

**ANNEX II**

REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THE SENATE

**PUBLIC HEARINGS/ RECEIPT OF MEMORANDA**

**THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 26 OF 2019)**

The National Drought Management Authority (Amendment) Bill (National Assembly Bills No. 26 of 2019) was read a First Time in the Senate on 19<sup>th</sup> February, 2020 and was thereafter committed to the Senate Standing Committee on Land, Environment and Natural Resources for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140 of the Senate Standing Orders, the Senate Standing Committee on Land, Environment and Natural Resources now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bill shall be held on **Thursday, 12<sup>th</sup> March, 2020 from 10:00 a.m. to 12:00 noon at KICC, Shimba Hills Boardroom, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **csenate@parliament.go.ke**, to be received **on or before Thursday, 12<sup>th</sup> March, 2020 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.**

the counties. The proposed amendments under the NDMA Amendment bill, 2019 therefore do not affect in any way counties as provided for under Article 110 of the Constitution. The Fund Regulations will be actualizing the provisions of the Act and will facilitate effective and efficient delivery of service by the Authority.

#### **JUSTIFICATION**

The Amendment bill will facilitate the operationalization of the Public Finance Management (National Drought Emergency Fund) Regulations 2019, as the existing inconsistency and duplication in law in the National Drought Management Act and Fund regulations will be cured;

The Amendment bill has aligned the provisions of the National Drought Management Act, 2016 and the Public Finance Management Authority Act, 2012 in regard to establishment of the Fund as well as the institutional framework while maintaining the letter and spirit of the National Drought Management Act, 2016 as well as the desired Government Objective.

#### **RECOMMENDATIONS**

The Ministry of Devolution and ASALs has no concerns on the contents of the National Drought Management Act Bill 2019, as published. Unless any views to the contrary are brought forth by any other party, the Ministry is of the view that the Bill be passed in the manner it was Published.

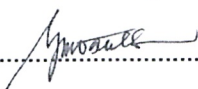
#### **MINUTE SEN/SCLN/041/2020: ANY OTHER BUSINESS;**

There was no other business discussed.

#### **MINUTE SEN/SCLN/042/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 12.45 pm and the next meeting was scheduled for to follow thereafter.

Signed: .....



Date: ..... 7/05/2020 .....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

- i) provide a common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.

## **JUSTIFICATION**

Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not the National Drought Management Authority Act, 2016 is that PFMA, 2012 is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds.

- c) Further, Section 6 (e) of the PFMA, 2012 provides that the PFM Law shall prevail in case of any inconsistency in establishment, administration and management of any public Fund.
- d) In addition, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly.

Accordingly, there is need to amend the National Drought Management Authority Act (NDMA), 2016, which had established the Fund to align it to the provisions of the PFMA, 2012 as guided by Law. This will avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.

### **The governance structure of the National Drought Emergency Fund:**

The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority board; the Chief Executive Officer of the Authority shall be the Funds' accounting officer/ administrator; and the NDMA Staff will provide Secretariat services to the Fund

### **Effect of National Drought Management Authority (Amendment) Bill, 2019 to Counties pursuant to Article 110 of the Constitution**

National Drought Management Authority is a national government institution fully funded from the equitable share of the national government.

Section 7 (2) of the NDMA act, 2016 had provided for administrative structures to counties through delegation when implementing NDMA programmes and initiatives at

3. Confirmation of Minutes of the Previous Sittings;
4. **Public Hearings on the National Drought Management Authority (Amendment) Bill (National Assembly Bills No. 26 of 2019);**
  - 9.30am – 10.00am - Briefing by the Legal Counsel on the Bill
  - 10.00am – 11.00am - Views from Stakeholders
    - The National Treasury,
    - The Ministry of Devolution,
    - The National Drought Management Authority,
  - 11.00am – 12.00Noon – Views from Members of the Public
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNDR/040/2020: PUBLIC HEARINGS ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 26 OF 2019)**

The Committee did not obtain any attendance from members of the Public and discussed the Bill with the guidance of the Secretariat and resolved to support the Bill in its current status and without any amendments.

The Committee was only in receipt of submissions from the Ministry of Devolution as follows:

**BACKGROUND**

The Ministry of Devolution and ASALs, the National Treasury and Planning and the Attorney General developed the Public Finance Management (National Drought Emergency Fund) Regulations 2019 pursuant to section 24 of the Public Finance Management Act 2012. The object of the fund is to;

- g) improve the effectiveness and efficiency of the drought risk management systems in the country;
- h) facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts; and

**MINUTES OF THE 8<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE  
ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON  
THURSDAY, 12<sup>TH</sup> MARCH, 2020 IN SHIMBA HILLS HALL, 1<sup>ST</sup> FLOOR, KICC  
AT 9.30 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Slyvia Kasanga, M.P.
4. Sen. Mwaruma Johnes, M.P.
5. Sen. Halake Abshiro, M.P.

**PRESENT**

- Chairperson
- Vice Chairperson
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Godana Hargura, M.P. - Member
2. Sen. Boy Issa Juma, M.P. - Member
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
4. Sen. George Khaniri, MGH, M.P. - Member

**IN ATTENDANCE**

**SECRETARIAT**

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Carolynne Cheruiyot - Legal Counsel
3. Mr. Wilson Bosmet - Seargent-at-arms
4. Mr. John Nganga - Audio Recording
5. Mr. Abdalla Mbore - Seargent-at-arms
6. Ms. Faith Wanja - Intern
7. Mr. Frank Nyabuti - Intern

**MINUTE SEN/SCLNDR/038/2020: PRELIMINARIES**

The meeting was called to order at 10.00 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNDR/039/2020: ADOPTION OF AGENDA**

The agenda was therefore proposed by Sen. Mwaruma Johnes. M.P. and seconded by Sen. Halake Abshiro, M.P. as follows.

1. Preliminaries - *Prayer*
2. Adoption of the agenda;

**MINUTE SEN/SCLNDR/053/2020: CONSIDERATION OF THE COMMITTEE REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 26 OF 2019);**

The Committee adopted its report with the following Recommendations;

**That the Committee recommends to the House to pass the Bill as initially passed by the National Assembly and without any further amendments.**


The Report was adopted after having been proposed by Sen. Prengei Victor, M.P. and Seconded by Sen. Boy Issa Juma, M.P.

**MINUTE SEN/SCLNDR/054/2020: ANY OTHER BUSINESS;**

There was no other business discussed.

**MINUTE SEN/SCLNDR/055/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 12.15 pm and the next meeting was scheduled for Monday, 11<sup>th</sup> May, 2020 at 10.00am in the Senate Chamber.

Signed:..........

Date:.....7/05/2020.....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES**

the Dandora Estate Waste Sewerage Treatment Plant in Ruai. The Secretariat was able to present a brief as is in the media regarding the Ruai land and resolved to write to the relevant Ministries seeking facts on the matter.

v. **SCHEDULE OF MEETINGS**

The Committee resolved to schedule as many number of meetings as possible so as conclude on all pending business that is before the Committee.

Hearing that was already held before the suspension of business on **Wednesday, 13<sup>th</sup> May, 2020**, adoption of report to be done at another meeting to be held as soon as the report is ready.

4. **Geology Bill, 2020** – The Committee was informed by the secretariat that the Bill was cleared by the Geology Society of Kenya and that the Committee can review it a final time before its forwarded for publishing.

#### **ii. STATUS OF STATEMENTS**

- Statement requested by Senator for Elgeyo Marakwet County on an issue of national concern regarding the landslide that occurred in Kerio Valley affecting residents of West-Pokot and Elgeyo Marakwet counties. - The Secretariat informed the Committee that letters have been done seeking for a response from the following Cabinet Secretary, Ministry of Interior and Coordination of National Government; Cabinet Secretary Lands and Physical Planning; and National Land Commission. The Secretariat is following up on the feedback from the aforementioned stakeholders and will brief the Committee during the forthcoming meeting.
- Statement requested by Sen. Johnson Sakaja regarding the demolitions of houses that have left more than 5,000 residents in Kariobangi North Ward, Embakasi North Constituency Homeless – the Committee resolved to have a meeting on Monday, 11<sup>th</sup> May, 2020 at 10.00am with the relevant stakeholders and thereafter conduct a site visit to the families affected.

The Secretariat was tasked to analyze the pending Statements seeking information where necessary so as to conclude on them as soon as possible.

Further remarks on each of the Statements are indicated in the Statements Tracker attached. *(See Statement Tracker)*

#### **iii. STATUS OF PETITIONS**

The Committee tasked the Secretariat to prepare reports that can be tabled and also seek information from the Ministry where necessary so as to conclude as many Petitions as possible. The Secretariat was also tasked to schedule meetings that are possible so as to reduce on the number of Petitions that are pending.

Further remarks on each of the Petitions are indicated in the Petitions Tracker attached. *(See Petition Tracker)*

#### **iv. COMMITTEE INQUIRIES**

The Chairperson indicated that the Committee embarks on inquiries and had requested the secretariat to do some research on the recent happenings as observed in the media touching on Land matters and the move by the Government to recover land grabbed from

- C. Status of Petitions
- D. Possible Committee Inquiries
- E. Proposed Schedule of Meetings
- 5. Consideration of the Committee Report on the National Drought Management Authority (Amendment) Bill (National Assembly Bills No. 26 of 2019);
- 6. Any other Business;
- 7. Date of the next meeting;
- 8. Adjournment.

**MINUTE SEN/SCLNR/051/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS**

The Minutes of the 6<sup>th</sup> sitting held on 10<sup>th</sup> March, 2020 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Godana Hargura, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 7<sup>th</sup> sitting held on 11<sup>th</sup> March 2020 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 8<sup>th</sup> sitting held on 12<sup>th</sup> March, 2020 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 9<sup>th</sup> sitting held on 12<sup>th</sup> March, 2020 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

**MINUTE SEN/SCLNR/052/2020: HOUSEKEEPING –**

**i. STATUS OF BILLS**

1. Report of the Standing Committee on Land, Environment and Natural Resources on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019) – the Committee resolved to table the report on **Tuesday, 12<sup>th</sup> May, 2019** after it was adopted by the Committee before the suspension period of COVID-19.
2. Report of the Standing Committee on Land, Environment and Natural Resources on the National Drought Management Authority (Amendment) Bill (National Assembly Bills No. 26 of 2019). – the Committee resolved to table the report on **Tuesday, 12<sup>th</sup> May, 2019** after it is adopted later in the meeting.
3. Report of the Standing Committee on Land, Environment and Natural Resources on the Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 24 of 2019). - The Committee resolved to review the Matrix of the Public

## ANNEX I

### MINUTES OF THE 10<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 7<sup>TH</sup> MAY, 2020 ON ZOOM ONLINE PLATFORM AT 10.00 AM.

#### MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Mwaruma Johnes, M.P.
5. Sen. Boy Issa Juma, M.P.

#### PRESENT

- Chairperson
- Vice Chairperson
- Member
- Member
- Member

#### ABSENT WITH APOLOGY

1. Sen. Slyvia Kasanga, M.P. - Member
2. Sen. Halake Abshiro, M.P. - Member
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
4. Sen. George Khaniri, MGH, M.P. - Member

#### IN ATTENDANCE                      SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Judy Ndegwa - Legal Counsel
3. Ms. Carolyne Cheruiyot - Legal Counsel
4. Mr. John Nganga - Audio Recording

#### MINUTE SEN/SCLNDR/049/2020:      PRELIMINARIES

The meeting was called to order at 10.25 am by the Chairperson followed by a word of prayer.

#### MINUTE SEN/SCLNDR/050/2020:      ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Prengei Victor. M.P. and seconded by Sen. Godana Hargura, M.P. as follows.

1. Preliminaries - *Prayer*
2. Adoption of the agenda;
3. Confirmation of Minutes of the Previous Sittings;
4. **Housekeeping –**
  - A. **Status of Bills**
  - B. **Status of Statements**

**APPENDICES**

**Annex I:** Minutes of the Committee Meetings

**Annex II:** Newspaper Adverts on the Public Hearing

### 3.1 Recommendations

The Committee therefore recommends to the House to pass the Bill as initially passed by the National Assembly and without any further amendments.

## CHAPTER THREE

### COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

#### 3.0 Observations and Determinations

The Committee made the following observations in line with the submissions made during the Public Hearing:

1. The Committee observed that it would be prudent that the Fund be managed by the National Drought Management Authority and the Parent Ministry under the auspices of the Public Finance Management Act, 2012 which makes general provisions for the management of all public funds in the country.
2. The Committee did not receive any other submissions on the Bill from members of the Public and deliberated on the Bill with the guidance of the submissions submitted by the Ministry of Devolution and ASALs.

