



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FIFTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, FEBRUARY 10, 2022

1. The House assembled at thirty minutes past Two O'clock

2. The Proceedings were opened with Prayer

3. **Presiding** – the Hon. Deputy Speaker

4. **QUORUM**

There being no Quorum present at the commencement of the Sitting, the Hon. Deputy Speaker ordered that the Quorum Bell be rung for ten minutes;

And Quorum having been attained before expiration of ten minutes, proceedings commenced.

5. **PETITIONS**

(a) The Hon. Deputy Speaker conveyed the following Petition pursuant to the provisions of Standing Order 225(2)(b) –

Operations of the Open Tender System (OTS) for Importation of Fuel Products

“Honourable Members, Standing Order 225(2) (b) requires the Speaker to report to the House any petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation. In this regard, I wish to report to the House that my Office is in receipt of a Petition by Mr. Stephen Mutoro, Secretary General of the Consumer Federation of Kenya (COFEK) regarding the operations of Open Tender System for fuel supply.

Honourable Members, the Petitioner states that COFEK is an independent, non-political, self-funded and non-profit society registered under the Societies Act, Cap 108. It is the apex body that is committed to consumer protection, education, research, consultancy, litigation, anti-counterfeits campaign and other matters related to consumerism. The Petitioner claims that COFEK is concerned about the manner in which the Ministry of Petroleum and Mining has been operating the Open Tender System (OTS) that was deployed from 2005 as a system for regulating importation of refined petroleum products. The Petitioners lament that even though the system is dubbed “open”, the manner in which it is run remains opaque, shrouded in secrecy and susceptible to abuse by cartels.

They are particularly concerned that the current pricing mechanism does not make necessary disclosures on the procurement of fuel products, which makes it almost impossible to determine the prices at which Kenya secures its refined petroleum products vis-à-vis the prevailing global oil prices.

Honourable Members, the Petitioners claim that whereas the intended purposes of the OTS was to ensure that petroleum products, whose prices are regulated on a monthly basis in Kenya, remain competitive as per market conditions, data from the Energy and Petroleum Regulatory Authority (EPRA) indicates that only 13 out of a possible 96 Oil Marketing Companies (OMCs) participate in the monthly OTS tenders. The Petitioners also allege that there are credible reports that the said Oil Companies unfairly dominate the OTS through anti-competitive cartel-like behavior, which denies consumers the benefits of competitive pricing. In addition, the Petitioners aver that neither the Ministry of Petroleum and Mining nor EPRA have made sufficient public disclosure of information relating to the tenders, including when the tenders were floated, when bids were received, the evaluation of the bids, the sizes of the cargo, past winners and beneficial owners of the winning bidders.

Honourable Members, the Petitioners are worried that the current situation contradicts the right to access to information enshrined in Article 35 of the Constitution of Kenya as well as the national values and principles of governance on public participation, transparency and accountability provided for in Article 10 of the Constitution as well as the President's Executive Order of 13th June 2018 on *'Procurement of Public Goods, Works and Services by Public Entities'* that require all public institutions to publish full details of tenders and awards, including the directors of the winning companies.

The Petitioners are therefore seeking the intervention of the National Assembly to inquire into the operations of the Open Tender System (OTP) for procurement of refined petroleum products and, among other reliefs –

- (1) Intervene through the Ministry of Energy and Petroleum to put in place measures for proper oversight of the operations of the OTS in order to ensure that the system promotes free and fair tendering processes that benefit consumers of fuel products through competitive pricing;
- (2) Develop necessary legislative framework to align the activities of monthly OTS with the national values and principles of governance on public participation, transparency and accountability and in order to secure consumer rights and guarantee the right to access to information;
- (3) Cause the Ministry of Energy, EPRA and other relevant Government agencies to make necessary disclosures on fuel imports made through the OTS, including ensuring public notification of all OTS awards and details of pricing for imported fuel products vis-à-vis the prevailing market prices; and,
- (4) Recommend to the Competition Authority of Kenya to inquire into alleged dominance of the OTS and price manipulation by certain Oil Marketing Companies in order to flush out firms involved in uncompetitive practices and to level the playing ground for all oil marketing firms.

Honourable Members, having determined that the matters raised by the Petitioner are well within the authority of this House, I order that, pursuant to the provisions of Standing Order 227(1), this petition be committed to the Departmental Committee on

Energy. The Committee is required to consider the petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.”

