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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT –FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENERGY

REPORT ON THE CONSIDERATION OF THE ENERGY (AMENDMENTS) BILL (SENATE
BILL NO. 42 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 DEC 2025	DAY: <i>Wednesday</i>
TABLED BY:	<i>hon. David Gikania, CBS, MP</i>
CLERK-AT THE-TABLE:	<i>Getinde Chebet</i>

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2025

NATIONAL ASSEMBLY
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SPEAKER'S OFFICE
P. O. Box 51632, NAIROBI.



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LIST OF ABBREVIATIONS

EPRA	-	Energy and Petroleum Regulatory Authority
EPAs	-	Energy Purchase Agreements
MW	-	Megawatts
MWh	-	Megawatts per Hour
NDC	-	Nationally Determined Contributions
PPAs	-	Power Purchase Agreements
KPLC	-	Kenya Power & Lighting Company
PFM	-	Public Finance Management
PPP	-	Public Private Partnership
PPAD	-	Public Procurement and Asset Disposal

CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Energy of the Energy (Amendment) Bill (Senate Bill No. 42 of 2023). The Bill seeks to amend the Energy Act, Cap. 314 to create transparency in the purchase of electric energy from private generators, ensure the contracts entered into are financially sound to protect the end user of electricity from inflated electricity costs.

The Bill was published on 30th October, 2023 and read a First Time in the House on 24th April 2025. It was thereafter committed to the Departmental Committee on Energy for consideration and reporting to the House pursuant to the provisions of Standing Order 127.

Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, through the placement of adverts in the print media on 15th May 2025 (Annex 3), the National Assembly invited the public and interested stakeholders to submit memoranda on the proposed amendments.

Further, vide its letters dated 12th June 2025 and 18th July 2025, the Committee invited the Ministry of Energy and Petroleum for a meeting on the 29th July 2025 to give their comments and proposals on the Bill. In addition, the Committee vide its letter dated 1st October 2025, invited other stakeholders including Orpower 4 Inc, Kipeto Energy PLC, Sosian Energy Limited and Lake Turkana Wind Power Ltd for a meeting to give their comments and proposals on the Bill.

The Committee thereafter held meetings where submissions were received and the presentations considered before the adoption of this report.

Having considered the proposed amendments of the Energy Act, Cap. 314 and based on analysis of submissions by the Ministry of Energy and Petroleum and Sosian Energy Limited, the Committee made observations for each of the proposed amendments to the Energy (Amendments) Bill as contained in Part IV of this Report.

The Committee having reviewed the Energy (Amendment) Bill (Senate Bill No. 42 of 2023) recommends that the House approves the Bill with amendments as proposed in the Schedule in Part six of this report.

Hon. David Gikaria, CBS, M.P.
Chairperson Departmental Committee on Energy

PART I

1.0 PREFACE

1.1. Introduction

1. This report details the consideration by the Departmental Committee on Energy of the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 42 of 2023).
2. The Bill was published on 30th October, 2023 and read a First Time in the House on 15th December, 2022. It was thereafter committed to the Departmental Committee on Energy for consideration and reporting to the House pursuant to the provision of Standing Order 127. Specifically, the Committee considered amendments proposed to **the Energy Act, Cap.314**.

1.2. Mandate of the Committee

3. The Departmental Committee on Energy is established pursuant to the National Assembly Standing Order No. 216. The functions and mandate of the Committee include, among others, **“to study and review all legislation referred to it”**.
4. The subject matter under the purview of the Departmental Committee on Energy are stated in the Second Schedule of the National Assembly Standing Orders as follows: The Committee is mandated to consider matters relating to the Fossil Fuel Exploration, Development, Production, Maintenance and Regulation of Energy.

1.3. Oversight

5. In executing its mandate, the Committee oversees the following State Departments: The State Department for Energy and The State Department for Petroleum.

1.4. Committee Membership

6. The Departmental Committee on Energy comprises of the following Members:

Chairperson

Hon. David Gikaria, CBS, MP
Nakuru Town East Constituency

UDA Party

Vice-Chairperson

Hon. Lemanken Aramat, MP
Narok East Constituency

UDA Party

Members

Hon. Charles Gimose, MP
Hamisi Constituency

ANC Party

Hon. Siyad Amina Udgoon, MP
Garissa County

Jubilee Party

Hon. Walter Owino, MP
Awendo Constituency

ODM Party

Hon. Barongo Nolfason Obadiah., MP
Bomachoge Borabu Constituency

ODM Party

Hon. Musili Mawathe, MP
Embakasi South Constituency

WDM - K Party

Hon. George Aladwa Omwera, MP
Makadara Constituency

ODM Party

Hon. Elisha Odhiambo, MP
Gem Constituency

ODM Party

Hon. Cecilia Asinyen Ng'itit, MP
Turkana County

UDA Party

Hon. Gonzi Rai, MP
Kinango Constituency

PAA Party

Hon. Victor Koech Kipngetch, MP
Chepalungu Constituency

CCM Party

Hon. Simon King'ara, MP
Ruiru Constituency

UDA Party

Hon. Geoffrey Ekesa Mulanya, MP
Nambale Constituency

Independent

Hon. Tom Mboya Odege, MP
Nyatike Constituency

ODM Party

1.5. Committee Secretariat

7. The Committee is facilitated by the following technical staff representing the office of the Clerk:

Mr. Fredrick O. Otieno
Clerk Assistant I/Head of Secretariat

Mr. Salim Athuman
Clerk Assistant III

Ms. Brigitta Mati
Senior Legal Counsel

Mr. Brian Njeru
Fiscal Analyst II

Mr. Robert Langat
Research Officer III

Mr. Ambrose Nguti
Media Relations Officer II

Ms. Viola Saiya
Research Officer III

Ms. Lillian Aluga
Public Communications Officer

Mr. Anthony Wamae
Serjeant-At-Arms

Mrs. Rehema Koech
Audio Officer III

PART II

2.0 OVERVIEW OF THE ENERGY (AMENDMENT) BILL, (SENATE BILL NO. 42 OF 2023)

8. The Energy (Amendment) Bill, (Senate Bill No. 42 of 2023), sponsored by Senator Edwin Sifuna, MP, seeks to amend the Energy Act, Cap.314. The Bill proposes the introduction of Section 134A to govern Energy Purchase Agreements (EPAs) with an emphasis on transparency, accountability, prudent financial management, and public participation. The Bill was published on 30th October, 2023 and read a First Time in the House on 24th April, 2025.
9. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Energy for consideration.
10. The Bill seeks to amend the following law, which is relevant to the Departmental Committee on Energy: **The Energy Act, Cap. 314.**
11. The Bill aims to ensure greater transparency and accountability in the procurement of electric energy by requiring disclosure of beneficial ownership and adherence to the principles enshrined in Article 201 of the Constitution of Kenya. It endeavors to establish a statutory mechanism for regulating the conduct of EPAs between generating entities and licensed purchasing entities, including Kenya Power and Lighting Company.

2.1.Salient Provisions of the Bill

12. Insertion of Section 134A:
 - a) Subsection (1) authorizes generating entities to enter into EPAs with specified licensed entities.
 - b) Subsection (2) mandates that EPAs comply with the principles of public finance under Article 201 of the Constitution.
 - c) Subsection (3) imposes obligations on purchasing entities to conduct feasibility studies, follow procurement procedures, and prioritize renewable energy.
 - d) Subsection (4) requires generating entities to disclose beneficial ownership in accordance with the Companies Act, No. 17 of 2015.
 - e) Subsections (5) and (6) obligate purchasing entities to maintain and publish a register of EPAs and beneficial ownership data.
 - f) Subsection (7) empowers the Energy and Petroleum Regulatory Authority (EPRA) to withhold approval of non-compliant EPAs.

2.2.Alignment with Legal Frameworks

13. **Constitution of Kenya, 2010:** Article 201 sets forth principles of public finance including accountability, transparency, public participation, and prudent use of public resources.
14. **Public Procurement and Asset Disposal Act, Cap. 412C:** Governs procurement procedures applicable to EPAs.

15. **Companies Act, Cap.486:** Provides for the disclosure of beneficial ownership.
16. **Access to Information Act, Cap.7M:** Guarantees the public's right to access information including registers of EPAs.
17. **Energy Act, Cap.314:** The principal statute being amended to enhance governance in the energy sector.

2.3. Advantages of Enactment of the Bill

18. **Legal and Institutional Transparency:** The Bill imposes a mandatory disclosure regime, thereby fortifying anti-corruption measures and preventing the concealment of ownership through opaque corporate structures. This aligns with international best practices concerning beneficial ownership transparency.
19. **Promotion of Good Governance and Fiscal Responsibility** by anchoring procurement and contractual engagements within the framework of Article 201, the Bill ensures that energy-related public expenditure is managed prudently and with due regard to sustainability.
20. **Strengthening of Regulatory Oversight:** The conferment of discretionary powers upon EPRA to disapprove non-compliant EPAs enhances the agency's regulatory leverage and enables enforcement of compliance standards.
21. **Support for Renewable Energy Transition:** The prioritization of dispatchable and renewable energy sources in EPAs supports national commitments under the Paris Agreement and promotes environmental sustainability. This means that **Kenya's Nationally Determined Contributions (NDCs)** under the Paris Agreement commit the country to:
 - i. Reduce GHG Emissions By **32% By 2030**;
 - ii. Expand investment in **Clean and Renewable Energy Sources**, including solar, wind, hydro, and geothermal;
 - iii. Implement **Climate-Resilient Energy Infrastructure** and adopt measures to mitigate the carbon intensity of energy generation.
22. **Public Participation and Access to Information:** The Bill requires the publication of EPA registers and beneficial ownership on public platforms, thereby facilitating citizen engagement and oversight.