Section 7 (2) of the NDMA Act, 2016 had provided for administrative structures to counties through delegation when implementing NDMA programmes and initiatives at the counties. The proposed amendments under the NDMA Amendment Bill, 2019 therefore do not affect in any way counties as provided for under Article 110 of the Constitution. The Fund Regulations will be actualizing the provisions of the Act and will facilitate effective and efficient delivery of service by the Authority.

### **JUSTIFICATION**

The Amendment bill will facilitate the operationalization of the Public Finance Management (National Drought Emergency Fund) Regulations 2019, as the existing inconsistency and duplication in law in the National Drought Management Act and Fund regulations will be cured;

The Amendment bill has aligned the provisions of the National Drought Management Act, 2016 and the Public Finance Management Authority Act, 2012 in regard to establishment of the Fund as well as the institutional framework while maintaining the letter and spirit of the National Drought Management Act, 2016 as well as the desired Government Objective.

### **RECOMMENDATIONS**

The Ministry of Devolution and ASALs has no concerns on the contents of the National Drought Management Act Bill 2019, as published. Unless any views to the contrary are brought forth by any other party, the Ministry is of the view that the Bill be passed in the manner it was Published.

## **JUSTIFICATION**

Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not the National Drought Management Authority Act, 2016 is that PFMA, 2012 is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds.

- a) Further, Section 6 (e) of the PFMA, 2012 provides that the PFM Law shall prevail in case of any inconsistency in establishment, administration and management of any public Fund.
- b) In addition, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly.

Accordingly, there is need to amend the National Drought Management Authority Act (NDMA), 2016, which had established the Fund to align it to the provisions of the PFMA, 2012 as guided by Law. This will avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.

### **The Governance Structure of the National Drought Emergency Fund**

The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority board; the Chief Executive Officer of the Authority shall be the Funds' accounting officer/ administrator; and the NDMA Staff will provide Secretariat services to the Fund

### **Effect of National Drought Management Authority (Amendment) Bill, 2019 to Counties pursuant to Article 110 of the Constitution**

The National Drought Management Authority is a national government institution fully funded from the equitable share of the national government.

## CHAPTER TWO

### PUBLIC PARTICIPATION

#### **2.0 Attendance by Stakeholders**

The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the People and the Star Daily Newspapers on 2<sup>nd</sup> March, 2020. On 12<sup>th</sup> March, 2020, the Committee met in, Shimba Hills Hall, 1<sup>st</sup> Floor, Kenya International Conference Centre (KICC), Nairobi and received written Memoranda on the Bill from the Ministry of Devolution and ASALs.

#### **2.1 Submissions from Stakeholders**

#### **MINISTRY OF DEVOLUTION AND ASALs**

The submissions by the Ministry were as follows:

#### **BACKGROUND**

The Ministry of Devolution and ASALs, the National Treasury and Planning and the Attorney General developed the Public Finance Management (National Drought Emergency Fund) Regulations 2019 pursuant to section 24 of the Public Finance Management Act 2012. The object of the fund is to;

- d) improve the effectiveness and efficiency of the drought risk management systems in the country;
- e) facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts; and
- f) provide a common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.

### **1.3 Consequences of the Bill**

The Amendment bill will facilitate the operationalization of the Public Finance Management (National Drought Emergency Fund) Regulations 2019, as the existing inconsistency and duplication in law in the National Drought Management Act and Fund regulations will be cured;

The Amendment bill has aligned the provisions of the National Drought Management Act, 2016 and the Public Finance Management Authority Act, 2012 in regard to establishment of the Fund as well as the institutional framework while maintaining the letter and spirit of the National Drought Management Act, 2016 as well as the desired Government Objective.

- b) facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts; and
- c) provide a common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.

## **1.2 Overview of the Bill**

The rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not the National Drought Management Authority Act, 2016 is that PFMA, 2012 is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds.

Further, Section 6 (e) of the PFMA, 2012 provides that the PFM Law shall prevail in case of any inconsistency in establishment, administration and management of any public Fund.

In addition, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly.

Accordingly, there is need to amend the National Drought Management Authority Act (NDMA), 2016, which had established the Fund to align it to the provisions of the PFMA, 2012 as guided by Law. This will avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.

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PAPERS LAID	
DATE	12/05/2020
TABLED BY	Chair
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CLERK AT THE TABLE	SC (NA)

REPUBLIC OF KENYA



THE SENATE

-----  
 TWELFTH PARLIAMENT  
 FOURTH SESSION, 2020

-----  
 SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND  
 NATURAL RESOURCES

.....  
 COMMITTEE REPORT ON THE NATIONAL DROUGHT  
 MANAGEMENT AUTHORITY (AMENDMENT) BILL  
 (NATIONAL ASSEMBLY BILLS NO. 26 OF 2019)  
 .....

*Clerk's Chambers,  
 First Floor,  
 Parliament Buildings,  
NAIROBI.*

*MAY, 2020*



NEWS GENERAL

# Waiguru, Kibicho clash over Sh15bn project by Kemri

Governor accuses PS of engaging in politics instead of concentrating on his duties



Kirinyaga Governor Anne Waiguru / victor umboro

Interior PS Karanja Kibicho / rna

REUBEN GITHINI  
@igithi@reuben



Kirinyaga Governor Anne Waiguru has told Interior PS Karanja Kibicho to either resign and join politics or concentrate on matters of internal security.

This comes after Kibicho accused Waiguru of trying to sabotage the Sh15 billion proposed Kenya Medical Research Institute project in Mwea constituency. Kemri plans to set up a level five hospital, a university, a medical supplies factory and a medical research centre in Mwea, all valued at Sh15 billion.

Waiguru on Saturday accused Kibicho of engaging in politics in-

stead of concentrating on his duties of providing security.

"If PS Karanja Kibicho wants to engage in village politics and insults, he should resign and join others in early campaigning," Waiguru said in a statement.

The governor said that the county has already signed an MoU to facilitate the implementation of the project and forwarded it to Kemri for execution.

Waiguru said she was committed to ensuring that the interests of Kirinyaga residents were met. Among her requests are 30 per cent manual and non-technical jobs for Kirinyaga residents in the project.

Kibicho on Friday during a visit to Mwea accused Waiguru of sabotaging the project by delaying trans-

ferring a 100-acre parcel of land in Mwea to Kemri.

The county has allocated 100 acres for the project in Wamuru, Mwea, but has yet to release the title.

**LOSE OUT**

Kibicho said Kirinyaga residents would lose out if the project was taken to another county.

During President Uhuru Kenyatta's visit to Kirinyaga two weeks ago, Waiguru had said they were not op-

posed to the Kemri project, but they required an agreement specifying how Kirinyaga people would benefit from the project.

The President then directed that the two parties sign an MoU in a week's time to enable the project to commence.

The project has also been put to a halt by a court order following an injunction filed by a resident barring Kemri from undertaking any development on the land.

“

*If PS Kibicho wants to engage in village politics and insults, he should resign*

**REPUBLIC OF KENYA**



**TWELFTH PARLIAMENT  
THE SENATE**

**PUBLIC HEARINGS/ RECEIPT OF MEMORANDA**

The Fisheries Management and Development (Amendment) Bill (Senate Bills No. 22 of 2019) was read a First Time in the Senate on 19th November, 2019 and was thereafter committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries for consideration.


Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries now invites interested members of the public to submit their views on the Bill. The views may be submitted in the following manner-

1. Public Hearings shall be held on **Wednesday, 26th February, 2020** from 11:00 a.m. to 1:00 p.m. at the **Ground Floor Boardroom, Red Cross Building, Nairobi**; or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke), to be received on or before **Wednesday, 26th February, 2020 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>

**CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.**

**REPUBLIC OF KENYA**



**TWELFTH PARLIAMENT  
THE SENATE**

**PUBLIC HEARINGS/ RECEIPT OF MEMORANDA**

**THE SECTIONAL PROPERTIES BILL  
(NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)**

The Sectional Properties Bill (National Assembly Bills No. 23 of 2019) was read a First Time in the Senate on 7th November, 2019 and was thereafter committed to the Senate Standing Committee on Land, Environment and Natural Resources for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140 of the Senate Standing Orders, the Senate Standing Committee on Land, Environment and Natural Resources now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bill shall be held on **Wednesday, 26th February, 2020** from 10:00 a.m. to 12:00 noon at the **Mini Chamber, County Hall, Parliament Buildings, Nairobi**; or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke), to be received on or before **Wednesday, 26th February, 2020 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>

**CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.**

## CoG, Controller of Budget to meet over fund delays

Untimely disbursement of revenue threatens to disrupt operations in devolved governments

by Eric Juma  
@PeopleDailyKe

Governors are today set to meet the Controller of Budget over delayed disbursement of revenue which is threatening to disrupt operations in the counties.

Already in some counties, workers who are yet to receive their last month's pay, are on a go-slow.

Last week, the Council of Governors (CoG), through its chairman Wycliffe Oparanya, wrote to the Controller of Budget Margaret Nyakang'o protesting the delayed disbursement of funds to the counties.

He accused the Controller of failing to facilitate "in a timely manner the approvals to enable county governments access funds" after it demanded the counties must first provide lists of their respective employees outside Integrated Payroll and

Personnel Database (PPD) to facilitate approval of withdrawal of funds.

Counties are also required to provide a list of their casual employees with an explanation on whether they have worked for more than three months as well as different Internet Banking reports for multiple payments to individuals or suppliers.

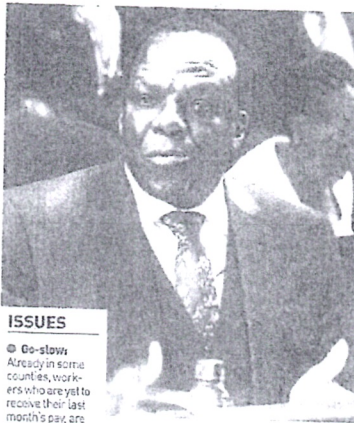
Yesterday, Vilaga Governor Wilbur Otichillo, whose administration has been drastically affected by the delay, revealed that all county chiefs will have a sitting with CoB as part of their spirited efforts to try and broker a truce.

### Affecting operations

"Since this is a national wide challenge, all governors are meeting the Controller of Budget tomorrow (today) over the matter," Otichillo said in a press statement sent to newswires.

But Oparanya said the CoB amounts to auditing, yet the office of the Auditor General and the Senate are the bodies mandated to play oversight role of the county government expenditures while CoG is responsible for facilitating counties get resources on time.

"You need to facilitate counties as re-



### ISSUES

● **Go-slow:** Already in some counties, workers who are yet to receive their last month's pay, are on a go-slow.

● **Protest:** Last week, the Council of Governors, through its chairman Kalamaga Governor Wycliffe Oparanya wrote to Controller of Budget Margaret Nyakang'o protesting the delayed disbursement of funds to the counties.

Council of Governors chairman Wycliffe Oparanya at a past function. PHOTOFILE

quired by the Constitution failure to which we will seek legal intervention," Oparanya who is also the Kakamega Governor said while telling counties not to honour the requests.

"I am advising the County Executive Committee Members in charge of Finance not to respond to these queries until this issue is resolved by your office in consultation with the Council of Governors which is mandated to handle matters on common interests to all counties," he added.

## Kericho man in viral defilement video arrested

by Philip Yego  
@PeopleDailyKe

Detectives in Kericho have arrested a man alleged to have recorded himself defiling his relative.

The man was said to have posted the video, which has since gone viral, defiling a girl said to be his niece, attracting anger from the public who called for his arrest.

Detectives led by Kericho DCI boss Stephen Chacha who had earlier assured the public they are investigating the matter, traced the man to his home in Nyagacho, Kericho county, where he was found with his wife and three children.

He was arrested and taken to Kericho DCI office for interrogation. Police sources said the man admitted to have recorded the video with the consent of the young girl who is also his niece.

Patrick Ayoyi told detectives that he took the video in 2017 while in Nairobi, for fun. At the time, he claimed the girl in the video was 20 years old, and has since been married in Turbo.

The man is said to have told the officers that the video may have been sent out on social media by someone who stolen his phone back in 2017.

