

Approved for tabling.

SNA  
5/8/2021



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON  
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT  
ON

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 AUG 2021	DAY: Thurs
TABLED BY: CLERK AT THE TABLE:	Hon. Daniel P. Kariuki Chair, Transport Mamih Wanjiku

CONSIDERATION OF THE NATIONAL CONSTRUCTION AUTHORITY  
(AMENDMENT) BILL, 2020

(NATIONAL ASSEMBLY BILL NO. 45 OF 2020)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 AUG 2021	DAY: DAY
TABLED BY:	CLERK AT THE TABLE:

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
CLERK'S CHAMBERS - NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST 2021



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## **CHAIRPERSON'S FOREWORD**

This report contains proceedings of the Departmental Committee on Transport, Public Works and Housing on its consideration of the National Construction Authority (Amendment) Bill, 2020 (*National Assembly Bill No. 45 of 2020*), sponsored by Hon. David Gikaria, M.P. The Bill was published on 20<sup>th</sup> November, 2020 and read a First Time on 9<sup>th</sup> June, 2021 and was thereafter committed to the Departmental Transport, Public Works and Housing pursuant to Standing Order 127.

Following placement of adverts in the print media on 11<sup>th</sup> June, 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received memorandum from the State Department for Public Works.

The Committee discussed the Bill with stakeholders on Wednesday, 28<sup>th</sup> July 2021. Both the State Department for Public Works and the National Construction Authority were opposed to the amendment proposed in the Bill because it may open avenues for misuse and abuse. They explained that the intended benefits can still be obtained without an amendment to the Act.

The Committee was persuaded by the submissions of the State Department and further noted that if the Bill was to be passed in its current form, it may occasion the government loss in revenues through undeserving categorization that may be made by misrepresentation of facts.

The Committee wishes to sincerely thank the Offices of the Speaker and of the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also take this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and commitment towards the production of this Report. The Committee further wishes to record its appreciation for services rendered by the Committee Secretariat. Their efforts and input made the work of the Committee and production of this Report possible.

The Committee further wishes to thank Hon. David Gikaria, M.P. for sponsoring the Bill, and the State Department for Public Works together with the National Construction Authority as stakeholders who participated in the consideration of the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the National Construction Authority (Amendment) Bill, 2020 (*National Assembly Bill No. 45 of 2020*), with the recommendation that the Bill be amended by deleting it in its entirety.



**HON. DAVID PKOSING, C.B.S, M.P.**

**Chairperson - Departmental Committee on Transport, Public Works and Housing**

## 1.0 PREFACE

1. Pursuant to Standing Order 127(1), the Bill was Read a First Time on Wednesday, 9<sup>th</sup> June 2021 and consequently committed to the Departmental Committee on Transport, Public Works and Housing for consideration and thereafter report to the House.

### 1.1 Committee Mandate

2. The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;
  - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
  - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
  - c. *study and review all legislation referred to it;*
  - d. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - e. *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;*
  - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
    - f(a). *examine treaties, agreements and conventions;*
    - g. *examine treaties, agreements and conventions;*
    - h. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
    - i. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
    - j. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    - k. *examine any questions raised by Members on a matter within its mandate.*
3. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects: -
  - a) Transport;
  - b) Roads;
  - c) Public works;
  - d) Construction and maintenance of roads, rails and buildings;
  - e) Air and seaports; and
  - f) Housing.
4. In executing this mandate, the Committee oversights various State Departments, namely:
  - a) The State Department of Transport;
  - b) The State Department of Infrastructure;
  - c) The State Department of Housing and Urban Development;
  - d) The State Department of Public Works; and
  - e) The State Department of Shipping and Maritime Affairs.

## 1.2 Committee Membership

5. The Committee on Transport, Public Works and Housing as constituted by the House comprises of the following members:

### **Chairperson**

Hon. David Pkosing, C.B.S., M.P.  
Pokot South Constituency  
Jubilee Party

### **Vice-Chairperson**

Hon. Gathoni Wamuchomba, H.S.C., M.P.  
Kiambu County  
Jubilee Party

### **Members:**

Hon. Abdul Rahim Dawood, M.P.  
North Imenti Constituency  
**Jubilee Party**

Hon. David Njuguna Kiaraho, M.P.  
Ol Kalou Constituency  
**Jubilee Party**

Hon. Johnson Many Naicca, M.P.  
Mumias West Constituency  
**Orange Democratic Movement Party**

Hon. Omar Mwinyi Shimbwa, M.P.  
Changamwe Constituency  
**Orange Democratic Movement Party**

Hon. Peris Tobiko, C.B.S., M.P.  
Kajiado East Constituency  
**Jubilee Party**

Hon. Samuel Arama, M.P.  
Nakuru Town West  
**Jubilee Party**

Hon. Ahmed Abdisalan Ibrahim, M.P.  
Wajir North Constituency  
**Orange Democratic Movement Party**

Hon. Ahmed Bashane Gaal, M.P.  
Tarbaj Constituency  
**Peoples Democratic Party**

Hon. Ali Wario Guyo, M.P.  
Garsen Constituency  
**Orange Democratic Movement Party**

Hon. Dominic Kipkoech Koskei, M.P.  
Soitik Constituency  
**Jubilee Party**

Hon. George Aladwa Omwere, M.P.  
Makadara Constituency  
**Orange Democratic Movement Party**

Hon. Gideon Mutemi Mulyungi, M.P.  
Mwingi Central Constituency  
**Wiper Democratic Party**

Hon. Kulow Maalim Hassan, M.P.  
Banisa Constituency  
**Economic Freedom Party (EFP)**

Hon. Mercy Wanjiku Gakuya, M.P.  
Kasarani Constituency  
**Jubilee Party**

Hon. Janet Wanyama Nangabo, M.P.  
Trans-Nzoia County  
**Jubilee Party**

Hon. Shadrack John Mose, M.P.  
Kitutu Masaba Constituency  
**Jubilee Party**

Hon. Tom Mboya Odege, M.P.  
Nyatike Constituency  
**Orange Democratic Movement Party**

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### 1.3 Committee Secretariat