2.4. Disadvantages of Enactment of the Bill

23. **Increased Administrative and Compliance Burden:** The statutory requirements for feasibility studies, register maintenance, and beneficial ownership disclosures may overburden purchasing entities, particularly in terms of time, financial, and human resources.
24. **Risk of Delayed Project Implementation:** Enhanced procedural requirements and regulatory scrutiny may prolong the timeframes for negotiating and executing EPAs, potentially delaying energy generation projects.

25. **Legal and Contractual Uncertainty:** Existing EPAs that were entered into under the previous legal framework may become the subject of dispute or renegotiation, especially if they are inconsistent with the new statutory requirements.
26. **Institutional Capacity Constraints:** The effective implementation of the Bill will require institutional strengthening of regulatory and purchasing entities, which may not currently possess the requisite technical or administrative capacity.

PART III

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

27. Following the call for memoranda from the public through placement of adverts in the print media on Thursday, 15th May 2025 and vide a letters Ref: NA/DDC/ENERGY/CORR/2025/048 and Ref: NA/DDC/ENERGY/CORR/2025/077 dated 18th July 2025 and 1st October 2025 respectively inviting stakeholders for a meeting, the Committee received comments from the Ministry of Energy and Petroleum and Sosian Energy Limited.

3.1. Submissions by the Ministry of Energy and Petroleum

In a meeting with the Committee held on Tuesday, 29th July 2025, the Principal Secretary State Department for Energy made the following submissions on the Bill:

28. **THAT, Section 134A (1)** be amended to include both Energy and Power Purchase Agreements.

Justification: *This commercial transaction is referred to as an energy purchase agreement in technical language. However, there is a difference between Energy in Megawatt Hour (MWh) and Power in Megawatt (MW) and thus while this is well intended, it could mean that the proposals restrict KPLC from entering into firm Power Purchase Agreement. Energy planning is done with regard to power not energy. Secondly, KPLC enters both into Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPA). Power plants are designed in MW not MWh. Essentially, PPAs ensure that power is available during the time is required while energy is a derivative of power. It is, therefore, proposed that the amendments should make reference to both Energy and Power Purchase Agreements.*

Committee Observations

The Committee observed that Section 134A(1) refers only to Energy Purchase Agreements, yet sector practice shows that Kenya Power routinely enters into both Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPAs). The Committee further observed that the two instruments are not identical: PPAs relate to the availability of power measured in megawatts (MW), while EPAs relate to the purchase of energy measured in megawatt hours (MWh).

Committee recommendation

The Committee recommends that the Bill be amended by inserting a new clause 1A that amends section 2 of the Energy Act, Cap. 314 as follows:

Section 2 of the Energy Act be amended by inserting the following definition in its proper alphabetical sequence—

29. “Energy Purchase Agreement” means a contract between a licensed power producer and an electricity buyer for the supply of energy measured in megawatt hours, and also includes a Power Purchase Agreement for the supply of power measured in megawatts, together with all related terms on pricing, delivery, obligations of the parties, and the duration of the agreement. **THAT, Section 134A (2)** be amended by deletion of proposed provision.

Justification:

The Constitution under Article 227, provides the guiding principle in public infrastructure development. In procuring the of goods and services a public entity shall do so in a system that is fair, equitable, transparent, competitive and cost-effective. These principles have been emphasized in both the PFM Act and the PPP Act.

Committee Observations

The Committee observed that the principles listed in the proposed Section 134A(2) are already fully provided for in the Constitution and existing statutes. Article 227 of the Constitution sets out the mandatory principles for public procurement of goods and services, including fairness, equity, transparency, competitiveness, and cost-effectiveness, which apply to all public infrastructure contracts, including energy and power purchase agreements. The Committee therefore found that restating these principles in Section 134A(2) is unnecessary and may create duplication. For this reason, the Committee recommends deletion of the proposed subsection.

Committee Recommendation

THAT, the Bill be amended in the proposed new section 134A by deleting subsection (2).

Justification:

The applicable constitutional and financial principles are already adequately addressed in existing legislation.

30. **THAT, Section 134A (3)** be amended by deletion of proposed provision.

Justifications:

The requirement for specific feasibility studies as a condition for the sign-off of energy purchase and power purchase agreements should be deleted provided that the agreements are in line with the Least Cost Power Development Plan and importantly driven by need for added power supply to the grid and not arbitrary contractual commitments;

Most power purchase contracts are done under the Public Private Partnership Act, Cap. 430 (PPP Act) including the framework under the Feed In Tariff Policy (FiT Policy), which has demonstrated its ability to manage and deliver contracts under very short timelines. It is important to note that the procurement regime proposed in these amendments and as contemplated under the Public Procurement and Assets Disposal Act, Cap. (PPAD Act) is principally for conventional procurement. The proposal for the requirement for the application of the PPAD Act in the procurement of power should therefore be deleted. The requirement for compliance with the Constitution and Public Finance Principles is good enough.

Committee Observations

The Committee observed that the proposed subsection (3) introduces procurement requirements that are already addressed under existing laws and policies governing the energy sector. The Committee further noted that feasibility studies for new power commitments are adequately covered through the Least Cost Power Development Plan, which guides system expansion and determines actual need. It also noted that most power purchase arrangements are undertaken within the framework of the Public Private Partnership Act, which provides an established and efficient process for procuring generation

projects, particularly those that are site-specific such as geothermal, wind, solar, and small hydros. The Committee found that applying the Public Procurement and Asset Disposal Act to such projects may conflict with the PPP Act and could undermine the effectiveness and timelines of energy procurement. The Committee concluded that the proposed subsection duplicates existing legal requirements and may create inconsistencies.

Committee Recommendation

THAT, the Bill be amended in the proposed new section 134A by deleting the subsection (3).

Justification:

To avoid duplication, legal conflict, and unintended disruption of established procurement processes under the PPP framework

31. **THAT, Section 134A (4)(5) and (7)** be amended to include Power Purchase Agreement.

Justification: *Comments outlining difference in energy and power purchase agreements.*

Committee Observations

The Committee observed that Section 134A(4) (5) and (7) refers only to Energy Purchase Agreements, yet sector practice shows that Kenya Power routinely enters into both Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPAs). The Committee further observed that the two instruments are not identical: PPAs relate to the availability of power measured in megawatts (MW), while EPAs relate to the purchase of energy measured in megawatt hours (MWh).

Committee Recommendations

The Committee recommends that the Bill be amended by inserting a new clause 1A that amends section 2 of the Energy Act, Cap. 314 as follows:

Section 2 of the Energy Act be amended by inserting the following definition in its proper alphabetical sequence—

“Energy Purchase Agreement” means a contract between a licensed power producer and an electricity buyer for the supply of energy measured in megawatt hours, and also includes a Power Purchase Agreement for the supply of power measured in megawatts, together with all related terms on pricing, delivery, obligations of the parties, and the duration of the agreement.

The introduction of the new definition cures the ambiguity.

3.2.Submissions by the Sosian Energy Limited

32. In a meeting with the Committee held on Thursday, 9th October 2025, the Managing Director, Sosian Energy Limited, Mr. Venu Gopal, submitted that the Company fully supports the Bill in its entirety without any amendments.

PART IV

4.0 COMMITTEE OBSERVATIONS

33. Having considered the Bill, the Committee made the following observations: **THAT;**

- 1) The Bill proposes the introduction of Section 134A to govern Energy Purchase Agreements (EPAs) with an emphasis on transparency, accountability, prudent financial management, and public participation;
- 2) The Bill aims to ensure greater transparency and accountability in the procurement of electric energy by requiring disclosure of beneficial ownership and adherence to the principles enshrined in Article 201 of the Constitution of Kenya. It endeavors to establish a statutory mechanism for regulating the conduct of EPAs between generating entities and licensed purchasing entities, including Kenya Power and Lighting Company.
- 3) Section 134A(1) refers only to Energy Purchase Agreements, yet sector practice shows that Kenya Power routinely enters into both Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPAs). The Committee further observed that the two instruments are not identical: PPAs relate to the availability of power measured in megawatts (MW), while EPAs relate to the purchase of energy measured in megawatt hours (MWh).
- 4) The principles listed in the proposed Section 134A(2) are already fully provided for in the Constitution and existing statutes. Article 227 of the Constitution sets out the mandatory principles for public procurement of goods and services, including fairness, equity, transparency, competitiveness, and cost-effectiveness, which apply to all public infrastructure contracts, including energy and power purchase agreements. The Committee therefore found that restating these principles in Section 134A(2) is unnecessary and may create duplication. For this reason, the Committee recommends deletion of the proposed subsection.
- 5) The proposed subsection (3) introduces procurement requirements that are already addressed under existing laws and policies governing the energy sector. The Committee further noted that feasibility studies for new power commitments are adequately covered through the Least Cost Power Development Plan, which guides system expansion and determines actual need. It also noted that most power purchase arrangements are undertaken within the framework of the Public Private Partnership Act, which provides an established and efficient process for procuring generation projects, particularly those that are site-specific such as geothermal, wind, solar, and small hydros. The Committee found that applying the Public Procurement and Asset Disposal Act to such projects may conflict with the PPP Act and could undermine the effectiveness and timelines of energy procurement. The Committee concluded that the proposed subsection duplicates existing legal requirements and may create inconsistencies.
- 6) Section 134A(4) (5) and (7) refers only to Energy Purchase Agreements, yet sector practice shows that Kenya Power routinely enters into both Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPAs). The Committee further observed that the two instruments are not identical: PPAs relate to the availability of power measured in megawatts (MW), while EPAs relate to the purchase of energy measured in megawatt hours (MWh).

