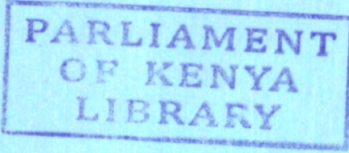


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THE PROTECTION OF CRITICAL INFRASTRUCTURE BILL, 2024

A Bill for

AN ACT of Parliament to provide a legal framework for the protection of critical infrastructure; to provide for the establishment of the Critical Infrastructure Protection Committee, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART 1 – PRELIMINARY

1. This Act may be cited as The Protection of Critical Infrastructure Bill, 2024.

Short title.

2. In this Act—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Internal Security;

“critical infrastructure” means any designated physical or virtual system, facility, establishment, premises, installation or equipment, whether owned by a public or private entity and which—

- (a) is essential for the provision of services to the public or functioning of the Government or enterprises in the country and includes a security installation, transport network, communication network and water system;
- (b) is designated as such under this Act; and
- (c) if damaged or destroyed would have a debilitating impact on the security, economy, public health and safety of the country;

“security” means any measure that includes, but is not limited to —

- (a) physical security of critical infrastructure;
- (b) contingency plans applicable to critical infrastructure; and
- (c) measures aimed at protecting critical infrastructure;

“Secretariat” means the Critical Infrastructure Secretariat established under section 16;

“state agency” means an entity incorporated by the Government to undertake a specific Government objective in delivering public service including regulation;

“Plan” means the integrated national critical infrastructure plan; and

“Transport” means physical distribution systems critical to State security and economic interest including national airspace systems, airports, traffic movement systems, roads, ports, pipelines, waterways, railway and stations.

3. The objects of the Act is to —

Objects of the Act.

- (a) provide for the establishment of an institutional framework for the designation and protection of critical infrastructure;
- (b) provide for the establishment of a national database of critical infrastructures;
- (c) ensure that objective criteria are developed for the identification, designation and protection of critical infrastructure;
- (d) provide for the undertaking of research in order to identify the challenges and vulnerabilities faced by critical infrastructure assets and to explore on mechanisms to mitigate the impact of such challenges and vulnerabilities;
- (e) promote co-ordination of the activities of all the stakeholders including, the National Government, County Governments, private sector and members of the public, in the planning, designing and deployment of critical infrastructure;
- (f) provide for protection of critical infrastructure;
- (g) provide for the conducting civic education to promote awareness and sensitize the public on the value of Critical Infrastructure through dissemination of information, education and communication in order to foster in the public a

sense of communal ownership and protection of Critical Infrastructure;

- (h) provide for prior identification of and preparedness for any threats or hazards that may affect a critical infrastructure;
- (i) provide for mitigation of the potential consequences of incidents or adverse effects that may occur to critical infrastructure;
- (j) provide for the co-ordination of the implementation of the Plans and programmes for the protection of critical infrastructure; and
- (k) strengthen relationships amongst the key actors and stakeholders in critical infrastructure fraternity, National and county government actors, the private sector and the public.

4. The Cabinet Secretary, the Committee and the Secretariat shall, in the exercise of the powers and discharge of functions under this Act, be guided by the values and principles enshrined in the Constitution.

Guiding principles.

(1) In addition to subsection (1), the Cabinet Secretary, the Committee and the Secretariat shall be guided by the following principles —

- (a) consultation and public participation including consultations with the relevant State agency, county governments, primary and secondary critical infrastructure owners and members of the public;
- (b) economic efficiency in the deployment of critical infrastructure;
- (c) inclusivity including multi-disciplinary and multi-sectoral approach to planning for critical infrastructure development; and
- (d) sharing of critical infrastructure among all players while safeguarding privacy and constitutional rights and freedoms.

(2) The Secretariat shall in coordinating the implementation of this Act—

- (a) create interdependencies between interconnected and shared infrastructure;
- (b) evaluate security requirements for critical infrastructure;
- (c) establish schemes for co-operation between owners and operators of critical infrastructure and critical assets;
- (d) establish a mechanism to enable the reporting and identification of vulnerabilities and opportunities for improvement; and
- (e) establish a mechanism on information sharing.