REPUBLIC OF KENYA

### TWELFTH PARLIAMENT THE SENATE

#### PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The Fisheries Management and Development (Amendment) Bill (Senate Bills No. 22 of 2019) was read a First Time in the Senate on 19th November, 2019 and was thereafter committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries now invites interested members of the public to submit their views on the Bill. The views may be submitted in the following manner-

1. Public Hearings shall be held on Wednesday, 26th February, 2020 from 11:00 a.m. to 1:00 p.m. at the Ground Floor Boardroom, Red Cross Building, Nairobi; or
2. Written Memoranda may be forwarded to the Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi or emailed to [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke), to be received on or before Wednesday, 26th February, 2020 at 5.00 p.m.

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>

CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.

REPUBLIC OF KENYA

### TWELFTH PARLIAMENT THE SENATE

#### PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

#### THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)

The Sectional Properties Bill (National Assembly Bills No. 23 of 2019) was read a First Time in the Senate on 7th November, 2019 and was thereafter committed to the Senate Standing Committee on Land, Environment and Natural Resources for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140 of the Senate Standing Orders, the Senate Standing Committee on Land, Environment and Natural Resources now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bill shall be held on Wednesday, 26th February, 2020 from 10:00 a.m. to 12:00 noon at the Mini Chamber, County Hall, Parliament Buildings, Nairobi; or
2. Written Memoranda may be forwarded to the Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi or emailed to [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke), to be received on or before Wednesday, 26th February, 2020 at 5.00 p.m.

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.

**ANNEX II**

7<sup>th</sup> May, 2020

The Clerk of the Senate,  
Parliament Buildings,  
**NAIROBI.**

**RE: COMMITTEE STAGE AMENDMENTS TO THE SECTIONAL  
PROPERTIES BILL, 2019 (NATIONAL ASSEMBLY BILLS NO. 23 OF  
2019)**

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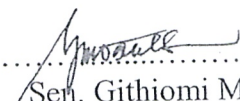
**NOTICE** is hereby given that Sen. Githiomi Mwangi, Chairperson of the Senate Standing Committee on Land, Environment and Natural Resources, intends to move the following amendments to the Sectional Properties Bill, 2019, at the Committee Stage -

**CLAUSE 12**

**THAT** clause 12 of the Bill be amended by deleting sub clause (5) and substituting therefor the following new sub clause –

(5) Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall upon endorsement by a surveyor amend the original sectional plan in the manner prescribed by the regulations.

Dated.....7/05/2020.....2020

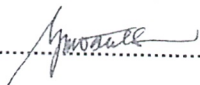
.....  
  
Sen. Githiomi Mwangi,  
*Chairperson of the Standing Committee on  
Land, Environment and Natural Resources*

The Chairperson notified the Committee that he is aware that the matter is currently before the Finance and Budget Committee of the Senate and he will advise the Speaker accordingly to allow the Senate Finance and Budget Committee to proceed with the matter.

**MINUTE SEN/SCLNR/031/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 12.45 pm and the next meeting was scheduled for Wednesday, 11<sup>th</sup> March, 2020.

Signed: .....



Date: ..... 7/05/2020 .....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNENR/028/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS**

The Committee differed the Confirmation of Minutes to such a time that the Committee would be able to have the requisite Committee Members present.

**MINUTE SEN/SCLNENR/029/2020: CONSIDERATION OF THE COMMITTEE REPORT ON THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)**

The Committee reviewed the report of the Committee on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019) and approved its contents and the inclusion of the amendment that:

**THAT** clause 12 of the Bill be amended by deleting sub clause (5) and substituting therefor the following new sub clause –

(5) Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall upon endorsement by a surveyor amend the original sectional plan in the manner prescribed by the regulations.

**MINUTE SEN/SCLNENR/030/2020: ANY OTHER BUSINESS;**

The Secretariat took the Committee through correspondences as follows:

1. Receipt of an invitation from the Ministry of Foreign Affairs on the preparations for UN 2020 Oceans Conference scheduled for 2-6<sup>th</sup> June, 2020; The Chairperson informed the Committee that names will be submitted in due course.
2. Receipt of an invitation from citizens Climate Lobby Kenya on the request for the Committee to join the Carbon Pricing Leadership Coalition meeting scheduled for Uganda on 20 – 22<sup>nd</sup> April, 2020 in Uganda.
3. Receipt of an acknowledgment letter on receipt and work so far on the recommendations from the Ministry of Water and Sanitation and Irrigation on the Committee's Report on the 8<sup>th</sup> World Water Forum held in Brasilia, Brazil held from 18<sup>th</sup> – 23<sup>rd</sup> March, 2018.
4. Receipt of a letter from the County Government of Mandera on the County Non-core Infrastructure projects, involving the Governor's residence, Deputy Governor's residence and the Speakers residence.

**MINUTES OF THE 6<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 10<sup>TH</sup> MARCH, 2020 IN COMMITTEE ROOM 10 AT 11.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Godana Hargura, M.P.
3. Sen. Mwaruma Johnes, M.P.

**PRESENT**

- Chairperson
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Prengei Victor, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Boy Issa Juma, M.P.
4. Sen. Ndwiga Peter Njeru, EGH. M.P.
5. Sen. George Khaniri, MGH, M.P.
6. Sen. Slyvia Kasanga, M.P.

- Vice Chairperson
- Member
- Member
- Member
- Member
- Member

**IN ATTENDANCE**

1. Mr. Victor Bett
2. Mr. Tiyan Joseph
3. Ms. Carolyne Cheruiyot
4. Mr. John Nganga
5. Mr. Abdalla Mbore
6. Ms. Faith Wanja

**SECRETARIAT**

- Clerk Assistant
- Researcher
- Legal Counsel
- Audio Recording
- Seargent-at-arms
- Intern

**MINUTE SEN/SCLNENR/026/2020: PRELIMINARIES**

The meeting was called to order at 11.30 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNENR/027/2020: ADOPTION OF AGENDA**

The agenda was therefore proposed by Sen. Mwaruma Johnes. M.P. and seconded by Sen. Godana Hargura, M.P. as follows.

1. Preliminaries - *Prayer*
2. Adoption of the agenda;
3. Confirmation of Minutes of the Previous Sittings;
4. **Consideration of the Committee Report on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019);**

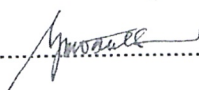
**MINUTE SEN/SCLNDR/014/2020: ANY OTHER BUSINESS;**

1. The Committee discussed the Petition by Residents of Barwaqo Area on the Unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency- Mandera County and receipt of a letter from the Governor, Mandera County Government through the office of the Speaker of the Senate directing the Committee to conduct an inquiry into the ongoing county non-core infrastructure projects. The Speaker directed that the matter be handled by this Committee. However, the Secretariat advised the Committee that there are security concerns in Mandera County as well as the matter at hand falls within the mandate of the Senate Committee on Roads and Infrastructure. The Committee then resolved to conduct the visit on Thursday, 5<sup>th</sup> March, 2020; and
2. The Committee considered an invitation from Golder ESIA team to attend a breakfast meeting on Wednesday, 4<sup>th</sup> March, 2019 as from 9.00am and resolved to instead attend the Committee's Public Hearing as it has coincided with the Committee meeting.

**MINUTE SEN/SCLNDR/015/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 11.05 am and the next meeting was scheduled for Wednesday, 4<sup>th</sup> March, 2020.

Signed: .....



Date: ..... 12/03/2020 .....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

4. **Analysis of Public Hearing Matrix on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019)**
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNR/013/2020: ANALYSIS OF PUBLIC HEARING MATRIX ON THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)**

The Committee made the following observations in line with the submissions made during the Public Hearing:

1. Clause 2: Common areas should be properly defined and protected by the law to avoid encroachment. Clause 2 of the Bill provides that common property means so much of a parcel as is not comprised in a unit shown in a sectional plan.

**The Committee observed that indeed this is a good proposal and that there is need define “Common Area” especially if it has been used in the Bill.**

2. Clause 2: Definition of building to remove any ambiguity on types of building that can be subdivided into units for the purposes intended in this Bill. It also takes into consideration construction of multi-dwelling building in single dwelling designated areas.

**The Committee observed that indeed this is a good proposal and that the definition of the term “Building” should be as per the Land Registration Act, 2012 meaning a structure or erection of any kind, whether permanent or temporary, movable or immovable and whether completed or not.**

3. Clause 12(5): the amendment of a sectional plan should be done by a surveyor and then the Registrar will then proceed to register the amended approved subdivision or consolidation. Clause 12(5) of the Bill provides that before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend the original sectional plan in the manner prescribed by the regulations.

**The Committee observed that it’s in agreement with the proposal proposed and the rationale that the Registrar does not possess technical capacity to amend sectional plans, is not the repository of maps and relies on maps prepared by the Director of Survey.**

**MINUTES OF THE 3<sup>RD</sup> MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 3<sup>RD</sup> MARCH, 2020 IN COMMITTEE ROOM 10 AT 9.00 AM.**

**MEMBERS**

1. Sen. Prengei Victor, M.P.
2. Sen. Mwaruma Johnes, M.P.
3. Sen. Sylvia Kasanga, M.P.

**PRESENT**

- Vice Chairperson
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Mwangi Paul Githiomi, M.P. - Chairperson
2. Sen. Godana Hargura, M.P. - Member
3. Sen. Boy Issa Juma, M.P. - Member
4. Sen. Ndwiiga Peter Njeru, EGH. M.P. - Member
5. Sen. George Khaniri, MGH, M.P. - Member
6. Sen. Halake Abshiro, M.P. - Member

**IN ATTENDANCE**

**SECRETARIAT**

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Carolynne Cheruiyot - Legal Counsel
3. Mr. John Nganga - Audio Recording
4. Mr. Abdalla Mboire - Sergeant-at-arms
5. Ms. Faith Wanja - Intern

**MINUTE SEN/SCLNDR/011/2020: PRELIMINARIES**

The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNDR/012/2020: ADOPTION OF AGENDA**

The agenda was therefore proposed by Sen. Mwaruma Johnes. M.P. and seconded by Sen. Sylvia Kasanga, M.P. as follows.

1. Preliminaries - *Prayer*
2. Adoption of the agenda;
3. Confirmation of Minutes of the Previous Sittings;



belatedly join the management company. The law should therefore protect the purchasers by providing express warranties based on legitimate expectations.

19. The law should provide that procurement of planning approval and in deed occupation certificate from planning authorities are by no means completion of the development as per sale agreement as is often assumed.

**MINUTE SEN/SCLN/009/2020: ANY OTHER BUSINESS;**

The was no other matter discussed.

**MINUTE SEN/SCLN/010/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 12.05 pm and the next meeting was scheduled for Tuesday, 3<sup>rd</sup> March, 2020.

Signed:  .....

Date: **12/03/2020** .....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL**

**RESOURCES**

1. The trustee directorship by developer of management companies should be defined by law and role/obligations spelt out to avoid abuse and conflict of interest.  
There should be an understanding that once the sale process commences the developer ceases to be the absolute exclusive owner so that minority interest and say is recognized before ultimate handover.
2. Any developer intending to develop a property that will have sectional ownership must decide on the number of units before submission.
3. The developer must form the management company before applying for certificate of occupancy.
4. The developer must allocate the shares as soon as the sale of unit occurs.
5. As soon as 51 percent of units are sold, the developer also must pay for service charge of the unsold units.
6. As soon as 51 percent of units are sold, appointment of management committee including directors is to happen. The appointed directors must endorse any sale by developer provided for as unit for sale.
7. The developer must disclose names and contacts of all the contractors involved in the development like the architect, engineers, constructor, plumber, electrician, borehole, lift guy etc.
8. The developer must also disclose any service provider who is a related party to the shareholders and directors of the developer to the new owners.
9. Developer should fulfil promises made in sale/marketing prospectus.
10. Midway plan changes should be limited to structural/design improvement only.
11. Approval of plan changes should involve enlisted owners.
12. Share certificates issuance and handover should be progressive.
13. Service charge for maintaining common areas should be mandatory. The law should allow easy recovery and/or distress on defaulters
14. Completion of development should be as per sale agreement.
15. Common areas should be properly defined and protected by the law to avoid encroachment.
16. Penalties and refund from false advertising.  
Any deviation of the finished product from the advertised product should allow for refund plus adjusted interest for the initial of takers. This should include design, quality, timelines, workmanship etc
17. Adequate parking for both commercial and residential.
18. The sale agreement for sectional property is drawn by the developer with very little say by individual purchasers who only acquire influence upon the property when they

		its by-laws permit, grant a lease to an owner of a unit permitting that owner to exercise exclusive use in respect of an area or areas of the common property.		individuals as they belong to community and are maintained/served by resources obtained from all owners/tenants
8	44 (3) (a)	A management agreement may not be terminated under subsection (2) without cause until two years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date;	Delete	Parties to the agreement should be able to agree and stipulate in the agreement the contract period and the circumstances under which it can be terminated
9	45 (3)	The owner of a unit shall give the Corporation written notice of the name of the tenant residing in the unit within twenty days from the commencement of the tenancy.	Reduce the number from twenty days notice to 5 days notice	Communication of new tenant should be communicated immediately for security reasons
10	45 (4)	Within twenty days of ceasing to rent his unit, the owner shall give the Corporation written notice that his unit is no longer rented	Reduce the number from twenty days notice to 5 days notice	Communication of vacant house should be communicated immediately for security reasons

