



*Approved
SNA
20/6/23*

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON
HOUSING, URBAN PLANNING AND PUBLIC WORKS

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 20 JUN 2023

DAY:

Tuesday

TABLED
BY:

Hon. Johana Ng'ero (Chairperson
and public works
Housing and Urban Planning Committee)

REPORT
THE TABLE:

Inzofu Mwale

ON

CONSIDERATION OF THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) BILL, 2022

(NATIONAL ASSEMBLY BILL NO. 59 OF 2022)

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS - NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2023



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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Housing, Urban Planning and Public Works on its consideration of the National Construction Authority (Amendment) Bill, 2022 (*National Assembly Bill No. 59 of 2022*), sponsored by Hon. David Gikaria, M.P. The Bill was published on 18th November, 2022 and read a First Time on 22nd February, 2023. The Bill was thereafter committed to the Departmental Committee on Housing, Urban Planning and Public Works pursuant to Standing Order 127.

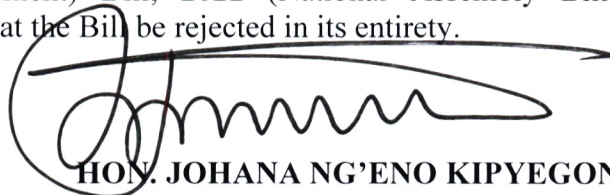
Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee placed advertisements in the print media on 8th March, 2023 requesting for comments on the Bill from members of the public and relevant stakeholders. The Committee received memorandum from the State Department for Public Works.

The Committee considered the views from the stakeholders on Tuesday 25th April, 2023. The sponsor, Hon. David Gikaria was in support of the Bill as it would empower the special interests' groups. On the other hand, both the State Department for Public Works and the National Construction Authority were opposed to the amendment proposed in the Bill as it may lead to loss of revenue. Further, it may open avenues for misuse and abuse as people who did not fall under the special interest category may find ways of benefiting from this amendment. They were of the view that the objectives of the Bill can still be achieved without an amendment to the Act. The Committee considered all the submissions and made its determination regarding the amendments to the National Construction Authority Act, 2011.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also take this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and commitment towards the production of this Report. The Committee further wishes to record its appreciation for services rendered by the Committee Secretariat. Their efforts and input made the work of the Committee and production of this report possible.

The Committee further wishes to thank Hon. David Gikaria, M.P. for sponsoring the Bill, and the State Department for Public Works together with the National Construction Authority as stakeholders who participated in the consideration of the Bill.

On behalf of the Departmental Committee on Housing, Urban Planning and Public Works and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the National Construction Authority (Amendment) Bill, 2022 (National Assembly Bill No. 59 of 2022), with the recommendation that the Bill be rejected in its entirety.



HON. JOHANA NG'ENO KIPYEGON, M.P.

Chairperson, Departmental Committee on Housing, Urban Planning and Public Works

1.0 PREFACE

1. Pursuant to Standing Order 127(1), the Bill was Read a First Time on Wednesday, 22nd February, 2023 and consequently committed to the Departmental Committee on Housing, Urban Planning and Public Works for consideration and thereafter reporting to the House.

1.1 Committee Mandate

2. The Departmental Committee on Housing, Urban Planning and Public Works is established under Standing Order 216 (1). Its mandate, pursuant to the Standing Order 216 (5), is as follows:
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - c. **study and review all legislation referred to it;**
 - d. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - f (a). *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *(deleted)*
 - i. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within its mandate.*
3. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:
 - (a) Housing;
 - (b) Public Works;
 - (c) Urban Planning;
 - (d) Metropolitan Affairs;
 - (e) Housing Development; and
 - (f) Built Environment.
4. In executing this mandate, the Committee oversees various State Departments, namely:
 - a) The State Department of Housing and Urban Development; and
 - b) The State Department of Public Works.

1.2 Committee Membership

5. The Committee on Housing, Urban Planning and Public Works as constituted by the House comprises of the following members:

Chairperson

Hon. Johana Ng'eno Kipyegon, MP
Emurua Dikirr Constituency
UDA Party

Vice-Chairperson

Hon. Mugambi Murwithania Rindikiri, MP
Buuri Constituency
UDA Party

Members:

Hon. John Waluke Koyi, MP
Sirisia Constituency
Jubilee Party

Hon. Esther Muthoni Passaris, OGW, MP
Nairobi County Women Representative
ODM Party

Hon. Innocent Obiri Momanyi, MP
Bobasi Constituency
WDM-K Party

Hon. Joshua Kivinda Kimilu, MP
Kaiti Constituency
WDM-K Party

Hon. Samuel Kinuthia Gachobe, MP
Subukia Constituency
UDA Party

Hon. Abraham Kipsang Kirwa, MP
Mosop Constituency
UDA Party

Hon. Caleb Mutiso Mule, MP
Machakos Town Constituency
MCCP Party

Hon. (Dr.) Daniel Ogwoka Manduku, MP
Nyaribari Masaba Constituency
ODM Party

Hon. Irene Njoki Mrembo, MP
Bahati Constituency
Jubilee Party

Hon. Jane Wangechi Kagiri, MP
Laikipia County Women Representative.
UDA Party

Hon. John G. Mwaniki Mukunji, MP
Manyatta Constituency
UDA Party

Hon. Maurice Kakai Bisau, MP
Kiminini Constituency
DAP-K Party

Hon. Ronald Kamwiko Karauri, MP
Kasarani Constituency
Independent

1.3 Committee Secretariat

6. The Committee secretariat comprises the following:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Dickson Mogeni Gekara
Clerk Assistant III

Mr. Sisto Gichuhi Macharia
Clerk Assistant III

Ms. Emma Essendi
Senior Legal Counsel

Mr. James Muguna
Research Officer II

Mr. Josephat Motonu
Senior Fiscal Analyst II

Ms. Esther Ngechu
Senior Serjeant-At-Arms

Mr. Nelson Odida
Research Officer III

Mr. Ambrose Nguti
Media Relations Officer II

Mr. Meldrick Kevin Sakani
Audio Recording Officer

2.0 OVERVIEW OF THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 59 OF 2022)

2.1 Analysis of the Bill

7. The Bill seeks to amend the National Construction Authority Act, No. 41 of 2011 to provide that women, youth and persons living with disabilities with start-up businesses who apply to be registered as contractors under category six, seven and eight shall be exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.
8. Clause 1: Provides for the short title.
9. Clause 2: Proposes an amendment to section 17 of the National Construction Authority Act, 2011 by inserting a new subsection (2A) immediately after subsection (2) which provides as follows:

(2A) Despite subsection (2), women, youth and persons with disabilities who apply to be registered by the Board as contractors shall be exempted from paying the prescribed registration fee where —

 - (a) the business is a startup business venture; and*
 - (b) the fee does not exceed fifteen thousand shillings.*
10. The Bill does not delegate legislative powers and neither does it limit fundamental rights and freedoms.
11. The Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution.
12. The enactment of the Bill may occasion additional expenditure of public funds to be provided for in the estimates.

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

13. Following the call for memoranda from the public through the placement of advertisements in the print media on 8th March, 2023 inviting stakeholders to submit their views on the Bill, the Committee received memorandum from the State Department for Public Works which views which were supported by the National Construction Authority.
14. On 13th June 2023, the Committee considered its report on the Bill and adopted it at the same sitting.