- (b) The Member for Samburu North Constituency (Hon. Aloise Lentoimaga) presented a Petition on behalf of residents of Samburu North Constituency regarding the State of Insecurity in Samburu North Constituency.

(Petition referred to the relevant Committee pursuant to the provisions of Standing Order 227(1))

6. PAPERS LAID

The following Papers were laid on the Table of the House –

- (a) Annual Report and Financial Statement of the Commission on revenue Allocation for Financial year 2019/2020.
- (b) Recommendation on the Basis for Equitable Sharing Revenue between National and County Governments for the FY 2022/2023.
- (c) Reports of the Auditor-General and Financial Statement of Meru National Polytechnic for years ended 30th June, 2017, 30th June, 2018 and 30th June, 2019 and the certificates therein.
- (d) Reports of the Auditor-General and Financial Statement of Sigalagala National Polytechnic for years ended 30th June, 2017, 30th June, 2018 and 30th June, 2019 and the certificates therein.
- (e) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2021 and the certificates therein: -
 1. The National Assembly;
 2. Office of the Director of Public Prosecutions;
 3. National Humanitarian Fund;
 4. National Intelligence Service;
 5. Ministry of Lands and Physical Planning;
 6. Government Press Fund;
 7. State Department for Crop Development and Agricultural Research;
 8. State Department for Post Training and Skills Development;
 9. Kenya Youth Employment and Opportunities Project – State Department for Labour;
 10. Kenya Symbiocity Programme – Council of Governors;
 11. Instrument for Devolution Advice and Support – State Department for Devolution;
 12. Kenya Youth Employment and Opportunities Project – National Industrial Training Authority;
 13. Kenya Italy Debt for Development Program – State Department for Vocational and Technical Training;
 14. Support to Enhancement of Quality and Relevance in Higher Education, Science and Technology Project – State Department for University Education;
 15. East Africa Skills for Transformation and Regional Integration Project – Ministry of Education – State Department for Vocational and Technical Training;
 16. Support to Technical Vocational Educational and Training for Relevant Skills Development Project – State Department for Vocational and Technical training;

17. Kenya GPE Covid-19 Learning Continuity in Basic Education Project - State Department for Early Learning and Basic Education;
18. Kenya Development Response to Displacement Impacts Project - State Department for Development of Arid and Semi-Arid Lands (ASALs);
19. Ethiopia-Kenya Electricity Highway Project - Kenya Electricity Transmission Company Limited;
20. Power Transmission System Improvement Project - Kenya Electricity Transmission Company Limited;
21. Agricultural Sector Development Support Programme II - State Department for Crop Development and Agricultural Research;
22. Small-Scale Irrigation and Value Addition Project - State Department for Crop Development and Agricultural Research;
23. Aquaculture Business Development Programme - State Department for Fisheries, Aquaculture and the Blue Economy;
24. Lake Victoria Water Supply and Sanitation Program - Lake Victoria South Water Works Development Agency;
25. Water Sector Development Programme Lake Victoria South (Kericho, Kisii, Nyamira and Letein) - Lake Victoria South Water Works Development Agency;
26. Africa Centre of Excellence in Sustainable Use of Insects as Food and Feeds Project - Jaramogi Oginga Odinga University of Science and Technology;
27. Promotion of Youth Employment and Vocational Training in Kenya Project - State Department for Vocational and Technical Training;
28. Eastern and Southern Africa Higher Education Centres of Excellence Project;
29. GOK/UNICEF Education for Young People Programme;
30. Multi- National - Kenya Section of Interconnection Project of Electricity Grids of Nile Equatorial Lakes Countries - Kenya Electricity Transmission Company Limited;
31. East Africa Skills Transformation and Regional Integration Project - Kisumu National Polytechnic;
32. Kenya Social and Economic Inclusion Project - National Drought Management Authority;
33. Kenya Primary Education Development Project - State Department for Early Learning and Basic Education;
34. Lake Victoria Water and Sanitation Project - Lake Victoria South Water Works Development Agency;
35. Kisumu Urban Project (Advance Account) - County Government of Kisumu;
36. Kenya Social and Economic Inclusion Project - State Department for Social Protection;
37. Secondary Education Quality Improvement Project - State Department for Early Learning and Basic Education;
38. Kisumu Urban (Cash and Expenditure) - County Government of Kisumu;
39. Eastern Electricity Highway Project - Kenya Electricity Transmission Company Limited;
40. Menengai Geothermal Project - Geothermal Development Company Limited;
41. Bogoria Sisali Geothermal Project - Geothermal Development Company Limited;
42. Rural Electrification in Five Regions Project - Rural Electrification and Renewable Energy Corporation;
43. Multi-National Rural Livelihoods Adaptation to Climate Change in the Horn of Africa - State Department for Crop Development and Agricultural Research;
44. Multi-National Drought Resilience and Sustainable Programme in the Horn of Africa - State Department for Crop Development and Agricultural Research;