#### D. NEXTGEN MALL

They made submissions as the Representatives of the Unit Owners Committee of Nextgen Mall and tabled the following recommendations:

			conspicuously on a board at the site  11 (4) The notification referred to under subsection (3) shall invite members of the public to submit within 30 working days any objections on the proposed change to the County Executive Committee Member in charge planning & urban development for consideration	
5	Section 11 (3)	Where the plan presented for registration as a sectional plan is in respect of a building containing units, it shall, in addition to the certificate required under subsection (1), be endorsed by a <i>surveyor or such other person as shall be approved by the Director of Survey</i> stating that the units shown on the plan correlate with the existing structure.	Replace <i>surveyor</i> with <b>Licensed</b> surveyor and delete <i>or such other person as shall be approved by the Director of Survey</i>	Reduce chances of quacks masquerading as surveyors and also limit the powers of Director of Survey who may approve individuals to perpetuate self interest
6	20 (6)	The corporation may constitute an Internal Dispute Resolution Committee on a need basis to hear and determine disputes.	Prescribe the composition of the committee and number allowable	The corporation should have standard guidelines for constituting the committee to avoid biasness and inspire confidence among the parties involved in dispute
7	40	A Corporation, by a unanimous resolution, may, if	Delete	Common properties should not be subjected to exclusive use by

2	Section 4 (2)	A surveyor shall not prepare a sectional plan unless he is presented with proof of ownership of the parcel or unit to which the sectional plan shall apply.	A surveyor shall not prepare a sectional plan unless: a) presented with proof of ownership of the parcel or unit to which the sectional plan shall apply b) the parcel or unit to which the sectional plan shall apply has a valid address as issued and registered by the respective county government and is in the national addressing database.	This will aid in efforts to put national addressing system at the centre of all service provision and assist in the development of addressing maps that will aid in the delivery of services to citizens by county and national governments. It is also an important step in improving security by proper identification. It shall also be assumed that the corporation to be formed shall carry the address of the said parcel of land.
3	Section 4 (4)	The Registrar shall not register a sectional plan unless the sectional plan— (a) describes two or more units in it; and (b) is presented for registration in quadruplicate.	The Registrar shall not register a sectional plan unless the sectional plan – (a) describes two or more units in it; (b) has a valid address as issued and registered by the respective county government and is in the national addressing database; and (c) is presented for registration in quadruplicate.	This further entrenches physical addressing in land dealings for reasons already alluded to in the rationale above. However, these may require some amendments under a miscellaneous amendment bill, of Sections 22(1) and 95 (1) and 95 (3) (a) of the Land Registration Act to require the provision of a physical address as prescribed by a county government and entered into the national addressing database.
4	N/A	N/A	<i>New: Insert a new Section 11 and renumber the Section</i>  11 (3) A person applying for division of a single dwelling building into multi dwelling units shall notify the public of the proposed change by displaying the details	To avoid unscrupulous people using this Sectional Properties Bill in a manner that could undermine the zoning and change of user by-laws/regulations, there is need for any person applying for division of a building into units to notify the public of the proposed subdivision.

Finally and unless the above issues are clarified, it may be safe to consider establishing the Corporation under the Companies Act for ease of operations and management thereof. In any event what is the peculiarity of the Corporation compared to a company incorporated under the Companies Act and what is the harm if established under the Companies Act? It may be necessary to consider certain amendments including providing for certain exemptions, so as to make it possible for the establishment of the Corporation under Companies Act. Otherwise, provisions on establishment of the Corporation are part of the weaknesses of the Bill.

**6) Functions of the Corporation:**

Under section 20, payment of service charge/levies should be made mandatory in law; to facilitate easier management of Estates. Currently, a situation has arisen whereby once the purchasers have paid the full purchase price for the sectional units, they neglect or refuse to pay service charge for the running of the estate.

**7) Alignment to the Physical planning Act:**

In the past some developers have charged licenses for use of parking spaces and yet the Physical planning Act is clear on how development should be carried out to meet the set criteria. The Bill should be aligned to the Physical planning Act in this regard.

**8) Tenant Purchase Terms:**

Sale of houses/apartments on tenant purchase terms is beset with problems of escalation of costs during transfers, after payment of full purchase price (at the end of payment period).

The Bill should provide for payment of stamp duty based on the sale price at the commencement of the tenant payment period and not future value; which will make affordable Housing Program lose its meaning.

**C. THE KENYA ALLIANCE OF RESIDENT ASSOCIATIONS (KARA)**

No	Section	Current Clause in the Bill	Proposed Amendment	Rationale
1.	Section 3(sub-title "Interpretation")	"building" means one or more structures on the same parcel	"building" means a structure or erection and any part of structure or erection whether permanent or temporary and whether completed or uncompleted, approved by County Government	This removes any ambiguity on types of building that can be subdivided into units for the purposes intended in this Bill. It also takes into consideration construction of multi-dwelling building in single dwelling designated areas

The sections referring to off plan sales and purchases be expunged so that the bill only deals with complete units.

#### **4) Phased Developments:**

This is a development approach that is gaining traction in the real estate development in Kenya. It is characterized by the large-scale development over large tracks of land using an approved master plan and owing to financial factors, being implemented in phases.

It has been observed that as much as it is critical in property development, there are technical issues associated with the model especially on how to process Titles for completed Units.

#### **5) Establishment of the Corporation:**

The provisions on establishment of the Corporation under section 17 of the Bill are problematic for the following reasons:-

- (i) The ordinary reading of section 17(1) implies that on registration of a sectional plan, there shall be constituted a Corporation under the name "The owners, Sectional Plan No... being the number given to the plan upon registration". This situation does not seem to contemplate practical steps for preparation and presentation of necessary constitutive documents, pursuant to which the Corporation may be registered. Instead the Corporation is constituted on registration of a sectional plan without doing anything else such as presentation or filing of necessary documents (providing particulars of the owners, shareholding, postal and email addresses, etc).
- (ii) Under sub – section (2), the Registrar shall issue a certificate of registration of the Corporation. In view of the wording of sub – section (1), this implies the Certificate of registration shall be issued without creation of a register or a clear process designed to create a record of documents for official reference.
- (iii) Sub – section (3) states that, a Corporation shall consist of all persons-
  - (a) Who are the owners of the units in the parcel to which the sectional plan relates or,
  - (b) Who are entitled to the parcel when the sectional arrangement is terminated under this Act.

This sub – section does not clarify on where one will find the list of members of the Corporation and in what format. In addition there is no provision on issue of individual certificates to members of the Corporation (as proof of membership).

Further, there are no clear provisions on the depository or place where records of the Corporation shall be kept or where to undertake official searches, certification of the Corporation documents, Transfer of shareholding in the Corporation etc.

		had to be an accountant, advocate or registered estate agent.	In addition, the Bill gives the corporation powers to resolve disputes by constituting a Dispute Resolution Committee to hear disputes arising between the owners and the corporation on a need basis.
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## B. NATIONAL HOUSING COOPERATION

### 1) Registration of Sectional Units

Section 12 (5) of the bill proposes that before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend the original sectional plan in the manner prescribed by regulations.

The proposal empowers the Registrar to carry out amendments to the sectional plan which is a preserve of the Director of Survey. It is observed that the proposal is improper based on the following aspects:

- a) The registrar does not possess technical Capacity of amending sectional plans
- b) The registrar does not possess repository of maps
- c) The proposal is in conflict with Survey Act, Cap 299, Section 22 which states that Surveys of land to be conducted under the direction of Director of Survey
- d) The registrars rely on the maps prepared by the Director of Survey

### 2) Sectional Properties Tribunal:

The sectional properties tribunal was also removed. The responsibility to settle disputes arising from the Corporation was delegated to the Internal Dispute Resolution Committee. Parties not satisfied with the decision of the Committee can apply to court for determination.

There is need to create an alternative dispute resolution mechanism to offer alternative dispute resolution mechanism. Otherwise Sectional Properties Tribunal should be retained as a specialized dispute resolution forum, for uniformity and standards.

### 3) Regulation of Property Developers and off Plan Units:

It is observed that currently there is no mechanism for regulating developers; this has led to many unsuspecting members of public losing their money. It is noted that this issue arose from the envisaged off plan purchase and sales contemplated in Section 43.

	<p><b>rates</b> <b>Section 53</b></p>	<p>paid corporately by the corporation. Enforcement becomes tricky and therefore bogs down compliant unit owners whenever they want to transact in their property.</p>	<p>respect of each unit title shall be borne individually.</p>
8.	<p><b>Review of Long-Term Leases/Sub-Leases through conversion process</b>  <b>Section 13</b></p>	<p>SPA oversaw issuance of Irregular leases thus exposing members of the public to likely loss</p>	<p>The Bill provides a mechanism for regularizing long-term leases/sub-leases irregularly registered. All long-term leases/sub-leases hitherto registered shall be reviewed to conform to the process prescribed under Section 54(5) of the LRA. On review, stamp duty shall not be demanded in respect of properties early paid for.</p>
9.	<p><b>The Corporation</b>  <b>Section 17</b></p>	<p>Legal entity status of the corporation is not clear.</p>	<p>The Bill ensures that the corporate status of the Corporation is enhanced by issuance of a certificate of registration on registration of a sectional plan. This ensures that the corporation can open bank accounts and enter into contracts in its name without any doubt.</p>
10.	<p><b>Corporation to Manage Property and Resolve Disputes</b>  <b>Section 20 &amp; 31</b></p>	<p>Under SPA, the corporation impliedly owned the common property as the developer retained the mother title. It also managed the property through an institutional manager who</p>	<p>The Bill vests management of the sectional property with the corporation through property manager not or any other person they may deem fit.</p>

4.	<b>Reversionary interest</b>	The developer retained the mother title after sale of units and therefore reserved the right to exercise reversionary interest upon expiry of lease.	Each unit owner corporately exercises reversionary right upon expiry of lease.
5.	<b>Title to include proportionate interest in common area</b>  <b>Section 5(1) (C), 6, 7</b>	Ownership of the common area was not clearly defined whether it remains in the hands of the corporation or the developer who remained with the mother title. This lacuna encouraged developers to interfere with the common area as they wished to the detriment of unit owners.	The certificate of lease or certificate of title held by the unit owner shall include the proportionate share of the common area of the sectional property. This prevents subsequent interference with the common area.
6.	<b>Dealings on registration to be done under LRA</b>  <b>Section 5(5)</b>	Resistance by developers to register properties under SPA for lack of clear or predictable or consistent model of ownership led to use of sketch plans as a base for registration of units.	When the register to each unit in a registered sectional plan is opened, all dealings and dispositions regarding the unit shall be conducted under the Land Registration Act. This is meant to streamline land registration which can only be done under LRA as a sole land registration regime in Kenya.
7.	<b>Mortgage and discharge</b>  <b>Section 8</b>	Unit owners purchasing their property on mortgage get partial discharge upon completion of payment of the loan. This is because the mother title remains intact. Absolute ownership is therefore not guaranteed.	The purchaser of a unit under mortgage gets fully discharged on completion of payment of loan.
	<b>Ground rent and</b>	Ground rent and rates are	Ground rent and rates in

1.	<b>Building Plans/Sketch Plans As Opposed to Sectional Plans</b>	An irregular practice of registering sectional units based on sketch plans or building plans registered under Registration of Documents Act, as opposed to a sectional plan thrived because of poor uptake and acceptance by developers and practitioners of the Sectional Properties Act.	All sectional units must be registered based on a registered sectional plan. The process is ring-fenced against early abuse propagated by practice by prescribing single regime of registration under the Land Registration Act.
2.	<b>Certificates of title/certificate of leases</b>  <b>Section 5</b>	Under SPA unit owners hold subleases or long-term leases while the developer remains with the mother title or head lease which is often charged to the bank without the knowledge or consent of unit owners.  A Unit owner's proprietary rights are limited since they have to seek consent from developer in the event the unit owner wants to deal with the property. Absolute ownership is not guaranteed to the unit owner.  Reversionary right is reserved with the developer.	On registration of the Sectional plan, the mother title or head lease is closed and a register of units opened for issuance of individual certificates of titles or certificates of leases to respective new unit owners. Unsold units are registered in the name of the developer. The titles confer absolute ownership to the unit owners who can deal or transact without seeking any consent from the developer as is the practice now. Rates and land rent are borne by unit owners individually. Reversionary right is corporately exercised by each unit owner.
3.	<b>Closure of head lease on opening registers in respect of units</b> <b>Section 5</b>	The mother title remained intact with the developer thus compromises the security of titles held by unit owners. Unit owners are not free to deal in their property without seeking consent from the developer.	The Bill ensures closure of head lease or mother title on registration of a sectional plan to allow opening of new register of units for issuance of individual unit titles.