3.1 Submissions by the State Department for Public Works

15. In their submission to the Committee, the State Department provided a background regarding regulation of a contractor under the National Construction Authority Act, No. 41 of 2011. They broadly covered the following issues in their submission:
 - a) Requirement for registration as a contractor under section 15 of the Act;
 - b) Definition of a contractor under section 16 of the Act;
 - c) Application for Registration as a contractor under section 17 of the Act;
 - d) Contractor classification (classes of contract works); and
 - e) Contractor registration fees.
16. The State Department further explained that registration of contractors was important to ensure safety of the citizens. This is because a registered contractor has the technical capability to deliver a project in accordance with the requirements of the government.
17. The State Department was of the view that the proposed amendment, although well-intentioned, may open avenues for misuse. For instance, the waiver may be subject to abuse where firms may seek partnerships with youth, women and persons living with disabilities to qualify for the waiver. To cure this, the Authority proposed a requirement that companies under this special category must have as their principal bank signatories youth, women and people living with disabilities.
18. The State Department further submitted that section 42(1) of the Act has given the Cabinet Secretary powers to make regulations. Under Regulation 27 of the National Construction Authority Regulations 2014, the Authority may, with the approval of the Cabinet Secretary, determine the fees payable from time to time in respect of any matter required for purposes of the NCA Act, 2011. The NCA was of the opinion that the issue of prescribing fees with respect to any matter required for the purposes of the NCA Act, 2011 should be set out via Regulations and not legislation.
19. The State Department provided a comparative analysis of how other Authorities managed the issue of fees. For instance, the National Transport and Safety Authority (NTSA), the Insurance Regulatory Authority (IRA) and the Board of Registration of Architects and Quantity Surveyors (BORAQS) all have Regulations which cover the issue of prescribing fees in respect to any matter required under their respective Acts.
20. The State Department stated that it is through these provisions that the NCA Board with the approval of the Cabinet Secretary has waived the accreditation fees from time to time for site supervisors and construction workers. They submitted that the same approach may be taken

for women, youth and persons with disabilities who apply to be registered by the Board as contractors. The State Department explained that the intended objectives may still be obtained without an amendment to the Act through such waivers.

21. The State Department for Public Works indicated that one of the objectives of the Authority's registration system is to generate revenue. The funds collected from such payments are usually used for development purposes such as the promotion of training on various aspects of the construction business, dissemination of information and networking, promotion of partnership and joint ventures between local, foreign contractors, and research on the construction business.
22. The National Construction Authority (NCA) submitted that section 34 (2) (b) provides that the charges levied on contractors on services given by the Authority are one of the sources of funds for the National Construction Authority Fund.
23. Further, the State Department for Public Works noted that the youth should be encouraged to make use of the Hustler Fund as a source of money for registration fee purposes.
24. The NCA informed the committee that if the proposed amendments were to be adopted, the Authority will be forced to seek provisions for more funds from the exchequer to supplement their budget. It was their submission that due to the existing financial constraints, there was no assurance that the National Treasury will be able to adequately fill in the gap. They gave the example of the Construction Levy which was abolished in 2017, with a promise that any gap will be supplemented by the exchequer. However, the Authority was still struggling financially to date.
25. In conclusion, the State Department for Public Works recommended reconsideration of the proposed amendments to the National Construction Authority (Amendment) Bill 2022.

3.2 Submissions by Hon. David Gikaria, M.P., (Sponsor of the Bill)

26. The Honourable Member informed the Committee that the proposed amendment to the NCA Act, 2011 was brought about by the need in constituencies to provide opportunities to the special interest groups, that is, youth, women and people living with disabilities registering start-up companies under categories 8, 7 and 6. He noted that despite registering companies, they were still unable to access contracts due to the registration fees demanded by the National Construction Authority. The Bill therefore seeks to exempt this group from paying registration fee.
27. The Hon. Member noted that section 157 (10) of the Public Procurement and Asset Disposal Act, 2015 provides that every procuring entity shall ensure that at least 30% of its procurement value in every financial year is allocated to the youth, women and persons with disabilities. For this reason, it was important that the exemption is provided for the three categories under the NCA Act, 2011 so that they can fully access the benefits provided for under Public Procurement and Asset Disposal Act, 2015.
28. The Hon. Member clarified to the Committee that the proposed amendment to the NCA Act, 2011 will not affect revenue generation of NCA significantly since the exemption is on

registration of start-up companies only and that they will continue paying annual subscription fee as required.

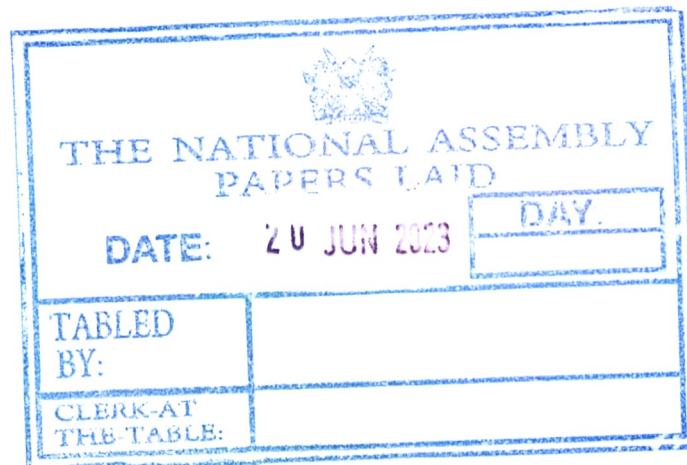
29. The Committee was further informed by the Hon. Member that without the amendment, the vulnerable groups will continue being misused by the already established contractors to register new companies on their behalf so as to benefit from the provisions of section 157(10) of the Public Procurement and Asset Disposal Act 2015.
30. In support of the Bill, the Hon. Member noted that the amendment to the NCA Act, 2011 will help ease unemployment rates amongst the youth as it will help jumpstart their start-up businesses.

4.0 COMMITTEE'S OBSERVATIONS

31. The Committee observed as follows:

- i. That the exemption sought through the Bill is within the existing powers of the Cabinet Secretary and the NCA Board, as per section 42(1) of the Act and Regulation 27 of the National Construction Authority Regulations, 2014.
- ii. That section 42 of the National Construction Authority Act, 2011 provides for power to make Regulations:
 - 42. (1) The Minister may in consultation with the Board, make regulations generally for the better carrying out of the purposes of this Act.*
 - (2) Without prejudice to the generality of the foregoing, regulation made under this section may provide for—*
 - (a) the manner of payment of the levy imposed under section 29;*
 - (b) the manner of service of any notice required under Act;*
 - (c) the fees and charges to be paid in respect of any matter required for purposes of this Act;*
 - (d) the manner and forms of accreditation and certification of contractors, skilled construction workers and construction site supervisors;*
 - (e) the responsibilities and control of the officers and servants of the Authority;*
 - (f) the performance of the functions, the exercise of the powers and discharge of the duties of the Authority under this Act, and*
 - (g) any other matter to give effect to the provisions of this Act.*
 - (3) Regulations made under this section shall be tabled in Parliament for approval before taking effect.*
- iii. That Regulation 27 of the National Construction Authority Regulations 2014 outlines how such fees may be prescribed:
 - 27. (1) There shall be payable to the Authority such fees for its services as the Authority may, with the approval of the Cabinet Secretary, determine from time to time.*
 - (2) The fees determined under sub-Regulation (1) above shall be published in the Kenya Gazette.*
- iv. That the Bill is well-intentioned but the benefits can be achieved without amending the National Construction Authority Act, 2011 by the Authority in consultation with the Cabinet Secretary approving waivers from time to time.
- v. That the provisions of the Bill if enacted will supersede those of the Regulations as provisions in the Act take precedence over the provisions in Regulations.
- vi. That the Bill can be subject to abuse and that there should be punitive measures or penalties to discourage abuse of the registration fee waiver.

