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THIRTEENTH PARLIAMENT – SECOND SESSION – 2023  
DEPARTMENTAL COMMITTEE ON ENERGY  
.....

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	
DAY: TUESDAY	
TABLED BY:	HON. GEORGE MURUGARA, MP, CHAIRPERSON SLAC
CLERK-AT THE TABLE:	ESTHER NG'ENDO

CLERK'S CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

MARCH, 2023

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## CHAIRPERSON'S FOREWARD

This report details the consideration by the Departmental Committee Energy of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022). The Bill seeks to amend many laws among them **that seeks to amend the Energy Act, 2019** which is relevant to the Departmental Energy. The Bill in particular proposes several amendments to the Energy Act, 2019.

The Bill was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127.

Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Further, vide a letter Ref: NA/DDC /ENERGY/2023/005 dated 21<sup>st</sup> February, 2023 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendments to the said Act: The Cabinet Secretary for Energy together with Chief Executive Officers of Kenya Power and Lightning Company, Rural Electrification and Renewable Energy Company, Energy Regulatory Authority and Nuclear Power and Energy Agency and the Chairperson, Council of Governors.

From the foregoing, the Committee received views from the Ministry of Energy and Petroleum and the Council of Governors. The Committee thereafter held meetings with various stakeholders where submissions were received and the presentations considered before adoption of this report.

Having considered the proposed amendments and based on analysis of submissions by the Ministry of Energy and Petroleum, the Council of Governors and the Kenya Law Reform Commission, the Committee made observations for each of the proposed amendments to the Energy Act, 2019 as contained in Part IV of this Report.

Having reviewed the proposed amendments to the Energy Act, 2019 as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), the Committee recommends:

- (1) **THAT** the proposed amendments to **the new section 6A and sections 20(1), 26(4), 45(1), 82, 98(1)(d), 100(1)(b), 117, 129(2), 166(3), 166(4), 167(1), 187, 199(1) and 216(1)** relating to the Energy Act, 2019 be proceeded with as proposed;
- (2) **THAT** the proposed amendments to **sections 2, 4(1), 4(1)(f)(i), 4(1)(f)(v), 6(1)(a)(ii), 9(1), 10, 11, 12(1)(e), 18(3)(a), 18(3)(b), 20, 20(4), 22(2), 24, 24(2), 26(1), 26(2), 26(3), 26,**

**30(1)(a), 30(1)(e)(ii), 45(1)(e), 76(2), 149(3), 154(2), 169(2) and 208** relating to the Energy Act, 2019 be amended as proposed in Part V of this Report.

**Hon. Eng. Vincent Musyoka, M.P.**  
**Departmental Committee on Energy**

## PART I

### 1.0 PREFACE

#### 1.1 Introduction

1. This report details the consideration by the Departmental Committee on Energy of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022).
2. The Bill was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127. Specifically, the Committee considered amendments proposed to **the Energy Act, 2019**.

#### 1.2 Mandate of the Committee

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

#### 1.3 Oversight

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

#### 1.4 Committee Membership

6. The Departmental Committee on Energy was constituted by the House on 27<sup>th</sup> October, 2022 and comprises the following Members:

##### **Chairperson**

Hon. (Eng.) Vincent Musyoka Musau, MP  
Mwala Constituency

##### **United Democracy Alliance Party**

##### **Vice Chairperson**

Hon. Lemanken Aramat, MP  
Narok East Constituency

##### **United Democracy Alliance Party**

##### **Members**

The Hon. Charles Gimose, MP.  
Hamisi Constituency

##### **Amani National Congress Party**

The Hon. Richard Chonga, MP.  
Kilifi South Constituency

##### **Orange Democratic Movement (ODM)**

The Hon. Musili Mawathe, MP.  
Embakasi Constituency

##### **Orange Democratic Movement (ODM)**

The Hon. Tom Mboya Odege, MP.  
Nyatike Constituency

##### **Orange Democratic Movement (ODM)**

The Hon. Cecilia Ngitit, MP  
Turkana County Women Representative

##### **United Democracy Alliance Party**

The Hon. Geoffrey Mulanya, MP  
Nambale Constituency

##### **Independent Party**

The Hon. George Aladwa, MP  
Makadara Constituency

##### **Orange Democratic Movement (ODM)**

The Hon. Elisha Odhiambo, MP.  
Gem Constituency

##### **Orange Democratic Movement (ODM)**

The Hon. Walter Owino, MP.  
Awendo Constituency

##### **Orange Democratic Movement (ODM)**

The Hon. Simon King'ara, MP  
Ruiru Constituency

##### **United Democracy Alliance Party**

The Hon. Augustine Kamande, MP  
Roysambu Constituency

##### **United Democracy Alliance Party**

The Hon. Victor Koech, MP  
Chepalungu Constituency

##### **Chama Cha Mashinani(CCM)**

The Hon. Nolfason Obadiah, MP  
Borabu Bomachoge Constituency

##### **Orange Democratic Movement (ODM)**

### **1.5 Committee Secretariat**

7. The Committee is facilitated by the following staff:

Mr. Adan Gindicha

**Senior Clerk Assistant**

**Lead Clerk/Head of Secretariat**

Ms. Mary Lemerelle  
**Second Clerk Assistant**

Mr. Salim Athuman  
**Third Clerk Assistant**

Ms. Jemimah Waigwa  
**Senior Legal Counsel**

Mr. Brian Njeru  
**Fiscal Analyst III**

Mr. Josphat Bundotich  
**Senior Serjeant-at-Arms**

Ms. Lorraine Onyego  
**Legal Counsel II**

Mr. Derrick Kathurima  
**Media Relations Officer**

Mr. Robert Langat  
**Research Officer III**



## PART II

### 2.0 OVERVIEW OF THE PROPOSED AMENDMENTS

11. The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), which was sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP, was an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills. The Bill was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration.
12. The Bill seeks to amend the following laws which are relevant to the Departmental Committee on Energy: **The Energy Act, 2019 (No. 1 of 2019)**
13. The Bill proposes to amend the Energy Act, 2019 to among other things:
  - i. Address the overlap in functions between the Energy and Petroleum Regulatory Authority and the Cabinet Secretary;
  - ii. Include Kenya Power and Lighting Company PLC and the Authority in the Membership of the Renewable Energy Resources Advisory Committee established under the Act; and
  - iii. Subject the making of regulations to the attainment by the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority.

## CHAPTER 3

## PART III

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

14. Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Two submissions were received from the Ministry of Energy & Petroleum and from the Kenya Law Reform Commission. (Annex 4).
15. Through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Further, vide a letter Ref: NA/DDC /ENERGY/2023/005 dated 21<sup>st</sup> February, 2023 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendments to the said Act: The Cabinet Secretary for Energy together with Chief Executive Officers of Kenya Power and Lightning Company, Rural Electrification and Renewable Energy Company, Energy Regulatory Authority and Nuclear Power and Energy Agency and the Chairperson,
16. Further, vide a letter Ref: NA/DDC /ENERGY/2023/005 dated 21<sup>st</sup> February, 2023 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendment to the said Act: Ministry of Energy & Petroleum and the Council of Governors. (Annex 5).
17. The analysis of the submissions made by the Ministry of Energy and Petroleum, the Council of Governors and the Kenya Law Reform Commission are contained in Part IV of this Chapter.

## PART IV

### 3.1 ANALYSIS OF THE PROPOSED AMENDMENTS

18. The Bill in particular proposes several amendments to the Energy Act, 2019. The following is an analysis of the proposed amendments and the submissions made by the Ministry of Energy, Council of Governors and the Kenya Law Reform Commission for each of the proposed amendments:

#### **Proposed amendment to section 2:**

19. The Bill seeks to delete the definition of the term “distribution licence” and inserts the following new definition in proper alphabetical sequence—

**“distribution licence” means a document or instrument authorising a person to distribute energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;**

#### **Submission by the Ministry of Energy and Petroleum**

20. The proposed amendment seeks to retain the second definition, which is more comprehensive.

#### **Committee’s Observation**

21. The definition of distribution licence appears twice in section 2 of the Act as follows:

**distribution licence" means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;**

**"distribution licence", means any document or instrument authorizing a person to distribute energy in the manner described in such document or instrument in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;**

22. The application of the definition in the term “distribution of electricity” and in sections 139 and 140 of the Energy Act appear to refer to electrical energy and hence there is need to amend the definition to make reference to “electrical energy”.

#### **Proposed amendment to section 4(1):**

23. The Bill seeks to amend section 4(1) of the Energy Act as follows:

Insert the following new paragraph immediately after paragraph (e) —

(ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.

#### **Submission by the Ministry of Energy and Petroleum .**

24. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

25. There is a serious disarrangement of proposed amendments to the Energy Act and the Scrap Metal Act. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

**Committee's Observation**

26. Section 4 of the Act deals with the National Energy Policy. The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 4(1)(f)(i)**

27. The Bill proposes to delete the word "the" and substitute therefor the word "a".

**Submission by the Ministry of Energy and Petroleum .**

28. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

29. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

**Committee's Observation**

30. Section 4 of the Act deals with the National Energy Policy. The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 4(1)(f)(v)**

31. The Bill proposes to delete paragraph (f)(v) appearing in section 4.

**Submission by the Ministry of Energy and Petroleum .**

32. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

33. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

### **Committee's Observation**

34. Section 4 of the Act deals with the National Energy Policy. The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

### **Proposed amendment to section 6(1)(a)(ii)**

35. The Bill proposes to delete the word "utility" and substitute therefor the words "critical national"

### **Submission by the Ministry of Energy and Petroleum .**

36. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

### **Submission by the Kenya Law Reform Commission (KLRC)**

37. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

### **Committee's Observation**

38. Section 6 of the Act deals with monitoring the implementation of the national integrated energy plan. The section being proposed to be amended is section 6 of the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

### **Proposed new section 6A**

39. The Bill proposes to insert the following new section immediately after section 6—

#### **National energy efficiency and conservation action plan**

6A. The Cabinet Secretary, in consultation with the relevant statutory authorities and stakeholders, shall coordinate the development and implementation of a national energy efficiency and conservation action plan.

### **Submission by the Ministry of Energy and Petroleum**

40. The role of coordinating and development of the national energy efficiency and conservation plan is presently under Energy and Petroleum Regulatory Authority (hereinafter referred to as "EPRA"). The amendment seeks to confer this role to the Cabinet Secretary. The role of the Ministry is policy and planning while the role of EPRA is regulation.

### **Committee's Observation**

41. Section 10(z)(ll) confers upon EPRA the role of coordinating the development and implementation of a national energy efficiency and conservation action plan. There is need to amend section 10 to align the functions of EPRA with the new proposed amendment.

**Proposed amendment to section 9(1)**

42. The Bill proposed to amend section 9(1) to insert the word “a” immediately after the word “of”.

**Submission by the Ministry of Energy and Petroleum .**

43. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

44. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

**Committee’s Observation**

45. Section 9 of the Act deals with the establishment of EPRA. The section being proposed to be amended is in the Scrap Metal Act and hence does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 10**

46. The Bill proposes to amend section 10 of the Energy Act as follows:  
Delete the words “with the exception of crude oil” appearing in paragraph (a) (ii);  
Delete paragraph (ii) and substitute therefor the following new paragraph—  
(ii) make proposals to the Cabinet Secretary for purposes of making regulations on energy efficiency and conservation.

**Submission by the Ministry of Energy and Petroleum**

47. The proposal seeks to harmonize EPRA’S functions under 10(a)(ii) with other functions under section 10(b) to 10(aa). The amendment is not captured correctly, as it should read paragraph 10. (LL) and not 10. (ii). In addition, paragraph (LL) gives the Authority the role of coordinating the development and implementation of national energy efficiency plan and hence should be amended.

**Committee’s observations**

48. Section 10(a) of the Act provides that the functions of the Authority shall be to—

(a) regulate—

(i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;

(ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products **with the exception of crude oil**;

49. The amendment seeks to allow EPRA to also regulate the importation, refining, exportation, transportation, storage of petroleum and petroleum products including crude oil.

50. The amendment to paragraph (ii) in relation to the energy efficiency and conservation does not appear in subparagraph (ii) but in subparagraph (II) which reads:

*The functions of the Authority shall be to co-ordinate the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant statutory authorities and other stakeholders.*

51. There is a need to amend section 10(z)(II) to align the amendment with the new proposed amendment to section 6A.

#### **Proposed amendment to section 11**

52. The Bill proposes to amend section 11 of the Energy Act as follows:

Renumber the provision as subsection (1) and add the following subsections—

(2) Notwithstanding subsection (1), the Cabinet secretary shall issue a special licence for dealing in copper, aluminium and their alloys.

(3) An application for a special licence shall be made in accordance with section 10.

#### **Submission by the Ministry of Energy and Petroleum .**

53. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

#### **Submission by the Kenya Law Reform Commission (KLRC)**

54. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

#### **Committee's Observation**

55. The section being proposed to be amended is in the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. The amendment may be deleted.

### **Proposed amendment to section 12(1)(e)**

56. The Bill proposes to amend section 12 of the Energy Act by deleting paragraph (1)(e).

### **Submission by the Ministry of Energy and Petroleum .**

57. The amendment seeks to realign the membership of the EPRA board as guided by the principles of separation of powers noting EPRA is a national entity.

### **Submission by the Council of Governors**

58. The Fourth Schedule bestows the function of planning and development including electricity and gas reticulation and energy to regulation to county governments. Section 222 of the Energy Act stipulates the functions of county governments to include energy planning, county energy planning and county energy operations and development and energy regulation.

59. The amendment takes away the representation of county governments yet counties play a major role in the energy sector. Article 6(2) of the Constitution requires both levels of government to conduct their mutual relations on the basis of consultation and cooperation.

### **Committee's Observations**

60. Section 12 (1) of the Act provides that the Management of the Authority shall vest in the Board of Directors of the Authority consisting of—

- (a) a Chairperson who shall be appointed by the President;
- (b) the Principal Secretary responsible for Energy or his representative;
- (c) the Principal Secretary responsible for Petroleum or his representative;
- (d) the Principal Secretary in the National Treasury or his or her authorized representative;
- (e) **one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors;**
- (f) the Director-General; and
- (g) five other members not being public officers appointed by the Cabinet Secretary.

61. The county governments have only one representative in the Board of EPRA while the national government has 10 representatives to the Board.

62. Pursuant to paragraph 31 of Part 1 and paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, energy regulation falls under the concurrent jurisdiction of both levels of government.



63. The Fifth Schedule to the Act also provides for a detailed analysis of the distribution of the functions between the two arms of government.
64. The principle of separation of powers applies to the three arms of government and the two levels of government are governed by Article 6 of the Constitution. In this regard, the amendment does not accord with the Fourth Schedule to the Constitution and the Fifth Schedule to the Act which recognizes energy regulation as a function that falls within the concurrent jurisdiction of both levels of government.

**The proposed amendment to section 18(3)(a)**

65. The Bill proposes to amend section 18(3)(a) to delete the words “one million” and substitute therefor the words “five million”.

**Submission by the Ministry of Energy and Petroleum .**

66. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

67. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

**Committee’s Observation**

68. The section being proposed to be amended is in the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. The amendment should be deleted.

**Proposed amendment to section 18(3)(b)**

69. The Bill proposes to amend section 18(3)(b) to delete the word “five” and substitute therefor the word “ten”.

**Submission by the Ministry of Energy and Petroleum .**

70. The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

71. The proposed amendment in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

### **Committee's Observation**

72. The section being proposed to be amended is in the Scrap Metal Act, 2015 and hence does not exist in the Energy Act. The amendment should be deleted.

### **Proposed amendment to section 20(1)**

73. The Bill proposes to amend section 20(1) of the Energy Act by deleting the phrase "half of a" appearing in paragraph (a).

