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NATIONAL ASSEMBLY

THE HANSARD

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Thursday, 25th April 2024

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Hon. Members, we do not have quorum. Serjeant-at-Arms, ring the Quorum Bell.

(The Quorum Bell was rung)

Order, Hon. Members. We now have quorum to conduct business. Clerks-at-the-Table.

PAPERS

Hon. Speaker: Chairperson, Departmental Committee on Communication, Information and Innovation.

Hon. Alfah Miruka (Bomachoge Chache, UDA): Thank you very much, Hon. Speaker.

I beg to lay the following Papers on the Table:

Reports of the Departmental Committee on Communication, Information and Innovation on its consideration of:

- (a) The Kenya Information and Communication (Amendment) Bill, (National Assembly Bill No. 52 of 2022); and,
- (b) The Budget Implementation Monitoring for the Financial Year 2022/2023 for the following votes:
 - (i) Vote 1122 - The State Department for ICT and Digital Economy; and,
 - (ii) Vote 1123 - The State Department for Broadcasting and Telecommunications.

Thank you.

Hon. Speaker: Thank you. Next Order.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Alfah.

ADOPTION OF REPORT ON BUDGET IMPLEMENTATION MONITORING FOR THE FINANCIAL YEAR 2022/2023

Hon. Alfah Miruka (Bomachoge Chache, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Communication, Information and Innovation on the Budget Implementation Monitoring for the Financial Year 2022/2023 for the following Votes laid on the Table of the House on Thursday, 25th April 2024:

- (a) Vote 1122 - The State Department for ICT and Digital Economy; and
- (b) Vote 1123 -The State Department for Broadcasting and Telecommunications.

Hon. Speaker: Member for Nyali, Hon. Mohamed Ali.

UUNDAJI WA SERA YA KUSHUGULIKIA MATUKIO YA UBAGUZI
DHIDI YA WANAFUNZI WA DINI MBALIMBALI

Hon. Mohamed Ali (Nyali, UDA): Mhe. Spika, naomba kuwasilisha Hoja ifuatayo:

KWAMBA, tukifahamu kuwa, Ibara ya 27(5) ya Katiba inaeleza kwamba hakutakuwepo na ubaguzi wa moja kwa moja au kwa njia isiyokuwa ya moja kwa moja dhidi ya mtu yeyote kwa msingi wowote, ikiwemo misingi ya dini; tukitambua kwamba baadhi ya taasisi za elimu za kidini kote nchini zinatekeleza wajibu muhimu katika utoaji wa elimu kwa wanafunzi wa imani mbalimbali za kidini; tukiwa na shauku kuwa kumekuwepo na ripoti za wanafunzi wa dini tofauti katika taasisi fulani za kielimu kukabiliwa na desturi za ubaguzi, ikiwemo kushurutishwa kuhudhuria ibada zisizolingana na dini zao; tukiwa na shauku zaidi kwamba pia kumekuwepo na matukio ya wanafunzi Waislamu kukatazwa kuvaa kulingana na mahitaji ya imani zao za kidini ambako kunawaathiri wanafunzi hao kwa njia hasi, ikiwemo kukwazika katika kaidi zao za kiimani, kuathirika kwa utendaji masomoni na mfidhaiko wa kisaikolojia; tukitambua kuwa ni muhimu kuunda mazingira jumuishi ya elimu na yenye heshima ambapo wanafunzi wote wanaweza kufanikiwa bila hofu ya chuki; pia tukitambua kwamba shule haziruhusiwi kuunda au kutekeleza kanuni zinazokiuka uhuru wa kuabudu, kama ilivyobainishwa katika Katiba; tukitambua ukweli kwamba hakuna sera ya kitaifa au mfumo wa kushughulikia na kuzua ubaguzi dhidi ya wanafunzi katika taasisi za kielimu za kidini; hivyo basi sasa, Bunge hili linaamua kwamba Serikali ya Kitaifa, kupitia kwa Wizara ya Elimu, iunde sera ambayo itaharamisha kwa njia bayana ubaguzi kwa msingi wa dini na kuhakikisha heshima kwa uanuwai wa dini kwa shule zote nchini na kutoa mfumo wa kufanya ukaguzi wa mara kwa mara na kuripoti matukio ili kushughulikia hali za ubaguzi na kuhakikisha ulinzi wa haki za wanafunzi.

Shukran, Mhe. Spika.

Hon. Speaker: Thank you, Hon. Mohammed. Next Order.

QUESTIONS AND STATEMENTS

Hon. Speaker: The first Statement will be by Hon. (Cpt.) Ruweida Obo, *Mbunge wa Lamu Mashariki*.

REQUEST FOR STATEMENT

ONGOING POWER OUTAGES IN KIUNGA VILLAGE

Hon. Ruweida Mohammed (Lamu East, JP): *Ahsante*.

Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a statement from the Chairperson of the Departmental Committee on Energy regarding the ongoing power outages in Kiunga Village in Lamu East Constituency.

Hon. Speaker, the Kenya Power and Lighting Company is mandated to provide electricity connectivity to all parts of the country. Unfortunately, since 10th April 2024, Kiunga Village in Lamu East Constituency has been experiencing prolonged power outages which have negatively impacted the constituents and caused expiry of medication requiring refrigeration in area hospitals.

Hon. Speaker, the power outage, which is allegedly due to a faulty generator and fallen electricity poles, has caused panic amongst the area residents, also noting that Kiunga Village is a security operation zone, and the lack of electricity is likely to cause a rise in incidences of insecurity.

Hon. Speaker, it is against this background that I request for a statement from the Chairperson of the Departmental Committee on Energy on the following:

1. What is the status of repairing faulty power generators in the country and specifically in Kiunga Village?
2. Could the Chairperson provide a report on the measures that have been put in place by the Kenya Power and Lighting to restore electricity in Kiunga Village and ensure stable power supply?

I, thank you, Hon. Speaker.

Bw. Spika, ingekuwa ni Nairobi haina stima kwa muda wa siku kumi na nne, Mawaziri wa kila Wizara wangukuwa hapa wakipeleka wahusika mbio. Lakini kwa sababu ni Kiunga, msimamizi mkuu wala wa kikanda hawajaenda huko hata.

Hon. Speaker: Order.

(Hon. Ruweida Mohammed spoke off the record)

Hon. Speaker: Order, Hon. Ruweida. You are out of order. One, when you start in English, you end in English. Two, you have no authority to debate your own request for statement. Next is the Member for Nyaribari Chache.

BAN ON CONSUMPTION OF SHISHA IN KENYA

Hon. Zaheer Jhanda (Nyaribari Chache, UDA): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Health regarding the ban on the consumption of shisha and vape in the country.

Hon. Speaker, in 2017, Kenya implemented a comprehensive ban on shisha including; the use, importation, manufacture, sale, offer of sale, promotion, distribution and encouraging or facilitating its use.

Despite this ban, shisha and vape smoking has slowly but steadily managed to entrench itself as a habit among the youth in this country. The vice has become so widespread that it is being sold illegally in major entertainment joints across the country. Sadly, it has found its way deep into the rural towns where young people are puffing their way to the grave.

Hon. Speaker, it is against this background that I seek for a statement from the Chairperson of the Departmental Committee on Health on the following issues:

1. What regulatory frameworks have allowed shisha and vape smoking in the country?

2. What steps is the Ministry of Health taking in collaboration with the Ministry of Interior and National Administration to ensure that shisha and vape are not readily available, especially among the young people?
3. What measures has the Government put in place to ensure that anybody who sells shisha and vape amongst other narcotic drugs, especially to people below eighteen (18) years, is prosecuted and brought to book?

Hon. Speaker, as a nation, we must not allow our country to be a smoking and drinking nation, but a healthy and working one. We must make hard and unpopular decisions to save the future of the young generation of this nation, by making laws that are criminalising the consumption, sale and distribution of shisha and vape amongst other illegal narcotic drugs.

Punitive measures have to be put in place for anyone found importing, selling, consuming or distributing shisha and vape.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Hon. Ruweida, I did not commit the Chair of the Committee on when to bring your Statement. Who is the Chairperson of the Departmental Committee on Energy? Is Hon. Vincent Musyoka in the House? Leader of the Majority Party, advise him to bring a response in two weeks. The same with the Chairperson of the Departmental Committee on Health.

(Hon. (Dr) Robert Pukose spoke of the record)

Hon. (Dr) Pukose you are here. Bring the statement in two weeks. Next is Hon. Marianne Kitany, Member for Aldai Constituency.

DISBURSEMENT OF WEF

Hon. Marianne Kitany (Aldai, UDA): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Social Protection regarding the disbursement of the Women Enterprise Fund (WEF).

Hon. Speaker, the Women Enterprise Fund was established in 2007 primarily to provide accessible and affordable credit and business support services to women entrepreneurs to start or expand their businesses for enterprise development. The fund plays a crucial role in strengthening women-led Micro, Small and Medium Enterprises (MSMEs), a sector that significantly drives the economy of the country.

In early 2023, the Government re-launched the Women Enterprise Fund aiming to enhance accessibility of the fund through increased resources and digitisation. However, the borrowing limit of the fund was revised drastically from Ksh750,000 to Ksh50,000 per group. This reduction severely impacts women groups, the primary users of the fund, as the Ksh50,000 may not adequately meet their financial needs for enterprise development. The reduction seeks to stifle the very mandate that the Fund was established to accomplish, which is to support and strengthen women entrepreneurs.

Hon. Speaker, it is against this background that I request for a statement from the Chairperson of the Departmental Committee on Social Protection on the following:

1. What is the rationale behind reducing the borrowing limit, especially considering the Fund's expanded resources and the fact that it specifically targets women groups?
2. What measures are being put in place to ensure that the Women Enterprise Fund remains an effective tool for supporting women entrepreneurs?

