



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, MAY 03, 2016

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding**- the Speaker

4. **MESSAGE**

Hon. Speaker conveyed the following Message from the Senate -

"Honourable Members,

Pursuant to the provisions of Standing Order 41(4), I wish to report to the House that I have received a Message from the Senate regarding the approval, by the Senate, of the Mediated Version of the Climate Change Bill (National Assembly Bill No. 1 of 2014).

The Message reads, and I quote, "That the Senate, by a resolution passed on Tuesday 26th April, 2016, approved the Mediated Version of the Climate Change Bill (National Assembly Bill No.1 of 2014)."

Honourable Members, you may recall that the National Assembly considered the Report of the Mediation Committee and approved the same version of the said Bill on 20th April, 2016. In this regard, I will now proceed to present the Bill for Assent to His Excellency the President in accordance with the provisions of Article 113(3) of the Constitution.

Thank you".

5. **PETITION ON ENACTMENT OF LEGISLATION TO PROVIDE FOR THE IMPLEMENTATION OF THE AFRICAN UNION RESOLUTIONS**

The Speaker conveyed the following Petition –

"Honourable Members,

Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office is in receipt of one such petition.

The Petition is signed by one David Gesicho, a Kenyan citizen, regarding enactment of legislation to provide for implementation of the resolutions of African Union.

In the Petition, the Petitioner prays that the National Assembly initiates the process of enacting legislation in regard to implementation of resolutions of the African Union in the Republic of Kenya, in particular concerning the proposed formula for division and allocation of revenue towards realisation of the Sustainable Development Goals (SDGs). The Petitioner has further tabulated the proposed allocation of revenue as follow –

- (i) fifteen percent (15%) to the health sector;
- (ii) ten percent (10%) to the agriculture sector to implement Maputo Declaration;
- (iii) twenty percent (20%) to agriculture including water, irrigation, sanitation and rural development; and
- (iv) finally, five percent (5%) to national annual deficit.

Honourable Members,

Pursuant to the provisions of Standing Order 227, the Petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and the House in accordance with Standing Order 227 (2). The Committee is at liberty to introduce a Bill to the House, proposing to make the amendments as proposed by the Petitioner.

Thank you”.

6. PAPERS LAID

The following Papers were laid on the Table -

- (i) Report of the Auditor-General on the Financial Statements of the National Authority for the Campaign Against Alcohol and Drug Abuse, Alcoholic Drinks Control Fund for the year ended 30th June 2015 and the Certificate therein;
- (ii) The Report of the Auditor-General on the Financial Statements of the Kenya Re-Insurance Corporation Limited for the year ended 31st December, 2015 and the Certificate therein;
- (iii) The Annual Report and Financial Statements of the Capital Markets Authority for the year ended 30th June, 2015 and the Certificate therein;
- (iv) The Annual Report and Financial Statements of the Anti-Female Genital Mutilation Board for the Year ended 30th June 2015; and,
- (v) A list of nominees to the National Government Constituencies Development Fund Committees from the National Constituencies Development Fund Board.

(The Leader of the Majority Party)

- (vi) Reports of the Departmental Committee on Administration and National Security on its consideration of the following Petitions:-
 - (a) The Petition by the residents of Chuka/Igambang’ombe Constituency regarding delayed creation of a new administrative unit in Kiringani Location, Meru South Sub-County, presented in the House by the Member for Member for Chuka Igambang’ombe (Hon. Muthomi Njuki).

- (b) The Petition by Kasikeu Ward village managers regarding the recognition and compensation for services rendered by village elders, presented in the House by the Deputy Speaker pursuant to Standing Order 225(2).
- (c) The Petition by three inmates from Naivasha Maximum Prison on Radicalization of Inmates, Review of the Penal Code and Amnesty for Inmates who have served a jail term of more than seven years, presented in the House by the Speaker pursuant to Standing Order 225(2).

(Chairperson, Departmental Committee on Administration & National Security)

7. **THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2015)**

Order for Third Reading read;

Motion made and Question proposed –

THAT, the Energy Bill (National Assembly Bill No.50 of 2015) be now read a Third Time

(The Leader of the Majority Party – 28.4.2016(PM))

Debate on the Third Reading having been concluded on Thursday, April 28, 2016 (Afternoon Sitting);

Question put and agreed to;

Bill read a Third Time and **passed**.

8. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The First Chairperson in the Chair

The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)

Clauses 3, 4, 5, 6 and 7 - agreed to

Clause 8 - amendment proposed –

THAT, clause 8 of the Bill be amended in sub clause (3) by inserting the words “on its own” immediately before the words “through the” appearing in paragraph (a);

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 8 - as amended agreed to

Clause 9 - agreed to

Clause 10 - amendment proposed –

THAT, clause 10 of the Bill be amended—

- (a) in sub-clause (1) by inserting the words “and the petroleum agreement” immediately after the words “in accordance with this Act” appearing in paragraph (h);
- (b) in sub-clause (5) by inserting the words “ to carry out his or her duties under this Act” immediately after the words “and assistance”;
- (c) in sub-clause (6) by deleting the closing paragraph appearing immediately after paragraph (b) and substituting therefor the following new closing paragraph—
“commits an offence and shall on conviction be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or to both”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 10 of the Bill be amended in paragraph (l) of sub-clause (1) by inserting the words “is considered unsafe which” immediately after the words “or building that” in sub-paragraph (i).

(Hon. Joyce Emanikor)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clause 11 - agreed to

Clause 12 - amendment proposed –

THAT, clause 12 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (h) —

“(hh) a representative of the Council of Governors.”

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 12 - as amended agreed to

Clauses 13 and 14 - agreed to

Clause 15 - amendment proposed –

THAT, clause 15 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph (a)—

“(a) regulate, monitor and supervise upstream petroleum operations in Kenya in accordance with this Act, the regulations made thereunder and the relevant petroleum agreement”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 15 - as amended agreed to

Clause 16 - amendment proposed –

THAT, clause 16 of the Bill be amended in sub-clause (1) —

(a) by deleting the words “being not less than ten thousand shillings” appearing in paragraph (m) and substituting therefor the words “not exceeding five hundred thousand shillings”;

(b) by deleting the words “National Transparency and Accountability Standards” appearing in paragraph (p) and substituting therefor the words “national values and principles”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 16 - as amended agreed to

Clause 17 - amendment proposed -

THAT, clause 17 of the Bill be amended in sub-clause (2) -

- (a) by inserting the words "any of the following fields" immediately after the words "Kenya in" appearing in paragraph (b);
- (b) by inserting the following new sub-paragraph immediately after subparagraph (vi) -
"(vii) any other relevant degree".

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, clause 17 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph-

"(e) five other members appointed by the Cabinet Secretary from persons nominated by the top governance organs of each of the following bodies-

- (i) the Consumers Federation of Kenya;
- (ii) the Law Society of Kenya;
- (iii) the Petroleum Industry Association of Kenya;
- (iv) the Kenya Private Sector Alliance; and
- (v) the National Environment Management Authority.

(Hon. (Dr.) Patrick Musimba)

Question of the further amendment proposed;

Debate arising;

Question put and negatived;

Further amendment proposed -

THAT, clause 17 of the Bill be amended in sub-clause (1) by inserting the words "appointed under section 23 of this Act" immediately after the words "the Director-General" appearing in paragraph (d).

(Hon. Joyce Emanikor)

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 17 - as amended agreed to

Clauses 18, 19, 20, 21, 22 and 23 - agreed to

Clause 24 - amendment proposed –

THAT, clause 24 of the Bill be amended in sub-clause (2) by inserting the words “to the Authority” immediately after the words “made against him or her” appearing in paragraph (a).

(Hon. (Dr.) Patrick Musimba)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 24 - as amended agreed to

Clauses 25, 26, 27, 28, 29, 30, 31, 32 and 33 - agreed to

Clause 34 - amendment proposed –

THAT, clause 34 of the Bill be amended—

(a) in sub-clause (5) by deleting the words “of not less than five hundred thousand shillings or to a term of imprisonment of not less than six months or both” and substituting therefor the words “not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both”;

(b) in sub-clause (6) by deleting the words “of not less than five thousand shillings” and substituting therefor the words “not exceeding one hundred thousand shillings”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, clause 34 of the Bill be amended in sub-clause (1) by inserting the words “and further upon issuance of sufficient notice” immediately after the words “of appointment” appearing in the opening paragraph.

(Hon. (Dr.) Patrick Musimba)

Question of the further amendment proposed;

Debate arising;

Question put and negatived;

Clause 34 - as amended agreed to

Clauses 35 & 36 - agreed to

Clause 37 - amendment proposed –

THAT, the Bill be amended by deleting clause 37.

(Hon. (Dr.) Patrick Musimba)

Question for the amendment proposed;

Debate arising;

Question put and negatived;

Clause 37 - as amended agreed to

Clauses 38, 39, 40, 41 and 42 - agreed to

Clause 43 - amendment proposed –

THAT, clause 43 of the Bill be amended in sub clause (4) by deleting the words “of not less than ten million shillings or to a term of imprisonment of not less than two years or both” and substituting therefor the words “not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years or to both”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 43 - as amended agreed to

Clause 44 - amendment proposed –

THAT, clause 44 of the Bill be amended in sub-clause (2) by deleting the word “contract” and substituting therefor the words “petroleum agreement”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Clause 44 - agreed to

Clause 45 - amendment proposed -

THAT, clause 45 of the Bill be amended by deleting sub-clause (3).