PART II—ESTABLISHMENT OF THE CRITICAL INFRASTRUCTURE PROTECTION COMMITTEE

5. There is established a Committee to be known as the Critical Infrastructure Protection Committee which shall consist of —

Establishment of the Critical Infrastructure Protection Committee.

- (a) the Principal Secretary in the Ministry for the time being responsible for matters relating to Internal Security who shall be the chairperson;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to Finance;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to Energy;
- (d) the Principal Secretary in the Ministry for the time being responsible for matters relating to Transport and Infrastructure;
- (e) the Principal Secretary in the Ministry for the time being responsible for matters relating to Information, Communications and Technology;
- (f) the Principal Secretary in the Ministry for the time being responsible for matters relating to Health;
- (g) the Principal Secretary in the Ministry for the time being responsible for matters relating to natural resources;
- (h) the Attorney-General;
- (i) the Chief of the Kenya Defence Forces;

- (j) the Inspector-General of the National Police Service;
- (k) the Director-General of the National Intelligence Service;
- (l) two persons nominated by the Council of County Governors;
- (m) the Director appointed under section 14 who shall be the Secretary to the Committee; and
- (n) three persons from the private sector, appointed by the Cabinet Secretary through an open and competitive process;

(1) The persons under subsection(1)(l) and (n) shall hold office for a term of three years which may be renewed for one further term.

(2) A person shall be qualified for appointment under subsection(1)(l) or (n) if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya in the field of —
 - (i) information, communication and technology;
 - (ii) transport and infrastructure; or
 - (iii) natural resources such water and energy;
 - (iv) security; and
- (c) has at least ten years professional experience in the relevant field.

(3) The appointment of the members of the Committee under subsection (1)(l) and (n) shall be by notice in the Gazette.

(4) In appointing members of the Committee under subsection (1) (n), the Cabinet Secretary shall ensure—

- (a) that the appointees to the Committee reflect the interests of all sections of the society;
- (b) equal opportunities are accorded to persons with disabilities and other marginalized groups; and

(c) that not more than two-thirds of the members shall be of the same gender.

(5) The Cabinet Secretary may co-opt any other person including persons from other sectors to attend the meetings of the Committee.

6. The members of the Committee shall be paid such allowances, as the Cabinet Secretary shall determine in consultation with the Salaries and Remuneration Commission.

Terms and conditions and service.

7. The office of a member of the Committee appointed under section 5(1)(l) and (n) shall become vacant, if the member—

Vacation of office of member.

- (a) resigns from office by notice in writing to the Cabinet Secretary;
- (b) is removed from office in accordance with section 8;
- (c) dies; or
- (d) is adjudged bankrupt.

8. (1) A person appointed to the office of member of the Committee under section 5(1)(l) and (n) may be removed from office, if the person —

Removal from office.

- (a) is found to have committed gross misconduct in the performance of the member's functions;
- (b) is absent from three consecutive meetings of the Committee without permission of the chairperson or good cause;
- (c) violates the provisions of Chapter Six of the Constitution;
- (d) is incapacitated by prolonged physical or mental illness for a period exceeding four months;
- (e) is unable to discharge the duties of their office;
- (f) is convicted of an offence and imprisoned for a term of more than six months without the option of a fine; and
- (g) is adjudged bankrupt.

(2) Before the removal of a member under subsection (1), the Cabinet Secretary shall request the Committee to—

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations on whether or not the member should be removed from office.

9. The Committee shall be responsible for—

Functions of the Committee.

- (a) consideration of applications for declaration of infrastructure are critical infrastructure;
- (b) formulating policy guidelines on critical infrastructure protection;
- (c) in consultation with other source ministries, formulate strategies and measures for the protection of critical infrastructure;
- (d) approving the organisational structure of the Secretariat;
- (e) advising and making recommendations to the Cabinet Secretary on matters relating to critical infrastructure;
- (f) prepare annual reports on the status of critical infrastructure in the country;
- (g) performing any other function as may be conferred on it by this Act or any other written law.

10. The Committee shall have all the powers necessary for the proper discharge of its functions under this Act and without prejudice to the generality of the foregoing, shall have power to —

Powers of the Committee.

- (a) oversee the implementation of policies formulated under section 9; and
- (b) require any information from any party on any matter relating to critical infrastructure.

