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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

*But SNA
18/8/2021*

*Papers laid
by Chair, Transport
Hr. David Phosin
on Wednesday
18/08/2021*

REPORT

ON

THE LANDLORD AND TENANT BILL, 2021

(NATIONAL ASSEMBLY BILL NO. 3 OF 2021)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 AUG 2021	DAY: <input type="text"/>
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DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS - NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2021

Table of Contents

CHAIRPERSON'S FOREWORD	3
1.0 PREFACE	4
1.1 Committee Mandate	4
1.2 Committee Membership	5
1.3 Committee Secretariat	6
2.0 OVERVIEW OF THE LANDLORD AND TENANT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 3 OF 2021)	7
2.1 Analysis of the Bill.....	7
3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION	8
Consideration of the Landlord and Tenant Bill, 2021	8
4.0 COMMITTEE'S OBSERVATIONS.....	22
5.0 COMMITTEE'S RECOMMENDATION	23

ANNEXURES LIST

- (i) Minutes of meetings of the Committee
- (ii) Members report adoption list
- (iii) Newspaper advertisement inviting the public to make representations on the Bill
- (iv) Memoranda received by the Committee:
 - (a) Mr. Samuel Mutahi Gathogo
 - (b) Mr. James Josiah
 - (c) Mr. Geoffrey Kang'ethe
 - (d) Mr. James T. Maringa
 - (e) Mr. Derek Ndonye, Advocate
 - (f) Licensed Auctioneers of Kenya
 - (g) Civil Society Reference Group
 - (h) National Gender & Equality Commission
 - (i) Institution of Surveyors of Kenya (ISK)
 - (j) FSD Kenya
 - (k) Kenya Private Sector Alliance (KEPSA)
 - (l) Institute of Certified Public Accountants of Kenya (ICPAK)

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Landlord and Tenant Bill, 2021 (*National Assembly Bill No. 3 of 2021*), sponsored by the Leader of the Majority Party. The Bill was published on 12th February 2021, read a First Time on 25th March 2021 and thereafter committed to the Departmental Committee on Transport, Public Works and Housing for review and reporting to the House pursuant to Standing Order 127.

Following placement of adverts in the print media on 20th April, 2021 requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received twelve (12) memoranda.

The Committee discussed the Bill with stakeholders on Thursday, 29th July 2021. There were varied responses from the stakeholders; with numerous proposals for amendments. The Committee considered all the submissions from the stakeholders before it resolved to propose some amendments as contained in the schedule attached at the end of this Report.

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 Committee Members for their resilience and commitment towards consideration of the Bill and production of this report. The Committee further wishes to record its appreciation for outstanding services rendered by the Committee Secretariat. The Committee equally wishes to thank all the stakeholders who participated in the consideration of the Bill for their brilliant contributions in form of views and proposals.

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 Landlord and Tenant Bill, 2021.

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 Thursday, 25th March 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. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *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 Hon 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

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

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 LANDLORD AND TENANT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 3 OF 2021)

2.1 Analysis of the Bill

7. The principal object of this Bill is to repeal the Distress for Rent Act (Cap. 293), Rent Restriction Act (Cap. 296) and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301). The Bill seeks to introduce a legal framework which balances the interests of landlords and tenants in a free market economy by ensuring that landlords earn reasonable income from their investment in housing and also protects the tenant.
8. The Bill consolidates the laws relating to the renting of business and residential premises and seeks to regulate the relationship between the landlord and tenant.
9. Part I of the Bill provides for preliminary matters.
10. Part II of the Bill provides for the establishment, composition and jurisdiction of the Landlord and Tenant tribunals. The Part specifies the powers of a tribunal and provides for the staff and expenses of a tribunal.
11. Part III of the Bill provides for the administration of the tribunal.
12. Part IV of the Bill provides for general matters relating to tenancies including fair rent, permitted increase of rent, notice of termination and the right to assign or sublet rental premises.
13. Part V of the Bill deals with eviction orders. The Part provides for the power of a tribunal in matters relating to eviction.
14. Part VI contains miscellaneous provisions. The Part provides for service of documents, enforcement of orders, prosecution of offences, distress for rent, disposal of property by a landlord upon death or abandonment of premises by tenant and the power to make rules and regulations.
15. The Bill does delegates legislative powers to the Cabinet Secretary responsible for housing and the Chief Justice to make regulations for the carrying into effect of its provisions. It provides penalties for offences with the option of imprisonment upon lawful conviction.

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

16. Following the call for submission of memoranda by the public through the placement of advertisements in the print media of 20th April 2021, the Committee received twelve memoranda.
17. On 29th July 2021, the Committee met with stakeholders. The Committee thereafter proceeded with report writing before adopting this report on 13th August 2021.
18. The following stakeholders submitted written memoranda to the Committee, in response to the said call through the advertisements of 20th April 2021—
 - (a) Mr. Samuel Mutahi Gathogo
 - (b) Mr. James Josiah
 - (c) Mr. Geoffrey Kang'ethe
 - (d) Mr. James T. Maringa
 - (e) Mr. Derek Ndonye, Advocate
 - (f) Licensed Auctioneers of Kenya
 - (g) Civil Society Reference Group
 - (h) National Gender & Equality Commission
 - (i) Institution of Surveyors of Kenya (ISK)
 - (j) FSD Kenya
 - (k) Kenya Private Sector Alliance (KEPSA)
 - (l) Institute of Certified Public Accountants of Kenya (ICPAK)
19. The Committee also met with representatives from the State Department for Housing, the State Department for Trade, the Rent Restriction Tribunal, the Business Premises Restriction Tribunal and the Office of the Attorney General and Department of Justice.

Consideration of the Landlord and Tenant Bill, 2021

20. While considering the Landlord and Tenant Bill, 2021 (National Assembly Bill No. 3 of 2021), the Committee took into account the written memoranda (*annexure (iv)*) and oral submissions received from the public regarding each clause.

Clause 2

21. The Institute of Certified Public Accountants of Kenya (ICPAK); the Kenya Private Sector Alliance (KEPSA); FSD Kenya; and the Institution of Surveyors of Kenya (ISK) proposed amendments to this Clause. ICPAK proposed the insertion of new definitions for “agent” and “subtenant” for purposes of easy interpretation. KEPSA proposed the insertion of the definition of “service tenancy” to ensure clarity on the application to the term as used within the Bill while FSD Kenya raised concern with the meaning of the word “conservancy” as used in the Bill. ISK proposed new definitions for the terms “Cabinet Secretary”; “fair rent”; “landlord”; “market rent”; “outgoings”; and “premises” to avoid confusions in the implementation of the Act; require use of a registered valuer on the setting of fair rent; provide legal clarity; align the definition with international best practice; ensure that all various risks that the premises may be exposed to are covered and protected against; and avoid ambiguity, respectively.

22. The Committee was of the view that the provisions of the Clause adequately define the terms used in the Bill which require interpretation.

Clause 3

23. KEPSA, FSD Kenya and ISK proposed amendments to this Clause. With regard to the powers of the Cabinet Secretary to prescribe the nature of residential premises to which the Act would apply, KEPSA proposed that such power be vested on a nonpolitical office, rather than to the Cabinet Secretary. FSD Kenya noted that the powers were very wide and proposed a rental level agreed by the industry to which the Act would apply. In their view, in the event the applicable rent is set too high, it will bring too much work to the Tribunal and make its operations unsustainable. Alternatively, ISK proposed that the Act apply to residential premises rented out for a sum not exceeding five thousand shillings subject to a review every five years.
24. With regard to business premises to which the Act would apply, ISK proposed deletion of Clause 3(b) in its entirety to allow parties to a tenancy agreement for business premises to negotiate and mutually agree on reasonable exit clauses affecting the tenancy.
25. With regard to the powers granted to the Cabinet Secretary to prescribe business premises tenancies to which the Act shall apply, FSD Kenya submitted that Clause 3(3) was unclear, while ISK proposed deletion of the reference to the rateable value of the premises. In the view of ISK pegging rent control on the ratable value of the premises is likely to introduce uncertainties.
26. The Committee was of the view that the Clause mandates the Cabinet Secretary to set the rent threshold through regulations which shall be tabled before Parliament for approval. In this regard, it would not be prudent to set a limit in the Clause itself as the amount is subject to inflation and escalation regularly. The Committee agreed with the Clause subject to an amendment requiring the Cabinet Secretary to prescribe the threshold within six months of the coming into force of the legislation. The Committee therefore observed that Clause 3 of the Bill should be amended to require the Cabinet Secretary to prescribe the threshold within six months of the coming into force of the Act.

Clause 4

27. The National Gender and Equality Commission (NGEC), ICPAK and ISK proposed amendments to this clause. NGEC proposed that the composition of the Tribunal be required to adhere to the principles of regional and ethnic balance; and fair representation for persons with disabilities. ICPAK proposed the inclusion a financial expert, who is a member of the professional body regulating accountancy in the Tribunal. ISK proposed deletion of the requirement for the Deputy Chairperson of the Tribunal to be an Advocate of the High Court and substitution with the requirement that the Deputy Chairperson be a person versed with land, estate agency or property management. Additionally, ISK proposed that the other members of the Tribunal at Clause 4(3) be replaced by one registered and Practicing Valuer under Valuers Act, Cap 532 with five years post registration experience, one Registered and Licensed Estate Agent under Estate Agent Act, Cap 533 with five years post registration experience and one property manager, all nominated by ISK.

28. When they appeared before the Committee, representatives from the State Department for Housing, the State Department for Trade, the Rent Restriction Tribunal, the Business Premises Restriction Tribunal and the Office of the Attorney General and Department of Justice proposed that the Tribunal be named the Landlord and Tenant Tribunal.
29. They further proposed that its composition be amended to provide for one Chairperson and room for the appointment of several Deputy Chairpersons who may be designated to preside over sittings of the Tribunal as and when required across the country.
30. The Committee observed that Clause 4 of the Bill should be amended to rename the Tribunal as the Landlord and Tenant Tribunal; and to provide for one Chairperson and room for the appointment of several Deputy Chairpersons who may be designated to preside over sittings of the Tribunal as and when required across the country to ensure access to justice. The Committee noted that this would ensure access to justice across the country in a timely manner.

Clause 5

31. ISK and KEPSA. ISK proposed that the power of the Tribunal to determine the rent payable in respect to premises be subjected to the recommendation of a Registered valuer. ISK further proposed the deletion of Clauses 5(f), 5(j), and 5(m). It was their view that the provisions usurp the role of the County Government and unnecessarily lengthen approval of property development; unnecessarily extend the powers of the Tribunal beyond the determination of market rent; and may lead to a miscarriage of justice.
32. The Committee noted that the provisions cited are necessary to empower the Tribunal to adjudicate tenancy disputes adequately.
33. KEPSA proposed that the power of the Tribunal to order the refund of deposit be subjected to restoration of the property, save for fair wear and tear, and that the provision prescribe a determinable period for return of the deposit. The Committee was of the view that the issue of deposit and its use be reserved for the agreement between the landlord and tenant.

Clause 7

34. FSD Kenya and KEPSA. FSD Kenya were of the view that three (3) months is too long a period for a Tribunal to determine disputes, and that the Clause does not adequately define when the determination of a matter is to be made after the lapse of the three months. They proposed that a matter before a Tribunal be determined within a maximum of forty-five (45) days with a very strict timeline. KEPSA proposed that the reference to the "High Court" in the Clause be replaced with the "Environment and Land Court" to align the Clause with Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act, 2011.
35. With regard to the timelines, the Committee was of the view that the three-month period provided adequate room for the Tribunal to adjudicate over disputes. On the court to which an appeal is to be made, the Committee agreed with KEPSA to replace the reference to the High Court with the Environment and Land Court to align the Bill with the new constitutional dispensation.

Clause 10

36. NGEC and ISK proposed for the separation of the role of the Chairperson of the Tribunal from that of the Chief Executive Officer.
37. The Committee agreed that there was the need to have a secretary with clear roles as the Chief Executive Officer.

Clause 12

38. NGEC proposed that the Tribunal Secretary be tasked to serve as the Chief Executive Officer of the Tribunal in charge of management of its day-to-day affairs.
39. The Committee agreed that there was the need to have a secretary with clear roles as the Chief Executive Officer and therefore observed that Clause 12 of the Bill should be amended to make the secretary of the Tribunal its chief executive officer.

Clause 13

40. NGEC proposed that removal of a member of the Tribunal on account of illness be certified by a qualified medical practitioner. ICPAK proposed the addition of professional misconduct by a member belonging to a professional association as a ground for removal from the Tribunal.
41. The Committee agreed with the proposals by both the NGEC and ICPAK to amend the Clause.

Clause 15

42. Mr. Geoffrey Kang'ethe proposed that a landlord should retain the right to enforce rent in arrears through the current provisions of the Distress for rent Act, Cap. 293 due to the economic implications of default where the landlord depends on rental proceeds to service loans taken to develop a property. He proposed that the Tribunal only intervene where a dispute relating to the distress arises. The Committee agreed with the proposal to maintain a separate legal regime to allow a landlord a remedy under the Distress for Rent Act Cap. 293.

Clause 16

43. FSD submitted that the financial and imprisonment penalties in the Clause are not commensurate and are not aligned with ones outlined in Clause 49. According to them, the sentences seem unjust and may create room for coercion.
44. The Committee believed that the penalties proposed are adequate owing to the nature of the offence.

Clause 17

45. ICPAK proposed that the Clause be amended to provide for the payment of a security deposit not exceeding two months' rent in case of residential premises, and six months' rent, in case of business premises; and that deposit be refunded to the tenant on the date

of taking over vacant possession of the premises from the tenant, less any deductions. ISK proposed the deletion of the term “fair rent” in the Clause and replacement with the term “rent payable” for purposes of clarity.

46. The Committee resolved reserve the issue of deposit for mutual agreement by the parties to a tenancy. The Committee further agreed with the proposal to delete the term “fair rent” in the Clause and replace it with the term “rent payable” for purposes of clarity.

Clause 18

47. ISK proposed deletion of Clause 18(4)(c) and replacement with “market increase of rent” as a ground for increasing rent. NGEC proposed deletion of the provision of access to persons with disabilities as a basis for increasing rent. According to NGEC, all built environment is expected to adhere to the principle of universal design and basic principles of accessibility. Therefore, increase of rent on grounds of provision of access is unfair and discriminatory to persons with disability and all other persons whose mobility is limited.
48. The Committee disagreed with the proposal on “market increase of rent”. The Committee however agreed with the proposal by the NGEC to delete the provision of access to persons with disabilities as a basis for increasing rent. It noted that, in fact, the law currently requires that design of any new building must provide access for persons with disability.

Clause 19

49. ISK proposed that the Clause be amended to provide for a notice period of at least at least sixty (60) days for a residential property and ninety (90) days for a commercial premises to reduce conflicts. ICPAK proposed that the Clause be amended to require the Tribunal to determine an application by a tenant to terminate the tenancy within twenty-one (21) days from the day of application; and to require a termination notice to take into account any initial deposit or upfront payment made with regard to the premises.
50. The Committee agreed with the proposals to amend Clause 19 of the Bill to provide for a notice period of at least sixty (60) days for a residential property and ninety (90) days for a commercial premises to reduce conflicts.

Clause 20

51. ISK proposed replacement of the words “twenty-four months” with “twelve months” to allow for annual escalation rent to compensate for inflation. KEPSA proposed removal of the restriction on increment of rent by reference to time periods.
52. The Committee did not agree with the proposals by ISK and KEPSA to amend Clause 20. It noted that the periods prescribed are adequate in relation to the different categories of premises.

Clause 21

53. ICPAK proposed limitation of decrease in rent to services prescribed in a tenancy agreement at the prevailing market rate of the services.

54. The Committee was of the view that the Clause adequately provides for the manner in which a decrease of services is to be treated and that the legislation covers both written and unwritten tenancy agreements.

Clause 23

55. ICPAK proposed that the penalties in the Clause be shifted to Clause 50 or 55 for logical flow. The Committee agreed with the proposal to shift the offence and penalties.

Clause 24

56. ICPAK proposed inclusion of the amount and purpose of the security deposit; the amount of any late charge; notice periods required to bring a tenancy to an end; and the rights and obligations of both parties in a tenancy agreement. They further proposed that a landlord be required to provide a signed copy of the tenancy agreement to a tenant within one month of its execution in default of which the landlord is to be precluded from filing or maintaining an action against the tenant in the Tribunal. Additionally, they proposed that the landlord provide a tenant with a signed receipt for any amounts received relating to the tenancy.
57. The Committee noted that the provisions of Clause 24 are adequate with regard to the general form of a tenancy agreement. The Committee observed that the proposals made were too prescriptive.

Clause 25

58. KEPISA and FSD Kenya proposed amendment of Clause 25(1)(c) to accord with the provisions of Clause 27(1)(b) with regard to the period of default that entitles a landlord to terminate a tenancy without reference to a Tribunal. ISK proposed that the period of default be reduced to one month for residential premises and three months for business premises.
59. The Committee observed that there was need to reduce the default period and proposed to amend Clause 25 and Clause 27(1) (b) to provide for a period of one (1) month for both residential and business premises.

Clause 26

60. KEPISA proposed that the Clause be amended to allow a tenant to terminate the tenancy at any time before the end of the tenancy provided that the notice given is not be less than the period to which rent is payable to cater for extraneous circumstances that may lead for the need to terminate a tenancy.
61. The Committee agreed with this view and noted that Clause 26 of the Bill should be amended to allow a tenant to terminate the tenancy at any time before the end of the tenancy subject to the proposals on the notice period made with regard to Clause 19 of the Bill; and the notice period prescribed under clause 25(1) (a) of the Bill.

Clause 27

62. FSD Kenya noted that Clause 27(1)(b) seemed more equitable than Clause 25(1)(b) with regard to the period of default that entitles a landlord to terminate a tenancy without reference to a Tribunal. It was their further submission that Clause 27(1)(e) is unclear.
63. The Committee agreed with the need to reduce the default period and proposed to amend the Clause and Clause 25(1) (c) to provide for one (1) month for both residential and business premises.

Clause 29

64. The Committee received a memorandum touching on this Clause from ISK proposing deletion of the words “other than change of user” in subclause (1)(b). According to them, termination for change of use is good for the real estate sector, subject to giving reasonable notice.
65. The Committee agreed with the proposal by the ISK to amend Clause 29 of the Bill to delete of the words “other than change of user” in subclause (1)(b) as a change of use is beneficial for the real estate sector, subject to giving reasonable notice.

Clause 30

66. FSD Kenya proposed that the terms “illegal trade” appearing in subclause (1)(g) be defined. Additionally, they proposed that subclause (1) be reconsidered as it may be used by landlords to the detriment of the rights of sixty percent of Nairobi population that currently lives in informal settlements. It was their view that occupancy caps should be reserved for private lease contracts instead of law until the housing conditions in the country improve. The Committee was of the view that the term “illegal trade” does not require further interpretation or elaboration. It was further of the view that the additional grounds prescribed in the Clause are reasonable and that the Bill provides adequate safeguards for both landlords and tenants through the Tribunal.

Clause 32

67. ISK proposed that the Clause be amended to preclude tenants from subletting premises to reduce misuse and abuse of the premises by tenants. FSD Kenya noted that the provision places an undue burden on a landlord to undertake due diligence on sub-lessees and enter into legal relationships with sub-lessees. Additionally, it was their view that the penalty of five times of the rent applicable to a subtenant appears arbitrary and does not protect the landlord from a situation where a sub-tenant fails to vacate.
68. The Committee disagreed with the proposals to amend Clause 32. It noted that the principal concern of the Bill is to protect a vulnerable class of people, majority of who find themselves in a subtenancy. Deleting the provisions that allow such people access to the Tribunal would therefore defeat the purpose of the Bill. Any subletting under the Bill has to be done with the consent of a landlord.

Clause 33

69. ISK proposed the deletion of references to “subletting” to reduce misuse and abuse of premises by tenants. KEPSA proposed the deletion of the entire Clause. It was their submission that the Clause curtails the right to a landlord to deal with the property in a manner they so wish.
70. The Committee disagreed with the proposal by ISK and KEPSA to amend Clause 33. It noted that the principal concern of the Bill is to protect a vulnerable class of people, majority of who find themselves in a subtenancy. Deleting the provisions that allow such people access to the Tribunal would therefore defeat the purpose of the Bill. Any subletting under the Bill has to be done with the consent of a landlord.

Clause 36

71. ISK proposed amendment of the Clause to subject the Tribunal’s determination of any rent payable to the recommendation of a practicing Valuer and to reduce the period within which any notice relating to business premises rent assessed by a Tribunal may be given from two years to one year. The Committee agreed with the proposal of the ISK as it was reasonable.

Clause 39

72. ICPAK proposed enhancing the penalty for making a false entry of arrears owed by a tenant from ten thousand shillings to ten per cent of the sum indicated in the erroneous entry.

The Committee believed that the penalty as contained in the Clause is adequate when viewed as against the offence.

Clause 40

73. ICPAK proposed the enhancement of the penalty for the failure of a landlord to submit a statement specifying the amount of rent, or submission of a false statement of the rent payable from a sum not exceeding one month’s rent to twenty thousand shillings or six months imprisonment or both.

The Committee was of the view that the penalty as contained in the Clause is adequate when viewed as against the offence.

Clause 42

74. ICPAK proposed the deletion of the requirement for the landlord to apply to the Tribunal for permission to remove furniture or soft furnishings and substitution with an obligation on the landlord to notify the tenant of their intention and ensure the comfort of the tenant during the exercise. ISK proposed that subclause (3) be amended to provide for the determination of any rent payable after the removal of furniture or soft furnishings by a practicing Valuer.

75. The Committee disagreed with the recommendation by ICPAK and ISK. It was of the view that the provisions of Clause 42 adequately protect both parties to a tenancy agreement.

Clause 43

76. FSD Kenya noted that it is not in the landlord's duty to ensure county services like water are available to a tenant. ICPAK proposed that the penalties be shifted from Clause 50 to 55 for proper logical flow.
77. The Committee disagreed with proposals. It was of the view that the provisions of the Clause adequately protect both parties to a tenancy agreement and that the provision is currently contained in the Rent Restriction Act verbatim.

Clause 44

78. ISK proposed that subclause (1) be amended by deleting the words "not less than" to provide for a definite notice period and avoids instances where tenants overstay within the affected premises. They further proposed deletion of subclause (3) insofar as it relates to subtenancies which they propose to be disallowed.
79. The Committee agreed with the proposal to delete the words "not less than" to provide for a definite notice period. It however noted that the principal concern of the Bill is to protect a vulnerable class of people, majority of who find themselves in a subtenancy. Deleting the provisions on subletting would therefore defeat the purpose of the Bill.