12. Mr. Ibrahim Mohamed - Seargent-at-arms  
 13. Mr. Frank Nyabuti - Intern

**MINUTE SEN/SCLNENR/006/2020: PRELIMINARIES**

The meeting was called to order at 10.15 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNENR/007/2020: ADOPTION OF AGENDA**

The agenda was therefore proposed by Sen. Mwaruma Johnes. M.P. and seconded by Sen. Slyvia Kasanga, M.P. as follows.

1. Preliminaries - *Prayer*
2. Adoption of the agenda;
3. Confirmation of Minutes of the Previous Sittings;
4. **Public Hearings on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019)**
  - 10.00am – 11.00am – Views from Stakeholders
    - Ministry of Transport, Infrastructure, Housing and Urban Development,
    - The Law Society of Kenya,
    - National Housing Cooperation,
    - Kenya Professional Realtors Association,
    - The Kenya Alliance of Resident Associations (KARA),
    - Kenya Property Developers Association and
  - 11.00am – 12.00Noon – Views from Members of the Public
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNENR/008/2020: PUBLIC HEARINGS ON THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019);**

The Committee received submissions as follows:

**A. MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT**

ITEM	ISSUE and Section	The problem (SPA)	The Current (BILL)
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**MINUTES OF THE 2<sup>ND</sup> MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 26<sup>TH</sup> FEBRUARY, 2020 IN KICC, VIP, 1<sup>ST</sup> FLOOR, BOARDROOM AT 10.00 AM.**

**MEMBERS**

1. Sen. Prengei Victor, M.P.
2. Sen. Mwaruma Johnes, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Slyvia Kasanga, M.P.
5. Sen. Boy Issa Juma, M.P.

**PRESENT**

- Vice Chairperson
- Member
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

5. Sen. Mwangi Paul Githiomi, M.P. - Chairperson
6. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
7. Sen. George Khaniri, MGH, M.P. - Member
8. Sen. Halake Abshiro, M.P. - Member

**IN ATTENDANCE**

**A. SENATORS**

1. Sen. Philip Mpaayei, MP - Senator/Friend of the Committee

**B. STAKHOLDERS & MEMBERS OF THE PUBLIC**

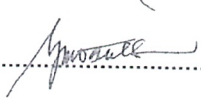
1. Mr. Samuel Mwangela - Property executive Nextgen mall
2. Mr. Paul J Oyier - Governing Council KARA
3. Mr. Amos Osur - SG
4. Mr. Peter Geche Karanja - Member KARA
5. Mr. David Kithakye - KARA –TECH- EXPERT
6. Mr. Henry Ochieng - KARA
7. Mr. James Mwangi - HOUSING
8. Mr. John w. Aguli - NHC
9. Mr. Wiliam Keitany - NHC
10. Ms. Jenifer Nduati - SDHUD
11. Mr. Patrick Bucha - Housing Secretary SDHUD
12. Mr. John Kimani - SDHUD

**C. SECRETARIAT**

8. Mr. Victor Bett - Clerk Assistant
9. Ms. Carolyn Cheruiyot - Legal Counsel
10. Mr. Joseph Tiyan - Researcher
11. Mr. John Nganga - Audio Recording

**MINUTE SEN/SCLNENR/048/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 12.45 pm and the next meeting was scheduled for Wednesday, 18<sup>th</sup> March, 2020.

Signed:..........

Date:.....7/05/2020.....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

4. **Adoption of the Committee Report on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019);**
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNENR/045/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS**

The Minutes of the 2<sup>nd</sup> sitting held on 26<sup>th</sup> February, 2020 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Slyvia Kasanga, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

The Minutes of the 3<sup>rd</sup> sitting held on 3<sup>rd</sup> April, 2020 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Slyvia Kasanga, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

**MINUTE SEN/SCLNENR/046/2020: CONSIDERATION OF THE COMMITTEE REPORT ON THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019);**

The Committee adopted its report with the following Recommendations;

**THAT** clause 12 of the Bill be amended by deleting sub clause (5) and substituting therefor the following new sub clause –

(5) Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall upon endorsement by a surveyor amend the original sectional plan in the manner prescribed by the regulations.

The Report was adopted after having been proposed by Sen. Halake Abshiro, M.P. and Seconded by Sen. Slyvia Kasanga, M.P.

**MINUTE SEN/SCLNENR/047/2020: ANY OTHER BUSINESS;**  
There was no other business discussed.

## **ANNEX I**

### **MINUTES OF THE 9<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 12<sup>TH</sup> MARCH, 2020 IN COMMITTEE ROOM 10 AT 12.00 NOON.**

#### **MEMBERS**

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Sylvia Kasanga, M.P.
4. Sen. Mwaruma Johnes, M.P.
5. Sen. Halake Abshiro, M.P.

#### **PRESENT**

- Chairperson
- Vice Chairperson
- Member
- Member
- Member

#### **ABSENT WITH APOLOGY**

1. Sen. Godana Hargura, M.P.
2. Sen. Boy Issa Juma, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. George Khaniri, MGH, M.P.

- Member
- Member
- Member
- Member

#### **IN ATTENDANCE**

1. Mr. Victor Bett
2. Ms. Getrude Nthiiri
3. Ms. Carlyne Cheruiyot
4. Mr. John Nganga
5. Mr. Abdalla Mbore
6. Ms. Faith Wanja
7. Mr. Frank Nyabuti

#### **SECRETARIAT**

- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Audio Recording
- Seargent-at-arms
- Intern
- Intern

#### **MINUTE SEN/SCLNDR/043/2020: PRELIMINARIES**

The meeting was called to order at 12.00 noon by the Chairperson followed by a word of prayer.

#### **MINUTE SEN/SCLNDR/044/2020: ADOPTION OF AGENDA**

The agenda was therefore proposed by Sen. Mwaruma Johnes. M.P. and seconded by Sen. Halake Abshiro, M.P. as follows.

1. Preliminaries - *Prayer*
2. Adoption of the agenda;
3. Confirmation of Minutes of the Previous Sittings;

## APPENDICES

- Annex I:** Minutes of the meetings
- Annex II:** Amendments
- Annex III:** Newspaper Advert

### 3.1 Recommendations

The Committee makes the following recommendations and proposes to make the following amendments to the Bill:

#### **CLAUSE 12**

**THAT** clause 12 of the Bill be amended by deleting sub clause (5) and substituting therefor the following new sub clause –

(5) Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall upon endorsement by a surveyor amend the original sectional plan in the manner prescribed by the regulations.

The Committee shall introduce the above amendments during the committee of the whole house for consideration and approval of the Senate.

ISK and NHC proposed that the amendment of a sectional plan should be done by a surveyor and then the Registrar will then proceed to register the amended approved subdivision or consolidation. This is because the Registrar does not possess technical capacity to amend sectional plans, is not the repository of maps and relies on maps prepared by the Director of Survey.

**The Committee observed that it is in agreement with this proposal and the rationale that the Registrar does not possess technical capacity to amend sectional plans, is not the repository of maps and relies on maps prepared by the Director of Survey.**

8. **The Committee considered proposed amendments to Clause 17 and observed that they have been catered for in the Bill and that for sub-clause (3) it wouldn't be necessary unless for best practise.**
9. Clause 20(1) provides for duties of a Corporation. NHC and Representatives of the Unit Owners Committee of Nextgen Mall proposed that payment of service charge should be made mandatory to facilitate easier management of estates.

**The Committee considered the proposal on payment of service charge and observed that the proposal has well been catered for in the Bill.**

10. Clause 20(6) provides that each Corporation may constitute an Internal Dispute Resolution Committee on need basis to hear and determine disputes.

**The Committee deliberated on the proposals to prescribe the composition of the committee and noted that this would be difficult and is catered for in Clause (20). The other proposal on an alternative ADR mechanism it has also been catered for in Clause (30) of the Bill.**

11. **The proposal on Clause 40, 43, 44(3)(a), 45(3), 45(4), 60 of the Bill was considered by the Committee and the Committee observed that it has been well catered for as it is in the Bill.**
12. **On the proposal regarding new provisions, the Committee observed that they are contained in the by-laws and in the Land Act, 2012.**

4. Clause 4(4) provides for the registration of a sectional plan by the Registrar. KARA proposed that the registration should only be done where there is a valid address as issued and registered by the respective county government and is in the national addressing database.

**The Committee considered the proposal and resolved that as the case is in Clause 4(2) above it would not be appropriate for this Bill to solve the concern.**

5. Clause 11 (New provision) that the proposal would avoid unscrupulous people using this Sectional Properties Bill in a manner that could undermine the zoning and change of user by-laws/regulations, there is need for any person applying for division of a building into units to notify the public of the proposed subdivision.

KARA proposed that a person applying for division of a single dwelling building into multi dwelling units shall notify the public of the proposed change by displaying the details conspicuously on a board at the site and shall invite members of the public to submit (within 30 working days) any objections on the proposed change to the County Executive Committee Member in charge of Planning and Urban Development for consideration.

**The Committee observed that Change of user is currently provided for in the Physical and Land Use Planning Act, 2019. The Bill proposes that the sub division consolidation of units should be with the approval of a county government and that provisions on registration of sectional plans will apply to the sub division or consolidation of units and is therefore covered for in the Bill.**

6. Clause 11(3) provides for the endorsement by a surveyor or such other person as shall be approved by the Director of Survey of a plan presented for registration as a sectional plan.

**The Committee considered the proposal that surveyor be replaced with licensed surveyor and observed that the Bill provides that a surveyor has the meaning assigned under section 2 of the Survey Act, Cap. 299 Laws of Kenya. A surveyor under the Survey Act means a Government surveyor or a licensed surveyor. In view of this the concern has been catered for in the Bill.**

7. Clause 12(5): the amendment of a sectional plan should be done by a surveyor and then the Registrar will then proceed to register the amended approved subdivision or consolidation. Clause 12(5) of the Bill provides that before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend the original sectional plan in the manner prescribed by the regulations.

## CHAPTER THREE

### COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

#### 3.0 Observations and Determinations

The Committee made the following observations in line with the submissions made during the Public Hearing:

1. Clause 2: Common areas should be properly defined and protected by the law to avoid encroachment. Clause 2 of the Bill provides that common property means so much of a parcel as is not comprised in a unit shown in a sectional plan.

**The Committee observed that indeed this is a good proposal and that there is need define ‘Common Area’ especially if it has been used in the Bill. Since it hasn’t been used in the Bill then the Committee intends to drop the proposal.**

2. Clause 2: Definition of building to remove any ambiguity on types of buildings that can be subdivided into units for the purposes intended in this Bill. It also takes into consideration construction of multi-dwelling building in single dwelling designated areas.

**The Committee observed that indeed this is a good proposal and that the definition of the term ‘Building’ should be as per the Land Registration Act, 2012 meaning a structure or erection of any kind, whether permanent or temporary, movable or immovable and whether completed or not.**

3. Clause 4(2) provides for preparation of a sectional plan by a surveyor. KARA proposed that the surveyor should not prepare the sectional plan unless the parcel or unit to which the sectional plan shall apply has a valid address as issued and registered by the respective county government and is in the national addressing database.

**The Committee decided to drop the proposal since the Kenya Information and Communications (Numbering) Regulations 2010 require the Communications Authority to among others establish a National Communications and Addressing Plan (NCAP) for electronic communication numbers and addresses, postal codes, in liaison with international organizations dealing with numbering and addressing matters.**

**The Authority is still in the process of implementing the same. Therefore this Bill wouldn’t be appropriate to solve this.**

13. Service charge for maintaining common areas should be mandatory. The law should allow easy recovery and/or distress on defaulters
14. Completion of development should be as per sale agreement.
15. Common areas should be properly defined and protected by the law to avoid encroachment.
16. Penalties and refund from false advertising.  
Any deviation of the finished product from the advertised product should allow for refund plus adjusted interest for the initial of takers. This should include design, quality, timelines, workmanship etc
17. Adequate parking for both commercial and residential.
18. The sale agreement for sectional property is drawn by the developer with very little say by individual purchasers who only acquire influence upon the property when they belatedly join the management company. The law should therefore protect the purchasers by providing express warranties based on legitimate expectations.
19. The law should provide that procurement of planning approval and in deed occupation certificate from planning authorities are by no means completion of the development as per sale agreement as is often assumed.

