



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, AUGUST 09, 2016

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker
4. **COMMUNICATION FROM THE CHAIR DELEGATION FROM PARLIAMENT OF NAMIBIA**

The Speaker conveyed the following Communication –

“Honourable Members,

I wish to introduce to you a delegation from the Parliament of Namibia, who are staff attached to various high level offices in that institution seated at the Speaker’s Gallery. The delegation comprises the following:-

1. Ms. Mirjam Katezerue Karongee - Senior Private Secretary, Clerk of Parliament and head of delegation
2. Ms. Tjeripove Kaujeua - Senior Private Secretary, Chief Legal Counsel
3. Ms. Theresia Miquel - Senior Private Secretary, Deputy Clerk of Parliament
4. Ms. Moringa Johanna Gaogoses - Private Secretary, Director, Specialized Services
5. Ms. Rosa Ligola Iteta - Private Secretary, Director-General Services
6. Ms. Sonia Heita - Private Secretary: SWAPO Office (Ruling Party)

The delegation is in the country for an attachment programme to the Parliament of Kenya. They have been here since Monday, 8th August 2016 and will depart on Friday, 12th August 2016. I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagements.

I thank you.

5. **PAPERS LAID**

The following Papers were laid on the Table –

The Reports of the Auditor-General on the Financial Statements of the Constituencies

Development Fund in respect of the following Constituencies for the year ended 30th June, 2015 and the Certificates therein –

- (i) Wundanyi Constituency;
- (ii) Matuga Constituency;
- (iii) Lamu West Constituency;
- (iv) Rabai Constituency;
- (v) Keiyo North Constituency;
- (vi) Masinga Constituency;
- (vii) Mwatate Constituency;
- (viii) Nyali Constituency;
- (ix) Kilifi South Constituency; and
- (x) Taveta Constituency.

(The Leader of the Majority Party)

6. **NOTICE OF MOTION**

The following Notice was given –

ESTABLISHMENT OF POLICY ON ALCOHOL AND DRUG ABUSE REHABILITATION

(Hon. Joyce Emanikor, M.P.)

THAT, aware that the use of illicit alcohol and abuse of drugs has reached alarming levels and caused untold suffering to individuals and families throughout the country; **further aware** that consumption of illicit brew has claimed over 7,000 lives in the last four years; **alarmed** that the long term impact is detrimental to the socio-economic development of the state; **concerned** that most rehabilitation centres are in private hands and thus quite expensive for the common Kenyan to afford particularly the recovering former alcoholics who have benefitted from the recent crackdowns on illicit brews; **noting** that there is no specific policy that ensures that victims are offered affordable and accessible psycho-social support, rehabilitation and treatment for addiction; this House resolves that the Government immediately establishes a policy that would promote regional level public rehabilitation facilities accessible to both urban and rural citizens.

7. **THE CONTEMPT OF COURT BILL (NATIONAL ASSEMBLY BILL NO.32 OF 2016)**

(The Leader of the Majority Party)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1)

8. **PARTY-SPONSORED MOTION – ESTABLISHMENT OF A SELECT COMMITTEE TO INQUIRE INTO THE BETTING AND GAMBLING INDUSTRY IN KENYA**

Motion made and Question proposed -

THAT, **aware** that the betting and gambling industry in Kenya has attracted a lot of public interest in the recent past, leading to its exponential growth; **further aware** that the services of betting companies like *Sportpesa*, *Elibet*, *Betway*, *Betin Kenya* and *mCheza*, among many others are now easily accessible via online and mobile platforms; **deeply concerned** that the industry is facing a myriad of challenges such as weak and insufficient regulatory and institutional frameworks, proliferation of betting and gambling

activities and attendant negative societal impacts; **also cognizant** of claims of malpractices in some of the betting, gaming and casino businesses in form of tax evasion, tax avoidance, money laundering, manipulated disclosures and misrepresentation of information; **appreciating** the fact that the Government has a role in strengthening the licensing and collection of tax revenues from the industry while ensuring its sustainability; **further noting** that while the Fourth Schedule of the Constitution has devolved the functions of betting and gambling to the county governments, Articles 95(2), 189(2) and 191(1) and (2) of the Constitution obligate the national Government, through Parliament, to resolve issues of concern to the people and pass law to ensure uniformity of action across the country; **mindful** of the fact that in several developed jurisdictions, betting and gaming activities are regulated in the same manner as other financial sectors such as insurance, banking and stock exchange with regard to disclosures of information, conflict of interest, enforcement of age limits of participants, audit, regular financial reporting, licensing and taxation; this House resolves to:

- (a) establish a Select Committee to inquire into all the activities of the betting, gaming and gambling industry with regard to tax compliance, claims of financial impropriety, identifying the common irregularities and lacunas in regulation, benefits to the society and the Country; identify best practices from other jurisdictions on the management of proceeds from betting activities; and report its recommendations to the House, including and proposals for remedial measures and legislation, within a period of fourteen (14) days; and,
- (b) approve the appointment of the following Members to the Select Committee:-
 - (i) The Hon. Jakoyo Midiwo, MP – Co-Chairperson (Deputy Leader of the Minority Party)
 - (ii) The Hon. Aden Duale, EGH, MP – Co-Chairperson (Leader of the Majority Party)
 - (iii) The Hon. Thomas Mwadeghu, MP
 - (iv) The Hon. Kanini Kega, MP
 - (v) The Hon. Roselinda Soipan Tuya, MP
 - (vi) The Hon. Samuel K. Gichigi, MP
 - (vii) The Hon. Samuel Chepkong'a, MP
 - (viii) The Hon. Dorcas Kedogo, MP
 - (ix) The Hon. Daniel K. Maanzo, MP
 - (x) The Hon. Benjamin Langat, MP
 - (xi) The Hon. Mary Keraa, MP

(The Deputy Leader of Minority Party – 04.08.2016)

Debate on the Motion having been concluded on Thursday, 4th August, 2016;

Question put and **negatived.**

9. **MOTION - APPROVAL OF THE MEDIATED VERSION OF THE WATER BILL, 2014**

Motion made and Question proposed -

THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Water Bill, 2014, laid on the Table of the House on Thursday, 28th July 2016, and **approves** the Mediated Version of the Water Bill (National Assembly Bill No. 8 of 2014).

(Hon. Amina Abdalla, M.P. – Vice-Chairperson, Mediation Committee)

Debate arising;

Mover replied;

Question of the Motion deferred to another day.

10. **MOTION – THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2015)**

Motion made and Question proposed -

THAT, the Senate Amendments to the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) be now considered.

(The Leader of the Majority Party)

Debate arising;

Mover replied;

Question put and agreed to.

11. **MOTION – THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2014)**

THAT, the Senate Amendments to Fisheries Management and Development Bill (National Assembly Bill No. 20 of 2014) be now considered.

(The Leader of the Majority Party)

Motion deferred to another day.

12. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Third Chairperson in the Chair

(i) **Consideration of the Senate amendments to the Fisheries Management and Development Bill (National Assembly Bill No. 20 of 2014)**

(The Leader of the Majority Party)

Consideration of the Bill deferred to another day.

(ii) **Consideration of the Senate amendments to Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)**

CLAUSE 2

Senate amendment proposed -

THAT, clause 2 of the Bill be amended by deleting the definition of the word “local community” and substituting therefor the following new definition –

“local community” means a people living in a sub-county within which a petroleum resource under this Act is situated and are affected by the exploitation of that petroleum resource;

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 2 – **agreed to**

CLAUSE 5

Senate Amendment proposed -

THAT, clause 5 of the Bill be amended in –

- (a) sub-clause (1) by inserting the words “once in” immediately after the words “at least”;
- (b) sub-clause (3) by inserting the words “on its website and in at least two newspapers of national circulation” immediately after the words “and publish”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 5 – **agreed to**

CLAUSE 6

Senate Amendment proposed -

THAT, clause 6 of the Bill be amended in sub-clause (1) by inserting the words “a national” immediately after the words “and review”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 6 – **agreed to**

CLAUSE 10

Senate Amendment proposed -

THAT, clause 10 of the Bill be amended in sub-clause (1) by –

- (a) inserting the following new paragraph immediately after paragraph (k) –
 - (ka) may, by order in writing and upon the recommendation by the Authority, order the cessation of any upstream petroleum operations where there has been a breach of any provision of this Act;
- (b) inserting the words “on the recommendation of the Authority” immediately after the word “may” in the opening clause of paragraph (l);

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 10 – **agreed to**

CLAUSE 12

Senate Amendment proposed -

THAT, clause 12 of the Bill be amended –

- (a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (i) –
 - (j) one person nominated by the Kenya Private Sector Alliance from their member organizations who has demonstrated competence and capacity in matters related to the petroleum sector.
- (b) in sub-clause (3) by inserting the words “of the Authority” immediately after the words “the Director-General”;
- (c) by inserting the following new sub-clause immediately after sub-clause (4) –
 - (5) The Advisory Committee shall, in co-opting members to sit in the Committee, ensure that the persons co-opted have the necessary knowledge and experience in the matters under consideration by the Committee.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 12 – **Negatived**

CLAUSE 15**Senate Amendment proposed -**

THAT, clause 15 of the Bill be amended in paragraph (o) by inserting the words “in consultation with the Competition Authority established under the Competition Act” immediately after the word “monitor”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 15 – **agreed to**

CLAUSE 16**Senate Amendment proposed -**

THAT, clause 16 of the Bill be amended in sub-clause (1) by inserting the words “the environment” immediately after the words “and to protect” appearing in paragraph (g).

