



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT - (THIRD SESSION)
THE SENATE
ORDER PAPER
WEDNESDAY, MAY 20, 2015 AT 2.30 P.M

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Statements (As Listed in the Appendix)

8. COMMITTEE OF THE WHOLE

**** THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)**
(The Senate Majority Leader)

9. COMMITTEE OF THE WHOLE

**** THE FAIR ADMINISTRATIVE ACTION BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2015)**
(The Senate Majority Leader)

10. COMMITTEE OF THE WHOLE

**** THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**
(The Senate Majority Leader)

11. COMMITTEE OF THE WHOLE

THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015
(Chairperson of the Sessional Committee on Delegated Legislation)

12. COMMITTEE OF THE WHOLE

THE PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENT) REGULATIONS, 2015
(Chairperson of the Sessional Committee on Delegated Legislation)

...../Motion

13. **MOTION** - (Sen. Fatuma Dulo)
(Department of Environment, Water and Natural Resources)

THAT, aware that the fourth Schedule to the Constitution assigns the responsibility of protection of the environment and natural resources to the National Government;

ACKNOWLEDGING THAT Section 5 of the Wildlife (Conservation and Management) Act, 2013 mandates the Cabinet Secretary to formulate innovative measures for mitigating human wildlife conflict;

FURTHER ACKNOWLEDGING THAT Section 19 of the said Act empowers the County Wildlife Conservation and Compensation Committee to develop and implement, in collaboration with community wildlife associations, mechanisms for mitigation of human wildlife conflict;

AWARE THAT in the spirit of mutual co-existence, Section 75 of the Wildlife Conservation and Management Act, 2013 advocates for recognition of the rights and privileges of communities living adjacent to conservation and protected areas in decision-making and determination on the matter of conservation and management of the wildlife resource;

NOTING WITH CONCERN THAT human-wildlife conflict between the Kinna Community of Isiolo County and wildlife at Meru National Park has escalated over the years;

FURTHER NOTING WITH CONCERN THAT the above conflict has led to tension between the community and the Kenya Wildlife Service (KWS) which the community accuses of kidnapping, shooting, torturing, wounding and even killing members of the community;

ALARMED about the latest alleged report that on 18th May, 2015 KWS rangers clashed with the Kinna Community demonstrators, shot and killed one demonstrator and wounded several others;

THE SENATE DIRECTS the Standing Committee on Land and Natural Resources to conduct a fact-finding mission regarding the conflict in the area with immediate effect and report back to the Senate within thirty days.

14. * **THE PARLIAMENTARY SERVICE (AMENDMENT) BILL (SENATE BILL NO. 21 OF 2014)**
(Sen. Kiraitu Murungi)
(Second Reading)
(Resumption of Debate interrupted on Tuesday, 19th May, 2015)
15. * **THE REPRODUCTIVE HEALTH CARE BILL (SENATE BILL NO. 17 OF 2014)**
(Sen. Judith Sijeny)
(Second Reading)
16. *** **THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)**
(Chairperson of the Standing Committee on Labour and Social Welfare)
(Second Reading)
17. *** **THE COUNTY EARLY CHILDHOOD EDUCATION BILL, (SENATE BILL NO. 32 OF 2014)**
(Chairperson, Standing Committee on Education)
(Second Reading)
18. *** **THE COUNTY ASSEMBLY SERVICES BILL, (SENATE BILL NO. 27 OF 2014)**
(Chairperson, Standing Committee on Legal Affairs and Human Rights)
(Second Reading)
19. * **THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL NO. 31 OF 2014)**
(Sen. Halima Abdille)
(Second Reading)
20. *** **THE COUNTY HALL OF FAME BILL (SENATE BILL NO. 33 OF 2014)**
(Chairperson of the Standing Committee on Legal Affairs and Human Rights)
(Second Reading)
21. *** **THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILL NO. OF 36 OF 2014)**
(Chairperson, *Ad hoc* Committee on Establishment of Public Compensation Bureaus)
(Second Reading)
22. **MOTION** - (The Chairperson, Sessional Committee on County Public Accounts and Investments)

THAT, the Senate adopts the Interim report of the Senate Sessional Committee on County Public Accounts and Investments on the inquiry into County Government Accounts for the Financial Year 2012/2013- (1st January to 30th June, 2013).