6. The Committee secretariat comprise the following:

Ms. Chelagat Tungo Aaron  
**First Clerk Assistant**  
Head of Secretariat

Mr. Ahmed Salim Abdalla  
**Second Clerk Assistant**

Mr. Ronald Walala  
**Legal Counsel I**

Mr. Abdinasir Moge Yusuf  
**Fiscal Analyst I**

Mr. Eric Kariuki  
**Research Officer III**

Ms. Zainabu Wario  
**Serjeant-at-Arms**

Mr. Yeziel Jilo  
**Serjeant-at-Arms**

Mr. Yaqub Ahmed  
**Media Relations Officer**

Mr. Collins Mahamba  
**Audio Recording Officer**

## **2.0 OVERVIEW OF THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILL NO. 45 OF 2020)**

### **2.1 Analysis of the Bill**

7. The Bill seeks to amend the National Construction Authority Act, No. 41 of 2011 to ensure women, youth and persons living with disabilities with start-up businesses who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.
8. Clause 1: Provides for the short title.
9. Clause 2: Proposes amendment to Section 17 of the National Construction Authority Act, 2011 by inserting a new subsection 2A immediately after subsection 2 to provide the exemption to women, youth and persons with disabilities as explained in paragraph 7 of this report.
10. The Bill does not delegate legislative powers, neither does it limit fundamental rights and freedoms.
11. The Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution.
12. The enactment of the Bill may occasion additional expenditure of public funds to be provided for in the estimates.

### **3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION**

13. Following the call for memoranda from the public through the placement of advertisements in the print media on 11<sup>th</sup> June 2021 inviting stakeholders to submit their views on the Bill, the Committee received memorandum from the State Department for Public Works; views which were supported by the National Construction Authority.
14. On 2<sup>nd</sup> August 2021, the Committee considered its report on the Bill and adopted it in the same sitting.

#### **3.1 Submissions by the State Department for Public Works**

15. In their submission to the Committee, the State Department provided a background regarding regulation of a contractor under the National Construction Authority Act No. 41 of 2011. They broadly covered the following issues in their submission:
  - a) Registration of a contractor under section 15 of the Act;
  - b) Definition of a contractor under section 16 of the Act;
  - c) Application for Registration as a contractor under section 17 of the Act;
  - d) Contractor classification (classes of contract works); and
  - e) Contractor registration fees.
16. The State Department further explained that contractor registration was important to ensure safety of the citizens because a registered contractor has the technical capability to deliver a project; and that the requirements of the government will be met.
17. The State Department provided a comparative analysis on how other Authorities managed the issue of fees. For instance, the National Transport and Safety Authority (NTSA), the Insurance Regulatory Authority (IRA) and the Board of Registration of Architects and Quantity Surveyors (BORAQS) all have Regulations which cover the issue of prescribing fees in respect to any matter required under their respective Acts.
18. The State Department was of the view that the proposed amendment, although well-intentioned, may open avenues for misuse and abuse. They explained that the intended exemptions can still be obtained without an amendment to the Act, but rather thorough Regulations. They submitted that section 42(1) of the Act has given the Cabinet Secretary powers to make regulations. Under Regulation 27 of the National Construction Authority Regulations 2014, the Authority may, with the approval of the Cabinet Secretary, determine the fees payable from time to time in respect of any matter required for purposes of the NCA Act.
19. The Department therefore stated that it is for these already existing provisions that the NCA Board with the approval of the Cabinet Secretary has from time to time waived the accreditation fees for site supervisors and construction workers. They submitted that the same approach may be taken for women, youth and persons with disabilities who will apply to be registered by the Board as contractors. It is for this reason that the State Department for Public Works therefore recommended that the proposed Bill be reconsidered before being passed by the House.



#### 4.0 COMMITTEE'S OBSERVATIONS

20. The Committee observed as follows:

- i. The Bill is well-intentioned but the benefits sought through the Bill can be achieved without amending the National Construction Authority Act, 2011.
- ii. The exemption sought through the Bill is within the existing powers of the Cabinet Secretary and the NCA Board, as per section 42(1) of the Act and Regulation 27 of the National Construction Authority Regulations 2014.
- iii. Section 42 of the National Construction Authority Act provides for power to make Regulations:

*42. (1) The Minister may in consultation with the Board, make regulations generally for the better carrying out of the purposes of this Act.*  
*(2) Without prejudice to the generality of the foregoing, regulation made under this section may provide for—*  
*(a) the manner of payment of the levy imposed under section 29;*  
*(b) the manner of service of any notice required under Act;*  
*(c) the fees and charges to be paid in respect of any matter required for purposes of this Act;*  
*(d) the manner and forms of accreditation and certification of contractors, skilled construction workers and construction site supervisors;*  
*(e) the responsibilities and control of the officers and servants of the Authority;*  
*(f) the performance of the functions, the exercise of the powers and discharge of the duties of the Authority under this Act, and*  
*(g) any other matter to give effect to the provisions of this Act.*  
*(3) Regulations made under this section shall be tabled in Parliament for approval before taking effect.*

- iv. Regulation 27 of the National Construction Authority Regulations 2014 outlines how such fees may be prescribed:

*27. (1) There shall be payable to the Authority such fees for its services as the Authority may, with the approval of the Cabinet Secretary, determine from time to time.*  
*(2) The fees determined under sub-Regulation (1) above shall be published in the Kenya Gazette.*

- v. It is not ideal to legislate on a matter that can flexibly be regulated through Regulations.

## 5.0 COMMITTEE'S RECOMMENDATION

21. The Committee having considered the National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020), stakeholders' comments on the Bill and the above observations recommends to the House to reject the Bill in its entirety. The Committee shall propose amendments to the Bill as contained in the Schedule.

Signed  .....

**Hon. David L. Pkosing, C.B.S., M.P.**

**Chairperson**

**DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING**

Date ..... 05/08/2021 .....



## **SCHEDULE OF AMENDMENTS**

### **CLAUSE 1**

That the Bill be amended by deleting Clause 1.

### **CLAUSE 2**

That the Bill be amended by deleting Clause 2.



