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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2020)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 AUG 2021	DAY: Thurs
TABLED BY:	Hon. Gladys Wanga Chair, Finance
CLERK-AT-THE-TABLE:	Mainah Wanjiku

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2021

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020) which was published on 10th December 2020.

The Bill went through the First Reading on 9th June 2021 and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill has two (2) clauses and seeks to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount of tenders where Kenya citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

Following placement of adverts in the print media on 11th June 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received two written memoranda from the National Treasury and Planning and the Institute of Certified Public Accountants of Kenya (ICPAK).

In order to extensively carry out public participation on the Bill, the Committee invited stakeholders vide letter REF: NA/DDC/F&NP/2021/30 dated 6th July 2021 for a stakeholder engagement meeting which was held on Wednesday, 15th July 2021 at Emara Ole Sereni Hotel where National Treasury and Planning attended the meeting.

The stakeholders were opposed to the amendment noting that the threshold set will inhibit the participation of private firms that usually contribute to the economy through the public private partnership framework. They also raised concerns on the capacity of citizen contractors and tenderers to adequately provide the necessary services that require specialized skills that the market space demands. Further, limiting participation of foreign tenderers may hinder technology transfer and building local capacity and locking out foreign contractors will negatively affect Kenya's participation as a key player in regional and international trade.

While considering the Bill, the Committee noted that the leap from five hundred million shillings to twenty billion shillings is astronomically huge. Further, very few Kenyan contractors can afford tenders worth twenty billion shillings. It is for the above reason that the Committee agreed with the stakeholders' concerns and resolved to delete the Bill in its entirety.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Procurement and Asset Disposal (Amendment) (No. 3) Bill, 2020. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Hon. Benjamin Gathiru, MP for sponsoring the Bill and all the stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the with the Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020) and have the honour to report back to the National Assembly recommendation that the Bill be deleted in its entirety.

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. ***To study and review all the legislation referred to it;***
 - iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
 - vii. *To examine treaties, agreements and conventions;*
 - viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 COMMITTEE'S SUBJECTS

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. National Treasury and Planning
 - ii. State Department for Devolution
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget
 - v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in July, 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County

ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency

Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency

ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency

Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency

Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County

ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency

CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency

Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency

MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency

MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency

WDM-K

Hon. Catherine Waruguru, MP
Laikipia County

Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency

Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency

Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency

Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Lauren O. Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

Mr. Vitalis Augo
Office Assistant

PART TWO

2 OVERVIEW OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2020)

2.1 INTRODUCTION

6. The main principle object the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020) is to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenyan citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

2.2 ANALYSIS OF THE BILL

The Bill proposes the following amendments:

7. **Clauses 1** of the Bill provides for the short title.
8. **Clauses 2** of the Bill increases the amount for exclusive preference of tenderers for Kenyans from five hundred million shillings to twenty billion shillings.
9. The Bill does not limit any fundamental rights and freedoms as provided under the Constitution.
10. The Bill affects the functions of county governments and is therefore a Bill concerning county governments for purposes of the Standing Orders.
11. Enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

12. Following the call for memoranda from the public through the placement of adverts in the print media on 11th June, 2021 and vide a letter REF: NA/DDC/F&NP/2021/30 dated 6th July 2021 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- i. Institute of Certified Public Accountants of Kenya (ICPAK)
- ii. National Treasury and Planning

The stakeholders submitted as follows:-

3.1 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

The Chief Executive Officer for the Institute of Certified Public Accountants of Kenya, Mr. Edwin Makori submitted a memorandum **THAT** —

13. The increment margin of exclusive preference from five hundred million shillings to twenty billion shillings is too high. Whereas the threshold set will enhance eligibility of local firms and contractors in promoting the growth of the SME sector, it has the risk of completely excluding foreign firms from participating in procurement thus may inhibit foreign investment in Kenya.
14. In addition, they submitted that the threshold set will inhibit the participation of private firms that usually contribute to the economy through Public Private Partnership frameworks. They also raised concerns about the capacity of citizen contractors and tenderers to adequately provide the necessary services that require specialized skill that the market space demands.
15. They proposed that the Bill should be amended by reducing the threshold of exclusive preference from twenty billion to five billion shillings.