#### **D. NEXTGEN MALL**

They made submissions as the Representatives of the Unit Owners Committee of Nextgen Mall and tabled the following recommendations:

1. The trustee directorship by developer of management companies should be defined by law and role/obligations spelt out to avoid abuse and conflict of interest.  
There should be an understanding that once the sale process commences the developer ceases to be the absolute exclusive owner so that minority interest and say is recognized before ultimate handover.
2. Any developer intending to develop a property that will have sectional ownership must decide on the number of units before submission.
3. The developer must form the management company before applying for certificate of occupancy.
4. The developer must allocate the shares as soon as the sale of unit occurs.
5. As soon as 51 percent of units are sold, the developer also must pay for service charge of the unsold units.
6. As soon as 51 percent of units are sold, appointment of management committee including directors is to happen. The appointed directors must endorse any sale by developer provided for as unit for sale.
7. The developer must disclose names and contacts of all the contractors involved in the development like the architect, engineers, constructor, plumber, electrician, borehole, lift guy etc.
8. The developer must also disclose any service provider who is a related party to the shareholders and directors of the developer to the new owners.
9. Developer should fulfil promises made in sale/marketing prospectus.
10. Midway plan changes should be limited to structural/design improvement only.
11. Approval of plan changes should involve enlisted owners.
12. Share certificates issuance and handover should be progressive.

		<p>under subsection (2) without cause until two years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date;</p>		<p>stipulate in the agreement the contract period and the circumstances under which it can be terminated</p>
9	45 (3)	<p>The owner of a unit shall give the Corporation written notice of the name of the tenant residing in the unit within twenty days from the commencement of the tenancy.</p>	<p>Reduce the number from twenty days notice to 5 days notice</p>	<p>Communication of new tenant should be communicated immediately for security reasons</p>
10	45 (4)	<p>Within twenty days of ceasing to rent his unit, the owner shall give the Corporation written notice that his unit is no longer rented</p>	<p>Reduce the number from twenty days notice to 5 days notice</p>	<p>Communication of vacant house should be communicated immediately for security reasons</p>

		<p><i>person as shall be approved by the Director of Survey</i></p> <p>stating that the units shown on the plan correlate with the existing structure.</p>		
6	20 (6)	<p>The corporation may constitute an Internal Dispute Resolution Committee on a need basis to hear and determine disputes.</p>	Prescribe the composition of the committee and number allowable	The corporation should have standard guidelines for constituting the committee to avoid biasness and inspire confidence among the parties involved in dispute
7	40	<p>A Corporation, by a unanimous resolution, may, if its by-laws permit, grant a lease to an owner of a unit permitting that owner to exercise exclusive use in respect of an area or areas of the common property.</p>	Delete	Common properties should not be subjected to exclusive use by individuals as they belong to community and are maintained/serviced by resources obtained from all owners/tenants
8	44 (3) (a)	A management agreement may not be terminated	Delete	Parties to the agreement should be able to agree and

			<p>dwelling units shall notify the public of the proposed change by displaying the details conspicuously on a board at the site</p> <p>11 (4) The notification referred to under sub-section (3) shall invite members of the public to submit within 30 working days any objections on the proposed change to the County Executive Committee Member in charge planning &amp; urban development for consideration</p>	<p>person applying for division of a building into units to notify the public of the proposed subdivision.</p>
5	Section 11 (3)	<p>Where the plan presented for registration as a sectional plan is in respect of a building containing units, it shall, in addition to the certificate required under subsection (1), be endorsed by a <i>surveyor or such other</i></p>	<p>Replace <i>surveyor</i> with <b>Licensed</b> surveyor and delete <i>or such other person as shall be approved by the Director of Survey</i></p>	<p>Reduce chances of quacks masquerading as surveyors and also limit the powers of Director of Survey who may approve individuals to perpetuate self interest</p>

			addressing database.	corporation to be formed shall carry the address of the said parcel of land.
3	Section 4 (4)	The Registrar shall not register a sectional plan unless the sectional plan—  (a) describes two or more units in it; and (b) is presented for registration in quadruplicate.	The Registrar shall not register a sectional plan unless the sectional plan –  (a) describes two or more units in it; (b) has a valid address as issued and registered by the respective county government and is in the national addressing database; and (c) is presented for registration in quadruplicate.	This further entrenches physical addressing in land dealings for reasons already alluded to in the rationale above.  However, these may require some amendments under a miscellaneous amendment bill, of Sections 22(1) and 95 (1) and 95 (3) (a) of the Land Registration Act to require the provision of a physical address as prescribed by a county government and entered into the national addressing database.
4	N/A	N/A	<i>New: Insert a new Section 11 and <u>renumber</u> the Section</i>  11 (3) A person applying for division of a single dwelling building into multi	To avoid unscrupulous people using this Sectional Properties Bill in a manner that could undermine the zoning and change of user by-laws/regulations, there is need for any

**C. THE KENYA ALLIANCE OF RESIDENT ASSOCIATIONS (KARA)**

No	Section	Current Clause in the Bill	Proposed Amendment	Rationale
1.	Section 3(sub-title "Interpretation)	"building" means one or more structures on the same parcel	"building" means a structure or erection and any part of structure or erection whether permanent or temporary and whether completed or uncompleted, approved by County Government	<p>This removes any ambiguity on types of building that can be subdivided into units for the purposes intended in this Bill.</p> <p>It also takes into consideration construction of multi-dwelling building in single dwelling designated areas</p>
2	Section 4 (2)	A surveyor shall not prepare a sectional plan unless he is presented with proof of ownership of the parcel or unit to which the sectional plan shall apply.	<p>A surveyor shall not prepare a sectional plan unless:</p> <p>a) presented with proof of ownership of the parcel or unit to which the sectional plan shall apply</p> <p>b) the parcel or unit to which the sectional plan shall apply has a valid address as issued and registered by the respective county government and is in the national</p>	<p>This will aid in efforts to put national addressing system at the centre of all service provision and assist in the development of addressing maps that will aid in the delivery of services to citizens by county and national governments.</p> <p>It is also an important step in improving security by proper identification.</p> <p>It shall also be assumed that the</p>

This sub – section does not clarify on where one will find the list of members of the Corporation and in what format. In addition there is no provision on issue of individual certificates to members of the Corporation (as proof of membership).

Further, there are no clear provisions on the depository or place where records of the Corporation shall be kept or where to undertake official searches, certification of the Corporation documents, Transfer of shareholding in the Corporation etc.

Finally and unless the above issues are clarified, it may be safe to consider establishing the Corporation under the Companies Act for ease of operations and management thereof. In any event what is the peculiarity of the Corporation compared to a company incorporated under the Companies Act and what is the harm if established under the Companies Act? It may be necessary to consider certain amendments including providing for certain exemptions, so as to make it possible for the establishment of the Corporation under Companies Act. Otherwise, provisions on establishment of the Corporation are part of the weaknesses of the Bill.

**6) Functions of the Corporation:**

Under section 20, payment of service charge/levies should be made mandatory in law; to facilitate easier management of Estates. Currently, a situation has arisen whereby once the purchasers have paid the full purchase price for the sectional units, they neglect or refuse to pay service charge for the running of the estate.

**7) Alignment to the Physical planning Act:**

In the past some developers have charged licenses for use of parking spaces and yet the Physical planning Act is clear on how development should be carried out to meet the set criteria. The Bill should be aligned to the Physical planning Act in this regard.

**8) Tenant Purchase Terms:**

Sale of houses/apartments on tenant purchase terms is beset with problems of escalation of costs during transfers, after payment of full purchase price (at the end of payment period).

The Bill should provide for payment of stamp duty based on the sale price at the commencement of the tenant payment period and not future value; which will make affordable Housing Program lose its meaning.

There is need to create an alternative dispute resolution mechanism to offer alternative dispute resolution mechanism. Otherwise Sectional Properties Tribunal should be retained as a specialized dispute resolution forum, for uniformity and standards.

**3) Regulation of Property Developers and off Plan Units:**

It is observed that currently there is no mechanism for regulating developers; this has led to many unsuspecting members of public losing their money. It is noted that this issue arose from the envisaged off plan purchase and sales contemplated in Section 43.

The sections referring to off plan sales and purchases be expunged so that the bill only deals with complete units.

**4) Phased Developments:**

This is a development approach that is gaining traction in the real estate development in Kenya. It is characterized by the large-scale development over large tracks of land using an approved master plan and owing to financial factors, being implemented in phases.

It has been observed that as much as it is critical in property development, there are technical issues associated with the model especially on how to process Titles for completed Units.

**5) Establishment of the Corporation:**

The provisions on establishment of the Corporation under section 17 of the Bill are problematic for the following reasons:-

- (i) The ordinary reading of section 17(1) implies that on registration of a sectional plan, there shall be constituted a Corporation under the name "The owners, Sectional Plan No... being the number given to the plan upon registration". This situation does not seem to contemplate practical steps for preparation and presentation of necessary constitutive documents, pursuant to which the Corporation may be registered. Instead the Corporation is constituted on registration of a sectional plan without doing anything else such as presentation or filing of necessary documents (providing particulars of the owners, shareholding, postal and email addresses, etc).
- (ii) Under sub – section (2), the Registrar shall issue a certificate of registration of the Corporation. In view of the wording of sub – section (1), this implies the Certificate of registration shall be issued without creation of a register or a clear process designed to create a record of documents for official reference.
- (iii) Sub – section (3) states that, a Corporation shall consist of all persons-
  - (a) Who are the owners of the units in the parcel to which the sectional plan relates or,
  - (b) Who are entitled to the parcel when the sectional arrangement is terminated under this Act.

	<p><b>Manage Property and Resolve Disputes</b></p> <p><b>Section 20 &amp; 31</b></p>	<p>impliedly owned the common property as the developer retained the mother title. It also managed the property through an institutional manager who had to be an accountant, advocate or registered estate agent.</p>	<p>management of the sectional property with the corporation through property manager not or any other person they may deem fit.</p> <p>In addition, the Bill gives the corporation powers to resolve disputes by constituting a Dispute Resolution Committee to hear disputes arising between the owners and the corporation on a need basis.</p>
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## **B. NATIONAL HOUSING COOPERATION**

### **1) Registration of Sectional Units**

Section 12 (5) of the bill proposes that before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend the original sectional plan in the manner prescribed by regulations.

The proposal empowers the Registrar to carry out amendments to the sectional plan which is a preserve of the Director of Survey. It is observed that the proposal is improper based on the following aspects:

- a) The registrar does not possess technical Capacity of amending sectional plans
- b) The registrar does not possess repository of maps
- c) The proposal is in conflict with Survey Act, Cap 299, Section 22 which states that Surveys of land to be conducted under the direction of Director of Survey
- d) The registrars rely on the maps prepared by the Director of Survey

### **2) Sectional Properties Tribunal:**

The sectional properties tribunal was also removed. The responsibility to settle disputes arising from the Corporation was delegated to the Internal Dispute Resolution Committee. Parties not satisfied with the decision of the Committee can apply to court for determination.

