

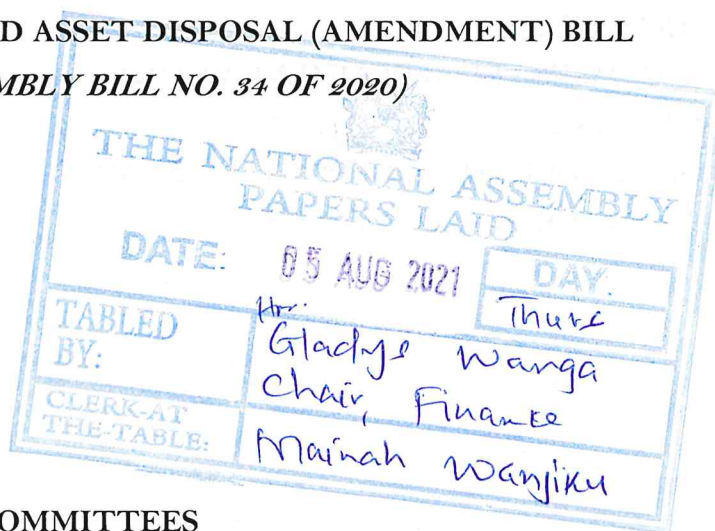
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SWA
5/8/2021



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
.....

REPORT ON -
THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 34 OF 2020)



CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2021

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020) which was published on 15th October, 2020.

The Bill went through the First Reading on 22nd December, 2020 and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill has three (3) clauses and seeks to amend the Public Procurement and Asset Disposal Act, 2015 to provide that all foreign tenderers participating in international tenders shall source all their locally available supplies from citizen contractors. The amendment seeks to promote growth of local industries and contractors.

Following placement of adverts in the print media on 12th February 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received two written memoranda from the National Treasury and Planning and the Institute of Certified Public Accountants of Kenya (ICPAK).

In order to extensively carry out public participation on the Bill, the Committee invited stakeholders vide letter REF: NA/DDC/F&NP/2021/30 dated 6th July 2021 for a stakeholder engagement meeting which was held on Wednesday, 15th July 2021 at Emara Ole Sereni Hotel where National Treasury and Planning attended the meeting. The stakeholders' comments on the Bill are contained in Part III of the Report. All the stakeholders' comments were put into consideration while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

The stakeholders were opposed to the amendment because giving advantage to local firms could perpetuate inefficiency and increased cost by compromising the principles of open competition and value for money. In some instances, citizen contractors lack the capacity to undertake various projects that could have been undertaken if procurement was done by experienced foreign contractors with demonstrable capacity.

While considering the Bill, the Committee noted that it is not clear what kind of brokerage firms the Bill was referring to. The Committee also noted that the requirement for foreign tenderers participating in local tenders to source all their locally manufactured supplies from local contractors is not feasible because it may not be attained in some sectors. The 40% that is provided in the Act is good enough.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Procurement and Asset Disposal (Amendment) Bill, 2020. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Hon. Richard Tongi, MP for sponsoring the Bill and the stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020) and have the honour to report back to the National Assembly with the recommendation that the Bill be approved with amendments.

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

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

1.2 COMMITTEE'S SUBJECTS

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

1.3 COMMITTEE MEMBERSHIP

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

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County
ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency
Jubilee Party

Members

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

Hon. Christopher Omulele, CBS, MP
Luanda Constituency
ODM Party

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

Hon. Daniel Nanok, MP
Turkana West Constituency
Jubilee Party

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

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency
Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency
MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency
WDM-K

Hon. Catherine Waruguru, MP
Laikipia County
Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency
Jubilee Party

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

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency
Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

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

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Laureen O. Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

Mr. Vitalis Augo
Office Assistant

PART TWO

2 OVERVIEW OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2020)

2.1 INTRODUCTION

6. The principle object of the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 34 of 2020*) is to amend the Public Procurement and Asset Disposal Act, 2015 to provide that all foreign companies participating Kenyan contracts listed as international tenders shall source all their locally available supplies from local contractors.
7. The proposed amendments seek to promote the growth of local industries and contractors by requiring foreign tenderers participating in Kenyan international tenders to source all their locally available supplies from citizen contractors.