Committee's Observation

The Committee noted ICPAK's concerns and resolved to delete the proposed amendment.

3.2 NATIONAL TREASURY AND PLANNING

In a meeting with the Committee held on Wednesday, 14th July 2021, Hon. Nelson Gaichuhie, Chief Administrative Secretary, National Treasury, submitted that National Treasury did not submit the amendment because of the following reasons:

16. The amendment implies that the Cabinet Secretary shall set thresholds of above KSh. 20 billion for citizen contractors (firms wholly owned and controlled by Kenyan citizens). This will lock out local contractors (firms registered in Kenya with above 51% Kenyan shareholding) and foreign contractors (firms owned by foreign Nationals).
17. The proposed amendment will limit competition to citizen contractors hence loss of benefits that accrue from international competition which includes increased prices for projects. Further, there is inadequate capacity of citizen contractors to deliver quality complex projects in a timely manner.

18. If procurements of KSh. 20 billion are reserved for local contractors, foreign bidders and local contractors will be locked out leading to capital flight, decline in direct investments and relocation of businesses to other countries. Limiting participation of foreign tenderers may hinder technological transfer and building local capacity.
19. Additionally, locking out foreign contractors will negatively affect Kenya's participation as a key player in regional and international trade. Further, it may create room for laxity among citizen contractors due to poor quality of projects which will in the long run outweigh the intended benefits.
20. Arising from the above reasons, there is need to assess the existing thresholds and evaluate if citizen contractors have the requisite capacity to handle tenders of that amount and increase gradually through prescribing in the Regulations.
21. The threshold for exclusive preference given to citizen contractors is prescribed in Regulation 163 of the Public Procurement and Disposal Regulations 2020 as follows: (i) One billion shillings for procurements in respect of works, construction materials and other materials which are made in Kenya; and (ii) five hundred million shillings for procurements in respect of goods and services.

Committee's Observation

The Committee noted the concerns raised by National Treasury and Planning and deleted the proposed amendment.

PART FOUR

4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed the following:

22. The proposed amendment will raise the threshold for exclusive preference from five hundred million shillings to twenty billion shillings;
23. The leap from five hundred million shillings to twenty billion shillings is too huge i.e. 40 times more. The increase should be gradual; and
24. Very few Kenyan contractors have the capacity to execute tenders worth twenty billion shillings. This will therefore mean that tenders worth the amount will be reserved for the few Kenyans who can afford them.

PART FIVE

5 COMMITTEE RECOMMENDATION

25. The Committee having considered the Public Finance Management (Amendment) Bill (National Assembly Bill No. 39 of 2020) recommends to the House that the Bill be **deleted in its entirety**.

PART SIX

6 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:-

26. Clause 2: Delete

Justification

The move from five hundred million shillings is astronomically high. Additionally, very few Kenyans can execute contracts worth twenty billion shillings. This will mean that such tenders will only be reserved to a few contractors.

SIGNED..... DATE.....



5th August 2021

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

1. Adoption Schedule
2. Minutes of the 50th and 53rd sittings
3. Newspaper Advertisement – Submission for Memoranda for Public Participation

REPUBLIC OF KENYA



**NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE**

***ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE PUBLIC
PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (N.A. BILL NO. 49 OF 2020)***

DATE:

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	Virtual
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	Virtual
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. PROF. MOHAMUD SHEIKH MOHAMED, MP	Virtual
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS ON THURSDAY, 5TH AUGUST, 2021 AT 10:30 A.M.