- vii. That the registration fee charges levied to the contractors in the higher categories should be adjusted upwards to cover for the waiver granted to the special groups. This is to ensure that NCA does not lose a lot of revenue from the waiver.
- viii. That the Bill is in line with the current government's strategy of empowering the financially weak persons.
- ix. That the proposed waiver of registration fees should be done on a case-by-case basis administratively as not all women, youth and persons with disability are unable to raise the registration fees.
- x. That section 157 (10) of the Public Procurement and Asset Disposal Act, 2015 already provides that 30% of contracts shall be reserved for these special groups and therefore there already exists legislation to uplift them.
- xi. That the contracts involve huge sums of money. For example, a contractor under category 8 who pays a registration fee of Kshs. 5, 000 is expected to undertake contracts worth Kshs. 10, 000, 000 (building), Kshs. 5, 000, 000 (specialist) and Kshs. 20, 000, 000 (roads and civil). Such a company ought to have the capacity to pay the registration fees.
- xii. That the registration fee is a major source of revenue for the National Construction Authority which already had its income reduced by the abolition of the construction levy. The Bill if adopted would further constrain an already struggling institution.





5.0 COMMITTEE'S RECOMMENDATION

The Committee having considered the National Construction Authority (Amendment) Bill, 2022 (National Assembly Bill No. 59 of 2022), the stakeholders' comments on the Bill and the above observations recommends that the House **rejects the Bill in its entirety**. The Committee shall propose amendments to the Bill during the Committee of the Whole House as contained in the Schedule.



Signed

HON. JOHANA NG'ENO KIPYEGON, M.P.

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON
HOUSING, URBAN PLANNING AND PUBLIC WORKS

Date 20/6/2023

SCHEDULE OF AMENDMENTS

CLAUSE 1

That the Bill be amended by deleting Clause 1.

CLAUSE 2

That the Bill be amended by deleting Clause 2.

MINUTES OF THE TWENTY EIGHTH (28TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON HOUSING, URBAN PLANNING AND PUBLIC WORKS HELD ON TUESDAY, 13TH JUNE 2023 AT 12:25 P.M. IN THE COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Johana Ng'eno Kipyegon, M.P. - Chairperson
2. Hon. Mugambi Murwithania Rindikiri, M.P. - Vice Chairperson
3. Hon. John Waluke Koyi, M.P.
4. Hon. Esther Muthoni Passaris, OGW, M.P.
5. Hon. Joshua Kivinda Kimilu, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Daniel Ogwoka Manduku, M.P.
8. Hon. Irene Njoki Mrembo, M.P.
9. Hon. Jane Wangechi Kagiri, M.P.
10. Hon. John G. Mwaniki Mukunji, M.P.

MEMBERS ABSENT WITH APOLOGY

11. Hon. Innocent Obiri Momanyi, M.P.
12. Hon. Abraham Kipsang Kirwa, M.P.
13. Hon. Maurice Kakai Bisau, M.P.
14. Hon. Ronald Kamwiko Karauri, M.P.
15. Hon. Samuel Kinuthia Gachobe, M.P.

SECRETARIAT

- | | |
|-------------------------------|---------------------------|
| 1. Mr. Ahmed Salim Abdalla | - Clerk Assistant I |
| 2. Mr. Sisto Gichuhi Macharia | - Clerk Assistant III |
| 3. Mr. Dickson Mogeni Gekara | - Clerk Assistant III |
| 4. Ms. Emma Esendi | - Senior Legal Counsel |
| 5. Mr. James Muguna | - Research Officer II |
| 6. Mr. Mr. Nelson Odida | - Research Officer III |
| 7. Ms. Florence Wanja | - Protocol Officer |
| 8. Mr. Ambrose Munywoki Nguti | - Media Relations Officer |

AGENDA

1. Prayers;
2. Preliminaries;
3. Confirmation of minutes
4. Report writing on the National Construction Authority (Amendment) Bill, 2022;
 - Committee Observations and Recommendations
 - Adoption of the Committee Report (Proposer & Seconder)
5. Any Other Business; and
6. Adjournment.

MIN No. HUPPW 123/2023: PRELIMINARIES

The meeting was called to order by the Chairperson at 12.25 p.m. followed by introduction from Members and then the Secretariat. He then opened the floor for members to debate and make their final observations and recommendations on the proposed amendments to the National Construction Authority (Amendment) bill, 2022.

MIN No. HUPPW 124/2023:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

1. Minutes of the 26th sitting which was held on 18th May 2023 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Caleb Mule, M.P. and seconded by Hon. John Waluke, M.P.
2. Minutes of the 27th sitting which was held on 7th June 2023 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Esther Passaris, M.P. and seconded by Hon. Caleb Mule, M.P.

MIN No. HUPPW 125/2023:

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS ON THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 59 OF 2022)

After considering the National Construction Authority (Amendment) Bill, 2022, the Committee observed that:

- i. That the exemption sought through the Bill is within the existing powers of the Cabinet Secretary and the NCA Board, as per section 42(1) of the Act and Regulation 27 of the National Construction Authority Regulations, 2014.
- ii. That the Bill is well-intentioned but the benefits can be achieved without amending the National Construction Authority Act, 2011 by the Authority in consultation with the Cabinet Secretary approving waivers from time to time.
- iii. That the provisions of the Bill if enacted will supersede those of the Regulations as provisions in the Act take precedence over the provisions in Regulations.
- iv. That the Bill can be subject to abuse and that there should be punitive measures or penalties to discourage abuse of the registration fee waiver.
- v. That the registration fee charges levied to the contractors in the higher categories should be adjusted upwards to cover for the waiver granted to the special groups. This is to ensure that NCA does not lose a lot of revenue from the waiver.
- vi. That the Bill is in line with the current government's strategy of empowering the financially weak persons.
- vii. That the proposed waiver of registration fees should be done on a case-by-case basis administratively as not all women, youth and persons with disability are unable to raise the registration fees.
- viii. That section 157 (10) of the Public Procurement and Asset Disposal Act, 2015 already provides that 30% of contracts shall be reserved for these special groups and therefore there already exists legislation to uplift them.
- ix. That the contracts involves huge sums of money. For example, a contractor under category 8 who pays a registration fee of Kshs. 5, 000 is expected to undertake contracts worth Kshs. 10, 000, 000 (building), Kshs. 5, 000, 000 (specialist) and Kshs. 20, 000, 000 (roads and civil). Such a company ought to have the capacity to pay the registration fees.
- x. That the registration fee is a major source of revenue for the National Construction Authority which already had its income reduced by the abolition of the construction levy. The Bill if adopted would further constrain an already struggling institution.

MIN NO. HUPPW 126/2023:

**ADOPTION OF COMMITTEE REPORT ON ITS
CONSIDERATION OF THE NATIONAL
CONSTRUCTION AUTHORITY (AMENDMENT)
BILL, 2022**

The committee adopted the report on its consideration of the National Construction Authority (Amendment) Bill, 2022 (National Assembly Bill No. 59 of 2022), with the recommendation that the committee rejects the Bill in its entirety. Adoption of the report was proposed by Hon. Daniel Ogwoka Manduku, M.P. and seconded by Hon. John G. Mwaniki Mukunji, M.P.

MIN No. HUPPW 127/2023:

ANY OTHER BUSINESS

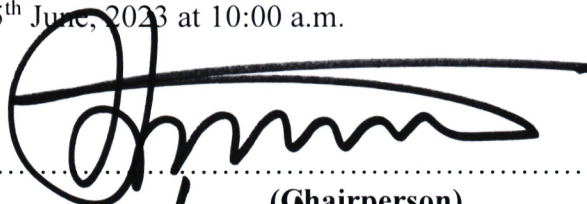
1. The Vice-Chairperson urged Members to be actively involved in committee's activities for it to be vibrant.
2. Members proposed that the committee undertakes field visits to oversight stalled, ongoing and completed projects under its purview.
3. The Hon. Members proposed that the committee plans for international visits to benchmark on successful and unsuccessful affordable housing projects in countries such as Malaysia, Egypt, India, Singapore, Bahamas, Brazil and Morocco among others in the next financial year 2023/2024.

MIN No. HUPPW 128/2023:

ADJOURNMENT

There being no other business to transact, the sitting adjourned at 2:04p.m. Next meeting to be held on Thursday 15th June, 2023 at 10:00 a.m.