Clause 45

80. FSD Kenya submitted that the timelines provided in the Clause are ambiguous and open to long delays. They proposed that a matter before a Tribunal be determined within a maximum of forty-five (45) days with a stringent timeline as stated in their submissions on Clause 7 of the Bill.

The Committee was of the view that the timelines in the Bill provide adequate room for the Tribunal to adjudicate over disputes.

Clause 46

81. ICPAK proposed that the Clause be amended to require a landlord to provide copies of receipts for reasonable expenses incurred for repairing premises that are deducted from a security deposit. NGEC proposed that the clause be amended to require a landlord to ensure that the premises are accessible to all prospective tenants, including those that may suffer mobility challenges.

The Committee agreed to the proposal to require a landlord to provide copies of receipts for reasonable expenses incurred for repairing premises. It was their other view that the building code currently requires buildings to be accessible to all persons.

Clause 49

82. KEPISA proposed the inclusion of a penalty for subjecting the landlord to annoyance to strike a balance between the rights and obligations of both the landlord and the tenant to each other. FSD Kenya proposed that landlords be encouraged to keep a register to notify the next of kin of their tenants, and take over properties within fourteen (14) days of abandonment and thirty (30) days of death. It was further their view that the financial and imprisonment penalties in the Clause do not seem commensurate and are not aligned with the ones at Clause 16. According to them, the sentences seem unjust and may create room for coercion.

The Committee noted the provision relates to measures undertaken by a landlord to induce a tenant to vacate premises irregularly. It did not agree with the proposals made.

Clause 50

83. ICPAC proposed the inclusion of the offences and penalties contained in Clause 23 and 43(2) in the Clause for logical flow of the Bill. The Committee agreed with this proposal.

Clause 59

84. The Committee received memoranda touching on this Clause from ISK and ICPAK. ISK proposed that the Clause be amended to reduce the period within which tenancy is to terminate upon death or dissolution of a tenant from sixty (60) days to seven (7) days. ICPAK proposed the amendment of subclause (3)(b) to require a member of the deceased tenant's family to produce relevant identification and legal documents to gain access to the rented premises for purposes of removing the tenant's property.
85. The Committee agreed with the proposal to reduce the period from sixty (60) days, but resolved that it be reduced to thirty (30) days. The Committee further agreed to the production of relevant identification and legal documents to gain access to the rented premises for purposes of removing a dead tenant's property

Clause 60

86. The Committee received memoranda touching on this Clause from FSD Kenya, ISK and ICPAK. FSD Kenya that landlords be encouraged to keep a register to notify the next of kin of their tenants; and take over properties within fourteen (14) days of abandonment and thirty (30) days of death. ISK proposed amendment of subclause (1) to include failure to maintain the premises despite payment of rent and failure to grant access to a landlord to inspect or maintain the premises as evidence of abandonment. ICPAK proposed the amendment of subclause (2)(b) to require a member of the family of the tenant deemed to have abandoned the premises to produce relevant identification and legal documents to gain access to the premises for purposes of removing the tenant's property.
87. The Committee agreed with the proposal to require a landlord to keep a register of their tenant's next of kin; resolved to reduce the period after which an abandoned tenancy terminates to thirty (30) days; and agreed to include the failure to maintain premises as a ground for abandonment; and the production of relevant identification and legal documents to gain access to the rented premises for purposes of removing the property from abandoned premises.

Clause 62

88. The Committee received a memorandum touching on this Clause from FSD Kenya. They noted that the marginal note of the Clause is unclear. The Committee noted that the marginal note for Clause 62 seemed to be conjoined with the note for Clause 63, thereby causing confusion.

Clause 63

89. The Committee received a memorandum touching on this Clause from FSD Kenya. They noted that the powers of the Cabinet Secretary to exempt premises from all or any of the provisions of the Act were very wide. The Committee noted the concern by FSD Kenya that blanket exemptions may render the Act ineffective.
90. The Committee observed that it was equally important for the Cabinet Secretary to be granted powers to make regulations and that the Constitution requires any such regulations to be tabled before Parliament for approval as a safeguard against abuse of delegated powers. They agreed to amend the Clause to subject any exemption made by the Cabinet Secretary to approval by the National Assembly.

Clause 64

91. The Committee received a memorandum touching on this Clause from FSD Kenya. It was their submission that the nature of regulations and timelines within which they should be made should be agreed during public stakeholder engagement to prevent unnecessary delays.
92. The Committee resolved to amend the Clause to require the regulations to operationalize the Tribunal to be made within six (6) months of the commencement of the Act.

Clause 65

93. When they appeared before the Committee, representatives from the State Department for Housing, the State Department for Trade, the Rent Restriction Tribunal, the Business Premises Restriction Tribunal and the Office of the Attorney General and Department of Justice proposed that the Distress for Rent Act be retained in its current form.
94. The Committee agreed to amend clause 65 to delete the proposed repealing of the Distress for Rent Act.

General Submissions on the Bill

95. In addition to the submissions received relating to specific provisions of the Bill, the Committee received the following general submissions from the cited stakeholders—

FSD Kenya

96. FSD Kenya proposed that the Bill—

- (a) integrate the need for a digital interface where all Tribunal applications and determinations are available on a digital platform to promote strict timelines kept by the Tribunal and the availability of data on market rentals.
- (b) assist in the creation of credit histories of tenants to allow them to access financial products.
- (c) integrate incentives for landlords that intentionally invest in climate-smart, green, affordable housing for Kenyans.

97. They further submitted that the timeframe for public participation should be lengthened.

ISK

98. ISK submitted the following—

- (a) rent control has various negative effects including asset dilapidation and mismanagement; site sub-optimization; losses to urban leaseholders; artificial short supplies of controlled properties; slowed urban renewal and supply of new units;
- (b) the proposed Tribunal has been given so many powers that it will render it ineffective;
- (c) the Bill has not clearly brought distinction between rent and service charge;
- (d) the Bill proposes to repeal the Distress for Rent Act (Cap 293) without offering an alternative means for enforcing rent payment for those premises falling outside the Bill;
- (e) distress for Rent is a simple to understand, straight forward way of resolving rent arrears disputes within 14 days with minimum costs to the parties; and
- (f) the Bill threatens to reverse the growth of the real estate market by restricting rent escalation. It will dissuade investors from investing in real estate, increase the rate of default in rent payment and make the landlord unable meet financial obligations.

Civil Society Reference Group

99. They proposed the following—

- (a) substitution of all references to “landlord” in all laws relating to renting of business and residential premises with 'Landholder' or 'Lessor';
- (b) substitution of all references to “tenant” in all laws relating to renting of business or residential facilities with “leaseholder” or “lessee”; whichever the Committee will deem most appropriate.
- (c) a re-engineering of the deteriorating relationship between rental property owners and their consumers;
- (d) that the Bill law should encourage smaller residents' organizations to form federations capable of rallying and amplifying the voices of tenants across the country;
- (e) that county governments be tasked under the law to develop manuals for public education on the rights and responsibilities of rental property owners and tenants;
- (f) that county governments be tasked under the law, in collaboration with neighbourhood groups and their federations, to come up with standardized manuals, handbooks, pamphlets and infomercials on the Codes of Practice for property owners and tenants; and
- (g) that the law dictate that all tenants have a certain set of responsibilities inherent to their rental agreements, including payment of rent, responsible use of amenities, and safe disposal of waste.

Samuel Mutahi Gathogo

100. Mr. Gathogo proposed that an elaborate distress for rent procedure to mirror the existing provisions of the Distress for Rent Act, Cap. 293 and that the tribunal be decentralized to facilitate access by all concerned parties.

James Josiah

101. Mr. Josiah was of the view that—

- (a) the imposition of criminal penalties to a landlord seeking to enforce his or her rights is draconian and leaves them powerless in the landlord-tenant relationship. According to him, the Bill provides several loopholes for tenants to avoid paying rent knowing that they will easily stay rent free in a premise as the aggrieved landlord struggles to get a hearing date before an overwhelmed tribunal; and
- (b) the Bill should be placed aside to allow for further consultations with all interested parties, more particularly landlords.

James T. Maringa

102. Mr. Maringa proposed—

- (a) the creation of a government-funded Tenant Rent Distress Fund, where tenants in serious rent distress can apply through their landlords for relief;
- (b) involvement of landlords, plot-owners and tenants in formulation and consideration of the Bill; and
- (c) commission of a study to obtain input on how best the sector can be regulated, moderated and managed.

Licensed Auctioneers of Kenya

103. The Licensed Auctioneers of Kenya proposed that—

- (a) the role of auctioneers in the collection of rent arrears by the Landlord as currently regulated under the Distress for Rent Act, Cap. 293 be retained;
- (b) the provisions of the Auctioneers Act and Rules be retained by Parliament as they have served the landlord and tenants fairly;
- (c) the landlord or his agent be solely responsible for issuing instructions for distress or eviction and that the Auctioneer as a court officer ensure that the instructions comply with the law;
- (d) auctioneers be empowered to arbitrate between the landlord and tenant as a court officer in line with Article 159 of the Constitution;
- (e) the role of the auctioneer and the Valuer as contained in the Auctioneers' Act be amplified to enable the auctioneers take more responsibility in the storage and sale of distrained goods;
- (f) the Auctioneers' Act be amended to allow auctioneers to handle their own disciplinary issues like the Law Society of Kenya; and
- (g) that auctioneers be empowered to assist the Tribunal to do its work.

104. Mr. Ndongye proposed the inclusion of a clause or clauses to protect the monies paid as deposits by tenants to landlords. Under his proposal, a trustee will hold and administer the funds for the benefit of the parties and only assume a legal and financial (fiduciary) responsibility and stewardship of the funds involved in the deposits for a small reasonable fee.

Committee's views on the general submissions on the Bill

105. The Committee noted the general submissions made by the FSD Kenya, the ISK, the Civil Society Reference Group, Mr. Samuel Mutahi Gathogo, Mr. James Josiah, Mr. James T. Maringa, the Licensed Auctioneers of Kenya and Mr. Derek Ndongye. The Committee noted that the submissions enriched the Committee's perspective on the Bill, and they have to a certain extent guided the Committee during its consideration of the Bill.

4.0 COMMITTEE'S OBSERVATIONS

106. The Committee observed as follows:

- (1) The Landlord and Tenant Bill, 2021 (National Assembly Bill No. 3 of 2021) is a Bill which should cater fairly for the interests of both the landlords and the tenants;
- (2) There was need to amend the Bill to allow a tenant to terminate the tenancy at any time before the end of the tenancy subject to the proposals on the notice period made with regard to Clause 19 of the Bill; and the notice period prescribed under clause 25(1) (a) of the Bill;
- (3) There was need to amend Clause 36 of the Bill to subject the Tribunal's determination of any rent payable to the recommendation of a practising Valuer and to reduce the period within which any notice relating to business premises rent assessed by a Tribunal may be given from two years to one year;
- (4) Clause 60 of the Bill should be amended to require a landlord to keep a register of their tenant's next of kin; reduce the period after which an abandoned tenancy terminates to thirty (30) days; include the failure to maintain premises as a ground for abandonment; and require the production of relevant identification and legal documents to gain access to the rented premises for purposes of removing the property from abandoned premises;
- (5) There was need to amend Clause 63 of the Bill to subject any exemption made by the Cabinet Secretary to approval by the National Assembly as a safeguard against abuse of delegated powers;
- (6) There was need to amend Clause 64 of the Bill to require the regulations to operationalize the Tribunal to be made within six (6) months of the commencement of the Act; and
- (7) The Distress for Rent Act. Cap. 393 provides a clear mechanism in case of distress, and there was therefore need to amend Clause 65 of the Bill to delete the proposed repeal of the Distress for Rent Act. Cap. 393 to maintain the good provisions of the Act.

5.0 COMMITTEE'S RECOMMENDATION

107. The Committee having considered the Landlord and Tenant Bill, 2021 (National Assembly Bill No. 3 of 2021), stakeholders' comments on the Bill and the above observations recommends to the House to pass the Bill with amendments. The Committee shall propose amendments to **Clauses 3, 4, 7, 10, 12, 13, 17, 18, 19, 23, 25, 26, 27, 29, 36, 44, 46, 50, 59, 60, 63, 64 and 65** of 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 17/8/2021

SCHEDULE OF AMENDMENTS

CLAUSE 2

Clause 2 of the Bill be amended by deleting the definition “Tribunal” and substituting therefor the following new definition—

“Tribunal” means the Landlord and Tenant Tribunal and the regional Tribunals established under section 4;”

CLAUSE 3

Clause 3 of the Bill be amended—

- (a) in subclause (1)(a) by deleting subparagraph (iii) and substituting therefor the following subparagraph—

“(iii) residential premises whose monthly rent exceeds such amount as the Cabinet Secretary may prescribe, with the approval of the National Assembly.”

- (b) by inserting the following new subclause immediately after subclause (1)—

“(1A) The Cabinet Secretary shall prescribe the initial amount under subsection (1)(a)(iii) within six months of the commencement of this Act.”.

CLAUSE 4

The Bill be amended by deleting Clause 4 and substituting therefor the following Clause—

Establishment
of Tribunal.

4. (1) There is hereby established The Landlord and Tenant Tribunal to have Jurisdiction within the territory of the republic of Kenya.

(2) The Chief Justice shall by notice in the Gazette establish such regional Tribunals having Jurisdiction in such areas as the Chief Justice may consider necessary.

(3) The Judicial Service Commission shall appoint—

(a) the Chairperson of the Tribunal who shall be qualified to be appointed a Judge of the High Court; and

(b) Deputy Chairpersons, who shall be Advocates of the High Court who have served for at least five years, to preside over regional Tribunals.

(4) The Chairperson and the Deputy Chairperson of the Tribunal shall serve on a full-time basis.

(5) The Chairperson and a Deputy Chairperson of the Tribunal shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(6) A person shall not qualify for appointment under this section unless the person meets the requirements of Chapter Six of the Constitution.

(7) For the purpose of exercising its functions under this Act, the Tribunal shall be presided over by the Chairperson or a Deputy chairperson.

CLAUSE 7

Clause 7 of the Bill be amended in subclause (2) by deleting the words “High Court” Appearing immediately after the words “to the” and substituting therefor the words “Environment and Land Court”.

CLAUSE 10

Clause 10 of the Bill be amended by deleting subclause (1) and substituting therefor the following subclause—

“(1) The Chairperson of the Tribunal shall—

- (a) assign duties to a Deputy Chairperson; and
- (b) preside over the Tribunal in matters where there are complex and substantial issues of law and which may be referred to the Chairperson by a Deputy Chairperson.”

CLAUSE 12

Clause 12 of the Bill be amended—

- (a) in subclause (1) by deleting the words “to a” appearing immediately after the word “secretary” and substituting therefor the words “and chief executive officer of the”;
- (b) in the opening statement of subclause (2) by deleting the word “A” and substituting therefor the word “The”.

CLAUSE 13

Clause 13 of the Bill be amended—

- (a) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) is incapacitated from performing the duties of the office by reason of prolonged physical or mental illness certified by a registered medical practitioner;”
- (b) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) is found guilty of professional misconduct by a professional body in which he or she is a member;”

CLAUSE 17

Clause 17 of the Bill be amended—

- (a) in subclause (2) by deleting the words “fair rent” appearing immediately after the words “determine the” and substituting therefor the words “rent payable”;
- (b) in subclause (4) by deleting the words “fair rent” appearing immediately after the words “determine the” and substituting therefor the words “rent payable”.

CLAUSE 18

Clause 18 of the Bill be amended in subclause (4) by deleting paragraph (d);

CLAUSE 19

Clause 19 of the Bill be amended in subclause (1)(a) by inserting the words “which shall be on the lapse of at least two months, in the case of residential premises, and three months, in the case of business premises, after the giving of notice”.

CLAUSE 23

Clause 23 of the Bill be deleted.

CLAUSE 25

Clause 25 of the Bill be amended—

- (a) in subclause (1)(a) by deleting the words “twenty-four months in the case of business premises and not less than twelve months” appearing immediately after the words “not less than” and substituting therefor the words “three months in the case of business premises and not less than two months”;
- (b) in subclause (1)(c) by deleting the words “three consecutive months” appearing immediately after the words “rent for” and substituting therefor the words “one month”.

CLAUSE 27

Clause 27 of the Bill be amended in subclause (1)(b) by deleting the words “two months” appearing immediately after the words “period of” and substituting therefor the words “one month”.

CLAUSE 29

Clause 29 of the Bill be amended in subclause (1)(b) by deleting the words “other than change of user” appearing immediately after the word “purpose”.

CLAUSE 36

Clause 36 of the Bill be amended—

- (a) in the opening statement of subclause 2(a) by inserting the words “on the recommendation of a practicing valuer” immediately after the word “tenancy”;
- (b) in subclause (3)(a)(i) by deleting the words “two years” and substituting therefor the words “one year”.

CLAUSE 44

Clause 44 of the Bill be amended in subclause (1) by deleting the words “not less than” appearing immediately after the words “law in force, on giving”.

CLAUSE 46

Clause 46 of the Bill be amended—

- (a) in subclause (1)(b) by inserting the words “except for” immediately after the words “the tenancy”;
- (b) inserting the following new subclause immediately after subclause (2)—

“(3) A landlord shall provide a tenant with receipts for reasonable expenses incurred for repairing premises that the landlord proposes to deduct from any security deposit held.”

CLAUSE 50

Clause 50 of the Bill be amended in subclause (1) by inserting the following new paragraph immediately after paragraph (c)—

- “(d) knowingly serves a notice containing false or misleading information,”.

CLAUSE 59

Clause 59 of the Bill be amended—

- (a) in subclause (1) by deleting the words “sixty” appearing immediately after the word “terminated” and substituting therefor the words “thirty”;
- (b) in subclause (2) by deleting the words “sixty” appearing immediately after the word “terminated” and substituting therefor the words “thirty”;
- (c) in subclause (3)(b) by inserting the words “upon production of relevant identification or legal documents” immediately after the words “tenants’ property”.

CLAUSE 60

Clause 60 of the Bill be amended—

- (a) in subclause (1) by deleting the words “sixty” appearing immediately after the word “terminated” and substituting therefor the words “thirty”;
 - (b) in subclause (2)(b) by inserting the words “upon production of relevant identification or legal documents” immediately after the words “tenants’ property”.
-

CLAUSE 63

Clause 63 of the Bill be amended by inserting the words “with the approval of the National Assembly” immediately after the word “Act”.

CLAUSE 64

Clause 64 of the Bill be amended by deleting the words “may make regulations for giving better effect to the provisions of this Act” and substituting therefor the words “shall make regulations for giving better effect to the provisions of this Act within six months of the commencement of the Act”.

CLAUSE 65

Clause 65 of the Bill be amended by deleting the words “Distress for Rent Act” appearing immediately after the word “The”.

(i)

Minutes

of meetings of the Committee

MINUTES OF THE FOURTY THIRD (43RD) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 13TH AUGUST 2021 AT 3.00 P.M. AT MASHUA ROOM, SERENA HOTEL MOMBASA

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Omar Mwinyi Shimbwa, M.P.
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Samuel Arama, M.P.
6. Hon. Ali Wario Guyo, M.P.
7. Hon. Dominic Koskei, M.P.
8. Hon. Gideon Mulyungi, M.P.
9. Hon. Janet Nangabo, M.P.
10. Hon. Shadrack John Mose, M.P.
11. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

12. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
13. Hon. Abdul Rahim Dawood, M.P.
14. Hon. Johnson Many Naicca, M.P.
15. Hon. Ahmed Abdisalan Ibrahim, M.P.
16. Hon. Ahmed Bashane Gaal, M.P.
17. Hon. George Aladwa Omwera, M.P.
18. Hon. Kulow Maalim Hassan, M.P.
19. Hon. Mercy Wanjiku Gakuya, M.P.

SECRETARIAT

- | | | |
|------------------------|---|--------------------|
| 1. Mr. Ahmed Salim | - | Clerk Assistant II |
| 2. Mr. Ronald Walala | - | Legal Counsel |
| 3. Mr. Eric Kariuki | - | Research Officer |
| 4. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 5. Ms. Zainab Wario | - | Sergeant-at-arm |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Ms. Mercy Mutuku | - | Legislative Fellow |
| 8. Mr. Boniface Matano | - | Legislative Fellow |
| 9. Ms. Lilian Surei | - | Secretary |

MIN No. TPWH 249/2021: PRELIMINARIES

The Chairman called the meeting to order at fifteen minutes to three o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to adopt the Report on consideration of the Landlord and Tenant Bill, 2021.

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

MIN No. TPWH 250/2021:

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

Minutes of the 42nd sitting which was held on 13th August 2021 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Ali Wario, MP, and seconded by the Hon. Samuel Arama, MP.

MIN NO. TPWH 251/2021:

**ADOPTION OF THE REPORT ON
CONSIDERATION OF THE LANDLORD AND
TENANT BILL, 2021**

The Committee having considered the Landlord and Tenant Bill, 2021 (National Assembly Bill No. 3 of 2021), stakeholders' comments on the Bill and its observations as contained in the Report, resolved to recommend to the House to pass the Bill with amendments. The Committee shall therefore propose amendments to Clauses 3, 4, 7, 10, 12, 13, 17, 18, 19, 23, 25, 26, 27, 29, 36, 44, 46, 50, 59, 60, 63, 64 and 65 of the Bill. The Legal Counsel directed to prepare the schedule of amendments to be attached to the Report.

Adoption of the Report

The Committee to adopted its Report on the Landlord and Tenant Bill, 2021 (National Assembly Bill No. 3 of 2021), after having been proposed by Hon. Samuel Arama and seconded by Hon. Gideon Mulyungi.

MIN No. TPWH 252/2021:

ADJOURNMENT

There being no other business, the sitting was adjourned at ten minutes past four o'clock. Next meeting to be held on Saturday, the 14th day of August 2021, at 9:30am.

Signed.....



(Chairperson)

Date.....