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. The Chairperson of the Departmental Committee on Social Protection, Hon. Alice, when can you be ready to respond?

Hon. Alice Ng'ang'a (Thika Town, UDA): Hon. Speaker, now that we are going on recess next week, can I respond after we come back from recess?

Hon. Speaker: Two weeks.

Hon. Alice Ng'ang'a (Thika Town, UDA): In two weeks. Thank you.

Hon. Speaker: Hon. Joyce Kamene, Member for Machakos County.

DEPLORABLE CONDITION OF MLOLONGO-QUARRY-
KATANI ROAD IN MACHAKOS COUNTY

Hon. Joyce Kamene (Machakos County, WDM): Hon. Speaker, pursuant to Standing Order 44(2)(c), I rise to request for a statement from the Chairperson, Departmental Committee on Transport and Infrastructure regarding the deplorable condition of Mlolongo-Quarry-Katani Road in Machakos County.

Hon. Speaker, road infrastructure is a critical enabler for national development. It is therefore imperative that construction of road infrastructure adheres to principles of durability in order to guarantee longevity and sustained functionality of roads. Regrettably, the Mlolongo-Quarry-Katani Road stands as a stark example of a deficiency in the principle of durability of road infrastructure. Despite its relatively recent construction spanning barely five years, the road has alarmingly deteriorated. In fact, some sections of the road began failing during and immediately after its construction, thereby casting doubt on the quality of works.

Mlolongo-Quarry-Katani Road is a crucial road that not only links Mombasa Road to Utawala, but also services the quarries in Katani where construction materials, including those being used by the Government to construct affordable housing projects, are transported. The road is currently riddled with large potholes, eroded lanes and frequent flooding, especially during the ongoing rainy season, rendering it impassable. Further, the overflow of storm water from the Mlolongo-Quarry-Katani Road due to a failed drainage system has caused flooding in homes and business premises alongside the road. The deplorable state of the said road and other nearby roads such as Joska-Sunshine-Muthwani Road, Syokimau-Katani Link Road and Mwananchi-Syokimau-Katani Road has caused frustration to motorists and residents, some of whom are marooned in their homes.

Hon. Speaker, it is against this background that I seek a statement from the Chairperson of the Departmental Committee on Transport and Infrastructure on the following:

1. Could the Chairperson provide a report on the approved designs for Mlolongo-Quarry-Katani Road, including the road profiles, drainage and lightings, and whether the design adhered to the principle of durability and sustainability for roads serving heavy trucks?
2. Clarify whether the construction of the named road conformed to the approved design; outline the contents of the inspection report for the road and confirm whether a completion certificate was issued and if so, explain why the road failed within five years of construction.
3. What plans has the Ministry, through the Kenya Urban Roads Authority, put in place to urgently reconstruct the dilapidated Mlolongo to Katani Road, tarmac the Mwananchi-Syokimau-Katani Road and Joska-Sunshine-Muthwani Road and repair the Syokimau-Katani Link Road?
4. State the timelines for reconstruction and maintenance of the named roads so as to restore them to a motorable state.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Kamene. The Chairperson of the Departmental Committee on Transport and Infrastructure.

Hon. George Kariuki (Ndia, UDA): Hon. Speaker, we require two or three weeks to respond.

Hon. Speaker: You have two weeks. Leader of the Majority Party, give your Thursday Statement

STATEMENT

BUSINESS FOR THE WEEK OF 29TH APRIL TO 3RD MAY 2024

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Speaker. This is the usual Thursday Statement by the Leader of the Majority Party.

Pursuant to the provisions of Standing Order 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee, which met on Tuesday, 23rd April 2024, to prioritise the business for consideration during the week.

Hon. Speaker, with regard to the business scheduled for Tuesday next week, the House is expected to undertake the Committee of the whole House on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024. The House will also continue with the Second Reading of the following Bills, should they not be concluded today:

1. The Statute Law (Miscellaneous Amendments) Bill, 2023; and,
2. The Land Laws (Amendment) (No.2) Bill, 2023.

Additionally, debate will also be undertaken on the following Motions, should they not be concluded today:

1. Report on consideration of the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024; of which there is a request for re-organisation of the Order Paper so that it comes early and we dispose of it because of its urgency.
2. Reports of the Auditor-General on the National Government Constituencies Development Fund for nine constituencies in Bungoma County;
3. Reports of the Auditor-General on the financial statements of specified state corporations;
4. Report on consideration of a Public Petition on funds spent contrary to the provisions of Article 223 of the Constitution;
5. Report on enhancing reporting of parliamentary business on online platforms;
6. Report on an inspection visit to the semi-autonomous institutions of the East African Community in Uganda;
7. Report on the implementation status of reports on Petitions and Resolutions passed by the House;
8. Report on alleged unfair trade practices by foreign investors in Kenya; and,
9. Report on an inquiry into the maize flour subsidy programme for the Financial Year 2022/2023.

Hon. Speaker, as Members will note, next week on Wednesday shall be a public holiday. In this regard, I wish to inform the House that the Cabinet Secretaries that were scheduled to appear before the House that day to answer Questions from Members have been rescheduled to a later date.

As I conclude, allow me to reiterate my appreciation to Members and Committees for the active participation which has seen the conclusion of several key items in the last few weeks. I also wish to remind Hon. Members that the House is scheduled to proceed on a month-long recess next week. As such, the Members should note that the House may be required to

sit longer or have additional sittings on some days to conclude any urgent matters before proceeding on the long recess.

Hon. Speaker, we have several matters that are of national importance that we must conclude. Therefore, when we request Members that we sit for longer hours or we add extra Sittings, we expect and ask Members to help us do that.

Hon. Speaker, the House Business Committee shall reconvene on Tuesday, 30th April 2024 to schedule business for the rest of that week. I now wish to lay this Statement on the Table of the House. Thank you for giving me the opportunity.

Hon. Speaker: Thank you, Hon. Owen. Next Order.

Hon. David Gikaria (Nakuru Town East, UDA): On a point of order.

Hon. Speaker: Yes, Hon. Gikaria. What is out of order?

Hon. David Gikaria (Nakuru Town East, UDA): Thank you, Hon. Speaker. I beg for your indulgence. The Departmental Committee on Environment, Forestry and Mining has a response to a request for statement that was sought by Hon. Lekuton of Laisamis. I have listened carefully to the Hon. Leader of Majority Party and I would request the House Business Committee to schedule us to give that Report on Climate Change. That is because we have had that response for the last almost a month. Thank you, Hon. Speaker.

Hon. Speaker: Is Hon. Lekuton in the House? Yes, Hon. Owen.

Hon. Owen Baya (Kilifi North, UDA): Hon. Lekuton is not in today.

Hon. Speaker: Okay. Hon. Gikaria, can we bring it up on Tuesday?

Hon. David Gikaria (Nakuru Town East, UDA): Most obliged Hon. Speaker.

Hon. Speaker: Thank you. Next Order.

BILLS

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL
(National Assembly Bill No. 10 of 2024)

(Moved by Hon. Kimani Ichung'wah on 23.4.2024)

(Debate concluded on 24.4.2024 – Afternoon Sitting)

Hon. Speaker: Yes, Hon. Chepkong'a.

Hon. Samuel Chepkong'a (Ainabkoi, UDA): Thank you, Hon. Speaker. I rise pursuant to Standing Order 42(2), and I would like to request you to re-organise the Order Paper so that Order No.12 comes before Order No.11 because of the urgency and importance of those regulations which need to be passed...

Hon. Speaker: The Hon. Leader of Majority Party has already made such a request to the Chair. Hon. Members on their feet, take your seats since I want to put the Question.

(Several Members stood along the aisle)

(Hon. Silvanus Osoro stood on the gangway)

Chief Whip, Majority Whip take your seat.

(Question put and agreed to)

*(The Bill was read a Second Time and committed
to Committee of the whole House)*

BILL

First Reading

THE PUBLIC RELATIONS AND COMMUNICATION MANAGEMENT BILL
(National Assembly Bill No. 17 of 2024)

*(The Bill was read a First Time and referred
to the relevant Committee)*

MOTION

CONSIDERATION OF SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL
(National Assembly Bill No. 33 of 2023)

Hon. Speaker: Hon. Leader of the Majority Party. Order No. 10. Are you ready?

Hon. Owen Baya (Kilifi North, UDA): Can I move?

Hon. Speaker: Yes.

Hon. Owen Baya (Kilifi North, UDA): Thank you Hon. Speaker. I beg to move:

THAT, the Senate amendments to the Water (Amendment) Bill, (National Assembly Bill No. 33 of 2023), be now considered.

Hon. Speaker, as Members may recall, the National Assembly considered the Water Amendment Bill 2023, (National Assembly Bill No. 33 of 2023), and passed it with amendments on 23rd August, 2023 and forwarded the same to the Senate for concurrence pursuant to the provisions of Standing Order 144. The Senate considered the Bill and passed it with amendments on the 7th of March 2024. The Senate amendments to the Bill subsequently were referred to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting back to the House. I would like to thank the Committee for a job well done. I note that the Committee considered the proposed amendments to the Bill and recommended that the House approves clauses 9 and 10 and further rejects the proposed amendments to clauses 2, 3, 4, 5, 6, 7, 11 and 12. That is, the Committee is only requesting this House to approve two clauses and reject at least 10 of the clauses and yet, this was a Bill that came from the National Assembly, it went to the Senate, the Senate made its amendments, but the Committee is rejecting the amendments that were approved by the Senate.