### **Submission by the Ministry of Energy and Petroleum**

74. The amendment seeks to ensure that EPRA is adequately funded to enable it to meet all its responsibilities.

### **Committee's observations**

75. Section 20(1) of the Act provides that the funds of the Authority shall consist of—
- (a) levies not exceeding one **half of a** percent on the sales of electricity and petroleum products;
76. The amendment seeks to provide that levies not exceeding **one** percent on the sales of electricity and petroleum products shall be part of the funds of EPRA. The Committee observed that whereas the amendment would ensure that EPRA is adequately funded, there was need for the National Assembly to oversight the appropriation of the funds collected as levies before making recommendations for allocations to the Authority. In this regard, the Committee agreed with the proposal to increase the ceiling for collection of the levies to a figure not exceeding 1% of the sales of electricity and petroleum products subject to :
- (a) requiring all levies to be paid into the Consolidated Fund; and
  - (b) ensuring that all monies collected as levies are subject to oversight by the House and the Committee through determination of budgetary allocations to be made to the Authority.

### **Proposed amendment to section 20**

77. The Bill seeks to amend section 20 of the Energy Act to delete the word "levies" appearing in the proviso.

### **Submission from the Ministry of Energy and Petroleum**

78. The amendment seeks to exempt levies collected by EPRA from being paid into the Consolidated fund in order to enhance EPRA's effectiveness in discharging its functions.

### **Committee's Observation**

79. The amendment seeks to exempt levies collected by the Authority from being paid into the consolidated fund to the Authority directly. The Committee observed that whereas the amendment found its basis in Article 206 (1)(b) of the Constitution which provides that money may be excluded from the Consolidated Funds to allow a state organ to retain such funds for purposes of defraying the expenses of the state organ, the proposed amendment would negate the oversight role of the House and the Committee in determining budgetary allocations to be made to the Authority.
80. The Committee further noted that although EPRA had submitted that the current practice allowed the Authority to retain monies collected from levies and hence the amendment was attempting to align practice with the law, the Committee noted that the practice has no legal basis in terms of Article 206(1)(b) of the Constitution as read with section 20 of the Act. In this regard, the Committee observed that the amendment should be deleted. The Committee further proposed that the Act be amended to create clarity that all levies shall be paid into the Consolidated Fund hence subject to approval for budgetary allocations by the Committee.

**Proposed amendments to sections 20(4), 22(2), 24, 24(2) 26(1), 26(2), 26(3) and 26.**

81. The Bill seeks to make various amendments to sections 20(4), 22(2), 24, 24(2), 26(1), 26(2), 26(3) and 26.

**Submission by the Ministry of Energy and Petroleum**

82. The sections being proposed to be amended do not exist in the Act and hence the amendments are erroneous.

**Submission by the Kenya Law Reform Commission (KLRC)**

83. The proposed amendments in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

**Committee's Observation**

84. The sections being proposed to be amended are in the Scrap Metal Act, 2015 and hence do not exist in the Energy Act. The amendments should be deleted.

**Proposed amendment to section 26(4)**

85. The proposed amendment to section 26(4) of the Energy Act seeks to insert the word "of" immediately after the word "terms".

**Submission by the Ministry of Energy and Petroleum**

86. The amendment is an editorial correction.

### **Committee's Observations**

87. Section 26(4) of the Act provides that the Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
88. The amendment is a grammatical correction.

### **Proposed amendments to sections 30(1)(a) and 30(1)(e)(ii)**

89. The Bill seeks to make various amendments to section 30.

### **Submission by the Ministry of Energy and Petroleum**

90. The sections being proposed to be amended do not exist in the Act and hence the amendments are erroneous.

### **Submission by the Kenya Law Reform Commission (KLRC)**

91. The proposed amendments in the Energy Act should be removed and placed under the proposed amendments to the Scrap Metal Act.

### **Committee's Observation**

92. The sections being proposed to be amended are in the Scrap Metal Act, 2015 and hence do not exist in the Energy Act. The amendments should be deleted.

### **Proposed amendment to section 45**

93. The Bill seeks to amend section 45 of the Energy Act to delete the words "who shall be the Secretary to the Board" appearing in paragraph (d); delete the word "three" and substitute therefor the word "seven" and delete paragraph (f).

### **Submission by the Ministry of Energy and Petroleum**

94. The amendment seeks to align the Board with Mwongozo, State Corporation Act and the Good Corporate Governance Practices on segregation of roles of the CEO and that of the Corporation Secretary.
95. The Rural Electrification and Renewable Energy Corporation is a national entity and its membership should be informed by principles of separation of powers.
96. The Cabinet Secretary only appoints three members to the Board while the county governments have a total of four Members yet the Board is a national entity in nature.

97. The Managing Director of Kenya Power should be part of RERAC which is an inter-ministerial advisory Committee. This is intended for value addition in the advisory role as these 2 entities play a critical role in the energy sector. Further, EPRA is a key stakeholder with regard to licensing.
98. The Cabinet Secretary is to be vested with the prerogative to appoint 4 more members to the Board of REREC thus a total of 7.

### **Submission by the Council of Governors**

99. The Council of Governors represents 47 county governments hence the need for adequate representation to safeguard the interests of counties.
100. Additionally, rural connectivity and renewable energy are primary functions of county governments.

### **Committee's Observations**

101. Section 45 (1) provides that the management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of—
  - (a) a Chairperson appointed by the President;
  - (b) the Principal Secretary in the Ministry responsible for energy or his representative;
  - (c) the Principal Secretary in the National Treasury or his representative;
  - (d) the Chief Executive Officer **who shall be the Secretary to the Board;**
  - (e) **three** members appointed by the Cabinet Secretary; and
  - (f) **four other members appointed by the Council of County Governors.**
102. The county governments have four representatives in the Board while the national government has six representatives.
103. Pursuant to paragraph 31 of Part 1 and paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, electricity and energy regulation falls under the concurrent jurisdiction of both levels of government.
104. The Fifth Schedule to the Act also provides for a detailed analysis of the distribution of the functions between the two arms of government.
105. The principle of separation of powers applies to the three arms of government and the two levels of government are governed by Article 6 of the Constitution. In this regard, the amendment does not accord with the Fourth Schedule to the Constitution and the Fifth Schedule to the Act which recognizes energy regulation as a function that falls within the concurrent jurisdiction of both levels of government.

106. However, noting the Board is a national entity responsible for the management of REREC, the representatives of the county governments should be reduced to three members while those of the national government should increase to four members.
107. The amendment to align the position of the Chief Executive Officer with the Mwongozo guidelines is in order.

#### **Proposed amendment to section 76**

108. The Bill proposes to amend section 76 of the Energy Act as follows:

Insert the following new paragraph immediately after paragraph (g)—

(h) the Managing Director of Kenya Power and Lighting Company PLC or his or her representative.

#### **Submission by the Ministry of Energy and Petroleum**

109. The proposal is intended to add value to the advisory role since the entity is in the energy sector.

#### **Submission by the Council of Governors**

110. The Fifth Schedule to the Energy Act requires the counties to establish energy centres for promotion of renewable energy technologies, energy efficiency and conservation in addition, the Fourth Schedule to the Constitution bestows the function of electricity and gas reticulation to county governments.
111. It is hence imperative that county governments are represented in the Renewable Energy Resource Advisory Committee as energy is a concurrent function.

#### **Committee's Observations**

112. Whereas the Committee notes that the Renewable Energy Resource Advisory Committee is an inter-ministerial Committee, there is need to amend the section to allow for representation of county governments in light of the provisions of the Fifth Schedule to the Act which allows the counties to deal with matters relating to renewable energy.
113. However, noting the Committee plays an advisory role, the Committee observed that there is need to ensure that the representative of the county governments to the Committee is a person who is suitably qualified and with the relevant expertise to play the advisory role. To this end, the Committee noted that the chairperson of the relevant Committee of the Council of Governors which is responsible for matters relating to energy should be a member of the Advisory Committee.

#### **Proposed amendment to section 82**

114. The Bill proposes to amend section 82 of the Act to delete the word “Authority” and substitute therefor the expression “Renewable Energy Resource Advisory Committee”.

#### **Submission by the Ministry of Energy and Petroleum**

115. The proposed amendments seek to align the section with the role of the Renewable Energy Resource Advisory Committee.

#### **Committee’s Observation**

116. The amendment aligns with section 82(4) of the Act which provides that it is the role of Renewable Energy Resource Advisory Committee to advise the Cabinet Secretary on criteria for allocation of renewable energy resource and licensing of renewable energy resource areas, among other functions.

#### **Proposed amendment to section 98(1)(d)**

117. The proposed amendment to section 98(1)(d) of the Act seeks to insert the word “with” immediately after the word “compliance”.

#### **Submission by the Ministry of Energy and Petroleum**

118. The amendment is a grammatical correction.

#### **Committee’s Observation**

119. Section 98(1)(d) provides that the Authority shall, in granting or rejecting an application for a licence or permit, take into consideration compliance **with** this Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Authority in consultation with the Kenya Bureau of Standards. The proposed amendment is hence a grammatical correction.

#### **Proposed amendment to section 100(1)(b)**

120. The proposed amendment to section 100(1)(b) seeks to insert the word “of” immediately after the word “type”.

#### **Submission by the Ministry of Energy and Petroleum**

121. The amendment is a grammatical correction.

#### **Committee’s Observation**

122. Section 100(1)(b) of the Act provides that every licence or permit shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or

conditions where applicable the type of coal or coal products. The proposed amendment is hence a grammatical correction.

**Proposed amendment to section 117**

123. The Bill seeks to amend section 117 of the Act to delete the word “one” and substitute therefor the words “one half of a”.

**Submission by the Ministry of Energy and Petroleum**

124. The provision state that a person shall not require authorization to generate energy for own use for capacity not exceeding 1MW. There are many industry players and there is need to have an efficient energy planning framework coupled with monitoring.

**Committee’s Observation**

125. Section 117 of the Act provides that a person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Authority in accordance with the provisions of this Act: Provided that a person shall not require any authorization to generate electrical energy for own use of a capacity not exceeding **one** megawatt. The amendment is in order as it seeks to create efficiency in energy generation and the licensing processes.

**Proposed amendment to section 129(2)**

126. The Bill seeks to amend section 129(2) of the Act to delete the word “three” and substitute therefor the word “four”.

**Submission by the Ministry of Energy and Petroleum**

127. The amendment provides for the submission of audited accounts of licensees to EPRA within 4 months. The amendment is in conformity with the Capital Markets Authority requirements.

**Committee’s Observation**

128. The amendment seeks to change the timeline for submission of audited accounts to a period within 4 months after the end of each financial year.

**Proposed amendment to section 149(3)**

129. The amendment seeks to amend section 149(3) of the Act to delete the word “licence” and substitute therefor the word “certificate”.

**Submission by the Ministry of Energy and Petroleum**



130. The Ministry proposes the withdrawal of the amendment to retain the term “licence” in line with the Kenya Accreditation Service Act, 2019.

#### **Committee’s Observation**

131. A licence is the instrument that confers power to persons to undertake certain functions and is subject to renewal. The amendment should therefore be deleted.

#### **Proposed amendment to section 154(2)**

132. The Bill proposes to amend section 154(2) of the Act to delete the word “meters” and substitute therefor the word “metres”.

#### **Submission by the Ministry of Energy and Petroleum**

133. The amendment is a spelling correction. Metres implies length as opposed to meter which is the gadget.

#### **Committee’s Observation**

134. Section 154(2) of the Act is captured correctly. The proposed amendment is erroneous and should therefore be deleted.

#### **Proposed amendment to section 166(3) and (4)**

135. The Bill seeks to amend section 166 (3) and (4) by deleting and substituting therefor the following new subsections—

(3) For the avoidance of doubt, the licensee shall not be liable to any penalty under subsection (1) or to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee’s electricity supply lines, or by inevitable accident or force majeure, or was so slight as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary may make regulations to give effect to this section subject to the grid attaining the quality and reliability of supply and service as prescribed by the Authority.

#### **Submission by the Ministry of Energy and Petroleum**

136. The proposal is an enhancement of the current provision by including penalty under subsection (1). The amendment to subsection (4) proposes that the Cabinet Secretary may make regulations subject to the grid attaining the quality and reliability of supply and service as will be prescribed by the Authority. To achieve this, the Ministry notes that there is need to enhance resource allocations to improve the grid status as the country at the moment may not be able to accommodate these investments.

#### **Committee’s Observation**

137. The amendment seeks to subject sub-section (1) to the proviso. The amendment also prescribes a conditional precedent for making regulations to give effect to the section which is pegged on the grid attaining quality and reliable supply. The amendment seeks to ensure that claims for compensation are based on direct actions or non-actions of the licensee.

#### **Proposed amendment to section 167**

138. The Bill seeks to amend section 67 by deleting the expression “(1)” and deleting the word “electrician” appearing in paragraph (o) and substituting therefor the words “electrical worker”.

#### **Submission by the Ministry of Energy and Petroleum**

139. This is correction of a numerical error, as there are no other subsections. Further, electrical work can only be carried out by an electrical workers who have attained the requirement of section 149 electrical.

#### **Committee’s Observation**

140. Section 149 of the Act recognizes the use of the term “electrical workers”. The proposed amendment also seeks to correct an error in paragraphing.

#### **Proposed amendment to section 169**

141. The Bill proposes to amend section 169 by deleting and substituting therefor the following new subsection—

- (1) Any vessel that is used to convey the vandalised or **stolen equipment** or appliances referred to in subsection (1) shall be forfeited to the State.

#### **Submission by the Ministry of Energy and Petroleum**

142. The amendment seeks to enhance the provisions of section 169(2) to cure the gap under subsection (1) to include vehicles used to conveying stolen equipment.

#### **Committee’s Observation**

143. The Committee observed that although the amendment sought to enhance the offence, the proposed amendment would lead to forfeiture of vessels whose owners may not have been involved in the commission of the offence or had knowledge of the commission of the offence in particular in cases where the vessels have been stolen. In this regard, the Committee observed that there was need to provide clarity by providing that the offence shall apply where an owner of a vessel or equipment knowingly or wilfully permits the use of his or her vessel or equipment to convey vandalised or stolen equipment or where an owner of a vessel or equipment knowingly or wilfully permits another person to use his or her vessel or equipment to convey vandalised or stolen equipment. Further, the Committee also observed that there was

need to expand the scope of the offence to include equipments used to convey vandalised and stolen appliances. To this end, the Committee proposed an amendment to include reference to equipments used to convey vandalised or stolen equipment.

#### **Proposed amendment to section 187**

144. The amendment seeks to amend section 187 to delete the words “coordinate the development and implementation of a” and substitute therefor the words “develop and implement”.

#### **Submission by the Ministry of Energy and Petroleum**

145. The role of coordinating and development of the national energy efficiency and conservation plan is presently under EPRA. The amendment seeks to confer this role to the Cabinet Secretary. The role of the Ministry is policy and planning while the role of EPRA is regulation.

#### **Committee’s Observation**

146. The Committee is a consequential amendment to the proposed amendment in the new section 6A.

#### **Proposed amendment to section 199**

147. The proposed amendment seeks to amend section 199 of the Act to insert the word “*Gazette*” immediately after the words “by notification in the”.

#### **Submission by the Ministry of Energy and Petroleum**

148. The amendment is an editorial correction.

#### **Committee’s Observation**

149. The amendment is an editorial correction.

#### **Proposed amendment to section 208**

150. The amendment seeks to amend section 208 of the Act to delete the words “on the recommendation of” and substitute therefor the words “in consultation with”.

#### **Submission by the Ministry of Energy and Petroleum**

151. The provision empowers the Cabinet Secretary to make regulations with respect to the Act.

#### **Committee’s Observation.**

152. The proposed amendment shall weaken the role of EPRA in executing its functions in particular in making regulations on matters that fall under its mandate. The Committee proposed that the amendment be deleted.

#### **Proposed amendment to section 216**

153. The Bill seeks to amend section 216 to delete the word “Consolidated”.

#### **Submission by the Ministry of Energy and Petroleum-**

154. The provision intends to eliminate confusion between the Energy Fund and the Consolidated Fund established under the Constitution.

#### **Committee’s Observation.**

155. The proposed amendment seeks to create clarity and distinguish the Energy fund with the Consolidated Fund established under the Constitution.