PART V

5.0 COMMITTEE RECOMMENDATIONS

34. The Committee having reviewed the Energy (Amendment) Bill (Senate Bill No. 42 of 2023) recommends that the House **approves the Bill with amendments** as proposed below:

- 1) THAT, the Bill be amended by inserting a new clause 1A that amends section 2 of the Energy Act, Cap. 314 as follows:

Section 2 of the Energy Act be amended by inserting the following definition in its proper alphabetical sequence—

“Energy Purchase Agreement” means a contract between a licensed power producer and an electricity buyer for the supply of energy measured in megawatt hours, and also includes a Power Purchase Agreement for the supply of power measured in megawatts, together with all related terms on pricing, delivery, obligations of the parties, and the duration of the agreement.

Justification

To introduce the new definition that cures the ambiguity of whether a power purchase agreement is included in a energy purchase agreement.

- 2) THAT, the Bill be amended in the proposed new section 134A by deleting subsection (2).

Justification

The applicable constitutional and financial principles are already adequately addressed in existing legislation.

3. THAT, the Bill be amended in the proposed new section 134A by deleting subsection (3).

Justification

To avoid duplication, legal conflict, and unintended disruption of established procurement processes under the PPP framework.


4. THAT, the Bill be amended in the proposed new section 134 A by inserting the following new subsection immediately after subsection (7)—

“(8) A generating entity who, immediately before the commencement of this Act, had entered into an energy purchase agreement shall, within six months of the commencement of this Act, ensure full compliance with the requirements of this section.

SIGNED: DATE: 

HON. DAVID GIKARIA, CBS, M.P.
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENER

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 DEC 2025	DAY: <input type="text"/>
TABLED BY:	
CLERK-AT-TABLE:	

LIST OF ANEXURES

1. Adoption Schedule
2. Committee Minutes
3. Copy of Newspaper Advert
4. Submissions by Stakeholders



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION, 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENERGY

**ADOPTION OF THE REPORT ON CONSIDERATION OF THE ENERGY (AMENDMENT) BILL,
(SENATE BILL NO. 42 OF 2023)**

We, the undersigned Honorable Members of the Departmental Committee on Energy today Tuesday, 16th December, 2025 do hereby affix our signatures to this **Report on consideration of the Energy (Amendment) Bill, (Senate Bill No. 42 of 2023)** to affirm our approval and confirm their accuracy, validity, and authenticity.

NO.	NAME	SIGNATURE
1.	The Hon. David Gikaria, CBS, MP -Chairperson	
2.	The Hon. Lemanken Aramat, MP – Vice-Chairperson	
3.	The Hon. Samuel Gonzi Rai, M.P.	
4.	The Hon. Charles Gimose, M.P.	
5.	The Hon. Elisha Odhiambo, M.P.	
6.	The Hon. Julius Musili Mawathe, M.P.	
7.	The Hon. Walter Owino, M.P.	
8.	The Hon. Tom Mboya Odege, M.P.	
9.	The Hon. Simon King'ara, M.P.	
10.	The Hon. George Omwera Aladwa, M.P.	
11.	The Hon. Victor Koech Kipngetch, M.P.	
12.	The Hon. Geoffrey Ekesa Mulanya, M.P.	
13.	The Hon. Cecilia Asinyen Ngitit, M.P.	
14.	The Hon. Barongo Nolfason Obadiah, M.P.	
15.	The Hon. Siyad Amina Udgoon, MP	



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION, 2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 45TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD ON TUESDAY, 2ND DECEMBER 2025 IN THE COMMITTEE ROOM 22, FIFTH FLOOR, BUNGE TOWER AT 10:00AM.

PRESENT.

1. The Hon. David Gikaria, CBS, MP-**Chairperson**
2. The Hon. Lemanken Aramat, MP-**Vice-Chairperson**
3. The Hon. Charles Gimose, MP
4. The Hon. Elisha Odhiambo, MP
5. The Hon. Walter Owino, MP
6. The Hon. Tom Mboya Odege, MP
7. The Hon. Julius Musili Mawathe, MP
8. The Hon. Simon Kingara, MP
9. The Hon. Geoffrey Ekesa Mulanya, MP
10. The Hon. Victor Koech Kipngetch, MP
11. The Hon. Barongo Nolfason Obadiah, MP
12. The Hon. Cecilia Asinyen Ngiti, MP

APOLOGY

1. The Hon. Samuel Gonzi Rai, MP
2. The Hon. George Omwera Aladwa, MP
3. The Hon. Siyad Amina Udgoon, MP

IN-ATTENDANCE:

COMMITTEE SECRETARIATE

- | | | |
|------------------------|---|----------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant I |
| 2. Mr. Salim Athuman | - | Clerk Assistant III |
| 3. Mr. Brian Njeru | - | Fiscal Analyst II |
| 4. Ms. Brigita Mati | - | Senior Legal Counsel |
| 5. Ms. Rehema Koech | - | Hansard Officer |
| 6. Mr. Robert Langat | - | Research Officer III |
| 7. Ms. Viviane Juma | - | Intern Officer |
| 8. Ms. Mariana Angela | - | Intern Officer |

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising.
4. **Agenda: Consideration of the clause-by-clause amendments on the Energy (Amendment) Bill (Senate Bill No.42 of 2023) and the Adoption of the Report**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN. NO. NA/ENERGY/2025/195: PRELIMINARIES

The Chairperson called the meeting to order at eighteen minutes past ten O'clock followed by a prayer. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Walter Owino, MP and the Hon. Simon King'ara, MP respectively.

MIN. NO. NA/ENERGY/2025/196: CONFIRMATION OF MINUTES

The Minutes of the 43rd sitting held on the 11th November, 2025 were confirmed as a true record of the proceedings having been proposed and seconded by the Hon. Walter Owino, M.P and the Hon. Obadiah Barongo, MP respectively.

MIN.NO.NA/ENERGY/2025/197: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE ENERGY (AMENDMENT) BILL (SENATE BILL NO.42 OF 2023)

The Committee considered and unanimously adopted the Report with the following observations recommendations:

COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee made the following observations: **THAT;**

- 1) The Bill proposes the introduction of Section 134A to govern Energy Purchase Agreements (EPAs) with an emphasis on transparency, accountability, prudent financial management, and public participation;
- 2) The Bill aims to ensure greater transparency and accountability in the procurement of electric energy by requiring disclosure of beneficial ownership and adherence to the principles enshrined in Article 201 of the Constitution of Kenya. It endeavors to establish a statutory mechanism for regulating the conduct of EPAs between generating entities and licensed purchasing entities, including Kenya Power and Lighting Company.
- 3) Section 134A (1) refers only to Energy Purchase Agreements, yet sector practice shows that Kenya Power routinely enters into both Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPAs). The Committee further observed that the two instruments are not identical: PPAs relate to the availability of power measured in megawatts (MW), while EPAs relate to the purchase of energy measured in megawatt hours (MWh).
- 4) The principles listed in the proposed Section 134A (2) are already fully provided for in the Constitution and existing statutes. Article 227 of the Constitution sets out the mandatory principles for public procurement of goods and services, including fairness, equity, transparency, competitiveness, and cost-effectiveness, which apply to all public infrastructure contracts, including energy and power purchase agreements. The Committee therefore found that restating these principles in Section 134A (2) is unnecessary and may create duplication. For this reason, the Committee recommends deletion of the proposed subsection.
- 5) The proposed subsection (3) introduces procurement requirements that are already addressed under existing laws and policies governing the energy sector. The Committee further noted that feasibility studies for new power commitments are adequately covered through the Least Cost Power Development Plan, which guides system expansion and determines actual need. It also noted that most power purchase arrangements are undertaken within the framework of the Public Private Partnership Act, which provides an established and efficient process for procuring generation projects, particularly those that are site-specific such as geothermal, wind, solar, and small hydros. The Committee found that applying the Public Procurement and Asset Disposal Act to such projects may conflict with the PPP Act and could undermine the effectiveness and timelines of energy procurement. The Committee concluded that the proposed subsection duplicates existing legal requirements and may create inconsistencies.
- 6) Section 134A (4) (5) and (7) refers only to Energy Purchase Agreements, yet sector practice shows that Kenya Power routinely enters into both Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPAs). The Committee further observed that the two

instruments are not identical: PPAs relate to the availability of power measured in megawatts (MW), while EPAs relate to the purchase of energy measured in megawatt hours (MWh).

COMMITTEE RECOMMENDATIONS

The Committee having reviewed the Energy (Amendment) Bill (Senate Bill No. 42 of 2023) recommends that the House approves the Bill with amendments as proposed below:

- 1) THAT, the Bill be amended by inserting a new clause 1A that amends section 2 of the Energy Act, Cap. 314 as follows:

Section 2 of the Energy Act be amended by inserting the following definition in its proper alphabetical sequence—

“Energy Purchase Agreement” means a contract between a licensed power producer and an electricity buyer for the supply of energy measured in megawatt hours, and also includes a Power Purchase Agreement for the supply of power measured in megawatts, together with all related terms on pricing, delivery, obligations of the parties, and the duration of the agreement.

Justification

To introduce the new definition that cures the ambiguity of whether a power purchase agreement is included in an energy purchase agreement.

- 2) THAT, the Bill be amended in the proposed new section 134A by deleting subsection (2).

Justification

The applicable constitutional and financial principles are already adequately addressed in existing legislation.