PRESENT

- | | | |
|---------------------------------------------|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Andrew A. Okuome, MP | | |
| 5. Hon. David M. Mboni, MP | | |
| 6. Hon. Edith Nyenze, MP | | |
| 7. Hon. James Gichuhi Mwangi, MP | | |
| 8. Hon. Joshua C. Kandie, MP | | |
| 9. Hon. Francis K. Kimani, MP | | |
| 10. Hon. Catherine Waruguru, MP | | |
| 11. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. (Dr.) Christine Ombaka, MP
5. Hon. Joseph M. Oyula, MP
6. Hon. Stanley M. Muthama, MP
7. Hon. Peter Lochakapong, MP
8. Hon. Qalicha Gufu Wario, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--------------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Brigitta Mati | - | Legal Counsel II |
| 3. Mr. John Njoro | - | Serjeant-At-Arms |
| 4. Ms. Christine Maeri | - | Audio Officer |
| 5. Ms. Hannah Mwangi | - | Intern |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Adoption of Reports on the following Bills:**
 - i. Report on the Pensions (Amendment) Bill (*National Assembly Bill No. 26 of 2020*)
 - ii. Report on the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 34 of 2020*)
 - iii. Report on the Public Finance Management (Amendment) Bill (*National Assembly Bill No. 39 of 2020*)
 - iv. Report on the Kenya Deposit Insurance (Amendment) Bill, 2020(*National Assembly Bill No. 43 of 2020*)
 - v. Report on the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 47 of 2020*)

- vi. Report on the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 49 of 2020*)
- vii. Report on the Central Bank of Kenya (Amendment) Bill (*National Assembly Bill No. 10 Of 2021*)
- viii. Report on the Trustees (Perpetual Succession) (Amendment) Bill (*National Assembly Bill No. 23 of 2021*)
- ix. Report on the Perpetuities and Accumulations (Amendment) Bill, 2021 (*National Assembly Bill No.24 of 2021*)

5. Any Other Business

6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/298: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:10 a.m and a prayer was said.

MIN.NO.NA/F&NP/2021/299: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/300: ADOPTION OF REPORTS ON BILL
The Chair invited Members to consider the following Reports which were subsequently adopted as follows: -

1. Report on the Pensions (Amendment) Bill (National Assembly Bill No. 26 of 2020)
Proposed by- Hon. Jimmy O. Angwenyi
Seconded by -Hon. James G. Mwangi
2. Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020)
Proposed by- Hon. Isaac W. Ndirangu
Seconded by -Hon. David M. Mboni
3. Report on the Public Finance Management (Amendment) Bill (National Assembly Bill No. 39 of 2020)
Proposed by- Hon. Edith Nyenze
Seconded by -Hon. Jimmy Angwenyi
4. Report on the Kenya Deposit Insurance (Amendment) Bill, 2020(National Assembly Bill No. 43 of 2020)
Proposed by- Hon. Jimmy O. Angwenyi
Seconded by -Hon. James G. Angwenyi
5. Report on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020)
Proposed by- Hon David M. Mboni
Seconded by -Hon Jimmy O. A
6. Report on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)

Proposed by- Hon. James Gichuhi, M.P
Seconded by – Hon. David Mboni, M.P

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON WEDNESDAY, 14TH JULY 2021 AT 2:00 P.M.

PRESENT

- | | | |
|---------------------------------------------|---|-------------------------|
| 1. Hon. Gladys Wangwa, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--------------------------------------------|
| 1. Mr. Anthony Njoroge | - | Director, Litigation |
| 2. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 3. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 4. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 5. Mr. Chelang'a Maiyo | - | Research Officer II |
| 6. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 7. Mr. John Njoro | - | Serjeant-At-Arms |
| 8. Ms. Christine Maeri | - | Audio Officer |

NATIONAL TREASURY AND PLANNING

1. Hon. Nelson Gaichuhie
2. Mr. Eric Korir
3. Mr. Elijah Nyamamba
4. Mr. Peter Ndung'u

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Meeting with the National Treasury to consider the Trustees (Perpetual Succession) (Amendment) Bill, 2021; the Perpetuities and Accumulations (Amendment) Bill, 2021; the Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Richard Tongi, MP; and the Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Benjamin Gathiru, MP**