45. Secondary Education Quality Improvement Project – Teachers Service Commission;
46. Trilateral Development Cooperation in Kenya, Water and Sanitation Sector Project – Lake Victoria South Water Works Development Agency;
47. Establishment of Kenya Advanced Institute of Science and Technology – Ministry of Education – State Department for University Education;
48. Kenya Cereal Enhancement Programme- Climate Resilient Agricultural Livelihood Window - State Department for Crop Development and Agricultural Research;
49. Kisii Water Supply and Sanitation Project – Lake Victoria South Water Works Development Agency;
50. Olkaria-Lessos-Kisumu Transmission Lines Construction Project - Kenya Electricity Transmission Company Limited;
51. Multinational Kenya-Tanzania Power Interconnection Project - Kenya Electricity Transmission Company Limited;
52. Petroleum Development Levy Fund – State Department for Petroleum; and
53. Lake Victoria Environmental Management Phase III Project – Ministry of Environment and Forestry.

(The Leader of the Majority Party)

- (f) Addendum to the Report of the Departmental Committee on Health on its consideration of the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021) tabled on *September 28, 2021*.

(The Hon. Joshua Kutuny – Member, Departmental Committee on Health)

- (g) Report of the Departmental Committee on Justice and Legal Affairs on the *Vetting of nominees for appointment as Chairperson and Members of the Kenya National Commission on Human Rights*.

(The Hon. Olago Aluoch – Member, Departmental Committee on Justice and Legal Affairs)

7. NOTICES OF MOTION

The following Notice of Motion was given –

“THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the *Vetting of nominees for appointment as Chairperson and Members of the Kenya National Commission on Human Rights, laid on the Table of the House on Thursday, February 10, 2022*, and pursuant to the provisions of Article 250(2)(b) of the Constitution, sections 3 and 4 of the Kenya National Commission on Human Rights Act, 2011 and section 8 (1) of the Public Appointments (Parliamentary Approval Act, 2011, this House **approves** the appointment of the following persons to the Kenya National Commission on Human Rights: -

1. Ms. Roseline Doreen Adhiambo Odhiambo – Odede - Chairperson;
2. Prof. Marion Mutugi Wanjiku - Member;
3. Dr. Raymond Plal Sangsang Nyeris - Member;
4. Ms. Sara Talaso Bonaya - Member; and
5. Dr. Dennis Nyongesa Wamalwa - Member.

((The Hon. Olago Aluoch – Member, Departmental Committee on Justice and Legal Affairs))

8. QUESTIONS**(a) The following Questions were asked –**

- **Question No. 032/2022** by the Member for Kirinyaga Central Constituency (Hon. John Wambugu) to the Cabinet Secretary for Education regarding the circumstances under which forty-one (41) students who sat for the Kenya Certificate of Secondary Education (KCSE) in 2012 at Sacred Heart Kangaita Secondary School in Kirinyaga Central Constituency were denied their certificates by the Kenya National Examinations Council (KNEC), particularly failure by KNEC to issue KCSE Certificates to Githae John Kariuki (Index No. 09203422035) and Kinyua D. Muriithi (Index No. 09203422005) who sat for KCSE in 2012 in the said school despite having made numerous follow-ups and submitting all requirements; and when the affected students would be issued with their KCSE Certificates to enable them pursue their respective careers.

(Question to be replied to by the Cabinet Secretary for Health before the Departmental Committee on Education and research)

- **Question No. 033/2022** by the Member for Mathare (Hon. Anthony Oluoch) to the Cabinet Secretary for on Environment and Forestry regarding the measures put in place, if any, to avert the impending closure of Kiamaiko Animal Slaughterhouse in Mathare Constituency, by the National Environmental Management Authority (NEMA) and the measures put in place by NEMA towards the management of toxic and hazardous chemicals and materials and clarify how the same are implemented, particularly with respect to pollutants to the Nairobi River in Nairobi City County.