Consequently, therefore, Hon. Speaker, as Members may recall, the principle object of the Bill as passed by this esteemed House was to amend the Water Act 2016 for the purposes of operationalising Public-Private-Partnership. So, this Bill was to operationalise Public-Private-Partnership in the water sector. Indeed, the Constitution of Kenya 2010 acknowledges the right to safe water and adequate sanitation as a basic human right. Article 43 entrenches water as a constitutional right by establishing a right to “reasonable standards of sanitation”, clean and safe water in adequate quantities.” The Constitution under Article 21, further places an obligation on the Government to take steps to progressively realise that right.

Hon. Speaker, notably, Kenya is classified as one of the water scarce countries. This means that a lot of effort is required in terms of funding and relevant resources to ensure quality and adequate water is supplied to the 50 million citizens, thus the need for Public-Private-Partnership as a means to drive economic development and infrastructure projects.

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Hon. Speaker, further, this will significantly increase the share of the population with access to clean water, help reduce water shortages by providing more water to the public distribution system and also boost agricultural production especially in areas that experience erratic and low rains. As Members may note, we must strive for legislation that promotes responsible stewardship of our water resource. There is need for regulation management and development of water resources that aligns the water sector with the objectives of the Constitution and Public-Private-Partnership (PPP) which provides a legal framework for the implementation of PPP projects in Kenya which outlines the processes for initiating, evaluating and implementing PPP projects as well as the roles and responsibilities of various stakeholders.

With those remarks, Hon. Speaker, I move that we reject the sections as proposed by the Senate, and approve only two of those, that is clauses 9 and 10. Therefore, it means that we are further amending this Bill that is coming from the Senate.

Hon. Speaker, I beg to move and I ask the Member for Lamu West to second the Motion.

Hon. Stanley Muthama (Lamu West, JP): Thank you, Hon. Speaker. I rise to second the Motion by the Deputy Leader of the Majority Party. We invited the Cabinet Secretary for Water, Sanitation and Irrigation as the Departmental Committee on Blue Economy and Irrigation, so that we can deliberate on issues pertaining to Public-Private-Partnerships (PPP) on water and who can be regarded as a bulk water supplier. We rejected all the clauses which the Senate had recommended, except Clauses 9 and 10. Our rejection was because for us to achieve our water demands for irrigation and drinking, we need to give investors in PPPs enough room to invest, agree on water tariffs and negotiate with banks to pre-determine the break-even point.

As a Committee, we could not agree with the Senate's recommendations. The Senate did not give water agencies like the Coast Water Works Development Agency, the Rift Valley Water Works Development Agency and all other agencies room to allow PPPs. We did not agree on all the clauses apart from Clauses 9 and 10.

I beg to second.

(Several Members stood up in their places)

Hon. Speaker: Order, Members on your feet. Take your seats. *Mama Kericho*, take the nearest seat.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: Do I put the Question?

Hon. Members: Yes!

(Question put and agreed to)

Hon. Speaker: Hon. Members, at the request of the Leader of the Majority Party, we will re-arrange the business and move from Order No.10 to Order No.12. We will return to Order No.11 later.

Leading Clerk-at-the-Table, call out Order No.12.

APPROVAL OF PFM (KENYA MILLENNIUM DEVELOPMENT
FUND) REGULATIONS, 2024

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Hon. Samuel Chepkong'a (Ainabkoi, UDA): Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024, laid on the Table of the House on Tuesday, 23rd April 2024 and, pursuant to the provisions of Section 24(4) of the Public Finance Management Act, 2012, approves the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024 (Legal Notice No.51 of 2024) subject to publishing a corrigenda to correct the minor errors appearing in Regulations 11 and 16.

Hon. Speaker, the Committee considered these Regulations, which were tabled in the House and forwarded to us for consideration. The National Treasury appeared before the Committee and took us through the Regulations.

The import of these Regulations is to establish the Kenya Millennium Development Fund (MDF), which is to be charged with the responsibility of receiving funds from the Millennium Corporation of the United States of America (USA) worth about US\$60 million for certain functions to be performed within Nairobi County and its environs.

The objects of the Regulations are intended to:

1. Provide better multi-modal transport system planning for Nairobi.
2. Improve connectivity and provide safe access to the mass public transport system in the targeted areas of Nairobi.
3. Clarify land use and development control policy in Nairobi in order to facilitate the construction of non-motorized transport infrastructure. This policy was first initiated in 1948 and it has not been revised. The grant being given to the Kenyan Government is intended to revise the policy that was put in place in 1948.
4. Catalyze financing required for the implementation of the Rapid Transit System (RTS) in a manner that promotes lower greenhouse emissions.

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

[The Deputy Speaker (Hon. Gladys Boss) took the Chair]

Hon. Deputy Speaker, the Regulations are divided into Five Parts. Part II provides for the objects that I have just mentioned.

Part III is on the establishment and composition of the board that is charged with the responsibility of managing the institution being created under the Regulations. It also provides for the functions and meetings of the board. It further provides for the establishment of the office of the chief executive officer of the corporation, together with the corporation secretary and the staff to be employed thereon.

On the policy context of these Regulations, the Millennium Challenge Corporation, popularly referred to as the MCC, is a bilateral USA foreign aid agency that was established by the USA Congress in 2004. Its objective is to form partnerships within developing countries that are committed to good governance, economic freedom and investing in their citizens. The MCC provides time-limited grants from the USA Government to promote economic development, reduce poverty and strengthen institutions within the countries they have chosen. Those investments in core infrastructure, policy and institutional reforms are key interventions that are improving the lives of nearly 270 million people in over 46 countries in five continents.

Kenya implemented the first threshold program of US\$12.7 million grant from March 2007 to December 2010 for three interventions that focused on reforming the health sector,

particularly the procurement component; improving health services and delivery, and improving the monitoring capacity of the Government and civil society organizations.

Hon. Deputy Speaker, in December 2019, the Millennium Challenge Corporation (MCC) Board selected Kenya based on improved performance on the control of corruption indicator. In January 2020, the MCC Chief Executive Officer (CEO) visited Kenya and launched the programme. Between March and October 2021, the Government and MCC conducted an economic constraint analysis to understand the causes and issues underlying the binding constraints to be targeted. Opportunities were identified and defined within that mission that visited Kenya. The programme will utilise blended financial interventions that will mobilise private capital and investment around MCC targeted sectors.

Two major constraints were identified by that mission. One, the crowding out and its limits in financing the private sector, particularly to vulnerable micro, small and medium enterprises. Two, the limited connectivity that undermines productivity in urban areas, especially within Nairobi and its environs, which are considered to be the engines of Kenya's development growth. Since the Government was already working with the International Monetary Fund (IMF) on various programmes to address the first constraint, it was agreed that the MCC would support interventions in addressing the second constraint.

In March 2022, the MCC Board of Directors approved US\$60 million threshold programme grant for Kenya, which sought to improve urban connectivity in Nairobi. It included projects to support integrated transport planning, non-motorised transport, land use policy and blended finance for the Bus Rapid Transit (BRT) system. To support greater inclusivity in Nairobi transport system, the programme sought to substantially improve the mobility and safety of pedestrians. It was noted that this category of people comprises the largest and poorest segment of Nairobi commuters. It is estimated that about 2.5 million people use non-motorised highways. To create safer and more visible transportation choices for women, the Fund intends to ensure that women travel in a safe environment. I hope that the County Woman Representatives are listening to this.

The Government of Kenya and the MCC concluded negotiations in August 2023. The threshold grant programme was signed on 19th September 2023 on the side-lines of the United Nations (UN) General Assembly in New York City.

Hon. Deputy Speaker, we scrutinised the Regulations against the Constitution, the Public Finance Management (PFM) Act, 2012; the Statutory Instruments Act, 2013; and the Interpretation and General Provisions Act (CAP. 2). We are satisfied that these Regulations substantially comply with the laws that I have just mentioned.

In conclusion, it is intended that if this programme is implemented in accordance with the grant agreement, Kenya will qualify for the next grant, which is about US\$600 million. It is, therefore, incumbent upon the Board that will be established by these Regulations to ensure that they comply with the conditions that are provided in the grant agreement.

I request this House to approve the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024, published as Legal Notice No.51 of 2024 in accordance with Section 24 (4) of the Public Finance Management Act (No.18 of 2012), subject to the regulations-making authority publishing a corrigendum to correct the minor errors that are appearing in Regulations 11 and 16.

Hon. Deputy Speaker, I beg to move and request the indomitable Member for Kilifi North, who is also the Deputy Leader of the Majority Party, Hon. Owen Baya, to second.

Hon. Deputy Speaker: Hon. Owen Baya, please second.

Hon. Owen Baya (Kilifi North, UDA): Hon. Deputy Speaker, I thank you. At the beginning, I declare that I would like to second the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Kenya Millennium

Development Fund) Regulations, 2024, laid on the Table of the House on 23rd April 2024. This is pursuant to the provisions of Section 24(4) of the PFM Act.

I request Members to support this Report because it is very important in terms of unlocking the finance for the BRT system in this country. This is a very important milestone in financing by the MCC, which has funded projects in this country before. We need to consider this as it is one of the most important policy statements. It is a bilateral agreement under the United States Aid Agency (USAID) which was established by the United States Congress in 2004.

Hon. Deputy Speaker, the MCC forms partnerships with developing countries that are committed to good governance, economic freedom and investing in their citizens. Kenya is one such country. She believes in good governance, practises it and is central to ensuring that it is in place. Secondly, Kenya is a country that believes in economic freedom. Thirdly, it continues to invest in its people. Therefore, this country qualifies for that funding. As we debate this Report, there is about Ksh60 billion available for this country, if and when we pass this Report.