Signed.....



(Chairperson)

Date.....

20/6/2023

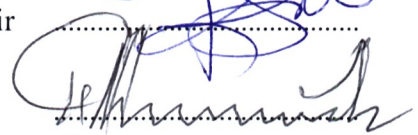
**ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE
NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL, 2022
(BILL NO. 59 OF 2022)**

We, the Members of the Departmental Committee on Housing, Urban Planning and Public Works have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the National Construction Authority (Amendment) Bill, 2022 (Bill No. 59 of 2022) and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Johana Ng'eno Kipyegon, M.P. – Chairperson



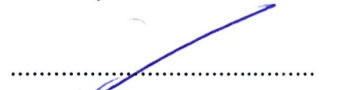
2. Hon. Mugambi Murwithania Rindikiri, M.P. – Vice Chair



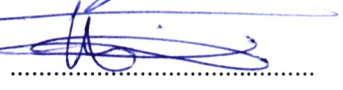
3. Hon. John Waluke Koyi, M.P.



4. Hon. Esther Muthoni Passaris, OGW, M.P.



5. Hon. Innocent Obiri Momanyi, M.P.



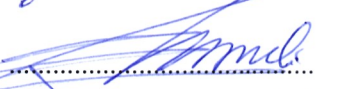
6. Hon. Joshua Kivinda Kimilu, M.P.



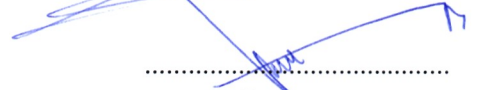
7. Hon. Samuel Kinuthia Gachobe, M.P.



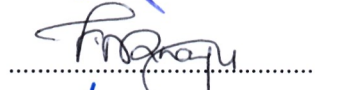
8. Hon. Abraham Kipsang Kirwa, M.P.



9. Hon. Caleb Mutiso Mule, M.P.



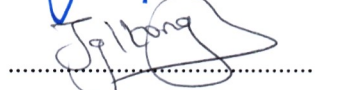
10. Hon. Daniel Ogwoka Manduku, M.P.



11. Hon. Irene Njoki Mrembo, M.P.



12. Hon. Jane Wangechi Kagiri, M.P.



13. Hon. John G. Mwaniki Mukunji, M.P.



14. Hon. Maurice Kakai Bisau, M.P.



15. Hon. Ronald Kamwiko Karauri, M.P.





REPUBLIC OF KENYA

**THIRTEENTH PARLIAMENT (SECOND SESSION)
THE NATIONAL ASSEMBLY**

In the matter of consideration by the National Assembly of the National Construction Authority (Amendment) Bill, 2022 (National Assembly Bill No. 59 of 2022)

PUBLIC PARTICIPATION / SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3) requires Parliament to facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees.

The National Construction Authority (Amendment) Bill, 2022 (National Assembly Bill No. 59 of 2022) sponsored by Hon. David Gikaria, MP, seeks to amend the National Construction Authority Act, No. 41 of 2011 to provide that women, youth and persons living with disabilities who own start-up businesses and who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

Pursuant to Standing Order 127(1), the Bill was Read a First Time on Wednesday, 22nd February 2023 and consequently committed to the Departmental Committee on Housing, Urban Planning and Public Works for consideration and thereafter report to the House.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee therefore invites interested members of the public to submit memoranda on the said Bill. Copies of the Bill are available at the National Assembly Table Office, Main Buildings or on the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi, or emailed to cnas@parliament.go.ke to be received on or before Tuesday, 21st March 2023 by 5.00 pm.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

8th March 2023

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



Kenya
Red Cross

TENDER NOTICE

The Kenya Red Cross Society (KRCS) invites applications from eligible Service Providers for the tender below:

ITEM NO.	TENDER NO.	DESCRIPTION	CATEGORY
1	GFPREQ02027	CONSULTANCY FOR CONDUCTING TARGETED STUDY USING HUMAN RIGHTS AND GENDER (HRG) NATIONAL SCORE CARDS FOR HIV, TB AND MALARIA.	Open National Tender

Detailed tender document can be downloaded FREE OF CHARGE from the websites <https://www.redcross.or.ke/Tenders> or <https://reliefweb.int>

Bids should reach tenders@redcross.or.ke on or before **29th March 2023** at **11.00 a.m.** Bids received after the above-specified date and time shall not be considered.

Bidders should provide **soft copies** of technical and financial proposal in two separate folders clearly Marked "**Technical Proposal**" and "**Financial Proposal**" both of which should then be sent to tenders@redcross.or.ke with the subject reading "**Tender No GFPREQ02027: Call for Consultancy to Conduct targeted study using the National human rights and gender (HRG) score cards for HIV, TB and Malaria**".

Tenders will be opened immediately thereafter in the presence of the bidders who choose to attend the **online tender opening**, a meeting link will be shared to all eligible bidders who register through tenders@redcross.or.ke

PROCUREMENT MANAGER



REPUBLIC OF KENYA

**COUNTY GOVERNMENT OF SIAYA
DEPARTMENT OF TRADE, ENTERPRISE AND INDUSTRIALIZATION
WEIGHTS AND MEASURES ACT (CAP 513)**

NOTICE TO TRADERS

An Inspector of Weights and Measures will visit stamping stations at the places stated here under for the purpose of assizing and stamping traders' Weight, Measure, Weighing and Measuring Instruments on the dates shown. All the traders within a radius of twenty (20) kilometers of the places mentioned are required under the provision of Weights and Measures Act Cap 513 section 27, Laws of Kenya to produce and stamping. Only instruments which Weighing and Measuring Instruments which are in their possession for assize and stamping. Only instruments which by reason of their being permanently fixed or of their delicate construction cannot be moved and Weight or such instruments may comply with this notice by notifying the Inspector of Weights and Measures (County Government of Siaya) in writing as to the type, capacity and location of the instrument at least three days before the date on which the equipment is to be produced as is notified here-under.

Email address,
siayaweights@gmail.com OR phelix512@gmail.com
Inspector of Weights and Measures,
County Government of Siaya,
P.O Box 803-40600,
Siaya (K).

SUB COUNTY - GEM		
DATE	STATION	TIME
28/3/2023	NYAGONDO, ONDISORE, WAGAI	8 AM - 5 PM
29/3/2023	AKALA, RIAT	8 AM - 5 PM
30/3/2023	NYAGWESO, SIREMBE, GOGO	8 AM - 5 PM
31/3/2023	MADEYA, LANA	8 AM - 5 PM
11/4/2023	MUHANDA, NYAWARA, NYANDIWA	8 AM - 5 PM
12/4/2023	BAR KALARE, SAGAM, RABUOR	8 AM - 5 PM
13/4/2023	YALA TOWN	8 AM - 5 PM
14/4/2023	ANYIKO	2 PM - 5 PM
25/4/2023	KODIAGA, MUTUMBU	8 AM - 5 PM
28/4/2023	KAMBARE, ALUOR, GOMBE, RAMULA	8 AM - 5 PM

SUB COUNTY - UGENYA		
DATE	STATION	TIME
27/4/2023	LIGEKA, GOT NANGA	8 AM - 5 PM
28/4/2023	BAR OBER, JERA	8 AM - 5 PM
9/5/2023	KANYUMBA, LWANDA K'ONYANGO	8 AM - 5 PM
10/05/2023	SEGA	8 AM - 5 PM
11/05/2023	NZOIA, SIRANGA, YENGA	8 AM - 5 PM
12/5/2023	LUHANO, NYAHOLO, RATADO	8 AM - 5 PM
23/5/2023	UKWALA, BAR AWENDO	8 AM - 5 PM
24/5/2023	ABOKE, NYABWEKE	8 AM - 5 PM
25/5/2023	LIGINGO, KOLALLI, OBET	8 AM - 5 PM