Details of the amendments proposed by National Treasury on the two Bills are contained in Part III of the Reports on the consideration of the Public Procurement Asset Disposal (Amendment) Bill (N.A. Bill No. 34 of 2020) and the Public Procurement Asset Disposal (Amendment) Bill (N.A. Bill No. 49 of 2020)

MIN.NO.NA/F&NP/2021/244:

**CLAUSE BY CLAUSE CONSIDERATION OF
THE TRUSTEES (PERPETUAL
SUCCESSION) (AMENDMENT) BILL, 2021
AND THE PERPETUITIES AND
ACCUMULATIONS (AMENDMENT) BILL,
2021**

The Perpetuities and Accumulations (Amendment) Bill, 2021

The meeting deliberated and agreed as follows on the Bill:

Clause 1: Agreed to

Clause 2: Agreed to

Clause 3: Amend 19(2) as per Prof. Tom Ojienda's proposal.

The Trustees (Perpetual Succession) (Amendment) Bill, 2021

The meeting deliberated and agreed as follows on the Bill:

Clause 1: Agreed to

Clause 2: Amend as per stakeholder comments
Delete definition of the word "*discretionary trust*"

Clause 3: (3)(1) amend as per Kenya Community Development Foundation/East Africa
Philanthropy Network proposal

Clause 4

3A: Agreed to

3B: Redraft

3C: Amend (1) by inserting the words "*non-charitable*".

3D: Agreed to

3E: Agreed to

3F: Agreed to

3G: Agreed to

3H: Agreed to

3I: Agreed to

3J: Agreed to

The Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Tongi

The meeting deliberated and agreed to adopt National Treasury's position on the Bill.

MIN.NO.NA/F&NP/2021/245:

**BRIEFING ON THE AMENDMENTS
PROPOSED TO THE PARLIAMENTARY
PENSIONS (AMENDMENT) BILL 2019 BY
HON. ANDREW MWADIME, MP**

The Chairperson invited Mr. Anthony Njoroge, Director Litigation to brief the meeting on amendments proposed by Hon. Peter Kaluma, MP and Hon. Wafula Wamunyinyi during consideration of the Bill in the Committee of the Whole House.

Mr. Njoroge implored on Members not to insist on the non-contributory post-retirement medical scheme as it will take away the benefits carried in the Parliamentary Pensions (Amendment) Bill, 2019. He noted that the PSC had consulted with the Salaries and Remuneration Commission before the Bill was drafted.

MIN.NO.NA/F&NP/2021/246:

ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 4.49 p.m. The next meeting will be held on Thursday, 15th July 2021 at 9.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED.....



DATE.....

5th August 2021

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON TUESDAY, 13TH JULY 2021 AT 9:30 A.M.

PRESENT

- | | | |
|---------------------------------------------|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--------------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

CENTRAL BANK OF KENYA

- | | | |
|------------------------|---|----------|
| 1. Dr. Patrick Njoroge | - | Governor |
| 2. Mr. Kennedy Abuga | | |
| 3. Mr. Matu Mugo | | |
| 4. Mr. Wallace Kantai | | |
| 5. Mr. Gerald Nyaoma | | |
| 6. Mr. Dickson Ndegwa | | |

OTHER STAKEHOLDERS

- | | | |
|-------------------------|---|--------------------------------------|
| 1. Ms. Rosemary Koech | - | Safaricom PLC |
| 2. Ms. Acha Ouma | - | Oxygene Media |
| 3. Mr. Frankline Sunday | - | Standard Media Group |
| 4. Ms. Brenda Kombo | - | KTN |
| 5. Mr. Kevin Mutiso | - | Digital Lenders Association of Kenya |
| 6. Mr. Vincent Odhiambo | - | Metropol TV |

- 7. Mr. Stanley Kiprop - Kass Media
- 8. Mr. Linus Roph - Kass Media

AGENDA

- 1. Prayers
- 2. Communication from the Chairperson
- 3. **Meeting with Central Bank of Kenya to consider the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
- 4. **Clause by Clause Consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020) and the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)**
- 5. Any Other Business
- 6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/227 COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.45 a.m. and a prayer was said. The Chairperson then called for introduction of those present before inviting the Governor, CBK to make their submissions.