2.2 ANALYSIS OF THE BILL

The Bill proposes the following amendments:

8. **Clauses 1** of the Bill provides for the short title.
9. **Clauses 2** of the Bill provides that where a procurement entity seeks to procure specialized services that are not wholly or partly available in Kenya, the accounting officer shall require successful bidders to cause transfer of specialized skills to the relevant persons.
10. **Clause 3** of the Bill requires foreign tenderers participating in local tenders to source all their locally manufactured supplies from citizen contractors.
11. The Bill does not delegate legislative powers neither does it limit any fundamental rights and freedoms as provided under the Constitution.
12. The Bill concerns county governments in terms of Article 110(1) of the Constitution as it affects the functions and powers of county governments as set out in the Fourth Schedule of the Constitution.
13. Enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

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

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

The stakeholders submitted as follows:

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

In the Institute's memorandum, the CEO, Mr. Edwin Makori, submitted as follows, **THAT—**

15. Under sub-clauses 2(6)(b) and (c), the Bill fails to provide the mechanisms through which the transfer of knowledge shall be accomplished. They proposed the following amendments to the sub-clauses: *“(b) Require successful bidders to cause the transfer of specialized skills and appropriate technology to local contractors and employees through internships, apprenticeships or on-the-job training; (c) Require successful bidders to provide detailed reports on implementation of technological transfers to include: (a) the percentage of work force who are drawn from the local economy; (b) level of uptake of new technology; and (c) percentage of supplies and services procured locally”*. This is to provide clarity and mechanisms through which the transfer of technology and skills can be done.

Committee's Observation

The Committee noted ICPAK's comments and deleted the proposed amendment.

16. A pool of experienced locals should be created to be utilized by existing universities, colleges and technical training institutions (TVETs) to offer relevant skill sets and build required expertise and capacity to locals. A graduate and scale up programme should further be introduced to specific MSMEs and local companies with demonstrated capacity to be ready for similar works (both locally, regionally and internationally) in the near future.

17. Under clause 3, they noted that some of the locally available supplies may be of low quality and may compromise the quality or lead to inefficiency in delivery of public services. They proposed that the clause should be amended by deleting the words *“at least forty percent”* and substituting with the words *“at least seventy percent”*. The suggestion of 70/30 principle is consistent with Ghana's model of preference in procurement.

18. They noted that exclusive preference gives too much emphasis to events leading to the award of a contract and neglects the pre and post contract award events. It also does not provide for the identification, detection and treatment of abnormally low tenders.

19. Giving advantage to local firms can perpetuate inefficiency and increased cost by compromising the principles of open competition and value for money. In some instances, citizen contractors lack the capacity to undertake various projects that could have been undertaken if procurement was done by experienced foreign contractors with demonstrable capacity.

3.2 NATIONAL TREASURY AND PLANNING

In a meeting with the Committee held on Wednesday, 14th July 2021, Hon. Nelson Gaichuhie, Chief Administrative Secretary, National Treasury, submitted as follows:

20. They did not support the amendment proposed in sub-clause 2(a) because the matter is addressed in section 157(9) where foreign bidders are required to source at least 40% of supplies from citizen contractors. The scope provided for in the Act and Regulations is all inclusive while the proposed amendment is specific to some industry.

Committee's Observation

The Committee noted their concerns and deleted the clause.

21. They did not support the amendment proposed in sub-clause 2(b)(6) because section 155(5)(b) of the Act requires successful bidders to cause technological transfer or create employment opportunities as shall be prescribed in Regulations. The scope provided for in Regulations is all inclusive.

Committee's Observation

The Committee noted their concerns and deleted the clause.

22. They supported the amendment proposed in clause 3 but proposed that it should be amended as follows; "*To source at least 40% of locally manufactured or mined materials from citizen contractors*". The amendment is to require citizen contractors to supply locally manufactured /mined materials. The 40% is minimum and PEs should endeavor to achieve the maximum possible. Making it mandatory may not be attainable in some sectors.

Committee's Observation

The Committee agreed to the amendment proposed by National Treasury.

PART FOUR

4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed the following:

23. The Bill proposes to provide for preferential treatment to registered brokerage firms. It is not clear which brokerage firms are referred to in the Bill. The subsidiary legislation provides for preference for local firms.
24. The requirement for foreign tenderers participating in local tenders to source all their locally manufactured supplies from local contractors is not feasible because it may not be attained in some sectors.

PART FIVE

5 COMMITTEE RECOMMENDATION

25. The Committee having considered the Public Procurement and Asset Disposal (Amendment) Bill (*National Assembly Bill No. 34 of 2020*) that the House passes the Bill with amendments as proposed in the schedule in chapter 6.