14/8/2021

MINUTES OF THE FOURTY SECOND (42ND) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 13TH AUGUST 2021 AT 9.30 A.M. AT MASHUA ROOM, SERENA HOTEL MOMBASA

MEMBERS PRESENT

1. Hon. David L. Pkosing, M.P. - Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Omar Mwinyi Shimbwa, M.P.
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Samuel Arama, M.P.
6. Hon. Ali Wario Guyo, M.P.
7. Hon. Dominic Koskei, M.P.
8. Hon. Shadrack John Mose, M.P.
9. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

10. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
11. Hon. Abdul Rahim Dawood, M.P.
12. Hon. Johnson Many Naicca, M.P.
13. Hon. Ahmed Abdisalan Ibrahim, M.P.
14. Hon. Ahmed Bashane Gaal, M.P.
15. Hon. George Aladwa Omwera, M.P.
16. Hon. Gideon Mulyungi, M.P.
17. Hon. Janet Nangabo, M.P.
18. Hon. Kulow Maalim Hassan, M.P.
19. Hon. Mercy Wanjiku Gakuya, M.P.

SECRETARIAT

- | | | |
|------------------------|---|--------------------|
| 1. Mr. Ahmed Salim | - | Clerk Assistant II |
| 2. Mr. Ronald Walala | - | Legal Counsel |
| 3. Mr. Eric Kariuki | - | Research Officer |
| 4. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 5. Ms. Zainab Wario | - | Sergeant-at-arm |
| 6. Mr. Collins Mahamba | - | Audio Officer |
| 7. Ms. Mercy Mutuku | - | Legislative Fellow |
| 8. Mr. Boniface Matano | - | Legislative Fellow |
| 9. Ms. Lilian Seurei | - | Secretary |

MIN No. TPWH 245/2021:

PRELIMINARIES

The Chairman called the meeting to order at fifteen minutes to ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting to consider the Landlord and Tenant Bill, 2021, to consider the stakeholder submissions, and making recommendations on the Bill.

The agenda of the meeting was therefore adopted after being proposed by the Hon. Dominic Koskei, MP and seconded by the Hon. Shadrack Mose, MP.

MIN No. TPWH 246/2021:

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

1. Minutes of the 39th sitting which was held on 3rd August 2021 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Ali Wario, MP, and seconded by the Hon. Dominic Koskei, MP.
2. Minutes of the 40th sitting which was held on 5th August 2021 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Tom Odege, MP, and seconded by the Hon. Dominic Koskei, MP.
3. Minutes of the 41st sitting which was held on 10th August 2021 were confirmed as a true record of the proceedings, after having been proposed by the Hon. Shadrack Mose, MP, and seconded by the Hon. Samuel Arama, MP.

MIN NO. TPWH 247/2021:

**CONSIDERATION OF THE LANDLORD AND
TENANT BILL, 2021 (N.A. BILL NO. 3 OF 2021)**

The Committee considered the Bill clause by clause, while noting the submissions received from the stakeholders who responded to the calls by the Clerk of the National Assembly for submission of memoranda vide a newspapers' advertisements dated 20th April 2021. The Committee noted that the Committee had received written submissions from the following parties, who were thereafter invited to make their submissions on 29th July 2021:

- (a) Mr. Samuel Mutahi Gathogo
- (b) Mr. James Josiah
- (c) Mr. Geoffrey Kang'ethe
- (d) Mr. James T. Maringa
- (e) Mr. Derek Ndonge, Advocate
- (f) Licensed Auctioneers of Kenya
- (g) Civil Society Reference Group
- (h) National Gender & Equality Commission
- (i) Institution of Surveyors of Kenya (ISK)
- (j) FSD Kenya
- (k) Kenya Private Sector Alliance (KEPSA)
- (l) Institute of Certified Public Accountants of Kenya (ICPAK)

The Committee, having considered the Bill, made the following observations:

1. Clause 3 of the Bill should be amended to require the Cabinet Secretary to prescribe the threshold within six months of the coming into force of the Act;
2. Clause 4 of the Bill should be amended to rename the Tribunal as the Landlord and Tenant Tribunal; and to provide for one Chairperson and room for the appointment of several Deputy Chairpersons who may be designated to preside over sittings of the Tribunal as and when required across the country to ensure access to justice. The Committee agreed with this proposal as it would ensure access to justice across the country in a timely manner.

3. Clause 7 of the Bill requires amendment to replace the reference to the High Court with the Environment and Land Court to align the Bill with the new constitutional dispensation.
4. Clause 10 of the Bill should be amended to separate the roles of the Chairperson and the chief executive officer of the Tribunal;
5. Clause 12 of the Bill should be amended to make the secretary of the Tribunal its chief executive officer;
6. Clause 13 of the Bill should be amended to subject the removal of a member of the Tribunal on account of illness to certification by a qualified medical practitioner; and include of professional misconduct by a member belonging to a professional association as a ground for removal from the Tribunal;
7. Clause 17 of the Bill should be amended to delete the term “fair rent” and replace it with the term “rent payable” for purposes of clarity;
8. Clause 18 of the Bill should be amended to delete the provision of access to persons with disabilities as a basis for increasing rent. The law currently requires that design of any new building must provide access for persons with disability;
9. Clause 19 of the Bill should be amended to provide for a notice period of at least at least sixty (60) days for a residential property and ninety (90) days for a commercial premises to reduce conflicts;
10. Clause 23 of the Bill should be amended to the penalties in the Clause be shifted to Clause 50 or 55 for logical flow;
11. Clause 25 of the Bill should be amended to reduce the default period to one (1) month for both residential and business premises;
12. Clause 26 of the Bill should be amended to allow a tenant to terminate the tenancy at any time before the end of the tenancy subject to the proposals on the notice period made with regard to Clause 19 of the Bill; and the notice period prescribed under clause 25(1) (a) of the Bill;
13. Clause 27 of the Bill should be amended to reduce the default period to one (1) month for both residential and business premises;
14. Clause 29 of the Bill should be amended to delete of the words “other than change of user” in subclause (1)(b) as a change of use is beneficial for the real estate sector, subject to giving reasonable notice;
15. Clause 36 of the Bill should be amended to subject the Tribunal’s determination of any rent payable to the recommendation of a practicing Valuer and to reduce the period within which any notice relating to business premises rent assessed by a Tribunal may be given from two years to one year;
16. Clause 44 of the Bill should be amended to delete the words “not less than” to provide for a definite notice period;
17. Clause 46 of the Bill should be amended to require a landlord to provide copies of receipts for reasonable expenses incurred for repairing premises;
18. Clause 50 of the Bill should be amended to include the offences and penalties contained in Clause 23 and 43(2) for logical flow of the Bill;
19. Clause 59 of the Bill should be amended to reduce the period within which tenancy is to terminate upon death or dissolution of a tenant from sixty (60) to thirty (30) days; and to require the production of relevant identification and legal documents to gain access to the rented premises for purposes of removing a dead tenant’s property;

20. Clause 60 of the Bill should be amended to require a landlord to keep a register of their tenant's next of kin; reduce the period after which an abandoned tenancy terminates to thirty (30) days; include the failure to maintain premises as a ground for abandonment; and require the production of relevant identification and legal documents to gain access to the rented premises for purposes of removing the property from abandoned premises;
21. Clause 63 of the Bill should be amended to subject any exemption made by the Cabinet Secretary to approval by the National Assembly as a safeguard against abuse of delegated powers;
22. Clause 64 of the Bill should be amended to require the regulations to operationalize the Tribunal to be made within six (6) months of the commencement of the Act; and
23. Clause 65 of the Bill should be amended to delete the proposed repeal of the Distress for Rent Act. Cap. 393.

Way Forward

1. The Committee to adopt the Report in its afternoon session upon finalization of the draft by the Secretariat.
2. The Committee Members were encouraged to keenly go through the Distress for Rent Act. Cap. 393 and the Landlord and Tenant Bill, 2021. The Committee noted that even after tabling its Report, if there will arise a need for further amendments, the Committee can sit and make the necessary proposals before the Committee of the whole House.

MIN No. TPWH 248/2021:

ADJOURNMENT

There being no other business, the sitting was adjourned at two o'clock. Next meeting to be held same day on Friday, the 13th day of August 2021, at 3pm.

Signed.....

(Chairperson)

Date.....13/8/2021

MINUTES OF THE THIRTY SEVENTH (37TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 29TH JULY 2021 AT 10.00 A.M. AT 5TH FLOOR, CONTINENTAL HOUSE

MEMBERS PRESENT

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

MEMBERS ABSENT WITH APOLOGY

16. Hon. Gathoni Wamuchomba, M.P. - Vice Chairperson
17. Hon. George Aladwa Omwera, M.P.
18. Hon. Gideon Mulyungi, 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. Ms. Euridice Nzioka | - | Audio Officer |
| 5. Ms. Mercy Mutuku | - | Legislative Fellow |
| 6. Mr. Boniface Matano | - | Legislative Fellow |

IN ATTENDANCE

- | | | |
|---------------------------------|---|---|
| 1. Mr. Charles Hinga | - | Principal Secretary, Housing & Urban Devlpt. |
| 2. Amb. Johnson Weru | - | Principal Secretary, Trade & Enterprise Devlpt. |
| 3. Mr. Patrick Bucha | - | Housing Secretary |
| 4. Mr. Hillary K. Korir | - | Chairperson, Rent Restrictions Tribunal |
| 5. Mr. Nguthari Cyprian Mugambi | - | Chairperson, Bus. Prem. Rent Tribunal |
| 6. Ms. Beatrice Mathenge | - | Deputy Chairperson, Rent Restrictions Tribunal |
| 7. Mr. Said O. Warfa | - | SA, SD for Trade & Enterprise Development |
| 8. Ms. Elizabeth M. Ng'ang'a | - | Chief State Counsel, OAG/DOJ |
| 9. Ms. Sheila Mwathi | - | ICPAK |
| 10. Ms. Nancy Moraa | - | ICPAK |
| 11. CPA Philip Kakai | - | ICPAK |
| 12. Ms. Seeta Shah | - | FSD Kenya |
| 13. Mr. Nathan Pala, Adv. | - | Licenced Auctioneers |
| 14. Mr. James Josiah | - | Licensed Auctioneer |
| 15. Mr. Mutahi Gathogo | - | Landlord |
| 16. Mr. James T. Maringa | - | Founder, INSEK Properties |

Stakeholders and Other Members of the Public who attended Virtually

17. Mr. Wafula Luasi Nabutola	-	Chairman, Building Surveyors Reg. Board
18. Ms. Njeri Njoroge	-	Institute of Surveyors of Kenya
19. Mr. Suba Churchill	-	Presiding Convener, CSRG
20. Mr. Peter S. Kariuki	-	Institute of Quantity Surveyors of Kenya
21. Mr. Derek Ndonge	-	Advocate of the High Court
22. Mr. Peter Thairu	-	KEPSA
23. Ms. Rose Mwaura	-	CEO, ISK
24. Ms. Rosemary Wanjiru	-	KEPSA Land Board (KFRA)
25. Vlr. Jesse Kihoro	-	ISK
26. Mr. Kuria Paul	-	National Gender and Equality Commission
27. Ms. Damaris Toboso	-	Women Land Rights Movement
28. Mr. Caleb Ngala	-	Pamoja Trust
29. Ms. Stellar Ekiro Sululu	-	Women and Land Movement Mombasa
30. Ms. Diana Wachira	-	Pamoja Trust
31. Mr. Humphrey Otieno	-	Kenya Social Movement Network
32. Mr. Rafiki Kamweru	-	Pamoja Trust
33. Amb. Zia Beja	-	Coast Professionals Forum
34. Mr. Hedrick Mboya	-	Kenya Social Movement Network Coordinator
35. Mr. Olando Sam	-	Pamoja Trust
36. Ms. Angeline Malaswai	-	Vision of the Blind
37. Mr. John Tsuma	-	Buxton Tenants Secretary General
38. Mwalimu Mutemi wa Kiama		
39. Ms. Betty Sungura		
40. Mr. Caleb Nyoiro Ngala		
41. Ms. Catherine Murache		
42. Mr. Dennis Muhindi		
43. Mr. Edwin Shamir		
44. Ms. Elizabeth Kitagha		
45. Mr. Gikonyo Gitonga		
46. Mr. Hamisi		
47. Ms. Jane Irene Maina		
48. Ms. Julia Kariuki		
49. Mr. Mark Lavi		
50. Mr. Okwaro		
51. Mr. Paul Kuria		
52. Mr. Peter S. Kariuki		
53. Mr. Rafiki Kamweru		
54. Mr. Stanley Maina		
55. Ms. Stella Sululu		
56. Ms. Veronica Koech		
57. Mr. Victor Ogallo		
58. Ms. Florence Weka		
59. Mr. Andrew Mativo		
60. Ms. Maureen Atieno		
61. Ms. Dorothy Muchiri		

MIN No. TPWH 206/2021:**PRELIMINARIES**

The Chairman called the meeting to order at ten o'clock followed by a word of prayer. The Chairman informed the Honorable Members that the Committee was meeting stakeholders to receive their views on the Landlord & Tenant Bill, 2021. The Committee noted that in response to the advertisements dated 20th April 2021, the Committee received memoranda from the following:

1. Mr. Samuel Mutahi Gathogo
2. Mr. James Josiah
3. Mr. Geoffrey Kang'ethe
4. Mr. James T. Maringa
5. Mr. Derek Ndonye, Advocate
6. Licensed Auctioneers of Kenya
7. Civil Society Reference Group
8. National Gender & Equality Commission
9. Institution of Surveyors of Kenya (ISK)
10. FSD Kenya
11. Kenya Private Sector Alliance (KEPSA)
12. Institute of Certified Public Accountants of Kenya (ICPAK)

The Committee noted that all the twelve stakeholders and Members of the public were therefore invited to make their oral submissions on the Bill. The Committee had also invited the State Department for Housing, State Department for Trade & Enterprise Development, Rent Restriction Tribunal (RRT), Business Premises Restriction Tribunal (BPRT), and the Office of the Attorney General & Department of Justice (AG&DOJ) to assist the Committee in clarifying any issues which may arise in the course of its hearings.

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

MIN No. TPWH 207/2021:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

Confirmation of minutes of the previous sitting was deferred.

MIN NO. TPWH 208/2021:

SUBMISSIONS FROM THE FSD KENYA ON THE LANDLORD & TENANT BILL, 2021

FSD Kenya was represented by Ms. Seeta Shah. In her submissions before the Committee, she noted that clause 7 of the Bill provides that a tribunal shall determine any dispute within a period of three months from the date the dispute is lodged. She explained that 3 months was too long a period to allow for a Tribunal to determine disputes, and additionally there was no definition of when a date shall be 'immediately fixed' after the lapse of 3 months.

She further submitted that clause 25 (1)(c) provides that a landlord shall be entitled to terminate the tenancy without reference to the Tribunal on the ground that the tenant has defaulted in the payment of rent for three consecutive months following the last date such rent became due and payable. In her view, this appeared to contradict clause 27 (1) (b) and therefore suggest it is reduced to 2 months as stated in clause 27.

FSD Kenya further submitted that clause 59 and clause 60 state that a landlord must keep a tenant's goods and not reclaim a unit 60 days after a tenant's death, or if the tenant abandons the property. This, in their opinion, was too long a loss for a landlord to bear for situations out of the landlord's control. She further noted that subclause 59(c) would allow the landlord to claim the property was not safe or hygienic, therefore undermining the purpose of the clause. They recommended that landlords should be encouraged to keep a register to notify next of kin, and then take over properties within 14 days of abandonment and 30 days of death.

FSD Kenya further noted that clause 3(1)(iii) states that "the Act will not apply to residential premises whose monthly rent does not exceed such amount as the Cabinet secretary may prescribe." They further noted that clause 63 provides that the Cabinet Secretary may by notice

in the Gazette, exempt certain categories of premises from all or any of the provisions of this Act. It was their submission that these are very sweeping provisions. They suggested that it was critical to have an industry agreed rental for enactment of the Act, and the basis and frequency with which this will be reviewed. If the rent level prescribed by the Cabinet Secretary is too low, it will preclude most of the vulnerable tenancies. If the level is too high, it will bring too much work to the Tribunal making its operations unsustainable.

MIN NO. TPWH 209/2021:

**SUBMISSIONS FROM THE INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS OF
KENYA (ICPAK) ON THE LANDLORD &
TENANT BILL, 2021**

In their submissions, ICPAK proposed an amendment to clause 17 to insert a new paragraph (f) immediately after (e) to read “professional misconduct in case of members belonging to professional associations”. The amendment is meant to enhance professionalism and strengthen the regulatory role of professional institutions.

On clause 17(1), ICPAK was of the view that the Bill was not clear on the amount of security deposit the landlord can ask legally. They submitted that there was need to standardize the security deposit by fixing it to one to two months depending on what amenities the residential premises offer to a tenant.

On clause 19(b), ICPAK submitted that the Bill should state the number of days required by the tenant to terminate the tenancy agreement before applying for eviction to tribunal. Further they explained that the Bill does not provide for the time required by the tribunal in determination of eviction of the tenant. They therefore proposed a new clause 19(c) to read “where an application to terminate the tenancy has been made, the tribunal shall make determination as soon as practicable and not more than 21 days from the day of application”. This is meant to provide clarity for planning by the tenant/landlord and curb abuse by either party.

They further proposed amendments to clauses 21, 23, 24, 29, 39, 40, 42, 43, 50, 59 and 62(b) which the Committee will consider during its report writing session.

MIN NO. TPWH 210/2021:

**SUBMISSIONS FROM MR. SAMUEL MUTAHI
GATHOGO ON THE LANDLORD & TENANT
BILL, 2021**

In his submissions before the Committee, Mr. Samuel Mutahi explained that he was a landlord of various residential premises within the country and hence competent to air his views and standpoint in so far as the Landlord & Tenant Bill 2021 is concerned.

He submitted that he had misgivings and reservations with the proposed Bill for two reasons namely:

1. Lack of an elaborate rent distress procedure; and
2. Incapacity of the proposed tribunal.

He therefore recommended the following:

1. Establishment of an elaborate distress for rent procedure to mirror the existing provisions of the Distress for Rent Act;
2. Maintain and/or modify the existing tribunals to handle disputes touching on the landlord-tenant relationship and abandon the single pronged approach of creating one tribunal to handle all disputes aforesaid; and

3. Decentralize the tribunals to facilitate access by all concerned parties and importantly align them with the principle of devolution.

MIN NO. TPWH 211/2021:

**SUBMISSIONS FROM MR. JAMES T. MARINGA
ON THE LANDLORD & TENANT BILL, 2021**

In his submissions before the Committee, Mr. James T. Maringa proposed for creation of a government-funded Tenant- Rent Distress Fund, where tenants in serious rent distress can apply through their landlords. He explained that this proposal was informed by the Covid19 pandemic experience, and that this can be operationalized by the Rent Tribunal. He submitted that it was very unfair to ask a small landlord, some of whom have no other source of income, to allow a non-paying tenant beyond even for a month.

He further submitted that the word Landlord is used wrongly since plot owners were lumped together with people who own big chunks of land (acres of land or many plots). He explained that plot owners were in business just like shopkeepers and are also indebted, and therefore proposed separation of the real landlords and plot owners while applying law.

MIN NO. TPWH 212/2021:

**SUBMISSIONS FROM MR. JAMES JOSIAH ON
THE LANDLORD & TENANT BILL, 2021**

In his submissions before the Committee, Mr. James Josiah explained that Distress for Rent Act -which the Bill proposes to repeal- had very important and elaborate procedures on holding of tenant's goods, proclamation of the goods, among so many others which are now all missing in the new Bill. He therefore recommended for an establishment of an elaborate distress for rent procedure in the Bill to mirror the existing provisions of the Distress for Rent Act.

MIN NO. TPWH 213/2021:

**SUBMISSIONS FROM MR. GEOFFREY
KANG'ETHE ON THE LANDLORD & TENANT
BILL, 2021**

The Committee noted that Mr. Geoffrey Kang'ethe was absent despite being invited together with other stakeholders. The Committee however noted that his written submissions dated 26th April 2021 will be considered during report writing for the Bill.

MIN NO. TPWH 214/2021:

**SUBMISSIONS FROM MR. DEREK NDONYE,
ADVOCATE ON THE LANDLORD & TENANT
BILL, 2021**

The Committee noted that Mr. Derek Ndonge, although he appeared virtually through the Zoom platform, did not respond to the Committee calls for him to introduce himself and to give his oral submissions. The Committee however noted that his written submissions will be considered during report writing for the Bill.

MIN NO. TPWH 215/2021:

**SUBMISSIONS FROM THE LICENSED
AUCTIONEERS OF KENYA ON THE LANDLORD
& TENANT BILL, 2021**

In their submissions, the Licensed Auctioneers appreciated the role of Auctioneers in the collection of rent arrears by the Landlord and recommended that the provisions of the Distress for Rent Act Cap. 293 be retained in both the Residential and Business Premises and consequently have the two months default period and auctioneers notice for fourteen days, save for the archaic 2500 rent limit ceiling which needs to be removed.

They further recommended to the Committee to have the provisions of Auctioneers Act 9, and Rules No. 5 1996 and Rules 1997 and as amended in 2009 be retained by parliament as they have served the landlord and tenants fairly. They explained that Bill's proposal to have a court officer present when attaching, selling of distressed goods will be duplicating the work of other Court Officers who are Auctioneers. They submitted that they continue being accountable to the court.

On issuance of instructions to distress or evict, they noted that the Landlord or his Registered Agent (e.g., Advocate or Estate Agent) be solely responsible for the same and that the Auctioneer as a court officer has the burden of ensuring that the instruction comply with the law. They submitted that the Auctioneer should also be empowered to arbitrate between the Landlord and Tenant as a court officer in line with Article 159 of the constitution.

Regarding Accounting of the Proceed of Sale, they submitted that the Auctioneers role and the valuers' role as contained in the Auctioneers Act be amplified to enable the Auctioneers take more responsibility in the storing and sale of the restrained goods to enable the Landlord and the tenant satisfied with the process.

MIN NO. TPWH 216/2021:

**SUBMISSIONS FROM THE CIVIL SOCIETY
REFERENCE GROUP ON THE LANDLORD &
TENANT BILL, 2021**

The Civil Society Reference Group was represented by Mr. Suba Churchill who recommended expunging of all references to 'landlord' in all laws relating to renting of business and residential premises and in its place substituting thereof with 'Landholder' or 'Lessor'; and expunging all references to 'tenant' in all laws relating to renting of such business or residential facilities and substituting thereof with 'leaseholder' or 'lessee' whichever the Committee will deem most appropriate.

He further explained that there was need to rethink Landlord-Tenant relationships as the National Assembly seeks to consolidate laws relating to the renting of business and residential premises in Kenya. He proposed that the new law provides for the role of neighborhood associations in the promotion of cordial relationships between rental property owners and tenants.