(i)

# Minutes

of the meetings of the Committee



**MINUTES OF THE THIRTY EIGHTH (38<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 2<sup>ND</sup> AUGUST 2021 AT 2.30 P.M. AT 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE**

**MEMBERS PRESENT**

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Abdul Rahim Dawood, M.P.
3. Hon. David Njuguna Kiaraho, M.P. - *virtually*
4. Hon. Johnson Manya Naicca, M.P.
5. Hon. Omar Mwinyi Shimbwa, M.P.
6. Hon. Samuel Arama, M.P. - *virtually*
7. Hon. Ahmed Abdisalan Ibrahim, M.P. - *virtually*
8. Hon. Ahmed Bashane Gaal, M.P.
9. Hon. Ali Wario Guyo, M.P.
10. Hon. Dominic Koskei, M.P. - *virtually*
11. Hon. Kulow Maalim Hassan, M.P.
12. Hon. Mercy Wanjiku Gakuya, M.P.
13. Hon. Shadrack John Mose, M.P.
14. Hon. Tom Mboya Odege, M.P. - *virtually*

**MEMBERS ABSENT WITH APOLOGY**

15. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
16. Hon. Peris Pesi Tobiko, M.P.
17. Hon. George Aladwa Omwera, M.P.
18. Hon. Gideon Mulyungi, M.P.
19. Hon. Janet Nangabo, M.P.

**SECRETARIAT**

- |                        |   |                    |
|------------------------|---|--------------------|
| 1. Mr. Ahmed Salim     | - | Clerk Assistant II |
| 2. Mr. Ronald Walala   | - | Legal Counsel      |
| 3. Ms. Zainab Wario    | - | Sergeant-at-arm    |
| 4. Mr. Collins Mahamba | - | Audio Officer      |
| 5. Ms. Mercy Mutuku    | - | Legislative Fellow |
| 6. Mr. Boniface Matano | - | Legislative Fellow |

**MIN No. TPWH 223/2021:**

**PRELIMINARIES**

The Chairman called the meeting to order at two o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to adopt the report on NCA (Amendment) Bill, 2021 and Kenya Roads.

The agenda of the meeting was therefore adopted after being proposed by the Hon. Ahmed Bashane, MP and seconded by the Hon. Johnson Naicca, MP.

**MIN No. TPWH 224/2021:**

**CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS**

Confirmation of minutes of the previous sitting was deferred.

**MIN NO. TPWH 225/2021:**

**ADOPTION OF THE REPORT ON  
CONSIDERATION OF THE NATIONAL  
CONSTRUCTION AUTHORITY (AMENDMENT)  
BILL, 2020 (NATIONAL ASSEMBLY BILL NO. 45  
OF 2020)**

The Committee observed that the Bill was well-intentioned but the benefits sought through the Bill can be achieved without amending the National Construction Authority Act, 2011. It was noted that the exemption sought through the Bill is within the existing powers of the Cabinet Secretary and the NCA Board, as per section 42(1) of the Act and Regulation 27 of the National Construction Authority Regulations 2014. The Committee therefore noted that it was not ideal to legislate on a matter that can flexibly be regulated through Regulations.

Having considered the National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020) and stakeholders' comments on the Bill, the Committee resolved to recommend to the House to reject the Bill in its entirety. The Committee shall propose amendments to the Bill as contained in the Schedule.

Report on Consideration of The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020) was therefore adopted after being proposed by Hon. Johnson Many Naicca, M.P. and seconded by Hon. Shadrack Mose.

**MIN NO. TPWH 226/2021:**

**ADOPTION OF THE REPORT ON  
CONSIDERATION OF THE KENYA ROADS  
(AMENDMENT) BILL, 2021 (NATIONAL  
ASSEMBLY BILL NO. 13 OF 2021)**

There was a debate on whether to amend clause 2 and clause 3 of the Bill. The Committee therefore resolved not to amend clause 2 of the Bill, to leave the tenure for the Director General at 5 years as proposed. The Committee further noted that this position was not and it was also agreed during consideration of the Kenya Roads Bill, 2017.

Regarding clause 3, the Committee by majority proposed that the Bill be amended by deleting it and replacing it with the following:

*14. A person shall be qualified for appointment as the Director-General if the person—*

- (a) holds a postgraduate degree in engineering, architecture, finance, accounts, management, law or a related field from a university recognized in Kenya;*
- (b) has at least ten years' experience in a senior managerial position within the roads sector;*
- (c) is a member in good standing of a relevant professional body; and*
- (d) satisfies the requirements of Chapter six of the Constitution.*

Report on Consideration of the Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021) was therefore adopted after being proposed by Hon. Ali Wario, M.P. and seconded by Hon. Abdul Rahim Dawood.

**MIN No. TPWH 227/2021:**

**ANY OTHER BUSINESS**

The Committee resolved to have the meeting scheduled for Wednesday, 4<sup>th</sup> August 2021 postponed because according to the Order Paper, the House will be sitting.

**MIN No. TPWH 228/2021:**

**ADJOURNMENT**

There being no other business, the sitting was adjourned at two o'clock. Next meeting to be held on Tuesday, the 3<sup>rd</sup> day of August 2021, at 11:00am.

Signed.....

*[Signature]*

(Chairperson)

Date.....

3/8/2021





**MINUTES OF THE THIRTY SIXTH (36<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 28<sup>TH</sup> JULY 2021 AT 2.30 P.M. AT 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE**

**MEMBERS PRESENT**

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. Abdul Rahim Dawood, M.P. - *virtually*
3. Hon. Johnson Many Naicca, M.P.
4. Hon. Omar Mwinyi Shimbwa, M.P. - *virtually*
5. Hon. Peris Pesi Tobiko, M.P. - *virtually*
6. Hon. Samuel Arama, M.P. - *virtually*
7. Hon. Ahmed Abdisalan Ibrahim, M.P. - *virtually*
8. Hon. Ahmed Bashane Gaal, M.P.
9. Hon. Ali Wario Guyo, M.P. - *virtually*
10. Hon. Dominic Koskei, M.P.
11. Hon. Janet Nangabo, M.P. - *virtually*
12. Hon. Tom Mboya Odege, M.P. - *virtually*

**MEMBERS ABSENT WITH APOLOGY**

13. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
14. Hon. David Njuguna Kiaraho, M.P.
15. Hon. George Aladwa Omwera, M.P.
16. Hon. Gideon Mulyungi, M.P.
17. Hon. Kulow Maalim Hassan, M.P.
18. Hon. Mercy Wanjiku Gakuya, M.P.
19. Hon. Shadrack John Mose, M.P.