#### **Other Proposed amendments: The Memorandum of Objects and Reasons of the Bill**

156. The Ministry of Energy and Petroleum submitted that the Memorandum of Objects & Reasons of the Bill contains a drafting error whereby it seeks to include Kenya Power as a member of REREC (Rural Electrification and Renewable Energy Corporation) instead of the RERAC (Renewable Energy Resource Advisory Committee).

157. The Nuclear Power and Energy Agency also observed that the Memorandum also provided that the Bill sought to wind up the Nuclear Power and Energy Agency and transfer its functions to the Ministry.

#### **Committee’s Observation.**

158. Pursuant to Standing Order 132, the memorandum of objects and reasons of a Bill is not subject to amendment. Further, although the memorandum of the Bill erroneously indicates that the Bill seeks to wind up the Nuclear Power and Energy Agency and transfer its functions to the Ministry and to include Kenya Power and Lighting Company as a member of REREC (Rural Electrification and Renewable Energy Corporation) instead of the RERAC (Renewable Energy Resource Advisory Committee), the Committee observed that the Bill does not contain any amendment to this effect.

## **PART IV**

### **4.0 COMMITTEE OBSERVATIONS**

Having considered the proposed amendments, the Committee observed **THAT**:

#### **Proposed amendment to section 2**

- (1) The definition of distribution licence appears twice in section 2 of the Energy Act (hereinafter referred to as the Act) and hence there is need to delete both definitions and substitute with a more comprehensive definition that aligns with section 139 of the Act.

#### **Proposed amendment to section 4(1)**

- (2) The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 4(1)(f)(i)**

- (3) The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 4(1)(f)(v)**

- (4) The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 6(1)(a)(ii)**

- (5) The section being proposed to be amended is section 6 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed new section 6A**

- (6) Section 10(z)(II) confers upon EPRA the role of coordinating the development and implementation of a national energy efficiency and conservation action plan. There is to amend section 10 of the Act to align the functions of EPRA with the new proposed amendment.

**Proposed amendment to section 9(1)**

- (7) Section 9 of the Act deals with the establishment of EPRA. The section being proposed to be amended is in the Scrap Metal Act and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 10**

- (8) The amendment seeks to allow EPRA to also regulate the importation, refining, exportation, transportation, storage of petroleum and petroleum products including crude oil. The amendment to paragraph (ii) in relation to the energy efficiency and conservation does not appear in subparagraph (ii) but in subparagraph (II) which reads:

*The functions of the Authority shall be to co-ordinate the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant*

*statutory authorities and other stakeholders.* The is need to amend section 10(z)(II) of the Act to align the amendment with the new proposed amendment to section 6A.

**Proposed amendment to section 11**

- (9) The section being proposed to be amended is in the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. The amendment should be deleted.

**Proposed amendment to section 12(1)(e)**

- (10) The county governments have only one representative in the Board of EPRA while the national government has 10 representatives to the Board. Pursuant to paragraph 31 of Part 1 and paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, energy regulation falls under the concurrent jurisdiction of both levels of government. The Fifth Schedule to the Act also provides for a detailed analysis of the distribution of the functions between the two arms of government.
- (11) The principle of separation of powers applies to the three arms of government while the two levels of government are governed by Article 6 of the Constitution. In this regard, the amendment does not accord with the Fourth Schedule to the Constitution and the Fifth Schedule to the Act which recognizes energy regulation as a function that falls within the concurrent jurisdiction of both levels of government. The amendment should hence be deleted.

**The proposed amendment to section 18(3)(a)**

- (12) The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous. The amendment should be deleted.

**Proposed amendment to section 18(3)(b)**

- (13) The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous. The amendment should be deleted.

**Proposed amendment to section 20(1)**

- (14) The amendment seeks to provide that levies not exceeding **one** percent on the sales of electricity and petroleum products shall be part of the funds of EPRA. The Committee observed that whereas the amendment would ensure that EPRA is adequately funded, there was need for the National Assembly to oversight the appropriation of the funds collected

as levies before making recommendations for allocations to the Authority. In this regard, the Committee agreed with the proposal to increase the ceiling for collection of the levies to a figure not exceeding 1% of the sales of electricity and petroleum products subject to :

- (a) requiring all levies collected to be paid into the Consolidated Fund; and
- (b) ensuring that all monies collected as levies are subject to oversight by the House and the Committee through determination of budgetary allocations to be made to the Authority

**Proposed amendment to section 20**

- (15) The amendment seeks to exempt levies collected by the Authority from being paid into the consolidated fund to the Authority directly. The Committee observed that whereas the amendment found its basis in Article 206 (1)(b) of the Constitution which provides that money may be excluded from the Consolidated Funds to allow a state organ to retain such funds for purposes of defraying the expenses of the state organ, the proposed amendment would negate the oversight role of the House and the Committee in determining budgetary allocations to be made to the Authority.
- (16) The Committee further noted that although EPRA had submitted that the current practice allowed the Authority to retain monies collected from levies and hence the amendment was attempting to align practice with the law, the Committee noted that the practice has no legal basis in terms of Article 206(1)(b) of the Constitution as read with section 20 of the Act. In this regard, the Committee observed that the amendment should be deleted. The Committee further proposed that the Act be amended to create clarity that all levies shall be paid into the Consolidated Fund hence subject to approval for budgetary allocations by the Committee.

**Proposed amendments to sections 20(4), 22(2), 24, 24(2) 26(1), 26(2), 26(3) and 26.**

- (17) The sections being proposed to be amended do not exist in the Act and hence the amendments are erroneous. The amendments should be deleted.

**Proposed amendment to section 26(4)**

- (18) The proposed amendment is an editorial correction.

**Proposed amendments to sections 30(1)(a) and 30(1)(e)(ii)**

- (19) The sections being proposed to be amended do not exist in the Act and hence the amendments are erroneous. The amendments should be deleted.

**Proposed amendment to section 45**



- (20) The county governments have four representatives in the Board of REREC while the national government has six representatives to the Board. Pursuant to paragraph 31 of Part 1 and paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, electricity and energy regulation falls under the concurrent jurisdiction of both levels of government. The Fifth Schedule to the Act also provides for a detailed analysis of the distribution of the functions between the two arms of government.
- (21) principle of separation of powers applies to the three arms of government while the two levels of government are governed by Article 6 of the Constitution. In this regard, the amendment does not accord with the Fourth Schedule to the Constitution and the Fifth Schedule to the Act which recognizes energy regulation as a function that falls within the concurrent jurisdiction of both levels of government. However, noting the Board is a national entity responsible for the management of REREC, the representatives of the county governments should be reduced to three members while those of the national government should increase to four members.

**Proposed amendment to section 76**

- (22) Despite the Renewable Energy Resource Advisory Committee being an inter-ministerial Committee, there is need to amend the section to allow for representation of county governments in light of the provisions of the Fifth Schedule to the Act which allows the counties to deal with matters relating to renewable energy. However, noting the Committee plays an advisory role, there is need to ensure that the representative from the county governments to the Committee is a person who is suitably qualified and with the relevant expertise to play the advisory role. To this end, the Committee noted that the chairperson of the relevant Committee of the Council Governments responsible for matters relating to energy should be a member of the Advisory Committee.
- (23) Counties play a critical role in energy regulation and hence including representatives of county governments to the Committee shall be value addition as it will enhance the capacity of the Advisory Committee to perform its functions effectively .

**Proposed amendment to section 82**

- (24) The amendment aligns with section 82(4) of the Act which provides that it is the role of Renewable Energy Resource Advisory Committee to advise the Cabinet Secretary on criteria for allocation of renewable energy resource and licensing of renewable energy resource areas, among other functions.

**Proposed amendment to section 98(1)(d)**

- (25) The proposed amendment is a grammatical correction.

**Proposed amendment to section 100(1)(b)**

(26) The proposed amendment is a grammatical correction.

**Proposed amendment to section 117**

(27) The amendment seeks to provide that a person who wishes to generate electrical energy for own use of a capacity not exceeding one half of a megawatt shall not be required to apply for a licence. The amendment is in order as it seeks to create efficiency in energy generation, increase energy generation to address the energy demands in the country and improve on the licensing processes.

**Proposed amendment to section 129(2)**

(28) The amendment seeks to change the timeline for submission of audited accounts to a period of within 4 months after the end of each financial year.

**Proposed amendment to section 149(3)**

(29) A licence is the instrument that confers power to persons to undertake certain functions and is subject to renewal and hence the amendment should be deleted.

**Proposed amendment to section 154(2)**

(30) Section 154(2) of the Act makes reference to meters which is the correct reference to the electric gadgets. In this regard, the amendment should be withdrawn.

**Proposed amendment to section 166(3) and (4)**

(31) The amendment seeks to subject sub-section (1) to the proviso. The amendment also prescribes a conditional precedent for making regulations to give effect to the section which is pegged on the grid attaining quality and reliable supply. The amendment seeks to ensure that claims for compensation against KPLC are based on direct actions or non-actions of KPLC.

**Proposed amendment to section 167**

(32) The proposed amendment is an editorial correction and is in line with section 149 of the Act which recognizes the use of the term “electrical workers”.

**Proposed amendment to section 169**

(33) The Committee observed that although the amendment sought to enhance the offence of vandalism, the proposed amendment would lead to forfeiture of vessels whose owners may

not have been involved in the commission of the offence or had knowledge of the commission of the offence in particular in cases where the vessels have been stolen. In this regard, the Committee observed that there was need to provide clarity by providing that the offence shall apply where an owner of a vessel or equipment knowingly or wilfully permits the use of his or her vessel or equipment to convey vandalised or stolen equipment or where an owner of a vessel or equipment knowingly or wilfully permits another person to use his or her vessel or equipment to convey vandalised or stolen equipment. Further, the Committee also observed that there was need to expand the scope of the offence to include equipments used to convey vandalised and stolen appliances. To this end, the Committee proposed an amendment to include reference to equipments used to convey vandalised or stolen equipment.

#### **Proposed amendment to section 187**

- (34) The amendment is a consequential amendment to the new section 6A which conferred the power to the Cabinet Secretary to coordinate the development and implementation of the national energy efficiency plan.

#### **Proposed amendment to section 199**

- (35) The proposed amendment seeks to amend section 199 of the Act to insert the word “*Gazette*” immediately after the words “by notification in the”. In this regard, the amendment seeks to create clarity that notification shall be done through the Kenya Gazette.

#### **Proposed amendment to section 208**

- (36) The proposed amendment shall weaken the role of EPRA in executing its functions in particular in making regulations on matters that fall under its mandate. The Committee proposed that the amendment be deleted.

#### **Proposed amendment to section 216**

- (37) The amendment seeks to eliminate confusion between the Energy Fund and the Consolidated Fund established under the Constitution.

#### **Other Proposed amendments: The Memorandum of Objects and Reasons of the Bill**

- (38) Pursuant to Standing Order 132, the memorandum of objects and reasons of the Bill is not subject to amendment. Further, although the memorandum of the Bill erroneously indicates

that the Bill seeks to wind up the Nuclear Power and Energy Agency and transfer its functions to the Ministry and to include Kenya Power and Lighting Company as a member of REREC (Rural Electrification and Renewable Energy Corporation) instead of the RERAC (Renewable Energy Resource Advisory Committee), the Committee observed that the Bill does not contain any amendment to this effect.

## PART V

### 5.0 COMMITTEE RECOMMENDATIONS

Pursuant to Standing Order 127, the Committee recommends:

- (3) **THAT** the proposed amendments to **the new section 6A and sections 20(1), 26(4), 45(1), 82, 98(1)(d), 100(1)(b), 117, 129(2), 166(3), 166(4), 167(1), 187, 199(1) and 216(1)** relating to the Energy Act, 2019 be proceeded with as proposed;
- (4) **THAT** the proposed amendments to **sections 2, 4(1), 4(1)(f)(i), 4(1)(f)(v), 6(1)(a)(ii), 9(1), 10, 11, 12(1)(e), 18(3)(a), 18(3)(b), 20, 20(4), 22(2), 24, 24(2), 26(1), 26(2), 26(3), 26,**

- 30(1)(a), 30(1)(e)(ii), 45(1)(e), 76(2), 149(3), 154(2), 169(2) and 208** relating to the Energy Act, 2019 be amended accordingly; and
- (5) **THAT** in light of paragraph (2), the Schedule to the Bill be amended in the proposed amendments to the Energy Act, 2019—

- (a) by deleting the proposed amendment to section 2 and substituting therefor the following new proposed amendment—

s.2 Delete the definition of the terms “distribution licence” whenever they appear and substitute therefor the following new definition in its proper alphabetical sequence—

“distribution licence” means a document or instrument authorising a person to distribute electrical energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;

- (b) by deleting the proposed amendment to section 4(1);

- (c) by deleting the proposed amendment to section 4(1)(f)(i);

- (d) by deleting the proposed amendment to section 4(1)(f)(v);

- (e) by deleting the proposed amendment to section 6(1)(a)(ii);

- (f) by deleting the proposed amendment to section 9(1);

- (g) by deleting the proposed amendment to section 10 and substituting therefor the following new proposed amendment—

s.10 Delete the words “with the exception of crude oil” appearing in paragraph (ii);  
Delete paragraph (z)(II).

- (h) by deleting the proposed amendment to section 11;

- (i) by deleting the proposed amendment to section 12(1)(e);

- (j) by deleting the proposed amendment to section 18(3)(a);

- (k) by deleting the proposed amendment to section 18(3)(b);
- (l) by deleting the proposed amendment to section 20 and substituting therefor the following new proposed amendment—
- s.20            Insert the words “referred to under subsection (1)(a)” immediately after the words “Authority including” appearing in the proviso;
- (m) by deleting the proposed amendment to section 20(4);
- (n) by deleting the proposed amendment to section 22(2);
- (o) by deleting the proposed amendment to section 24;
- (p) by deleting the proposed amendment to section 24(2);
- (q) by deleting the proposed amendment to section 26(1);
- (r) by deleting the proposed amendment to section 26(2);
- (s) by deleting the proposed amendment to section 26(3);
- (t) by deleting the proposed amendment to section 26;
- (u) by deleting the proposed amendment to section 30(1)(a);
- (v) by deleting the proposed amendment to section 30(1)(e)(ii);
- (w) by deleting the word “seven” appearing in the proposed amendment to section 45(1)(e) and substituting therefor the word “four”;
- (x) by deleting the proposed amendment to section 45 and substituting therefor the following new proposed amendment —

s.45(1)(f) Delete the word “four” appearing in paragraph (f) and substitute therefor the word “three”;

(y) by inserting the following new proposed amendment immediately after the proposed amendment to section 45—

s.76(1) Delete the words “an inter-ministerial” appearing in subsection (1) and substitute therefor the word “a”;

(z) in the proposed amendment to section 76(2), by inserting the following new paragraph immediately after paragraph (h) —

“(i) the Chairperson of the relevant committee of the Council of Governors responsible for matters relating to energy;”

(aa) by deleting the proposed amendments to section 149(3);

(bb) by deleting the proposed amendments to section 154(2);

(cc) by deleting the proposed amendment to section 169(2) and substituting therefor the following new proposed amendment —


s.169(2) Delete and substitute therefor the following—  
(2) Any vessel or equipment which is used to convey the vandalised or stolen equipment or appliances referred to in subsection (1) shall be forfeited to the State—  
(a) where an owner of the vessel or equipment knowingly or wilfully permits the use of his or her vessel or equipment to convey the vandalised or stolen equipment or appliances; and  
(b) where an owner of a vessel or equipment knowingly or wilfully permits another person to use his or her vessel or equipment to convey the vandalised or stolen equipment or appliances.

(dd) by deleting the proposed amendment to section 208.

**Justifications for the amendments.**

(1) The amendment seeks to create clarity on the definition of the term distribution licence.