What will this money do? What is in these Regulations? The objects of these Regulations are that they will provide better multi-modal transport system planning for Nairobi. The Members who represent constituencies in Nairobi City County and those of us who are residents have an opportunity to vote and ensure that we have a better rapid transport system in this country. The objective is also to improve connectivity and provide safer access to mass public transport system in targeted areas in Nairobi. This will also ensure that we have better non-motorised transport infrastructure. Finally, we shall have a good BRT system in a manner that promotes lower greenhouse emissions. The object is to ensure that we provide funding for expansion of the transport system.

With those remarks, I second the Motion and request Members to vote and support this Report.

Hon. Deputy Speaker, because of the urgency of this matter, I request that you put the question once you propose it so that we vote and get the money.

(Question proposed)

Hon. Members: Put the question!

Hon. Deputy Speaker: Hon. Members, I hear you that I should put the question.

(Question put and agreed to)

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

IN THE COMMITTEE

[The Temporary Chairman (Hon. David Ochieng') in the Chair]

THE NATIONAL LAND COMMISSION (AMENDMENT) BILL
(National Assembly Bill No.43 of 2023)

The Temporary Chairman (Hon. David Ochieng’): Hon. Members, we are in the Committee of the whole House. As you can see on the Order Paper, we will start with the second item, which is the National Land Commission (Amendment) Bill, (National Assembly Bill No.43 of 2023).

Hon. Baya Owen is the Mover of the Bill. Hon. Owen Baya, have you finished consulting? Hon. Joash Nyamoko, move your amendment.

Clause 2

Hon. Joash Nyamoko (North Mugirango, UDA): Hon. Temporary Speaker, I beg to move:

Amendment of section 14 of No. 5 of 2012.

2. The National Land Commission Act, (in this Act referred to as “the Principal Act”), is amended by repealing section 14 and replacing therefor the following new section —

Review of grants and dispositions. no.4 of 2015.

14. (1) Subject to Article 68(c)(v) of the Constitution, the Commission shall, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality

(2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).

(3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grantor disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.

(4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.

(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.

(6) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.

(7) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.

(8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.

(9) A person may register a determination that complies with Article 40(6) of the Constitution made under subsection (6) in High Court.

(10) Where a person registers a determination under subsection (9),

(a) includes any consequential the High Court shall enter judgment in accordance with the determination; and

(b) includes any consequential orders issued as a result of the determination.

(11) A person may enforce a judgment that is entered under subsection (9) in the manner provided in the Civil Procedure Act.

(12) The Commission shall publish all determinations made under subsection (6).

(13) A person who is aggrieved by a determination under this section may apply for review of the under section 7 of the Fair Administrative Action Act.

No.4 of 2015.

Hon. Temporary Chairman, the justification for the amendment is that Clause 2 of the Bill proposes to amend Section 14 of the National Land Commission Act through deletion of sub-sections (2) and (9). However, Section 14 of the Act is couched as a transition provision that was to expire five years following its enactment and, hence, the provisions of sub-section 1. The Committee proposes to substitute Clause 2 of the Bill to align with Article 68(c)(v) that does not anticipate a time limit where the National Land Commission exercises the function of reviewing grants and expositions.

(Question of the amendment proposed)

The Temporary Chairman (Hon. David Ochieng'): Hon. Oundo, please go ahead.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Chairman, for giving me this opportunity. The Chairman of the Departmental Committee on Lands could probably give further clarifications on review of grants and dispositions now that we are removing any time limit. We would be interested to know if the National Land Commission itself has done the disposition and the grant. How then do we approach such kind of a situation? Does the matter now lie directly on the High Court instead of the National Land Commission? This is so that we understand the import of the amendment clearly. We should not be mixed up into some kind of a situation where there is self-review of what we have already done. Since the new Constitution and NLC came into place, they have been in charge of grants of public land to individuals or any other public entities. We need to know the cut-off point in respect of this clause.

The Temporary Chairman (Hon. David Ochieng'): Hon. Chairman.

Hon. Joash Nyamoko (North Mugirango, UDA): Thank you. What we have is amendments moved during the Second Reading. It was the feeling of the entire House that the set five-year time limit was a bit inhibiting to the NLC. Therefore, we came up with these amendments to clean up the Bill and make sure that we align the particular proposed amendment with the Constitution to avoid contradictions. We are trying to clean up the Bill and make sure that Clause 2 is clear.

The Temporary Chairman (Hon. David Ochieng'): Thank you. Hon. Members, if there is no further intervention on that, I wish to... What is out of order?

Hon. Omboko Milemba (Emuhaya, ANC): I do not have a point of order. I want to contribute, Hon. Temporary Chairman. I am sorry.

The Temporary Chairman (Hon. David Ochieng'): Go ahead.

Hon. Omboko Milemba (Emuhaya, ANC): Could the Chairperson further clarify what the new term is? He has explained that he wants to align it. Please, let him tell the House what the new term is as per his proposal.

Thank you, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng'): Go ahead, Hon. Chairperson.

Hon. Joash Nyamoko (North Mugirango, UDA): I was very clear that there is no time limit.

The Temporary Chairman (Hon. David Ochieng'): So, it is left open?

Hon. Joash Nyamoko (North Mugirango, UDA): Yes.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

The Temporary Chairman (Hon. David Ochieng'): Okay. Thank you. Hon. Members, if there is no intervention on that, Hon. Owen Baya has a further amendment to Clause 2. I invite him to move his amendment.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairperson, I beg to move:

THAT, Clause 2 be further amended by deleting the word “all” after the word “review” in Section 14 of the Principal Act and substitute it with the word “any”.

It says review all grants and “all” would mean that the Commission needs to do all grants that have been issued. When we substitute it with the word “any”, it will mean that any claim that is presented to the committee.

The Temporary Chairman (Hon. David Ochieng'): Thank you.

(Question of the further amendment proposed)

Yes, Hon. Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairperson, that is a progressive amendment and we need to support it. But let me go back to the gist of the amendments in totality. I am not so sure whether the National Land Commission has reported that it was unable to complete the review process as contemplated in the original Act, but that is now water under the bridge. He has raised a fairly good idea. But what happens to that person who does not know the indolent? In equity, we do not wake up a sleeping dog. What happens? He has proposed the word “any” but the amendment by the Committee has the word “all”. It means that all the grants and the disposition that has been made will be reviewed. Again, a time frame is not given. They can take 100 or 300 years. We need more clarity. After how long? It is not fair for one to be given a title and nobody objects, he invests to improve the property and then somebody comes and makes a claim. Is that claim limited by the statute of limitation of 12 years? Or does it exclude that limitation of action so that we leave it open completely throughout? We need that clarity. As I always say, when we are making laws, we must be sticklers to the details to avoid a situation where too much room is left to interpret the law as there are many lawyers in the House.

Thank you, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng'): Thank you. Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman I have followed what Hon. Oundo, our good Professor of planning, has said. Yes, there have been those questions. The answer to those questions lies in the Constitution. I invite him to look at what Article 67(2)(e) of the Constitution provides. It provides that to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, the word “present” cannot be limited to a certain framework of time. Therefore, to put a limitation on the Constitution through a statute by saying that we only limit it to five years or ten years or 20 years, is defeating the letter and spirit of the Constitution. Therefore, I would like to invite Hon. Oundo to look at it from the prism of the Constitution and agree that we need to do away with the time frame. That is because the Constitution does not envisage a time frame for historical land injustices of the present and of the past.

The Temporary Chairman (Hon. David Ochieng'): Thank you.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Chairman. Although Hon. Owen has quoted the Constitution, I have read the Bill and I have noticed that there must have been a reason to have a time limit. There are land injustices and some of them are broader and deeper than the level we have imagined. We will be opening a Pandora's box if we do an entire review, even when we limit it to a time frame. I am a historian and I know there was land alienation. But that gives people space to ask for a review of an earlier period before land alienation took place. I would want to hear Hon. Owen Baya's views on that.

The Temporary Chairman (Hon. David Ochieng'): That is not Hon. Owen Baya's amendment, but let us see what he says.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman, if you read the entirety of Section 14 of the law, it actually provides for the kind of claims that can be put before the Commission. Hon. Omboko, the good teacher, should not look at a subsection of the law. He should go into its depth to understand its letter and spirit. I request him to look at what historical land injustice is. It is enumerated down there further. One cannot just wake up and make a claim. It has to meet certain parameters and standards. Therefore, that guides the number of years we can go down the line.

I thank you, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng'): This now has to go to the vote.

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

Clause 3

The Temporary Chairman (Hon. David Ochieng'): Hon. Chairperson

Hon. Joash Nyamoko (North Mugirango, UDA): Hon. Temporary Chairman. I beg to move:

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause —

Repeal replacement section 15 of No. 5 of 2012.	and of	3. The Principal Act is amended by repealing section 15 and replacing therefor the following new section—
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Historical land
injustices

15. (1) Pursuant to Article 67 (3) of the Constitution, the Commission shall initiate, receive, admit, and investigate a complaint on present or historical land injustices, and recommend appropriate redress.

(2) For the purposes of this section, a historical land injustice means a grievance which—

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection (3) of this section.

(3) For the purposes of this section, a “historical land injustice” includes a subsisting land injustice.

(4) A historical land claim may only be admitted, registered and processed by the Commission if—

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
 - (i) the claim contradicts a law that was in force at the time when the injustice began; or
 - (ii) the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based; and
- (d) no action or omission on the part of the claimant amounts to surrender or renunciation of the right to the land in question.