**SECRETARIAT**

- |                        |   |                    |
|------------------------|---|--------------------|
| 1. Mr. Ahmed Salim     | - | Clerk Assistant II |
| 2. Mr. Ronald Walala   | - | Legal Counsel      |
| 3. Ms. Zainab Wario    | - | Sergeant-at-arm    |
| 4. Mr. Nixon Mutai     | - | Audio Officer      |
| 5. Ms. Mercy Mutuku    | - | Legislative Fellow |
| 6. Mr. Boniface Matano | - | Legislative Fellow |

**IN ATTENDANCE**

- |                               |   |  |
|-------------------------------|---|--|
| 1. Maj. Gen. Gordon Kihlangwa | - | Principal Secretary, Public Works - <i>virtually</i>       |
| 2. Eng. Maurice Aketch        | - | Executive Director, NCA. - <i>virtually</i>                |
| 3. Mr. Samson Lukoba          | - | Corp. Sec. & Head of Legal, NCA - <i>virtually</i>         |
| 4. Ms. Cindy Ogola            | - | NCA - <i>virtually</i>                                     |
| 5. Mr. Samson Maundu          | - | Sen. Parliamentary Counsel, AG's Office - <i>virtually</i> |
| 6. Eng. Nathaniel Matalanga   | - | President, Institution of Eng. of Kenya- <i>virtually</i>  |
| 7. Mr. Dan Manyasi            | - | KeRRA - <i>virtually</i>                                   |

**MIN No. TPWH 202/2021:**

**PRELIMINARIES**

The Chairman called the meeting to order at thirty minutes past two o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting the Ministry to receive their views on the National Construction Authority (Amendment) Bill, 2020

(National Assembly Bill No. 45 of 2020). The Committee noted that in response to the advertisements dated 11<sup>th</sup> June 2021 the Committee received one memorandum from the State Department for Public Works.

The agenda of the meeting was therefore adopted after being proposed by the Hon. Janet Nangabo, MP and seconded by the Hon. Omar Mwinyi, MP.

**MIN No. TPWH 203/2021:**

**CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS**

Confirmation of minutes of the previous sitting was deferred.

**MIN NO. TPWH 204/2021:**

**SUBMISSIONS FROM THE STATE DEPARTMENT FOR PUBLIC WORKS ON THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILL NO. 45 OF 2020)**

The State Department for Public Works was supported by the National Construction Authority (NCA). They were opposed to the proposed amendment to Section 17 of the National Construction Authority Act, 2011 as contained in the National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020). The State Department was of the view that the proposed amendment, although well-intentioned, may open avenues for misuse abuse. They explained that the intended benefits can still be obtained without an amendment to the Act.

They submitted that in line with the National Construction Authority Act No. 41 of 2011 and the National Construction Authority Regulations 2014, the Cabinet Secretary may, in consultation with Board, make Regulation in regards to the fees and charges to be paid in respect of any matter required for purposes of the NCA Act. Hence, the NCA Board with the approval of the Cabinet Secretary has from time to time waived the accreditation fees for site supervisors and construction workers. They submitted that the same approach may be taken for women, youth and persons with disabilities who will apply to be registered by the Board as contractors. It is for this reason that the State Department for Public Works therefore recommended that the proposed Bill be reconsidered before passed by the House.

**MIN No. TPWH 205/2021:**

**ADJOURNMENT**

There being no other business, the sitting was adjourned at fifty minutes past two o'clock. Next meeting to be held on Thursday, the 29<sup>th</sup> day of July 2021, at 10:00am.

Signed.....



(Chairperson)

Date.....

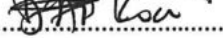
3/8/2021

# (ii) Adoption list of Members



**Adoption of the Report on the Consideration of the National Construction Authority  
(Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020)**

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this Report and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. David Pkosing, CBS – Chairperson ..... 

2. Hon. Gathoni Wamuchomba, HSC – Vice Chairperson .....

3. Hon. Abdul Rahim Dawood ..... 

4. Hon. David Njuguna Kiaraho ..... 


5. Hon. Johnson Many Naicca ..... 

6. Hon. Omar Mwinyi Shimbwa ..... 

7. Hon. Peris Pesi Tobiko, CBS .....

8. Hon. Samuel Arama .....

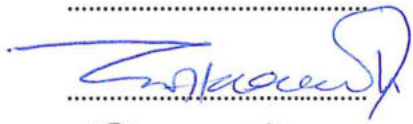
9. Hon. Ahmed Abdisalan Ibrahim .....

10. Hon. Ahmed Bashane Gaal ..... 

11. Hon. Ali Wario Guyo ..... 

12. Hon. Dominic Kipkoech Koskei .....

13. Hon. George Aladwa Omwera .....

14. Hon. Gideon Mutemi Mulyungi ..... 

15. Hon. Kulow Maalim Hassan ..... 

16. Hon. Mercy Wanjiku Gakuya .....

17. Hon. Janet Wanyama Nangabo .....

18. Hon. Shadrack John Mose ..... 

19. Hon. Tom Mboya Odege ..... 



(iii)  
Newspaper  
Advertisement  
inviting the public to make  
representations on the Bill







REPUBLIC OF KENYA  
**THE NATIONAL ASSEMBLY**  
 TWELFTH PARLIAMENT- FIFTH SESSION

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

1. The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020);
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**The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021)** seeks to provide for development, regulation and promotion of the Coffee Industry, provide for establishment, powers and functions of the Coffee Board of Kenya.

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

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MICHAEL SIALAL CBS  
 CLERK OF THE NATIONAL ASSEMBLY  
 11<sup>th</sup> June 2021





**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**TWELFTH PARLIAMENT – FIFTH SESSION**

In the Matter of Article 118(1) (b) of the Constitution

And

In the Matter of Consideration by the National Assembly of;

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020);</li> <li>2. The Pharmacy and Poisons (Amendment) Bill (National Assembly Bill No. 1 of 2021);</li> <li>3. The Health (Amendment) Bill (National Assembly Bill No. 14 of 2021);</li> <li>4. The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021);</li> <li>5. The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021);</li> <li>6. The Community Groups Registration Bill (National Assembly Bill No. 20 of 2021);</li> <li>7. The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021);</li> </ol> | <ol style="list-style-type: none"> <li>8. The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021)</li> <li>9. The Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021);</li> <li>10. The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020);</li> <li>11. The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020);</li> <li>12. The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020);</li> <li>13. The Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021);</li> <li>14. The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021).</li> </ol> |
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MICHAEL SIALAI, CBS  
CLERK OF THE NATIONAL ASSEMBLY  
11<sup>th</sup> June 2021