He further submitted that there was need for awareness and education of rental property owners and tenants on rights and responsibilities. He stated that although the Fourth Schedule of the Constitution places the function of developing housing policy on the National Government, the County governments also have a role to play in housing as provided in Part 2 of the Fourth Schedule under County Planning and Development. The CSRG therefore proposed that as part of the execution of their function of providing civic education, county governments be tasked under the law to develop manuals for public education on the rights and responsibilities of rental property owners and tenants.

MIN NO. TPWH 217/2021:

**SUBMISSIONS FROM THE NATIONAL GENDER
& EQUALITY COMMISSION ON THE
LANDLORD & TENANT BILL, 2021**

The National Gender and Equality Commission made reference to their submissions dated 26th April 2021. They proposed an amendment to clause 4 of the Bill on appointments of members of the Tribunal by the Judicial Service Commission stating that the provisions as proposed did not adhere to the gender principle and also inclusion of persons with disability.

The NGEK also proposed an amendment to clause 10 of the Bill stating that the governance structures proposed in clause(1)(a) which stipulate that the Chairperson shall be the CEO contradicts the principles of good governance. They explained that the Secretary appointed under clause 12 should be the CEO, and therefore proposed amendment to clause 12 to that effect. The Commission also had an issue with clause 13(c) explaining that it was discriminatory to persons with physical and mental disabilities. The proposed to amend the clause by inserting after the word “illness” the words “as certified by a qualified medical practitioner”.

The Commission further proposed deletion of sub clause 18(5)(d) in its entirety because it was unfair to persons with disability. The Commission also proposed an amendment to clause 46(1) to substitute the word “repairs” with “habitability” and to introduce a new subclause stating that “the landlord shall ensure that the premises are accessible to all prospective tenants”.

MIN NO. TPWH 218/2021:

**SUBMISSIONS FROM THE INSTITUTION OF
SURVEYORS OF KENYA (ISK) ON THE
LANDLORD & TENANT BILL, 2021**

The Institution of Surveyors of Kenya had a number of proposed amendments as submitted in the written submissions dated 26th April 2021. This included amendments to clause 2, 3, 4, 5, 10, 17, 18, 19, 20, 25, 29, 32, 33, 36, 42, 44, 59 and 60. The Committee resolved to keenly consider the same during its report writing retreat.

MIN NO. TPWH 219/2021:

**SUBMISSIONS FROM THE KENYA PRIVATE
SECTOR ALLIANCE (KEPSA) ON THE
LANDLORD & TENANT BILL, 2021**

The Kenya Private Sector Alliance proposed amendments to clause 3(1)(a)(ii) on definition of the word ‘service tenancy’, an amendment to clause 3(1)(a)(iii) to reflect that the power to grant the exception to the application of the Bill be vested on a nonpolitical office, rather than to the Cabinet Secretary. They further proposed amendments to clause 5(p), 7(2), 20(1), 25(1)(a), 25(1)(c), 26, 33 and 49.

MIN NO. TPWH 220/2021:

**SUBMISSIONS FROM THE STATE
DEPARTMENT FOR HOUSING, STATE
DEPARTMENT FOR TRADE, RRT, BPRT, AND
THE AG ON THE LANDLORD & TENANT BILL,
2021**

In response to Members’ questions, the office of the Attorney General explained that they normally consult the Ministry on policy before acting on any legal requirements. They further declared that they were in agreement that the landlords, just like the tenants, also need legal protection.

BPRT submitted that as it is now, the parties can only appeal to the High Court on points of law. It was their opinion that an appeal should be open to both facts and the law. They also explained that a clear mechanism on operations of auctioneers should be provided.

The State Department was advised to forward their views and proposals to the Committee in writing for consideration, before the Committee retreats to draft its Report.

MIN No. TPWH 221/2021:


ANY OTHER BUSINESS

The Committee resolved to retreat in Mombasa County in the week of 12th to 16th August 2021 for Report Writing on the Landlord and Tenant Bill, 2021.

MIN No. TPWH 222/2021:

ADJOURNMENT

There being no other business, the sitting was adjourned at two o'clock. Next meeting to be held on Monday, the 2nd day of August 2021, at 2:30pm.

Signed.....

(Chairperson)

Date.....3/8/2021

(ii)

Members' Report

Adoption List

Adoption of the Report on Consideration of the Landlord and Tenant Bill, 2021
(National Assembly Bill No. 3 of 2021)

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this Report on the Landlord and Tenant Bill, 2021 (National Assembly Bill No. 3 of 2021) 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



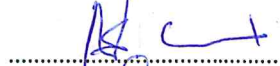
15. Hon. Kulow Maalim Hassan

.....

16. Hon. Mercy Wanjiku Gakuya

.....

17. Hon. Janet Nangabo Wanyama



18. Hon. Shadrack John Mose

.....

19. Hon. Tom Mboya Odege



(iii)

Newspaper advertisement

inviting the public to make representations on the Bill

Politics Move could put MPs allied to DP in a tight spot, as they could face disciplinary action

Jubilee declares war on Ruto's UDA

Ruling party threatens to sever ties, saying it signed pre-election deal with PDR and not the rebranded UDA

BY PATRICK LANG'AT AND ONYANGO K'ONYANGO

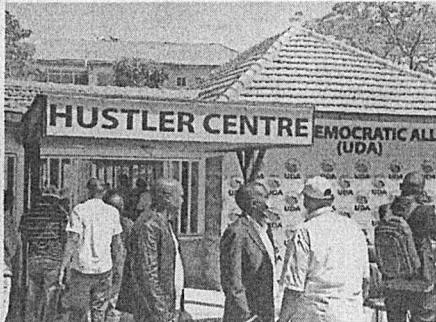
President Uhuru Kenyatta's Jubilee has taken on Deputy President William Ruto-backed United Democratic Alliance (UDA), with a plot to terminate a pre-election agreement with the rebranded party.

Jubilee has insisted it signed a pre-election pact with Party for Development and Reforms (PDR), which rebranded to UDA, and is therefore considered a new entity.

And if it goes ahead and severs ties with UDA, MPs allied to Ruto who are openly associating with the new party, citing the coalition agreement, would be exposed legally.

According to the Political Parties Act, a party member who promotes the affairs of another outfit risks disciplinary action, punishment the President's camp would not hesitate to initiate against rebels as the relations with his deputy continue to deteriorate.

"It is dishonest to say we are in



A busy day at the UDA headquarters in Nairobi on January 8. Jubilee has threatened to sever ties with the party, saying it signed a pre-election deal with PDR and not the rebranded UDA. FILE | NATION

the same coalition (with UDA). It is a hostile coalition. It is hostile in Parliament. It cannot be allowed to continue," Jubilee secretary-general Raphael Tuji recently submitted to the Political Parties Disputes Tribunal where he defended the party's decision

to expel nominated Senator Isaac Mwaura for his association with UDA.

But Dr Ruto has dismissed such claims, insisting that UDA's agreement with Jubilee is still valid.

"UDA and Jubilee are one. We

If they break Jubilee, trying to make it a tribal party, we will build UDA as the national party we had hoped Jubilee will be

DP William Ruto



have a coalition agreement and we have been working together. If they break Jubilee, trying to make it a tribal party, we will build UDA as the national party we had hoped Jubilee will be," Dr Ruto said last month.

And last Thursday, the DP cautioned Jubilee has itself to blame for what he said will be an avalanche of defections to UDA. "In the event Jubilee is not available, we will have a plan B. UDA is the next best option as it is already working with Jubilee. It will become an option if Jubilee does

not stop this expulsion spree."

The DP's allies, too, insist they have done nothing wrong in associating with an affiliate of Jubilee.

"As far as I am concerned, I am still a Jubilee member. I may not agree with what Jubilee is doing, but I am a member. I have no apologies to make for associating with UDA. I am a firm believer that you cannot stop anyone from associating with anybody," Meru senator Mithika Linturi said yesterday.

The ruling party, however, argues that it was disingenuous for the Ruto team to be in both parties at the same time, and that they should resign to seek a fresh mandate in the new UDA party.

A Northern Kenya based party, PDR, now UDA, worked with Jubilee at a time President Kenyatta preferred such working relationships to shore up his support in regions where Jubilee was not the most preferred party.

UDA now has five elected leaders in Parliament led by Senate Deputy Majority Leader Fatuma Dullo, who is also the Isiolo sen-

ator, as well as Wajir Woman Rep Fatuma Gedi, Tarbaj's Ahmed Bashane, Mark Lomunokol of Kacheliba and Tjara's Sophia Abdi.

The Nation has learnt that the DP instructed his allies during a meeting at his Karen home recently to help the UDA leadership in constituting the party coordinators from the constituency to county level ahead of the party's June 18 grassroots polls.

South Mugirango MP Sylvanus Osoro and his Keiyo South counterpart Daniel Rono confirmed to the Nation that they were told to ensure that the party has interim officials ready to register members.

"We were restructuring our political moves by endeavouring to expand our networks from the grassroots level," said Mr Osoro.

"Leaders agreed to consult further and constitute party coordinators in their areas so that we can soldier on and minimise unnecessary fights. Having the officials will help us register as many members as possible to outsmart Jubilee party," Mr Rono added.

UDA has proposed a power-sharing model in its top party leadership structures.

In a draft UDA constitution seen by the Nation, the outfit proposes to have three deputy party leaders, three deputy chairpersons, three deputy secretaries-general, three deputy national treasurers, and three deputy national organising secretaries.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (FIFTH SESSION)

INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA

(Article 118 (1) (b) of the Constitution and National Assembly Standing Order 127(3))

In the matters of consideration by the National Assembly:-

1. The Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 39 of 2020);
2. The Landlord and Tenant Bill (National Assembly Bill No. 3 of 2021); and
3. The Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021).

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the following Bills:

1. The Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 39 of 2020) introduced by the Chairperson, Departmental Committee on Finance & National Planning seeks to amend the Public Finance Management Act, 2012 by reducing the time for submission of financial statements by public entities from three months after the end of a financial year to one month after the end of a financial year. This aims at ensuring that the Office of the Auditor General has adequate time to carry out required audits and prepare the required reports.

2. The Landlord and Tenant Bill (National Assembly Bill No. 3 of 2021) introduced to the House by the Leader of the Majority Party in the National Assembly seeks to repeal the Distress for Rent Act (Cap. 293), Rent Restriction Act (Cap. 296) and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301).

The Bill seeks to introduce a legal framework which balances the interests of landlords and tenants in a free market economy by ensuring that landlords earn reasonable income from their investment in housing and also protects the tenant. The Bill consolidates the laws relating to the renting of business and residential premises and seeks to regulate the relationship between the landlord and tenant.

3. The Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) to the House by the Leader of the Majority Party in the National Assembly seeks to provide for the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships; to streamline the regulatory framework for public private partnerships; and to repeal the Public Private Partnerships Act, 2013.

The Bills were read a First Time on Thursday, 25th March 2021 and committed to the Departmental Committee on Finance and National Planning (The Public Finance Management (Amendment) (No. 3) Bill, 2020 & the Public Private Partnerships Bill, 2021) and the Departmental Committee on Transport, Public Works and Housing (The Landlord and Tenant Bill, 2021) for consideration in accordance with the provisions of Standing Order 127(3).

Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 26th April 2021 at 5.00 p.m.

MICHAEL R. SIALAJI, CBS
CLERK OF THE NATIONAL ASSEMBLY
20th April, 2021



THE WORLD BANK
IBRD • IDA

THE KISUMU NATIONAL POLYTECHNIC

SPECIFIC PROCUREMENT NOTICE (SPN)

Country: KENYA

Name of Project: East Africa Skills for Transformation and Regional Integration Project (EASTRIP)
Loan No. /Credit: No. P163399

1. The Kenyan Government has received financing from The World Bank towards the implementation of the East Africa Skills for Transformation and Integration Project (EASTRIP), and intends to apply part of the proceeds towards payments under the contract for the following:

S/N	CONTRACT TITLE	RFB REF NO	BID SECURITY (KES)
1	CONSTRUCTION WORKS OF PROPOSED (RFTITT) AT THE KISUMU NATIONAL POLYTECHNIC	KE-KISUMUPOLY-205821-CW-RFB	7,000,000.00

2. The Kisumu National Polytechnic (TKNP) now invites sealed Bids from eligible Bidders for Supply and delivery of the above-mentioned contracts.

3. Bidding will be conducted through National competitive procurement using a Request for Bids (RFB) as specified in the World Bank's "Procurement Regulations for IPF Borrowers" (World Bank procurement regulation for IBF Borrowers, Procurement in Investment Projects Financing dated July 2016 and revised in Nov 2017, July 2018 and Nov 2020) ("Procurement Regulations"), and is open to all eligible Bidders as defined in the Procurement Regulations.

4. Interested eligible Bidders may obtain further information from TKNP through Supply Chain Manager Email address: procurement@kisumupoly.ac.ke and inspect the bidding document during office hours, 0900 to 1700 hours at the address given below.

5. A complete set of bidding document may be purchased by interested eligible Bidders upon the submission of a written application to the address below and upon payment of a non-refundable fee of 1000 KES. The method of payment will be in Bankers cheque /cash payable to Cash office TKNP. The document may also be downloaded free of charge from TKNP website www.kisumupoly.ac.ke or www.worldbank.org

6. Bids must be delivered to the address below on or before 2/8/2021 at 1000hrs East Africa Time. Electronic Bidding will not be permitted. Late Bids will be rejected. Bids will be publicly opened in the presence of the Bidders' designated representatives and anyone who chooses to attend at the address below on Wednesday 2/8/2021 at 11.00 A.M.

7. Attention is drawn to the Procurement Regulations requiring the Borrower to disclose information on the successful bidder's beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the bidding document.

8. The address referred to above is:

THE CHIEF PRINCIPAL
THE KISUMU NATIONAL POLYTECHNIC
P.O. BOX 143 - 40100, TECHNOLOGY ROAD
KISUMU - KENYA

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (FIFTH SESSION)

INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA

(Article 118 (1) (b) of the Constitution and National Assembly Standing Order 127(3))

In the matters of consideration by the National Assembly: -

1. The Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 39 of 2020);
2. The Landlord and Tenant Bill (National Assembly Bill No. 3 of 2021); and
3. The Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021).

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the following Bills:

1. The Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 39 of 2020) introduced by the Chairperson, Departmental Committee on Finance & National Planning seeks to amend the Public Finance Management Act, 2012 by reducing the time for submission of financial statements by public entities from three months after the end of a financial year to one month after the end of a financial year. This aims at ensuring that the Office of the Auditor General has adequate time to carry out required audits and prepare the required reports.

2. The Landlord and Tenant Bill (National Assembly Bill No. 3 of 2021) introduced to the House by the Leader of the Majority Party in the National Assembly seeks to repeal the Distress for Rent Act (Cap. 293), Rent Restriction Act (Cap. 296) and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301).

The Bill seeks to introduce a legal framework which balances the interests of landlords and tenants in a free market economy by ensuring that landlords earn reasonable income from their investment in housing and also protects the tenant. The Bill consolidates the laws relating to the renting of business and residential premises and seeks to regulate the relationship between the landlord and tenant.

3. The Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) to the House by the Leader of the Majority Party in the National Assembly seeks to provide for the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships; to streamline the regulatory framework for public private partnerships; and to repeal the Public Private Partnerships Act, 2013.

The Bills were read a First Time on Thursday, 25th March 2021 and committed to the Departmental Committee on Finance and National Planning (The Public Finance Management (Amendment) (No. 3) Bill, 2020 & the Public Private Partnerships Bill, 2021) and the Departmental Committee on Transport, Public Works and Housing (The Landlord and Tenant Bill, 2021) for consideration in accordance with the provisions of Standing Order 127(3).

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MICHAEL R. SIALA, CBS
CLERK OF THE NATIONAL ASSEMBLY
26th April, 2021



The Kenya Civil Aviation Authority

JOB OPPORTUNITIES

The Kenya Civil Aviation Authority is responsible for providing regulatory oversight, air navigation services and aviation training in Kenya. The Authority is seeking to recruit qualified Kenyan citizens to fill the following vacant positions in its establishment:

NO.	JOB TITLE	REF. NO.
1.	Chief Examiner - Personnel Licensing	REF: ASSR/PEL/05/21
2.	Chief Inspector - Approved Training Organizations	REF: ASSR/PEL/04/21
3.	Chief Aerodromes Inspector - Structures	REF: ASSR/AAR/03/21
4.	Chief Internal Auditor - Technical Assurance (Flight Safety)	REF: IAD/04/21
5.	Senior Examiner - Personnel Licensing	REF: ASSR/PEL/07/21
6.	Senior Inspector - Approved Training Organizations	REF: ASSR/PEL/06/21
7.	Senior Accountant - Expenditure and Payroll	REF: FD/05/21
8.	Senior Lecturer - Aviation Security	REF: EASA/AS/18/21
9.	Lecturer I - Aviation Security	REF: EASA/AS/19/21
10.	Flight Operations Inspector	REF: ASSR/FO/20/21
11.	Airworthiness Inspector	REF: ASSR/AW/20/21
12.	Aviation Personnel Licensing Officer I	REF: ASSR/PEL/10/21

Interested candidates are required to submit their application letters quoting the job reference No. on the envelope and application letter, attaching copies of certificates, testimonials, a detailed CV with full contact details of three professional referees to the address below. The applications should be received not later than 4th May 2021.

Details of the job specifications can be obtained from the KCAA website at www.kcaa.or.ke

The Kenya Civil Aviation Authority is an equal opportunity employer. Female candidates and persons with disabilities (PWDs) are encouraged to apply. Note: Persons with disabilities are required to attach a valid NCPWD membership card.

The Director General
Kenya Civil Aviation Authority
Aviation House - JKIA
P.O. Box 30163 - 00100
NAIROBI

Only shortlisted Candidates will be contacted.



PUBLIC SERVICE COMMISSION

Our Vision

"A citizen-centric public service"

Our Mission

"To reform and transform the public service for efficient and effective service delivery"

SHORTLISTED CANDIDATES FOR ADVERTISED VACANCIES AT
UNIVERSITY OF NAIROBI AND KENYATTA UNIVERSITY

1. Deputy Vice Chancellor (Finance, Planning and Development) - University of Nairobi
2. Deputy Vice Chancellor (Human Resource and Administration) - University of Nairobi
3. Deputy Vice Chancellor (Academic) - Kenyatta University

The Public Service Commission, in compliance with the provisions of Section 35(1)(a)(v) of the Universities Act, 2012 and the Statute Law (Miscellaneous Amendment) Act No. 18 of 2018, declared the above vacancies in the print media and the Public Service Commission website on 9th and 10th February, 2021.

A list of all the applicants is available on the Commission website www.publicservice.go.ke

Following the conclusion of the shortlisting exercise, the Commission publishes the names and the interview schedule of the shortlisted candidates and calls for public participation requesting for comments on any of the candidates.

1. Monday 26th April 2021

Deputy Vice Chancellor (Finance, Planning and Development) University of Nairobi

Sl. No.	Name	Date	Time
1	Prof. Margaret Jesang Hutchinson	26 th April, 2021	9.00 a.m.
2	Prof. Duke Omondi Orata	26 th April, 2021	10.00 a.m.
3	Prof. Gerald Ngugi Kimani	26 th April, 2021	11.30 a.m.
4	Prof. Atieno A. Ndede-Amadi	26 th April, 2021	2.00 p.m.
5	Prof. Henry Mutembei M'Kiugu	26 th April, 2021	3.00 p.m.
6	Prof. Bernard Odhiambo Aduda	26 th April, 2021	4.00 p.m.

Deputy Vice Chancellor (Academic) - Kenyatta University

Sl. No.	Name	Date	Time
1	Prof. David Masabule Mulati	26 th April, 2021	9.00 a.m.
2	Prof. Philip Oduor Oviro	26 th April, 2021	10.00 a.m.
3	Prof. James Biu Kung'u	26 th April, 2021	11.30 a.m.
4	Prof. Joyce Waceke Wanjohi	26 th April, 2021	2.00 p.m.
5	Prof. Jonah Nyaga Kindiki	26 th April, 2021	3.00 p.m.

2. Tuesday 27th April 2021

Deputy Vice Chancellor (Human Resource and Administration) University of Nairobi

Sl. No.	Name	Date	Time
1	Prof. Simmy Mwita Marwa	27 th April, 2021	9.00 a.m.
2	Prof. Jonah Nyaga Kindiki	27 th April, 2021	10.00 a.m.
3	Prof. Maurice Mghendi Mwamburi	27 th April, 2021	11.30 a.m.
4	Prof. Duke Omondi Orata	27 th April, 2021	2.00 p.m.
5	Prof. Henry Mutembei M'Kiugu	27 th April, 2021	3.00 p.m.
6	Prof. Bernard Odhiambo Aduda	27 th April, 2021	4.00 p.m.

Deputy Vice Chancellor (Academic) - Kenyatta University

Sl. No.	Name	Date	Time
1	Prof. Stanley Egara Kabaji	27 th April, 2021	9.00 a.m.
2	Prof. Peter Lwagula Barasa	27 th April, 2021	10.00 a.m.
3	Prof. Hussein S. A. Golicha	27 th April, 2021	11.30 a.m.
4	Prof. Caroline C. Langat Thoruwa	27 th April, 2021	2.00 p.m.
5	Prof. Ezekiel Kiptoo Kiprop	27 th April, 2021	3.00 p.m.

The shortlisted candidates will be interviewed at the Public Service Commission, Harambee Avenue Nairobi on the date and time indicated. The candidates should be at the venue at least fifteen (15) minutes before the starting time.

The candidates should bring with them **originals** of the following documents:

- (i) National Identity Card;
- (ii) Academic and professional certificates and transcripts;
- (iii) Any other supporting documents and testimonials; and
- (iv) Clearances from the following bodies:
 - (a) Kenya Revenue Authority;
 - (b) Higher Education Loans Board;
 - (c) Any of the Registered Credit Reference Bureau;
 - (d) Directorate of Criminal Investigations (Police Clearance Certificate);
- (v) Self-Declaration Form duly stamped by the Ethics and Anti-Corruption Commission; and
- (vi) Recommendation from relevant professional bodies and associations (where applicable).

PUBLIC PARTICIPATION

Members of the public are invited to avail any credible information of interest relating to any of the shortlisted candidates (through sworn affidavits) to the Secretary/CEO, Public Service Commission, 4th floor Commission House, Harambee Avenue, Nairobi or online through hdrands@publicservice.go.ke so as to be received on or before 23rd April, 2021.