(5) A claim alleging historical land injustice shall be permissible if it was occasioned by—

- (a) colonial occupation;
- (b) independence struggle;

- (c) pre-independence treaty or agreement between a community and the government;
 - (d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;
 - (e) inequitable land adjudication process or resettlement scheme;
 - (f) politically motivated or conflict based eviction;
 - (g) corruption or other form of illegality;
 - (h) natural disaster; or
 - (i) other cause approved by the Commission.
- (6) When conducting investigations under subsection (1) into historical land injustices the Commission may—
- (a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or
 - (b) by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.
- (7) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.
- (8) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

- (9) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice.
- (10) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies—
- (a) restitution;
 - (b) compensation, if it is impossible to restore the land;
 - (c) resettlement on an alternative land;
 - (d) rehabilitation through provision of social infrastructure;
 - (e) affirmative action programmes for marginalized groups and communities;
 - (f) creation of wayleaves and easements;
 - (g) order for revocation and reallocation of the land;
 - (h) order for revocation of an official declaration in respect of any public land and reallocation;
 - (i) sale and sharing of the proceeds;
 - (j) refund to bona fide third party purchasers after valuation; or
 - (k) declaratory and preservation orders including injunctions.
- (11) Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.
- (12) The Commission shall publish all determinations.
- (13) A person who is aggrieved by a determination under this section may apply for review of the determination under section 7 of the Fair Administrative Acton Act.

No.4 of 2015.

The justification is that Clause 3 of the Bill proposes to amend Section 15 of the National Land Commission Act through deletion under subsection 3 and 11. However, Section 15 of the Act is a transition provision that was to expire after five years following its enactment and, hence, the provisions of subsection 1. The Committee proposes to substitute Clause 2 of the Bill to align with Article 67(2)5 that does not anticipate a time limit where the National Land Commission exercises the function of initiating, receiving, admitting and investigating a complaint on present historical land injustices.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the amendment proposed)

Hon. (Dr) Oundo Ojiambo (Funyula, ODM): Hon. Temporary Chairman, as it might look plausible, the principal Act says that the provision of this section shall stand repealed within 10 years. That means that if you had an issue about any historical injustice, you must have petitioned the NLC and the courts and must have exhausted all avenues within 10 years. Indeed, the Constitution has been with us for over 10 years and the NLC has been with us for all those years. This was an amendment that was brought by Hon. Owen Baya and I can understand the historical aspect of it, including the issue of absentee landlords. But, honestly speaking, we must bring some issues to a closure. We cannot live in eternity with a problem. There must come a time when we bring it to a closure. Even when you have a dispute with your neighbour, common sense and fairness require that you must bring the matter to a closure. We cannot leave a matter open forever, because then the NLC will perpetually do nothing else but be saddled with boundless and endless complaints of historical land injustices. When we did general surveys many years back, land boundaries were never precise or fixed. That is why even the Constitution talks about traditional dispute resolution mechanisms. Yet, this amendment seems to be oblivious to that provision in the Constitution, as much as the amendment is good for his constituency and the coastal strip. The Maasais are going to claim Nairobi because it is a historical land injustice. Yes, the 10 years have lapsed. We could introduce another timeline, but not just leave it open forever.

The Temporary Chairman (Hon. David Ochieng’): Hon. Oundo, you have made your point.

Hon. (Dr) Oundo Ojiambo (Funyula, ODM): I can make much more points. You know I have a future in this matter.

The Temporary Chairman (Hon. David Ochieng’): Order! Hon. Oundo, what you are proposing is okay and yet you know the rules. These amendments are in the Order Paper. You can propose your amendment and say we set the timeline at 10 years.

Hon. Omboko, go ahead?

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Temporary Chairman, let me go on record and I know you may lump me together with Hon. Oundo. When I looked at the amendment, Hon. Baya, we should have thought of an extension, not infinity, so that we can conclude the matters. I do not know what you can do from where you are, but we should not litigate on land injustices forever. We should extend the period for another 10 years, after which we close the issue.

The Temporary Chairman (Hon. David Ochieng’): Where were you, Hon. Members? What you do normally in such a situation is that you approach the Member concerned. He may even accept to move a further amendment. Be that as it may, I now put the Question.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

The Temporary Chairman (Hon. David Ochieng’): There is a further amendment by Hon. Owen Baya. Is it? Chair, next time you move amendments together, not in bits. Which further amendment do you have, Chair? To which clause? You just moved your amendment already.

Hon. Joash Nyamoko (North Mugirango, UDA): Thank you, Hon. Temporary Chairman.

I beg to move that Clause 3 of the Bill be deleted and substituted by the following new clause as it appears in the Order Paper. The Committee proposes to amend the Bill by inserting a New Clause 4 to address emerging parties.

The Temporary Chairman (Hon. David Ochieng’): Order. Hon. Nyamoko, what we have been discussing all this while was your amendment. That is a new clause and so, resume your seat. We will have time for that new clause. The further amendment is by Hon. Toroitich.

Hon. Timothy Kipchumba (Marakwet West, Independent): Hon. Temporary Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended by—

(a) deleting paragraph (b) and substituting therefor the following new paragraph:

(b) deleting subsection (14) and substituting therefore the following new subsections—

(14) (1) The Commission shall complete an investigation under subsection (10) within six months.

(2) The Commission may submit to the National Assembly, a request to extend time for a period that does not exceed six months, where the Commission does not complete an investigation under paragraph (1).

(3) The National Assembly may only approve a request under subsection (2) once.

(15) The Commission shall, in consultation with the Cabinet Secretary, publish regulations to operationalize this section within six months of enacting this Act.

The purpose of this amendment is that when a person has a claim of a historical land injustice, then that particular claim has a definite time in which investigations and hearings are conducted. I propose that a claim should be heard within a period of six months. If it is not completed, the Commission shall seek extension of time by six months. The period comes to one year under which a historical land claim can be heard, determined and disposed of by the NLC. The purpose is to limit the hearing of a claim of a historical land injustice to six months.

(Question of the amendment proposed)

The Temporary Chairman (Hon. David Ochieng’): The Member for Emgwen.

Hon. Josses Lelmengit (Emgwen, UDA): Thank you, Hon. Temporary Chairman. I support the amendment as proposed by the Member for Marakwet West, Hon. Timothy Kipchumba. We should have definite time. I support the six months he has proposed and extension for another six months. I support the amendment because in Nandi County where I come from, we have historical land injustices. Up to date, we have never had a solution. We should shorten the period to six months. Someone can also apply for an extension by another six months.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Mathenge.

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Temporary Chairman. I support that amendment. Sadly, issues of historical land injustices remain unresolved 60 years after Independence. In my constituency of Nyeri Town, the issues of people who were left in the colonial villages, despite being *Mau Mau* freedom fighters who were fighting for their land, has remained unresolved to date. Therefore, as a matter of expediting justice on historical land

injustices, it is important that we put a cap on the duration within which NLC must resolve those issues once any Kenyan has lodged a case.

I support. Thank you.

The Temporary Chairman (Hon. David Ochieng'): Hon. Oundo.

Hon. Dr. Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, I come from a school of thought that everything must have an end-point. It cannot just be an open cheque and an endless process where we litigate non-stop. Even election petitions, as emotive as they are, have timelines. Even the presidential one, which has so much public interest, has a timeline. I sincerely support the amendment that has been moved by the Member of Parliament for Marakwet West that once the National Land Commission seizes the matter, it must be required by law to conclude it within a certain period, however complex it is. There cannot be something so complex that it cannot be resolved in one year. This is a matter of record. There are witnesses. If they are dead witnesses, they are dead witnesses. There is nothing you can do. You cannot exhume their bodies, give them life to come and give evidence. They are dead. Within one year, you must have resolved the matter because we do not want to be held in circles like the Public Petitions Committee that has been unable to move. We need those timelines. I sincerely support and urge the Committee and the Majority side to accept that amendment so that we can put a cap.

The Temporary Chairman (Hon. David Ochieng'): Thank you, Hon. Oundo. Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Temporary Chairman. I want to agree and support the Hon. Member for Marakwet West that, indeed, timelines are very important, especially on very strong issues like these. What I am having reservations about is this: Should there be a situation where, within that one year, it cannot be concluded, what window are we likely to give to the Commission to, at least, extend? If at all we can consider a very unique circumstance which might arise in many cases, so that we do not lock out the possibility of extending the time to look into a very controversial or very extraneous matter beyond that time.

Otherwise, I support.

The Temporary Chairman (Hon. David Ochieng'): There is a very valid point that Hon. Wangwe is making. I know of cases where, when you put a timeline like one year, anything that is done by that Commission beyond that one year is a nullity. So, the question you are asking is valid. If you get an overzealous court, you may have done very hard work for 11 months and 29 days, and you just need another 30 days to finish. But the court will say that anything you did beyond the one year provided for is nugatory and does not help. Hon. Timothy, as a lawyer, you should think about what Hon. Wangwe has raised as a point of mulling over.

Do you want to say something about that?

Hon. Timothy Kipchumba (Marakwet West, Independent): Hon. Temporary Chairman, litigation cannot be done in perpetuity, even in a court of law. There must be closure to a matter before a court of law. Even in a presidential petition, we have a time limit. If a matter is heard for ten years by the Commission, that, in itself, is a historical injustice. It is an injustice. There must be a determinate period in which a matter is heard and disposed of by the National Land Commission.

If you do not give the Commission a time frame in which to hear, determine and dispose of a matter that is taken before it, that amounts to an injustice. We are in a jurisdiction where we normally set timelines on matters. So, I call upon the Members of this House to pass an amendment that will set a timeline to which the National Land Commission can handle a matter.

The Temporary Chairman (Hon. David Ochieng'): Thank you. Hon. Nyamai.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Thank you very much, Hon. Temporary Chairman. I want to support this amendment by the Member for Marakwet West, Hon. Timothy, bearing in mind that historical injustices cases on land are cases that have taken a very long time. Therefore, having a period of six months with the possibility of extending for an additional six months, any further extension would be an injustice in itself.

I support. Thank you.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Before I put the question for a decision, there is a further amendment to the amendment by the Hon. Baya.