11. (1) The Committee may by resolution generally or in any particular case delegate in writing to a sub-committee, or any officer, member of staff or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act or under any other written law.

Delegation by the Committee.

(1) A delegation under this section—

- (a) shall be subject to any conditions as the Committee may impose; and
- (b) shall not divest the Committee of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and may be withdrawn and any decision made by the person to whom the delegation is made may be withdrawn or varied by the Committee.

12. The conduct and regulation of the business and affairs of the Committee shall be as set out in the Schedule but subject thereto, the Committee may regulate its own procedure.

Conduct of the affairs of business of the Committee.

13. The Committee shall be responsible for carrying out public education in order to—

Public awareness.

- (a) create awareness and sensitize the public on the value of Critical Infrastructure through dissemination of information, education and communication;
- (b) foster a sense of communal ownership and protection of Critical Infrastructure by the members of the public;
- (c) encourage property owners to make provision for the installation of critical infrastructure assets on their premises on reasonable terms; and
- (d) provide mechanisms for members of the public to share information concerning critical infrastructure assets.

14. The Committee shall—

Security measures.

- (a) carry out research on global trends regarding the developments and dealings with critical infrastructure assets;
- (b) assess and evaluate the security needs of the critical infrastructure in the country;
- (c) be entitled to receive intelligence concerning threats to critical infrastructure assets; and

- (d) in collaboration with the office of the Inspector-General to ensure that critical infrastructure assets are afforded continued security surveillance and protection against—
- (i) threat or use of force;
 - (ii) terrorism;
 - (iii) espionage;
 - (iv) sabotage;
 - (v) cybercrime or crime targeted at information transmitted by means of critical infrastructure assets;
 - (vi) vandalism; and
 - (vii) encroachment of property on which critical infrastructure assets are situated.

15. The Committee shall —

General guidance.

- (a) formulate guidelines on the manner in which the owners of Critical Infrastructure Assets shall mark, identify and secure Critical Infrastructure Assets;
- (b) formulate guidelines that govern the co-existence of interconnected Critical Infrastructure Assets taking into consideration the necessary interdependencies between such interconnected Critical Infrastructure Assets; and
- (c) in consultation with critical infrastructure asset owners, County Governments and source ministries develop standard operating procedures, guidelines, processes and standards to be followed in situations where it is necessary to temporarily affect critical infrastructure assets of one critical infrastructure owner, to install or repair the critical infrastructure assets of another critical infrastructure owner.

PART III—ESTABLISHMENT OF THE CRITICAL INFRASTRUCTURE PROTECTION SECRETARIAT

16. There is established the Critical Infrastructure Protection Secretariat.

Establishment of the Critical Infrastructure Protection Secretariat.

17. (1) The Secretariat shall consist of—

Composition of
the Secretariat.

- (a) a Director who shall be appointed by the Cabinet Secretary by notice in the *Gazette*; and
- (b) such staff as the Cabinet Secretary may, in consultation with the Committee, consider necessary for the performance of the functions of the Secretariat under this Act.

(2) The Director shall be the head of the Secretariat.

18. (1) A person is qualified for appointment as a Director if that person—

Appointment of
the Director.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience; and
- (d) satisfies the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) A person appointed as Director shall hold office for a term of three years and is eligible for re-appointment for one further term.

(4) A person shall not be qualified for appointment if that person—

- (a) is a sitting member of Parliament or county assembly;
- (b) is an official of a governing body of a political party; is an undischarged bankrupt;
- (c) has been convicted of a felony or any other offence related to abuse of office or under the economic Crimes Act;
- (d) has previously been removed from office for contravening the provisions of the Constitution or any written law.

19. (1) The office of the Director shall become vacant if the holder of the office —

Vacancy.