SECRETARY/CEO
PUBLIC SERVICE COMMISSION

(iv)

Memoranda

received by the Committee

RECEIVED MEMORANDA ON THE LANDLORD AND TENANT BILL, 2021

(National Assembly Bill No. 3 of 2021)

1. Mr. Samuel Mutahi Gathogo
2. Mr. James Josiah
3. Mr. Geoffrey Kang'ethe
4. Mr. James T. Maringa
5. Mr. Derek Ndonge, Advocate
6. Licensed Auctioneers of Kenya
7. Civil Society Reference Group
8. National Gender & Equality Commission
9. Institution of Surveyors of Kenya (ISK)
10. FSD Kenya
11. Kenya Private Sector Alliance (KEPSA)
12. Institute of Certified Public Accountants of Kenya (ICPAK)

INVITED BUT WITHOUT ADVANCE WRITTEN SUBMISSIONS:

1. State Department for Housing and Urban Development
2. Rent Restriction Tribunal
3. Business Premises Rent Tribunal
4. The Office of the Attorney General

1

Mr. Samuel Mutahi Gathogo

MEMORANDUM ON THE LANDLORD & TENANT BILL

(NO. 3 OF 2021)

-BY-

SAMUEL MUTAHI GATHOGO

DOCTOR
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27/04

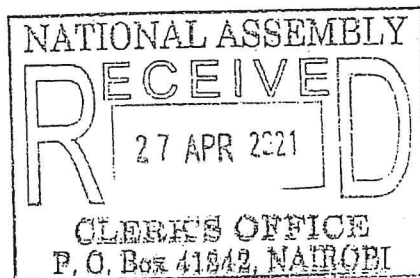
Salim Ahmed

pls process

28/4/21

PRESENTED TO: THE NATIONAL ASSEMBLY

ON 26TH APRIL, 2021



1. INTRODUCTION

- 1.1. I Samuel Mutahi Gathogo, of P.O BOX 57893 - 00200 NAIROBI, TEL 0722313991 do wish to state and confirm that I am a citizen of the Republic of Kenya bearing I.D No. 3490393 I am landlord of various residential premises within the country and hence competent to air my views and standpoint in so far as the Landlord & Tenant Bill is concerned.
- 1.2. I read and processed the contents of the aforesaid Bill before this House and the imports of the same are baffling as they are revolutionary.
- 1.3. The Landlord & Tenant Bill (N.A Bill No. 3 of 2021) seeks to repeal the conventional Distress for rent Act, Rent Restriction Act and the Landlord & Tenant (Shops, Hotels and Catering Establishments Act) and introduce a sole statute that encompasses all regulatory guidelines in the both residential and business premises.

2. GRIEVANCES OVER THE GRAVITAS OF THE BILL

- 2.1. Whereas I appreciate and commend the National Assembly for its reformist agenda over the holistic tenant-landlord relationship the aforesaid, I would be deceitful if I didn't voice my grievances over some of the proposed statutory provisions in the said Bill.
- 2.2. In the premises, I shall proceed to enumerate my misgivings and reservations with the proposed Bill as hereunder:
 - a. Lack of an elaborate rent distress procedure
- 2.3. The Bill falls short of establishing a clear roadmap on how landlords can levy distress against tenants for non-payment of rent. Times without number, Landlords have had to invoke the provisions of the Distress for Rent Act in a bid to recover sums of money in unpaid rent.
- 2.4. The Distress for Rent Act presently empowers Landlords whether by themselves or through licenced auctioneers, to levy distress and issue a proclamation notice to the tenant requiring them to clear all outstanding rental dues owed to the landlord within a period of fourteen (14) days.

- 2.5. Upon expiry of the said Fourteen (14) day period, if at all the tenant has not complied with the terms of the proclamation notice aforesaid, the Landlord, whether by themselves or through licenced auctioneers, are legally sanctioned to remove from the premises and sell the distrained goods at the best price in order to recover the rental dues owed to the Landlord. This is very friendly as the tenant is given a notice and before the expiry of such notice the tenant is at liberty to seek redress from court.
- 2.6. Unfortunately, the proposed Bill seeks repeal the foregoing provisions of the Distress for Rent Act and in its place, leave a vacuum and particularly a legal lacuna.
- 2.7. From my viewpoint as a landlord, what have I to do when faced with a tenant who has, for months on end, failed and/or refused to honour their rental obligations for reasons unbeknown to me? On this pertinent issue, the proposed Bill is shallow and needs to incorporate a clear cut mechanism and criteria for levying distress.
- 2.8. In consideration of the foregoing, it is important to note that Landlords acquire property, residential or commercial, in assorted ways key among them being through loan facilities from financial institutions. The terms of such loan agreements demand that rental income forms the monthly instalments for the loan facility. Therefore, a tenant's failure to pay rent exacerbated by the Landlord's incapacity to levy distress and recover the rental dues ultimately affects the Landlord's loan facility with the net effect of crippling the landlord's economic stability.
- 2.9. It is therefore critical that the National Assembly revisits the provisions of the Distress of Rent Act as a premise to formulate mechanisms on how Landlords can recover rental dues owed to them by defaulting tenants.

b. Incapacity of the proposed tribunal

- 2.10. The proposed Bill seeks to establish a singular tribunal to oversee disputes arising between tenants and landlords from both residential and commercial settings.
- 2.11. Presently, there exists the Rent Restrictions Tribunal as well as the Business Premises Rent Tribunal with jurisdiction over residential and commercial establishments respectively.

2.12. It is public knowledge that the afore-stated tribunals are presently overwhelmed in their own respective capacities, due to the volumes of matters before them. It would be certain beyond peradventure that the creation of a singular tribunal to tackle all disputes between a landlord and a tenant within the Republic of Kenya will create more pandemonium than efficiency.

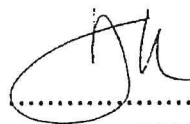
2.13. Based on my foregoing sentiments, I am of the strong view that the National Assembly should restructure the proposed tribunal and specifically establish various tribunals to handle disputes relating to or emanating from a landlord-tenant relationship from the existing facets.

3. RECOMMENDATIONS

3.1. Based on my foregoing exhaustive sentiments, I wish to recommend as follows:

- a. Establish an elaborate distress for rent procedure to mirror the existing provisions of the Distress for Rent Act.
- b. Maintain and or modify the existing tribunals to handle disputes touching on the landlord-tenant relationship and abandon the single pronged approach of creating one tribunal to handle all disputes aforesaid.
- c. Decentralize the tribunals to facilitate access by all concerned parties and importantly align them with the principle of devolution.

SIGNED at NAIROBI by the said **SAMUEL GATHOGO** this 26th day of April, 2021



SAMUEL GATHOGO

DRAWN AND FILED BY:-

SAMUEL GATHOGO

P.O BOX 57893 - 00200

NAIROBI.

TEL. 0722313991

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Mr. James Josiah

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REPUBLIC OF KENYA

**TO: THE CLERK OF THE NATIONAL ASSEMBLY,
P. O. BOX 41842-00100,
NAIROBI**

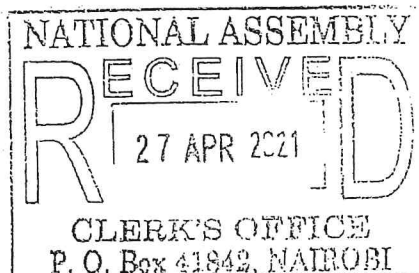
email: clerk@parliament.go.ke

*salim Ahmed
pls process DOCTH
28/4/21 8 2107*

**RE MEMORANDUM ON THE PROPOSED LANDLORD AND TENANT BILL (NATIONAL
ASSEMBLY BILL NO. 3 OF 2021)**

I, JAMES JOSIAH of Post Office Box Number P.O Box 648 KISUMU in the Republic of Kenya do hereby make the following observations regarding the above proposed Bill:

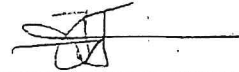
1. The I am a Kenyan tax paying citizen and a landlord of both residential and commercial premises in Nairobi.
2. That I have gone through the proposals contained in the said Bill and I verily believe that the said proposals do not have the interests of the Landlords, who have invested in properties, at heart whatsoever.
3. That the proposal to impose a 6 month jail term on a Landlord who evicts a non paying tenant is tantamount to criminalising a Landlord's enforcing his rights and is draconian to say the very least as it ends up jailing a person who is merely trying to collect monies that are due to him/her for someone who has resided in his/her premises and who had already agreed to the rent that is due and payable.
4. That the situation is made even worse when one realises that the Landlord can also be jailed for attaching a tenant's property for unpaid rent, which would naturally result in very many tenants blatantly refusing to pay rent knowing that there is next to nothing that the landlord can do to recover the unpaid rent in a timely manner.
5. Further to the above, the proposed creation of a 5 person tribunal is unsustainable in a country that has around 50 million people. The number of residential and commercial properties in Nairobi alone would more than overwhelm such a tribunal making it nearly impossible to access justice by either an aggrieved landlord or tenant which I believe goes against the principles enshrined in our constitution which require justice be accessible and attainable by everyone in a judicious and efficient manner.
6. The proposed law clearly provides several loopholes for tenants to avoid paying rent knowing that they will easily stay rent free in a premises as the aggrieved landlord struggles to get a hearing date in front of the overwhelmed tribunal.



7. All in all, I believe that the net effect of passing this bill will either be to reduce the number of available premises that will be available for rental purposes, or it will result in landlords putting in very hefty deposit requirements that would eventually result in low income people not being able to afford to pay the said deposits and this would lead to them not having shelter.
8. Another result would be that the landlords would refuse to invest in properties in Kenya and this would adversely affect the GDP of the country and the collectable tax revenue.

I therefore humbly request that this bill be put aside to allow for further consultation with all interested parties, more particularly landlords.

SIGNED at **KISUMU** by the said **JAMES JOSIAH** this 26th day of April, 2021



JAMES JOSIAH

DRAWN AND FILED BY:-

JAMES JOSIAH

P. O. BOX 648

KISUMU

TEL. 0722329463

RE: STAKEHOLDERS SUBMISSIONS ON THE LANDLORDS AND TENANTS BILL 2021.

Mr. Chairman and members of The Departmental Committee on Transport, Public Works and Housing. My names are James Josiah I am an Auctioneer of 42 years standing trading as Nyaluoyo Auctioneers. A past member of the Auctioneers Licensing Board for 7 years appointed by the late RTD Chief Justice Gicheru. Mr. Chairman I am equally a landlord of 18 tenants and I believe my submissions as both an Auctioneer and Landlord will assist this committee in reaching its objective.

Mr. Chairman I am also a member of the International Union of Judicial Officers and I do know that this International Union is heavily funded internationally by the world bank to try and harmonize recovery procedures worldwide. The objective is such that if an investor from the EU were to invest in Kenya in the real estate industry he would have a seamless recourse in the event of default in his investment and in this particular instance this would be tenants defaulting in paying their rent. Mr. Chairman The Land Lords and Tenants Bill 2021 is very well crafted but allow me to make my submissions.

Google describes Distress for rent as the means by which a landlord can recover rent in arrears.

This is an ancient remedy which gave the landlord the right to recover rent that is in arrears/overdue. Basically, the landlord would access the premises and impound the goods found therein until the rent owed is settled.

Law insider describes Distress for Rent as the act of the landlord seizing property of the tenant to enforce payment of rent.

Mr. Chairman, allow me to give a brief history ,before 1996 the Distress for Rent Act was enforced by a people then known as bailiffs who were licensed under a General Certificate and appointed by the Judiciary, a Registrar . Court judgments were enforced by the court broker, then appointed by the Court Brokers Licensing Board which board was not as vast as it is today. For the sale of items by public auction the Auctioneers License then, was issued at a cost of only Kshs. 500 from the then

Provincial headquarters, no vetting was required. Financial institutions repossessed vehicles vide any of the mentioned licensees above. Either a bailiff, court broker or auctioneer. As there was no outlined scope of duty tagged to one's license and no specific regulatory authority for either license, duties overlapped. The common noun used then was "Auctioneers" as this was the license required across board to enable anyone who seized property in a distress recovery to finally sell the attached property.

This overlapping with no guidelines, and with the continued issuance of auctioneer licenses at respective provincial headquarters allowed for all and sundry to obtain licenses and effectively become auctioneers and practitioners within the Auctioneers Practice. Auctioneers without the bailiffs' general certificate would distrain for rent, without the court broker's license would execute court judgments, repossess chattels and evict on the strength of mere instructions.

Persons who were in possession of the Auctioneers license obtained from the Provincial Commissioners office at the time were in excess of 5,000 in 1992. The hue and cry from members of the public against auctioneers, court brokers, bailiffs, repossessors and evictors as they were known in 1992 hit a crescendo and we were at a loss and perturbed as to who were the practitioners that we would read about in the newspapers on a daily basis. Who brought down people's buildings, ferried away motor vehicles and properties with no decorum and regard to the law.

As members of the National Court Brokers and Bailiffs Association the goings on that were alarmingly in the public domain, triggered us to complain to the Hon. Attorney General as an Association The Hon. Attorney General appointed the Bosire task force in 1994 where two of our members were appointed to this task force and in 1996 the Bosire task force effectively introduced the Auctioneers Act No.5 of 1996.

This new act incorporated the Auctioneer, the bailiff, the repossessor, the court broker and the persons who executed evictions all under one license and regulatory arm known as the Auctioneers Licensing Board with a clear scope of duty. This was now the only regulatory authority and all the purported practitioners then were

required to re-apply for their licenses in 1996 upon the commencement of the new Auctioneers Act No.5 of 1996. The licensing board authenticated 200 licensees and effectively extinguished the other 4,800 licenses bringing about order to the industry.

Mr. Chairman, the distress for rent act clearly outlines the guidelines a licensed auctioneer is required to follow in the event a tenant falls into arrears. This detailed procedure guards the interest of the tenant. The requisite notices to effect and procedures from seizure, advertisement, sale and the subsequent accounts of the sale proceeds.

As an auctioneer, Mr. Chairman I have given you the history of how the tenants interest was protected by the enactment of the Auctioneers Act No.5 of 1996 and an effective avenue was created vide this new act to adjudicate any complaints against the actions of the licensed auctioneer in the execution of instructions to distrain for rent in arrears. Mr. Chairman it is interesting to note that annually there are not more than 200 complaints against auctioneers and all these vary in nature. So there would not be many complaints dealing with matters of distress for rent.

Equally Mr. Chairman, I am a landlord and effectively I have eighteen tenants. Presently, I thank God that they are all paying rent on time. I however shudder to think what one would have to go through incase my tenants fall into arrears.

If one had ten tenants in arrears, under section 5(e) he would have to file his dispute at the tribunal. This would mean:

- i. Filing fees for ten matters. If during the filing of these disputes and serving them with the respective summons to attend the tribunal hearings the tenants start removing their goods the landlord will have no recourse, he can only watch as section 58 of the new bill is clear, "no landlord shall without legal process, seize a tenants property for default in the payment of rent or for the breach of any other obligation of the tenant"

The distress for rent act allows the landlord through the auctioneer to proclaim the tenant's goods upon his falling into arrears. And within this notice period of 14 days if the tenant was to start running away with his goods, the law allows the landlord through the auctioneer the right to seize these goods while in the process of carting them away.

The distress for rent act allows the landlord if within 30 days of the goods being carted away, the authority to seize the very same goods where they may be found.

As a landlord, I will have filed ten matters at the tribunal for rent in arrears and duly served my tenants with the said summons and having no authority to seize the goods, my tenants will obviously move on to the next vulnerable landlord. Knowing that the tribunal in sec.7 (i) may need up to 3 months or more to hear and determine the dispute before them.

Mr. Chairman, I have 42 years experience as an auctioneer and I know that of the ten who will be in arrears, six can pay if pushed but if you don't push and you are still filing suits against them, they will vacate. Four of them you will most probably attach their property for them to pay. These statistics are true as I have been in this business long enough.

Effectively Mr. Chairman, you will render this investor bankrupt. He will have 10 judgments that he will not be able to recover, he will have paid his lawyer, his tenants will have moved on and he will be left with all this paper work and most probably a notice from his bank intending to sell his property for not servicing his mortgage.

How does a landowner recover the proceeds of land he has leased for crop production when that falls into arrears? You are equally telling the land owner to file his rent arrears dispute. Whereas the distress for rent act gives the landlord through the auctioneer the power to proclaim the crops in the store and proceed to realize the sum owed in the lease in default.

If he follows the bill 2021, he will let the farmer proceed to sell the crop and hope and pray that the good farmer pays him. If the farmer does not pay he will have no

one or nowhere to go. By the time he launches a suit against the farmer, he will be long gone and again staring at bankruptcy because he had no recourse against the farmer.

When a tenant abandons the premises, the landlord through an auctioneer in the distress for rent act has standard guidelines on how to proceed with the immediate recovery of the premises. However sec 60 of bill 2021 gives the tenant 60 days before the landlord can declare that the premises is abandoned whereas it is visibly clear in the past 30 days the tenant has not set foot in that premises and he is in arrears. Who then ascertains that the tenant has abandoned the premises as in sec.60? Is it the landlord? The landlord is then required to access and seize the goods on this purportedly abandoned premises. Is the landlord protected if the tenant re-appears and says he had one millions shillings in his house?

The tenant could come back with all manner of accusations once he knows his house has been broken into by the landlord and his property removed. Beyond losing the 60 days waiting to declare the premises abandoned and removing the goods, sec 61(4) will further expose the landlord when he is allowed to sell the goods removed from the so called abandoned premises. What happens if the tenant returns and declares his goods were sold below value by the landlord? In both these instances the distress for rent act has clear guidelines as to how to proceed.

The Landlords and Tenants Bill 2021 is very well crafted and ensures that the landlord and tenant respect the lease and terms of the lease agreement and equally respect the eviction of tenants. But this would be the end of investors in the real estate industry who will not be able to effect the recovery of rent arrears that is about 30% of their collections.

If the distress for rent act were part of the bill 2021 enabling landlords to effectively and at minimal cost and time recover rent arrears, then the bill 2021 would be wholesome and would truly espouse its objective in balancing the interest of the landlord and tenant in a free market economy.

However, as the bill stands, it will only assist in the bankrupting of real estate investors who will have no recourse in the recovery of 30% rent arrears. Mr. Chairman and members when you block the landlords route to a seamless recovery, frustration sets in and when you get a Kenyan who feels he is being denied what is rightfully his then you now open an avenue to the anarchy that the Bosire Task Force effectively capped and redirected smartly in appointing the licensed auctioneer as agent for the landlord and guided by the Auctioneers Act NO.5 of 1996, The Distress for Rent Act and regulated by the Auctioneers Licensing Board.

James O. Josiah

Auctioneer/Landlord.

July 29, 2021

3

Mr. Geoffrey Kang'ethe

DD C-8005
27/04/21
salim Ahmed
pls process
28/4/21

REPUBLIC OF KENYA
IN THE MATTER OF NATIONAL ASSEMBLY
(TWELVETH PARLIAMENT FIFTH SESSION)
AND
IN THE MATTER OF LANDLORD AND TENANT BILL
(NATIONAL BILL No. 3 OF 2021)

MEMORANDA

1. INTRODUCTION:

To the clerk National Assembly
~~Hon. Mr. Chairman,~~

NATIONAL ASSEMBLY
MAIN RECORDS UNIT

27 APR 2021

RECEIVED (3)
NAIROBI - KENYA

I Geoffrey Kang'ethe of P. O. Box 20542 - 00200, NAIROBI, being property owner(s) and Tax payers in Kenya, wish to address the Honorable Committee of Parliament concerning the above as follows;

Mr. Chairman,

I have looked at the proposed bill and as a Stake holder, have identified a few areas that need to be addressed in order for me to be allowed to freely enjoy the fruits of my investment.

2. APPLICATION:

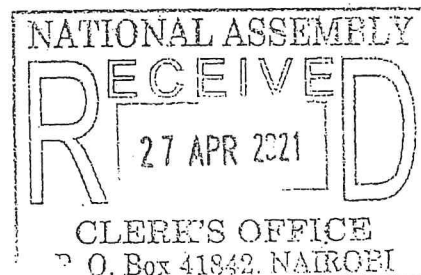
Mr. Chairman,

Tenancies that are defined in a lease agreement, set out terms and conditions, Monthly Rent payable, Durations that the rent is due and payable, speak for themselves and upon execution of the tenancy agreement, cannot be reopened unless there is breach from either party as envisioned in Section 5 of Landlord/ Tenants Bill no. 3 of 2021.

3. RENT RECOVERY.

Mr. Chairman,

Section 15 of the Bill proposes that a Landlord can only recover rent owed in arrears after filing a complaint with the Tribunal which will then pronounce itself on the matter by way of a decree. What happens if a tenant defaults and I have a mortgage to service? How long will the tribunal take to hear and determine the complaint? Will the Tribunal have the capacity to deal with all the issues that will come up? Will my property end up being foreclosed owing to the default and delay by the tenant and/or the Tribunal?



What happens to a peasant farmer who has leased his land and the Lessor does not pay the balance of the leased sum? It is important to note that the Distress for rent Act guided the Peasant farmer on how to distrain the harvested crop.

What happens to a Developer who has more than 500 tenants and has to distrain for rent monthly a minimum of 50 tenants? Does he have to keep on paying to the tribunal despite the heavy losses in defaulting tenants?

I would propose that the Landlord retains the right to enforce rent in arrears through the Distress for rent Act Cap 293 and that upon a dispute the same be canvassed at the Tribunal.

CONCLUSION

Mr. Chairman,

In conclusion, I wish to point out that repealing the Distress for rent Act Cap 293 in its entirety closes an important avenue in the recovery and turnaround time of rent that are in arrears and that the Bill no. 3 of 2021 opens a costly avenue to both Landlords and Tenants but a solution would be to allow the Act Cap 293 and the Bill no. 3 of 2021 to run concurrently where the process of rent in arrears shall commence vide Cap 293 and the Tribunal deals with any disputes.

DATED at NAIROBI this 26 day of APRIL 2021.

9.

.....

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Mr. James T. Maringa

JAMES T. MARINGA

P.O. BOX 14289 -00100

NAIROBI

April 22, 2021

0728189039

jtmaringa@gmail.com

THE CLERK OF THE NATIONAL ASSEMBLY

PARLIAMENT BUILDINGS

P.O. BOX 41842-00100

NAIROBI

clerk@parliament.go.ke

MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE LANDLORD-TENANT BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2021)

I am a small "landlord" who has also occasionally been a tenant in another person's property somewhere else.

I, therefore, wish to make the following submissions on the Landlord-Tenant Bill (NA no 3 of 2021).