(Loud consultations)

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman, with tremendous respect to the Hon. Member for Marakwet West, I agree we must have a timeline in principle, and I support that matter. But, Hon. Speaker, I think we also need to be realistic about the kind of issues that get...

The Temporary Chairman (Hon. David Ochieng’): Order! You are a senior Member of this House. You know why I have asked you to rise.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman, I beg to move that the proposed new Clause of the Bill be further amended in Section 15 of the Principal Act by inserting the following new sub-sections immediately after Section 13 —

“The Commission shall complete an investigation under Section 10 within one year.”

“The Commission shall publish regulations to operationalize this section within six months.”

The import of this is that six months will be a very short, considering the issues that are raised within a historical land injustice. If, after six months, we must come back to this Parliament again and seek an extension, then nothing much will be achieved. I propose that we do one year with an option of seeking an extension from Parliament after one year. This is neater.

Secondly...

The Temporary Chairman (Hon. David Ochieng’): Hon. Baya, you know it is neater to do one thing at a time. The amendment you are moving is to sub-clause 15, not 14. So what you are moving is to move the period of regulations from six months to one year. You have to clarify that so we do not confuse it with one year for investigations.

Hon. Owen Baya (Kilifi North, UDA): I am entirely in agreement that we extend it to one year. I request Hon. Kipchumba Toroitich to second me on this because he is also in agreement.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the further amendment proposed)

Hon. Timothy Kipchumba (Marakwet West, Independent): Hon. Temporary Chairman, I agree with that further amendment to extend the period from six months to one year.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): I support Hon. Baya’s amendment because it gives a little bit more time just in case the cases so said are many. One year gives more leverage because this amendment is coming up mainly to protect accounts, which are usually guaranteed. This amendment is being proposed to protect accounts that are garnisheed by lawyers and, therefore, stop those cases from proceeding for a very long time. However, one year should suffice for all the parties.

Thank you.

The Temporary Chairman (Hon. David Ochieng'): Thank you. If there is no further reaction, I will propose the Question.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 3 as further amended agreed to)

Hon. Members, we go back to Clause...

*(The Temporary Chairman (Hon. David Ochieng')
consulted the Clerks-at-the Table)*

Note that the proposal by Hon. Toroitich in its second part at fifteen, falls, and the one by Hon. Baya is carried.

I wish to go back to Clause 2, which we dealt with earlier, for a vote.

(Clause 2 as amended agreed to)

The Temporary Chairman (Hon. David Ochieng'): Hon. Chairperson.

New Clause 4

Hon. Joash Nyamoko (North Mugirango, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 3 —

Repeal and replacement
of section 15 of No. 5 of
2012.

4. The principal Act is amended by repealing section 26 and replacing therefor the following new section—

Bank account

26. (1) The Commission shall open and maintain such bank accounts as are necessary for the effective management of the Commission.

(2) A court shall not issue garnishee or charging orders against a bank account under subsection (1) or any existing bank account opened and maintained by the Commission.

The justification is that our experience dealing with the National Lands Commission has shown that there are instances, and it has become a practice, where courts grant orders...

The Temporary Chairman (Hon. David Ochieng'): Hon. Nyamoko, this is a new clause.

Hon. Joash Nyamoko (North Mugirango, UDA): It is a new clause.

The Temporary Chairman (Hon. David Ochieng'): Start by moving that it be read a Second Time, then go on and explain. A new clause has to be read a Second Time.

Hon. Joash Nyamoko (North Mugirango, UDA): Hon. Temporary Chairman, I beg to move that the new clause 4 be now read a Second Time.

The Temporary Chairman (Hon. David Ochieng’): Hon. Nyamoko, we are not amending this now. We are introducing a new clause and so, start by saying that you move that new clause 4 be now read a Second Time. Then, now tell us what you are proposing to put in the law, as a new clause.

Hon. Joash Nyamoko (North Mugirango, UDA): We are proposing that this new clause be included because the National Lands Commission has had many issues. Lawyers have gone to court and attached the National Lands Commission's accounts. This has happened in the past. NLC receives monies from different entities, especially the acquiring entities, like the Kenya National Highways Authority, the Kenya Urban Roads Authority, and the Ministry of Water, for onward transmission to project-affected persons.

When those garnishees are given, that money is meant for a different purpose. That is why, based on the experience and the interaction that we have had with NLC, we found it prudent for us to protect those particular accounts.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

Hon. Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, this is very interesting. It is coming on the heels of a judgement by the High Court that said that the Government is not necessarily new to recovery procedures in the event of failure to honour a judgement or a financial obligation. Sorry, I have been away and so, I did not follow the amendments because I did not think they would come soon. We would have separated them as advocates and State agencies do – they have a client account. Probably, it is the client account that should have been insulated against garnishees orders or any recovery process.

Lumping all the funds tells the Commission: 'You people do not do much, and you are protected. Do not defend court cases.' We will create a bit of chaos. There is a good reason, and I can see from far. But unless we cure it by separating the two sets of accounts, we will not cure the problem. Again, sorry, I must admit that I did not have time. That is why we allowed this kind of amendment to go through without tidying them up and creating a fairly untidy situation.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Yes, Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman, I am inviting Hon. Oundo to see this as near and not far. The NLC has been unable to discharge its mandate because every time a judgement is made, people rush to court and get garnishee orders. All the money, including what is meant for his payments in his constituency, is taken away. It becomes impossible for the NLC to continue to work. Some malicious individuals do that to disable the Commission. NLC is not a darling of many people because it is trying to cure historical land injustices that have benefitted many people for many years.

To advance the spirit and letter of the Constitution on the issues of the NLC, we have to insulate it against malicious individuals who want to disable it. There are very many people who wish the NLC dead because they are the perpetrators of historical land injustices. We have to insulate and allow the NLC to advance the spirit and letter of this Constitution. This is by insulating its money and preventing it from falling under garnishee orders that justices all over the place who want to throw and subvert justice for the local, poor people.

For a long time, the people have been looking for an opportunity to get justice. The poor people in Hon. Oundo’s constituency will one day require justice and be saved by the

National Lands Commission. It requires all of us to hand-hold NLC so that it has power not just to make decisions, but to execute them for the benefit of Kenyans. I want to convince Hon. Oundo.

The Temporary Chairman (Hon. David Ochieng’): Hon. Oundo was not opposing anything.

Hon. Owen Baya (Kilifi North, UDA): He said he is seeing it from afar. I want him to start seeing it closer so that he can go home convinced that we have passed a good law. He should go home and sleep soundly because we have passed a good law. Hon. Oundo, I beg that you join us –the people who believe in NLC - to cure historical injustices.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman, Hon. Nyamai chaired the Departmental Committee on Lands in the 12th Parliament. I was there with her and could see the pain she went through trying to bring justice to individuals, but could not. The justice kept on being diverted by people who had a lot of interest. This is the only opportunity to give the new Chairperson of the Departmental Committee on Lands in this Parliament an opportunity to provide justice to the people.

Hon. Oundo, kindly support this one.

The Temporary Chairman (Hon. David Ochieng’): Hon. Oundo actually supported this, from what I heard. The Chairperson knows that the Court of Appeal has overturned the High Court judgement in the last few days. The Court has declared that they cannot go ahead and...

Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): On this particular one, I think Hon. Baya is right. It is so intentional that the garnishees I spoke about appear when money is in the accounts of the National Lands Commission.

Even as we speak, there is a great road in the Northern Corridor where somehow the money was garnisheed. The people who were supposed to benefit from that money were unable to get it. So, this amendment will open space for more development. At the same time, the people who are supposed to benefit from the reimbursements will get their monies.

Thank you, Hon. Temporary Speaker.

The Temporary Chairman (Hon. David Ochieng’): Hon. Baya should tell us how those guys who garnishee the accounts get to know that there is money in the accounts. Be that as it may, I will now put the Question.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

(Title agreed to)

(Clause 1 agreed to)

The Temporary Chairman (Hon. David Ochieng’): The Chairperson of the Departmental Committee on Lands, this is your chance to move reporting. Was the Mover Hon. Baya or the Chairperson?

(The Temporary Chairman consulted with the Clerk-at-the-Table)

Hon. Baya, I think this is your chance. Who is the Mover of this Bill? Is it you or the Chairperson of the Committee? Okay. Hon. Chairperson, go ahead.

Hon. Joash Nyamoko (North Mugirango, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report its consideration of National Land Commission (Amendment) Bill, (National Assembly Bill No. 43 of 2023), and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairman (Hon. David Ochieng’): We shall pend the reporting so that we can consider the next Bill.

BILL

THE COUNTY LICENSING (UNIFORM PROCEDURE) BILL (Senate Bill No.9 of 2022)

The Temporary Chairman (Hon. David Ochieng’): Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Temporary Chairman. This Bill emanated from the Senate and considering that there are certain matters that we do not agree with the Senate. I request that we step it down and bring it next week. This will enable us to conclude certain matters before we take it through the Committee of the whole House.

Thank you, Hon. Temporary Chairman. I beg to indulge you.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Members, the County Licensing (Uniform Procedure) Bill (Senate Bill No. 9 of 2022), is, therefore, pended until the next time it is put on the Order Paper for consideration in the Committee of the whole House.

(Bill deferred)

Next Bill.

BILL

SENATE AMENDMENTS TO THE WATER (AMENDMENT) BILL (National Assembly Bill No.33 of 2023)

The Temporary Chairman (Hon. David Ochieng’): Hon. Muthama, I am told you are holding brief for the Chairperson of the Committee. I request that you sit where I can see you.

(Hon. Stanley Muthama moved to another seat)

Are you ready?

Hon. Stanley Muthama (Lamu West, JP): Yes.

The Temporary Chairman (Hon. David Ochieng’): Okay.