- (a) is adjudged bankrupt;

- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months without the option of a fine;
 - (c) resigns in writing addressed to Cabinet Secretary;
 - (d) is removed from office by the Cabinet Secretary for—
 - (i) being unable to perform the functions of their office by reason of mental or physical infirmity; or
 - (ii) failing to declare their interest in any matter being considered or to be considered by the Secretariat or the Committee; or
 - (e) fails to perform their duties in accordance with the terms and conditions of appointment; or
 - (f) dies.
- (5) Before the removal of a Director under subsection (1)(d), the Committee shall—
- (a) investigate the circumstances giving rise to the proposed removal; and
 - (b) make recommendations to the Cabinet Secretary on whether or not they should be removed from office.
- 20.** (1) The functions of the Secretariat shall be to—
- (a) serve as the secretariat and technical arm of the Committee; and
 - (b) provide technical, financial and legal expertise to the Committee.
- (2) In the performance of its functions under subsection (1), the Secretariat shall—
- (a) implement strategies and measures for the protection of critical infrastructure;
 - (b) establish an integrated database of information on critical infrastructure;
 - (c) oversee the implementation of the provisions of the Act;

Functions of the
secretariat.

- (d) maintain a register of all the assets and locations declared as critical infrastructure;
- (e) coordinate the planning, development and implementation of security measures and strategies for the protection of critical infrastructure;
- (f) conduct research and gap analysis to ensure continuous development in matters relating to critical infrastructure protection;
- (g) prepare and implement critical infrastructure protection programmes;
- (h) advise and make recommendations to the Committee on matters relating to critical infrastructure protection; and
- (i) perform any other function related as may be assigned by the Committee.

21. The Secretariat shall have all the powers necessary for the proper performance of its functions under this Act, and in particular, the Secretariat shall have power to—

Powers of the Secretariat.

- (a) require from any person information on critical infrastructure including CCTV footages, building plans, maps for inclusion in the data register;
- (b) receive and review all applications for declaration of critical infrastructure;
- (c) maintain a national database of all critical infrastructure assets; and
- (d) make recommendations to the Cabinet Secretary on the protection and maintenance of critical infrastructure in the country.

PART IV—DESIGNATION OF CRITICAL INFRASTRUCTURE

22. An infrastructure asset shall qualify for declaration as critical infrastructure, if—

Guidelines for declaration of infrastructure as critical infrastructure.

- (a) the functioning of such infrastructure is essential for the national economy, national security, public safety and continuous provision of basic public services; and

- (b) the loss, damage, disruption or immobilisation of such infrastructure may severely harm—
 - (i) the functioning or stability of the nation;
 - (ii) public interest with regard to safety and the maintenance of law and order; and
 - (iii) national security.

23. (1) The Committee shall determine the assets and facilities in Kenya that constitute critical infrastructure.

Designation of critical infrastructure.

(2) On the commencement of the Act, the assets set out in the First Schedule are designated as critical infrastructure.

(3) Any public or private entity may request the Committee to designate any assets or facilities under its control or ownership as critical infrastructure.

(4) In designating critical infrastructure, the Committee shall—

- (a) assess the value of the services provided using the assets or facilities and determine whether such services are essential to the social and economic wellbeing of the citizens of Kenya;
- (b) assess the impact on the country, in the event that such assets or facilities are for any reason destroyed, degraded or rendered unavailable; and
- (c) assess the value of such assets and facilities to the country's ability to conduct national defence and security.

(5) The Committee shall notify the owner or operator of an asset or facility, in writing, before designating that asset or facility as a Critical Infrastructure Asset.

(6) The Committee shall issue a declaration through a notice in the *Kenya Gazette* that a specified asset or facility has been designated as a Critical Infrastructure Asset.

24. (1) The Secretariat shall maintain in such form as it considers appropriate, a database of the assets and facilities declared as critical infrastructure assets.

Register of Critical Infrastructure.

(2) The Secretariat shall—

- (a) collect such information from owners of critical infrastructure assets for purposes of registration of a critical infrastructure asset;
- (b) collect from the owners of critical infrastructure such information as is necessary for the Secretariat to locate the critical infrastructure assets;
- (c) ensure that the relevant Critical infrastructure assets database is accurate and updated on a regular basis; and
- (d) regulate access to the contents of the critical assets database and shall restrict such access to authorized persons.

25. The Cabinet Secretary may, upon the recommendation of the Committee revoke the status of assets as being part of critical infrastructure through a written notice in the *Kenya Gazette*.

Revocation of status.

26. A person who is aggrieved by the revocation of status issued by the Cabinet Secretary may lodge a written appeal to the Committee which shall be determined in 30 days from the issuance of the revocation.

Appeals.

