall not clarify the amount of money payable by Government into the Political Parties Funds as suggested in the Memorandum of Objections and Reason. With such proposal there shall significantly uncertainty of the amount a Political Parties shall receive and a possibility of the fund being depleted. This shall lead to difficulty in planning by the parties themselves in line with their work plans.
- c. The amendment shall in itself defeat the fundamental intention and purpose of the funds as outlined in Section 26 of the Political Parties Act, 2011 and Art. 92 of the Constitution of Kenya which includes promoting the representation in parliament and in county assemblies of women, PWDs, youth, ethnic and other minorities and marginalized communities as it shall constrain the democratic space.
- d. The proposal therein intends to amend a substantive provision of the Act in respect to the allocation and purpose of the Political Parties Fund that ought not to be through a miscellaneous Amendment as it merits the publication of separate Bills and not consolidation into one omnibus Bill.
- e. It is important to note that Attorney General has provided a legal advisory to the National Treasury and Parliament on the issue whether it was *discretionary* to allocate, appropriate and disburse the Political Parties Funds for purposes of disbursement to the eligible Political Parties. According to the Attorney General, it is *mandatory* in terms of the spirit and letter of the Act, meaning it is not in compliance with the Constitution. In a multiparty democratic state the political parties fund is within the category of mandatory and non- discretionary expenditure of the Government.
- f. In addition to the above, the issue of the allocation of the said fund was canvassed clearly in the case of **Orange Democratic Movement (ODM) v National Treasury & 5 others [2017] eKLR** Where the High Court made the following pronouncements and clarification;

*'The Justification that there are competing interests for national revenue does not hold any water as the makers of the Political Parties Act and who are the members of Parliament and the Political Parties were and are still alive to that fact. There is no demonstration by the Parliament that it was unable to allocate/appropriate 0.3% of the total revenue received for the years in question because of competing interests or the national government revenue, or that the allocation would have adversely affected the effective functioning of the government as a whole due to sustainability'.*

In conclusion, we associate ourselves with the following words of **R.E Aburili J.** when the Honourable Judge observed the following on the importance of funding political parties and why it is in the law;

*"Political parties perform important functions without which representative democracy could not exist. They offer alternative policies from which voters chose at elections, organize campaigns to mobilize voters and field candidates for public office. Political Parties may be unpopular with technocrats but*



there is absolutely no better alternative way of organizing for democracy which is guaranteed by the Constitution and therefore the will of the people of Kenya.

Political Parties constitute engines of democratic political systems, for they encourage and enhance competition between societal groups and interests. They are in my view, the only effective mechanism by which ordinary people 'wanjiku' can have any meaningful engagement at a personal level with the body politic.

Thus, representative democracy cannot function effectively without strong and healthy political parties. And democracy, it must be remembered, is one of the national values and principles of governance espoused in Article 10 of the Constitution. **It is for that reason that Part 3 of the Chapter seven of the Constitution of Kenya, 2010 is dedicated to political parties and under Article 92(f) thereof, Parliament is mandated to enact legislation to provide for the establishment and management of Political Parties Fund.** And the National Assembly has that very important role of not only legislating and having oversight role over all other national state organs and institutions, but also the role of determining the allocation of national revenue between the levels of government, and also the appropriation of funds for expenditure by the national government and other national state organs.

**Therefore, any question about political parties is a question of quality governance of any country that believes in democratic governance and hence the financing of political parties is a critical matter for ensuring that very much yearned for good governance.**

Political Parties, therefore, should not be starved of that much needed revenue which accrues to them by fiat of the Constitution and its implementing legislation.'

This Office humbly urge the house and the relevant Committee to put into consideration the issue above before amending such a substantive provision of the Act.