(iv)  
Memorandum  
on the Bill, from the  
State Department for Public Works



Ms. Tungo  
Please deal  
29/07/21



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING & URBAN  
DEVELOPMENT AND PUBLIC WORKS  
STATE DEPARTMENT FOR PUBLIC WORKS.  
Office of the Principal Secretary**

Works House  
Ngong Road, Nairobi  
P.O. Box 30743 - 00100  
NAIROBI

Tel: +254 (0) 20 2723101  
Fax: +254 (0) 20 2737659  
[info@publicworks.go.ke](mailto:info@publicworks.go.ke)  
Website: [www.publicworks.go.ke](http://www.publicworks.go.ke)

**PW/A/100/135**

**23<sup>rd</sup> July, 2021**

**Mr. Michael Sialai, CBS**  
Clerk of the National Assembly  
Office of the Clerk  
Main Parliament Buildings  
P.O. Box 41842-00100  
**NAIROBI**

D/O  
28/7/21

Dear Michael,

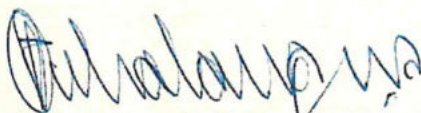
**MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY  
(AMENDMENT) BILL 2020**

Reference is made to the above subject matter.

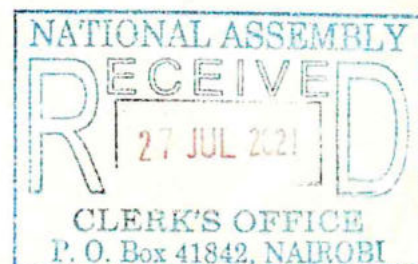
The National Assembly invited members of the public and stakeholders for comments on the National Construction Authority (Amendment) Bill 2020.

The National Construction Authority has reviewed the National Construction Authority (Amendment) Bill 2020 in line with the National Construction Authority Act No. 41 of 2011 and have noted substantive issues of law that need to be addressed regarding the Bill.

Accordingly, kindly find enclosed a Memorandum on the National Construction Authority (Amendment) Bill 2020.

  
**Maj. Gen. (Rtd) Dr. Gordon Kihlangwa, CBS**  
**PRINCIPAL SECRETARY**

**Encls**





**REPUBLIC OF KENYA**

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN  
DEVELOPMENT & PUBLIC WORKS**

**STATE DEPARTMENT FOR PUBLIC WORKS**

**MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY  
(AMENDMENT) BILL 2020**

**JULY 2021**

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## **MEMORANDUM ON THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL 2020**

### **1.0 BACKGROUND**

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The National Construction Authority (NCA) is established by the National Construction Authority Act No. 41 of 2011 (hereinafter referred to as the 'Act') (*copy attached*) which came into effect on the 8<sup>th</sup> of June 2011. In exercise of the Cabinet Secretary's powers conferred under Section 42 of the Act, the National Construction Authority Regulations were adopted by the National Assembly and took effect on the 6<sup>th</sup> June 2014 by Notice in the Kenya Gazette.

The object for which the Authority is established is to oversee the construction industry and coordinate its development. In addition, Section 5(2) (a) of the Act states that the Authority shall promote and stimulate the development, improvement and expansion of the construction industry.

The National Construction Authority (Amendment) Bill 2020 (*copy attached*) has been reviewed and our written submissions on the same are as outlined below.

### **2.0 THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL 2020**

---

#### **2.1 Introduction**

The National Construction Authority (Amendment) Bill 2020 (herein referred to as 'Bill') is an Act of Parliament that seeks to amend the National Construction Act No. 41 of 2011.

The principal object of the Bill is to amend the National Construction Authority Act, No.41 of 2011 to ensure women, youth and persons living with disabilities with startup businesses who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

#### **2.2 Amendments**

The Bill seeks to make the following amendments to the National Construction Authority Act, No. 41 of 2011-

#### ***Section 2 of the National Construction Authority (Amendment) Bill 2020***



*The National Construction Authority Act, 2011 is amended in section 17 by inserting the following new subsection immediately after subsection (2) —*

*(2A) Despite subsection (2), women, youth and persons with disabilities who apply to be registered by the Board as contractors shall be exempted from paying the prescribed registration fee where —*

*(a) the business is a startup business venture; and*

*(b) the fee does not exceed fifteen thousand shillings.*

### **3.0 REGULATION OF A CONTRACTOR UNDER THE NATIONAL CONSTRUCTION AUTHORITY ACT NO. 41 OF 2011**

---

In view of the mandate of the National Construction Authority to oversee the construction industry and coordinate its development, the functions of the Authority are categorized into three namely:

- a) Regulatory;
- b) Capacity Building and Training; and
- c) Advisory.

In view of the regulatory function, the Authority is empowered to register and regulate the performance of contractors and accredit skilled construction workers and site supervisors. Further, the Authority carries out its regulatory functions in the construction industry with regard to the registration of projects and undertaking quality assurance activities to ensure conformity to standards.

According to Section 5(2) (d) and (k) of the Act, the Authority shall prescribe the qualifications or other attributes required for registration as a contractor under the Act and accredit and register contractors and regulate their professional undertakings respectively. It is important to note that a developer must engage a registered contractor in all construction activities.

Section 5 (2) (d) and (k) of the NCA Act states:

***5(2) Without prejudice to the generality of subsection (1), the Authority shall—***

***(d) prescribe the qualifications or other attributes required for registration as a contractor under this Act***

***(k) Accredit and register contractors and regulate their professional undertakings.***

### **3.1 Registration of a Contractor – Section 15 of the Act**

A person shall not carry on the business of a contractor unless the person is registered by the Board under this Act.

A person seeking registration shall, in the case of a firm, be eligible for registration if at least one of the partners or directors of the firm possesses such technical qualifications, skills or experience as the Board may from time to time prescribe.

Any person who carries on the business of a contractor without being registered commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a fine not exceeding one hundred thousand shillings for every day or part thereof during which the offence continues.