SUB COUNTY - UGUNJA		
DATE	STATION	TIME
26/5/2023	RANG'ALA, SIIMERO, SIIMENYA	8 AM - 5 PM
6/6/2023	MAGOYA, MBOSIE, YUAYA	8 AM - 5 PM
7/6/2023	UGUNJA	8 AM - 5 PM
8/6/2023	UGUNJA	8 AM - 5 PM
9/5/2023	SIDINDI, SIKALAME, MUDHIRO	8 AM - 5 PM
20/6/2023	SIGOMERE, UMINA	8 AM - 5 PM

SUB COUNTY - ALEGO USONGA		
DATE	STATION	TIME
21/6/2023	NG'YA	8 AM - 5 PM
22/6/2023	SIAYA	8 AM - 5 PM
23/6/2023	SIAYA	8 AM - 5 PM
8/8/2023	KOBARE, NDERE, MBAGA	8 AM - 5 PM
9/8/2023	UMALA, DONDI KOKI, UHURU SEGERE	8 AM - 5 PM
10/8/2023	WUOROYA, BORO, SEGERE	8 AM - 5 PM
11/8/2023	AWELO, OBAMBO, KADENGE, BAR OLENGO	8 AM - 5 PM
22/8/2023	NYANGOMA, BARDING, UHURU	8 AM - 5 PM
23/8/2023	MALANGA, RANDAGO, TING' WANG'I	8 AM - 5 PM
24/8/2023	HAWINGA, SIDUNDO	8 AM - 5 PM
25/8/2023	NYADORERA, HARAMBEE, RWAMBWA	8 AM - 5 PM
5/9/2023	RABAR, NYAWITA	8 AM - 5 PM
6/9/2023	URANGA, OPAR URADI	8 AM - 5 PM
7/9/2023	MWER, KODIERE	8 AM - 5 PM

SUB COUNTY - RARIEDA		
DATE	STATION	TIME
8/9/2023	NDORI	8 AM - 5 PM
19/9/2023	WANG'AROT, MAHAYA, KAPUOYO	8 AM - 5 PM
20/9/2023	ARAM, KALANDIN	8 AM - 5 PM
21/9/2023	OYUDE, NDARA OKAGO, LWAK	8 AM - 5 PM
22/9/2023	NYILIMA, ASEMBO BAY	8 AM - 5 PM
3/10/2023	KAMARIGA, MANYWANDA, OBENGE	8 AM - 5 PM
4/10/2023	MADIANY, RAGENGI, CHIANDA	8 AM - 5 PM
5/10/2023	NDIGWA, LUANDA KOTIENO, MADUNDU	8 AM - 5 PM
6/10/2023	OSINDO, NYAKONGO, MISORI	8 AM - 5 PM

SUB COUNTY - BONDO		
DATE	STATION	TIME
16/10/2023	MARANDA, KAMBAJO, NYAMONYE	8 AM - 5 PM
17/10/2023	UYAWI, SIRONGO, LIUNDA, NDEDA, OYAMO, NANGO	8 AM - 5 PM
18/10/2023	BONDO TOWN	8 AM - 5 PM
19/10/2023	BONDO TOWN, AJIGO	8 AM - 5 PM
31/10/2023	USENGE, ANYANGA	8 AM - 5 PM
1/11/2023	USIGU, UHANYA, NYENYE	8 AM - 5 PM
2/11/2023	GOT AGULU, OSIEKO, HONGE	8 AM - 5 PM
3/11/2023	ANYUONGI, AMOYO, WICHILUM	8 AM - 5 PM
14/11/2023	BARKANYANGO, USIGU, OELE	8 AM - 5 PM
15/11/2023	MAGETA ISLAND	8 AM - 5 PM

HON. GRACE AGOLA
CECM - DEPARTMENT OF TRADE, ENTERPRISE AND INDUSTRIALIZATION.

Bridging the gap EBK chief executive says women are often excluded from the digital world due to various factors

NMG editors feted at Women's Day gala

Women leaders in the fields of engineering and innovation and technology were also awarded

BY WANJA MBUTHIA

Nation Media Group's Executive Editor Pamela Sittoni and Gender and Partnerships Editor Dorcas Muga-Odumbe were among Kenyan women feted at a gala dinner on Monday to celebrate this year's International Women's Day.

The celebrations held at Radisson Blu in Upper Hill, Nairobi, were organised by a local business reporters association with support from the Engineers Board of Kenya (EBK) and Centum Plc. The aim was to recognise women in media and communications, engineering and innovation and technology who are doing exceptionally well.

Also celebrated at the event were women engineers working for the Kenya Highways Authority



Some of the awards recipients (above) at the event held at Radisson Blu in Upper Hill Nairobi. NMG Executive Editor Pamela Sittoni (top right) and Gender and Partnerships Editor Dorcas Muga-Odumbe were also awarded. PHOTO: IPOOL

ty and Kenya Rural Roads Authority.

Ms Sittoni and Ms Odumbe scooped the winner and 1st runners-up awards, respectively, in the Women In Media and Communications category. The 2nd runners up in this category was Najma Ismail a Multimedia journalist.

Under the Women In Engineering category, Ms Carol Koeh was the winner, while Ms Christine Ndwigwa and Ms Lilian Nandutu

took the 1st and 2nd runners-up awards, respectively.

Ms Nancy Mungai, the CEO and founder of Uppercut Digital Media won the Women In Innovation and Technology category award while Ms Diana Waithanji and Ms Nancy Muriithi came in second and third, respectively.

The awardees were celebrated for their work in highlighting the impact of the digital gender gap in their respective sectors and the widening economic and social



and digital education. The theme is DigitALL: Innovator Technology for Gender Equality. EBK Registrar and CEO Margaret Ogai urged Kenyan women and girls not to relent in their pursuit of equal opportunities in the digital and innovation spaces, well as science, technology, engineering and mathematics (STEM) courses in schools.

"We would like to see as many Kenyan girls leading the digital revolution and winning. The board is keen on ensuring global engineering standards are entrenched here in Kenya so that our girls and women can excel in technology and innovation side by side with their male colleagues on a level playing field, where the only thing that counts is personal excellence and not gender," said Ms Ogai.

She further noted that despite the increasing dependence on technology across the world, the digital gender gap remains a significant problem. She said girls and women are often excluded from the digital world due to factors such as lack of access to technology, cultural restrictions and gender-based violence.

inequality. They were also recognised for amplifying the importance of protecting the rights of women and girls in digital spaces and addressing online and ICT-facilitated gender-based violence.

This year, the International Women's Day recognises and celebrates the women and girls championing the advancement of transformative technology



REPUBLIC OF KENYA

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S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

8th March 2023

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



Kenya Red Cross

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Procurement Manager



REPUBLIC OF KENYA

**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING & URBAN
DEVELOPMENT**

STATE DEPARTMENT FOR PUBLIC WORKS

**MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) BILL 2022**

24TH APRIL, 2023

**MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) BILL 2022**

SUPPLEMENTARY INFORMATION

In furtherance to the memorandum that was submitted by the State Department for Public Works in March 2023, the following information is also intended to inform the committee on the data that has been collected over the years in relation to contractors under the Access to Government Procurement Opportunities (AGPO). This information provides the numbers of registered contractors registered either as Women, Youth or Persons living with Disabilities on the NCA Register of Contractors. These are registrations across the different categories from NCA 8 to 6 and also covering the various classes of works as provided for under the third schedule of the NCA Act. These include Building Works, Civil Engineering Works, Electrical Engineering Services and Mechanical Engineering Services.

No.	FY	Total No. of Contractors	Total AIA Kshs
1.	2022-2023	853	15,662,600.00
2.	2021-2022	4213	119,379,500.00
3.	2020-2021	5092	113,347,500.00
4.	2019-2020	5408	112,933,500.00
5.	2018-2019	3621	80,958,650.00
6.	2017-2018	2612	66,955,650.00
7.	2016-2017	2063	56,258,000.00

Construction services are technical in nature. The process of evaluation of a contractor for registration is also tedious requiring key skills in the field of construction to ensure that only competent persons are registered as contractors.