- (2) The amendments seek to delete sections relating to the Scrap Metal Act, 2015 erroneously placed in the Energy Act.
- (3) The amendment seeks to ensure that EPRA is adequately funded to perform its functions while at the same time ensuring that levies collected by the Authority are subject to approval for budgetary allocations by the Committee and the House in exercise of its oversight role.
- (4) The amendment to the offence on vandalism seeks to create clarity by ensuring that owners of vessels and equipments who have no knowledge of the commission of the offence of vandalism do not lose their vessels or equipments through forfeiture to the State.
- (5) The amendments seek to ensure that county governments are represented in the EPRA, REREC Boards and the Renewable Energy Resource Advisory Committee in line with the Fourth Schedule to the Constitution and the Fifth Schedule to the Energy Act.
- (6) The amendments seek to correct a grammatical error and create clarity.
- (7) The amendments seeks to ensure that EPRA as a regulator is able to make regulations on matters falling under its functions.

SIGNED:  : DATE: 23/03/2023

**HON. ENG. VINCENT MUSYOKA, M.P.**  
**CHAIRPERSON,**  
**DEPARTMENTAL COMMITTEE ON ENERGY**



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON ENERGY

MEMBERS' ADOPTION

Agenda: Adoption of the report on Statute Law (Miscellaneous) Amendments Bill 2022

DATE: 07/03/2023 VENUE: County Hall ground floor START TIME: 12.10pm

END

TIME: 2.30pm

	NAMES	SIGNATURE
1.	Hon. (Eng.) Vincent Musyoka, MP- Chairperson	
2.	Hon. Lemanken Aramat, MP- Vice Chairperson	
3.	Hon. Charles Gimose, M.P	
4.	Hon. Julius Musili Mawathe, MP	
5.	Hon. Richard Ken Chonga, MP	
6.	Hon. Walter Owino, M.P MP	
7.	Hon. Elisha Odhiambo, MP	
8.	Hon. Tom Mboya Odege, MP	
9.	Hon. Simon King'ara, MP	
10.	Hon. George Omera Aladwa, MP	
11.	Hon. Mwafrika Augustine Kamande, MP	
12.	Hon. Victor Koech Kipngetch, MP	
13.	Hon. Geoffrey Ekesa Mulanya, MP	
14.	Hon. Cecilia Asinyen Ngirit, MP	
15.	Hon. Barongo Nolfason Obadiah, MP	

SIGN: ..... DATE: .....

MR. ADAN GINDICHA- SENIOR CLERK ASSISTANT

SIGN: ..... DATE: .....

DIRECTOR, DIRECTORATE DEPARTMENTAL COMMITTEES

**MINUTES OF THE 19<sup>TH</sup> SITTING OF THE DEPARTMENTAL  
COMMITTEE ON ENERGY HELD ON THURSDAY 7<sup>th</sup> MARCH, 2023  
AT COUNTY HALL GROUND FLOOR AT 11.00AM.**

**PRESENT**

1. The Hon. (Eng.) Vincent Musyoka Musau, MP –**Chairperson**
2. The Hon. Lemanken Aramat, MP-**Vice Chairperson**
3. The Hon. Charles Gimose, MP
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Walter Owino, MP
6. The Hon. Elisha Odhiambo, MP
7. The Hon. Tom Mboya Odege, MP
8. The Hon. Simon King'ara, MP
9. The Hon. Mwafrika Augustine Kamande, MP
10. The Hon. Victor Koech Kipngetch, MP
11. The Hon. Geoffrey Ekesa Mulanya, MP
12. The Hon. Barongo Nolfason Obadiah, MP

**APOLOGIES**

1. The Hon. George Aladwa Omwera, MP
2. The Hon. Cecilia Asinyen Ngitit, MP
3. The Hon. Richard Ken Chonga, MP

**COMMITTEE SECRETARIAT**

- |                          |   |                         |
|--------------------------|---|-------------------------|
| 1. Ms. Mary Lemerelle    | - | Clerk Assistant II      |
| 2. Mr. Salim Athuman     | - | Clerk Assistant III     |
| 3. Ms. Jemimah Waigwa    | - | Legal Counsel I         |
| 4. Mr. Moses Mwariri     | - | Legal Counsel II        |
| 5. Mr. Brian Njeru       | - | Fiscal Analyst III      |
| 6. Mr. Robert Langat     | - | Research Officer        |
| 7. Ms. Lorraine Onyego   | - | Research Officer        |
| 8. Mr. Derrick Kathurima | - | Media Relations Officer |
| 9. Ms. Rehema Chepkurui  | - | Audio-Recording Officer |

**AGENDA**

1. Prayers
2. Preliminaries/Introductions
3. **Adoption of the Statute Law Miscellaneous (Amendments) Bill, 2022**
4. Adjournment/ Date of the next meeting

**MIN. NO. NA/ENERGY/2023/27: PRELIMINARIES**

The meeting was called to order at 12.10Pm and commenced with prayers by Hon. Walter Owino. Agenda of the meeting was noted as adoption of the Statute Law (Miscellaneous Amendments) Bill, 2022 which seeks to amend the Energy Act, 2019. Self-introductions were made

**MIN. NO. NA/ENERGY/2023/30: OBSERVATIONS**

**COMMITTEE OBSERVATIONS**

Having considered the proposed amendments, the Committee observed **THAT**:

**Proposed amendment to section 2**

- (1) The definition of distribution licence appears twice in section 2 of the Energy Act (hereinafter referred to as the Act) and hence there is need to delete both definitions and substitute with a more comprehensive definition that aligns with section 139 of the Act.

**Proposed amendment to section 4(1)**

- (2) The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 4(1)(f)(i)**

- (3) The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 4(1)(f)(v)**

- (4) The section being proposed to be amended is section 4 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 6(1)(a)(ii)**

- (5) The section being proposed to be amended is section 6 of the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed new section 6A**

- (6) Section 10(z)(ll) confers upon EPRA the role of coordinating the development and implementation of a national energy efficiency and conservation action plan. There is to amend section 10 of the Act to align the functions of EPRA with the new proposed amendment.

**Proposed amendment to section 9(1)**

- (7) Section 9 of the Act deals with the establishment of EPRA. The section being proposed to be amended is in the Scrap Metal Act and hence it does not exist in the Energy Act. In this regard, the amendment should be deleted from the Bill.

**Proposed amendment to section 10**

- (8) The amendment seeks to allow EPRA to also regulate the importation, refining, exportation, transportation, storage of petroleum and petroleum products including crude oil. The

amendment to paragraph (ii) in relation to the energy efficiency and conservation does not appear in subparagraph (ii) but in subparagraph (II) which reads:

*The functions of the Authority shall be to co-ordinate the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant statutory authorities and other stakeholders.* The is need to amend section 10(z)(II) of the Act to align the amendment with the new proposed amendment to section 6A.

**Proposed amendment to section 11**

- (9) The section being proposed to be amended is in the Scrap Metal Act, 2015 and hence it does not exist in the Energy Act. The amendment should be deleted.

**Proposed amendment to section 12(1)(e)**

- (10) The county governments have only one representative in the Board of EPRA while the national government has 10 representatives to the Board. Pursuant to paragraph 31 of Part 1 and paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, energy regulation falls under the concurrent jurisdiction of both levels of government. The Fifth Schedule to the Act also provides for a detailed analysis of the distribution of the functions between the two arms of government.
- (11) The principle of separation of powers applies to the three arms of government while the two levels of government are governed by Article 6 of the Constitution. In this regard, the amendment does not accord with the Fourth Schedule to the Constitution and the Fifth Schedule to the Act which recognizes energy regulation as a function that falls within the concurrent jurisdiction of both levels of government. The amendment should hence be deleted.

**The proposed amendment to section 18(3)(a)**

- (12) The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous. The amendment should be deleted.

**Proposed amendment to section 18(3)(b)**

- (13) The section being proposed to be amended does not exist in the Act and hence the amendment is erroneous. The amendment should be deleted.

**Proposed amendment to section 20(1)**

- (14) The amendment seeks to provide that levies not exceeding **one** percent on the sales of electricity and petroleum products shall be part of the funds of EPRA. The Committee observed that whereas the amendment would ensure that EPRA is adequately funded, there was need for the National Assembly to oversight the appropriation of the funds collected as levies before making recommendations for allocations to the Authority. In this regard, the Committee agreed with the proposal to increase the ceiling for collection of the levies to a figure not exceeding 1% of the sales of electricity and petroleum products subject to :

- (a) requiring all levies collected to be paid into the Consolidated Fund; and
- (b) ensuring that all monies collected as levies are subject to oversight by the House and the Committee through determination of budgetary allocations to be made to the Authority

**Proposed amendment to section 20**

- (15) The amendment seeks to exempt levies collected by the Authority from being paid into the consolidated fund to the Authority directly. The Committee observed that whereas the amendment found its basis in Article 206 (1)(b) of the Constitution which provides that money may be excluded from the Consolidated Funds to allow a state organ to retain such funds for purposes of defraying the expenses of the state organ, the proposed amendment would negate the oversight role of the House and the Committee in determining budgetary allocations to be made to the Authority.
- (16) The Committee further noted that although EPRA had submitted that the current practice allowed the Authority to retain monies collected from levies and hence the amendment was attempting to align practice with the law, the Committee noted that the practice has no legal basis in terms of Article 206(1)(b) of the Constitution as read with section 20 of the Act. In this regard, the Committee observed that the amendment should be deleted. The Committee further proposed that the Act be amended to create clarity that all levies shall be paid into the Consolidated Fund hence subject to approval for budgetary allocations by the Committee.

**Proposed amendments to sections 20(4), 22(2), 24, 24(2) 26(1), 26(2), 26(3) and 26.**

- (17) The sections being proposed to be amended do not exist in the Act and hence the amendments are erroneous. The amendments should be deleted.

**Proposed amendment to section 26(4)**

- (18) The proposed amendment is an editorial correction.

**Proposed amendments to sections 30(1)(a) and 30(1)(e)(ii)**

- (19) The sections being proposed to be amended do not exist in the Act and hence the amendments are erroneous. The amendments should be deleted.

**Proposed amendment to section 45**

- (20) The county governments have four representatives in the Board of REREC while the national government has six representatives to the Board. Pursuant to paragraph 31 of Part 1 and paragraph 8(e) of Part 2 of the Fourth Schedule to the Constitution, electricity and energy regulation falls under the concurrent jurisdiction of both levels of government. The Fifth Schedule to the Act also provides for a detailed analysis of the distribution of the functions between the two arms of government.
- (21) principle of separation of powers applies to the three arms of government while the two levels of government are governed by Article 6 of the Constitution. In this regard, the amendment does not accord with the Fourth Schedule to the Constitution and the Fifth Schedule to the Act which recognizes energy regulation as a function that falls within the concurrent jurisdiction of both levels of government. However, noting the Board is a national entity responsible for

the management of REREC, the representatives of the county governments should be reduced to three members while those of the national government should increase to four members.

**Proposed amendment to section 76**

- (22) Despite the Renewable Energy Resource Advisory Committee being an inter-ministerial Committee, there is need to amend the section to allow for representation of county governments in light of the provisions of the Fifth Schedule to the Act which allows the counties to deal with matters relating to renewable energy. However, noting the Committee plays an advisory role, there is need to ensure that the representative from the county governments to the Committee is a person who is suitably qualified and with the relevant expertise to play the advisory role. To this end, the Committee noted that the chairperson of the relevant Committee of the Council Governments responsible for matters relating to energy should be a member of the Advisory Committee.
- (23) Counties play a critical role in energy regulation and hence including representatives of county governments to the Committee shall be value addition as it will enhance the capacity of the Advisory Committee to perform its functions effectively .

**Proposed amendment to section 82**

- (24) The amendment aligns with section 82(4) of the Act which provides that it is the role of Renewable Energy Resource Advisory Committee to advise the Cabinet Secretary on criteria for allocation of renewable energy resource and licensing of renewable energy resource areas, among other functions.

**Proposed amendment to section 98(1)(d)**

- (25) The proposed amendment is a grammatical correction.

**Proposed amendment to section 100(1)(b)**

- (26) The proposed amendment is a grammatical correction.

**Proposed amendment to section 117**

- (27) The amendment seeks to provide that a person who wishes to generate electrical energy for own use of a capacity not exceeding one half of a megawatt shall not be required to apply for a licence. The amendment is in order as it seeks to create efficiency in energy generation, increase energy generation to address the energy demands in the country and improve on the licensing processes.

**Proposed amendment to section 129(2)**

- (28) The amendment seeks to change the timeline for submission of audited accounts to a period of within 4 months after the end of each financial year.

**Proposed amendment to section 149(3)**

(29) A licence is the instrument that confers power to persons to undertake certain functions and is subject to renewal and hence the amendment should be deleted.

**Proposed amendment to section 154(2)**

(30) Section 154(2) of the Act makes reference to meters which is the correct reference to the electric gadgets. In this regard, the amendment should be withdrawn.

**Proposed amendment to section 166(3) and (4)**

(31) The amendment seeks to subject sub-section (1) to the proviso. The amendment also prescribes a conditional precedent for making regulations to give effect to the section which is pegged on the grid attaining quality and reliable supply. The amendment seeks to ensure that claims for compensation against KPLC are based on direct actions or non-actions of KPLC.

**Proposed amendment to section 167**

(32) The proposed amendment is an editorial correction and is in line with section 149 of the Act which recognizes the use of the term “electrical workers”.

**Proposed amendment to section 169**

(33) The Committee observed that although the amendment sought to enhance the offence of vandalism, the proposed amendment would lead to forfeiture of vessels whose owners may not have been involved in the commission of the offence or had knowledge of the commission of the offence in particular in cases where the vessels have been stolen. In this regard, the Committee observed that there was need to provide clarity by providing that the offence shall apply where an owner of a vessel or equipment knowingly or wilfully permits the use of his or her vessel or equipment to convey vandalised or stolen equipment or where an owner of a vessel or equipment knowingly or wilfully permits another person to use his or her vessel or equipment to convey vandalised or stolen equipment. Further, the Committee also observed that there was need to expand the scope of the offence to include equipments used to convey vandalised and stolen appliances. To this end, the Committee proposed an amendment to include reference to equipments used to convey vandalised or stolen equipment.

**Proposed amendment to section 187**

(34) The amendment is a consequential amendment to the new section 6A which conferred the power to the Cabinet Secretary to coordinate the development and implementation of the national energy efficiency plan.

**Proposed amendment to section 199**

(35) The proposed amendment seeks to amend section 199 of the Act to insert the word “*Gazette*” immediately after the words “by notification in the”. In this regard, the amendment seeks to create clarity that notification shall be done through the Kenya Gazette.

**Proposed amendment to section 208**

- (36) The proposed amendment shall weaken the role of EPRA in executing its functions in particular in making regulations on matters that fall under its mandate. The Committee proposed that the amendment be deleted.

#### **Proposed amendment to section 216**

- (37) The amendment seeks to eliminate confusion between the Energy Fund and the Consolidated Fund established under the Constitution.

#### **Other Proposed amendments: The Memorandum of Objects and Reasons of the Bill**

- (38) Pursuant to Standing Order 132, the memorandum of objects and reasons of the Bill is not subject to amendment. Further, although the memorandum of the Bill erroneously indicates that the Bill seeks to wind up the Nuclear Power and Energy Agency and transfer its functions to the Ministry and to include Kenya Power and Lighting Company as a member of REREC (Rural Electrification and Renewable Energy Corporation) instead of the RERAC (Renewable Energy Resource Advisory Committee), the Committee observed that the Bill does not contain any amendment to this effect.