### **3.2 Definition of a Contractor – Section 16 of the Act**

A person carries on business as a contractor where such person, for reward or other valuable consideration, undertakes the construction, installation or erection for any other person, of any structure situated below, on or above the ground, or other work connected therewith, or the execution for any other person, of any alteration or otherwise to any structure or other work connected therewith and undertakes to supply –

- a) The materials necessary for the work or is authorized to exercise control over the type, quality or use of the materials supplied by any other person;
- b) The labour necessary for the work or is authorized on behalf of the person for whom the work is undertaken to employ or select workmen for employment whether under a contract of service or otherwise.

### **3.3 Application for Registration as a Contractor – Section 17**

Pursuant to Section 17 of the Act, a person or firm may apply to the Board for registration as a contractor and in his/her application, must demonstrate to the Board that the person/firm (at least one director);

- a) The holder of the minimum technical qualifications and skills prescribed by the Board for the class of contract works in respect for which registration is sought;
- b) Has the necessary experience prescribed by the Board in works involving construction, erection, installation, alteration or any other activity;
- c) Has professional and general conduct which in the opinion of the Board makes the person suitable to be registered under the Act;

- d) Has the necessary plant and equipment for the category of works for which registration is sought.

Upon registration, the person shall be issued with a certificate of registration indicating the registration number, the class of works for which registered, the date of registration and duration of registration.

### **3.4 Contractor Classification (Classes of Contract Works)**

As provided under the Third Schedule of the Act, contractors may apply to undertake construction works in the following classes;

*A – Building Works*

*B - Civil Engineering Works*

*C - Electrical Engineering Services (Electrical Installation & Electronic)*

*D - Mechanical Engineering Services*

The NCA Regulations 2014 permit a local contractor to register in one or more categories according to class of construction works to be undertaken.

### **3.5 Contractor Registration Fees**

In line with the NCA Act and Regulations and the National Construction Authority's Citizen Service Delivery Charter, local contractors are required to pay a fee of Ksh. 5,000 – 100, 000 depending on the contractor category in order to register. Annual license renewal costs are valued at between Ksh. 2, 500 and Ksh. 30, 000.

## **4.0 ANALYSIS OF THE PROPOSED AMENDMENTS IN THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL 2020**

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### **4.1 Importance of NCA Contractor's Registration Certificate**

According to the Black's Law Dictionary Second (2<sup>nd</sup>) Edition, "Registration" is defined as recording; inserting in an official register; the act of making a list, catalogue, schedule, or register, particularly of an official character, or of making entries therein.

In regards to the construction industry in Kenya, the term "Registration" is used to refer to the official recognition which construction firms are required to have in order to practice and operate in Kenya. Every construction firm must meet a certain criterion to be registered. Further, the applicant must submit documentary evidence to support the information which it provides. Registered contractors are placed in categories which indicate the size of the projects (in monetary terms) they are capable to undertake. The classification, which denotes the capacity and capability of the firms, indicates the sizes of

projects that contractors in the various categories can tender for. The registration is usually valid for a three (3) year period, subject to payment of an annual fee.

In view of the above, contractor registration is important to ensure the safety of its citizens.

1. **A registered contractor has the technical capability to deliver a project:** Without a formal process to license and evaluate the skills of a contractor, many persons may be hiring a contractor that is not skilled in the techniques and systems needed to complete a job properly. By hiring a registered contractor and having a registration system in place, citizens can have increased confidence that construction work will be done by a person who has demonstrated competency.
2. **The requirements of the government will be met:** It is an offense to engage in contracting business without a certificate first being obtained. The purpose of the contractor's registration is to ensure, for the safety of the public, that only qualified and reliable contractors are allowed to undertake construction in the country. Registration also aims to promote for the benefit of the public and private sectors and for the national interest, the orderly growth of the contracting sector and the upgrading of construction capability.

The NCA contractor's registration certificate operates as a business license which ensures that firms which undertake construction projects have the necessary professional and technical capability to deliver a project with the requisite quality and durability.

#### **4.2 Prescription of Fees under NCA Regulations 2014**

As the State Department for Public Works, we recognize Regulation as a means to an important end is essential for the proper functioning of the construction industry. Often, Regulations are written to implement the specifics of a particular law/legislation.

According to Section 42 of the National Construction Authority Act No. 41 of 2011 –

##### ***Power to make Regulations.***

***42. (1) The Minister may in consultation with the Board, make regulations generally for the better carrying out of the purposes of this Act.***

**2) Without prejudice to the generality of the foregoing, regulation made under this section may provide for—**

- (a) the manner of payment of the levy imposed under section 29;**
  - (b) the manner of service of any notice required under Act;**
  - (c) the fees and charges to be paid in respect of any matter required for purposes of this Act;**
  - (d) the manner and forms of accreditation and certification of contractors, skilled construction workers and construction site supervisors;**
  - (e) the responsibilities and control of the officers and servants of the Authority;**
  - (f) the performance of the functions, the exercise of the powers and discharge of the duties of the Authority under this Act, and**
  - (g) any other matter to give effect to the provisions of this Act.**
- (3) Regulations made under this section shall be tabled in Parliament for approval before taking effect.**

Under Regulation 27 of the National Construction Authority Regulations 2014:

**27. (1) There shall be payable to the Authority such fees for its services as the Authority may, with the approval of the Cabinet Secretary, determine from time to time.**

**(2) The fees determined under sub Regulation (1) above shall be published in the Kenya Gazette.**

According to the National Construction Authority (Amendment) Bill, 2020, women, youth and persons with disabilities who apply to be registered by the Board as contractors shall be exempted from paying the prescribed registration fee where the fee does not exceed fifteen thousand shillings.

In view of the foregoing, the issue of prescribing fees in respect to any matter required for the purposes of the NCA Act shall be set out via Regulations and not Legislation. Fees is a regulation issue and hence, the NCA Act need not be amended in view of Section 42 of the of the National Construction Authority Act No. 41 of 2011.

**Waiver of Accreditation Fees for Site Supervisors and Construction Workers**



In view of the Authority's regulatory function, the Authority is mandated under Section 5 (2) (l) of the NCA Act to accredit and certify skilled construction workers and construction site supervisors. Construction workers and site supervisors are required to accredit with NCA, which confirms their level of education, expertise and experience. The function of accreditation has been provided at a fee of Kshs. 1,000 for skilled workers and Kshs. 2,000 for site supervisors, renewable after three years.