NOTICE

The Senate resolved on 11th February, 2015 as follows:-

THAT, pursuant to Standing Order 100 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

KEY

- * * * *** ■ Denotes a Majority /Minority Party Bill
- * * *** ■ Denotes a Committee Bill
- **** ■ Denotes a National Assembly Bill
- *** ■ Denotes any other Bill

NOTICES OF AMENDMENTS**i) ** THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)**

(The Senate Majority Leader)

NOTICE is hereby given that the Chairperson of the Standing Committee on Finance, Commerce and Budget intends to move the following amendments to the Public Audit Bill (National Assembly Bill No. 38 Of 2014), at the Committee Stage-

CLAUSE 5

THAT clause 5 be amended in-

- (a) paragraph (b) by deleting the words "Article 229" appearing immediately after the words "specified in" and substituting therefor the words "Article 229(2)"; and
- (b) paragraph(c) by inserting the words "post graduate" immediately after the words "holds a".

CLAUSE 11

THAT clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (5)-

(5A) The members of the selection panel appointed under subsection (5) shall elect a chairperson from among themselves.

CLAUSE 19

THAT clause 19 be amended in sub-section (2) by deleting the words "review and" appearing immediately after the words "each year for" at the end of the paragraph.

CLAUSE 24

THAT clause 24 be amended in-

- (a) paragraph (a) of sub-section (1), by inserting the words "who shall be the chairperson" at the end of the paragraph; and
- (b) sub-section (3) by deleting the words "shall appoint a chairperson from among the persons under subsection (1) above and" appearing immediately after the words "the Auditor-General".

CLAUSE 32

THAT clause 32be amended in sub-clause (1) by deleting the word"may" appearing immediately after the words "public entity" and substituting therefor the word "shall".

CLAUSE 39

THAT clause 39 be amended-

- (a) by deleting sub-clause (1); and
- (b) by deleting sub-clause (2) and substituting therefor with the following new sub-clause-
 - (2)Sections of the audit reports on national security organs may remain confidential to the Auditor-General but may, on demand, be submitted to Parliament.

...../ **Amendments**

CLAUSE 40

THAT clause 40 be amended in sub-clause (2) by deleting the words "Article 206(1)(b)" appearing immediately after the words "accordance with" and substituting therefor the words "Article 206(1)".

CLAUSE 41

THAT clause 41 be amended in paragraph (e) of sub-clause (2), by inserting the words "including statements on processes and systems audit" immediately after the words "of the Auditor-General".

ii) **** THE FAIR ADMINISTRATIVE ACTION BILL (NATIONAL ASSEMBLY
BILL NO. 10 OF 2015)**
(The Senate Majority Leader)

NOTICE is given that the Chairperson of the Standing Committee on Legal Affairs and Human Rights intends to move the following amendments to the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) at the Committee Stage-

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting paragraph (b).

CLAUSE 4

THAT clause 4 of the Bill be amended-

(a) in sub-clause (3)-

- (i) in the introductory phrase by deleting the words "decision making authority" appearing immediately before the words "freedom of any person" and substituting therefor the word "administrator";
- (ii) in paragraph (c) by inserting the word "an" immediately before the words "administrative decision"; and
- (iii) in paragraph (f) of sub-clause (3) by: deleting the word "or" appearing immediately before the words "where applicable";

(b) in sub-clause (4) by deleting the words "decision making body" appearing immediately after the word "the" at the beginning of the sub-clause and substituting therefor the word "administrator";

(c) by deleting sub-clause (6) and substituting therefor the following new sub-clause-

(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

CLAUSE 5

THAT clause 5 of the Bill amended by in sub-clause (2) by deleting paragraph (a) and substituting therefor the following new paragraph-

- (a) challenge any administrative action or decision in accordance with the procedure set out under the Commission of Administrative Justice Act, 2011 or any successor to the Commission on Administrative Justice under section 55 of the Commission in Administrative Justice Act"

CLAUSE 6

THAT clause 6 of the Bill amended by inserting the following new sub-clauses immediately after sub-clause (2)-

- (3) The administrator to whom a request is made under subsection (1), shall, within thirty days after receiving the request, furnish the applicant, in writing, the reasons for the administrative action.
- (4) Subject to subsection (5), if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.
- (5) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and shall inform the person making the request of such departure.