#### **MIN. NO. NA/ENERGY/2023/31 COMMITTEE RECOMMENDATIONS**

Pursuant to Standing Order 127, the Committee recommends:

- (1) **THAT** the proposed amendments to **the new section 6A and sections 20(1), 26(4), 45(1), 82, 98(1)(d), 100(1)(b), 117, 129(2), 166(3), 166(4), 167(1), 187, 199(1) and 216(1)** relating to the Energy Act, 2019 be proceeded with as proposed;
- (2) **THAT** the proposed amendments to **sections 2, 4(1), 4(1)(f)(i), 4(1)(f)(v), 6(1)(a)(ii), 9(1), 10, 11, 12(1)(e), 18(3)(a), 18(3)(b), 20, 20(4), 22(2), 24, 24(2), 26(1), 26(2), 26(3), 26, 30(1)(a), 30(1)(e)(ii), 45(1)(e), 76(2), 149(3), 154(2), 169(2) and 208** relating to the Energy Act, 2019 be amended accordingly; and
- (3) **THAT** in light of paragraph (2), the Schedule to the Bill be amended in the proposed amendments to the Energy Act, 2019—
  - (a) **by deleting the proposed amendment to section 2 and substituting therefor the following new proposed amendment—**

s.2            **Delete the definition of the terms “distribution licence” whenever they appear and substitute therefor the following new definition in its proper alphabetical sequence—**



**“distribution licence” means a document or instrument authorising a person to distribute electrical energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;**

- (b) by deleting the proposed amendment to section 4(1);
- (c) by deleting the proposed amendment to section 4(1)(f)(i);
- (d) by deleting the proposed amendment to section 4(1)(f)(v);
- (e) by deleting the proposed amendment to section 6(1)(a)(ii);
- (f) by deleting the proposed amendment to section 9(1);
- (g) by deleting the proposed amendment to section 10 and substituting therefor the following new proposed amendment—
  - s.10 Delete the words “with the exception of crude oil” appearing in paragraph (ii);  
Delete paragraph (z)(II).
- (h) by deleting the proposed amendment to section 11;
- (i) by deleting the proposed amendment to section 12(1)(e);
- (j) by deleting the proposed amendment to section 18(3)(a);
- (k) by deleting the proposed amendment to section 18(3)(b);
- (l) by deleting the proposed amendment to section 20 and substituting therefor the following new proposed amendment—
  - s.20 Insert the words “referred to under subsection (1)(a)” immediately after the words “Authority including” appearing in the proviso;
- (m) by deleting the proposed amendment to section 20(4);
- (n) by deleting the proposed amendment to section 22(2);
- (o) by deleting the proposed amendment to section 24;

- (p) by deleting the proposed amendment to section 24(2);
- (q) by deleting the proposed amendment to section 26(1);
- (r) by deleting the proposed amendment to section 26(2);
- (s) by deleting the proposed amendment to section 26(3);
- (t) by deleting the proposed amendment to section 26;
- (u) by deleting the proposed amendment to section 30(1)(a);
- (v) by deleting the proposed amendment to section 30(1)(e)(ii);
- (w) by deleting the word “seven” appearing in the proposed amendment to section 45(1)(e) and substituting therefor the word “four”;
- (x) by deleting the proposed amendment to section 45 and substituting therefor the following new proposed amendment —
- s.45(1)(f) Delete the word “four” appearing in paragraph (f) and substitute therefor the word “three”;
- (y) by inserting the following new proposed amendment immediately after the proposed amendment to section 45—
- s.76(1) Delete the words “an inter-ministerial” appearing in subsection (1) and substitute therefor the word “a”;
- (z) in the proposed amendment to section 76(2), by inserting the following new paragraph immediately after paragraph (h) —
- “(i) the Chairperson of the relevant committee of the Council of Governors responsible for matters relating to energy;”
- (aa) by deleting the proposed amendments to section 149(3);
- (bb) by deleting the proposed amendments to section 154(2);
- (cc) by deleting the proposed amendment to section 169(2) and substituting therefor the following new proposed amendment —
- s.169(2) Delete and substitute therefor the following—
- (2) Any vessel or equipment which is used to convey the vandalised or stolen equipment or appliances referred to in subsection (1) shall be forfeited to the State—

- (a) where an owner of the vessel or equipment knowingly or wilfully permits the use of his or her vessel or equipment to convey the vandalised or stolen equipment or appliances; and
- (b) where an owner of a vessel or equipment knowingly or wilfully permits another person to use his or her vessel or equipment to convey the vandalised or stolen equipment or appliances.


(dd) by deleting the proposed amendment to section 208.

**Justifications for the amendments.**

- (1) The amendment seeks to create clarity on the definition of the term distribution licence.
- (2) The amendments seek to delete sections relating to the Scrap Metal Act, 2015 erroneously placed in the Energy Act.
- (3) The amendment seeks to ensure that EPRA is adequately funded to perform its functions while at the same time ensuring that levies collected by the Authority are subject to approval for budgetary allocations by the Committee and the House in exercise of its oversight role.
- (4) The amendment to the offence on vandalism seeks to create clarity by ensuring that owners of vessels and equipments who have no knowledge of the commission of the offence of vandalism do not lose their vessels or equipments through forfeiture to the State.
- (5) The amendments seek to ensure that county governments are represented in the EPRA, REREC Boards and the Renewable Energy Resource Advisory Committee in line with the Fourth Schedule to the Constitution and the Fifth Schedule to the Energy Act.
- (6) The amendments seek to correct a grammatical error and create clarity.
- (7) The amendments seeks to ensure that EPRA as a regulator is able to make regulations on matters falling under its functions.

**MIN. NO. NA/ENERGY/2023/32 ADJOURNMENT**

There being no other business, the meeting was adjourned at half past one o'clock.

SIGNED.......... DATE 23/03/2023.....  
 (CHAIRPERSON)



THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

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[www.parliament.go.ke/the-national-assembly](http://www.parliament.go.ke/the-national-assembly)

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When replying, please quote

Ref: NA/DDC/ENERGY/2023/005

21<sup>st</sup> February 2023

**Mr. Alex Wachira**  
Principal Secretary  
State Department for Energy  
Ministry of Energy & Petroleum  
Kawi House, Cathedral Road  
**NAIROBI**

**Mr. Mohamed Liban**  
Principal Secretary  
State Department for Petroleum  
Ministry of Energy & Petroleum  
Kilimo House, Cathedral Road  
**NAIROBI**

**Ms. Mary Mwiti**  
Chief Executive Officer  
Council of Governors  
Delta House, 2<sup>nd</sup> Floor  
Westlands  
**NAIROBI**

Dear **Mr. Alex Wachira**

**RE: DEPARTMENTAL COMMITTEE ON ENERGY : CONSIDERATION OF  
STATUTE LAW MISCELLANEOUS (AMENDMENTS) BILL, 2022**

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The Departmental Committee on Energy is established under National Assembly Standing Order 216 and is mandated to amongst others, "*consider all legislation referred to it*"

The Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No.60 of 2022*), that seeks to amend the Energy Act, 2019 is before the Committee for consideration.

Article 118 of the Constitution and Standing Order 127(3) of the National Standing Orders require the Committee to conduct public participation on the Bill before reporting to the House.

In accordance with the provisions above, the Committee sought submissions on the Bill through an advertisement published in the daily newspapers on Friday, 16<sup>th</sup> December, 2022. In addition to this, the Committee resolved to enrich the Bill further by seeking the views of key stakeholders. In this regard, a meeting has been scheduled on **Thursday 2<sup>nd</sup> March, 2023 at 10.00 am at the Mini-Chamber, County Hall.**

The purpose of this letter is to invite:

- i. The Cabinet Secretary for Energy together with Chief Executive Officers of Kenya Power and Lightning Company, Rural Electrification and Renewable Energy Company, Energy Regulatory Authority and Nuclear Power and Energy Agency,
- ii. The Chairperson, Council of Governors

A copy of the Bill is available at the National Assembly Table Office and an electronic version may be obtained from the Parliament website: [www.parliament.go.ke/the-national-assembly/house-bills](http://www.parliament.go.ke/the-national-assembly/house-bills).

The liaison officers for this activity are **Mr. Adan Gindicha** who may be contacted on tel. no. 0720450112 or email: [adan.gindicha@parliament.go.ke](mailto:adan.gindicha@parliament.go.ke). **Ms. Mary Lemerelle**, on tel. no. 0710204017 or email: [mary.lemerelle@parliament.go.ke](mailto:mary.lemerelle@parliament.go.ke) or **Mr. Salim Athman** on tel. no. 0715467519 or email: [salim.athuman@parliament.go.ke](mailto:salim.athuman@parliament.go.ke).

Yours

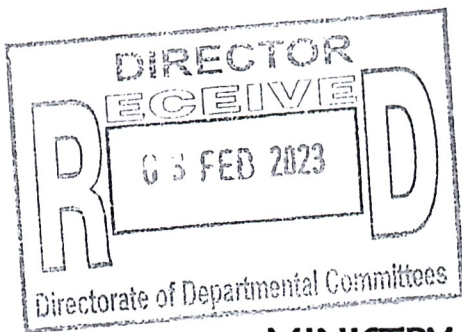


**JEREMIAH NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy

**Mr. Davis Chirchir**  
Cabinet Secretary  
Ministry of Energy & Petroleum  
Kawi House, South C  
**NAIROBI**

**Ms. Anne Waiguru EGH, OGW**  
Chairperson, Council of Governors  
Delta House, Rhapsa Road  
**NAIROBI**



REPUBLIC OF KENYA

**MINISTRY OF ENERGY AND PETROLEUM  
STATE DEPARTMENT FOR ENERGY**

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P. O. Box 30582-00100  
Nairobi

When replying please quote:

Ref. MOE/CONF/1/42

Date: 30<sup>th</sup> January, 2023

**Clerk of the National Assembly**

Clerks Chambers  
National Assembly Building  
P. O Box 41842 -00100  
**NAIROBI**

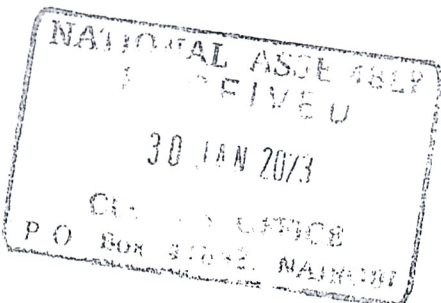
**RE: STAKEHOLDER ENGAGEMENT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)**

Reference is made to the above matter and your letter ref. NA/DCC/ENERGY/QSN/2022/004 dated 21<sup>st</sup> December, 2022 inviting the State Department for Energy to make submissions on the proposed amendments to the Energy Act, 2019 as contained in the Bill together with a justification for each proposal.

We hereby submit proposed amendments to the Energy Act, 2019 as contained in the Statute Law (Miscellaneous Amendments) Bill, 2022 as tabulated hereunder for your kind consideration:

**REVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2022**

The Bill referred to above is cited as the *Statute Law (Miscellaneous Amendments) Bill, 2022* dated 22<sup>nd</sup> November 2022. It is *National Assembly Bill No. 60 of 2022* under *Kenya Gazette Supplement Number 199*.



*Mr. Adam Gindliche*  
*Pls TWA* 06/02/23

*D/Dept'l Committee*  
*For attention of the*  
*relevant committee*  
*AS*  
*CPN*  
*31/1/23*

The Bill amends the following provisions of the *Energy Act, 2019* at pages 1480-1484 and 1492.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
1.	s.2: Interpretations	<p>“Distribution licence” means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;</p> <p>“distribution licence”, means any document or instrument authorizing a person to distribute energy in the manner described in such document or instrument in that person’s authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;</p>	<p>Delete definition of the term “<i>distribution licence</i>”.</p> <p>Insert the following new definition in proper alphabetical sequence-</p> <p>“distribution licence” means a document or instrument authorizing a person to distribute energy in the manner described in the document or instrument, in that person’s authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;</p>	<p>The term distribution licence appears twice in the interpretation section. The proposed amendment seeks to retain the second definition, which is more comprehensive.</p>
2.	s.4(1)	-	<p>Insert the following new paragraph immediately after paragraph (e) (ea) the Principal Secretary of the Ministry for the time responsible for matters relating to finance or his or her representative.</p>	<p>There is no section 4(1)(e) and section. 4(1)(f)(d) in the Act. This is an error.</p>
3.	s.4(1)(f)(i)	-	<p>Delete the word “the” and substitute therefor the word “a”</p>	<p>There is no section 4(1)(f)(i) in the <i>Energy Act, 2019</i>. This is an error.</p>
4.	s.4(1)(f)(v)	-	<p>Delete</p>	<p>There is no section 4(1)(f)(i) in the <i>Energy Act, 2019</i>. This is an error.</p>

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
5.	s.6(1)(a)(ii)	-	Delete the word utility and substitute therefor the words "critical national".	There is no section 6(1)(a)(ii) in the <i>Energy Act, 2019</i> . This is an error.
6.	s.6A National Energy Efficiency and Conservation Strategy Action Plan.	New	Insert the following new section immediately after section 6-  6A. The Cabinet Secretary, in consultation with the relevant statutory authorities and stakeholders, shall coordinate the development and implementation of a national energy efficiency and conservation action plan strategy.	The role of coordinating and development and implementation of national energy efficiency and conservation action is currently under EPRA ( <i>Energy Act 2019</i> section 187).  By inserting this paragraph, the Bill (along other amendments) seeks to withdraw this role from EPRA and vest it on the Cabinet Secretary. This paragraph vests the Cabinet Secretary with the role of coordinating the development and implementation of a national energy efficiency and conservation strategy.  The role of the Ministry is policy and planning. Regulation function is with EPRA. Execution is with the implementing agencies.  Further, at the ministry level it is easy to mobilize funding for purposes of implementation.
7.	s.9(1)	-	Insert the word "a" immediately after the word "of"	The word "of" is not in this section. This is an error.
8.	s.10 -	The functions of the Authority shall be to—	s. 10 (i) Delete the words "with the exception of"	This is under the functions of EPRA with



SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
Functions of the Authority	<p>(a) regulate—</p> <p>(i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;</p> <p>(ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;</p> <p>(iii) production, conversion, distribution, supply, marketing and use of renewable energy;</p> <p>....</p> <p>(ll) co-ordinate the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant statutory authorities and other stakeholders;</p>	<p><i>crude oil</i>" appearing in paragraph (a) (ii);</p> <p>s. 10 Delete paragraph (ii) and substitute therefor the following new paragraph—</p> <p>(ii) make proposals to the Cabinet Secretary for purposes of making regulations on energy efficiency and conservation.</p>	<p>regard to Regulation of the Petroleum Industry, as regulation of crude oil falls under the mandate of EPRA</p> <p>The amend seeks to harmonize EPRA's functions under 10(a)(ii) with other functions under Sections 10(b) to 10(aa).</p> <p>The Bill mentions deleting paragraph (ii) and replacing it with paragraph (ii). The reference is not captured correctly, it should read paragraph 10. (LL) not 10. (ii). Paragraph (LL) gives the Authority the role of co-ordinating the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant statutory authorities and other stakeholders.</p> <p>This role is to be vested on The Cabinet Secretary. The new substitute for paragraph (LL) reviews the role of the Authority and states that the Authority would make proposals to the Cabinet Secretary for purposes of making regulations on energy</p>

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
				<p>efficiency and conservation.</p> <p>Therefore, by rightfully deleting paragraph (LL) and substituting it, the Bill would amend the role of the Authority from co-ordinating the development and implementation of a national energy efficiency and conservation strategy to making proposals to the Cabinet Secretary.</p>
9.	s.11	Powers of the Authority	<p>Renumber the provision as subsection (1) and add the following subsection (2) Notwithstanding subsection (1), the Cabinet Secretary shall issue a special licence for dealing in copper, aluminium and their alloys.</p> <p>(3) An application for a special licence shall be made in accordance with section 10</p>	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.
10.	s. 12- Board of the Authority	<p>12. (1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) ...</p> <p>(d) ...</p> <p>(e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors;</p> <p>(f) ...</p>	Delete s.12(1)(e)	This is a realignment of the membership of the EPRA's board informed by the principles of separation of powers within the context that EPRA is a national entity within the meaning of the Act.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
11.	s.18(3)(a)	-	Delete the words, "one million" and substitute thereof the words "five million"	There is no section 18(3)(a) in the <i>Energy Act, 2019</i> . This is an error.
12.	s.18(3)(b)	-	Delete the words, "five " and substitute thereof the word "ten"	There is no section 18(3)(b) in the <i>Energy Act, 2019</i> . This is an error.
13.	s.20 - Funds of the Authority	<p>Section 20. (1)The funds of the Authority shall consist of—</p> <p>(a) levies not exceeding one half of a percent on the sales of electricity and petroleum products;</p> <p>Provided that any monies collected by the Authority including levies, fines and penalties in exercise of its functions shall be paid into the Consolidated Fund.</p>	<p>Delete the phrase "half of a" appearing in paragraph (a).</p> <p>Delete the word "levies" appearing in the proviso.</p>	<p>This change is attributed to the enhanced mandate of EPRA to effectively implement its functions. This is also informed by the quantum of regulatory work to be undertaken in the energy and petroleum sectors. To allow by law, the adequate funding of the Authority to enable it to meet all its responsibilities competently, professionally and in a timely manner.</p> <p>The proviso seeks to exempt levies collected by EPRA from being paid to the consolidated fund.</p> <p>The amendment as proposed is that the best way to fund an independent regulatory is through direct levies (and not through the consolidated fund) in line with international best practice and the World Bank handbook for Evaluating Infrastructure Regulation System (2006) Chapter 3 Section 10 which recommends that "by</p>