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 16 – **agreed to**

CLAUSE 17**Senate 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 out of whom -

- (i) one person shall be nominated by the Kenya Private Sector Alliance;
- (ii) one person with knowledge and experience in matters relating to the petroleum from an institution of higher education.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 17 – **Negatived**

CLAUSE 45**Senate Amendment proposed -**

THAT, clause 45 of the Bill be amended –

(a) in sub-clause (4) by inserting the words “on the website of the Ministry,” immediately after the words “of thirty days”;

(b) by inserting the following new sub-clause immediately after sub-clause (4) –

(4A) The Cabinet Secretary shall, in the notice published under subsection (4) –

(a) set out a statement of the details of the contractor with whom the Cabinet Secretary intends to enter into direct negotiations;

(b) invite any objections that a person may have with respect to the intended negotiations; and

(c) invite any interested party who may have an interest in the block to submit a bid with respect to that block.

(c) by inserting the following new sub-clauses immediately after sub-clause (5) –

(5A) The Cabinet Secretary shall inform all the bidders of the bidder to whom a block has been awarded.

(5B) The Cabinet Secretary shall, upon concluding negotiations under this section, publish a notice on the website of the Ministry, in the *Gazette* and in at least two newspapers of national circulation, information with respect to the contractor to whom the Cabinet Secretary has awarded a block and the outcome of such negotiations.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 45 – **agreed to**

CLAUSE 48**Senate Amendment proposed -**

THAT, clause 48 of the Bill be amended –

(a) in sub-clause (1) by deleting the words “with the approval of the cabinet Secretary” immediately after the words “contractor shall appoint”;

(b) in sub-clause (2) by deleting the words “with the approval of the Cabinet Secretary” immediately after the words “another operator”;

(c) by deleting sub-clause (3).

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 48 – **Negatived**

CLAUSE 49

Senate Amendment proposed -

THAT, clause 49 of the Bill be amended in sub-clause (6) by deleting the word “ten” appearing immediately after the words “not less than” and substituting therefor the word “two”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 49 – **Negatived**

CLAUSE 50

Senate Amendment proposed -

THAT, clause 50 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause –

- (2) The Authority shall give access to information relating to non-exclusive exploration permits that have been issued under this Act to an applicant for such information and shall, for this purpose, avail such information–
 - (a) for inspection by a person applying to inspect such information free of charge;
 - (b) by supplying a copy to an applicant or, where such information is held by the Authority in electronic form, by submitting such information through electronic means upon payment of a reasonable fee to cover the costs of supplying the information; and
 - (c) by publishing the information on its website and in such other manner as it may consider appropriate.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 50 – agreed to

CLAUSE 51

Senate Amendment proposed -

THAT, clause 51 of the Bill be amended –

(a) by inserting the following new sub-clause immediately after sub-clause (1) -

(1A) The provisions of section 50(2) shall apply with respect to operational permits under subsection (1).

(b) by inserting the following new sub-clause immediately after sub-clause (7) –

(7A) The Authority shall, in carrying out public participation under subsection (7)–

(a) be guided by the principles of citizen participation in counties set out under section 87 of the County Governments Act; and

(b) conduct the public participation through such means as may be necessary to ensure that the citizens within the respective county and the relevant stakeholders –

(i) are informed of any decision to be undertaken under this Act which affects them;

(ii) have sufficient notice of any decisions to be made or permits to be issued which may affect them; and

(iii) have an opportunity to obtain information with respect to any permit issued or decision made under sub-paragraph (i) or to submit their concerns or any information that they may have with respect to the issue under consideration;

(c) conduct the public participation through such for a as may be necessary for effective public participation under paragraph (b) including the structures for citizen participation established by a county government pursuant to section 91 of the County Governments Act;

(d) publish any notices required for the purpose of informing the public through such forums including at least one newspaper of local circulation within the local community which is to be affected by the issue under consideration.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 51 – agreed to

CLAUSE 53

Senate Amendment proposed -

THAT, clause 53 of the Bill be amended –

(a) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c) –

(d) the taxes payable with respect to the transaction have been assessed.

(b) in sub-clause (9) by deleting the words “an exploration” appearing immediately after the words “or control of” and substituting therefor the word “a”;

(c) by inserting the following new sub-clause immediately after sub-clause (11) –

(12) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of two years or to both.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 53 – agreed to

CLAUSE 58

Senate Amendment proposed -

THAT, clause 58 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)–

(2A) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 58 – agreed to

CLAUSE 60

Senate Amendment proposed -

THAT, clause 60 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

- (3) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a penalty of not less than ten million shillings or to imprisonment for a term of two years or to both.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 60 – **agreed to**

CLAUSE 77

Senate Amendment proposed -

THAT, clause 77 of the Bill be amended in sub-clause (1) by deleting the words “not be higher than at any other place” appearing immediately after the words “local content shall” in the proviso and substituting therefor the words “be at the prevailing market rate”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 77 – **agreed to**

CLAUSE 86

Senate Amendment proposed -

THAT, clause 86 of the Bill be amended in sub-clause (2) by inserting the words “sea, forest, wildlife and marine” immediately after the words “lake, reservoir” appearing in paragraph (h).