MIN.NO.NA/F&NP/2021/228: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/229: MEETING WITH CENTRAL BANK OF KENYA TO CONSIDER THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020) AND THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Dr. Njoroge submitted as follows on the two Bills:

- 1. Digital lending has grown exponentially in Kenya over the last few years due to high mobile phone penetration, adoption of mobile-phone based financial services and ease of use and convenience.
- 2. Regulated digital lending has 3.9 million accounts with a loan value of KSh. 50.6 billion which is 1.6% of banking sector loan book as at the end of April 2021.
- 3. FinAccess Survey 2019 showed that usage of unregulated digital credit has grown from 0.6% (200,000) of Kenya’s adult population in 2016 to 8.3% (2 million people) in 2019. There is growing uptake of unregulated digital credit but the number and size of the unregulated digital credit providers is uncertain.
- 4. The following issues have arisen from unregulated digital lending:
 - i. High indebtedness of borrowers;
 - ii. Lack of consumer protection safeguards due to lack of transparency in pricing, aggressive debt collection and personal data abuse;
 - iii. Financial integrity concerns like Anti-Money Laundering/Combating Financing of Terrorism;
 - iv. Misuse of Credit Reference Bureau (CRB) reporting for blackmailing borrowers; and
 - v. Uneven playing field-regulatory arbitrage.
- 5. Actions taken by CBK against unregulated digital lending:

- i. Warnings to the public through speeches, press conferences, public notices, dedicated page on CBK website on fraud safety and warned banks against dealing with fraudulent and unlicensed financial schemes;
 - ii. Carrying out of surveys like the National FinAccess Household Surveys conducted by CBK, KNBS and FSD done in 2016 and 2019 and the CBK Innovation Survey done in 2020;
 - iii. Withdrawal of approval as third party sources of information to CRBs
 - iv. Regulation: CBK hosted Global Alliance for Financial Inclusion Forum on Regulation of Digital Credit and drafted Digital Credit Policy and Regulations; and
 - v. Engagement: Afro-Asia Fintech Festival 2019 and 2020, related Africa Hackathons (Fintech) Competitions in 2019 and 2020 and subsequent engagements with Fintechs.
6. Central Bank of Kenya (Amendment) Bill, 2020:
- i. The scope is limited to mobile phones, excludes other digital channels;
 - ii. Too broad and applies to all entities including licensed institutions like banks, microfinance banks and saccos; and
 - iii. Recommended that it is shelved and Central Bank of Kenya (Amendment) Bill, 2021 progressed.
7. Central Bank of Kenya (Amendment) Bill, 2021:
- i. Seeks to empower CBK to regulate and supervise the conduct of digital lenders; and
 - ii. Seeks to address the issue of unregulated digital lending activities.

MEMBERS' DELIBERATIONS

1. Regarding the setting of the minimum liquidity rate and capital requirements for digital lenders, the meeting was informed that regulation on minimum liquidity and capital will be right sized for digital lenders.
2. Regarding the capping of interest rates for digital lenders, CBK will come up with regulations that will ensure that consumers are protected.
3. With regards to delays in issuance of licenses to digital lenders, the Governor stated that CBK does not sit on licensing requests. Requests take long to be approved because applicants fail to submit all the required information.
4. Regarding the renewal of licenses annually, the meeting was informed that licenses will be paid for annually but digital lenders will not be required to reapply for the licenses.
5. Regarding concerns that regulation of digital lenders will stifle innovation, the Governor informed the meeting that innovators should not be allowed to run amok and that the innovations should be consistent with the principles that are already set out. CBK does not intend to overregulate the industry. All they want is to protect consumers.
6. Regarding the over indebtedness of borrowers, the Governor noted that it is a very important issue that needs to be looked into. Information should be provided to the citizenry on their financial options.
7. Regarding listing of customers on the CRBs, CBK noted that that digital lenders should continue using CRBs in a balanced way. The data should be well protected.
8. On whether these laws will stop pyramid schemes, the Governor stated that the law will not stop pyramid schemes. CBK will however ensure that people are given the right information on investment.
9. Regarding collaboration with the Office of the Data Commissioner and Communications Authority, the Governor stated that this is very welcome as it will enhance consumer protection.