To boost the function of accreditation of workers, the Board has from time to time waived the accreditation fees of workers for a certain period of time. The waiver means that the Ksh. 1,000 for construction workers and Ksh. 2,000 for construction site supervisors, payable every three years, is no longer applicable until a certain period of time.

Hence, the Board may waive the requirements of the NCA Regulations in exceptional cases at its discretion to boost the functions of the Authority or to avoid substantial injustice or great hardship in the construction industry.

### **4.3 Importance of payment of Contractors Registration Fees**

In view of the proposed amendments in the National Construction Authority (Amendment) Bill 2020, it will be very crucial to recognize and appreciate the impetus of registration of Contractors and payment of registration fees.

The objective of the Authority is to ensure that the construction industry is served by competent contractors who observe business ethics and care for quality of work, environment and safety of workers and public at large.

One of the objectives of the Authority's registration system is to **generate revenue**.

Construction firms are required to pay a fee to the Authority in order to be registered. The funds collected from such fees are usually used for developmental purposes such as promotion of training on aspects of construction business, dissemination of information and networking, promotion of partnership and joint ventures between local and foreign contractors and research on construction business.

According to Section 34 of the NCA Act there shall be established a Fund to be known as the **National Construction Fund**, which shall vest in the Authority.

Pursuant to Section 34 (2) there shall be paid to the Fund –

- a) the initial budgetary provision by the Government as start-up capital for the establishment of the Authority;*
- b) the charges levied on contractors on services given by the Authority;*
- c) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;*
- d) all proceeds from the levy imposed under section 31; and*
- e) all moneys from any other source provided for or donated or lent to the Authority.*

In view of the foregoing, the Authority has implemented various positive measures from the charges levied on contractors on services given by the Authority:

#### **1. Capacity building programmes**

One of the main objectives of National Construction Fund is to equip contractors with necessary technical and management skills so as to make

them more competitive in the local and foreign markets. The trainings organized by the Authority focus on contractors' needs, encompasses all contractors and takes into consideration lessons learnt from previous training programs. It seeks to enhance their capacity and capability.

The Authority is building and improving the capacity of Local Contractors through:

- a) Continuous Professional Development (CPD) seminars-
  - i. Regional Contractors seminars;
  - ii. Sector-based Seminars for Road, Building, Water, Electrical & Mechanical Contractors;
  - iii. Induction Seminars for newly registered contractors; and
  - iv. Online CPD Webinars & Masterclasses.
- b) Collaborative Training programmes-
  - i. Partnerships & MoU Agreements; and
  - ii. Accredited CPD Providers.
- c) Facilitating access to affordable Funding and financing options.
- d) Facilitating access to affordable construction plant and equipment.

## **2. Business Development, Technology transfer and acquisition**

The Authority is responsible for the promotion of technology transfer, acquisition and adaptation of new and modern technologies by Contractors. The Authority has also developed business initiatives that introduces the local contractors to international construction markets.

The Authority obligates the partnership and joint ventures between local and foreign contractors. The enforcement of the requirements for registration as a Foreign contractor as per the NCA Act which include 30% sub-contracting or Joint Ventures to local contractors and skills transfer.

## **3. Research into matters relating to the Construction Industry**

The Authority also promotes research culture in the construction industry with a focus on key factors including, funding, markets, materials, equipment and manpower. The Authority has so far conducted five (5) research studies wherein reports have been published. The studies include;

- a) Study on building failures in Kenya.



- b) Study on the involvement of MSMEs in construction industry in Kenya.
- c) Study on the adoption of alternative building technologies for the affordable housing programme in Kenya.
- d) Study on construction and demolition of waste management in Kenya.
- e) Study on the Domestic Construction industry Capacity for Kenya.

Continuous research into the issues and challenges affecting the construction industry is therefore very important as it will result in concise recommendation and solutions that will be followed up in implementation by the Authority.

## **5.0 COMPARATIVE ANALYSIS**

A comparative study is important to ascertain the similarities and differences between NCA and other regulatory bodies in handling the issue at hand. The institutions studied include:

- a) National Transport and Safety Authority (NTSA);
- b) Insurance Regulatory Authority (IRA)
- c) Board of Registration of Architects and Quantity Surveyors (BORAQS)

### **5.1 National Transport and Safety Authority (NTSA)**

NTSA is a state corporation established by the National Transport and Safety Authority Act No. 33 of 2012. Amongst other functions, NTSA implements policies relating to road transport and safety and ensures the provision of safe, reliable, and efficient road transport service.

In the performance of the Authority's functions as prescribed under Section 4 (1) of the NTSA Act, the Authority shall register and license motor vehicles. Section 11 of the NTSA Act states that the Board in the performance of its functions shall have the power **to determine, impose and levy rates, charges, dues or fees for any services performed by the Authority, or for the grant, renewal or validation of a licence, permit or certificate, subject to the approval of the Cabinet Secretary.**

According to Section 43 of the NTSA Act –

#### **Fees in respect of licences.**

- 43. An applicant for a licence under this Act shall pay such fees at such times and in such manner as the Cabinet Secretary**

**may prescribe shall be charged by the Authority in respect of the grant or variation of a licence.**

Section 54 of the NTSA Act, Regulations, states –

**The Cabinet Secretary may, in consultation with the Board, make regulations for the better carrying into effect of the provisions of this Act.**

The National Transport and Safety Authority Act makes no special case for interest groups (youth, women and person with disabilities) in regards to payment of fees in respect of licenses. Further, the issue of prescribing fees in respect to any matter required for the purposes of the NTSA Act are set out via Regulations.

## **5.2 Insurance Regulatory Authority (IRA)**

IRA is a statutory government agency established under the Insurance Act CAP 487 of the Laws of Kenya and it is charged with regulating, supervising and developing the insurance industry in Kenya.