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
				law, the task of funding of the agency should be adequate to enable it to meet all its responsibilities competently, professionally and in a timely manner.”
14.	s.20(4)	20 (4) There shall be paid out of the funds of the Authority, all expenditure incurred by the Authority in the exercise of its Powers or the performance of its functions under this Act.	Delete the word “one” and substitute thereof the word “five”	The word “one” is not in this section. This is an error.
15.	s. 22(2)	A committee, member, officer, employee or agent entering any premises under this section may be accompanied by such persons as the committee, officer, employee or agent deems necessary and may enter with such equipment as may be necessary for the performance of their functions.	Delete the word “one million” and substitute thereof the word “five million”	The word “one million” is not in this section. This is an error.
16.	s.24	(1) A person aggrieved by a decision of the Authority may appeal to the Tribunal within thirty days of receipt of the decision	(1) Insert the words “critical national” immediately after the word “the”.  Insert the following new sections immediately after section (1)-  (1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
			<p>Complex and the Kenya Shipyard Limited for smelting into billets.</p> <p>(1B) Where there is inadequate capacity at the Numerical Machining Complex and the Kenya Shipyard Limited, shall seek approval from the council to partner with a local smelter directly without involving a broker.</p>	
17.	s.24(2)	(2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.	<p>Delete the words "ten" and substitute thereof the word "twenty"</p> <p>Delete the word "three" and substitute thereof the word "seven"</p>	The words "ten" and "three" are not in this section. This is an error.
18.	s.26(1)	<p>26(1) (1) The Tribunal shall consist of not more than seven members as follows —</p> <p>(a) a chairperson who shall be appointed by the President from among persons qualified to be judges of the High Court and who has at least five years' experience in energy and petroleum matters; and Appeal against a decision of the Authority_ Establishment of the Energy and Petroleum Tribunal. Members of the</p>	Insert the words "or import" immediately after the word "export"	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
		Tribunal. 39 2019 Energy No. 1 (b) six other persons possessing knowledge and experience in law, petroleum and energy and who are not in the employment of the Government, Agency or the Authority.		
19.	s.26(2)	26(2) The members of the Tribunal shall at the first meeting of the Tribunal elect a vice-chairperson who shall be a person qualified to be a judge of the High Court possessing at least five years' experience in energy and petroleum matters	Insert the words "or import" immediately after the word "export"	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.
20.	s.26(3)	26(3) A person shall be qualified for appointment under subsection (1) if that person — (a) is a citizen of Kenya; (b) holds a degree in a relevant area from a university recognized in Kenya; (c) is a member in good standing of the relevant professional association; (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.	Insert the words "in consultation with the Authority" immediately after the word "Secretary"	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.
21.	s.26	26(3) A person shall be qualified for appointment under subsection (1) if that person — (a) is a citizen of Kenya; (b) holds a	Insert the following new sub section immediately after subsection (3)-  (3A) The certificate issued under subsection (3) shall	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
		degree in a relevant area from a university recognized in Kenya; (c) is a member in good standing of the relevant professional association; (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.	indicate the nature, quality and consideration for scrap metal to ensure compliance with the approved limits.	
22.	s.26(4)	(4) The Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.	Insert the word "of" immediately after the word "terms"	The Section is with regard to the appointment of members of the Energy & Petroleum Tribunal. The amendment does not alter the proviso. (Grammatical)
23.	s.30(1)(a)	-	Insert the words "critical national" immediately after the word "vandalized"	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.
24.	s.30(1)(e)(ii)	-	Insert the words "smelter, electrical rewinder, steel fabricator"	This amendment is not in-sync with the provisions of the <i>Energy Act, 2019</i> . This is an error.
25.	s.45(1)(d); (e) & (f) Board of the Corporation	(1) The management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of— (a) ... (b) ... (c) ... (d) the Chief Executive Officer who shall be the Secretary to the Board; (e) three members appointed by the Cabinet Secretary; and (f) four other members appointed by the Council of County Governors.	Delete the words "who shall be the Secretary to the Board" appearing in paragraph (d).  Delete the word "three" and substitute therefor the word "seven".	It is trite, the role of the Secretary to the Board should be vested on a Corporation Secretary rather than the CEO.  This aligns with <i>Mwongozo</i> , State Corporations Act, CAP446 and Good Corporate Governance Practices on segregation of roles of the CEO and that of the Corporation Secretary.  REREC is a national entity. This is a realignment of the

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
			Delete paragraph (f)	<p>membership of the REREC's board informed by the principles of separation of powers. The said section should be read together with section 45(1)(f)</p> <p>The Cabinet Secretary is to be vested with the prerogative to appoint 4 more members to the Board of REREC thus a total of 7.</p>
26.	s.76(2) Establishment of Renewable Energy Resource Advisory Committee	(2) The Renewable Energy Resource Advisory Committee is composed of— (a)...	<p>s.76 (2) Insert the following new paragraphs immediately after paragraph (g) —</p> <p>(h) the Managing Director of Kenya Power and Lighting Company PLC or his or her representative.</p> <p>(g) the Director General of the Authority or his or her representative.</p>	<p>The MD of Kenya Power and DG of EPRA would be part of RERAC which is an inter-ministerial advisory Committee. This is intended for value addition in the advisory role as these 2 entities have a view and a role in the energy sector. Further EPRA is a key stakeholder with regard to licensing.</p> <p><i>The Memorandum of Objects &amp; Reasons of the Bill contains a drafting error whereby it seeks to include Kenya Power as a member of REREC (Rural Electrification and Renewable Energy Corporation) instead of the RERAC (Renewable Energy Resource Advisory Committee).</i></p> <p>RERAC is the inter-ministerial advisory Committee whereas REREC is the Corporation.</p>



	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
27.	s.82- Renewal and surrender of license, etc	82. The Cabinet Secretary may, on the advice of the Authority—	Delete the word “Authority” and substitute therefor the expression “Renewable Energy Resource Advisory Committee	Section 82 had previously been wrongly worded indicating “Authority” which is EPRA instead of RERAC.  RERAC is the intended advisory committee. This will bring consistency as the Authority is currently not involved at the initial stage of licencing, the role is performed by RERAC.
28.	s.98 (1)(d) Factors to be considered in reviewing an application	(1)The Authority shall, in granting or rejecting an application for a licence or permit, take into consideration –  (d) compliance this Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Authority in consultation with the Kenya Bureau of Standards;	Insert the word “with” immediately after the word “compliance”.	This is grammatical correction.
29.	s.100(1)(b) Forms and conditions of a license or permit	100. (1) Every license or permit shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable — (a) the duration of the license or permit; (b) the type coal or coal products;	Insert the word “of” immediately after the word “type”.	This is grammatical correction
30.	s.117 - Requirement of a licence	Section 117. A person who wishes to carry out the generation, exportation, importation,	Delete the word “one” and substitute therefor the words “one half of a”.	The provision of the Act is that a person shall not require authorization to generate electrical

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
		transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Authority in accordance with the provisions of this Act: Provided that a person shall not require any authorization to generate electrical energy for own use of a capacity not exceeding one megawatt		energy for own use of a capacity not exceeding 1MW. A person will be able to produce ½MW without a licence.  This is market driven as there are very many players and in order to have an efficient energy planning framework coupled with monitoring. This also aligns to the proposed Captive Power Policy. This further seeks to facilitate effective planning relative to the installed capacity. To also mitigate on challenges of managing the grid
31.	s.129(2) - Accounts, records and reports of licensee.	(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Authority within three months after the end of each financial year.	Delete the word “three” and substitute therefor the word “four”.	The Act provides for submission of audited accounts of licensees to EPRA within 3 months after the end of each financial year. The amendment is for conformity with the Capital Markets Authority requirements.
32.	s.149(3) – Certificates for electrical workers	(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry, subject to the holder satisfying such continuing technical trainings as may be prescribed.	Delete the word “licence” and substitute therefor the word “certificate”	This amendment is hereby withdrawn.  To retain the term “licence” in line with Kenya Accreditation Service Act, 2019.
33.	s.154(2) – Metering of supply to consumers.	154. (1) ... (2) ... Provided that the licensee may agree to the value of	Proviso Delete the word “meters” and substitute therefor the word “metres”.	This is a spelling correction. Metres implies length as opposed to meter which is the gadget.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
		the supply to any consumer being ascertained by a private metre belonging to the consumer.		<p>However, it should be captured in the Bill as follows:</p> <p><i>Delete the word "metres" and substitute therefor the word "meters".</i></p>
34.	s.166(3) Penalties and compensation for failure and defects in electricity supply.	(3) For the avoidance of doubt, the licensee shall not be liable to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines or inevitable accident or force majeure was so slight as not to materially affect the quality or value of the supply.	<p>Delete and substitute therefor the following new subsection—</p> <p>(3) For the avoidance of doubt, the licensee shall not be liable to any penalty under subsection (1) or to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines, or by inevitable accident or force majeure, <i>or</i> was so slight as not to materially affect the quality or value of the supply.</p>	<p>The amendment seeks to include the following statement "<i>to any penalty under subsection (1)</i>".</p> <p>The amendment is an enhancement of the current provision.</p>
35.	s.166(4) - Penalties and compensation for failure and defects in electricity supply.	(4) The Cabinet Secretary shall make regulations to give effect to this section within six months of the coming into force of this Act.	<p>Delete and substitute with the following new subsection—</p> <p>(4) The Cabinet Secretary may make regulations to give effect to this section subject to the grid attaining the quality and reliability of supply and service as prescribed by the Authority.</p>	<p>The Cabinet Secretary making regulations is subject to the grid attaining the quality and reliability of supply and service as will be prescribed by the Authority.</p> <p>To achieve this objective, from a technical and operational perspective, there is need to enhance resource allocations to improve the grid status. The country at the moment may not be able to accommodate</p>

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
				this investments. A feasible timeline is currently being formulated.
36.	s.167(1) Regulations for electrical energy.	(1) The Cabinet Secretary may upon recommendation of the Authority make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or any of the following purposes—  (o) carrying out electrical installation work by an electrician and an electrical contractor.	Delete the expression “(1)”.  (1) Delete the word “electrician” appearing in paragraph (0) and substitute therefor the words “electrical worker”.	This is a correction of a numerical error, as there are no other subsections thereof.  Electrical work can only be carried out by an Electrical worker who has attained the requirements under section 149.
37.	s.169(2) - Offences deemed to be economic crimes	(2) Any vessel used to convey the vandalised equipment or appliance in the attempted vandalism detailed in subsection (1) shall be forfeited to the state.	Delete and substitute therefor the following new subsection—  (2) Any vessel that is used to convey the vandalised or stolen equipment or appliances referred to in subsection (1) shall be forfeited to the State.	The amendment seeks to enhance the provision of Section 169(2). This cures the gap under subsection (1) to include vehicles used in conveying stolen equipment.
38.	s.187 - Energy efficiency and conservation programme	The Authority shall coordinate the development and implementation of a prudent national energy efficiency and conservation programme	Delete and substitute therefor the following new section—  The Authority shall coordinate the development of a prudent national energy efficiency and conservation programme	The amendment shifts the role of EPRA from coordination of implementation of a prudent programme to coordination of actual development. <i>See the amendment to section 6A.</i>
39.	s. 199(1) - Power of County Government to make rules	(1) A County Government may, by notification in the, make rules for carrying out the provisions of this Act and	Insert the word “ <i>Gazette</i> ” immediately after the words “by notification in the”.	Editorial correction. The word <i>Gazette</i> was erroneously left out.

	SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
		not inconsistent with the rules and regulations, if any, made by the National Government.		
40.	s. 208 Cabinet Secretary may make regulations generally	208. (1) The Cabinet Secretary may, on the recommendation of the Authority and subject to section 167, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act	Delete the phrase "on the recommendation of" and substitute therefor the phrase "in consultation with".	The provision empowers the Cabinet Secretary to make Regulations with respect to the Act.
41.	216(1)	(1) The Cabinet Secretary shall establish the Consolidated Energy Fund to cater for— (a) energy sector disaster mitigation and response; (b) hydro risk mitigation; (c) operations of the Agency; (d) promotion of renewable energy initiatives, (e) construction of appropriate energy infrastructure; No. 1 Standardisation. Licensing authorities not to discriminate. Reporting of accidents and incidents. Recovery and application of	Delete the word "Consolidated"	As recommended by the National Treasury so as to retain only one Consolidated Fund established under the Constitution of Kenya, 2010. This is intended to eliminate the confusion between the Energy Fund and the Consolidated Fund.

SECTION	ENERGY ACT, 2019	PROPOSED AMENDMENT	JUSTIFICATION
	licence fees and penalties. Consolidated Energy Fund. 148 No. 1 Energy 2019 (f) decommissioning of energy infrastructure; (g) energy efficiency and conservation; (h) applied research, technology development and innovation allied to energy sector including technology needs assessment, deployment and scaling up		

### MEMORANDUM OF OBJECTS AND REASONS

The following have been highlighted in the Bill as published in the gazette notice to be presented to Parliament.

The Statute Amendment Bill, 2022 at page 1492 is proposed to be amended as follows:

#### The Energy Act, 2019 (No. 1 of 2019)

The Bill proposes to amend the Energy Act, 2015 2019 to give effect to the recommendations of the State Department for Energy and the Presidential Taskforce on the Review of Power Purchase Agreements. The proposals include:

- i. Addressing the overlap in functions between the Energy and Petroleum Regulatory Authority and the ~~Ministry of Energy~~ Cabinet Secretary;
- ii. Include Kenya Power and Lighting Company PLC and the Authority in the Membership of the ~~Rural Electrification and Renewable Energy Corporation~~ Resources Advisory Committee established under the Act;
- iii. ~~Winding up the Nuclear Power and Energy Agency and transferring its functions to the Ministry; and~~

- iv. Subject the making of regulations to the attainment by the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority ~~to allow for compensation of consumers for power outages when the country achieves N-I Grid reliability status.~~

We thank you for your continued support to this Office.



**Alex K. Wachira**  
**PRINCIPAL SECRETARY**

**Copy to: Mr. Davis Chirchir**  
Cabinet Secretary  
Ministry of Energy and Petroleum  
Kawi Complex, Block A  
**NAIROBI**

**Mr. Kennedy Ogeto, CBS**  
Solicitor General  
Office of the Attorney General and  
Department of Justice  
**NAIROBI**

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# KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

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**KLRC/RES/93 VOL.VI (38)**

Ref. No. \_\_\_\_\_  
and Date



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA

12<sup>th</sup> January, 2023

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*make copies and*  
*distribute to some*  
*relevant committees*  
*involved*

*17/1/23*

The Clerk of National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O Box 41842 -00100  
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear

*Jerem,*

RECEIVED  
10 JAN 2023  
DEPUTY CLERK  
P.O. Box 41842, NAIROBI

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO.60 OF 2022)**

We acknowledge with thanks receipt of your letter Ref.No.NA/DDC/JLAC/2022/010 dated 20<sup>th</sup> December, 2022 on the above subject.

Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

As always, we are grateful for your continued support and collaboration.

Yours

*Joash Dache*  
*Joash Dache*

Joash Dache, MBS  
Secretary/Chief Executive Officer

Encl.

NATIONAL ASSEMBLY  
RECEIVED  
13 JAN 2023  
CLERK'S OFFICE  
P O Box 41842, NAIROBI

DIRECTOR  
RECEIVED  
16 JAN 2023  
Directors of Departmental Committees





## THE KLRC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

### I. INTRODUCTION

This memorandum is issued in furtherance of the Kenya Law Reform Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No, 19 of 2013, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) seeking its comments on the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bill, No. 60 of 2022. The Bill seeks to "amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills". The National Assembly has sought KLRC's comments on the Bills under the purview of the Departmental Committee on Justice and Legal Affairs.

Against this background and pursuant to the KLRC's mandate, KLRC has undertaken an analysis of the relevant Bills as set out below.

### II. ANALYSIS

	LAW	S.	PROPOSED AMENDMENT	KLRC COMMENT	JUSTIFICATION
1.	The Judicature Act (Cap.8)	7(1)	Delete the word "thirty" and substitute therefor the word "seventy".	No objection to the proposed amendment.	Increasing the number of judges at the Court of Appeal will facilitate speedy delivery of justice.
2.	The Appellate Jurisdiction Act (Cap. 9)	59(7)	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Court of Appeal Rules in the requisite	The proposed amendment would align the Rules to Article 157(6) of the Constitution which provides that the Director of Public Prosecutions is the one to exercise State powers of prosecution.

				manner and not through the amendment of the Appellate Jurisdiction Act.	
	The Appellate Jurisdiction Act (Cap. 9)	73	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Rules in the requisite manner and not through the amendment of the Appellate Jurisdiction Act.	The proposed amendment would align the Rules to Article 157 of the Constitution.
3.	The Vexatious Proceedings Act (Cap. 41)	4	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157(6) of the Constitution.
4.	The Penal Code (Cap. 63)	146	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities".	No objection to the proposed amendment.	The proposed amendment aligns the Code with the constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No. 14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
5.	The Criminal Procedure Code (Cap.75)	2	Delete the expression "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	No objection to the proposed amendment.	The proposed amendment would align the Code to the Office of the Director of Public Prosecutions Act, 2013.

	<p>Delete the definition of “police officer” and substitute therefor the following new definition—</p> <p>“police officer” has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
	<p>Delete the definition of “police station” and substitute therefor the following new definition—</p> <p>“police station” has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
83	<p>Delete and substitute therefore the following new section—</p> <p>83.(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of Public Prosecutions, the Senior Assistant Director of Public Prosecutions, the Senior Principal Prosecution Counsel, Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.</p>	No objection to the proposed amendment.	The proposed amendment would align the Act to the Office of the Director of Public Prosecutions Act, 2013.

			(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.		
		90(3)	Delete the words "a Sunday" and substitute therefor the words "any day of the week including Sunday".	No objection to the proposed amendment.	The proposed amendment clarifies the provision.
		123(1)	Delete the words "other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence".	No objection to the proposed amendment.	The proposed amendment aligns the Code to Article 49(1) (h) of the Constitution which provides that all offences are bailable.
		131(2)	Delete the word "movable".	No objection to the proposed amendment.	The proposed amendment widens the scope of property that may be attached. This may, in turn, act as a deterrent to a person bound by a recognizance.
		137	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
6.	The Extradition (Commonwealth) Countries Act (Cap. 77)	7	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		8	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		9	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.

		10	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
7.	Official Secrets Act (Cap. 187)	10(1). 49(1)	Deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
8.	The Evidence Act (Cap. 80)	3	Insert the following definition in proper alphabetical sequence—  "photograph" means an image created by light falling on a light sensitive surface, either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored digitally,	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		78(1)	Insert the words "or an electronic and digital medium" immediately after the word "film".	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		125 (2)	Insert the word "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	No objection to the proposed amendment.	The proposed amendment aligns the Act with constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No.14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
9.	The Vetting of Judges and Magistrates Act (No. 2 of 2011)		Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment save that the citation of the Act is wrong. It should read No. 2 of 2011 and not 2010).	The proposed amendment would align the Act to Article 157 of the Constitution.

10.	The Judicial Service Act (No. 1 of 2011)	38	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read “Parliament” instead of “National Assembly” in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) of the Constitution which requires constitutional commissions and independent offices to submit a report to the President and to Parliament. In addition, the proposed amendment contravenes section 38(4) of the Judicial Service Act which requires the report to be tabled before the two Houses of Parliament.</p>
				<p>Consider standardizing the provision for all constitutional commissions and independent offices.</p>	<p>This ensures consistency in legislation.</p>
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	<p>Delete the word “three” and substitute therefor the word “six”.</p>	<p>No objection to the proposed amendment.</p>	<p>Three months is too short a period to file the annual report in view of the magnitude of work involved.</p>
12.	The Kenya National Commission on Human Rights Act, (No. 14 of 2011)	53	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read “Parliament” instead of “National Assembly” in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) which requires constitutional commissions and independent offices to submit a report to the President and to Parliament.</p>

				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures uniformity in legislation.
13.	Ethics and Anti-Corruption Commission Act (No. 22 of 2011)	27(2)	Delete the word "three" and substitute therefor the word "six".	No objection to the proposed amendment.	Three months is too short a period to file the annual report in view of the magnitude of work involved.
14.	Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	25A.	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendments.	The proposed amendment would align the Act to Article 157 of the Constitution.
		37(6)			
		62(5)			
		62(6)	<p>(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an <i>ex parte</i> application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff.</p> <p>(6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to—</p> <p>(a) conceal, alter, destroy, or remove</p>	<p>No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).</p>	<p>This offence should apply to both State and public officers. In addition, the proposed amendment is in line with the Court of Appeal decision in the case of <i>Moses Kasaine Lenolkulal vs Republic</i>, Criminal Appeal No. 109 of 2019.</p>

			<p>records, documents or other evidence;</p> <p>(b) intimidate, threaten or otherwise interfere with witnesses; or</p> <p>(c) interfere with investigations in any other manner.</p>		
15.	Sexual Offences Act (No. 3 of 2006)	40	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
16.	International Crimes Act (No. 16 of 2008)		Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
17.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	12A.	New subsections to mandate the EACC vet all the shortlisted candidates.	Considering the number of requests that the EACC may receive from the various public entities, it would be prudent for the Commission to be mandated to vet only those who are considered for appointment, that is, those who have undergone the interview process.	This would save the EACC time and money.
18.	The Kenya Law Reform Commission Act (No. 19 of 2013)			Although the National Assembly's letter dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) and the Memorandum to the Public indicates that the Statute Law (Miscellaneous Amendment) Bill, 2022, seeks to amend the Kenya Law Reform Commission	



				<p>Act to provide for clarifications on the attendance of the <i>ex officio</i> members at the Commission meeting, the Bill does not contain any proposed amendments.</p> <p>Further, the Kenya Law Reform Commission Act is erroneously cited as Act, No. 35 of 2013 instead of No. 19 of 2013.</p>	
19.	Bribery Act (No. 47 of 2016)	1.	Delete the expression "Bribery Act" and substitute "Anti-Bribery Act".	No objection to the proposed amendment.	The proposed amendment describes what the Act is about and avoids any misrepresentation.
		5.	Delete the word "who" and substitute therefore the word "if the person offering, promising or giving knows".	The word "who" appears in both subsection (1) and (2), hence there is need for clarity on where the phrase "if the person offering, promising or giving knows" is to be inserted.	This will clarify the provision.



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (FIRST SESSION)  
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

In the Matter of Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

and  
In the Matter of Consideration by the National Assembly of:

- 1) The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 2) The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
- 3) The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

**PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)**

Pursuant to Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the following Agreements were submitted to the Speaker of the National Assembly on 29<sup>th</sup> November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

1. Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
2. The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer sets out to significantly limit future production and consumption of hydrofluorocarbons (HFCs). It also contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment further includes target baselines and emission levels that states in agreement with it are to achieve.

The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa aims to prohibit the import into Africa of any hazardous waste and to specifically ban the transboundary movement of hazardous wastes.

The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities aims to enhance the management of the marine and coastal environment and natural heritage including its biological diversity for the sustainable use and benefits of present and future generations.

The Departmental Committee on Environment, Forestry and Mining hereby invites the public and stakeholders to submit Memoranda on the three Agreements. The full text of the Agreements and the accompanying Memorandum to Parliament may be accessed at <http://www.parliament.go.ke/the-national-assembly/house-business/paper-laid>

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to [ena@parliament.go.ke](mailto:ena@parliament.go.ke); to be received on or before Friday, 6<sup>th</sup> January, 2023.

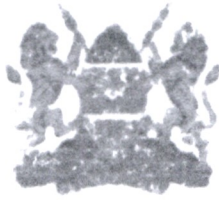
SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY

16<sup>th</sup> December, 2022

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







We hereby attach the Council of Governors' memorandum for your reference

Please be assured of our highest consideration.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Anne Waiguru".

**Anne Waiguru, EGH**  
**Chairperson, Council of Governors**



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE MISCELLANEOUS AMENDMENTS BILLS, 2022  
(ENERGY ACT, 2019)

TO

NATIONAL ASSEMBLY

FROM

THE COUNCIL OF GOVERNORS

**THE COUNCIL OF GOVERNORS**, a non – partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (hereafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

**In recognition** of the fact that the Constitution sets out the functions of County Governments with regards to Article 209 (3) (a) of the Constitution

**In further recognition** of the need to align the Miscellaneous Amendments Bills, 2022 (Energy Act, 2019) and its implementation to the Constitution to ensure consultation and cooperation in the sector and for effective implementation in the counties; and

**Aware** of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council of Governors therefore proposes the following amendments to the Miscellaneous Amendments Bills, 2022 (Energy Act, 2019):

CLAUSE	Provision in the principal Act	Proposed amendment in the miscellaneous amendments	Our proposal	Justification
12 ( 1 ) (e)	<p>12.(1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—</p> <p>(e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the <b>Council of County Governors;</b></p>	<b>Delete s. 12 ( 1 ) (e)</b>	s. 12 (l) (e) should not be deleted in the principal Act.	<p>It is a deliberate effort to remove the County Governments in this Board yet the Counties play a major role in the energy sector.</p> <p>It is imperative that County Governments be represented in the Board in light of the Fourth schedule of the constitution which bestows the function of County Planning and Development including electricity and gas reticulation and Energy Regulation to County Governments.</p> <p>Further, the fourth schedule Distribution of functions between the national Government and the county governments (s.222) Energy Act 2019 bestows the functions of County Energy Planning, County Energy operations and Development and Energy regulation</p>
s. 45 ( 1 ) (e)	e) three members appointed by the Cabinet Secretary; and	Delete the word "three" and substitute there for the Word"seven".	The section should be retained as is in the principal Act to read;  <b>three members</b>	The Council does not agree with this proposal as it takes away the representation of County Governments to the National Government and yet

			appointed by the Cabinet Secretary; and	Counties play a major role in the energy sector
S. 45 (f)	four other members appointed by the Council of County Governors.	Delete paragraph (f).	S. 45 (f) should not be deleted in the principal Act	<p>It is a deliberate effort to remove the representation of County Governments in this Board yet the Counties play a major role in the energy sector.</p> <p>It is imperative that County Governments be represented in the Board in light of the Fourth schedule of the constitution which bestows the function of County Planning and Development including electricity and gas reticulation and Energy Regulation to County Governments. Further, the fifth schedule Distribution of functions between the national Government and the county governments (s.222) Energy Act 2019 bestows the functions of County Energy Planning, County Energy operations and Development and Energy regulation</p>
Sect. 76 (2)	<p>(2) The Renewable Energy Resource Advisory Committee is composed of—</p> <p>(a) principal secretary in the</p>	<p>Insert the following new paragraph immediately after paragraph (g) —</p> <p>(h) the Managing</p>	<p>Insert the following new paragraph in place of the proposed (h)</p> <p><b>One representative nominated by</b></p>	<p>The representative of the KPLC is provided for in (d) of the Act</p> <p>It is imperative that County Governments need to be represented in the Board in light of the</p>

<p>Ministry of Energy or his or her representative who shall be the Chairperson;</p> <p>(b) chief executive officer of the Corporation or his representative, who shall be the Secretary;</p> <p>(c) managing director of the Geothermal Development Company Limited or his or her representative;</p> <p>(d) managing director of the Kenya Electricity Generating Company Limited or his or her representative;</p> <p>(e) Attorney-General or his or her representative;</p> <p>(f) principal secretary of the National Treasury or his or her representative; and</p> <p>(g) Principal secretary responsible for matters relating to natural resources or his or her representative.</p>	<p>Director of Kenya Power and Lighting Company PLC or his or her Representative.</p>	<p><b>the Council of County Governors</b></p>	<p>Fourth schedule of the constitution, which bestows the function of electricity and gas reticulation to County Governments.</p>
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The proposed amendments as they are substantive in nature, seek to claw back on devolution and defeats the intended purpose of the miscellaneous amendments. The enactment of the legislation was after rigorous process that involved County participation which secured their representation to the respective Boards among other provisions that support devolution





**REPUBLIC OF KENYA  
THIRTEENTH PARLIAMENT (FIRST SESSION) 2022  
THE NATIONAL ASSEMBLY**

**In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)**

**PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA**

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

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'uah, CBS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes-

- 1. The Appellate Jurisdiction Act (Cap 9)
- 2. The Vexatious Proceedings Act (Cap 41)
- 3. The Extradition (Commonwealth Countries) Act (Cap 77)
- 4. The National Flag, Emblems and Names Act (Cap 99)
- 5. The Official Secrets Act (Cap 187)
- 6. The Geneva Conventions Act (Cap 198)
- 7. The Pharmacy and Poisons Act (Cap 244)
- 8. The Mental Health Act (Cap 248)
- 9. The Land Consolidation Act (Cap 283)
- 10. The Land Adjudication Act (Cap 284)
- 11. The Marine Insurance Act (Cap 390)
- 12. The Local Manufacturers (Export Compensation) Act (Cap 482)
- 13. The Capital Markets Act (Cap 485A)
- 14. The Architects and Quantity Surveyors Act (Cap 525)
- 15. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)
- 16. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
- 17. The Retirement Benefits Act, 1997 (No. 3 of 1997)
- 18. The Co-operatives Societies Act, 1997 (No. 12 of 1997)
- 19. The Central Depositories Act, 2000 (No. 4 of 2000)
- 20. The Sexual Offences Act, 2008 (No. 3 of 2008)
- 21. The National Museums and Heritage Act, 2008 (No. 6 of 2008)
- 22. The Labour Institutions Act, 2007 (No. 12 of 2007)
- 23. The Accountants Act, 2008 (No. 15 of 2008)
- 24. The International Crimes Act, 2008 (No. 16 of 2008)
- 25. The Biosafety Act, 2009 (No. 2 of 2009)
- 26. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)
- 27. The Harbours Act, 2011 (No. 28 of 2011)
- 28. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)

The Bill seeks to amend these Acts in order to harmonise their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

The Bill seeks to amend the First Schedule to the Excise Duty Act to correct mistakes in a tariff number.

The Bill seeks to amend the Judiciary Act (Cap 8) to propose to amend the Act to increase the number of Judges of the Court of Appeal from to Seventy.

43. The Penal Code (Cap 63)  
The Bill seeks to amend Section 246 of the Act by deleting expressions therein which may be perceived to be discriminatory towards persons with mental disabilities.

44. The Criminal Procedure Code (Cap 75)  
The Bill seeks to amend the statute to harmonize terms therein with the provisions of the Constitution of Kenya, 2010 and the National Police Service Act, 2011. It also seeks to allow the Director of Public Prosecutions to delegate powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2008.

45. The Evidence Act (Cap 80)  
The Bill seeks to amend the Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with the current technological advancements. It also seeks to delete expressions which may be perceived to be discriminatory to persons with mental disabilities.