1. Consideration by bill processor on creation of a government-funded **TENANT- RENT DISTRESS FUND**, where tenants in serious rent distress can apply through their landlords. The Rent Tribunal can operationalize this. Landlords pay rental taxes, apportion

I propose this because it is very unfair to ask a small landlord, some of whom have no other income source, to allow a non-paying tenant beyond even a month (in line with deposit, though meant for damages). If all tenants make the same claim of inability to pay, you will have a hungry plot owner (so-called "landlord". What may follow is what you are trying to avoid with the new law.

"Landlords" are business people who opt not to go for daily, but monthly income and thus have to wait till end month. Meanwhile, they could be borrowing awaiting rent income. Then a tenant springs a surprise. If all do so, or collude as has happened in some places, plot owner will sleep hungry.

2. In my opinion, the word **Landlord** is used wrongly. **Plot owners** are lumped together with people who own big chunks of land (acres of land or many plots). Plot owners are in business just like shopkeepers and are also indebted. I propose you separate the **real landlords** and plot owners while applying law.
3. Remember, big landlords deal with above-average income people Their tenants are thus not likely to default on rent. The small landlord deals with tenants who can leave in the middle of the night, yet you are making a law that will apply equally.
4. The negative impact is investment in rental facilities will diminish for the lower class (affordable housing impacted negatively)
5. My view is that stakeholders (landlords, plot-owners & tenants) need to be fully engaged in such a bill – it is not as easy as its proponents are making it appear. Only few landlords/plot-owners would be so heartless to disrupt good tenants.
6. At the same time, a tenant may be in critical distress. The Landlord can also be thrown into chaos with lenders and he may also be forced to borrow at higher rates to meet their loan/commitment obligations. No one invests for zero returns. Investors are not charitable organizations, but people who opt for a different income stream (perhaps their only one).
7. A **TENANT DISTRESS FUND**, if well-managed, can help out tenants in distress. Thorough scrutiny measures can be established and a criteria of award.
8. This is how you can help out both parties. Laws may have negative effect if not thoroughly processed.
9. FINALLY, it is good to commission a study in this area and get inputs on how best this sector can be regulated, moderated and managed.

Thank You

Yours Faithfully

JT Maringa

A Plot Owner with some tenancy-landlord experience

5

Mr. Derek Ndonge, Advocate

DEREK NDONYE

LLB (Nbi), CPS (K)

Advocate & Certified Public Secretary

Corporate Place, Kiambere Road, Upper Hill

P.O. BOX 40132-00100 Nairobi, Kenya

Tel: 254-020-2714320/1, 254-020-2715597/9

Cell Phone: 0722 706721, 0733 706791, 0720 810770,

Email: ndonye@mnq.law

MY REF : RIBA.OI.21
DATE : 29th OCTOBER 2012

Salim

The Clerk of the National Assembly
Parliament of Kenya
P. O. Box 41842-00200
Parliament Road, Nairobi
Kenya

D/DC 29/12

Email clerk@parliament.go.ke

Dear Sir,

**RE: SUBMISSION OF MY VIEWS REGARDING THE LANDLORD AND TENANT BILL 2021 –
A CASE FOR INCLUSION OF THE ROLE OF A TRUSTEE IN SECURING OF THE DEPOSIT
MONEY PAID BY TENANTS TO LANDLORDS**

I would like to propose the inclusion of a clause or clauses that will serve to protect the monies paid as deposits by tenants to landlords. This money is usually referred to as deposits for various aspects such as rent, security, water, electricity, internet and service charge. At the end of the tenancy period or termination thereof, this money is usually refundable by the landlords to the tenants.

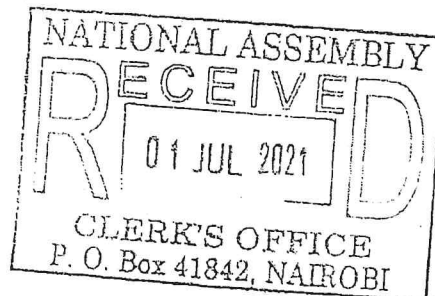
Once paid to the landlords, these funds are then held for a long periods of time, usually the length of the tenancy, before they are refunded to the ultimate beneficiary, the tenant. Typically, the premises must be restored to the state in which the tenant found them upon commencement of the tenancy, and all pending bills for services provided to the tenant and to the premises must be paid up, whereupon the landlord then releases the funds to the exiting tenant.

Even though the deposits are held for a very long period of time, they are usually not interest bearing and the landlords are normally keen to include such clauses in the tenancy agreements. The funds are then ideally refunded in the same amounts as they were paid in deposits.

More often than not the refund of the same is usually a great source of disagreement and conflict between the landlord and tenant, for many reasons including the fact that the landlord is no longer in possession of the money because they used it up a long time back, or the fact that the assessment of the

Ms. Leah Mwangi

Pls TNA. R 5/7/2021



repairs required by the landlord often supersedes the amount of deposit held, whether genuinely or not.

I propose the inclusion of a clause providing for the involvement of a trustee for these funds.

A trustee will hold and administer the funds for the benefit of the parties. The Trustees will only assume a legal and financial (fiduciary) responsibility and stewardship of the funds involved in the deposits. The trustee therefore, will act solely in the interest of both parties as both parties have a stake in the funds and the process of refund. The trustee is only eligible to a small reasonable fee.

The Trustee will ensure that all monies received are held in a Trust Fund and that the balances in the Trust Fund shall not at any time be less than what is owed to the tenant and landlord. This concept will also ensure that the landlord will not transfer the funds to its own account used for normal business operations and will not commingle the deposits with the funds of any other person or business other than the tenant on whose behalf the deposits are held. It will therefore mean that the Landlord is always able to account for the deposits received initially. Coupled with the proposed provisions under this bill, it will therefore be easy to manage the end period of the lease, with the tenant and landlord being able to obtain what is respectfully due to them either as refund or funds directed for repairs and payment of outstanding bills owed by the tenant to the building and landlord.

It is also my belief that the Trustee will employ appropriate risk mitigation strategies and will secure the money by ensuring they are sufficiently diversified by placing it in commercial banks licensed under the Banking Act and may also grow it by investing it in designated Government of Kenya securities for the benefit of the landlord and tenant, as the case may be.

The trust established shall at minimum contain—

- a) principal characteristics of the service provided pursuant to the Trust;
- b) details of how the fund shall be held and invested;
- c) procedures for nomination of the Trustees;
- d) the duties, responsibilities and the extent of liability of Trustees;
- e) provisions on discontinuation or termination of the Trust and subsequent handling of the Trust Funds;
- f) procedure of handling accounts of deceased persons;
- g) rights of Landlords and Tenants with regards to the funds;

- h) applicable law and mode of resolution of disputes;
- i) use of income generated from the trust fund ; and
- j) Mode of approval of changes to the Trust deed

Similarly, I propose certain similar minimum requirements of the Trustee, if it is a body corporate-;

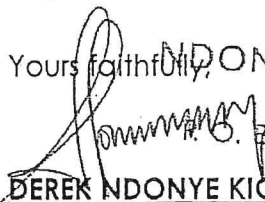
- a) Fit and proper forms completed by all its shareholders & Directors
- b) Current CR 12 of the company
- c) Certificate of Incorporation of the company
- d) CVs of the shareholders/ Directors
- e) National ID/ Passports of the shareholders & Directors
- f) CRB Reports of the Company, shareholders & Directors
- g) KRA PIN Certificates of the Company, shareholders & Directors
- h) Tax Compliance certificates of the Company, shareholders & Directors

In addition its directors, must pass certain minimum requirements. These are-

- (a) possession of adequate professional credentials or experience or both for the position for which it is proposed;
- (b) probity, diligence, competence and soundness of judgment;
- (c) reputation, character, integrity and honesty;
- (d) history of any offence involving fraud, dishonesty or violence;
- (e) whether that person has engaged in deceitful, oppressive or improper business practices or any practices which would discredit that person;
- (f) whether that person has engaged, associated or conducted himself in a manner which may cast doubt on the fitness, competence and soundness of judgment of that person;
- (g) whether that person has contravened any provision made by or under any law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
- (h) whether that person has been declared bankrupt

I am available to discussions in person, on mail and by phone call, should you require me to further detail out any aspect of this proposals.

Yours faithfully,

 **NDONYE K. DEREK**
ADVOCATE
P.O. Box 16328 - 00100
NAIROBI
DEREK NDONYE KIOKO

6

Licensed Auctioneers of Kenya

REPUBLIC OF KENYA
IN THE MATTER OF NATIONAL ASSEMBLY
(TWELVETH PARLIAMENT FIFTH SESSION
AND
IN THE MATTER OF LANDLORD AND TENANT BILL
(NATIONAL BILL No. 3 OF 2021)

SKELETON MEMORANDUM BY THE LICENSED AUCTIONEERS OF KENYA

1. INTRODUCTION

Hon. Mr. Speaker/Chairman,
On behalf of the Kenyan

Auctioneers , we have the instructions

to address the Honourable Parliament concerning the above as follows;

Mr. Speaker/Chairman,

The Auctioneers of this country have looked at the proposed bill and as major players in the industry, have identified a few areas that they wish to have their input .

2. RENT RECOVERY UNDER DISTRESS

Mr. Speaker/Chairman,

The first one is the role of Auctioneers in the collection of rent arrears by the Landlord and wish that the law as it obtains today under the Distress for Rent Act Cap.293 be retained in both the Residential and Business Premises and consequently, the two (2) months default period, Auctioneers notice for fourteen (14) days save for the archaic 2500 rent limit ceiling be removed.

3. AUCTIONEERS Act 9 AND RULES No. 5 1996 RULES 1997 AND AS AMENDED 2009.

Mr. Speaker/Chairman,

We urge that the provisions of this Act and rules be retained by parliament as they have served the landlord and tenants fairly.

Mr. Speaker/Chairman,

The bills proposal to have a court officer present when attaching, selling of distressed goods as this will be duplicating the work of other Court Officers who are Auctioneers. We submit that they continue being accountable to the court

4. ISSUANCE OF INSTRUCTIONS TO DISTRESS OR EVICT

Mr. Speaker/Chairman,

On this particular point, we wish to state that the Landlord or his Registered Agent e.g. Advocate or Estate Agent be solely responsible for the same and that the Auctioneer as a court officer has the burden of ensuring that the instructions comply with the law.

The Auctioneer should also be empowered to arbitrate between the Landlord and Tenant as a court officer in line with Article 159 of the constitution.

5. ACCOUNTING OF THE PROCEED OF SALE

Mr. Speaker/Chairman,

We submit that the Auctioneer's role and the valuer's role as contained in the Auctioneers Act be amplified to enable the Auctioneers take more responsibility in the storing and sale of the distrained goods to enable the Landlord and the tenant satisfied with the process.

COMPLAINTS

Mr. Speaker/Chairman,

We urge the committee to amend the Auctioneers Act so that the fraternity can handle their own disciplinary issues like LSK.

CONCLUSION

Mr. Speaker/Chairman,

In conclusion, we submit that the parliament be informed by the existing legislation and improve on the same for the benefit of all the players and that the Auctioneers as a professional be given a key role in the implementation of the Act.

Mr. Speaker/Chairman,

The bill as it is will overburden the court and cause backlog of the cases, we submit that Auctioneers be empowered to assist the Tribunal to do its work.

DATED at NAIROBI this...26.....day of...April.....2021.

.....palanathan.....

**FOR THE AUCTIONEERS
NATHAN PALA-ADVOCATE**

Drawn By:

Muhatia Pala & Associates

Advocates (MPA)

Jeevan Bharati House, 6th floor,

Harambee avenue,

P.O. Box 75452-00200

NAIROBI.

PR/No.LSK/2021/06968 ADM.No.P105/14096/17

TEL:0723 282 863



Muhatia Pala & Associates Advocates (MPA) and Commissioners for Oaths

Partners:- N. Pala LLB Dip Law mku, PGD KSL Cert. Education mgt (KEMU). J. Oyaro LLB (Hons) PGD KSL

Jeevan Bharati, 6th Floor
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Harambee Avenue
P.O. Box 75452-00200
Nairobi

SANTURI COURT,
Kenyatta Avenue, 1st Flr, Dr II
P.O Box 8003 - 30100 - Eldoret.
Tel:- +254 722 437 935

THIKA OFFICE:- New Gateway House, 1st Floor, Commercial Street
When replying please quote our reference.

REPUBLIC OF KENYA
LANDLORDS & TENANTS BILL

LICENSED AUCTIONEER MEMORANDUM TO PARLIAMENTARY COMMITTEE TO

BE HELD ON THE 29TH DAY OF JULY, 2021

The Licensed Auctioneer will rely on the following Laws:

Clean environment to be provided by the landlord, right to property, right to petition parliament, *Article 42, 43, 40, 119 of the Constitution* as the basis of the presentation.

Access to justice by the landlord and the tenant and the Auctioneer, under article 48 of the Constitution.

THE LAWS TO BE AFFECTED BY THE BILL ARE:

- (1) Distress for rent Act Cap 293.
- (2) The Land Act No.6 of 2012.
- (3) Rent Restriction Act Cap 296.
- (4) The Landlord and Tenant (shop and catering establishments) Act Cap 301.
- (5) The Auctioneers Act 256 The Magistrate's Court Act.
- (6) The Chief's Act.
- (7) The Civil Procedure Act and Fair administration Action Act.
- (8) The eviction Act AND THE POLICE STANDING ORDERS;

The Rent Restriction ought to open up the rent collection to the Auctioneer so that an Auctioneer of a lower class, which is Class "A" can intervene on behalf of the court with the assistance of the Area Assistant Chief or the Chief who will in turn facilitate the security of the Auctioneer through the Area Police Officers.

DISPUTE RESOLUTION ARTICLE 50 AND 159 OF THE CONSTITUTION, FAIR ADMINISTRATION ACTION ACT

That we further suggest that the Auctioneer or the Chief be given power to arbitrate the dispute as some of the goods in this lower establishment may not meet the rent in arrears and the cost of the said action by the Auctioneer and the Chief, The Rent Tribunal, the Magistrate's court can still play the supervising role.

The above will need an amendment of the Auctioneers Act to allow Class 'A' Auctioneers to levy distress up to a certain amount, the Chief's Act and the Rent Restriction Tribunal Act and the Magistrate's court.

The Landlords and Tenant (shops, hotels and catering Establishments) Act Cap 301 should be amended to provide that only persons without or parties with written and Registered Agreement should approach the tribunal to ease congestion to the courts and arbitration if their lease provide so.

The Auctioneers should continue to play the vital role in executing through distress for rent Act all Landlords and Tenants agreements that are reduced into written and all agreement that are oral but with leave of court of any court or Tribunal.

The application for leave be made either by the landlord, the advocate for the Landlord or by the Licensed Auctioneer with legally binding instructions.

The current bill be amended to reflect the position of the licensed Auctioneer as the Officer of the court as provided under the Auctioneer's Act Cap 256.

POLICE ASSISTANCE

The Auctioneers Act be amended Section 11 rule 9 to give the OCS the final and exclusive Authority on matters execution except where the assistant or chief in matters mentioned above involving class 'A' Auctioneers, to oversee the break-in orders and or security of the auctioneers when performing their duties.

AUCTIONEER TO ACCOUNT FOR THE PROCESS AND THE PROCEEDS:

The Auctioneer be responsible for the proceeds of the sale and statement of account be copied to the nearest tribunal court or in the event of the two being unavailable, the local Chief or his assistant should be given jurisdiction to receive them.

DISPUTE ON FEES AND CHARGES PAYABLE

In the event of any dispute on the fees, the Association of licensed Auctioneer should be given power to arbitrate/ tax the same and or the tribunal or the courts in their duties should have inherent powers to tax the same, this will include Auctioneers Licensing Board mandate under the Auctioneer's Act.

JURISDICTION OF THE COURTS

The bill should consider giving special Magistrate powers to sit as a tribunal or empower the Magistrate's court to have the jurisdiction to hear the cases arising from the disputes where there exist no tribunal to speed up the matters.

The above proposal may be brought in force by the subsidiary legislation by the Chief Justice in the mandate bestowed unto it to make practice rules.

COMPARATIVE ANALYSIS ; CASE:

Study South Africa and UK;

I have looked at UK various statutes on Landlords and Tenants and they appear to be similar to our Kenyan.

In South Africa, I found out the following:

SOUTH AFRICA RENTAL HOUSING ACT 50 OF 1999

The tenant must receive an Invoice that breaks down what he owes i.e. electricity, water, service charge. We propose that the same do apply in Kenyan laws.

It is our hope that with this contribution, the Committee will find it useful in their recommendation to amend the bill.

DATED at NAIROBI this 28th day of July 2021.



NATHAN MUHATIA PALA

DRAWN & FILED BY:

MUHATIA PALA & ASSOC. ADVOCATES [MPA]
JEEVAN BHARATI BUILDING, 6TH FLOOR,
HARAMBEE AVENUE,
NAIROBI.

PR/NO.LSK/2021/06968

ADM NO. P105/14096/17

Contact: 0723-282863 or 0771-157-225

Email: mpassociatesadvs@gmail.com, muhatiapala@yahoo.com

7

Civil Society Reference Group



DD call 8
29/04/21

CIVIL SOCIETY REFERENCE GROUP

Ufungamano House, Rooms 10 & 11, Mamlaka Road, off Lower State House Road. P.O. Box 37485 – 00100, Nairobi – Kenya
Telephone: +254 772 342 310; E-mail Address: info@civilsocietyrg.org; Web Address: www.civilsocietyrg.org

April 25, 2021

Departmental Committee

Transport, Public Works and Housing

Thro'

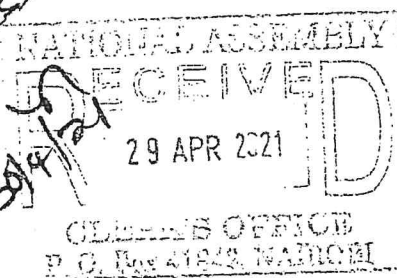
The Clerk

National Assembly of Kenya

E-mail address: clerk@parliament.go.ke

P.O. Box 41842 – 00100, Nairobi – Kenya

*Salim Ahmed
PLS process
29/4/21*



RE: MEMORANDUM TO THE DEPARTMENTAL COMMITTEE ON TRANSPORT,
PUBLIC WORKS AND HOUSING IN RESPONSE TO AN INVITATION FOR PUBLIC
PARTICIPATION BY THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA
ON THE LANDLORD AND TENANT BILL (NATIONAL ASSEMBLY BILL NO. 3, 2021

This memorandum is in response to an invitation by the National Assembly for public participation and submission of memoranda as published in the Daily Nation of Tuesday, April 20, 2021.

The Civil Society Reference Group (CSRG) is the umbrella network of community-based, national and international non-governmental organizations, social movements based in and operating in Kenya and the East, Horn and Great Lakes Region with a role to inform, unite and amplify the voice of citizens and the Kenyan society overall.

The CSRG is committed to a vision of a democratically governed, peaceful, rapidly growing and equitable Kenya.

Within this vision, therefore, the CSRG is committed to building a civil society sector that promotes and protects the public good, democratic development, social cohesion, tolerance within society and respect for the rule of law.

It is in light of this vision and commitments, that the Landlord and Tenant Bill No. 3 of 2021 has drawn our attention. The relevance of this Bill, especially at this time of the Covid-19 pandemic cannot be overstated.

A. Recent Developments of Concern in Landlord - Tenant Relationships

At this juncture the CSRG would wish to draw the attention of the leadership and membership of the Committee on Transport, Public Works and Housing to the following incidents of great concern in landlord-tenant relationships:

1. On April 1, 2020, TV47 reported that residents in Shauri, an informal settlement in Eldoret town under protected tenancy were facing eviction even as the Rent Tribunal continued to remain closed due to the Covid-19 pandemic¹;
2. On April 5, 2020, a woman and her children were forced to spend the night in the cold weather of Nairobi after their landlady kicked them out over rent arrears²;
3. On April 8, 2020, a cold-hearted landlord in Witethie, Juja Sub-County in Kiambu County was reported to have resorted to extreme measures of removing all doors for tenants who defaulted on their rent³. The landlord breaks door hinges to remove the doors for tenants who default their payment. The heartless landlord went ahead to disconnect water and power supply for the tenants who had failed to pay their rent. "I broke into their houses so that they can leave my premises completely. Now that they haven't left, I will get rid of the iron sheets on the roof probably before the end of the day", the landlord of Limpopo Plaza as the residential block in Witethie is christened told a People Daily reporter when confronted to explain his inhumanity;
4. On April 23, 2020, a landlord removes the door and iron sheets from the roof of a rented house over unpaid rent at Ichunga Estate in Nanyuki town, exposing Ms. Jane Wamucii, a 39-year mother and her three children to the vagaries of the weather at the height of countrywide Covid-19 curfew. The family had lived in the same house for close to two years without defaulting on rent until Covid-19 happened⁴;
5. On December 5, 2020 a family was detained in their house in Kahoya Estate in Eldoret town, Uasin Gishu landlord in Eldoret locked out a family in their house for failing to pay three-month' rent arrears amounting to Ksh 20,000 as the family prepared their mid-day meal. It took the efforts of their sickle-celled anemic daughter Vienne Victoria who had returned home from a local day school for lunch to report the matter to the Chief, who sent a village elder to rescue the family from the illegal detention⁵;
6. On April 2021 a Kisumu-based landlord evicted a 56-year-old disabled mother over Sh56, 000 rent arrears from Migosi estate. The woman identified as Elizabeth Agutu is among thousands of traders who had been evicted from Kibuye market and were yet to be relocated⁶.

¹ <https://www.youtube.com/watch?v=mSz8nDDO73M>

² <https://www.kenyans.co.ke/news/51778-landlady-kicks-children-out-hours-curfew-mothers-absence-video>

³ <https://www.kenyans.co.ke/news/51812-heartless-landlord-moving-mountains-collect-rent-photos>

⁴ <https://nairobi.news.nation.co.ke/news/landlord-removes-door-iron-sheets-from-house-over-unpaid-rent#:~:text=Jane%20Wamucii%2C%20a%20mother%20of,an%20eviction%20notice%20as%20required.>

⁵ <https://www.youtube.com/watch?v=dof6vk-NGoc>

⁶ <https://www.youtube.com/watch?v=MoRt9Llu5qc>

All these brutalities, among many others that have been visited upon tenants happened despite H.E. President Uhuru Kenyatta appealing to landlords in the country to reduce monthly rent for their tenants as many were struggling financially because of the global Covid-19 crisis that has had social and economic impact on the people, more so on the most vulnerable and underserved.