According to Section 3A (c) of the Insurance Act, one of the objects and functions of the IRA shall be to **license all persons involved in or connected with insurance business, including insurance and reinsurance companies, insurance and reinsurance intermediaries, loss adjusters and assessors, risk surveyors and valuers.**

### **Registration of Insurer – Prescribed Fee**

According to Section 180 of the Insurance Act-

#### **Section 180**

**The Cabinet Secretary may make regulations providing for all matters that are required or permitted to be prescribed by this Act, or that are necessary, desirable or convenient to be prescribed for giving effect to this Act.**

The requirements regarding the prescribed registration fee of an insurer have been detailed and provided for under the Insurance Regulations as follows:

1. The registration requirements of an Insurer and Reinsurer are detailed in Section 30 and 31 of the Insurance Act. Amongst other requirements, an applicant is required to pay registration fee of Kshs. 150,000 for insurance companies and Kshs. 250,000 for reinsurers.
2. The registration requirements for Insurance Brokers, Reinsurance Brokers and Medical Insurance Providers (MIPs) are detailed in Section 150, 150 A and 151 (d) of the Insurance Act. Amongst other requirements, an applicant is required to pay registration fee of Ksh. 10,000.
3. The registration requirements of Other Insurance Service Providers (risk manager, loss assessor, loss adjuster, insurance surveyor, claims settling

agent, insurance agent, corporate insurance agent) are detailed in Section 150 and 151 (1) (d) of the Insurance Act. Amongst other requirements, an applicant is required to pay registration fee of Ksh. 3,000 – Ksh. 1000. The Regulations make no special provision for interest groups (youth, women and person with disabilities) in regards to payment of fees in respect of licenses. Further, the issue of prescribing fees in respect to any matter required for the purposes of the Insurance Act are set out via Regulations.

### **5.3 Board of Registration of Architects and Quantity Surveyors (BORAQS)**

The BORAQS is established under Section 4 of the Architects and Quantity Surveyors Act Cap 525 Laws of Kenya. The Boards mandate is to regulate the professions of Architecture and Quantity Surveying through training, registration and enhancement of ethical practice.

According to Section 5 (g) of the Architects and Quantity Surveyors Act –

#### **5. Power of Board to make by-laws**

**The Board may from time to time, subject to the confirmation of the Minister, make by-laws for all or any of the following purposes—**

**(g) for the fees to be paid for registration under this Act.**

#### **Registration as an Architect and Quantity Surveyor**

Pursuant to Section 7 (d) and 8 (d) of the Architects and Quantity Surveyors Act, no person shall be registered as an architect and quantity surveyor unless the applicant has paid the prescribed registration fee.

The Architects and Quantity Surveyors Act make no special provision for interest groups (youth, women and person with disabilities) in regards to payment of fees in respect of licenses. Further, the issue of prescribing fees in respect to any matter required for the purposes of the Architects and Quantity Surveyors Act are set out via Regulations.

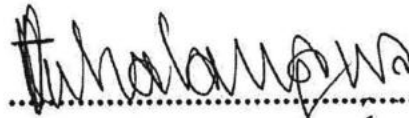
### **6.0 WAY FORWARD**

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In line with the National Construction Authority Act No. 41 of 2011 and National Construction Authority Regulations 2014, the Minister may in consultation with the Board, make Regulations in regards to the fees and charges to be paid in respect of any matter required for purposes of the NCA Act.

Hence, the NCA Board with the approval of the Minister has from time to time waived the accreditation fees for site supervisors and construction workers. The same approach may be taken for women, youth and persons with disabilities who will apply to be registered by the Board as contractors.

The State Department for Public Works therefore recommends that the proposed amendments in the National Construction Authority (Amendment) Bill 2020 be reconsidered before full adoption of the Bill.



Maj. Gen. (Rtd) Dr. Gordon Kihalangwa, CBS  
**PRINCIPAL SECRETARY**



**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 208 (National Assembly Bills No. 45)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2020**

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**NAIROBI, 20th November, 2020**

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**THE NATIONAL CONSTRUCTION AUTHORITY  
(AMENDMENT) BILL, 2020**

**A Bill for**

**AN ACT of Parliament to amend the National  
Construction Act and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART 1 —PRELIMINARY**

1. This Act may be cited as the National  
Construction Authority (Amendment) Act, 2020.

Short title.

2. The National Construction Authority Act, 2011 is  
amended in section 17 by inserting the following new  
subsection immediately after subsection (2) —

Amendment of  
section 17 of No.  
41 of 2011

(2A) Despite subsection (2), women, youth and  
persons with disabilities who apply to be registered by the  
Board as contractors shall be exempted from paying the  
prescribed registration fee where —

- (a) the business is a startup business venture; and
- (b) the fee does not exceed fifteen thousand shillings.



**MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to amend the National Construction Authority Act, No.41 of 2011 to ensure women, youth and persons living with disabilities with startup businesses who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not contain provisions limiting fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

This is not a Bill concerning county governments in terms of Article 110(1) (a) of the Constitution as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

**Statement on the financial implications of the Bill**

The enactment of this Bill may occasion additional expenditure of public funds to be provided for in the estimates.

DAVID GIKARIA,  
*Member of Parliament.*



*Section 17 of No. 41 of 2011 which it is proposed to amend—*

**Application for registration**

17. (1) A person or firm may apply to the Board for registration as a contractor for purposes of this Act.

(2) An application for registration shall be in the prescribed form and shall be accompanied by the prescribed fee, and shall demonstrate to the satisfaction of the Board that the person, or, in the case of a firm, at least one director or partner thereof—

- (a) is the holder of the minimum technical qualifications and skills prescribed by the Board for the class of contract works in respect of which registration is sought;
- (b) has the necessary experience prescribed by the Board in works involving construction, erection, installation, alteration or any other activity connected therewith;
- (c) has professional and general conduct which in the opinion of the Board, makes the person suitable to be registered under this Act; and
- (d) has the necessary plant and equipment for the category of works for which the registration is sought.

(3) The Board may refuse to register a person as a contractor if in its opinion that person—

- (a) does not meet the conditions stated in subsection (2);
- (b) is a member of a consulting firm providing architectural, quantity surveying or engineering services, unless the person declares interest during the application for registration and does not carry out functions of consultancy and construction in the same project unless expressly specified;
- (c) is a person whose registration as a contractor shall result in conflict of interest with his employer.

(4) The Board shall, where it refuses to register a person under subsection (3), communicate its decision in writing to the person within fourteen days of the date of its decision and shall state the reasons for such refusal.

(5) Upon registration the person shall be issued with a certificate of registration indicating the registration numbers, the class of work for which registered, the date of registration and duration of registration.

(6) The certificate issued under subsection (3) shall remain the property of the Authority and shall be withdrawn and returned to the Authority upon suspension or cancellation of the registration of the holder.