46. The Public Holidays Act (Cap 110)  
The Bill proposes to amend the Public Holidays Act to provide that 10<sup>th</sup> October be *Huduma Day* and 26<sup>th</sup> December *Utamaduni Day*.

47. The Copyright Act 2001 (No. 12 of 2001)  
The Bill seeks to amend the Act to provide for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards authors and performers. It also seeks to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

48. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)  
The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also proposes to amend the Act to allow the Commission to seek a court order for a state officer under investigation or charged with corruption or economic crimes to be barred from accessing office or exercising powers of that office where the public officer is likely to interfere with investigations.

49. The Merchant Shipping Act, 2009 (No. 4 of 2009)  
The Bill seeks to amend the Act by deleting section 16 which restricts ship owners from providing crewing agencies, pilotage, clearing and forwarding, port facility operator and shipping agencies among other services in the maritime industry. This is after the High Court in September, 2020 declared the section unconstitutional and to allow for the revival of the Kenya National Shipping Line.

50. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)  
The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organized crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.

51. Leadership and Integrity Act, 2012 (No. 19 of 2012)  
The Bill seeks to amend the Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of candidates seeking public service appointments and make recommendations.

52. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)  
The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.

53. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)  
The Bill seeks to amend the Act to clarify the provisions on the attendance of ex-officio members at the Commission meetings.

54. The Water Act, 2016 (No. 43 of 2016)  
The Bill seeks to amend the Act to include the Attorney-General as a member of the Water Resources Management Board and to require the appointments of Chief Executive Officers under the Act to be in line with guidelines issued by the Salaries and Remuneration Commission. The Bill further seeks to allow the designation of representatives to sit in Boards in place of designated officer holders and the introduction of new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

55. The Bribery Act, 2016 (No. 47 of 2016)  
The Bill seeks to amend the Act to include both private and public entities in the scope and application of the Act and to make other minor amendments.

56. The Scrap Metal Act, 2015 (No. 1 of 2015)  
The Bill seeks to amend the Act to provide for the issuance of a special license for dealing in copper, aluminium, and their alloys. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely; Numerical Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act in order to deter vandalism and other prohibited acts.

57. The Energy Act, 2019 (No. 1 of 2019)  
The Bill proposes to amend the Act to give effect to the recommendations of the "Presidential Task Force on the Review of Power Purchase Agreements". The recommendations include addressing the overlapping functions between the Energy Petroleum Regulatory Authority and the Ministry responsible for Energy matters.

58. The Housing Act (Cap 17)  
The Bill seeks to amend the Act by placing definitions of terminologies in proper alphabetical sequence.

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE		
i.	The Vexatious Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii.	The Extradition (Commonwealth Countries) Act (Cap 77)	
iii.	The Official Secrets Act (Cap 187)	
iv.	The Sexual Offences Act, 2008 (No. 3 of 2008)	
v.	The International Crimes Act, 2008 (No. 16 of 2008)	
vi.	The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii.	The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii.	The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix.	The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	
x.	The Penal Code (Cap 63)	
xi.	The Criminal Procedure Code (Cap 75)	
xii.	The Evidence Act (Cap 80)	
xiii.	The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv.	The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi.	The Bribery Act, 2016 (No. 47 of 2016)	
xvii.	The Judiciary Act (Cap 8)	
xviii.	The Appellate Jurisdiction Act (Cap 9)	
i.	The Capital Markets Act (Cap 485A)	Departmental Committee on Finance and National Planning
ii.	The Retirement Benefits Act, 1997 (No. 3 of 1997)	
iii.	The Central Depositories Act, 2000 (No. 4 of 2000)	
iv.	The Accountants Act, 2008 (No. 15 of 2008)	
v.	The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)	
vi.	The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)	
vii.	The Controller of Budget Act, 2016 (No. 26 of 2016)	
viii.	The Excise Duty Act, 2015 (No. 23 of 2015)	

i.	The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii.	The Public Holidays Act (Cap 110)	
iii.	The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)	
iv.	The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)	
v.	The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi.	The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i.	The Marine Insurance Act (Cap 390)	Departmental Committee on Transport and Infrastructure
ii.	The Kenya Roads Board Act, 1999 (No. 7 of 1999)	
iii.	The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv.	The Merchant Shipping Act, 2009 (No. 4 of 2009)	
i.	The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii.	The Teachers Service Commission Act, 2012 (No. 20 of 2012)	
i.	The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii.	The Land Adjudication Act (Cap 284)	
iii.	The National Land Commission Act, 2012 (No. 5 of 2012)	
i.	The Co-operatives Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii.	The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii.	The Local Manufacturers (Export Compensation) Act (Cap 482)	
i.	The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii.	The Mental Health Act (Cap 248)	
i.	The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii.	The Public Service Commission Act, 2017 (No. 17 of 2017)	
i.	The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii.	The Housing Act (Cap 17)	
i.	The National Museums and Heritage Act, 2008 (No. 6 of 2008)	Departmental Committee on Sports and Culture
ii.	The Copyright Act 2001 (No. 12 of 2001)	
The Tourism Act, 2011 (No. 28 of 2011)		
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)		
The Geneva Conventions Act (Cap 198)		
The Energy Act, 2019 (No. 1 of 2019)		
The Water Act, 2016 (No. 43 of 2016)		
The Biosafety Act, 2009 (No. 2 of 2009)		

IN COMPLIANCE with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and interested stakeholders to submit memoranda to the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on [www.parliament.go.ke](http://www.parliament.go.ke) (for non-assembly business) or [www.parliament.go.ke/bills](http://www.parliament.go.ke/bills).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; or hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [cta@parliament.go.ke](mailto:cta@parliament.go.ke) to be received on or before Friday, 6<sup>th</sup> January, 2023 by 5.00 pm.

**SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY**

16<sup>th</sup> December, 2022





REPUBLIC OF KENYA  
THIRTEENTH PARLIAMENT (FIRST SESSION) 2022  
THE NATIONAL ASSEMBLY

In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

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

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'uwa, CBS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes-

- A. The Appellate Jurisdiction Act (Cap 9)
- B. The Vexatious Proceedings Act (Cap 41)
- C. The Extradition (Commonwealth Countries) Act (Cap 77)
- D. The National Flag, Emblems and Names Act (Cap 99)
- E. The Official Secrets Act (Cap 187)
- F. The Geneva Conventions Act (Cap 198)
- G. The Pharmacy and Poisons Act (Cap 244)
- H. The Mental Health Act (Cap 248)
- I. The Land Consolidation Act (Cap 283)
- J. The Land Adjudication Act (Cap 284)
- K. The Marine Insurance Act (Cap 390)
- L. The Local Manufacturers (Export Compensation) Act (Cap 482)
- M. The Capital Markets Act (Cap 485A)
- N. The Architects and Quantity Surveyors Act (Cap 525)
- O. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)
- P. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
- Q. The Retirement Benefits Act, 1997 (No. 3 of 1997)
- R. The Co-operatives Societies Act, 1997 (No. 12 of 1997)
- S. The Central Depositories Act, 2000 (No. 4 of 2000)
- T. The Sexual Offences Act, 2006 (No. 3 of 2006)
- U. The National Museums and Heritage Act, 2006 (No. 8 of 2006)
- V. The Labour Institutions Act, 2007 (No. 12 of 2007)
- W. The Accountants Act, 2008 (No. 15 of 2008)
- X. The International Crimes Act, 2008 (No. 16 of 2008)
- Y. The Biosafety Act, 2009 (No. 2 of 2009)
- Z. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)
- AA. The Tourism Act, 2011 (No. 28 of 2011)
- AB. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)
- AC. The Judicial Service Commission Act, 2011 (No. 1 of 2011)
- AD. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)
- AE. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)
- AF. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)
- AG. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)
- AH. The Commission on Revenue Allocation Act, 2011 (No. 22 of 2011)
- AI. The Ethics and Anti-Corruption Commission Act, 2011 (No. 30 of 2011)
- AJ. The National Public Service Commission Act, 2011 (No. 30 of 2011)
- AK. The National Land Commission Act, 2012 (No. 5 of 2012)
- AL. The Teachers Service Commission Act, 2012 (No. 20 of 2012)
- AM. The Controller of Budget Act, 2016 (No. 26 of 2016)
- AN. The Public Service Commission Act, 2017 (No. 17 of 2017)

The Bill seeks to amend these Acts in order to harmonise their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

29. The Judicial Service Commission Act, 2011 (No. 1 of 2011)

30. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)

31. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)

32. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)

33. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)

34. The Commission on Revenue Allocation Act, 2011 (No. 22 of 2011)

35. The Ethics and Anti-Corruption Commission Act, 2011 (No. 30 of 2011)

36. The National Public Service Commission Act, 2011 (No. 30 of 2011)

37. The National Land Commission Act, 2012 (No. 5 of 2012)

38. The Teachers Service Commission Act, 2012 (No. 20 of 2012)

39. The Controller of Budget Act, 2016 (No. 26 of 2016)

40. The Public Service Commission Act, 2017 (No. 17 of 2017)

1. seeks to amend these Acts to require the presentation of Annual Reports by the Inspectors/Officers within six (6) months after the end of the year to which they relate.

The Excise Duty Act, 2015 (No. 23 of 2015)

1. Bill seeks to amend the First Schedule to the Excise Duty Act to correct mistakes in a tariff number.

The Judiciary Act (Cap 8)

1. proposes to amend the Act to increase the number of Judges of the Court of Appeal from twenty to Seventy.

43. The Penal Code (Cap 63)

The Bill seeks to amend Section 246 of the Act by deleting expressions therein which may be perceived to be discriminatory towards persons with mental disabilities.

44. The Criminal Procedure Code (Cap 75)

The Bill seeks to amend the statute to harmonize terms therein with the provisions of the Constitution of Kenya, 2010 and the National Public Service Act, 2011. It also seeks to allow the Director of Public Prosecutions to delegate powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

45. The Evidence Act (Cap 80)

The Bill seeks to amend the Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with the current technological advancements. It also seeks to delete expressions which may be perceived to be discriminatory to persons with mental disabilities.

46. The Public Holidays Act (Cap 110)

The Bill proposes to amend the Public Holidays Act to provide that 10<sup>th</sup> October be *Huduma Day* and 26<sup>th</sup> December *Utamaduni Day*.

47. The Copyright Act 2001 (No. 12 of 2001)

The Bill seeks to amend the Act to provide for the equitable remuneration of performers and producers of sound recordings and to provide for the responsibilities of collective management organisations towards authors and performers. It also seeks to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

48. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)

The Bill seeks to amend the Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also proposes to amend the Act to allow the Commission to seek a court order for a state officer under investigation or charged with corruption or economic crimes to be barred from accessing office or exercising powers of that office where the public officer is likely to interfere with investigations.

49. The Merchant Shipping Act, 2009 (No. 4 of 2009)

The Bill seeks to amend the Act by deleting section 16 which restricts ship owners from providing crewing agencies, pilots, clearing and forwarding, port facility operator and shipping agencies among other services in the maritime industry. This is after the High Court in September, 2020 declared the section unconstitutional and to allow for the revival of the Kenya National Shipping Line.

- 50. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)
- 51. Leadership and Integrity Act, 2012 (No. 19 of 2012)
- 52. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)
- 53. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)
- 54. The Water Act, 2016 (No. 43 of 2016)
- 55. The Bribery Act, 2016 (No. 47 of 2016)
- 56. The Scrap Metal Act, 2015 (No. 1 of 2015)
- 57. The Energy Act, 2019 (No. 1 of 2019)
- 58. The Housing Act (Cap 17)

The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organised crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.

The Bill seeks to amend the Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of candidates seeking public service appointments and make recommendations.

The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.

The Bill seeks to amend the Act to clarify the provisions on the attendance of ex-officio members at the Commission meetings.

The Bill seeks to amend the Act to include the Attorney-General as a member of the Water Resources Management Board and to require the appointments of Chief Executive Officers under the Act to be in line with guidelines issued by the Salaries and Remuneration Commission. The Bill further seeks to allow the designation of representatives to sit in Boards in place of designated officer holders and the introduction of new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

The Bill seeks to amend the Act to include both private and public entities in the scope and application of the Act and to make other minor amendments.

The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely; Numerical Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act in order to deter vandalism and other prohibited acts.

The Bill proposes to amend the Act to give effect to the recommendations of the "Presidential Task Force on the Review of Power Purchase Agreement". The recommendations include addressing the overlapping functions between the Energy Petroleum Regulatory Authority and the Ministry responsible for Energy matters.

The Bill seeks to amend the Act by placing definitions of terminologies in proper alphabetical sequence.

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE	
i. The Vexatious Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii. The Extradition (Commonwealth Countries) Act (Cap 77)	
iii. The Official Secrets Act (Cap 187)	
iv. The Sexual Offences Act, 2006 (No. 3 of 2006)	
v. The International Crimes Act, 2008 (No. 16 of 2008)	
vi. The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix. The Ethics and Anti-Corruption Commission Act, 2011 (No. 30 of 2011)	
x. The Penal Code (Cap 63)	
xi. The Criminal Procedure Code (Cap 75)	
xii. The Evidence Act (Cap 80)	
xiii. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv. Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi. The Bribery Act, 2016 (No. 47 of 2016)	
xvii. The Judiciary Act (Cap 8)	
xviii. The Appellate Jurisdiction Act (Cap 9)	
i. The Capital Markets Act (Cap 485A)	Departmental Committee on Finance and National Planning
ii. The Retirement Benefits Act, 1997 (No. 3 of 1997)	
iii. The Central Depositories Act, 2000 (No. 4 of 2000)	
iv. The Accountants Act, 2008 (No. 15 of 2008)	
v. The Commission on Revenue Allocation Act, 2011 (No. 22 of 2011)	
vi. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)	
vii. The Controller of Budget Act, 2016 (No. 26 of 2016)	
viii. The Excise Duty Act, 2015 (No. 23 of 2015)	

i. The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii. The Public Holidays Act (Cap 110)	
iii. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)	
iv. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)	
v. The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i. The Marine Insurance Act (Cap 390)	Departmental Committee on Transport and Infrastructure
ii. The Kenya Roads Board Act, 1999 (No. 7 of 1999)	
iii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv. The Merchant Shipping Act, 2009 (No. 4 of 2009)	
i. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii. The Teachers Service Commission Act, 2012 (No. 20 of 2012)	
i. The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii. The Land Adjudication Act (Cap 284)	
iii. The National Land Commission Act, 2012 (No. 5 of 2012)	
i. The Co-operatives Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii. The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii. The Local Manufacturers (Export Compensation) Act (Cap 482)	
i. The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii. The Mental Health Act (Cap 248)	
i. The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii. The Public Service Commission Act, 2017 (No. 17 of 2017)	
i. The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii. The Housing Act (Cap 17)	
i. The National Museums and Heritage Act, 2006 (No. 8 of 2006)	Departmental Committee on Sports and Culture
ii. The Copyright Act 2001 (No. 12 of 2001)	
The Tourism Act, 2011 (No. 28 of 2011)	Departmental Committee on Tourism and Wildlife
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)	Departmental Committee on Social Protection
The Geneva Conventions Act (Cap 198)	Departmental Committee on Defence, Intelligence and Foreign Relations
The Energy Act, 2019 (No. 1 of 2019)	Departmental Committee on Energy
The Water Act, 2016 (No. 43 of 2016)	Departmental Committee on Blue Economy and Irrigation
The Biosafety Act, 2009 (No. 2 of 2009)	Departmental Committee on Agriculture and Livestock

IN COMPLIANCE with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and interested stakeholders to submit memoranda on the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on [www.parliament.go.ke/the-national-assembly/the-national-assembly-bills](http://www.parliament.go.ke/the-national-assembly/the-national-assembly-bills).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; or hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [cn@parliament.go.ke](mailto:cn@parliament.go.ke) to be received on or before Friday, 6<sup>th</sup> January, 2023 by 5.00 pm.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY  
16<sup>th</sup> December, 2022

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