PART V— PLANNING, DESIGN AND IMPLEMENTATION OF CRITICAL INFRASTRUCTURE

27. (1) The Committee shall co-ordinate the planning, design, implementation and deployment of Critical Infrastructure in Kenya.

Integrated National Critical Infrastructure Plan.

- (2) The Committee shall—
 - (a) require all owners and operators of Critical Infrastructure to develop plans and submit the plans to the Committee;
 - (b) consider the plans of the National Government as well as the plans of County Governments in respect to the deployment of Critical Infrastructure; and
 - (c) require owners of critical infrastructure assets to notify the Committee of any changes of their plans.

(3) The Committee shall, in consultation with the relevant parties, consolidate the plans submitted under subsection (1) (a) and (b) into an Integrated National Critical Infrastructure Master Plan which shall take into consideration future planning appropriate to the nature of the service and shall be reviewed on a regular basis.

(4) The Integrated National Critical Infrastructure Master plans shall guide the deployment of critical infrastructure assets.

28. (1) The Committee shall supervise the deployment and implementation of the Integrated National Critical Infrastructure Master Plan in Kenya.

Implementation of the Integrated National Critical Infrastructure Master Plan.

(2) The owners or operators shall obtain the consent of the Committee before deploying any critical infrastructure assets.

(3) The Committee in giving its consent shall ensure that the Integrated National Critical Infrastructure Master Plan is adhered to.

(4) The Committee shall give its response within thirty days of receipt of an application.

(5) The Committee shall harmonize costs related to critical infrastructure deployment permits across all counties.

PART VI—DUTIES AND OBLIGATIONS OF OWNERS AND OPERATORS OF CRITICAL INFRASTRUCTURE ASSETS

29. For purposes of ensuring service continuity, the owners or critical infrastructure shall—

Service continuity.

- (a) demonstrate to the Committee their service continuity plans in the event that the critical infrastructure assets are destroyed, degraded or rendered unavailable for any reason;
- (b) submit such service continuity plans and make recommendations for improvement of the security of critical infrastructure assets;
- (c) make recommendations to the National Government and County Governments on how to ensure service continuity in the event of critical

infrastructure assets are destroyed, degraded or rendered unavailable for any reason; and

- (d) collaborate with the entities responsible for National Disaster management to mitigate the impact of natural disasters on critical infrastructure.

30. The owners of critical infrastructure shall be responsible for obtaining and maintaining an appropriate insurance cover for the critical infrastructure at their own cost.

Requirement for insurance cover.

31. (1) The Committee shall subject to subsection (2) and (3), endeavour to settle any dispute resulting from the implementation of the provisions of this Act in an amicable manner.

Settlement of disputes.

(2) Without prejudice to the provisions of subsection (1), where the disputes relate to the two levels of governments, the provisions of Part IV of the Intergovernmental Relations Act, 2012 shall apply.

Cap 265F.

(3) Where a party is aggrieved by the outcome of the decision under subsections (2) the aggrieved party may seek redress of the matter in the High Court of Kenya as a last resort.

32. Each county government shall—

Obligations of county governments.

- (a) propose such county assets that meets the requirements of the Act for designation as critical infrastructure assets;
- (b) provide the Committee with information and maps regarding the location of the critical infrastructure assets;
- (c) prepare and submit the county plans for the development and deployment of critical infrastructure assets within the county with the Committee including any updates; and
- (d) support the Committee in the implementation of its mandate at the county level in the implementation of plans and designs of critical infrastructure at the county.

33. (1) The owners and operators of critical infrastructure assets shall—

Duties of owners and operators of critical infrastructure.

- (a) propose and submit to the Committee such assets as meet the requirements of the Act for designation as critical infrastructure assets;
- (b) provide the Committee with information and maps regarding the location of the critical infrastructure assets falling under this Act;
- (c) prepare and submit their plans for the development and deployment of critical infrastructure assets including any reviews thereof; and
- (d) co-operate with other owners of Critical Infrastructure Assets, where critical infrastructure assets are interconnected or interdependent.