(Hon. Joyce Emanikor)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Clause 45 - as amended agreed to

Clauses 46, 47 and 48 - agreed to

Clause 49 - agreed to

Clause 50 - agreed to

Clause 51 - agreed to

Clauses 52 and 53 - agreed to

Clause 54 - agreed to

Clause 55 - agreed to

Clause 56 - agreed to

Clause 57 - amendment proposed -

THAT, clause 57 of the Bill be amended—

(a) in sub-clause (3) by deleting the words “which shall advise the Cabinet Secretary for approval” and substituting therefor the words “in accordance with the petroleum agreement”;

(b) by inserting the following new sub-clause immediately after sub-clause (3)—

“(3A) The Authority shall advise the Cabinet Secretary before approval of the field development plan”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 57 - as amended agreed to

Clause 58 - amendment proposed -

THAT, clause 58 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “upon a declaration of commerciality by the contractor, and the submission adoption and approval of the Field Development Plan, submit to Parliament the Field Development Plan for ratification” and substituting therefor the words “within thirty days of receipt of production sharing contract submit to Parliament for ratification all production sharing contracts entered into pursuant to this Act and regulations made under this Act”;
- (b) in sub-clause (2) —
 - (i) by deleting the words “the Field Development Plan” appearing immediately after the words “receipt of” in the opening paragraph and substituting therefor the words “the production sharing contract”;
 - (ii) in paragraph (a) by deleting the words “Field Development Plan” and substituting therefor the words “ production sharing contract”;
 - (iii) in paragraph (b) by deleting the words “Field Development Plan” and substituting therefor the words “production sharing contract”; and
- (c) in sub-clause (4) by deleting the words “Field Development Plan” and substituting therefor the words “ production sharing contract”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 58 - as amended agreed to

Clauses 59, 60 & 61 - agreed to

Clause 62 - agreed to

Clause 63 - amendment proposed -

THAT, clause 63 of the Bill be amended in sub-clause (1) by deleting the word “two” appearing immediately after the words “Cabinet Secretary within” and substituting therefor the word “seven”.

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 63 - as amended agreed to

Clauses 64, 65, 66, 67, 68 and 69 - agreed to

Clause 70 - agreed to

Clauses 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 84 - agreed to

Clause 85 - amendment proposed –

THAT, clause 85 of the Bill be amended—

(a) in sub-clause (2) by deleting the proviso;

(b) in sub-clause (4) —

- (i) by deleting the words “five percent” appearing immediately after the words “equivalent to” and substituting therefor the words “ten percent”;
- (ii) by deleting the proviso.

(Hon. Joyce Emanikor)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, clause 85 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) —

“(4A) The registered owner of a freehold land on whose land a petroleum resource is located, shall be entitled to a one-off payment equivalent to one percent of the local community’s share under sub-section (4).

(Hon. Sammy Mwaita)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Clause 85 - as amended agreed to

Clause 86 - agreed to

Clause 87 - agreed to

Clause 88 - agreed to

Clause 89 - agreed to

Clauses 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112 - agreed to

Clause 113 - agreed to

Clause 114,115,116,117,118,119 and 120- agreed to

Schedule - agreed to

Clause 2 - amendment proposed –

THAT, clause 2 of the Bill be amended—

(c) by deleting the definition of the term “petroleum agreement” and substituting therefor the following new definition—

“petroleum agreement” means any agreement, license, contract or other arrangement between the Government and a contractor to conduct upstream petroleum operations in accordance with the provisions of this Act, and may include —

- (a) production sharing contracts;
- (b) concession agreements; and
- (c) service contracts;

(d) by inserting the following new definitions in proper alphabetical sequence—

“commercial field” means a geological structure or feature which hosts one or more reservoirs from which petroleum production may be commercially undertaken through a defined set of facilities”;

“common user facility” means petroleum infrastructure owned and maintained by any person which may be used by third parties”;

“community land” has the meaning assigned to it under Article 63 of the Constitution;

“compulsory acquisition” has the same meaning as assigned to it under the Land Act, 2012;

“contract area” means a block in respect of which a contractor has entered into a petroleum agreement with the Government to conduct upstream petroleum operations;

“private land” has the meaning assigned to it under Article 64 of the Constitution;

“public land” has the meaning assigned to it under Article 62 of the Constitution;

“unitization agreement” means an agreement between contractors, who hold separate petroleum agreements on blocks that are adjacent or contiguous to each other for purposes of joint development or production of petroleum from a field straddling two or more different contract areas”

(Chairperson, Departmental Committee on Energy, Information and Communication)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendments proposed -

THAT, clause 2 of the Bill be further amended by-

- (a) deleting the definition of the term " compulsory acquisition" as proposed in the Bill;
- (b) deleting the definition of the term " contract area" as proposed in the Bill; and
- (c) deleting the definition of the words "and may include-
 - (a) Production sharing agreement
 - (b) Concession agreement; and
 - (c) Service contracts,"

appearing immediately after the words" provision of this Act" in the proposed new definition of the term "Petroleum agreement."