The Landlord and Tenant Bill No. 3 of 2021 that as you have stated "seeks to introduce a legal framework which balances the interests of landlords and tenants in a free market economy by ensuring that landlords earn reasonable income from their investments in housing and also protects the tenant, consolidate the laws relating to the renting of business and residential premises, and regulate the relationship between the landlord and the tenant should, therefore, consider accepting the following tasks:

- B. Expunging all references to 'landlord' in all laws relating to renting of business and residential premises and in its place substituting thereof with 'Landholder' or 'Lessor'; and expunging all references to 'tenant' in all laws relating to renting of such business or residential facilities and substituting thereof with 'leaseholder' or 'lessee' whichever the Committee will deem most appropriate.**

The Fifth Schedule of the Constitution of Kenya (2010) listed a number of legislations that Parliament (National Assembly and the Senate) were required to enact in order to bring the Constitution into full operation.

While Parliament has so far done a commendation job on this task, the assignment did not and should not have ended there. With the Constitution of Kenya (2010) in place, and enabling legislations that were contemplated in the Fifth Schedule in place, Parliament must now focus its attention on laws that were already in force under the former Constitution and the Landlord and Tenant Act is one such relics of colonial legislative artefacts that call for your urgent attention.

Over the years, landlordism has always conjured up all manner of connotations. From its medieval sense, landlordism has always characterized the unequal, exclusive and exploitative interaction between private housing providers and their tenants. This partly explains why despite the brutal relationships that have always pervaded this frosty relationship, including the examples that the CSRG has highlighted above, the landlord/lady has always had his or her way, breaking the law with impunity in pursuit of income, invariably, at the expense of the tenant.

Such a system that perpetuates the pursuit of exclusive economic rights at the detriment of other right holders has no place in, and are incompatible with the values that underlie Kenya's constitutional democracy based on human dignity, equality and freedoms as guaranteed in Chapter Four of the Constitution on the Bill of Rights.

Landlordism is largely to blame for the pervasive mentality among owners of rental land or property on land right from pre-independence to post-independent Kenya, making it extremely difficult if not virtually impossible to enforce the Bill of Rights. They see themselves as law unto themselves, trampling on the rights of their tenant victims with abandon.

The Landlord and Tenant Bill No. 3 of 2021 provides an opportune moment to deal a blow to this mentality and attitude that has turned otherwise innocent owners of rented property into brutal leviathans, monsters and ogres in their dealings and relations with consumers of their goods and services.

There is no denying the fact that this attitude of raw bestiality starts with the title that laws relating to renting of business and residential property bequeaths to owners of such property. The Landlord and Tenant Bill No. 3 of 2021 is the opportunity to bring to an end this anomaly that is inconsistent with the letter and spirit of the Constitution.

Replacing the word 'landlord' in the laws are aligned to the letter and spirit of Article 61 of the Constitution that classifies land as public, community or private land; and Article 64 that describes private land as consisting of registered land held by any person under freehold and leasehold tenure systems.

As can be deduced from the few examples that the CSRG has cited, among rights protected under the Constitution that have become untenable and unachievable due to reference to residential and business property owners as 'lords' are:

- i. the right to equality and freedom from discrimination (Article 27);
- ii. the right to human dignity (Article 28);
- iii. the right to freedom and security of the person (Article 29);
- iv. the right to privacy (Article 31);
- v. the right to freedom of movement and residence (Article 39);
- vi. the right to property (Article 40 (2) (b));
- vii. the right to clean and healthy environment (Article 42(1) (b));
- viii. the right to accessible and adequate housing, and to reasonable standards of sanitation (Article 43 (1) (b));
- ix. the right to education of children affected whenever illegal evictions by landlords occur (Article 43 (1) (f))

C. Need to Rethink Landlord-Tenant Relationships as the National Assembly seeks to consolidate laws relating to the renting of business and residential premises in Kenya

Law plays a critical role in governing and managing relationships in the society and the Landlord and Tenant Act and other related laws are not an exception. The CSRG therefore, calls on the Departmental Committee on Transport, Public Works and Housing to take full advantage of the Landlord and Tenant Bill No. 3 Of 2021 and use it as the tool of choice to re-engineer the deteriorating relationship between rental property owners and their consumers.

In this regard, the CSRG proposes that the new law provides for the role of neighbourhood associations in the promotion of cordial relationships between rental property owners and tenants.

This can be achieved through elaborate schedules that spell out Codes of Practice designed to promote 'reasonable behaviour' between the two for the benefit of all the concerned parties. The Code of Practice will serve the purpose of motivating rental owners and tenants to behave 'reasonably', by exploring arrangements outside of the existing letter of their leases in order to create a shared plan for recovery especially during economic shocks that are bound to occur due to loss of jobs and such natural calamities as Covid-19.

To strengthen the role of neighbourhood association, the law should encourage smaller residents' organizations to form federations like the Kenya Alliance Residents Association (KARA) that has over the years emerged as a formidable and influential civil society formation capable of rallying and amplifying the voices of tenants across the country.

1. Education of rental property owners and tenants on rights and responsibilities

The Fourth Schedule of the Constitution places the function of developing housing policy on the National Government. But county governments also have a role to play in housing in Part 2 of the Fourth Schedule under County Planning and Development.

The CSRG proposes that as part of the execution of their function of providing civic education, county governments be tasked under the law to develop manuals for public education on the rights and responsibilities of rental property owners and tenants.

This will be in keeping with the provisions of Article 6 (2) of the Constitution providing that "the governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation".

2. Manuals, Handbooks, Pamphlets and Infomercials

In collaboration with neighbourhood groups and their federations, county governments should be tasked under the law to come up with standardized manuals, handbooks, pamphlets and infomercials that can be shared in-person or online as part of public education on the Codes of Practice for property owners and tenants.

The standardized manuals, handbooks and pamphlets should also highlight national, county, and city regulations covering specific rights of rental property owners and tenants. These publications should be compiled based on their corresponding Landholder-Tenant Acts and/or National Housing Acts and regularly updated.

Specifics may vary from county to county, but laws regarding general civil rights and accountability should be fairly consistent across the country.

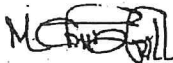
3. Responsibilities of Tenants

Similarly, the law should dictate that all tenants have a certain set of responsibilities inherent to their rental agreements. For instance, tenants should endeavour to pay their rent in full on the day outlined in their lease. Tenants should also use amenities like parking lots and laundry rooms responsibly and without causing harm or destruction to them. Tenants are obligated to dispose of all waste materials such as car batteries, motor oil, and electronics in a safe and proper manner.

Tenants may not let people live in their rental units that are unnamed on the original lease without the written consent of the rental property owner. This is particularly critical in these times of cross-border crimes like terrorism and money laundering.

Tenants are also required to live in their rental unit without disturbing their neighbours. This includes, but may not be limited to, keeping all noise (voice, music, and television volume, pet sounds, operating tools and machinery) at levels that do not interfere with the rights of neighbours to a peaceful and pleasant living environment, including avoiding keeping pets and rearing domestic animals without the authority of relevant county government offices.

Signed by:



Suba Churchill

Presiding Convener, For and on Behalf of the Civil Society Reference Group (CSRG)

8

National Gender & Equality Commission



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When replying please quote

Ref: No:.....NGEC/CS/NAS/ 005/VOL.I (38)

Mr. Michael R. Sialai, CBS
The Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI
clerk@parliament.go.ke

Dear Mr. Sialai,

SUBMISSION OF THE MEMORANDUM ON THE LANDLORD AND TENANT BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2021)

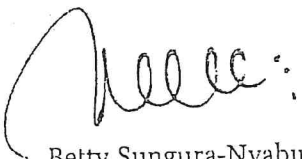
Reference is made to your call for the submission of memorandum on the Landlord and Tenant Bill 2021.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

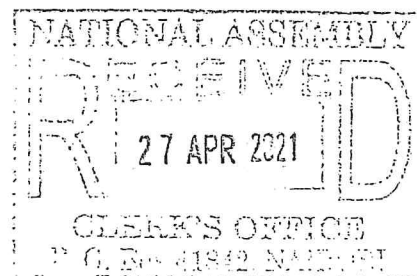
Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*.

In line with our mandate and functions, the Commission presents the enclosed memorandum with our comments, suggestions and inputs to improve the proposed Bill.

Yours sincerely,


Betty Sungura-Nyabuto, MBS
COMMISSION SECRETARY/ CEO

Encl.(1)



DOC-11-00
27/04
salim Ahmed
pls process
28/4/21

26th April 2021

NATIONAL GENDER AND EQUALITY COMMISSION

"Gender Equality and Non-Discrimination"



MEMORANDUM ON THE LANDLORD AND TENANT BILL, 2021
Submitted to: clerk@parliament.go.ke

S/NO	CLAUSE	PROVISIONS	PROPOSALS/COMMENTS
1.	Clause 4	ESTABLISHMENT AND POWERS OF THE TRIBUNALS 4.(1) The Chief Justice shall by notice in the Gazette establish such Tribunals, having jurisdiction in such areas, as the Chief Justice may consider necessary. (2) Each Tribunal established under subsection (1) shall consist of the following members, appointed by the Judicial Service Commission— (a) a Chairperson who shall be a person qualified to be appointed a judge of the High Court; (b) a Deputy Chairperson who shall be a person who has been an advocate of the High Court for a period of at least five years; (c) Three other members, one of whom shall have expert knowledge of matters relating to the valuation of premises.	<p>The provisions in Clause 4 of the Bill on appointments of members of the Tribunal by the Judicial Service Commission do not adhere to the gender principle and also inclusion of Persons with Disability.</p> <p>Proposal</p> <p>The clause to be amended by inserting 2 new sub clauses (d) and (e) as follows;</p> <p>(d) The appointments shall ensure that not more than two-thirds of the members of the Tribunal are of the same gender, shall observe the principle of regional and ethnic balance and shall also have due regard to the principle of fair representation for persons with disabilities.</p> <p>(e) The chairperson and the Deputy chairperson shall be of opposite gender.</p>
2.	Clause 10	PART III—ADMINISTRATION OF A TRIBUNAL	<p>The governance structures proposed in Clause 10(1)(a) which stipulate that the Chairperson shall be the Chief</p>

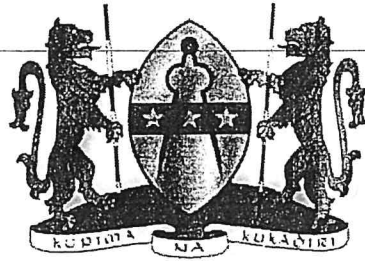
		<p>10. (1) The Chairperson of a Tribunal shall—</p> <p>Functions of the Chairperson.</p> <p>(a) be the Chief Executive Officer of the Tribunal and shall be responsible for the administration and management of the Tribunal;</p> <p>(b) constitute such panels of the Tribunal as may be necessary for the fair and expeditious disposal of the business of the Tribunal;</p> <p>(c) assign duties to the Deputy Chairperson; and</p>	<p>Executive Officer contradict the principles of good governance.</p> <p>The Tribunal is a public entity and the <i>Mwongozo</i> code clearly spell out the roles of each office.</p> <p>There is a need to differentiate the Tribunal's powers and functions as stipulated in clauses 6,7 and 8 which are supervised and managed by the Chairperson, and the administrative functions including the day-to-day management of the Tribunal which is the function of the Chief Executive Officer.</p> <p>Proposal</p> <p>To delete the following words from the sub-clause 10 (1)(a) as follows-; "Be the Chief Executive Officer of the Tribunal and"</p> <p>The Chief Executive Office who will also be the Secretary is appointed under clause 12.</p>
3.	Clause 12	<p>Secretary.</p> <p>12. (1) The Judicial Service Commission shall appoint a suitably qualified person to be the secretary to a Tribunal.</p> <p>(2) A secretary shall be responsible for—</p> <p>(a) the establishment and maintenance of the register and registry of the Tribunal;</p>	<p>As indicated in serial Number 2, the Chief Executive Officer is the head of the Secretariat and also the Secretary envisaged in Clause 12.</p> <p>The duties of the Chief Executive Officer /Secretary are as proposed in Clause 12(2)</p> <p>Proposal</p> <p>Amend the clause by inserting the following words after the word Tribunal as follows-;</p>

		<p>(b) supervising the registry of the Tribunal;</p> <p>(c) the acceptance, transmission, service and custody of documents in accordance with this Act;</p> <p>(d) enforcing the decisions of the Tribunal;</p> <p>(e) certifying that any order, direction or decision is an order, direction or decision of the Tribunal, the Chairperson or a member, as the case may be;</p>	<p>"The secretary shall also be the Chief Executive Officer to the Tribunal and head of the secretariat, and shall be responsible to the Chairperson of the Tribunal."</p> <p>The Secretariat comprise of the Staff appointed under Clause 8-</p> <p>8. The Judicial Service Commission shall appoint such staff of a Tribunal as are necessary for the proper functioning of the Tribunal.</p>
4.	Clause 13	<p>Removal of a member of a Tribunal</p> <p>13. The Judicial Service Commission may remove a member of a Tribunal if the member—</p> <p>(a) becomes an undischarged bankrupt;</p> <p>(b) is convicted of a criminal offence and sentenced to a term of imprisonment;</p> <p>(c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;</p>	<p>Clause 13 (c) is discriminatory to persons with physical and mental disabilities.</p> <p>We do submit that the inability to perform duties on medical grounds can only be determined by a qualified medical practitioner.</p> <p>Proposal</p> <p>To amend the clause by inserting after the word "illness" the following "as certified by a qualified medical practitioner"</p> <p>Rationale</p> <p>Mental and physical illness can be successfully treated or managed through medical and other interventions including reasonable adjustments and accommodation.</p>

			Such interventions will enable an individual to continue delivering on their mandate.
5.	Clause 18 Permitted increase of rent.	<p>PART IV—GENERAL PROVISIONS RELATING TO TENANCIES.</p> <p>18. (1) A landlord shall not increase the rent payable by a tenant for rented premises unless the landlord gives the tenant at least give ninety days written notice of the intention to do so.</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5) For purposes of this section, a landlord may increase rent if the capital expenditure carried out is necessary to—</p> <p>(a) protect or restore the physical integrity of the rented premises;</p> <p>(b) Improve or structurally alter the premises, redecorate, repair or improve drainage, sewerage electrical, ventilation or air conditioning system.</p> <p>(c) install a plumbing, electrical, ventilation or air conditioning system;</p> <p>(d) provide access to persons with disabilities;</p>	<p>All built environment including buildings is expected to adhere to the principle of universal design and basic principles of accessibility.</p> <p>In that regard, increase of rent on grounds of provision of access to persons with disability in Clause 18(5) is not only unfair but discriminatory to this special interest group and all other persons whose mobility is limited.</p> <p>These group includes older members of society, sick persons, expectant mothers and young children.</p> <p>Proposal</p> <p>To delete Sub clause 18 (5) (d) in its entirety without a replacement.</p>
6.	Repairs	<p>46. (1) In the absence of any provision to the contrary in the tenancy agreement, for the purposes of this Act—</p>	<p>The provisions in this clause speak to the habitability of the premises under tenancy. The subtitle "Repairs" does not therefore suffice and so we make proposals as follows;</p>

9

Institution of Surveyors of Kenya (ISK)



**MEMORANDUM FROM THE INSTITUTION OF SURVEYORS OF
KENYA (ISK)**

ON

THE LANDLORD AND TENANT BILL, 2021

PRESENTED TO

CLERK, NATIONAL ASSEMBLY

26th APRIL, 2020

A) General comments

1. Introduction

The preamble sets out the Bill's intention as to bring stability in the rental market. However, the vision of the Bill seems to be overtaken by introduction of rent control just like price control. This is a traditional method of price determination viz a vis the modern free market where there exists forces of demand and supply.

The negative effects of Rent Control include;

- a) Asset dilapidation and mis-management due to low-income yields
- b) Site sub-optimization due to old development properties sitting on prime sites
- c) Loss to leaseholders especially in urban areas
- d) Artificial short supplies of the controlled categories in the long run
- e) Slowed urban renewal and supply of new units
- f) Distribution of value and reduction of investment worth
- g) Inequities during high inflation periods.

2. General Comments

a) Rent escalation restrictions: The requirement of restricting rent escalation reviews for after a minimum of twelve months for the residential properties, and twenty-four months, in the case of business premises is against most of the leases which allows for annual escalation to compensate for inflation.

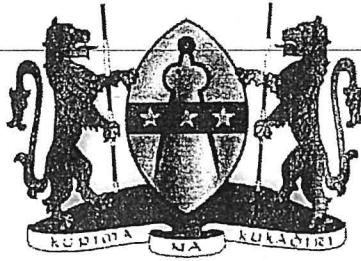
b) Tenancy termination notice: Notice period of twenty-four months in the case of business premises and twelve months in the case of a residential premises is too long especially if the tenant has defaulted in rent payment. This makes tenancy termination cumbersome which is risky in case of a tenant who has defaulted and the Tribunal do not have time to respond to the notice due to a heavy backlog.

c) Establishment of Tribunal: The proposed Tribunal has been given so many powers that it will render it ineffective.

d) Rent and Service Charge: The bill has not clearly brought distinction between rent and service charge. It therefore becomes difficult to account for service charge since they are treated as direct expenses to the landlord. Further, in the tenancy and lease agreements between the landlord and tenant, service charge is payable by the tenants but administered by the landlord and this make is easier in audit and income tax payment as applicable.

e) The bill proposes to repeal the Distress for Rent Act (Cap 293) without offering an alternative means for enforcing rent payment for those premises falling outside the act. This implies rent non-payment matter, majority currently sorted out by an efficient Distress or Rent Act process must end up in the main courts. An inadvertent omission or a cynical move to muscle property owners by discouraging efforts to obtain their dues/rents

		<p>(a) the landlord of any premises shall maintain and keep the premises in a state of good structural repair and in a condition suitable for human habitation; and</p> <p>(b) The tenant of any premises, other than a tenement house, shall maintain the premises in the same state as that in which the premises were at the commencement of the tenancy, fair wear and tear, damage arising from irresistible force and structural repairs for which the landlord is liable.</p> <p>(2) Subject to subsection (1), the Tribunal may order either party to carry out the repairs at the cost of the party in default.</p>	<ol style="list-style-type: none"> 1. To amend the subtitle "Repairs" by substituting it with the word "Habitability" 2. To amend the Clause further by inserting a new sub-clause (1)(c) as follows; <p>12(1) (c). The Landlord shall ensure that the premises are accessible to all prospective tenants.</p> <p>Rationale</p> <p>All Premises designed for use by human beings must always be accessible to all regardless of their status.</p> <p>A tenant may suddenly find themselves in position of limited mobility e.g. injuries, temporary disability, pregnancy, sickness etc. and this should not be a ground of vacating or paying increased rent above what other tenants would be paying so that they can continue enjoying occupation of premises.</p>
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Distress for Rent is a simple to understand, straight forward way of resolving rent arrears disputes within 14 days with minimum costs to the parties. If all those easily resolved cases proceed to court (The Tribunal) costs and delays will be the order of the day and ultimately justice will not be served.

It is noteworthy that majority of Distress matters are amicably resolved between Tenant and Landlord/Agent it's a form of Alternative Dispute Resolution Mechanism with the Auctioneers playing a part.

3. Effects of the bill on the Real Estate Market

The Kenyan Real Estate Market is one of the leading contributors to the Country's GDP accounting to approximately 15%. To put this into context, in 2019 the Value added by the real estate sector to the Gross Domestic Product (GDP) increased to roughly 675.3 billion Kenyan shillings (Kshs) (nearly 6.2 billion U.S. dollars) from 625.9 billion Kshs (around 5.8 billion U.S. dollars) in 2018.

The proposed bill however threatens to reverse the growth of the real estate market. The bill will propose to restrict rent escalation which will undoubtedly make the real estate unattractive and reduce the property values leading to reduced rental yield. Further, the bill will dissuade investors from investing in real estate

The Reduced rent will ultimately lead to a drop of in returns from real estate including rental income tax, property taxes and development levies by the County Governments.

This will also increase the rate of default in rent payment thus making the landlord unable meet their financial obligations. This will also lead to increase in foreclosures and ultimately that will have serious ramifications to other relevant sectors of economy including among others, banking sector.

Based on the above, it is our hope that the below observations and amendments will be considered to improve the Bill with a vision of balancing the obligation of both the Landlord and the Tenant.

B) SPECIFIC COMMENTS

Section	Provision	Proposed amendment	Justification
2 (1)	Interpretation – provides interpretation of various terminologies as used in the Act	Amend as follows; Cabinet Secretary – means the Cabinet Secretary for the time being responsible for matters relating to housing.	This avoids confusions in the implementation of the Act. The implementation of the Act is under the purview of the Ministry responsible for housing.
		Fair rent - means the rent assessed and determined by a Registered and Practicing Valuer on the basis of the going rent to comparable lettings taking into consideration into the location, size, age, tenantable quality and outgoings of the subject premises.	A Valuer who has be registered to practice under Valuers Act, Cap 532, has relevant expertise, knowledge and professional expertise to assess the determine rent payable.
		Landlord - in relation to tenancy a) Means the registered owner and authorized representation b) Includes heirs, assigns, personal representation in the title of the land lord	The current definition under (a) may not be ascertained legally and someone "entitled to rent and profits" can include the registered owner's chargors/dependants/debtors etc., who are not usually authorised to act for the landlord.

		Market rent – The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.	The provided definition is from an International Valuation Standards, which has been adopted globally and therefore provide a globally accepted definition. It incorporates two key requirements of valuation and mutual understanding between the two parties.
		Outgoings – means a; ground rent, insurance risks, other risks , rates, cost of repairs and management and letting commissions	Fire insurance premiums" locks out other insured risks. The proposed amendment therefore seeks to ensure that all various risks that the premises maybe exposed to are well covered and protected against.
		Premises - includes residence or place of business as defined in a lease or tenancy agreement	This seeks to avoid ambiguity
3 1 (a)	Provides for the application of the Act	<ul style="list-style-type: none"> Amend the section to read "Residential premises whose monthly rent does not exceed such Kenya shillings five thousand as per 2021 valuations and revised after every five years" 	The spirit of this bill, being an amendment of Landlords and Tenants Act, 1965 seeks to cushion tenants and landlords from exploitation. Therefore, there is need to limit the scope of the bill to a category of tenants as maybe specified by the Cabinet Secretary. The proposal to include all residential premises will bring about confusion especially for those premises whose have tenancy leases
3 (1)(b) (i)	Provides that the Act applies to a business premises which has not been-reduced into writing	<ul style="list-style-type: none"> Delete this sub section 	<ul style="list-style-type: none"> Allow for exit clauses in tenancies to enable parties terminate when circumstances change. Exit clauses will reduce the impact of financial losses and reduce court cases.