(2) The owners of critical infrastructure assets shall—

- (a) co-operate with the Committee in implementing security measures prescribed by the Committee;
- (b) share with the Committee their respective service continuity plans;
- (c) report any incidents of security violation or threat to the critical infrastructure assets to the Committee;
- (d) co-operate with the Committee and take steps recommended by the Committee in the event of a security violation or in the event of a natural disaster; and
- (e) provide access to Critical Infrastructure Assets in the event of national disaster or security issue.

34. (1) A person who jams, disrupts, damages, wrecks, disables, incapacitates, impairs, removes or otherwise interferes with the operation of any critical infrastructure asset without authorization of the owner or operator of the critical infrastructure asset shall—

Duty to restore.

- (a) immediately on being notified desist from all such activities interfering with the critical infrastructure assets;
- (b) promptly or within such time as the Committee may prescribe at his own cost restore the damaged,

impaired, removed or incapacitated asset to the same standard of quality and functionality as they were before the interference or damage;

- (c) be liable to pay compensation, including aggravated damages on failure, for any loss caused to the owner or operator of the critical infrastructure asset affected or damaged; or
- (d) responsible to mitigate the loss caused or likely to be caused to the owners and operators of the affected critical infrastructure.

(2) Where an existing written law applicable to any civil works or any sector or class of critical infrastructure assets prescribes any process for avoidance or mitigation of damage or provides for limitation of damages arising in the course of such civil works or regulated activity, the party responsible for civil works or regulated activity shall only be liable to make restitution or pay compensation in accordance with such other law.

PART VII—OFFENCES AND ENFORCEMENT MECHANISMS

35. A person who wilfully, negligently or without authorization—

- (a) interferes with the management or operation of critical infrastructure; or
- (b) vandalizes, damages, removes, tampers with, touches or in any other way whatsoever interferes with Critical Infrastructure; or
- (c) steals or severs critical infrastructure; or
- (d) interferes with, disables, obstructs, incapacitates or otherwise impairs the operations of critical infrastructure or information transmitted by means of Critical Infrastructure; or
- (e) fails to comply with the directions/orders of the Committee or the Director; or
- (f) unlawfully gains access to confidential information relating to critical infrastructure; or
- (g) removes, defaces or destroys any critical infrastructure or part thereof; or

Offence of Defacing, destruction, or interference with critical infrastructure.

- (h) wrecks, derails, sets fire to, or disables critical infrastructure; or
- (i) puts up structures above critical infrastructure buried underground such as power cables, oil, gas and water pipelines, communication cables; or
- (j) dumps soils, garbage and excavated materials such as soil adjacent to, above or below critical infrastructure that compromises the operation of the critical infrastructure and safety of members of the public; or
- (k) plants trees or other vegetation that grow to heights and depths that compromise the established safety standards adjacent to critical infrastructure; or
- (l) excavate quarries or trenches adjacent to the critical infrastructure resulting to the weakening of the foundation of the critical infrastructure; or
- (m) burns waste matter or other matter above, adjacent to or below critical infrastructure; or
- (n) sets to fire, places or causes to be placed any biological agent, toxin, destructive device or other dangerous substance for use as a weapon, destructive substances, or destructive device in, upon, or near critical infrastructure, with intent to endanger the safety of any person using or attending to critical infrastructure, or with a reckless disregard for the safety of human life,

commits an offence and is liable on conviction to a fine of not more than ten million shillings or to imprisonment for a term of not more than ten years or to both and in addition the court shall order for the convicted person to repair the damage occasioned to the critical infrastructure asset.

36. A person who—

- (a) attempts, threatens, conspires to do; or
- (b) aids or abets in the commission of; or
- (c) incites members of the public to commit,

Inciting or
abetting
interference with
critical
infrastructure.

any of the acts specified under section 35 commits an offence and is liable, on conviction to a fine of not more than ten million shillings or to imprisonment for a term of not more than ten years or to both.

37. A person who hinders, obstructs or interferes with the exercise by a critical infrastructure owner or by the servants or agents duly authorised in writing of any such owner, of any right of entry upon land conferred by this Act for the purpose of laying and connecting, or repairing, inspecting or removing, critical infrastructure commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs or continues.

Hindering, obstructing or interfering with the exercise of critical infrastructure owner powers.

38.(1) Where an owner of a critical infrastructure does not comply with the provisions of this Act, the Committee shall give a sixty days' notice in writing requiring the owner to —

Penalties for non-compliance.