	<b>Section 8</b>	completion of payment of the loan. This is because the mother title remains intact. Absolute ownership is therefore not guaranteed.	completion of payment of loan.
	<b>Ground rent and rates Section 53</b>	Ground rent and rates are paid corporately by the corporation. Enforcement becomes tricky and therefore bogs down compliant unit owners whenever they want to transact in their property.	Ground rent and rates in respect of each unit title shall be borne individually.
8.	<b>Review of Long-Term Leases/Sub-Leases through conversion process  Section 13</b>	SPA oversaw issuance of Irregular leases thus exposing members of the public to likely loss	The Bill provides a mechanism for regularizing long-term leases/sub-leases irregularly registered. All long-term leases/sub-leases hitherto registered shall be reviewed to conform to the process prescribed under Section 54(5) of the LRA. On review, stamp duty shall not be demanded in respect of properties early paid for.
9.	<b>The Corporation  Section 17</b>	Legal entity status of the corporation is not clear.	The Bill ensures that the corporate status of the Corporation is enhanced by issuance of a certificate of registration on registration of a sectional plan. This ensures that the corporation can open bank accounts and enter into contracts in its name without any doubt.
10.	<b>Corporation to</b>	Under SPA, the corporation	The Bill vests

	<b>respect of units Section 5</b>	security of titles held by unit owners. Unit owners are not free to deal in their property without seeking consent from the developer.	sectional plan to allow opening of new register of units for issuance of individual unit titles.
4.	<b>Reversionary interest</b>	The developer retained the mother title after sale of units and therefore reserved the right to exercise reversionary interest upon expiry of lease.	Each unit owner corporately exercises reversionary right upon expiry of lease.
5.	<b>Title to include proportionate interest in common area</b>  <b>Section 5(1) (C), 6, 7</b>	Ownership of the common area was not clearly defined whether it remains in the hands of the corporation or the developer who remained with the mother title. This lacuna encouraged developers to interfere with the common area as they wished to the detriment of unit owners.	The certificate of lease or certificate of title held by the unit owner shall include the proportionate share of the common area of the sectional property. This prevents subsequent interference with the common area.
6.	<b>Dealings on registration to be done under LRA</b>  <b>Section 5(5)</b>	Resistance by developers to register properties under SPA for lack of clear or predictable or consistent model of ownership led to use of sketch plans as a base for registration of units.	When the register to each unit in a registered sectional plan is opened, all dealings and dispositions regarding the unit shall be conducted under the Land Registration Act. This is meant to streamline land registration which can only be done under LRA as a sole land registration regime in Kenya.
7.	<b>Mortgage and discharge</b>	Unit owners purchasing their property on mortgage get partial discharge upon	The purchaser of a unit under mortgage gets fully discharged on

**2.1 Submissions from Stakeholders**

**A. MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT**

ITEM	ISSUE and Section	The problem (SPA)	The Current (BILL)
1.	<b>Building Plans/Sketch Plans As Opposed to Sectional Plans</b>	An irregular practice of registering sectional units based on sketch plans or building plans registered under Registration of Documents Act, as opposed to a sectional plan thrived because of poor uptake and acceptance by developers and practitioners of the Sectional Properties Act.	All sectional units must be registered based on a registered sectional plan. The process is ring-fenced against early abuse propagated by practice by prescribing single regime of registration under the Land Registration Act.
2.	<b>Certificates of title/certificate of leases</b>  <b>Section 5</b>	Under SPA unit owners hold subleases or long-term leases while the developer remains with the mother title or head lease which is often charged to the bank without the knowledge or consent of unit owners.  A Unit owner's proprietary rights are limited since they have to seek consent from developer in the event the unit owner wants to deal with the property. Absolute ownership is not guaranteed to the unit owner. Reversionary right is reserved with the developer.	On registration of the Sectional plan, the mother title or head lease is closed and a register of units opened for issuance of individual certificates of titles or certificates of leases to respective new unit owners. Unsold units are registered in the name of the developer. The titles confer absolute ownership to the unit owners who can deal or transact without seeking any consent from the developer as is the practice now. Rates and land rent are borne by unit owners individually. Reversionary right is corporately exercised by each unit owner.
3.	<b>Closure of head lease on opening registers in</b>	The mother title remained intact with the developer thus compromises the	The Bill ensures closure of head lease or mother title on registration of a

## CHAPTER TWO

### PUBLIC PARTICIPATION

#### **2.0 Attendance by Stakeholders**

The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the People and the Star Daily Newspapers on 17<sup>th</sup> February, 2020. On 26<sup>th</sup> February, 2020, the Committee met in, VIP Boardroom, 1<sup>st</sup> Floor, Kenya International Conference Centre (KICC), Nairobi and received views on the Bill from stakeholders and members of the public. The Committee received oral and written submissions from the —

1. Ministry of Transport, Infrastructure, Housing and Urban Development;
2. National Housing Cooperation (NHC);
3. Kenya Alliance of Resident Associations (KARA);
4. Institute of Surveyors of Kenya (ISK); and
5. Management of NextGen Mall.

- (e) concerning all matters that by this Act are required or be permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Clause 60 of the Bill seeks to repeal the Sectional Properties Act, No. 21 of 1987.

### **1.3 Consequences of the Bill**

The enactment of this Bill is expected to ensure that the registration and management of sectional properties is easier for Kenyans and therefore encourage investment in such properties.

**Clause 54 - Service of documents and notices.**

Service of a document shall be effected through physically delivery to a registered office or by registered post, personal service on a member of the board or through electronic transmission.

**Clause 55 - Change of address for service**

A Corporation may by resolution of the board change its address for service and that change does not take effect until a notice of that change of address is filed in the prescribed form at the land registry.

**Clause 56 - Fees for documents**

The Corporation may charge a reasonable fee for the expenses incurred in producing and providing a document required under the Act.

**Clause 57- Offences and penalty**

A person who fails to comply with clauses 13(1) or 43 is guilty of an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or imprisonment for one year.

The general penalty for which no specific penalty is prescribed shall be a fine not exceeding two hundred and fifty thousand shillings.

If a Corporation fails to comply with the Act, each member of the board who is knowingly a party to that failure is guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings.

Clause 59 empowers the Cabinet Secretary to make regulations on the following —

- (a) in respect of forms to be used for the purposes of this Act including the form of certificates of title to units;
- (b) respecting the manner of registering sectional plans;
- (c) prescribing the fees to be paid for any procedure or function required or permitted to be done under this Act;
- (d) respecting the practice and procedure governing application to the Court under this Act;

- (a) unanimous resolution;
- (b) substantial or total damage to the building; or
- (c) compulsory acquisition.

**Clause 48 - Effect of termination**

On the sectional status of the building being terminated, the Corporation shall file with the Registrar a notice of the termination in the prescribed form.

**Clause 49 - Sale of sectional property**

When the sectional status of a building is being terminated, the Corporation may, by a unanimous resolution, be directed to transfer the parcel or any part of it. When the board is satisfied that the unanimous resolution was properly passed, the transfer shall be executed in accordance to Land Registration Act.

**Clause 50 - Dissolution of corporation**

The corporation shall stand dissolved upon the termination of the sectional property.

**Clause 51 - Assessment and taxation**

For the purpose of assessment of rates and ground rent by a rating authority, each unit and the share in the common property appurtenant to the unit constitutes a separate parcel of land and improvements and the common property shall not constitute a separate parcel of land or improvements.

**Clause 52 - Liability of corporation**

The Corporation is not liable in relation to the parcel for any rate, ground rent, charge or tax levied by a rating authority.

**Clause 53 - Right of entry**

A county government, public authority or person authorized by either a county government or public authority shall have the right to access any part of a parcel or any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his powers.

(d) the term;

(e) the interest rate or the formula, if any, for determining the interest rate; and

(f) the prepayment privileges, if any.

On matters related to management agreement, clause 44 provides that a Corporation may contract a management agreement when its board is comprised of persons who were elected to the board while the majority of units were owned by the developer.

The agreement may thereafter be terminated after its board is comprised of persons who were elected to the board after the majority of the units were owned by persons other than the developer.

The following conditions must however be met before the termination –

(a) two years should have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date; and

(b) the Corporation must give sixty days' written notice to the other party to the agreement of its intention to terminate the agreement.

For owners of units who intend to rent the said units, clause 45 provides that they give written notice to the Corporation of their intention to rent the unit and indicate the address at which they may be served with a notice given by the Corporation under.

The owner is also required to give an undertaking to the Corporation to be liable for any damage caused by the tenant. The owner of a unit shall give the Corporation written notice of the name of the tenant residing in the unit within twenty days from the commencement of the tenancy. Within twenty days of ceasing to rent his unit, the owner shall give the Corporation written notice that his unit is no longer rented.

In instances where a tenant occupying a unit contravenes the by-laws, the Corporation shall give notice to the owner of the unit to take necessary action immediately. If the owner fails to take action within the time specified in the notice, the Corporation shall give the tenant a notice to vacate the premises. Subsequently, if a tenant refuses to vacate, the Corporation shall take necessary action against the tenant.

Part V of the Bill outlines the miscellaneous provisions as follows -

**Clause 47 - Termination of sectional property.**

The sectional status of a building may be terminated by -

- (a) loss resulting from destruction or damage caused by fire and such other perils as are specified in the by-laws; and
- (b) damages awarded against the developer, the owner of a unit or the Corporation in an action for occupier's liability.

Thereafter, upon the registration of the sectional plan, the insurable interest in the units and the common property shall pass to the Corporation, and if no insurance on the units and common property has been effected, the Corporation shall place insurance on the units and the common property.

Pursuant to clause 40 of the Bill, a Corporation (by a unanimous resolution) may grant a lease to an owner of a unit permitting that owner to exercise exclusive use in respect of an area(s) of the common property.

The Bill in Part IV outlines provisions relating to units. In clause 43, a developer is restricted from selling or agreeing to sell a unit or proposed unit unless the developer has delivered to a purchaser a copy of -

- (a) the purchase agreement;
- (b) the by-laws or proposed by-laws;
- (c) the management agreement or proposed management agreement, if any;
- (d) the recreational agreement or proposed recreational agreement, if any;
- (e) the lease or title of the parcel on which the unit is located or the certificate of title or the certificate of lease in respect of the unit;
- (f) any charge that affects or proposed charge that will affect the title to the unit or proposed unit or, in respect of that charge or proposed charge a notice prescribed under subsection (2); and
- (g) the sectional plan or proposed sectional plan.

In respect of a charge or proposed charge, a developer shall deliver to the purchaser a written notice stating —

- (a) the maximum principal amount available under the charge;
- (b) the maximum monthly payment that may be paid under the charge;
- (c) the amortization period;

- (c) a written demand made on the Corporation for an amount in excess of five thousand shillings that, if not met, may result in an action being brought against the Corporation;
- (d) the particulars of or a copy of any subsisting recreational agreement;
- (e) the particulars of or a copy of any subsisting management agreement;
- (f) a copy of the budget, if any, of the Corporation;
- (g) a copy of the financial statement, if any, of the Corporation;
- (h) a copy of the by-laws of the Corporation; or
- (i) a copy of any minutes of proceedings of a general meeting of the Corporation or of the board of management.

Clause 37 of the Bill deals with handing over of documents. An owner of land at the time a sectional plan is registered shall provide to the Corporation not later than one hundred and eighty days from the day the sectional plan is registered the original or a copy of the following documents -

- (a) all warranties and guarantees on the movable and immovable property of the Corporation and the common property for which the Corporation is responsible;
- (b) the -
  - (i) structural, electrical, mechanical and architectural working drawings and specification; and
  - (ii) built drawings which exist for the common property for which the Corporation is responsible;
- (c) the plans that exist showing the location of underground utility services and sewer pipes;
- (d) all written agreements to which the Corporation is a party; and
- (e) all certificates, approvals and permits issued by a county government, the Government or an agent of the Government which relate to any property for which the Corporation is responsible.

In clause 38, where a sectional plan has not been registered prior to the sale of any units, the developer shall insure the units and the common property against -

duties of the Corporation. Provisions related to the convening of meetings of the Corporation and the annual general meetings of the owners are highlighted in sections 27 and 28 of the Bill respectively.

Clause 29 makes provision for the by-laws of the Corporation to provide for the control, management and administration of the units, the movable and immovable property of the Corporation and the common property and for establishment of a Committee. Any by-law may be amended, repealed or replaced by a special resolution and only takes effect once the Corporation has filed a copy of it with the Registrar and the Registrar has made a memorandum of the filing on the sectional plan.

On the enforcement of by-laws, if an owner contravenes any of the by-laws, a corporation or an aggrieved owner, may refer the dispute to the Internal Dispute Resolution Committee provided for under clause 20. On hearing a dispute referred to it, the Committee is required to determine the dispute and make a finding and order which shall be in writing and signed by the members of the Committee.

In the event of non-compliance with such an order, the aggrieved party may apply to the Court to enforce the order of the Committee. On the other hand, if a party is dissatisfied with the determination of a Committee, the party may appeal to the Court.

In discharging its duties, a Corporation has powers to recover from an owner any sum of money spent by the Corporation in execution of its duties. The Corporation may also charge interest at a rate to be set out in the by-laws on any unpaid balance of a contribution owing to it by an owner.

On the written request of an owner, a purchaser or chargee of a unit, the Corporation may within twenty days of receiving that request provide the person with the following as requested –

- (a) a statement setting forth the amount of any contributions due and payable in respect of a unit;
- (b) the particulars of —
  - (i) any action commenced against the Corporation and served on the Corporation;
  - (ii) any unsatisfied judgment or order for which the Corporation is liable; and

- (a) establish and maintain a fund for administrative expenses sufficient, in the opinion of the Corporation, for the control, management, and administration of the common property, and for the payment of any insurance premiums, and the discharge of any other obligation of the Corporation;
- (b) determine from time to time the amounts to be paid for the purposes aforesaid; and
- (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.