Ann N. Nderitu, MBS  
Registrar of Political Parties





**Kenya National Highways Authority**  
Quality Highways, Better Connections

International Airport (JKIA), Nairobi, Off Mazao Road (Opposite KCAA Headquarters), PO Box 49712 - 00100 Nairobi  
Tel 020 - 4924000 / 0700 423 606 Email [dg@kenha.co.ke](mailto:dg@kenha.co.ke) / Website [www.kenha.co.ke](http://www.kenha.co.ke)

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14 JUL 2020

COMMENTS BY KENYA NATIONAL HIGHWAYS AUTHORITY ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 15 OF 2020)

NATIONAL ASSEMBLY  
CLERK'S OFFICE  
P. O. Box 41842, NAIROBI

NO.	PROVISION	AMENDMENT	COMMENTS
1.	The Evidence Act (Cap. 80)	Section 3 Insert the following new definition in proper alphabetical sequence – “photograph” means an image created by light falling on a light-sensitive surface, either a photographic film or an electronic medium and then made visible and permanent by chemical treatment, or stored digitally”.	The Bill proposes to amend the Act to expand the definition of “Photograph” and allow for the presentation and admissibility of digital photographs.  The principle requirements to admit a photograph (digital or photographic film) into evidence are relevance and authentication, hence in light of the latter aspect the definition should capture an element of authentication.
2.	The Public Holidays Act (Cap. 109)	Schedule	The Bill proposes to amend the Public Holidays Act to harmonise the terms applied therein with the Constitution and to rename Moi Day as Uramaduni Day.  The proposal is noted for purposes of inclusion in SECTION 9B: CONDITIONS OF CONTRACT PART II: (CONDITIONS OF PARTICULAR APPLICATION

1) I - W ASIKE  
2. CAZEMBA  
3. LEANT  
4. TUNGO  
Please deal  
FOR  
15/7/20

1) Clerk's Dis  
Pse deal,  
CMA  
15/7/20

Annexure 4

JUSTICE

ADMIN



				<p>SUBCLAUSE 14.1 "Program To Be Submitted"</p> <p>the various program of roadworks for ongoing contracts for works in the list of Kenya Public Holidays during which the Contractor shall not be permitted to work.</p>
3.	The Kenya Roads Board Act, 1999 (No. 7 of 1999)	Second Schedule, paragraph 3	<p>Delete subparagraph (1) and substitute therefor the following new subparagraph-</p> <p>"(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the one meeting and the next meeting, at such place or places in Kenya and at such time or times as the Chairman may determine."</p>	<p>It is proposed that the suggested amendment should read as follows:</p> <p><i>"The Board shall meet as often as necessary for the transaction of business at such places and at such times as may be decided upon by the Board, but it shall meet at least once every three months"</i></p>
4.	The Procurement and Asset Disposal Act, 2015 (No.33 of 2015)	Section 82	<p>Delete and substitute therefor the following new section-</p> <p>82. (1) Subject to subsection (2) of this section, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, revision, adjustment or amendment in any way by any person or entity.</p>	<p>It is proposed that the suggested amendment at Section 141 (2) should be reviewed to take into consideration that framework contracts where multiple awards are made to different bidders for the same item, require a rationale for the selection of the said bidders should be in place unless of course the bidders tied in their prices.</p>

T. DAVIS P&A

FNAN/C



			<p>(2) For avoidance of doubt, the provisions of subsection (1) shall not apply to sections 103, 131 and 141 of this Act.</p> <p>86 (1) Insert the following new proviso immediately after paragraph (d)-</p> <p>“Provided that the provisions of this subsection shall not apply to section 141 of this Act.”</p> <p>Delete and substitute therefor the following new section-</p> <p>141. (1) Subject to any prescribed restrictions, an accounting officer of a procuring entity may apply framework contracting arrangements by making awards of indefinite-delivery contracts and multiple awards of indefinite or definite quantity contracts for procurements under this Act.</p> <p>(2) For purposes of subsection (1), “multiple award” means award of separate (partial) contract to two or more bidders of the same item.</p>	
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