(To be replied to by the Cabinet Secretary for Education before the Departmental Committee on Environment and Natural Resources)

- **Question No. 034/2022** by the Member for Mwingi West Constituency (Hon. Charles Ngusya) to the Cabinet Secretary for Transport, Public Works and Housing regarding the status of the construction of the Kitui - Migwani - Mbondoni Road in Mwingi West Constituency; When will the construction works for the remaining 25kms stretch of the road resume and what are the expected completion timelines and the total funding allocated for the said road during the Financial Year 2021/2022.

(To be replied before the Departmental Committee on Transport, Public Works and Housing).

(b) The following Question was deferred –

- **Question No. 035/2022** by the Member for Tharaka Constituency (Hon. Gitonga Murugara) to the Teachers Service Commission seeking an explanation as to why Mr. Kithinji (TSC No. 414517), Ms. Sarah Njeri Kamiri (TSC No. 462538), Mr. Murugara Kithinji Leonard (TSC No. 463028), Mr. Erugura Godfrey Mwiti (TSC No. 492980) and Ms. Lucy Wanjiku Kiriga (TSC No. 366144), who were appointed as Deputy Principals and deployed by the Commission in September 2019 had not had their grades and salaries effected as required under the Commission's Policy on

Human Resource and Remuneration Guidelines and an indication on when their grades and salaries will be effected as required under the provisions of the policy.

9. STATEMENT PURSUANT TO STANDING ORDER 44(2)(C)

The Member for Njoro Constituency (Hon. Charity Kathambi) requested for a Statement from the Chairperson, Departmental Committee on Education and Research regarding the recent closure of Egerton University.

10. STATEMENT PURSUANT TO STANDING ORDER 44(2)(a)

Pursuant to the provisions of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, February 15, 2022.

11. THE HEALTH LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 2 OF 2021)

Motion having made and Question proposed –

THAT, the Health Laws (Amendment Bill) National Assembly Bill No. 2 of 2021) be now read a Second Time;

(The Leader of the Majority Party)

Debate having been concluded on Wednesday, February 09, 2022 (Afternoon Sitting);

Mover having replied;

Putting of the Question deferred pursuant to Standing Order 53(3).

12. THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2021)

Motion having made and Question proposed –

THAT, the Sacco Societies (Amendment Bill) National Assembly Bill No. 55 of 2021) be now read a Second Time;

(The Leader of the Majority Party)

Debate having been concluded;

Mover having replied;

Question put and agreed to.

Bill read a Second Time and committed to the Committee of the Whole House, tomorrow.

13. MOTION - ANNULMENT OF THE CROPS (FIBRE CROPS) REGULATIONS, 2020

Motion having been made and Question proposed;

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Crops (Fibre Crops) Regulations, 2020 *laid on the Table of the House on Tuesday, November 17, 2020*, and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b), **annuls in entirety** the Crops (Fibre Crops) Regulations, 2020 published as *Legal Notice No. 120 of 2020*.

(The Chairperson, Committee on Delegated Legislation)

Debate having been concluded;

Mover having replied;

Question put and agreed to.

14. **MOTION - ANNULMENT OF THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2021 AND OTHER RELATED REGULATIONS**

Motion having been made and Question proposed;

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (*Biashara Kenya Fund*) Regulations, 2021; the Public Finance Management (*Uwezo Fund*) (Revocation) Regulations, 2021; the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021; and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2021, *laid on the Table of the House on Tuesday, September 21, 2021*, and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 **annuls in entirety** -

- (i) the Public Finance Management (*Biashara Kenya Fund*) Regulations, 2021 published as *Legal Notice No. 55 of 2021*;
- (ii) the Public Finance Management (*Uwezo Fund*) (Revocation) Regulations, 2021 published as *Legal Notice No. 56 of 2021*;
- (iii) the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021 published as *Legal Notice No. 57 of 2021*; and
- (iv) the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2021 published as *Legal Notice No. 58 of 2021*.

(The Chairperson, Committee on Delegated Legislation)

Debate having been concluded;

Mover having replied;

Question put and agreed to.