Provided that the Corporation shall not have power to carry on any trading activities. However, pursuant to a resolution of the proprietors, the Corporation may distribute any money or personal property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlements. The Corporation may also constitute an Internal Dispute Resolution Committee on need basis to hear and determine disputes.

Clause 22 of the Act provides that any disposition and dealings affecting the common property shall be executed in accordance with Land Registration Act, 2012 and approved by a unanimous resolution of the Corporation and upon convening of a meeting of the Corporation in accordance with clause 27.

Clause 23 on registration of transfers of common property provides that every memorandum of transfer of the common property shall be accompanied by a sectional plan which shall be in substitution for and shall be deposited under the same number as the existing sectional plan, and shall show the effect of the transfer to the satisfaction of the Registrar.

Where any unit is subject to an existing registered charge, lease, or sublease, the Registrar shall not register any transfer of the common property until consent in writing is produced by every registered chargee, lessee, and sub-lessee to release their interest in the land comprised in the transfer. Further, upon the registration of the transfer each of such consent shall operate as a discharge of the charge or a surrender of the lease or sublease, as to the land comprised in the transfer, as the case may be.

The voting rights of the owner of a unit shall be determined by the unit factor for the owner's unit and an owner or chargee may exercise their right to vote personally or by proxy.

A Corporation shall have a board of management which shall be constituted as provided by the by-laws of the Corporation and which shall exercise and perform the powers and

- (a) who are the owners of units in the parcel to which the sectional plan relates; or
- (b) who are entitled to the parcel when the sectional arrangement is terminated under the Act.

Further, the Corporation shall have perpetual succession and a common seal and shall be capable of doing anything that a body corporate may do though the provisions of the Companies Act, 2015 shall not apply to the Corporation. The Corporation may sue for and in respect of damage or injury to the common property caused by any person, whether that person is the proprietor of a unit or not.

The duties of the corporation are set out in clause 20 of the Bill as follows -

- (a) carry out any duties imposed on it by the by-laws;
- (b) unless by unanimous resolution all the proprietors otherwise resolve, insure and keep insured buildings and other improvements on the parcel against fire;
- (c) effect such other insurance as it is required by law to effect or as it may consider expedient;
- (d) pay the premiums in respect of any policies of insurance effected by it;
- (e) keep the common property in a state of good repair;
- (f) comply with any notice or order duly served on it by the county government or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements;
- (g) control, manage, and administer the common property and do all things reasonably necessary for the enforcement of the by-laws;
- (h) do all things reasonably necessary for the enforcement of any lease or licence under which the land is held;
- (i) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section; and
- (j) do all other things to ensure the property is well managed including engaging the services of a property manager or any other persons they deem necessary.

The Corporation shall also be required to -

The Registrar shall register a restriction against the title of the parcel to prevent any further dealings on it if a proprietor or developer fails to comply with this section.

After the registration of a sectional plan, there is implied in respect of each unit on the sectional plan-

- (a) an easement for the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support;
- (b) an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter; and
- (c) an easement for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

Clause 15 provides for easements against the owner. After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan-

- (a) an easement for the subjacent and lateral support of the common property and of every other unit capable of enjoying support;
- (b) an easement to provide shelter to the common property and to every other unit capable of enjoying shelter; and
- (c) an easement for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing within the unit as appurtenant to the common property and also to every other unit capable of enjoying those easements.

Part III of the Bill makes Provision for the Establishment of a Corporation. Clause 17 provides that on the registration of a sectional plan, there shall be constituted a Corporation under the name "The Owners, Sectional Plan No. (the number to be specified being the number given to the plan on registration)". The Registrar shall issue a certificate of registration of the corporation. The Corporation shall consist of all those persons -

Upon registration of a sectional plan, the Registrar shall submit to the respective county government, a copy of the registered sectional plan within 21 days of registration.

Clause 10 of the Bill makes provision for boundaries of sectional units. If a boundary of a unit is described by reference to a floor, wall or ceiling or a wall located within a unit is a load bearing wall, the only portion of that floor, wall or ceiling, that forms part of the unit, is the finishing material that is in the interior of that unit, including any lath and plaster, panelling, gypsum board panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be. All doors and windows of a unit shall be part of the unit unless otherwise stipulated in the sectional plan.

In clause 11 of the Bill, each plan presented for registration as a sectional plan shall be endorsed by -

- (a) a surveyor stating that the structure shown on the plan is within the external surface boundaries of the parcel which is the subject of the plan that an appropriate easement has been granted as an appurtenance of the parcel; and
- (b) a certificate from the county government stating that the proposed division of the structure as illustrated on the plan has been approved by the county government.

A proprietor may with the approval of the county government, sub-divide or consolidate their unit by registering a sectional plan relating to the unit intended to be sub-divided or consolidated. On the registration of a sectional plan of sub-division or consolidation, units comprising the sectional plan are subject to and have the benefit of any easements affecting those units in the original sectional plan.

Before the registration of the proposed sectional plan of sub-division or consolidation, the Registrar shall amend the original sectional plan as per the regulations.

Clause 13 provides that if a building contains premises that are rented for residential or commercial purposes to a tenant who is not a party to a purchase agreement and not included in a sectional plan, the owner of the premises or a person acting on his behalf shall not sell those premises as a residential or commercial unit until the sectional plan that includes those premises is registered at a registry.

Further, all long term sub-leases that are intended to confer ownership of an apartment, flat, maisonette, town house or an office that were registered before the commencement of this Act shall be reviewed to conform to section 54 (5) of the Land Registration Act, 2012 within a period of two years of the commencement of this Act.

sewerage, drainage, gas, electricity, garbage, air and all other services of whatsoever nature (including telephone, radio and television services) over the parcel and every structure thereon as may from time to time be necessary for the reasonable use or enjoyment of the common property or unit.

Additionally, the common property and each unit on a sectional plan shall have as appurtenant thereto a right to the full, free and uninterrupted access and use of light to or for any windows, doors or other apertures existing at the date of the registration of the sectional plan and enjoyed at that date. The rights shall carry with them all ancillary rights necessary to make them effective as if they were easements.

Clause 8 makes provision for liability of the owner of a unit. The respective owner shall only be liable in respect of an interest endorsed on the sectional plan in proportion to the unit factor for his unit.

The requirements of sectional plans are provided for in clause 9 of the Bill. Every plan presented for registration as a sectional plan shall -

- (a) be described in the heading of the plan as a sectional plan;
- (b) be geo-referenced;
- (c) bear a statement containing those particulars as may be necessary to identify the title to the parcel;
- (d) include a drawing illustrating the units and distinguishing the units by numbers or other symbols;
- (e) show the approximate floor area of each unit;
- (f) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel;
- (g) be signed by the proprietor;
- (h) be signed and sealed by the office or authority responsible for survey;
- (i) have endorsed on it the address at which documents may be served on the Corporation concerned in accordance with section 54;
- (j) clearly indicate the user of the unit; and
- (k) contain any other particulars prescribed in the regulations.

## 1.2 Overview of the Bill

Clause 2 of the Bill on application of the Act provides that the Act shall apply only in respect of land held on freehold title or on a leasehold title where the unexpired residue of the term is not less than twenty-one years and there is an intention to confer ownership.

Clause 4 provides for sub-division of buildings into units. An existing structure may be designated a building containing a unit, part of a unit or units by the registration of a sectional plan prepared, by a surveyor, from a building plan that has been approved by a county government.

A surveyor shall not prepare a sectional plan without proof of ownership of the parcel or unit to which the sectional plan shall apply. The sectional plan shall be accompanied by an application for registration by the corporation and a list of the persons who are the owners of the units in the parcel. The Registrar shall also not register a sectional plan unless the sectional plan describes two or more units in it and is presented for registration in quadruplicate.

Clause 5 provides that once a sectional plan is registered, the Registrar shall –

- (a) close the register of the parcel described in it;
- (b) and open a separate register for each unit described in the plan.; and
- (c) upon payment of the prescribed fee, issue, for each unit a certificate of title if the property is freehold or a certificate of lease if the property is leasehold and shall include its proportionate share in the common property.

Only one unit and the share in the common property apportioned to the owner of that unit may be referred to in one register.

Upon registration of a sectional plan under this Act, the title to a unit shall be deemed to be issued under the Land Registration Act, 2012. After the register for a unit is opened, all dealings and dispositions regarding the unit shall be done in accordance with the Land Registration Act, 2012.

Clause 6 provides for a certificate to indicate share in common property. The certificate of title or lease shall indicate the share in common property. The common property comprised in a registered sectional plan shall be held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

Clause 7 provides for incidental rights to owners of common property. These include all such rights of support, shelter and protection, and for the passage or provision of water,

## CHAPTER ONE

### INTRODUCTION

#### **1.0 Background**

The Sectional Properties Bill (National Assembly Bills No. 23 of 2019) is sponsored by Hon. Aden Duale, Leader of Majority Party (National Assembly). The Sectional Properties Act, No. 21 of 1987 was the law guiding dealings in sectional property. However, the Act was not responsive to emerging market needs. The Sectional Properties Bill, 2019 seeks to address those gaps and will in turn simplify the process of registering sectional properties thus creating an enabling environment for investors and property owners.

The Bill was published on 29<sup>th</sup> March, 2019, and read a First Time in the Senate on 7<sup>th</sup> November, 2019. Following the First Reading in the Senate, it stood committed, pursuant to standing order 140(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the People and the Star Newspapers on 17<sup>th</sup> February, 2020.

#### **1.1 The Object of the Bill**

The principal object of the Bill is to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common, to provide for the use and management of the units and common property and address the contemporary challenges associated with ownership of property in a sectional property environment.

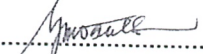
### **Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Mr. Victor Bett, Ms. Carolyn Cheruiyot and Mr. Tiyan Joseph for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further, the Committee wishes to thank members of the public and stakeholders who made both written and oral submissions such as the the Ministry of Transport, Infrastructure, Housing and Urban Development, the National Housing Cooperation (NHC), the Kenya Alliance of Resident Associations (KARA), the Institute of Surveyors of Kenya (ISK) and the management of the NextGen Mall.

**Mr. Speaker,**

It is now my pleasant duty, pursuant to standing order 143 of the Senate Standing Orders, to present the Report of the Standing Committee on Land, Environment and Natural Resources on the Sectional Properties Bill (National Assembly Bills No. 23 of 2019).

Signed:.....

Date:..... 7/05/2020.....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

## PREFACE

### Establishment of the Committee

The Standing Committee on Land, Environment and Natural Resources is established under standing order 218(3) of the Senate Standing Orders. The mandate and the functions of the committee are set out under the Second Schedule of the Senate Standing Orders which mandates the Committee to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

### Membership of the Committee

The Committee is comprised of the following members:-

- |                                       |                    |
|---------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P.    | - Chairperson      |
| 2. Sen. Prengei Victor, M.P.          | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P.     | - Member           |
| 4. Sen. (Eng.) Godana Hargura, M.P.   | - Member           |
| 5. Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member           |
| 6. Sen. Halake Abshiro, M.P.          | - Member           |
| 7. Sen. Boy Issa Juma, M.P.           | - Member           |
| 8. Sen. (Arch.) Sylvia Kasanga, M.P.  | - Member           |
| 9. Sen. Mwaruma Johnes, M.P.          | - Member           |

### **Mr. Speaker,**

The Sectional Properties Bill (National Assembly Bills No. 23 of 2019) seeks to provide a for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common, to provide for the use and management of the units and common property and address the contemporary challenges associated with ownership of property in a sectional property environment.

The Committee considered the Bill at length, conducted public participation and deliberated on the submissions received from various stakeholders. Based on the deliberations and public participation, the Committee will present some amendments with a view of strengthening the provisions of the Bill for consideration by this House.

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TABLED BY	Amari
COMMITTEE	Land
CLERK AT THE TABLE	DC (M)

REPUBLIC OF KENYA



THE SENATE

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 TWELFTH PARLIAMENT  
 FOURTH SESSION, 2020

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 SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND  
 NATURAL RESOURCES

.....  
 COMMITTEE REPORT ON THE SECTIONAL PROPERTIES BILL, 2019  
 (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)  
 .....

*Clerk's Chambers,  
 First Floor,  
 Parliament Buildings,  
 NAIROBI.*

**MAY, 2020**