Over and above the registration process, there is also the quality assurance process which requires appropriately qualified personnel of the Authority to physically visit construction sites to assure the consumers of construction services that the contractors are doing the right thing and that the quality of the works is to the expected standards. These contractors not only undertake public sector projects but also offer services to the private sector.

Furthermore, there is capacity building that is also undertaken for the industry both for the contractors and the skilled construction workers who provide services to the industry.

All these activities require appropriate resources in order to ensure that the NCA is able to meet its mandate but also grow and expand the construction industry in Kenya.

Removing the licence fee for the AGPO group will greatly hamper the ability of the Authority to deliver on its mandate and thus compromise on the quality of contractors being registered.


.....
Joel Arumonyang
PRINCIPAL SECRETARY



REPUBLIC OF KENYA

**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING & URBAN
DEVELOPMENT**

STATE DEPARTMENT FOR PUBLIC WORKS

**MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) BILL 2022**

MARCH, 2023

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**MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) BILL 2022**

1.0 BACKGROUND

The National Construction Authority (NCA) is established by the National Construction Authority Act No. 41 of 2011 (hereinafter referred to as the 'Act') (*copy enclosed*), which came into effect on the 8th of June 2011. In the exercise of the Cabinet Secretary's powers conferred under Section 42 of the Act, the National Construction Authority Regulations were adopted by the National Assembly and took effect on 6th June 2014 by Notice in the Kenya Gazette.

The object for which the Authority is established is to oversee the construction industry and coordinate its development. In addition, Section 5(2) (a) of the Act states that the Authority shall promote and stimulate the development, improvement and expansion of the construction industry.

The National Construction Authority (Amendment) Bill 2022 has been reviewed, and our written submissions are outlined below.

**2.0 THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL
2022**

2.1 Introduction

The National Construction Authority (Amendment) Bill 2022 (herein referred to as 'Bill') is an Act of Parliament that seeks to amend the National Construction Act No. 41 of 2011.

The principal object of the Bill is to amend the National Construction Authority Act, No.41 of 2011, to ensure women, youth and persons living with disabilities with startup businesses who apply to be registered as contractors under categories six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

2.2 Amendments

The Bill seeks to make the following amendments to the National Construction Authority Act, No. 41 of 2011-

Section 2 of the National Construction Authority (Amendment) Bill 2022

The National Construction Authority Act, 2011 is amended in section 17 by inserting the following new subsection immediately after subsection (2) —

(2A) Despite subsection (2), women, youth and persons with disabilities who apply to be registered by the Board as contractors shall be exempted from paying the prescribed registration fee where —

(a) the business is a startup business venture; and

(b) the fee does not exceed fifteen thousand shillings.

3.0 REGULATION OF A CONTRACTOR UNDER THE NATIONAL CONSTRUCTION AUTHORITY ACT NO. 41 OF 2011

Pursuant to the mandate of the National Construction Authority to oversee the construction industry and coordinate its development, the functions of the Authority are categorized into three, namely:

- a) Regulatory;
- b) Capacity Building and Training; and
- c) Advisory.

Given the regulatory function, the Authority is empowered to register and regulate the performance of contractors and accredit skilled construction workers and site supervisors. Further, the Authority carries out its regulatory functions in the construction industry concerning the registration of projects and undertaking quality assurance activities to ensure conformity to standards.

According to Section 5(2) (d) and (k) of the Act, the Authority shall prescribe the qualifications or other attributes required for registration as a contractor under the Act and accredit and register contractors and regulate their professional undertakings, respectively. It is important to note that a developer must engage a registered contractor in all construction activities.

Section 5 (2) (d) and (k) of the NCA Act states:

5(2) Without prejudice to the generality of subsection (1), the Authority shall—

(d) prescribe the qualifications or other attributes required for registration as a contractor under this Act

(k) Accredit and register contractors and regulate their professional undertakings.

3.1 Registration of a Contractor – Section 15 of the NCA Act

A person shall only carry on the business of a contractor if registered by the Board of the Authority in accordance with the Act.

Further, a person seeking registration shall, in the case of a firm, be eligible for registration if at least one of the partners or directors of the firm possesses such technical qualifications, skills or experience as the Board may from time to time prescribe.

Any person who carries on the business of a contractor without being registered commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a fine not exceeding one hundred thousand shillings for every day or part thereof during which the offence continues.

3.2 Definition of a Contractor – Section 16 of the Act

A person carries on business as a contractor where such person, for reward or other valuable consideration, undertakes the construction, installation or erection for any other person of any structure situated below, on or above the ground, or other work connected therewith, or the execution for any other person, of any alteration or otherwise to any structure or other work connected therewith and undertakes to supply –

- a) The materials necessary for the work or is authorized to exercise control over the type, quality or use of the materials supplied by any other person;
- b) The labour necessary for the work or is authorized on behalf of the person for whom the work is undertaken to employ or select workmen for employment whether under a contract of service or otherwise.

3.3 Application for Registration as a Contractor – Section 17

Under Section 17 of the Act, a person or firm may apply to the Board for registration as a contractor and, in their application, must demonstrate to the Board that the person/firm (at least one director);

- a) The holder of the minimum technical qualifications and skills prescribed by the Board for the class of contract works in respect for which registration is sought;
- b) Has the necessary experience prescribed by the Board in works involving construction, erection, installation, alteration or any other activity;
- c) Has professional and general conduct which, in the opinion of the Board, makes the person suitable to be registered under the Act;

- d) Has the necessary plant and equipment for the category of works for which registration is sought.

Upon registration, the person shall be issued a certificate of registration indicating the registration number, the class of works for which they registered, the date of registration and duration of registration.

3.4 Contractor Classification (Classes of Contract Works)

As provided under the Third Schedule of the Act, contractors may apply to undertake construction works in the following classes;

A – Building Works

B - Civil Engineering Works

C - Electrical Engineering Services (Electrical Installation & Electronic)

D - Mechanical Engineering Services

The NCA Regulations 2014 permit a local contractor to register in one or more categories according to the class of construction works to be undertaken.

3.5 Contractor Registration Fees

In line with the NCA Act, NCA Regulations and the National Construction Authority's Citizen Service Delivery Charter, local contractors are required to pay a fee of Ksh. 5,000 – Ksh.100, 000 depending on the contractor category.

Annual license renewal costs are valued between Ksh. 2, 500 and Ksh. 30, 000.

4.0 ANALYSIS OF THE PROPOSED AMENDMENTS IN THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL 2022

4.1 Importance of NCA Contractor's Registration Certificate

According to the Black's Law Dictionary Second (2nd) Edition, "Registration" is defined as recording; inserting in an official register; the act of making a list, catalogue, schedule, or register, particularly of an official character, or of making entries therein.

Regarding the construction industry in Kenya, the term "Registration" refers to the official recognition that a person/firm is required to have to practice and operate in Kenya.

Every construction firm must meet a specific criterion to be registered. Further, the applicant must submit documentary evidence to support the information which it provides.

Registered contractors are placed in categories indicating the size of the projects (in monetary terms) they can undertake and tender. Further, the classification also denotes the capacity and capability of the firms. The registration is usually valid for a three (3) year period, subject to payment of an annual fee.

In view of the above, contractor registration is essential to ensure the safety of its citizens:

1. **A registered contractor has the technical capability to deliver a project:** Without a formal process to license and evaluate the skills of a contractor, many persons may be hiring a person/firm that is not skilled in the techniques and systems needed to complete a job correctly. By hiring a registered contractor and having a registration system in place, citizens can have increased confidence that construction work will be done by a person who has demonstrated competency.
2. **The requirements of the government will be met:** It is an offence to engage in contracting business without a certificate first being obtained. The purpose of the contractor's registration is to ensure, for the public's safety, that only qualified and reliable contractors are allowed to undertake construction in the country. Registration also aims to promote and benefit the public and private sectors through the orderly growth of the construction sector and upgrading construction capability.