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

9. **HOUSE RESUMED** - the First Chairperson

The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)

Bill reported with amendments;

Motion made and Question proposed -

THAT, House do agree with the Committee in the said report

(Chairperson, Departmental Committee on Energy, Communication and Information)

Question put and agreed to;

Motion made and Question proposed -

THAT, the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) be now read a Third Time

(The Leader of the Majority Party)

Debate arising;

Question of the Third Reading deferred to another day

10. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The First Chairperson in the Chair

The Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015)

Clause 3 - amendment proposed –

THAT, clause 3 of the Bill be deleted.

(Hon. Abdullswamad Nassir)

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Further amendment proposed-

THAT, clause 3 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1), by deleting the words “Commission in consultation with

national and county governments may” and substituting therefor the words “Cabinet Secretary in consultation with the Commission shall”

(Chairperson, Departmental Committee on Lands)

Question of the amendment proposed;

(Change of Chair from the First Chairperson to the Second Chairperson)

Debate arising;

Question put and agreed to;

Clause 3 - as amended agreed to

Clause 4 - amendment proposed –

THAT, clause 4 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 4 - deleted

Clause 5 - amendment proposed –

THAT, clause 5 of the Bill be deleted.

(Hon. Abdullswamad Nassir)

Question of the amendment proposed;

Debate arising;

Question for the amendment put and negatived;

Clause 5 - agreed to;

Clause 6 - amendment proposed –

THAT, clause 6 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 6 - deleted;

Clauses 7 and 8 - agreed to

Clause 9 - amendment proposed –

THAT, clause 9 of the Bill be amended

- (a) in sub-section (1) of the proposed new section 13A, by inserting the words " a land surveyor, a land economist or an expert in any other relevant field" at the end of the sentence;
- (b) in sub-section (2) of the proposed new section 13A, by inserting the words " a land surveyor, a land economist or an expert in any other relevant field" at the end of the sentence; and
- (c) in sub-section (3) of the proposed new section 13A, by inserting the words " a land surveyor, a land economist or an expert in any other relevant field" at the end of the sentence;

(Hon. William Kisang)

Question for the amendment proposed;

11. QUORUM OF THE HOUSE

Rising in his place on a Point of Order, the Member for Matuga (Hon. Hassan Mwanyoha) drew to the attention of the Second Chairperson to the fact that there was no quorum in the House;

And the Chairperson, having confirmed that there was no quorum, caused the Division Bell be rung;

And there being quorum after six minutes, proceedings resumed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

THAT, clause 9 of the Bill be amended-

- (a) in the introductory statement, by inserting the word "inserting" immediately after the words "amended by"; and
- (b) in sub-section (3) of the proposed new section 13A, by inserting the words "or has at least five years' experience in land administration" immediately after the word "Kenya".

(Chairperson, Departmental Committee on Lands)

Proposed amendment withdrawn;

Further amendment proposed -

THAT, clause 9 of the Bill be amended in sub-section 2 of the proposed new section 13A by deleting the words "or an advocate of the High Court with at least 5 years' experience in land administration" immediately after the words "Advocate of the High Court".

(Hon. Abdulwasad Nassir)

Proposed amendment dropped;

Clause 9 - as amended agreed to;

Clause 10 - agreed to;

Clause 11 - agreed to;

Clause 12 - proposed amendment -

THAT, clause 12 of the Bill be deleted;

(Hon. Jones Mlolwa)

Question for the amendment proposed;

Debate arising;

Question put and negatived;

Clause 12 - agreed to;

12. HOUSE RESUMED - the First Chairperson in the Chair

Progress reported -

THAT, the Committee of the whole House has considered the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) up to Clause 12 and seeks leave to sit again another day

(The Leader of Majority Party)

Question put and agreed to.

And the time being thirty minutes past Six O'clock, the First Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. HOUSE ROSE - at thirty minutes past Six O'clock

MEMORANDUM

The Speaker will take the Chair on
Wednesday, May 04, 2016 at 9.30 a.m.

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