(a) remedy its non-compliance; and

(b) make representations to the Committee with respect to the matter.

(2) If, after the owner has been given an opportunity to remedy or make representation before the Committee, and the Committee is of the opinion that the owner has failed to comply with the provision of the Act, the Committee shall refer the matter to the regulator to take appropriate action

39. A person convicted of any offence in this Act, where no penalty is provided, is liable on conviction, to a fine of not more than ten million shillings or to imprisonment for a term of not more than fifteen years or to both.

General penalty.

PART VIII—MISCELLANEOUS PROVISIONS

40. The members of the Committee and Secretariat shall undertake to keep confidential all matters that come into their possession, except where disclosure may be required by law, to protect or pursue a legal right or to enforce or challenge a legal proceeding before a judicial body.

Confidentiality.

41.(1) The Cabinet Secretary may, in consultation with the Committee, make Regulations as may be

Regulations.

expedient or necessary for the better carrying out of the provisions of this Act or for prescribing anything that may be, or is required to be prescribed under this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may be made for—

- (a) purposes of regulating the unique features of the respective sectors or sub-sectors;
- (b) the sharing of information by and between all Government agencies, law enforcement agencies and private bodies involved in the protection of critical infrastructure;
- (c) the responsibility of owners or operators of Critical Infrastructure;
- (d) the content and timelines for the preparation of the Critical Infrastructure plans; and
- (e) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act.

SCHEDULE

s.12

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Meetings of the Committee.

1. (1) The Committee shall meet at least once in every three months to conduct its business.

(2) The Chairperson shall convene the ordinary meetings of the Committee at a place designated by the Cabinet Secretary.

(3) Unless three quarters of the total number of the members of the Committee otherwise agree, at least fourteen days written notice of every meeting of the Committee shall be given to every member of the Committee by the Secretary.

(4) The quorum for the conduct of the business of the Committee shall be five members.

(5) The Chairperson shall preside every meeting of the Committee at which they are present and in their absence, the members of the Committee present shall elect one person from their number to preside over the meeting of the Committee and they shall have all the powers of the Committee.

(6) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(7) The proceedings of the Committee shall not be invalidated by reason of a vacancy within its membership.

(8) Subject to provisions of this Schedule, the Committee may determine its own procedure and the procedure for any sub-committee and for the attendance of other persons at its meetings thereof.

Disclosure of interest.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Committee and is present at a meeting of the Committee at which the contract, proposed contract or other matter is the subject of consideration, they shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose their interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Committee by any person generally or specially authorized by the Committee for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The growth of Kenya's infrastructure network has served to greatly facilitate sustainable development in the country. At the same time, it has created the need for greater protection and a legal framework to support the measures undertaken towards the provision of that protection. With the rise of terrorism as a major security risk, there is an imperative need for the enactment of this legislation.

This Bill aims to create a legal framework that will enhance the protection of critical infrastructure in the Republic of Kenya.

Part I of the Bill identifies the key terms relating to critical infrastructure as well as the object and purpose of the Bill and the principles that guide the legislative framework envisioned by the Bill.

Part II of the Bill establishes the Critical Infrastructure Protection Committee which is the main body responsible for formulating the policy guidelines and strategies for the protection of critical infrastructure.

Part III of the Bill establishes the Critical Infrastructure Protection Secretariat which is designated to serve as the secretariat and technical arm of the Committee as well as provide technical, financial and legal expertise of the Committee.

Part IV of the Bill is concerned with the Designation of Critical Infrastructure and **Part V** of the Bill concerns the Planning, Design and Implementation of Critical Infrastructure.

The duties and obligations of the Committee are outlined in Part VI of the Bill and **Part VII** deals with the offences related to critical infrastructure. Part VIII contains the miscellaneous provisions of the Bill.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates any legislative powers only to the extent of giving effect to the provisions of this Act. The delegation of powers however does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Part II of the Fourth Schedule of the Constitution outlines the functions of the County Governments. County Governments are responsible for health, transport including roads, ferries and harbours, and electricity and gas reticulation.

These factors constitute critical assets and critical infrastructure which need legal protection as envisioned under this Bill.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated 14th March, 2024.

ALLAN K. CHESANG,
Senator.