3. THAT, the Bill be amended in the proposed new section 134A by deleting subsection (3).

Justification

To avoid duplication, legal conflict, and unintended disruption of established procurement processes under the PPP framework.

4. THAT, the Bill be amended in the proposed new section 134 A by inserting the following new subsection immediately after subsection (7)—

“(8) A generating entity who, immediately before the commencement of this Act, had entered into an energy purchase agreement shall, within six months of the commencement of this Act, ensure full compliance with the requirements of this section

MIN.NO.NA/ENERGY/2025/198.ANY OTHER BUSINESS

The Committee was informed that:

1. Field Development Plan and Production sharing Contracts for Block T6 and T7 in South Lokichar Basin in Turkana County was laid on the table of the House on Thursday, 28th November 2025. Subsequently, the Speaker of the National Assembly referred it to the Departmental Committee on Energy. The Consideration of the Field Development Plan and Production sharing Contracts for Block T6 and T7 in South Lokichar Basin in Turkana County will involve stakeholder engagement and presentation of report to the National Assembly on Tuesday, 24th February 2026.

The Committee was taken through the proposed timelines for consideration of the Field Development Plan and Production sharing Contracts for Block T6 and T7 in South Lokichar Basin in Turkana County and subsequent activities.

2. The Committee was further informed of the planned post legislative dialogue on the Energy Act, Cap 314 scheduled for Thursday, 4th December 2025 at FourPoints by Sheraton, Hurlingham from 8:00am. Members were urged to attend and participate in the event.

MIN. NO. NA/ENERGY/2025/199: ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes to twelve O'clock. The next meeting to be held on notice.

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

(HON. DAVID GIKARIA, CBS, M.P. CHAIRPERSON)





**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION, 2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD ON THURSDAY 5TH JUNE 2025 IN COMMITTEE ROOM,
CONTINENTAL HOUSE 4TH FLOOR AT 12.00PM.**

PRESENT.

1. The Hon. David Gikaria, CBS, MP – **Chairperson**
2. The Hon. Elisha Odhiambo, MP – Chairing
3. The Hon. Walter Owino, MP
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Simon King'ara, MP
6. The Hon. Barongo Nolfason Obadiah, MP

APOLOGY

1. The Hon. George Aladwa Omwera, MP
2. The Hon. Samuel Gonzi Rai, MP
3. The Hon. Lemanken Aramat, MP - **Vice Chairperson**
4. The Hon. Charles Gimose, MP
5. The Hon. Cecilia Asinyen Ngigit, MP
6. The Hon. Siyad Amina Udgoon, MP
7. The Hon. Tom Mboya Odege, MP
8. The Hon. Victor Koech Kipngetich, MP
9. The Hon. Geoffrey Ekesa Mulanya, MP

IN-ATTENDANCE:

COMMITTEE SECRETARIATE

- | | | |
|-----------------------|---|---------------------|
| 1. Mr. Salim Athuman | - | Clerk Assistant III |
| 2. Mr. Brian Njeri | - | Fiscal Analyst II |
| 3. Ms. Brigita Mati | - | Legal Counsel |
| 4. Ms. Rehema Koech | - | Hansard Officer |
| 5. Mr. Anthony Wamae | - | Serjeant-At-Arms |
| 6. Ms. Mariana Nyagol | - | Intern |
| 7. Ms. Viviane Juma | - | Intern |

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 1. Adoption of the Agenda
 2. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. Agenda
 - i. **Briefing on the Energy (Amendment) Bill (Senate Bill No.42 of 2023) by the Legal Counsel**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN. NO. NA/ENERGY/2025/099: PRELIMINARIES

The Chairperson called the meeting to order at twelve O'clock followed by a prayer. Thereafter everyone present introduced themselves. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Walter Owino, MP and the Hon. Barongo Obadiah, MP.

MIN. NO. NA/ENERGY/2025/100: CONFIRMATION OF MINUTES

- i. The Minutes of the 18th sitting held on the 13th May, 2025 were confirmed as a true record of the proceedings having been proposed and seconded by the Hon Barongo Obadiah, MP and Hon. Walter Owino, MP respectively.
- ii. The Minutes of the 19th sitting held on the 14th May, 2025 morning were confirmed as a true record of the proceedings having been proposed and seconded by the Hon Julius Mawathe MP and Hon. Barongo Obadiah, MP respectively.
- iii. The Minutes of the 20th sitting held on the 14th May, 2025 afternoon were confirmed as a true record of the proceedings having been proposed and seconded by the Hon Walter Owino, MP and Hon. Barongo Obadiah, MP respectively.
- iv. The Minutes of the 22nd sitting held on the 3rd June, 2025 were confirmed as a true record of the proceedings having been proposed and seconded by the Hon Julius Mawathe, MP and Hon. Barongo Obadiah, MP respectively.

MIN. NO. NA/ENERGY/2025/101: BRIEFING ON THE ENERGY (AMENDMENT) BILL (SENATE BILL NO.42 OF 2023) BY THE LEGAL COUNSEL

The meeting was briefed by the Legal Counsel on the Energy (Amendment) Bill (Senate Bill No.42 of 2023) as follows:

- i. The Bill proposes the introduction of Section 134A to govern Energy Purchase Agreements (EPAs) with an emphasis on transparency, accountability, prudent financial management, and public participation.
- ii. The Bill aims to ensure greater transparency and accountability in the procurement of electric energy by requiring disclosure of beneficial ownership and adherence to the principles enshrined in Article 201 of the Constitution of Kenya.
- iii. Insertion of Section 134A:
 - a) Subsection (1) authorizes generating entities to enter into EPAs with specified licensed entities.
 - b) Subsection (2) mandates that EPAs comply with the principles of public finance under Article 201 of the Constitution.
 - c) Subsection (3) imposes obligations on purchasing entities to conduct feasibility studies, follow procurement procedures, and prioritize renewable energy.
 - d) Subsection (4) requires generating entities to disclose beneficial ownership in

accordance with the Companies Act, No. 17 of 2015.

- e) Subsections (5) and (6) obligate purchasing entities to maintain and publish a register of EPAs and beneficial ownership data.
- f) Subsection (7) empowers the Energy and Petroleum Regulatory Authority (EPRA) to withhold approval of non-compliant EPAs.

iv. Advantages of enactment

- a) Legal and Institutional Transparency
- b) Promotion of Good Governance and Fiscal Responsibility
- c) Strengthening of Regulatory Oversight
- d) Support for Renewable Energy Transition
- e) Public Participation and Access to Information
- f) County Government Empowerment

v. Disadvantages of enactment

- a) Increased Administrative and Compliance Burden
- b) Risk of Delayed Project Implementation
- c) Legal and Contractual Uncertainty
- d) Institutional Capacity Constraints

vi. Conclusion and Recommendations

- a. The Bill incorporate transitional provisions to safeguard existing contracts.
- b. Regulatory entities be capacitated through budgetary and technical support.
- c. Stakeholder consultations be conducted to harmonize interests and enhance investor confidence.

Subject to these recommendations, the enactment of the Bill is legally sound and aligned with Kenya's constitutional and developmental aspirations.

MIN. NO. NA/ENERGY/2025/102: OBSERVATIONS

Having been briefed, the Committee noted that it is important enhance and enrich the bill to promote the transparency in power purchasing agreements. Further, the Committee indicated it will engage key stakeholders to provide their views on the Bill in accordance with Article 118 of the Constitution.

MIN. NO. NA/ENERGY/2025/103: RESOLUTIONS

The Committee made the following resolutions:

1. To invite the Ministry of Energy and Petroleum to apprise it on the status of Government-to-Government oil agreement.
2. To invite the Ministry to apprise it on the status of Lokichar and Lamu field development projects based on the budget allocations.
3. To invite KPC and the Ministry on the issue of the LPG storage facility in Mombasa awarded to the Nigerian firm Asharami Synergy Ltd, potential loss of Ksh.192.6 million in taxpayer funds already spent by KPC on feasibility studies and engineering designs.

CONCERNS/RESOLUTIONS

MIN. NO. NA/ENERGY/2025/104: ADJOURNMENT

There being no other business, the meeting was adjourned at a quarter past one O'clock. The next meeting to be held on notice.

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

(HON. DAVID GIKARIA, CBS, M.P. CHAIRPERSON)



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION, 2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 28TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD ON TUESDAY 29TH JULY 2025 IN MAIN CHAMBER, MAIN
PARLIAMENT BUILDING AT 10.00 A.M.**

PRESENT.