The NCA contractor's registration certificate operates as a business license, ensuring that a person/firm undertaking construction projects have the necessary professional and technical capability to deliver a project with the requisite quality and durability.

4.2 Prescription of Fees under NCA Regulations 2014

As the State Department for Public Works, we recognize that regulation is a means to a critical end and is, therefore, essential for the proper functioning of the construction industry. So often, Regulations are written to implement the specifics of particular legislation.

According to Section 42 of the National Construction Authority Act No. 41 of 2011 –

Power to make Regulations.

42. (1) The Minister may, in consultation with the Board, make regulations generally for the better carrying out of the purposes of this Act.

2) Without prejudice to the generality of the preceding, regulation made under this section may provide for—

(a) the manner of payment of the levy imposed under section 29;

(b) the manner of service of any notice required under Act;

(c) the fees and charges to be paid in respect of any matter required for purposes of this Act;

(d) the manner and forms of accreditation and certification of contractors, skilled construction workers and construction site supervisors;

(e) the responsibilities and control of the officers and servants of the Authority;

(f) the performance of the functions, the exercise of the powers and discharge of the duties of the Authority under this Act, and

(g) any other matter to give effect to the provisions of this Act.

(3) Regulations made under this section shall be tabled in Parliament for approval before taking effect.

Under Regulation 27 of the National Construction Authority Regulations 2014:

27. (1) There shall be payable to the Authority such fees for its services as the Authority may, with the approval of the Cabinet Secretary, determine from time to time.

(2) The fees determined under sub Regulation (1) above shall be published in the Kenya Gazette.

According to the National Construction Authority (Amendment) Bill, 2022, women, youth and persons with disabilities who apply to be registered by the Board as contractors shall be exempted from paying the prescribed registration fee where the fee does not exceed fifteen thousand shillings.

In view of the foregoing, the issue of prescribing fees with respect to any matter required for the purposes of the NCA Act shall be set out via Regulations and not Legislation. Fees are a regulation issue; hence, the NCA Act need not be amended in view of Section 42 of the National Construction Authority Act No. 41 of 2011.

4.3 Waiver of Accreditation Fees for Site Supervisors and Construction Workers

In view of the Authority's regulatory function, the Authority is mandated under Section 5 (2) (l) of the NCA Act to accredit and certify skilled construction workers and construction site supervisors.

Construction workers and site supervisors are required to accredit with NCA, which confirms their level of education, expertise and experience. The function of accreditation has been provided at a fee of Kshs. 1,000 for skilled workers and Kshs. 2,000 for site supervisors, renewable after three years.

To boost the function of the accreditation of workers, the Board has, from time to time, waived the accreditation fees of workers for a certain period. The waiver means that the Ksh. 1,000 for construction workers and Ksh. 2,000 for construction site supervisors, payable every three years, is no longer applicable until a specific time.

Hence, the Board may waive the requirements of the NCA Regulations in exceptional cases at its discretion to boost the functions of the Authority or to avoid substantial injustice or great hardship in the construction industry.

4.4 Importance of payment of Contractors' Registration Fees

Given the proposed amendments in the National Construction Authority (Amendment) Bill 2022, it will be crucial to recognize and appreciate the impetus of registration of Contractors and payment of registration fees.

The objective of the Authority is to ensure that the construction industry is served by competent contractors who observe business ethics and care for the quality of work, environment and safety of workers and the public at large.

One of the objectives of the Authority's registration system is to **generate revenue**.

Construction firms are required to pay a fee to the Authority in order to be registered. The funds collected from such payments are usually used for developmental purposes such as the promotion of training on aspects of the construction business, dissemination of information and networking, promotion of partnership and joint ventures between local and foreign contractors and research on the construction business.

According to Section 34 of the NCA Act, a Fund shall be established to be known as the **National Construction Fund**, which shall vest in the Authority.

Under Section 34 (2), there shall be paid to the Fund –

- a) the initial budgetary provision by the Government as start-up capital for the establishment of the Authority;***
- b) the charges levied on contractors on services given by the Authority;***
- c) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;***
- d) all proceeds from the levy imposed under section 31; and***
- e) all moneys from any other source provided for or donated or lent to the Authority.***

In view of the preceding, the Authority has implemented various positive measures from the charges levied on contractors on services given by the Authority:

1. Capacity building programmes

One of the main objectives of the National Construction Fund is to equip contractors with the necessary technical and management skills to make them more competitive in the local and foreign markets. The training organized by the Authority focuses on contractors' needs, encompasses all contractors and considers lessons learnt from previous training programs. It seeks to enhance their capacity and capability.

The Authority is building and improving the capacity of Local Contractors through:

- a) Continuous Professional Development (CPD) seminars-
 - i. Regional Contractors seminars;
 - ii. Sector-based Seminars for Road, Building, Water, Electrical & Mechanical Contractors;
 - iii. Induction Seminars for newly registered contractors; and
 - iv. Online CPD Webinars & Masterclasses.
- b) Collaborative Training programmes-
 - i. Partnerships & MoU Agreements; and
 - ii. Accredited CPD Providers.
- c) Facilitating access to affordable funding and financing options.

- d) Facilitating access to affordable construction plants and equipment.

2. Business Development, Technology transfer and acquisition

The Authority is responsible for promoting technology transfer, acquisition and adaptation of new and modern technologies by Contractors. The Authority has also developed business initiatives that introduce local contractors to international construction markets.

The Authority obligates the partnership and joint ventures between local and foreign contractors. The enforcement of the requirements for registration as a Foreign contractor as per the NCA Act, which includes 30% sub-contracting or Joint Ventures to local contractors and skills transfer.

3. Research into matters relating to the Construction Industry

The Authority also promotes research culture in the construction industry, focusing on critical factors including funding, markets, materials, equipment and workforce. The Authority has conducted various research studies wherein reports have been published. Some of the studies include;

- a) Study on building failures in Kenya.
- b) Study on the involvement of MSMEs in the construction industry in Kenya.
- c) Study on the adoption of alternative building technologies for the affordable housing programme in Kenya.
- d) Study on construction and demolition of waste management in Kenya.
- e) Study on the Domestic Construction industry Capacity for Kenya.

Therefore, continuous research into the issues and challenges affecting the construction industry is fundamental as it will result in concise recommendations and solutions that will be followed up in implementation by the Authority.

5.0 COMPARATIVE ANALYSIS

A comparative study is vital to ascertain the similarities and differences between NCA and other regulatory bodies in handling the issue. The institutions studied include:

- a) National Transport and Safety Authority (NTSA);
- b) Insurance Regulatory Authority (IRA)
- c) Board of Registration of Architects and Quantity Surveyors (BORAQS)

5.1 National Transport and Safety Authority (NTSA)

NTSA is a state corporation established by the National Transport and Safety Authority Act No. 33 of 2012. Amongst other functions, NTSA implements road transport and safety policies and ensures safe, reliable, and efficient road transport service.

In the performance of the NTSA's functions, as prescribed under Section 4 (1) of the NTSA Act, the NTSA shall register and license motor vehicles. In addition, Section 11 of the NTSA Act states that the Board, in the performance of its functions, shall have the power **to determine, impose and levy rates, charges, dues or fees for any services performed by the Authority or for the grant, renewal or validation of a licence, permit or certificate, subject to the approval of the Cabinet Secretary.**

According to Section 43 of the NTSA Act –

Fees in respect of licences.

43. An applicant for a licence under this Act shall pay such fees at such times and in such manner as the Cabinet Secretary may prescribe shall be charged by the Authority in respect of the grant or variation of a licence.

Section 54 of the NTSA Act, Regulations, states –

The Cabinet Secretary may, in consultation with the Board, make regulations for the better carrying into effect of the provisions of this Act.