15. **MOTION - OFFICIAL DOCUMENTING OF THE HISTORY OF THE NATIONAL ASSEMBLY**

THAT, aware that the history of any institution is key to evaluating its development; **FURTHER AWARE** that documenting history provides a knowledge bank for future generations; **NOTING** that the history of the Parliament of Kenya is largely unrecorded, scattered and piecemeal; **FURTHER NOTING** that most comparable jurisdictions have elaborate records of their history which are periodically updated to capture new developments; **COGNISANT** of the fact that the Parliament of Kenya marks its 115th anniversary this year having been established as the Legislative Council (*LegCo*) in August 1907; **FURTHER COGNISANT** that the legislature has been transforming in the last century both in mandate and composition starting as a fused unicameral legislature, to a bicameral one at independence to a unicameral legislature before again reverting to a bicameral Parliament after the promulgation of the Constitution of Kenya 2010; **RECOGNISING** the many works of arts, including statues, frescoes, murals and pictures connected with the history of the Parliament of Kenya, including the contributions of great men and women, families, architects and politicians throughout the 114 years of the history of the institution, and

its transformation and growth throughout the period; **NOW THEREFORE**, in order to ensure the preservation of the history of the institution for future generations, **this House resolves –**

1. **THAT**, at an appropriate stage, the House appoints a Committee comprising of not more than nine (9) Members to oversee the preservation of these histories for posterity, with special focus on the National Assembly;
2. **THAT**, the copyrights of the *History of Parliament of Kenya* projects be reserved for the benefit of Parliament and the people of Kenya; and,
3. **THAT**, the Clerk of the National Assembly puts in place and executes appropriate mechanisms to actualize this Resolution.

(The Leader of the Majority Party)

Debate having been concluded;

Mover having replied;

Question put and agreed to.

16. **SPECIAL MOTION - APPROVAL OF THE NATIONAL ASSEMBLY'S REPRESENTATIVE TO THE EQUALIZATION FUND ADVISORY BOARD**

(The Chairperson, Departmental Committee on Finance and National Planning)

THAT, taking into consideration the recommendations of the Departmental Committee on Finance and National Planning in its Report on the **Recruitment of the National Assembly's Nominee to the Equalization Fund Advisory Board**, *laid on the Table of the House on Wednesday, February 9, 2022* and pursuant to the provisions of section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 and paragraph 4(1)(d) of the Public Finance Management (Equalization Fund Administration) Regulations, 2021, this House **approves** the appointment of **Mr. Abdullahi Adan Khalif** to the Equalization Fund Advisory Board.

Order for the Motion read;

Order deferred to another day.

17. **MOTION - ANNULMENT OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021**

Motion made and Question proposed;

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Sinking Fund) Guidelines, 2021, *laid on the Table of the House on Tuesday, September 21, 2021*, and pursuant to the provisions of section 13 of the Statutory Instruments Act, 2013 **annuls in entirety** the Public Finance Management (Sinking Fund) Guidelines, 2021 published as *Gazette Notice No. 5085 of 2021*.

(The Hon. (Dr.) Oundo Ojiambo, Member of the Committee on Delegated Legislation)

Debate arising;

Mover replied;

Putting of the Question deferred to another day.

18. MOTION - ANNULMENT OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (IMPACT ASSESSMENT AND AUDIT) (AMENDMENT) REGULATIONS, 2016

Motion made and Question proposed –

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, *laid on the Table of the House on Wednesday, November 10, 2021*, and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b), **annuls in entirety** the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, published as *Legal Notice No. 149 of 2016*.

(The Hon. Charles Njagagua, Member of the Committee on Delegated Legislation)

(Change of Chair from the Deputy Speaker to the 3rd Chairperson)

Debate arising;

Mover replied;

Putting of the Question deferred to another day.

19. THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 30 OF 2020)

(The Chairperson, Departmental Committee on Environment and Natural Resources)

Order for Second Reading read;

Order deferred to another day.

20. THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILL NO. 28 OF 2020)

Second Reading;

Motion being made;

THAT, the Mental Health (Amendment) Bill (Senate Bill No. 28 of 2020) be now read a Second Time;

(The Hon. Joshua Kutuny, Member of the Departmental Committee on Health)

Rising in his place on a Point of Order pursuant to Standing Order 35, the Member for Funyula (Hon. (Dr.) Oundo Ojiambo) objected that there was not Quorum present in the House;

And the 3rd Chairperson having ascertained the claim upon a count of the Members present;

Thereupon ordered that the Quorum Bell be rung for ten minutes;

And there being no Quorum present at the expiration of ten minutes;

And the time being fifty one minutes past Four O'clock, and for the convenience of the House, the Fourth Chairperson adjourned the Sitting without Question put pursuant to the Standing Orders.

21. HOUSE ROSE

- at fifty one minutes past Four O'clock

MEMORANDUM

The Speaker will take the Chair on
Tuesday, February 15, 2022 at 2.30 p.m.

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