PART III

THAT the Bill be amended by deleting Part III and substituting therefor the following new Parts-

PART III – REVIEW OF ADMINISTRATIVE ACTION

Institution of proceedings. **7. (1)**Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to-

- (a) a court in accordance with section 8; or
- (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if-

(a) the person who made the decision-

- (i) was not authorized to do so by the empowering provision;
- (ii) acted in excess of jurisdiction or power conferred under any written law;
- (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;

...../ **Amendments**

- (iv) was biased or may reasonably be suspected of bias; or
- (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
- (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
- (c) the action or decision was procedurally unfair;
- (d) the action or decision was materially influenced by an error of law;
- (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
- (f) the administrator failed to take into account relevant considerations;
- (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
- (h) the administrative action or decision was made in bad faith;
- (i) the administrative action or decision is not rationally connected to-
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the administrator;
 - or
 - (iv) the reasons given for it by the administrator;
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- (k) the administrative action or decision is unreasonable;
- (l) the administrative action or decision is not proportionate to the interests or rights affected;
- (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;

(n) the administrative action or decision is unfair; or

(o) the administrative action or decision is taken or made in abuse of power.

(3) The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that-

(a) the administrator is under duty to act in relation to the matter in issue;

(b) the action or decision is required to be undertaken within a period specified under such law; and

(c) the administrator has refused, failed or neglected to take action within the prescribed period.

Period for determination of applications and appeals **7A.** An application for the review of an administrative action or an appeal under this Act shall be determined within ninety days of filing the application.

PART IIIA – JUDICIAL REVIEW

Procedure for judicial review. **8.** (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

Rules.

9. (1) An application for judicial review shall be heard and determined without undue regard to procedural technicalities.

(2) The Chief Justice may make rules of practice for regulating the procedure and practice in matters relating to judicial review of administrative action.

Orders in
proceedings
for
judicial review.

10. (1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order—

(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;

(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;

(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;

(d) prohibiting the administrator from acting in a particular manner;

(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;

(g) prohibiting the administrator from acting in a particular manner;

(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;

(i) granting a temporary interdict or other temporary relief; or

(j) for the award of costs or other pecuniary compensation in appropriate cases.

(2) In proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order-

- (a) directing the taking that decision;
- (b) declaring the rights of the parties in relation to the taking of the decision;
- (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties ; or
- (d) as to costs and other monetary compensation.

NEW CLAUSE 11A

THAT the Bill be amended by inserting the following new clause immediately after clause 11-

- Regulations **11A.** (1) The Cabinet Secretary may, in consultation with the Commission on Administrative Justice, make regulations for the better carrying out of the provisions of this Act.
- (2) Regulations made under subsection (5) shall, before publication in the *Gazette*, be approved by Parliament.

NEW CLAUSE 12A

THAT the Bill be amended by inserting the following new clause immediately after clause 12-

- Transition provisions **12A.**(1) In all proceedings pending whether preparatory or incidental to, or consequential upon any proceedings in court at the time of the coming into force of this Act, the provisions of this Act shall apply, but without prejudice to the validity of anything previously done.
- (2) Despite subsection (1)-
- (a) if, and in so far as it is impracticable in any proceedings to apply the provisions of this Act, the practice and procedure obtaining before the enactment of this Act shall be followed; and
 - (b) in any case of difficulty or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted.

CLAUSE 2

THAT clause 2 of the Bill be amended by-

- (a) inserting the following new definition after the definition of the word administrative action-

“administrator” means a person who takes an administrative action or who makes an administrative decision;

- (b) in the definition of the word “decision”, by deleting the words “under any written law” appearing after the words “as the case may be”;

iii) **** THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**

(The Senate Majority Leader)

NOTICE is hereby given that the Chairperson of the Standing Committee on Finance, Commerce and Budget intends to move the following amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) at the Committee Stage-

CLAUSE 33

THAT clause 33 be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f)-

(fa) promote preference and reservation schemes for residents of the county to ensure a minimum of twenty percent in public procurement at the county.

CLAUSE 51

THAT clause 51 be amended in sub-clause (3) by deleting the words "and licensed" appearing immediately after the words "agents registered".

CLAUSE 124

THAT clause 124 be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3A) In evaluation of tenders by public entities, the financial and technical capability of the tenderers shall be given equal weight.