10. On the provision of dispute resolution in the legislation, the meeting was informed that this is not necessary because disputes rarely arise. The law should be clear to prevent disputes.
11. Regarding the extension of the period of compliance with the law, the Governor stated that 6 months after enactment of the law is sufficient. CBK will start working with digital lenders immediately so that the licensing is timely.
12. The Committee requested CBK to submit documentation on legal frameworks on digital lending for countries that they had benchmarked with.

Details of the amendments proposed by CBK on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

MIN.NO.NA/F&NP/2021/230:

CLAUSE BY CLAUSE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2020) AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2020)

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)

The meeting deliberated and resolved that the Bill be deleted in its entirety because the leap from five hundred million shillings to twenty billion shillings is too high.

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020)

Clause 2(a): Delete because it is not clear what services are being brokered.

Clause 2(b) (6)(a): amend by deleting the words “*defined period*” and replacing with the words “*period as defined in the contract document*”

Clause 2(b) (6)(b): amend by deleting the word “*persons*” and replacing with the word “*Kenyans*”.

Clause 3: Delete

MIN.NO.NA/F&NP/2021/231:

ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.02 p.m. The next meeting will be held at 2.00 p.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....

.....DATE.....

5th August 2021



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
 TWELFTH PARLIAMENT- FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
 And
 In the Matter of Consideration by the National Assembly of;

1. The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020);
2. The Pharmacy and Poisons (Amendment) Bill (National Assembly Bill No. 1 of 2021);
3. The Health (Amendment) Bill (National Assembly Bill No. 14 of 2021);
4. The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021);
5. The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021);
6. The Community Groups Registration Bill (National Assembly Bill No. 20 of 2021);
7. The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021);
8. The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021)
9. The Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021);
10. The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020);
11. The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020);
12. The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020);
13. The Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021);
14. The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021).

SUBMISSION OF MEMORANDA

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the aforementioned Bills, whose objects are as follows:

The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020) sponsored by Hon. Paul Mwirigi, MP, Igembe South Constituency, seeks to amend the Higher Education Loans Board Act in order to provide that a loanee shall commence the repayment of his or her loan once he or she secures employment. The amendment is meant to cushion unemployed graduates from being charged interest on the loan before they have secured employment.

The Pharmacy and Poisons (Amendment) Bill, 2021 (National Assembly No 1 of 2021) sponsored by Hon. Alfred Keter, MP, Mandi Hills Constituency, seeks to amend the Pharmacy and Poison Act to prohibit the sale or dispensing of medicine without written prescription from a registered medical practitioners

The Health (Amendment) Bill, 2021 (National Assembly No 14 of 2021) sponsored by Hon. Moses Mwambu Wekesa Mabonga, MP, Bumula Constituency, seeks to amend the Health Act No 21 of 2017 to provide that the National government and county governments shall, in consultation through the existing inter-governmental relations mechanism establish regional cancer centers; to make it an offence for a person in-charge of a Public Health facility to demand or permit of payments of advance medical fees as pre-condition for the provision of medical services; to make it an offence for person in-charge of a Public Health facility to detain a body of deceased person as means of enforcing settlement of outstanding medical bills and to provide for regulation on levying of charges for the practice of conventional medical practice.

The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021) seeks to provide for the establishment and operationalization of the National Electronic Single Window System in order to facilitate trade, the establishment of the Kenya Trade Network Agency, to provide for electronic transactions, and for connected purposes.