Senate amendment to clause 2

THAT clause 2 of the Bill be amended—

a) by deleting paragraph (a) and inserting the following new paragraph—

(a) by inserting the following new definitions in the proper alphabetical sequence-

“bulk water service provider” means a water service provider, contracting authority, or any other person providing bulk water services in accordance with a license issued by the Regulatory Board for the service areas specified in the license;

“contracting authority” means-

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county level, the county government, county agency or county corporation which intends to have its functions undertaken by a private party;

“joint committee” means a committee established by the national or county government consisting of the national government and a county government or two or more county governments;

“private party” means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

b) in paragraph (b) by deleting the proposed definition of “bulk water” and inserting therefor the following new definition—

“bulk water” means supply of water in bulk by a bulk water services provider to a water services provider for retail;

c) by deleting paragraph (c).

The Temporary Chairman (Hon. David Ochieng’): Hon. Chairperson, go ahead and explain to us what this is all about.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Chairman, I move that the Senate amendment to clause 2 be rejected. The Committee met and looked at what the Senate was bringing on board which was definitions like water service provider, contracting authority and county agencies, among others. We discovered that this will bring a different interpretation to what is contained in the Water Act, 2016. Therefore, as a Committee we rejected clause 2.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and negated)

(Question, that the word to be inserted be inserted, put and negated)

(Senate amendment to clause 2 negated)

Senate amendment to clause 3

THAT, Clause 3 of the Bill be amended —

(a) in the proposed new paragraph (g) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph; and,

(b) in the proposed new paragraph (h) by inserting the words “subject to the economic efficiency criteria set by the Regulatory Board” at the end of the paragraph.

The Temporary Chairman (Hon. David Ochieng’): Hon. Chairperson.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Chairman, I move that the Senate amendment to clause 3 be rejected. The Committee looked at this clause and saw that the Public Private Partnerships Act which came into effect on 23rd December 2021, is the principal law governing the Public Private Partnerships (PPP) in Kenya. Also, Section 32 of the Act provides an elaborate, legal and institutional framework, for carrying out the approval of the feasibility studies which determine the viability of any project in Kenya. For that reason, as a Committee, we rejected clause 3.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and negatived)

(Senate amendment to clause 3 negatived)

Senate amendment to clause 4

THAT the Bill be amended by deleting Clause 4 and inserting the following new Clause 4 —

4. Section 68 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (b)—

(ba) operate water works and provide bulk water services by entering into a bulk water purchase agreement —

(i) with an investor in accordance with the provisions of the Public Private Partnerships Act, Cap 430, subject to the economic efficiency criteria set by the Regulatory Board and after conducting public participation and consulting the relevant county government whose area of jurisdiction the water works is located; or

(ii) with a water services provider subject to the economic efficiency criteria set by the Regulatory Board.

(bb) operate water works and provide bulk water services as a bulk water services provider until such a time as the water works development agency transfers responsibility for the operation and management of water works to a county government or water services provider in whose area of jurisdiction the water works is located.

The Temporary Chairman (Hon. David Ochieng’): Hon. Chairman.

Hon. Stanley Muthama (Lamu West, JP): Thank you, Hon. Temporary Chairman. I move that the Senate amendment to Clause 4 be rejected. The reason being that there is already an elaborate legal administrative framework in place under the Public Private Partnerships Act and the Water Act, 2016 (Cap. 372). This ensures that there is financial integrity of all the PPP projects that are carried out in Kenya. This also safeguards the customer interests and

guarantees equity access to water and sanitation services at a fair price. Further, the national public water works should not be transferred to the county government as the Senate had intended.

Thank you.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and negated)*

*(Question, that the word to be inserted
be inserted, put and negated)*

(Senate amendment to clause 4 negated)

Senate amendment to clause 5

THAT the Bill be amended in the proposed section 68A (2) by deleting the words “and with the approval of the Cabinet Secretary,” appearing immediately after the words “necessary thereafter”.

The Temporary Chairman (Hon. David Ochieng’): Chairman.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Chairman, I beg to move that clause 5 be rejected. As the Committee we looked at it and discovered that section 72 of Water Act, Cap 372 empowers the regulatory bodies to publish regulatory standards without the approval of the Cabinet. For consistency in this case, in the provisions of the law, the Senate amendment is welcomed. However, there is need for further amendments to remove the requirement for publication in the gazette. These are only Senate guidelines and not regulations.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and negated)*

(Senate amendment to clause 5 negated)

Senate amendment to clause 6

THAT, Clause 6 of the Bill be amended—

- (a) in paragraph (a), by deleting the new proposed subsection (1) and inserting the following new proposed subsection (1)—
 - (1) As soon as possible, following the commissioning of waterworks, the water works development agency shall enter into an agreement with a county government, a joint committee, cross-county water services provider, or water services provider to provide water services within whose area of jurisdiction the services are located.
- (b) by deleting paragraph (b) and inserting the following new paragraph—

(b) in subsection (2) by deleting the word “authority” appearing after the words “the joint committee” and inserting therefor the words “cross-county water service providers”.

(c) by deleting paragraph (c) and inserting therefor the following new paragraph —

(c) in subsection (3) by deleting the words “the authority” appearing immediately after the words “the joint committee” and inserting the words “cross-county water service providers”.

The Temporary Chairman (Hon. David Ochieng’): Chairman.

Hon. Stanley Muthama (Lamu West, JP): Thank you Hon. Temporary Chairman, I beg to move:-

THAT, the Senate amendment to clause 6 be rejected.

The Act provides that handover agreements for completed water works shall be between the water works development agencies like the Coast Water Works Development Agency or any other agencies and the county government. It is the county government, the joint committee or the authority of the county governments within whose area of water works is located jointly with the water service provider.

The Bill also seeks to omit the reference to joint committees and authorities in the process and, hence, the roles in the committee in the process has not been defined.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

The Temporary Chairman (Hon. David Ochieng’): Yes, go ahead. Where is the microphone?

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Chairman, I would like to support the rejection by the Committee. Looking at this, it is not in good faith and it is introducing a committee that is not clearly defined.

(Question, that the words to be left out be left out, put and negated)

(Question, that the words to be inserted be inserted, put and negated)

(Question, that the words to be inserted in place thereof be inserted, put and negated)

(Senate amendment to clause 6 negated)

Senate amendment to clause 7

THAT, Clause 7 of the Bill be amended—

(a) by deleting paragraph (a) and inserting the following new paragraph

—
(a) by inserting the following new paragraphs immediately after paragraph (b)—

(ba) evaluate and recommend bulk water tariffs and approve the imposition of such tariffs in line with consumer protection standards for use of water for domestic and commercial purposes;

(bb) evaluate and recommend tariffs for irrigation purposes;

(b) in paragraph (b) by deleting the proposed new paragraph (c) and inserting the following new paragraph—

(c) issue licenses, set conditions for water service provision, and accredit water service providers and bulk water services providers.

The Temporary Chairman (Hon. David Ochieng’): Chairman. The microphone is on.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Chairman, I beg to move that the Senate amendment to clause 7 be rejected.

The Bill proposes an amendment to Section 72 of Water Act by introducing a new mandate for the Water Services Regulatory Board (WASREB) to evaluate and approve water, sewerage and bulk water tariffs for the domestic, commercial and irrigation purposes.

The regulator evaluates the tariff and approves the imposition of the tariff in line with the customer protection standards.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and negated)

(Question, that the words to be inserted be inserted, put and negated)

(Senate amendment to clause 7 negated)

Senate amendment to clause 9

THAT clause 9 of the Bill be amended in paragraph (b) in the proposed new subsection (3), by deleting the words “provision of water services” appearing immediately after the words “infrastructure used for the” and inserting therefor the words “contracted function”.

The Temporary Chairman (Hon. David Ochieng’): Chairman.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Chairman, I beg to move that the Senate amendment to clause 9 be approved.

When we looked at this, we discovered that what the Senate was recommending is line with what is in the Water Act, 2016. It is also in line with the Public Private Partnerships Act (PPP) which was enacted in 2021. So, we support as a Committee.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place)

thereof be inserted, put and agreed to)

(Senate amendment to clause 9 agreed to)

Senate amendment to clause 10

THAT clause 10 of the Bill be amended by deleting the proposed subsection (4) and inserting therefor the following new subsection —

(4) Despite any provision in this Act, bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located, shall be undertaken by bulk water services providers licensed under this section.

The Temporary Chairman (Hon. David Ochieng’): Chairman.

Hon. Stanley Muthama (Lamu West, JP): Thank you, Hon. Temporary Chairman. I beg to move that the Senate amendment to clause 10 be accepted.

That is what we looked at as the Committee. Clause 10 of the Bill seeks to amend Section 100 of the Water Act which deals with supply of bulk water. The Bill proposes that the bulk water supply services to the water services provider in the county or multiple counties different from where the bulk water abstraction is situated, shall be undertaken by the water works development agencies that are established under section 65 of the Water Act.

The proposed amendment of the Bill by the Senate has provided and defined bulk water service providers. It follows, therefore, that the bulk water supply shall be undertaken by a bulk water supplier. The definition has expanded to include the counties. Thank you.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Senate amendment to clause 10 agreed to)

Senate amendment to Clause 11

THAT, the Bill be amended by deleting Clause 11.

The Temporary Chairman (Hon. David Ochieng’): Chairman.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Chairman, I beg to move that the Senate amendment to clause 11 be rejected.

Reason being that clause 11 of the Bill proposes an amendment to Section 114 of the Water Act to expand the mandate of the water trust fund by broadening the scope of entities to which the fund caters.