1. The Hon. David Gikaria, CBS, MP-**Chairperson**
2. The Hon. Lemanken Aramat, MP-**Vice-Chairperson**
3. The Hon. Samuel Gonzi Rai, MP
4. The Hon. Tom Mboya Odege, MP – Chairing
5. The Hon. Walter Owino, MP
6. The Hon. Julius Mawathe Musili, MP
7. The Hon. Barongo Nolfason Obadiah, MP
8. The Hon. Cecilia Asinyen Ngitit, MP
9. The Hon. Geoffrey Ekesa Mulanya, MP
10. The Hon. Victor Koech Kipnetich, MP
11. The Hon. Simon Kingara, MP

APOLOGY

1. The Hon. Siyad **Amina** Udgoon, MP
2. The Hon. Elisha **Odhiambo**, MP
3. The Hon. Charles **Gimose**, MP
4. The Hon. George **Omwera** Aladwa, MP

IN-ATTENDANCE:

COMMITTEE SECRETARIATE

- | | | |
|-------------------------------|---|------------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant I |
| 2. Mr. Salim Athuman | - | Clerk Assistant III |
| 3. Ms. Brigita Mati | - | Legal Counsel |
| 4. Mr. Ambrose Nguti | - | Media Relation Officer |
| 5. Mr. Antony Wamae | - | Serjeant at Arms |
| 6. Ms. Rehema Koech | - | Hansard Officer |
| 7. Ms. Lilian | - | Intern |
| 8. Ms. Viviane Juma | - | Intern |

MINISTRY OF ENERGY AND PETROLEUM

- | | | |
|----------------------------------|---|--------------------------------|
| 1. Mr. Alex Wachira , CBS | - | Principal Secretary |
| 2. Mr. Peter Ngumi | - | Deputy Chief State Counsel |
| 3. Mr. Labanson Mwai | - | Principal Secretary Office, PA |
| 4. Mr. Cyprian Nyakundi | - | AG.DG, EPRA |
| 5. Mr. D.N Mutiso | - | MOEP |
| 6. Ms. Roselyn Munuve | - | MOEP/SDE |

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. Agenda: **Meeting with the Ministry of Energy and Petroleum on the consideration of the Energy(Amendment) Bill (Senate Bill No.42 of 2023).**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN. NO. NA/ENERGY/2025/123: PRELIMINARIES

The Vice Chairperson called the meeting to order at half past ten O'clock followed by a prayer from Hon Victor Koech, MP. Self-introductions were made. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Geoffrey Mulanya, MP and the Hon. Nolfason Barongo, MP respectively.

MIN. NO. NA/ENERGY/2025/124: MEETING WITH THE MINISTRY OF ENERGY AND PETROLEUM ON THE CONSIDERATION OF THE ENERGY (AMENDMENT) BILL (SENATE BILL NO.42 OF 2023)

The Principal Secretary, State Department for Energy, Mr. Alex Wachira, CBS accompanied by other Ministry officials appeared before the Committee and made the following submissions: That;

- a) The proposed Section 134A (1) introduces a commercial transaction between a generating entity and a licensed entity identified in Third Schedule of the Energy Act, Cap. 314.
- b) The Third Schedule contains Government of Kenya (GoK) owned utilities like Kenya Power and Lighting Company (KPLC), Kenya Electricity Generating Company (Kengen) Kenya Electricity Transmission Company (KETRACO), Geothermal Development Company (GDC), and the Rural Electrification and Renewable Energy Corporation (REREC).
- c) This commercial transaction is referred to as an energy purchase agreement in technical language. However, there is a difference between Energy in Megawatt Hour (MWh) and Power in Megawatt (MW) and thus while this is well intended, it could mean that the proposals restrict KPLC from entering into firm Power Purchase Agreement.
- d) Currently, most power purchase contracts are done under the Public Private Partnership Act, Cap. 430 (PPP Act) including the framework under the Feed in Tariff Policy (FiT Policy), which has demonstrated its ability to manage and deliver contracts under very short timelines.
- e) It is important to note that the procurement regime proposed in these amendments and as contemplated under the Public Procurement and Assets Disposal Act, Cap. (PPAD Act) is principally for conventional procurement, for instance, procurement of goods and services.
- f) The second advantage of the PPP Act framework for power procurement is that not everything can be competitively procured. Some power projects and technologies are site specific (solar irradiance, wind speed, river flows and geothermal activities) and these sites may not be available for competition and are not owned by the Government or by any other entity other than the party submitting the proposal under PPP framework.
- g) The PPP process also has numerous layers of checks and balances, starting at the Contracting Authority (KPLC), the PPP Directorate at National Treasury, the Attorney General, the Ministry of Energy and Petroleum (MoEP) and the Energy and Petroleum Regulatory Authority (EPRA). These approval layers provide additional quality assurance and realization of just and reasonable costs.
- h) EPRA is further guided on the approval of various power undertakings under Sections 163, 164 & 165 of the Energy Act, Cap. 314. In pursuit of Section 163 EPRA has formulated draft Energy (Tariff) Regulations, 2025 which has factored the principles of accountability and transparency highlighted in the Bill.

- i) The Constitution under Article 227, provides the guiding principle in public infrastructure development. In procuring the of goods and services a public entity shall do so in a system that is fair, equitable, transparent, competitive and cost-effective. These principles have been emphasized in both the PFM Act and the PPP Act.
- j) The Energy Act CAP 314 is primarily a statute providing on energy issues and not the procurement process. The proposed sections on the Bill which are principally focused on procurement would be in conflict of the PPP Act which is the primary law on procurement of PPP projects. Additionally, generation projects are funded through project finance and all the monies for the project are from the private party.
- k) PRA has among several other initiatives on 24th May 2023 published vide Gazette Notices 6420, 6421, 6423 and 6424 guidelines for Allowable Return on Equity; Return on Investments; Benchmarks Generation Tariffs for Geothermal Power and Benchmark Tariffs for the Reverse Renewable Energy Auctions.
- l) The MoEP is also in the advanced stages of completing the National Energy Policy and is presently updating the Renewable Energy Auction Policy (REAP) which provides an auction mechanism to procure larger renewable energy generation capacity at a competitive cost.
- m) In a nutshell it is the view of the Ministry that the proposed amendments: -
 - i. Do away with the requirement for specific feasibility studies as a condition for the sign-off of energy purchase and power purchase agreements provided that the agreements are in line with the Least Cost Power Development Plan and importantly driven by need for added power supply to the grid and not arbitrary contractual commitments.
 - ii. Do away with the requirement for the application of the PPAD Act in the procurement of power. The requirement for compliance with the Constitution and Public Finance Principles is good enough.
 - iii. The Ministry finds the other aspects of the Bill merited and is agreeable to their inclusion for sustainable regulation of the energy sector.

MIN. NO. NA/ENERGY/2025/125: OBSERVATIONS

The Committee observed that the Ministry was opposed to:

- 1. The requirement for specific feasibility studies as a condition for the sign-off of energy purchase and power purchase agreements provided that the agreements are in line with the Least Cost Power Development Plan and importantly driven by need for added power supply to the grid and not arbitrary contractual commitments.
- 2. The requirement for the application of the PPAD Act in the procurement of power and that the requirement for compliance with the Constitution and Public Finance Principles is good enough.

MIN. NO. NA/ENERGY/2025/126: RESOLUTIONS

- i. The Committee resolved to engage more stakeholders on the Bill before it compiles and table its report.
- ii. It was resolved Ministry re-submits specific proposals on each clause of the Bill.
- iii. The Committee resolved to have the Ministry submit a list of all Last Mile Connectivity projects across all 290 Constituencies and their current status.

MIN. NO. NA/ENERGY/2025/127: ANY OTHER BUSINESS

The Committee noted with a lot of concerns the lack of its involvement on the Ministry's local and foreign activities for purposes of capacity building, representation and oversight. The Principal Secretary took note of the concerns and assured the Committee of its involvement in any activity.

MIN. NO. NA/ENERGY/2025/128: ADJOURNMENT

The meeting was adjourned at a quarter past twelve O'clock. The next meeting to be held on notice.

Signed.....  Date..... 30/09/2025

(HON. DAVID GIKARIA, CBS, M.P. CHAIRPERSON)

Despair Families are left to live between hope and grief, clinging to the idea that maybe their sons will come back

When were they released? Gen Z protesters' mothers now ask Ruto

AT A GLANCE President Ruto's remarks on issue

Speaking at State House during a joint press briefing with Finnish President Alexander Stubb, President Ruto declared: "All the people who disappeared or who were abducted, all of them have been brought back to their families and to their homes. I have given clarity and firm instructions that nothing of that nature will happen again."

Remarks by President that missing youth were pardoned come as a jarring contradiction to their reality

BY DANIELOGETTA

Alice Wambui still holds onto the hope that she'll see her son, Peter Macharia, again. It has been nearly a year since she last laid eyes on him - June 24, to be exact. Since then, her life has unravelled into an agonising routine of searching, waiting, and asking questions that return no answers.

"I haven't seen my son yet," Ms Wambui told *Nation*, her voice trembling between anxiety and fading hope. "When were they released?"

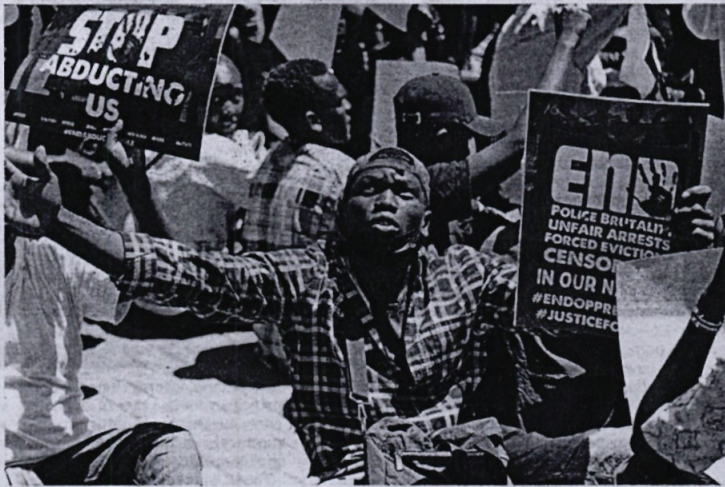
In the time since Peter, 27, disappeared, Alice has scoured hospitals and police stations, chasing every lead, every rumour. Each effort ends the same way: a dead end. The exhaustion has seeped into every part of her life. She's lost jobs, moved houses and unable to pay rent because her days are consumed by the search. The worst part, she says, is not knowing when the search will end.

For families like hers, Monday's remarks by President William Ruto came as a jarring contradiction to their reality.