The National Transport and Safety Authority Act makes no particular case for interest groups (youth, women and persons with disabilities) regarding payment of fees in respect of licenses. Further, the issue of prescribing fees with respect to any matter required for purposes under the NTSA Act is set out vide Regulations.

5.2 Insurance Regulatory Authority (IRA)

IRA is a statutory government agency established under the Insurance Act CAP 487 of the Laws of Kenya, and it is charged with regulating, supervising and developing the insurance industry in Kenya.

Section 3A (c) of the Insurance Act states that one of the objects and functions of the IRA shall be to **license all persons involved in or connected with an insurance business, including insurance and reinsurance companies, insurance and reinsurance intermediaries, loss adjusters and assessors, risk surveyors and valuers.**

According to Section 180 of the Insurance Act-

Section 180

The Cabinet Secretary may make regulations providing for all matters that are required or permitted to be prescribed by this Act or that are necessary, desirable or convenient to be prescribed for giving effect to this Act.

The requirements regarding the prescribed registration fee of an insurer have been detailed and provided for under the Insurance Regulations as follows:

1. The registration requirements of an Insurer and Reinsurer are detailed in Sections 30 and 31 of the Insurance Act. Amongst other requirements, an applicant must pay a registration fee of Kshs. 150,000 for insurance companies and Kshs. 250,000 for reinsurers.
2. The registration requirements for Insurance Brokers, Reinsurance Brokers and Medical Insurance Providers (MIPs) are detailed in Sections 150, 150 A and 151 (d) of the Insurance Act. Amongst other requirements, an applicant must pay a registration fee of Ksh. 10,000.
3. The registration requirements of Other Insurance Service Providers (risk manager, loss assessor, loss adjuster, insurance surveyor, claims settling agent, insurance agent, corporate insurance agent) are detailed in Sections 150 and 151 (1) (d) of the Insurance Act. Amongst other requirements, an applicant must pay a registration fee of Ksh. 3,000 – Ksh. 1000.

The Regulations make no special provision for interest groups (youth, women and persons with disabilities) concerning payment of fees in respect of licenses. Further, the issue of prescribing fees with respect to any matter required for the purposes of the Insurance Act is set out via Regulations.

5.3 Board of Registration of Architects and Quantity Surveyors (BORAQS)

The BORAQS is established under Section 4 of the Architects and Quantity Surveyors Act Cap 525. The Board's mandate is to regulate the professions of architecture and quantity surveying through training, registration and enhancement of ethical practice.

According to Section 5 (g) of the Architects and Quantity Surveyors Act –

5. Power of the Board to make by-laws

The Board may from time to time, subject to the confirmation of the Minister, make by-laws for all or any of the following purposes—

(g) for the fees to be paid for registration under this Act.

Registration as an Architect and Quantity Surveyor

According to Sections 7 (d) and 8 (d) of the Architects and Quantity Surveyors Act, no person shall be registered as an architect and quantity surveyor unless the applicant has paid the prescribed registration fee.

The Architects and Quantity Surveyors Act make no special provision for interest groups (youth, women and person with disabilities) regarding payment of fees in respect of licenses. Further, the issue of prescribing fees with respect to any matter required for the purposes of the Architects and Quantity Surveyors Act is set out via Regulations.

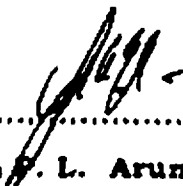
6.0 WAY FORWARD

In line with the National Construction Authority Act No. 41 of 2011 and National Construction Authority Regulations 2014, the Cabinet Secretary may, in consultation with the Board, make Regulations regarding the fees and charges to be paid regarding any matter required for purposes of the NCA Act.

Hence, with the approval of the Cabinet Secretary, the NCA Board has, from time to time, waived the accreditation fees for site supervisors and construction workers. The same approach may be taken for women, youth and persons with disabilities who will apply to be registered by the Board as contractors.

However, it is essential to note that the waiver may be subject to abuse where firms may seek partnerships with youth, women and persons living with disabilities to qualify for the waiver. To cure this, we propose requiring companies under the special category to have their principal bank signatories be youth, women and people living with disabilities.

Therefore, the State Department for Public Works recommends reconsidering the proposed amendments in the National Construction Authority (Amendment) Bill 2022 before full adoption.

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Joel P. L. Arumonyang
PRINCIPAL SECRETARY

SPECIAL ISSUE

Kenya Gazette Supplement No. 189 (National Assembly Bills No. 59)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

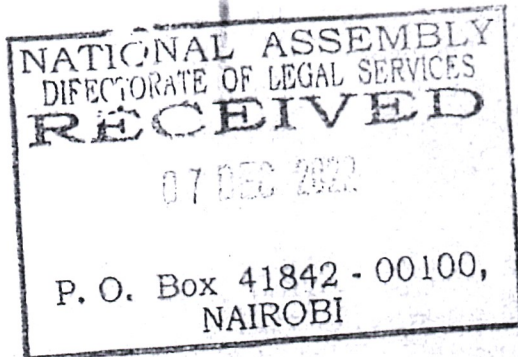
NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 18th November, 2022

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**THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) BILL, 2022**

A Bill for

**AN ACT of Parliament to amend the National
Construction Act and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Construction Authority (Amendment) Act, 2022.

Short title.

2. The National Construction Authority Act is amended in Section 17 by inserting the following new subsection immediately after subsection (2) —

Amendment of
section 17 of
No.41 of 2011.

(2A) Despite subsection (2), women, youth and persons with disabilities who apply to be registered by the Board as contractors shall be exempted from paying the prescribed registration fee where —

- (a) the business is a startup business venture; and
- (b) the fee does not exceed fifteen thousand shillings.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the National Construction Authority Act, *No.41 of 2011* to provide that women, youth and persons living with disabilities who own startup businesses and who apply for registration as contractors under category six, seven and eight shall be exempt from payment the prescribed fee. The amendment seeks to provide for the recognition of women, youth and persons living with disabilities as marginalized groups and cushion them from the burden of paying registration fees.

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

The Bill does not contain provisions limiting fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

This Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill, within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds which may be provided for in the estimates.

Dated the 17th November, 2022.

DAVID GIKARIA,
Member of Parliament.

Section 17 of No.41 of 2011 which it is proposed to amend—

17. Application for registration

(1) A person or firm may apply to the Board for registration as a contractor for purposes of this Act.

(2) An application for registration shall be in the prescribed form and shall be accompanied by the prescribed fee, and shall demonstrate to the satisfaction of the Board that the person, or, in the case of a firm, at least one director or partner thereof—

- (a) is the holder of the minimum technical qualifications and skills prescribed by the Board for the class of contract works in respect of which registration is sought;
- (b) has the necessary experience prescribed by the Board in works involving construction, erection, installation, alteration or any other activity connected therewith;
- (c) has professional and general conduct which in the opinion of the Board, makes the person suitable to be registered under this Act; and
- (d) has the necessary plant and equipment for the category of works for which the registration is sought.

(3) The Board may refuse to register a person as a contractor if in its opinion, the person—

- (a) does not meet the conditions stated in subsection (2);
- (b) is a member of a consulting firm providing architectural, quantity surveying or engineering services, unless the person declares interest during the application for registration and does not carry out functions of consultancy and construction in the same project unless expressly specified;
- (c) is a person whose registration as a contractor shall result in conflict of interest with his employer.

(4) The Board shall, where it refuses to register a person under subsection (3), communicate its decision in

writing to the person within fourteen days of the date of its decision and shall state the reasons for such refusal.

(5) Upon registration, the person shall be issued with a certificate of registration indicating the registration number, the class of works for which registered, the date of registration and duration of registration.

(6) The certificate issued under subsection (3) shall remain the property of the Authority and shall be withdrawn and returned to the Authority upon suspension or cancellation of the registration of the holder.