PART SIX

6 SCHEDULE OF PROPOSED AMENDMENTS

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

CLAUSE 2

26. **THAT**, the Bill be amended by deleting clause 2.

Justification

The clause is being deleted because the provision on preference to Kenyan citizens have been provided for in the regulations to the Act.

CLAUSE 3

27. **THAT**, the Bill be amended in clause 3 by deleting the words "*all their locally available*" and substituting therefor the words "*at least forty percent of locally manufactured or mined materials*"

Justification

The amendment is to modify the provisions in the Bill to provide that local preference shall be at least forty percent of locally manufactured or mined materials.

SIGNED.......... DATE.....*5th August 2021*.....

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

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

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE

*ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE PUBLIC
PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (N.A. BILL NO. 34 OF 2020)*

DATE:

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

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

PRESENT

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

ABSENT WITH APOLOGY

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

INATTENDANCE

SECRETARIAT

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

AGENDA

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

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

5. Any Other Business

6. Adjournment/Date of Next Meeting

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

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

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

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

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

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

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

PRESENT

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

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

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

NATIONAL TREASURY AND PLANNING

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

AGENDA

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

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

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

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

The Perpetuities and Accumulations (Amendment) Bill, 2021

The meeting deliberated and agreed as follows on the Bill:

Clause 1: Agreed to

Clause 2: Agreed to

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

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

The meeting deliberated and agreed as follows on the Bill:

Clause 1: Agreed to

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

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

Clause 4

3A: Agreed to

3B: Redraft

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

3D: Agreed to

3E: Agreed to

3F: Agreed to

3G: Agreed to

3H: Agreed to

3I: Agreed to

3J: Agreed to

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

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

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

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

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

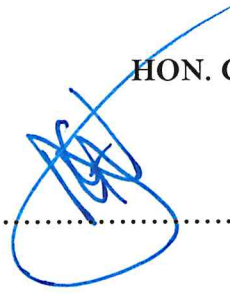
Mr. Njoroge implored on Members not to insist on the non-contributory post-retirement medical scheme as it will take away the benefits carried in the Parliamentary Pensions (Amendment) Bill, 2019. He noted that the PSC had consulted with the Salaries and Remuneration Commission before the Bill was drafted.

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

ADJOURNMENT/DATE OF NEXT MEETING

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

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)



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

5th August 2021

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

PRESENT

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

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

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

CENTRAL BANK OF KENYA

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

OTHER STAKEHOLDERS

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

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

AGENDA

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

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

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

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

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

Dr. Njoroge submitted as follows on the two Bills:

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

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

MEMBERS' DELIBERATIONS

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

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

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

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

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

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

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

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

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

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

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

Clause 3: Delete

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

ADJOURNMENT/DATE OF NEXT MEETING

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

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

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

5th August 2021

REPUBLIC OF KENYA

19/2/202



**TWELFTH PARLIAMENT (FIFTH SESSION)
THE NATIONAL ASSEMBLY**

**INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF
MEMORANDA**

(Article 118 (1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders)

In the matters of consideration by the National Assembly:-

1. The Public Procurement and Asset Disposal (Amendment) (No. 2) Bill (National Assembly Bill No. 34 of 2020)
2. The Public Debt Management Authority Bill (National Assembly Bill No. 36 of 2020)

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Procurement and Asset Disposal (Amendment) (No. 2) Bill (National Assembly Bill No. 34 of 2020) introduced by Hon. Richard Tongi, MP, seeks to amend the Public Procurement and Asset Disposal Act (No. 33 of 2015) to provide that all foreign tenderers participating in international tenders shall source all their locally available supplies from citizen contractors. The purpose of the amendment is to promote the growth of local industries and contractors.

The Public Debt Management Authority Bill (National Assembly Bill No. 36 of 2020) introduced by Hon. Sakwa Buniyasi, MP, seeks to establish the Public Debt Management Authority as an independent body to manage the public debt in the country at both levels of government. The country's debt is rising at an alarming level and there is need to manage the same to protect the current and future generations. The Office shall succeed the Public Debt Management Office.

The Bills have undergone First Reading pursuant to Standing Order 127(3) and stand committed to the **Departmental Committee on Finance and National Planning** for consideration and thereafter report to the House.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bills. The Bills can be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills.

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi, or emailed to clerk@parliament.go.ke to be received on or before Wednesday, 17th February, 2021 at 5:00 pm.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