The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021) seeks to provide for development, regulation and promotion of the Coffee Industry, provide for establishment, powers and functions of the Coffee Board of Kenya.

The Community Groups Registration Bill, 2021 (National Assembly Bill No.20 of 2021) seeks to provide a regulatory framework for the registration and regulation of community groups and connected purposes.

The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021) sponsored by Hon. David Pkosing, MP, Pokot South Constituency, seeks to amend the Kenya Roads Act (No. 2 of 2007) to align the Act with the provisions of the Constitution with regard to the auditing functions of the Office of the Auditor-General. The Act currently refers to the defunct office of the Controller of Budget and the Auditor-General. The Bill further seeks to amend the term of office of and the qualification for the Director-General of the Kenya Roads Board appointed under the Act.

The Computer Misuse and Cybercrimes (Amendment) Bill, 2021 (National Assembly Bill No. 11 of 2021) sponsored by Hon. Aden Bare Duale, MP, Garissa Township Constituency, seeks to amend The Computer Misuse and Cybercrimes Act, 2018 to provide for the prohibition against the sharing of pornography through the internet and prohibit use of electronic mediums to promote terrorism, extreme religious and cult activities.

Kenya Industrial Research and Development Institute Bill, 2021 (National Assembly Bill No. 44 of 2021) seeks to establish the Kenya Industrial Research and Development Institute, and for connected purposes. It further provides for the promotion of research, development, technology and innovation in industrial and allied technologies, and for initiation and support of industrial development.

The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020) sponsored by Hon. David Gikaria, MP, Nakuru Town East Constituency, seeks to amend the National Construction Authority Act, No. 41 of 2011 to ensure women, youth and persons living with disabilities with start-up businesses who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

The Kenya Deposit Insurance (Amendment) Bill, 2020 (National Assembly Bill No. 43 of 2020) sponsored by Hon. Abdul Rahim Dawood, MP, Imenti North Constituency, seeks to amend section 28 of the Kenya Deposit Insurance Act, 2012 in order to increase the maximum amount a person with an account with an institution under liquidation is to be paid by the Kenya Deposit Insurance Corporation. It further seeks to delete the provision limiting the maximum amount a person is to be paid by the Corporation despite having different accounts.

The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill, 2020 (National Assembly Bill No. 49 of 2020) sponsored by Hon. Benjamin Gathiru Mwangi, MP, Embakasi Central Constituency, seeks to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenya citizens are given

exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

The Irrigation (Amendment) Bill, 2021 (National Assembly Bill No. 12 of 2021) seeks to amend the Act by expanding the administration of irrigation matters to include management and regulation of irrigation matters. The Bill further seeks to amend the Act to harmonize the provision of the Irrigation Act, Water Act and Water Resources Management Rules, 2007.

The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021) seeks to amend the Tax Appeals Tribunal Act, 2013 to address the challenges affecting the performance of the Tax Appeals Tribunal to facilitate the expedition of tax disputes in the country.

Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bills proposing amendments to the various Acts of Parliament are committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE		
No.	BILL	COMMITTEE
1.	The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37)	Education and Research
2.	The Pharmacy and Poisons (Amendment) Bill (National Assembly No 1 of 2021)	Health
3.	The Health (Amendment) Bill (National Assembly No 14 of 2021)	Communication, Information and Innovation
4.	The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021)	
5.	The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021)	Agriculture and Livestock
6.	The Community Groups Registration Bill (National Assembly Bill No.20 of 2021)	Labour and Social Welfare
7.	Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021);	Trade, Industry and Cooperatives
8.	The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021)	Transport, Public Works and Housing
9.	The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020)	Finance and National Planning
10.	The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020)	
11.	The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020)	
12.	The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021)	
13.	The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021)	Environment and Natural Resources
14.	Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021)	

The Bills were read a First Time pursuant to Standing Order 127(3) on 8th and 9th June 2021. Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday 18th June, 2021, at 5:00 pm.

MICHAEL SIALAI, CBS
 CLERK OF THE NATIONAL ASSEMBLY

11th June 2021