Speaking at State House during a joint press briefing with Finnish President Alexander Stubb, President Ruto declared: "All the people who disappeared or who were abducted, all of them have been brought back to their families and to their homes. I have given clarity and firm instructions that nothing of that nature will happen again. It was my commitment when I became president that extrajudicial disappearances of Kenyans will not be part of what we are doing as a nation."

But for Monica Mwendu, that statement was like a wound being reopened.

Her brother, Kalani Muema, is still missing. He is one of four men abducted in Milongongo in December last year. His phone remains off. His trail, cold. And for Monica, every new day is another cycle of desperate searching.



Rights activists during an anti-government protest against abductions on Aga Khan Walk, Nairobi, last year. FILE | NATION

"I've been visiting the City Funeral Home frequently and hospitals looking for my brother, hoping that perhaps he is among the unknown persons in these facilities," she said.

Of the four, the bodies of Justus Mutumwa Musyimi and Martin Mwau were in January this year discovered at the funeral home.

"If he is in your custody, dead or alive, please release him," she pleaded. "He was our family's breadwinner."

Her mother, once strong and full of life, has been spiralling.

"She hadn't been eating," Monica said. "When she heard that President Ruto said all who had been abducted had been released, she called me to ask whether my brother had also been released."

But Monica had no news to give. "I told her to give it time, that perhaps he could be released later in the day," she said softly.

In January this year, the discovery of two bodies — Justus Mu-

tumwa Musyimi and Martin Mwau — at the Nairobi Funeral Home offered a grim twist to this ongoing crisis. For some families, the discovery brought tragic closure. For others, it deepened their agony. Each body identified is another reminder that many remain unaccounted for.

President Ruto's assurance that no state-sanctioned enforced disappearances have occurred has been met with skepticism from civil society and human rights watchdogs.

Vocal Africa, a civil society group that has been working with families of the missing, directly challenged the President's claim.

Emmanuel Mukuria, Dennis Chege, and Peter Macharia — who disappeared on June 25, 2024 — remain unaccounted for, said Vocal Africa. Martin Mbiisi and Kalani Muema, the body said, were abducted on December 17 in Milongongo and are also still missing.

These names are not isolated

cases but represent just a fraction of a broader pattern of repression and impunity that has yet to be adequately acknowledged or addressed by the state.

"These names are not isolated cases," Vocal Africa's Hussein Khalid said, adding they represent just a fraction of a broader pattern of repression and impunity that has yet to be adequately acknowledged or addressed by the state.

"Contrary to the President's claim, several individuals remain unaccounted for," Mr Khalid said.

Vocal Africa says it has documented dozens of cases through direct testimonies, field investigations, and partnerships with local networks. The group says many families continue to live in fear, caught in a cycle of pain, silence, and official denial.

That sense of denial is what troubles advocates the most. Ac-

ording to a recent report by Missing Voices, a coalition of human rights organisations, Kenya has already recorded 55 enforced disappearance cases in 2024 — a five-fold increase from 2023's 10 cases.

Even the Kenya National Commission on Human Rights (KNCHR), a state agency, has raised alarm. In December, it reported 82 abduction cases since June 2024.

For now, families like Alice's and Monica's are left to live between hope and grief, clinging to the idea that maybe — just maybe — their kins will walk back through the door. But until then, their question remains unanswered: Where are our kin?

Court bars State from shutting down internet

BY SAM KIPLAGAT

The High Court has barred the government from disrupting internet access during protests, exams, or elections, pending a case challenging recent shutdowns.

Justice Bahati Mwamuye issued interim orders restraining the Communications Authority, ICT Cabinet Secretary, and internet service providers from throttling or blocking access, including social media platforms.

The judge also directed preservation of all records linked to the alleged shutdowns.

The case, filed by The petitioners including the International Commission of Jurists (ICJ-Kenya), Bloggers Association of Kenya, and Kenya Union of Journalists (KUJ), cites illegal internet disruptions during the 2024 GenZ protests and 2023/2024 KCSE exams, including the suspension of Telegram. The petitioners argue that these actions violate freedoms of expression, media, information, association, and economic rights.



THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT- FOURTH SESSION (2025)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—

- (1) THE PUBLIC SERVICE HUMAN RESOURCE MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2024);
- (2) THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL (SENATE BILL NO. 39 OF 2023); AND
- (3) THE ENERGY (AMENDMENT) BILL (SENATE BILL NO. 42 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Public Service Human Resource Management Bill (National Assembly Bills No. 51 of 2024); the County Public Finance Laws (Amendment) Bill (Senate Bill No. 39 of 2023); and the Energy (Amendment) Bill (Senate Bill No. 42 of 2023); were read a First Time and referred to the relevant Departmental Committees for consideration and reporting back to the House;

IT IS NOTIFIED THAT—

- (1) The Public Service Human Resource Management Bill (National Assembly Bill No. 51 of 2024) is a Bill sponsored by the Chairperson, Departmental Committee on Labour that seeks to provide for uniform norms and standards for management of human resources in order to effectively support management and delivery of public services.
- (2) The County Public Finance Laws (Amendment) Bill (Senate Bill No. 39 of 2023) is a Bill sponsored by Sen. Kathari Murungu, MP that seeks to amend the County Assembly Services Act, Cap. 265D and the Public Finance Management Act, Cap. 412A to establish a County Assembly Fund to separate the monies for the running of county assemblies from the county treasury.
- (3) The Energy (Amendment) Bill (Senate Bill No. 42 of 2023) is a Bill sponsored by Sen. Edwin Sifuna, MP that seeks to amend the Energy Act, Cap. 314 to create transparency in purchase of electric energy from private energy generators and ensure the contracts entered into are financially sound to protect the end user of electricity from inflated electricity costs.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and the National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below—

NO.	BILL	COMMITTEE
1.	The Public Service Human Resource Management Bill (National Assembly Bill No. 51 of 2024)	Labour
2.	The County Public Finance Laws (Amendment) Bill (Senate Bill No. 39 of 2023)	Finance and National Planning
3.	The Energy (Amendment) Bill (Senate Bill No. 42 of 2023)	Energy

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building, and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda 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 Building, Nairobi; or emailed to cnr@parliament.go.ke to be received on or before Wednesday, 28th May, 2025 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
15th May, 2025

"For the Welfare of Society and the Just Government of the People"

REPUBLIC OF KENYA



PARLIAMENT

DIRECTORATE OF LEGAL SERVICES

LEGAL BRIEF ON THE ENERGY (AMENDMENT) BILL, NO. 42 OF 2023

NATIONAL ASSEMBLY BILL No.60 of 2022

CONSIDERATION

I. INTRODUCTION

This legal brief provides a comprehensive analysis of the Energy (Amendment) Bill, No. 42 of 2023 (hereinafter "the Bill"), which seeks to amend the Energy Act, Cap.314. The Bill proposes the introduction of Section 134A to govern Energy Purchase Agreements (EPAs) with an emphasis on transparency, accountability, prudent financial management, and public participation. This brief evaluates the potential advantages and disadvantages of enacting the Bill into law, with reference to relevant legal, constitutional, and policy frameworks.

II. PURPOSE AND OBJECT OF THE BILL

The Bill aims to ensure greater transparency and accountability in the procurement of electric energy by requiring disclosure of beneficial ownership and adherence to the principles enshrined in Article 201 of the Constitution of Kenya. It endeavors to establish a statutory mechanism for regulating the conduct of EPAs between generating entities and licensed purchasing entities, including Kenya Power and Lighting Company.

III. ANALYSIS OF THE PROPOSED AMENDMENTS

A. Salient Provisions of the Bill

1. Insertion of Section 134A:

- Subsection (1) authorizes generating entities to enter into EPAs with specified licensed entities.
- Subsection (2) mandates that EPAs comply with the principles of public finance under Article 201 of the Constitution.
- Subsection (3) imposes obligations on purchasing entities to conduct feasibility studies, follow procurement procedures, and prioritize renewable energy.
- Subsection (4) requires generating entities to disclose beneficial ownership in accordance with the Companies Act, No. 17 of 2015.
- Subsections (5) and (6) obligate purchasing entities to maintain and publish a register of EPAs and beneficial ownership data.
- Subsection (7) empowers the Energy and Petroleum Regulatory Authority (EPRA) to withhold approval of non-compliant EPAs.

B. Alignment with Legal Frameworks

- **Constitution of Kenya, 2010:** Article 201 sets forth principles of public finance including accountability, transparency, public participation, and prudent use of public resources.
- **Public Procurement and Asset Disposal Act, No. 33 of 2015:** Governs procurement procedures applicable to EPAs.
- **Companies Act, No. 17 of 2015:** Provides for the disclosure of beneficial ownership.
- **Access to Information Act, No. 31 of 2016:** Guarantees the public's right to access information including registers of EPAs.
- **Energy Act, No. 1 of 2019:** The principal statute being amended to enhance governance in the energy sector.

IV. ADVANTAGES OF ENACTMENT

1. Legal and Institutional Transparency The Bill imposes a mandatory disclosure regime, thereby fortifying anti-corruption measures and preventing the concealment of ownership through opaque corporate structures. This aligns with international best practices concerning beneficial ownership transparency.

2. Promotion of Good Governance and Fiscal Responsibility By anchoring procurement and contractual engagements within the framework of Article 201, the Bill ensures that energy-related public expenditure is managed prudently and with due regard to sustainability.

3. Strengthening of Regulatory Oversight The conferment of discretionary powers upon EPRA to disapprove non-compliant EPAs enhances the agency's regulatory leverage and enables enforcement of compliance standards.