Currently, the Act mandates the fund to provide financial support to counties in the provision of water and sanitation services. Also, to assist in the financing on the development and management of water services in marginalised and under-served areas.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and negatived)*

(Senate amendment to clause 11 negatived)

Senate amendment to clause 12

THAT, Clause 12 of the Bill be amended in the proposed new section 119 (2) by inserting the following new paragraph immediately after paragraph (c):

(d) two persons, a man and a woman, who possess a degree from a university recognized in Kenya and, at least, five years' experience in a relevant field, nominated by the Council of County Governors.

The Temporary Chairman (Hon. David Ochieng'): Chairman.

Hon. Stanley Muthama (Lamu West, JP): Thank you, Hon. Temporary Chairman. I beg to move that the Senate amendment to clause 12 be rejected.

It seeks to amend Section 119 of the Water Act which establishes the Water Tribunal. The Act established the tribunal but did not provide for composition of the tribunal members. The proposed amendments to clause 12 seeks to cure this gap of the law.

The Senate proposed that the two persons appointed under category (c) be nominated by the Council of Governors. The tribunal set up under the Act was established to hear the disputes relating to the implementation of the Act. As an arbiter, it would be prudent that the membership of the tribunal be as neutral as possible to avoid conflict of interest in the arbitration process.

(Question of the amendment proposed)

*(Question, that the words to be added
be added, put and negatived)*

(Senate amendment to clause 12 negatived)

The Temporary Chairman (Hon. David Ochieng'): Members, may I now call the Mover to move for reporting.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairperson, I beg to move that the Committee do report to the House its consideration of the Senate amendments to the Water (amendment) Bill, (National Assembly Bill No. 33 of 2023), and its approvals thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

[The Temporary Speaker (Hon. Omboko Milemba) in the Chair]

MOTIONS

CONSIDERATION OF REPORT ON THE
NATIONAL LAND COMMISSION (AMENDMENT) BILL
(National Assembly Bill No.43 of 2023)

The Temporary Speaker (Hon. Omboko Milemba): Hon. Chairperson, report to the House.

Hon. David Ochieng' (Ugenya, MDG): Thank you, Hon. Temporary Speaker. I beg to report that the Committee of the whole House has considered the National Land Commission (Amendment) Bill, (National Assembly Bill No.43 of 2023), and approved the same with amendments.

The Temporary Speaker (Hon. Omboko Milemba): Mover.

Hon. Joash Nyamoko (North Mugirango, UDA): Thank you, Hon. Temporary Speaker. I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Jerusha Momanyi to second.

Hon. Jerusha Momanyi (Nyamira County, JP): Hon. Temporary Speaker, I second.

(Question proposed)

Hon. Members: Put the question.

(Putting of the question deferred)

The Temporary Speaker (Hon. Omboko Milemba): Next Bill.

CONSIDERATION OF REPORT ON SENATE AMENDMENTS
TO THE WATER (AMENDMENT) BILL
(National Assembly Bill No.33 of 2023)

The Temporary Speaker (Hon. Omboko Milemba): Hon. Chairperson, report to the House.

Hon. David Ochieng' (Ugenya, MDG): Hon. Temporary Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Water (Amendment) Bill, (National Assembly Bill No.33 of 2023), and approved the same with amendments.

The Temporary Speaker (Hon. Omboko Milemba): Mover.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Stanley Muthama to second.

The Temporary Speaker (Hon. Omboko Milemba): Proceed, Hon. Muthama.

Hon. Stanley Muthama (Lamu West, JP): Hon. Temporary Speaker, I second.

(Question proposed)

(Putting of the question deferred)

The Temporary Speaker (Hon. Omboko Milemba): Next Order.

BILL*(Second Reading)*THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(National Assembly Bill No.67 of 2023)

The Temporary Speaker (Hon. Omboko Milemba): The Deputy Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Temporary Speaker.

I beg to move that the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No.67 of 2023), be now read a Second Time.

This Bill was introduced in keeping with the practice of making various amendments that do not merit the publication of separate Bills by consolidating them into one Bill. In the 12th Parliament, omnibus Bills posed a significant challenge for me. However, I realized that we need them as we cannot publish all the amendments separately. Hence, we use discretion to publish these miscellaneous Bills. Just like Saul became Paul in the Bible, I was convicted.

This Bill contains proposed amendments to nine statutes: The Children's Act of 2022, the Copyright Act No. 12 of 2001, the Scrap Metal Act No. 1 of 2015, the National Employment Authority Act No. 3 of 2016, the Fisheries Management and Development No. 35 of 2016, the Energy Act No. 1 of 2019, the Public Private Partnership Act No. 14 of 2021, the Parliamentary Services Act No. 22 of 2019, and the Judicial Service Act No. 1 of 2011. This Bill is sponsored by the Leader of the Majority Party.

Delving into the several Acts in this Bill, I would like to begin with the Children's Act of 2022. I hoped that Hon. Millie Odhiambo would be present today because this is her forte. This Act was introduced due to a court case known as Adoption Case No. E004 of 2022. The court was of the view that Section 186 (4) of the Children Act goes against the tenets of the Constitution, which forbid discrimination on any grounds. The provision in question discriminates against male applicants who wish to adopt a child on their own. Initially, I thought that this provision was reasonable as it prevented men from adopting children. However, people went to court and opposed this and sought an interpretation of the Constitution. The court ruled that the provision was discriminatory and needed to be aligned with the Constitution.

The Committee also observed that there is a need to amend the Act to refer to the correct section that is being amended, which is Section 186 (6) (e) and not 186 (6) (f) of the Act. It prohibits the court from granting a sole male applicant to adopt a child.

The second Bill to be amended is the Copyright Act No. 12 of 2001. This proposed amendment seeks to provide performers and producers of sound recordings with equitable remuneration and expand the responsibility of collective management organizations towards authors and performers. Many of our producers and musicians have not been receiving their fair share of remuneration. This Bill seeks to make amends to rectify that mishap. The Committee recommends that the proposed amendments to the Copyright Act 130 be withdrawn from the Bill for reasons that I would not want to go into. We will all have an opportunity to look at this Bill and make the various amendments.

Next is the Scrap Metal Act No. 1 of 2015. The amendments to this Act are to, among other things, provide for the issuance of licences to persons dealing with copper, aluminium, and other alloys and to increase penalties for offences under this Act. If you live in urban areas, your water meter can be stolen anytime because it can be sold as scrap metal. If you leave your car outside, somebody may steal the bumper to go and sell it as scrap metal. Even transformers have been vandalised to remove the copper wires which are then sold. Vandals have even been

stealing peoples' gates and selling them as scrap metal. This amendment seeks to rein in such people. It also seeks to bring in the aspect of licensing. You must have a license if you want to be a scrap metal dealer. It also seeks to increase penalties for vandals.

The fourth Act is the National Employment Authority Act, 2016 (No.3 of 2016). The amendment to the National Employment Authority Act 2016 provides that the Act shall apply to an employer who employs more than 10 employees. An employer will be subject to the National Employment Authority Act if he or she has more than 10 employees.

The next one is the Fisheries Management and Development Act, 2016 (No. 35 of 2016). The Bill proposes to amend the Fisheries Management and Development Act, 2016 to provide that the Cabinet Secretary responsible for matters relating to fisheries shall be the chairperson of the Kenya Fisheries Advisory Council.

There has been duplication of roles in the past where the Advisory Council is chaired by someone else. You then ask yourself who the Advisory Council is advising. We propose to amend the Act so that the Cabinet Secretary chairs the Advisory Council just as the President chairs his Advisory Council. This will cure the governance challenges that are posed by the current position on the appointment of the chairperson, noting that the Council is mainly composed of Cabinet Secretaries. An Advisory Council composed of Cabinet Secretaries cannot be chaired by someone who is not a Cabinet Secretary. That is what we want to cure through this amendment.

On the heels of that amendment is the Energy Act, 2019 (No.1 of 2019). The Bill proposes to amend the Energy Act, 2015 to give effect to the recommendations of the Presidential Taskforce on the Review of Power Purchase Agreements. We have had many discussions in this House about reviewing power purchase agreements. The President set up a Taskforce which made certain recommendations, which need to be incorporated into the Act, so that they can have the force of law for the country to have a better power purchase agreements regime.

There is also the Public Private Partnerships Act, 2021 (No.14 of 2021). The Bill proposes to amend the Public Private Partnerships Act, 2021 to correct typographical errors.

(An Hon. Member spoke off the record)

No. Just typographical errors.

Hon. Joshua Kimilu (Kaiti, WDM): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Order, Hon. Baya. Once a Member rises on a point of order, we have to hear him. What is your point of order?

QUORUM

Hon. Joshua Kimilu (Kaiti, WDM): Thank you, Hon. Temporary Speaker. Is it in order for the House to discuss such an important Bill without the requisite quorum?

The Temporary Speaker (Hon. Omboko Milemba): Which Standing Order are you rising on? He has raised an issue of quorum and our Standing Orders are very explicit on quorum.

*(The Temporary Speaker (Hon. Omboko Milemba)
consulted with the Clerks-at-the-Table)*

A Member has risen in his place and raised an issue of quorum as per Standing Order 35. I can ascertain that there is no quorum in the House. Therefore, I direct the Serjeant-at-Arms to ring the Quorum Bell for 10 minutes. Proceed, Serjeant-at-Arms.

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(The Quorum Bell was rung)

The Temporary Speaker (Hon. Omboko Milemba): Very well. A Member rose in his place under Standing Order No.35 on the matter that concerns the quorum of the House. I ascertained that there was no quorum in the House. Hon. Members, the bell having been rung for 10 minutes, I still ascertain that there is no quorum. Therefore, we may rise.

ADJOURNMENT

The Temporary Speaker (Hon. Omboko Milemba): Hon. Members, the time being 5.05 p.m., this House stands adjourned until Tuesday, 30th April 2024 at 2.30 p.m.

The House rose at 5.05 p.m.

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