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 86 – **agreed to**

CLAUSE 89**Senate Amendment proposed -**

THAT, clause 89 of the Bill be amended –

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clauses–

(1) A contractor shall not vent or flare natural gas in the course of the conduct of upstream petroleum operations except with the prior authorization of the Authority in consultation with the National Government agency responsible for environment and safety and any other National Government entity.

(1A) A contractor under sub-section (1) shall carry out the venting or flaring in accordance with the terms and conditions of the consent, existing laws and best petroleum industry practices.

(1B) Notwithstanding sub-section (1), the prior consent of the Authority shall not be required in the case of an emergency and where such venting or flaring is necessary to avert a disaster.

(1C) Where a contractor vents or flares under this section, such contractor shall –

- (a) ensure that the gas venting or flaring is kept at the lowest possible level;
- (b) inform the Authority of the carrying out of such venting or flaring and the circumstances requiring such action; and
- (c) submit to the Authority such information as the Authority may require with respect to such venting or flaring.

(b) in sub-clause (4) by deleting the word “five” appearing immediately after the words “not less than” and substituting therefor the word “ten”;

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 77 – **agreed to**

Senate amendment to Clause 89 – **agreed to**

CLAUSE 100**Senate Amendment**

THAT, clause 100 of the Bill be amended in the proviso appearing immediately after sub-clause (2)(b) by –

- (a) deleting the word “fifteen” appearing immediately after the words “applicant shall give” in the proviso and substituting therefor the word “thirty”;

- (b) inserting the words “and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists” immediately after the words “nationwide circulation”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 2 – **agreed to**

CLAUSE 102

Senate Amendment

THAT, clause 102 of the Bill be amended in sub-clause (1) –

- (a) by deleting the word “may” appearing immediately after the words “under section 100” in the introductory phrase and substituting therefor the word “shall”;
- (b) by inserting the following new paragraph immediately after paragraph (b)–
- (c) that any compensation payable under paragraph (a) or (b) shall be paid within a period of four months from the date of issuance of the consent and in full to the person entitled to such compensation.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 2 – **agreed to**

CLAUSE 107

Senate Amendment

THAT, clause 107 of the Bill be amended in sub-clause (1) by deleting the words “including forests, national parks, reserves and heritage sites” appearing immediately after the words “National Government Property”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 2 – **agreed to**

The Second Schedule
Senate Amendment

THAT, the Model Production Sharing Contract set out in the Second Schedule to the Bill be amended in –

- (a) clause 2 in the definition of the term “best petroleum industry practices” by deleting the word “maximizing” appearing immediately after the words “environment by” in paragraph (c) and substituting therefor the word “minimizing”;
- (b) clause 16 by –
 - (i) deleting the word “material” appearing immediately after the words “any adverse” in paragraph (6);
 - (ii) deleting the words “forty eight (48)” appearing immediately after the words “Authority within” in paragraph (8) and substituting therefor the words “twenty four”;
- (c) clause 20 by inserting the following new paragraph immediately after paragraph (3) –
 - (4) The contractor shall, in employing and providing training for Kenyans under this clause take into account the need to employ and train marginalized groups.
- (d) clause 26 by –
 - (i) deleting paragraph (3);
 - (ii) in paragraph (4) by inserting the words “in accordance with the Land Act” immediately after the words “the Government shall”;

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 2 – **agreed to**

Considerations to be reported with amendments;

13. **HOUSE RESUMED** – the First Chairperson in the Chair

Consideration of the Senate amendments to Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)

Considerations reported **with** amendments;

Motion made and Question proposed –

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

(The Leader of the Majority Party)

Question put and agreed to;

Motion made and Question proposed –

THAT, Senate amendments to Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) be agreed to

Question of the Motion deferred to another day.

14. **THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.64 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed -

THAT, the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 64 of 2015) be now read a Second Time

(The Leader of the Majority Party – 02.08.2016)

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

Debate interrupted on Tuesday, 2nd August 08, 2016 resumed;

Mover replied;

Question deferred to another day.

15. **THE BRIBERY BILL (NATIONAL ASSEMBLY BILL NO.16 OF 2016)**

Order for Second Reading read;

Motion made -

THAT, the Bribery Bill (National Assembly Bill No.16 of 2016) be now read a Second Time

(The Leader of the Majority Party)

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

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

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, August 10, 2016 at 9.30 a.m.

--X--