4. Support for Renewable Energy Transition The prioritization of dispatchable and renewable energy sources in EPAs supports national commitments under the Paris Agreement and promotes environmental sustainability. This means that Kenya's Nationally Determined Contributions (NDCs) under the Paris Agreement commit the country to:

- Reduce GHG emissions by 32% by 2030 ;
- Expand investment in clean and renewable energy sources, including solar, wind, hydro, and geothermal;
- Implement climate-resilient energy infrastructure and adopt measures to mitigate the carbon intensity of energy generation.

5. Public Participation and Access to Information The Bill requires the publication of EPA registers and beneficial ownership on public platforms, thereby facilitating citizen engagement and oversight.

6. **County Government Empowerment** The Bill recognizes electricity distribution and energy regulation as devolved functions under the Fourth Schedule of the Constitution. Enhanced governance in EPAs will directly benefit devolved sectors such as health, education, and agriculture.

V. DISADVANTAGES OF ENACTMENT

1. **Increased Administrative and Compliance Burden** The statutory requirements for feasibility studies, register maintenance, and beneficial ownership disclosures may overburden purchasing entities, particularly in terms of time, financial, and human resources.

2. **Risk of Delayed Project Implementation** Enhanced procedural requirements and regulatory scrutiny may prolong the timeframes for negotiating and executing EPAs, potentially delaying energy generation projects.

3. **Legal and Contractual Uncertainty** Existing EPAs that were entered into under the previous legal framework may become the subject of dispute or renegotiation, especially if they are inconsistent with the new statutory requirements.

4. **Institutional Capacity Constraints** The effective implementation of the Bill will require institutional strengthening of regulatory and purchasing entities, which may not currently possess the requisite technical or administrative capacity.

VI. LEGISLATIVE DRAFTING OBSERVATIONS AND RECOMMENDATIONS

1. Ambiguity in Key Terminology

- Terms such as "dispatchable generation with a sustainable base load" and "beneficial ownership" are undefined in the Bill. This creates uncertainty regarding the scope and application of these obligations.
- The term "Purchasing Entity" is a term not used in the Act and not defined in the Bill.

- Subsection 134 (1) (a) the use of the term “ licensed under the third schedule” may be limiting because there may exist in the future other licensed entities under the Act but are not part of those listed in the Third Schedule to the Act.
- **Recommendation:** Include definitions in the interpretation section or reference the specific provisions of relevant laws, such as the Companies Act.

2. Prescriptive vs. Enabling Language Conflict

- The phrase "give priority" to renewable energy is prescriptive but lacks clear criteria or a mechanism for operationalizing the preference.
- **Recommendation:** Mandate EPRA to issue detailed procurement scoring guidelines or regulations.

3. Inadequate Transitional Provisions

- The Bill does not address how existing EPAs will be treated under the new legal regime.
- **Recommendation:** Insert a savings clause clarifying the status of pre-existing agreements.

5. Lack of Penalty or Enforcement Mechanisms

- No penalties are specified for non-compliance with disclosure or register maintenance.
- **Recommendation:** Introduce administrative or penal sanctions, such as fines or contract nullification.

6. Vagueness in Timeframe Provisions

- The phrase "date of operation of this section" in Section 134A(6)(a) is unclear.

- **Recommendation:** Specify the commencement date with precision, e.g., date of Gazette publication or the day the Act or Parliament comes into force

VI. CONCLUSION AND RECOMMENDATIONS

The Energy (Amendment) Bill, No. 42 of 2023 constitutes a progressive legal reform aimed at embedding principles of transparency, accountability, and environmental sustainability within Kenya's energy sector. While the Bill offers numerous benefits particularly in terms of governance and public financial management, its implementation may be hampered by capacity constraints, potential investor hesitance, and transitional legal risks. To mitigate these concerns, it is recommended that:

1. The Bill incorporate transitional provisions to safeguard existing contracts.
2. Regulatory entities be capacitated through budgetary and technical support.
3. Stakeholder consultations be conducted to harmonize interests and enhance investor confidence.

Subject to these recommendations, the enactment of the Bill is legally sound and aligned with Kenya's constitutional and developmental aspirations.

Prepared by: Brigitta Mati- Legal Counsel

[04/06/25]



REPUBLIC OF KENYA

MINISTRY OF ENERGY AND PETROLEUM

STATE DEPARTMENT FOR ENERGY

SUBMISSIONS BY THE PRINCIPAL SECRETARY

Following the letter dated 12th June, 2025, Ref: NA/DDC/ENERGY/CORR/2025/043, the National Assembly's Departmental Committee on Energy requested the Principal Secretary, State Department for Energy, Ministry of Energy and Petroleum, to make submissions on the Energy (Amendment) Bill (Senate Bill No. 42 of 2023) which seeks to amend the Energy Act, CAP 314, to create transparency in the purchase of electric energy from private generators and ensure the contracts entered into are financially sound to protect the end user of electricity from inflated electricity costs.

The following are the submissions as requested:

1. The proposed Section 134A (1) introduces a commercial transaction between a generating entity and a licensed entity identified in Third Schedule of the Energy Act, Cap. 314.

2. The Third Schedule contains Government of Kenya (GoK) owned utilities like Kenya Power and Lighting Company (KPLC), Kenya Electricity Generating Company (KENGEN) Kenya Electricity Transmission Company (KETRACO), Geothermal Development Company (GDC), and the Rural Electrification and Renewable Energy Corporation (REREC).
3. This commercial transaction is referred to as an energy purchase agreement in technical language. However, there is a difference between Energy in Megawatt Hour (MWh) and Power in Megawatt (MW) and thus while this is well intended, it could mean that the proposals restrict KPLC from entering into firm Power Purchase Agreement. Energy planning is done with regard to power not energy. Secondly, KPLC enters both into Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPA). Power plants are designed in MW not MWh. Essentially, PPAs ensure that power is available during the time is required while energy is a derivative of power. It is, therefore, proposed that the amendments should make reference to both Energy and Power Purchase Agreements. We further note that the proposed Section 134A (3) (b) provides that *“A Purchasing Entity shall ensure the process of procurement of electrical energy complies with the procedures set out in the Public Procurement and Assets Disposal Act”*.
4. Currently, most power purchase contracts are done under the Public Private Partnership Act, Cap. 430 (PPP Act) including the framework under the Feed In Tariff Policy (FiT Policy), which has demonstrated its ability to manage and deliver contracts under very short timelines. It is important to note

that the procurement regime proposed in these amendments and as contemplated under the Public Procurement and Assets Disposal Act, Cap. (PPAD Act) is principally for conventional procurement, for instance, procurement of goods and services. A case in point is procurement of power plants and related infrastructure but may not be ideal for the procurement of power itself. This is benchmarked against other jurisdictions where power itself has hitherto not been procured using this method.

5. Further, the PPAD Act process has a drawback due to the litigations and counter litigations that are experienced in the process of tendering. Thus, it limits the procurement framework in the PPAD Act which may render project execution untenable leading to high lead time in development of critical power generation projects.
6. The second advantage of the PPP Act framework for power procurement is that not everything can be competitively procured. Some power projects and technologies are site specific (solar irradiance, wind speed, river flows and geothermal activities) and these sites may not be available for competition and are not owned by the Government or by any other entity other than the party submitting the proposal under PPP framework. Similarly, bioenergy generation from bagasse in sugarcane cannot be competitively tendered for anyone unless they have existing sugar factory.
7. With regard to the above and considering that power plants are cited to align with the demand and transmission capacity (reference being made to the Least Cost Power Development Plan among other legal/regulatory guidelines and policy

instruments) makes limiting power contracting to PPAD Act only untenable.

8. The PPP process also has numerous layers of checks and balances, starting at the Contracting Authority (KPLC), the PPP Directorate at National Treasury, the Attorney General, the Ministry of Energy and Petroleum (MoEP) and the Energy and Petroleum Regulatory Authority (EPRA). These approval layers provide additional quality assurance and realization of just and reasonable costs.
9. However, it is also important to note that irrespective of the regime for power procurement the energy sector, players under the watch of EPRA are called upon to ensure that the public finance principles and constitutional imperatives as proposed under Section 134A (2) of the proposed Bill are complied with. EPRA is further guided on the approval of various power undertakings under Sections 163, 164 & 165 of the Energy Act, Cap. 314. These provisions offer much needed guidance and controls for the sustainable and balanced regulation of the sector, among them ensuring 'just and reasonable' tariffs on contracts for supply of electrical energy and network services. In pursuit of Section 163 EPRA has formulated draft Energy (Tariff) Regulations, 2025 which has factored the principles of accountability and transparency highlighted in the Bill.
10. The Constitution under Article 227, provides the guiding principle in public infrastructure development. In procuring the of goods and services a public entity shall do so in a system that is fair, equitable, transparent, competitive and cost-

effective. These principles have been emphasized in both the PFM Act and the PPP Act.

11. The PPP Act under section 4 provides that the provisions of the Public Procurement and Assets Disposal Act, 2015 shall- (a) not apply to a public private partnership project, if all the monies for the project are from the private party; (b) apply if there is counterpart funding that is, including public funds, for the public private partnership project. Where there is a conflict between the provisions of the PPP Act and the provisions of any other written law, the provisions of this Act shall prevail. The Energy Act CAP 314 is primarily a statute providing on energy issues and not the procurement process. The proposed sections on the Bill which are principally focused on procurement would be in conflict of the PPP Act which is the primary law on procurement of PPP projects. Additionally generation projects are funded through project finance and all the monies for the project are from the private party.
12. Under Section 37 of the PPP Act, a contracting authority may procure a PPP project through Competitive bidding. This what the Bill envisages and the PPP Act provides an elaborate mechanism. It further states that in procuring a PPP project, a contracting authority shall be guided by the principles of transparency, cost-effectiveness and equal opportunity. A Contracting Authority is required to use standard bidding documents issued by the Directorate in all PPP procurements. The Cabinet Secretary shall prescribe guidelines for the procurement of a public private partnership under this Part. The proposed sections of the Bill could be provided under Section 37 (4) of the PPP Act. The National Treasury and the

PPP Directorate are in the final stages of finalizing the PPP Regulations 2024/. Since regulations have similar legal basis as the parent statutes, the proposed procurement provisions could be well suited under the regulations.