CLAUSE 165

THAT clause 165 be amended in sub-clause (1) by deleting paragraph (d).

a) **NOTICE** is given that Sen. Mutula Kilonzo Junior intends to move the following amendments to the foregoing Bill at the Committee Stage-

CLAUSE 176

THAT clause 176 of the Bill be amended by-

(a) inserting the following new sub clauses immediately after sub clause (4)-

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

(7) A contractor who has been found by a competent court, tribunal or any other competent authority to be guilty of defaulting on their tax obligations, engaging in corrupt practices or committing serious violations of fair employment laws and practices shall not be eligible for the award of a tender under this Act for a period of ten years from the date of the finding of a court, tribunal or any other competent authority.

...../ *Amendments*

iv) **THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015**

(Chairperson of the Sessional Committee on Delegated Legislation)

NOTICE is hereby given that the Chairperson of the Sessional Committee on Delegated Legislation intends to move the following amendments to the Public Finance Management (National Government) Regulations, 2015 at the Committee Stage-

REGULATION 109

THAT regulation 109 be amended-

- (a) by re-numbering the existing sub-regulation (1) as sub-regulation (1A); and
- (b) by inserting the following new sub-regulation (1) immediately before the renumbered sub-regulation (1A)-

- (1) A national government entity shall utilize the automated integrated financial management system in processing financial data.

PART VIII

THAT the sub-title "*Functions and responsibilities of the audit committee*" appearing immediately after regulation 178 be deleted.

REGULATION 181

THAT regulation 181 be amended in sub-regulation (1) by deleting the words "other relevant entities" and substituting therefor the words "the Salaries and Remuneration Commission".

REGULATION 2

THAT Regulation 2 be amended by inserting the following interpretation immediately after the interpretation of the phrase "Accounting Unit"-

"administrative costs" means any expense incidental to the running of an entity";

v) **THE PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENT) REGULATIONS, 2015**

(Chairperson of the Sessional Committee on Delegated Legislation)

NOTICE is hereby given that the Chairperson of the Sessional Committee on Delegated Legislation intends to move the following amendments to the Public Finance Management (County Government) Regulations, 2015, at the Committee Stage-

REGULATION 15

THAT regulation 15 be amended by inserting the words "the County Assembly Clerk" immediately after the words "County Executive Committee Member".

REGULATION 18

THAT regulation 18 be amended in sub-regulation (3) by deleting the words "the Speaker" appearing immediately after the words "County Assembly to" and substituting therefore the words "the chairperson of the county assembly service board".

...../ **Amendments**

REGULATION 19

THAT regulation 19 be amended in sub-regulation (2) by deleting the words "the Speaker" appearing immediately after the words "County Assembly to" and substituting therefore the words "the chairperson of the county assembly service board".

REGULATION 25

THAT regulation 25 be amended by deleting sub-regulation (1).

REGULATION 26

THAT regulation 26 be deleted and substituted with the following new regulation-

26.The County Fiscal Strategy Paper shall-

- (a) stipulate the ceilings of revenue and expenditure by vote; and
- (b) outline the program to be followed in finalizing the annual estimates of expenditure for all spending agencies of the county government.

REGULATION 37

THAT regulation 37 be amended-

- (a) by deleting sub-regulation (1) and substituting therefor the following new sub-regulation-
 - (1) The County Assembly may approve changes in the annual budget estimates as provided under section 131 of the Act, provided that any changes shall be within the approved report on the county fiscal strategy paper.
- (b) by inserting the following new sub-regulation immediately after sub-regulation (1)-
 - (1A) The Speaker of the County Assembly shall submit a copy of the approved annual budget estimates to the County Executive Committee Member within seven days of approval of the estimates.
- (c) in sub-regulation (2) by inserting the words "and the controller of budget" immediately after the words "National Treasury".

REGULATION 38

THAT regulation 38 be deleted.

REGULATION 59

THAT regulation 59 be deleted.

REGULATION 2

THAT regulation 2 be amended -

- (a) in the interpretation of the phrase "cash flow" by deleting the phrase "cash flow" and substituting therefor the phrase "cash flow statement"; and
- (b) in the interpretation of the phrase "irregular expenditure" by inserting the following new paragraph immediately after paragraph (d)-
 - (da) any other legislation of that county government;

APPENDIX

1. PETITION

Report by the Standing Committee on Agriculture, Land and Natural Resources on petition on plight of rice farmers at Mwea Settlement Scheme.

2. STATEMENT

The Chairperson of the Standing Committee on Lands and Natural Resources to issue a Statement on hazards caused by the Nairobi Dam, especially during the rainy season (Sen. Janet Ong'era).