13. EPRA has among several other initiatives on 24th May 2023 published vide Gazette Notices 6420, 6421, 6423 and 6424 guidelines for Allowable Return on Equity; Return on Investments; Benchmarks Generation Tariffs for Geothermal Power and Benchmark Tariffs for the Reverse Renewable Energy Auctions. These measures are geared towards enhancing sustainability, transparency, accountability and effective sector planning for investments and addressing public interest imperatives in regulating the energy sector.
14. The Cabinet Secretary published the Energy (Net Metering) Regulations 2024 on 9th May 2024 which provided a framework to allow private customers with installed solar system to sell their excess capacity to the grid. However, under the proposed framework net metering may not happen since KPLC shall be required to undertake competitive tendering.
15. Most recently, the Cabinet Secretary published the Energy (Integrated National Energy Plans) Regulations, 2025 on 7th May 2025 which *inter alia* enhances the concept of integrated energy planning which involves the analysis of the entire energy supply chain within a unified regulatory framework in order to arrive at a set of nationally optimal energy solutions over the long term between the national and county governments.
16. The MoEP is also in the advanced stages of completing the National Energy Policy and is presently updating the

Renewable Energy Auction Policy (REAP) which provides an auction mechanism to procure larger renewable energy generation capacity at a competitive cost. MoEP is finalizing on ToR to procure a Transaction Advisor who will guide on the implementation of the Auction Policy. The REAP is aligned with the requirements of the PPP Act 2021 towards procuring of a PPP projects by a Contracting Authority. REAP provides for a two - stage bidding process:

- a. Stage 1 - the prequalification stage during which preliminary evaluation will be undertaken; and
 - b. Stage 2 - the request for proposal stage which will entail a detailed technical and financial evaluation on the project's deliverability.
17. In summary, there are drawbacks of PPAD Act which the Energy Act, the PPP Act among other existing legal regulatory and policy frameworks currently in place to safe guard the energy sector from exploitation and exorbitant costs by mitigating on such risks. Currently, the PPP Act is aiding in transmission projects and restricting generation projects only may be onerous.

In a nutshell it is the view of the Ministry that the proposed amendments: -

1. Do away with the requirement for specific feasibility studies as a condition for the sign-off of energy purchase and power purchase agreements provided that the agreements are in line with the Least Cost Power Development Plan and importantly driven by need for added power supply to the grid and not arbitrary contractual commitments; and

2. Do away with the requirement for the application of the PPAD Act in the procurement of power. The requirement for compliance with the Constitution and Public Finance Principles is good enough.

The Ministry finds the other aspects of the Bill merited and is agreeable to their inclusion for sustainable regulation of the energy sector.



Signed:

Alex K. Wachira, CBS

Principal Secretary

Date: 23rd July, 2025



MINISTRY OF ENERGY AND PETROLEUM

STATE DEPARTMENT FOR ENERGY

SUBMISSIONS BY THE PRINCIPAL SECRETARY ON THE PROPOSED ENERGY (AMENDMENT) BILL, 2023

(SENATE BILL NO. 42 OF 2023)

Following the letter dated 12th June, 2025, Ref: NA/DDC/ENERGY/CORR/2025/043, the National Assembly's Departmental Committee on Energy requested the Principal Secretary, State Department for Energy, Ministry of Energy and Petroleum, to make submissions on the Energy (Amendment) Bill (Senate Bill No. 42 of 2023) which seeks to amend the Energy Act, CAP 314, to create transparency in the purchase of electric energy from private generators and ensure the contracts entered into are financially sound to protect the end user of electricity from inflated electricity costs.

The following are the submissions as requested:

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	RATIONALE
LONG TITLE	A Bill for AN ACT of Parliament to Amend the Energy Act to make provision for energy purchase agreements; and for connected purposes	None	
S.134 A. (1)	A generating entity may enter into an energy purchase agreement to sell electrical energy to a licensed entity specified in the Third Schedule	Amend to include both Energy and Power Purchase Agreements	This commercial transaction is referred to as an energy purchase agreement in technical language. However, there is a difference between Energy in Megawatt Hour (MWh) and Power in Megawatt (MW) and thus while this is well intended, it could mean that the proposals restrict KPLC from entering into firm Power Purchase Agreement. Energy planning is done with regard to power not energy. Secondly, KPLC enters both into Power Purchase Agreements (PPAs) and Energy Purchase Agreements (EPA). Power plants are designed in MW not MWh. Essentially, PPAs ensure that power is available during the time is required while energy is a derivative of power. It is, therefore, proposed that the amendments should make reference to both Energy and Power Purchase Agreements

S.134 A. (2)	<p>An Energy purchase agreement shall comply with the principles of public finance enshrined in Article 201 of the Constitution which include –</p> <ul style="list-style-type: none"> a) Openness and accountability; b) Public participation in financial matters; c) Good governance to ensure that public funds are used in a prudent and responsible way, and d) Sustainability. 	Deletion of proposed provision.	<p>The Constitution under Article 227, provides the guiding principle in public infrastructure development. In procuring the of goods and services a public entity shall do so in a system that is fair, equitable, transparent, competitive and cost-effective. These principles have been emphasized in both the PFM Act and the PPP Act.</p>
S.134 A. (3)	<p>The purchasing entity shall-</p> <ul style="list-style-type: none"> a) prior to procurement of electrical power, conduct a feasibility study to identify whether there is enough demand for electricity purchase which cannot be met by the existing production; b) ensure the process of procurement of 	Deletion of proposed provision.	<p>The requirement for specific feasibility studies as a condition for the sign-off of energy purchase and power purchase agreements should be deleted provided that the agreements are in line with the Least Cost Power Development Plan and importantly driven by need for added power supply to the grid and not arbitrary contractual commitments; and</p> <p>Most power purchase contracts are done under the Public Private</p>

	<p>electrical energy complies with the procedures set out in the Public Procurement and Asset Disposal Act;</p> <p>c) ensure that priority is given to dispatchable generation with a sustainable base-load at point of dispatch;</p> <p>d) Give priority to a generating entity generating electrical energy through renewable technology.</p>	<p>Partnership Act, Cap. 430 (PPP Act) including the framework under the Feed In Tariff Policy (FIT Policy), which has demonstrated its ability to manage and deliver contracts under very short timelines. It is important to note that the procurement regime proposed in these amendments and as contemplated under the Public Procurement and Assets Disposal Act, Cap. (PPAD Act) is principally for conventional procurement. The proposal for the requirement for the application of the PPAD Act in the procurement of power should therefore be deleted. The requirement for compliance with the Constitution and Public Finance Principles is good enough.</p> <p>The second advantage of the PPP Act framework for power procurement is that not everything can be competitively procured. Some power projects and technologies are site specific (solar irradiance, wind speed, river flows and geothermal activities) and these sites may not be available for competition and are not owned by the Government or by any other</p>
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			<p>entity other than the party submitting the proposal under PPP framework.</p> <p>There are drawbacks of PPAD Act which the Energy Act, the PPP Act among other existing legal regulatory and policy frameworks currently in place to safe guard the energy sector from exploitation and exorbitant costs by mitigating on such risks. Currently, the PPP Act is aiding in transmission projects and restricting generation projects only may be onerous.</p> <p>The PPP Act under section 4 provides that the provisions of the Public Procurement and Assets Disposal Act, 2015 shall- (a) not apply to a public private partnership project, if all the monies for the project are from the private party; (b) apply if there is counterpart funding that is, including public funds, for the public private partnership project. Where there is a conflict between the provisions of the PPP Act and the provisions of any other written law, the provisions of this Act shall prevail. The Energy Act CAP 314 is primarily</p>
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			<p>a statute providing on energy issues and not the procurement process. The proposed sections on the Bill which are principally focused on procurement would be in conflict of the PPP Act which is the primary law on procurement of PPP projects. Additionally, generation projects are funded through project finance and all the monies for the project are from the private party.</p>
<p>5.134 A. (4)</p>	<p>An Energy purchase agreement referred to in subsection (1) shall be entered into with a generating entity which has disclosed and registered full beneficial ownership in accordance with the Companies Act.</p>	<p>Amend to include Power Purchase Agreement</p>	<p>Comments outlining difference in energy and power purchase agreements indicated above.</p>
<p>5.134 A. (5)</p>	<p>A purchasing entity shall prepare and maintain a register of generating entities it has entered into energy purchase agreements with and the entity's beneficial ownership and publish the names of the same-</p> <p>a) On its website; and</p>	<p>Amend to include Power Purchase Agreement</p>	

	b) In the annual audit report.		
S.134 A. (6)	<p>The register in subsection (5) shall be –</p> <p>a) Prepared within ninety days from the date of operation of this section; and</p> <p>b) Open for inspection by members of the public in accordance with section 9(1)(e) of the Access to Information Act.</p>	None	
S.134 A. (7)	The Authority shall not approve an energy purchase agreement which fail to comply with this section.	Amend to include power purchase agreements.	