3 1(b) (ii)	Provides that the Act applies to a business premises which has been reduced into writing and which a) is for a period not exceeding five years b) contains a provision for termination	Delete the subsection	The rent determination should be decided mutually by the tenant and the landlord with a possibility to include a termination clause which serves as an exit clause in the event that both parties have agreed to. The proposal as currently provided limits flexibility in decision making. Furthermore, businesses cannot make long commitments without an opportunity to exit due to unforeseen challenges
3 (3)	Provides for the Cabinet Secretary to specify classes of business premises tenancies to which the Act shall apply	<ul style="list-style-type: none"> Amend the section by deleting "ratable value entered in a valuation roll" appearing before "rent paid" 	<ul style="list-style-type: none"> Pegging rent control on the ratable value on the valuation roll is likely to introduce uncertainties. Again, this presupposes that the Counties will always use the value (e.g Unimproved Site Value) as a basis of rating.
4 (2) (b)	Establishment of Tribunals; provides for requirement an Advocate of the High Court as a Deputy Chairperson	<ul style="list-style-type: none"> Amend the section by deleting "Advocate of the High Court" as requirements and replace with a person "who is versed with land, estate agency or property management." 	<ul style="list-style-type: none"> The Deputy Chairpersons principally also serves as an advisor to the Chairperson and it is highly recommended that the persons should have a background in land, property management or estate agency as opposed to being an advocate of the high court. This will promote effectiveness in the conduct and decision making by the Tribunal.
4 (2) (c)	Provides for Establishment of Tribunals that one of the three members shall have expert knowledge of matters relating to the valuation of premises	<ul style="list-style-type: none"> Amend the subsection as follows; "Three other members nominated by the Institution of Surveyors of Kenya; one Registered and Practicing Valuer under Valuers Act, Cap 532 with five years post registration 	<ul style="list-style-type: none"> This will expedite the work of the board these persons have relevant expertise in the various disciplines that touch on housing matters. The five-year experience will ensure that the members have the requisite experience. Furthermore, these professionals will provide the requisite subject matter expertise while the Advocate will provide the necessary expertise in law.

		experience, one Registered and Licensed Estate Agent under Estate Agent Act, Cap 533 with five years post registration experience and one property manager.	
5 (a)	Provides for the Tribunal to determine, assess or vary the rent payable in respect of any premises and fix the date from which rent is payable on application of any person interests	<ul style="list-style-type: none"> Amend the clause to read; "determine, assess or vary rent payable in respect of any premises on recommendation of a Registered and Practicing Valuer and fix the date from which the rent is payable on application of any persons." 	<ul style="list-style-type: none"> The ascertainment of rent should be on the recommendation of a Valuer as per the requirements of the Valuers Act to ensure that it is in line with the market rent and professional standards of practice.
5 (f)	On the powers of a Tribunal. This Empowers the tribunal to make orders permitting landlords to excise vacant land out of the premises	<ul style="list-style-type: none"> Delete this subsection 	<ul style="list-style-type: none"> This provision usurps the role of the County Government and unnecessarily lengthens approval of property development. It will increase the cost of such approvals. The landlord has absolute rights to develop any additional space since they do not interfere with the rights of the tenants. The tribunal should be limited to the determination of market rent.
5 (j)	Provides tat the Tribunal may reinstate a wrongfully evicted tenant	<ul style="list-style-type: none"> Delete the clause 	There exist other remedies that can be used to instead of a dispute that leads to an evicted tenant, which include among others compensation.

5 (m)	Empowers the Tribunal to enforce its own orders and punish for contempt in the same manner as any court of law	<ul style="list-style-type: none"> Delete this subsection 	The tribunal here acts as a judge and a prosecutor and may lead to miscarriage of justice. Furthermore, the disputes are largely contractual and thus criminal sanctions should be discouraged.
10 (1) (a)	Provides for the functions of the Chairperson of the Chairperson also being the Chief Executive Officer	<ul style="list-style-type: none"> Delete this subsection 	The mandate of the chairperson should be separated from that of the Chief Executive officer. The Chairpersons has the overall responsibility as to the smooth running of the Tribunal. The secretary on the other hand carries out the day to day running, as stipulated under 12.
17 (2), (3) & (4)	Provides for determination of rent based on fair rent	<ul style="list-style-type: none"> Replace 'fair rent' with 'Rent Payable.' 	The use of 'fair rent' is likely to introduce non-standard definition introducing ambiguity. Rent payable is an appropriate terminology.
17 (3)	Provides that the comparable to be referred to should not be more that two years	<ul style="list-style-type: none"> Replace "two years" with "one year" 	Due to market dynamics, the rental rates change regularly and, in most cases, annually. The two-year period is likely to give misleading guide in determining the rent payable.
18 (4) (c)	Provides that the land lord shall not increase rent payable without giving a notice of at least ninety days	<ul style="list-style-type: none"> Amend sub-section (4) to read; <ol style="list-style-type: none"> taken into account market increase of rent carried out or undertakes to carry out specified capital expenditure provided or undertaken to provide a new or additional service 	The proposed amend Allow change of rent based on market dynamics. This will encourage investments in the real estate sector which in the long run leads to stability in the rental market.
19	Provides for notice of termination of tenancy	<ul style="list-style-type: none"> Amend the section and Provide for notice period of at least at least 60 days for a 	The certainty of the notice period will reduce conflicts.

		residential property and 90 days for a commercial premise.	
20	Provides for limitation to increase in rent	<ul style="list-style-type: none"> Amend the section by replacing "24 months with 12 months" appearing after "residential premises." 	The requirement of restricting rent escalation reviews for after a minimum of twelve months, in the case of twenty-four months, in the case of business premises is against most of the leases which allows for annual escalation to compensate for inflation
25(1a)	Provides for the termination of tenancy without reference to Tribunal upon notice of not less than twenty-four months for business premises and not less than twelve months in the case of a residential premises	<ul style="list-style-type: none"> Amend the section to read as follows; "The landlord has given prior notice of not less than six months for residential and twelve months for business premises." 	<p>Notice period of twenty-four months in the case of business premises and twelve months in the case of residential premises is too long especially if the tenant has defaulted in rent payment.</p> <p>The lengthy notice period is not a good practice. The clause is discriminatory and overprotects the tenants.</p>
25 (1) (b)	Provides for termination of tenancy without reference to tribunal where the tenant has sublet the premises without prior written consent of the landlord	Amend the clause to read; "the tenant has sublet the premises"	<p>The bill should therefore discourage subletting of these space mainly because it will be subject to abuse and misuse by the tenants. Subletting will distort efficient operation of the market. furthermore, subletting in most cases has negative effects on the premises.</p> <p>It also increases the number of parties in the building thus putting pressure on the facilities and the building.</p>
25(1c)	Provides for termination of tenancy in the case that the tenant has defaulted in the payment of rent for three	Reduce the default period to one month for residential and three months for business premises.	Three months is too long for residential properties.

	consecutive months following the last date such rent become due		
29 (1) (b)	Provide for notice for demolition, conversion or repairs	<ul style="list-style-type: none"> Delete the phrase '...other than change of user'. 	<ul style="list-style-type: none"> Barring termination of leases to allow change of user will discourage investment in housing/real estate and Inhibit regeneration. It also curtails transactions in real estate as most people would prefer to achieve the highest and best user. As long as a tenant is given a reasonable notice, termination for change of use is good for the real estate sector.
32	The section is in regard to Subletting requires the Landlord to give consent for subletting.	Amend the section 32 to read "A tenant shall not sublet premises to another person"	<ul style="list-style-type: none"> The bill seeks cushion a specific cadre of the population who are predominantly low income and their specific interest is for a space for residency or business. The bill should therefore discourage subletting of these space mainly because it will be subject to abuse and misuse by the tenants. Subletting will distort efficient operation of the market. furthermore, subletting in most cases has negative effects on the premises. It also increases the number of parties in the building thus putting pressure on the facilities and the building.
33	Provides for application to Tribunal to assign or sublet	<ul style="list-style-type: none"> Delete reference to subletting 	<ul style="list-style-type: none"> Refer to section 32
36 (2) (a)	The subsection provides for the tribunal to determine or vary rent to be payable in respect of tenancy	Amend the section to read as follows; "determine or vary the rent, on recommendation of registered and practicing	<ul style="list-style-type: none"> This ensures professionalism in the determination of the rent payable.

		Valuer , to be payable in respect of the tenancy, having regard to its terms and to the rent at which the premises concerns might reasonably be expected to be let in the open market, disregarding -	
36(3a)	Provides for expiration of two years in case of an assessment of rent	Replace "two years with one year." Same terms to apply for residential and business premises.	Two years notice in the case of business premises is a long period.
42 (3)	Provides for removal of furniture by the landlord	Amend section 3 by inserting "the rent for the premises shall be determined by a registered and practicing valuer" after the "landlord"	A Valuer is an expert trained to determined market rent and would assist without ambiguity and is therefore the best placed to determine the market rent where such fittings and furnishings have been partially or fully removed.
		Delete Subsection (3)(a) & (b)	This will reduce uncertainties as the many variables involved would increase the likelihood of disputes.
44 (1)	Provides of statutory tenancy	Amend the section by deleting "not less than" appearing before "one month's notice"	This is to ensure that the time period is definite and avoids instances where tenants would take advantage and overstay within the premises.
44 (3)	Conditions of statutory tenancy	Delete	The bill seeks cushion a specific cadre of the population who are predominantly low income and their specific interest is for a space for residency or business. The bill should therefore discourage subletting of these space mainly because it will be subject to abuse and misuse by the tenants. Subletting will distort efficient operation of

			<p>the market. furthermore, subletting in most cases has negative effects on the premises.</p> <p>It also increases the number of parties in the building thus putting pressure on the facilities and the building.</p>
59 (1) and (2)	Provides for the Death of tenant	<p>Amend the section to read as follows;</p> <p>"(1) If a tenant of any premise dies and there are not other tenants of the said premises, the tenancy shall be deemed to be terminated seven (7) days after the death of the tenant."</p> <p>"(2) where a tenant of any person is a limited liability company, which is dissolved, the tenancy shall be deemed to be terminated seven (7) days after the dissolution of the company."</p>	<p>The sixty days' notice earlier provided does is not justifiable mainly because the vacancy occasioned by death cannot be filled and therefore warrants the need for a landlord to ensure continuous occupation of their premises. The same cases apply to a limited liability company which has been dissolved.</p>

60 (1)	Provides abandonment	for	Amend the subsection to read as follows. "if a tenant of rental business abandons the premises, or pay rents continuously for sixty days without maintenance or where the landlord cannot gain access to maintain and there are no tenants of the said premises, the tenancy shall be deemed to be terminated sixty days after the date of abandonment by the tenant."	payment of rent but with non-maintenance of the premises or where the landlord cannot gain access to inspect or maintain (locked for prolonged periods/no activity) should still qualify as abandonment. The landlord should be given opportunity to ensure that the premises are within acceptable standards
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Thank you,



Rose Mwaura
Chief Executive Officer

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FSD Kenya



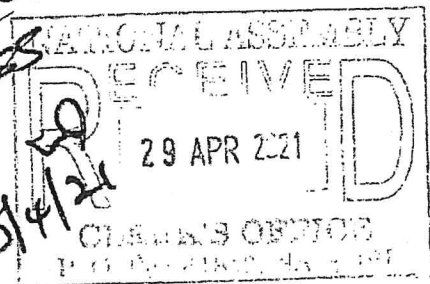
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29/04/2021

Creating value through
inclusive finance

20 April 2021

Clerk of National Assembly,
P. O. BOX 41842-00100, Nairobi,
By hand to Office of the clerk, Main Parliament Buildings, Nairobi
By email: clerk@parliament.go.ke

Salim Ahmed
Fds process
29/04/2021



Attention: Clerk of the National Assembly,

REF: REVIEW OF DRAFT LANDLORD AND TENANT BILL, WITH AN AFFORDABLE HOUSING SPECIFIC LENS

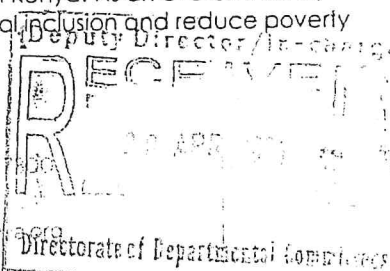
We are writing to advise that we have recently launched an Affordable Housing Program within FSD Kenya. Our strategy and the research which supported it is available at this link <https://www.fsdkenya.org/blog/support-for-collaboration-in-driving-an-affordable-housing-agenda-in-kenya/>

We have reviewed the draft Landlord and Tenant Bill, which is extremely timely given the greater income disparities following Covid, and the need for re-balancing equity between the landlords and tenants in Kenya. Further, this Bill repeals and consolidates 3 Acts (The Distress for Rent Act, the Rent Restriction Act and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act and addresses emergent issues.

The rental sector in Kenya houses 80% of urban Kenya, and up to 92% of Nairobi households, and hence is an extremely important sector that needs proper attention. Our comments are based mainly with an affordable housing sector lens. Regulations that promote investment into the sector to promote compliance, green and climate smart housing and affordability are required. Due to the high cost of housing delivery in Kenya, it is necessary to seek for patient, long term blended capital to assist with the development of this market.

Our overall comments:

1. Given Kenya's leadership in digital platforms, we would encourage the law to integrate the need for a digital interface, where all tribunal applications and determinations are available on a digital platform. This will assist in promoting strict timelines kept by the Tribunal and also promote the availability of data on market rentals.
2. This Act can consider the opportunity to assist the creation of credit histories of tenants to allow them to access financial products. A safe framework which protects tenants privacy, yet works with the relevant agencies to build credit histories should be considered.
3. Emphasis should be placed on the timeliness of Tribunal hearings, particularly taking into account the high cost of capital in Kenya. As an overall theme, we have found from our work to bring financial inclusion and reduce poverty



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to the bottom 40%, that is the better to stimulate the market to provide a 'better product' than to curtail market forces.¹

4. The Bill could also seek to integrate incentives for landlords that intentionally invest in climate smart, green, affordable housing for Kenyans. This opportunity is missing from the Bill at present. For example, landlords who provide climate smart housing for rented at KShs. 15,000 per month or less, could be eligible for the net rent from those units to be taxed at very favourable rents (around 3%) to encourage patient, blended finance to invest in this sector. This would not only encourage adoption of greener building practices and better quality / more affordable housing for tenants, but also encourage the development of domestic capital markets to create suitable products for investment into affordable rental housing.

Additional drafting comments:

Section and wording	FSD Kenya response
Timelines clauses	
<p>7. (1) A Tribunal shall determine any dispute before it expeditiously, but in any case shall determine a dispute within a period of three months from the date the dispute is lodged:</p> <p>Provided that where a determination is not given within three months the Chairperson shall record reasons, thereof a copy of which shall be forwarded to the Chief Justice and shall immediately fix a date for determination.</p>	<p>3 months is too long a period to allow for a Tribunal to determine disputes, and additionally there is no definition of when a date shall be 'immediately fixed' after the lapse of 3 months.</p> <p>We suggest all disputes be determined in a maximum of 45 days with a very strict timeline to be followed as follows: Applicant to lodge dispute <u>together with supporting evidence (this becomes Day 1)</u>. Respondent to provide its response within 21 days of dispute lodged. Tribunal has 7 days to make call a hearing (Day 28), Tribunal determines case within 7 days after hearing (Day 35). This allows for an additional 10 days for any delays. The capacity and timeliness response of the Tribunal is key to it meetings its mission.</p>
<p>S. 45 Where, for the purpose of determining fair rent, a valuation report has been made by order of the Tribunal, the Tribunal shall send written notification to the landlord and the tenant, or their representatives, that the details of the valuation report are available for their information and that before the fair rent is determined any such party or the party's representative may appear before the Tribunal on a date to be specified in the notification and object to the valuation report.</p>	<p>The timelines here are also too ambiguous and open to long delays. See timeline proposed above.</p>
<p>Section 25 (1)(c)</p> <p>A landlord shall be entitled to terminate the tenancy without reference to the Tribunal upon the following grounds that the tenant has defaulted in the payment of rent for three</p>	<p>This appears to contradict Section 27 (1) (b) below.</p> <p>Suggest it is reduced to 2 months as stated in S27.</p> <p>Consider from a landlord's perspective, a tenant does not pay for 3 months, the</p>

¹ This was also demonstrated recently in Kenya with the impact of the interest rate lending cap – the overall impact was a reduction in lending overall, rather than an increase in affordability.

consecutive months following the last date such rent became due and payable;	landlord then loses rent in month 4 during termination and re-letting, and has to also cover any repairs not carried out by the tenant. The total loss to the landlord could be up to 5 months. Landlords will resort by asking for higher deposits upfront, or worse, the industry will stop investing in good quality rental product which is highly desirable.
Section 27 (1) (b) that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable	This appears more equitable than Section 25.
S. 49 and S.60 states a landlord must keep a tenant's goods and not reclaim a unit 60 days after a tenant's death, or if the tenant abandons the property.	This is too long a loss for a landlord to bear for situations out of the landlords control. Further, subsection 49(c) would allow the landlord to claim the property was not safe or hygienic therefore undermining the purpose of the clause. Landlords should be encouraged to keep a register to notify next of kin, and then take over properties within 14 days of abandonment and 30 days of death.
Fines and Penalties clauses	
16. (1) A person who fails to comply with any lawful order or decision of the Tribunal after the expiration of the time allowed for an appeal, or, if an appeal has been filed, after such order or decision has been upheld, commits an offence and shall, on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.	The financial fines and imprisonment fines in S. 16 and S. 49 do not seem commensurate or aligned.
s. 49 commits an offence and is liable on conviction to a fine not exceeding two months' rent of the premises or to imprisonment for a term not exceeding six months, or to both.	The potential for both financial and imprisonment fines is unjust and can open the room for coercion.
Sub-letting clauses	
Section 27(1) (e) that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, and that the aggregate of the rents reasonably obtainable on a letting of such premises as a whole and that on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;	This section is not clear
S. 32 allows tenants to sub-let premises with the consent of the landlord, such consent not to be unreasonably withheld.	This is a big departure from our existing law and places an undue burden on landlords to undertake due diligence on sub-lessees and hence enter into legal relationships with sub-lessees.

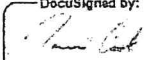
S. 32 (4) Any subtenant to whom subsection (3) applies who fails, without the consent of the tenant, to give the tenant vacant possession of the premises upon the due date shall be liable to pay to the tenant a sum equal to five times the rent of the premises in respect of each month which he continues to occupy the premises adversely to the tenant or such smaller sum as the Tribunal may direct may be recovered by the tenant as a civil debt.	The sum of five times appears arbitrary and does not protect the landlord from a situation where a sub-tenant does not leave.
Utilities access	
S. 43 requires a landlord to ensure tenants have access to utilities like water	It is not in landlords control to ensure county services like water are available.
Occupancy limits	
Section 30 (g) states the landlord can terminate the tenancy if the number of persons occupying the rented premises on a continuing basis results in a contravention of health, safety or housing standards required by law.	This requires significant attention. How will the 'maximum' number of occupiers be defined. This clause would jeopardise the rights of 60% of Nairobi population that currently lives in informal settlements, and similar urban populations around Kenya, who endure poor housing conditions as it is all that they can afford. Kenya is not ready for such a blanket cap till we improve our housing accessibility and availability. Occupancy caps can be a clause within private lease contracts between a landlord and tenant, but not a right stipulated in law till the housing conditions in our country can enable its application. To bear in mind that we have a housing deficit of 2 million units, growing at 350,000 households per annum.
Applicability:	
S. 62 States this Act shall bind the National Government and County Governments	The summary wording on the side states National Government and County Government exemption, and hence needs clarification if government properties are exempted or binding.
S 3(1)(iii) states 'the Act will not apply to residential premises whose monthly rent does not exceed such amount as the Cabinet secretary may prescribe.' S. 63 The Cabinet Secretary may by notice in the Gazette, exempt certain categories of premises from all or any of the provisions of this Act.	These are very sweeping provisions. We suggest it is critical to have an industry agreed rental for enactment of the Act, and the basis and frequency with which this will be reviewed. If this rent level prescribed by the Cabinet Secretary is too low, it will preclude most of the vulnerable tenancies. If this level is too high, it will bring too much work to the Tribunal making its operations unsustainable.
S. 64 Provides that the Cabinet Secretary may make regulations for the Act and define the procedure of the Tribunal	Such regulations and timelines are critical for agreement during public stakeholder engagement at the time of enactment of the Act and the public should not wait for the unknown timeframe during which regulations will be drafted.
Clarifications required	
S. 2 refers to Conservancy	for definitions, it is not clear what the term 'Conservancy' means.

S. 3 (3) states for the purposes of subsection (1)(b) the Cabinet Secretary may, by notice in the Gazette, specify, by reference to rent paid or rateable value entered in a valuation roll under the Valuation for rating Act, classes of businesses premises tenancies to which this Act shall apply.	This clause is not clear
Section 30(c) refers to illegal trades	These need to be defined

We look forward to working with all stakeholders to create an equitable law that promotes investment in this critical sector.

We thank you for promoting public engagement in this Bill, and also request the timeframe for the same should be longer than 6 days.

Yours faithfully

DocuSigned by:


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Tamara Cook
Chief Executive Officer

28 July 2021

**FSD KENYA'S ORAL SUBMISSION ON THE LANDLORD AND TENANT BILL, 2021 TO THE
PARLIAMENTARY DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING**

FSD has recently launched an affordable housing program which supports the Big 4 Agenda, and the Constitutional right of each Kenyan to safe and secure housing.

We commend the drafting of this Bill which seeks to regulate relationships between landlords and tenants in an equitable manner. We note several improvements and attempt to modernise the regulatory framework relative to the current statutes which are set to be repealed. This Bill is extremely important as 82% of Kenyans in urban areas lived in rented dwellings.

We have provided our detailed comments in writing, and are grateful for the opportunity to make oral submissions today. In this regard, I highlight key areas for this esteemed Committee's consideration to enable the effective functioning and implementation of this Bill to meet the intended outcomes. I also provide a written copy of these remarks.

i) Timelines of Dispute Resolution by Tribunal

Section 7 of the Bill states that a Tribunal must determine a dispute within 3 months, failing which the Chairperson shall record the reasons and immediately fix a date.

From past experience, the Tribunal process can take inordinately long to resolve. Even with the best intentions, the dispute resolution processes can be dragged out by parties resulting into losses and inconveniences, and worse parties intentionally breaking the law as the required process is ineffective. FSD's suggestion is to provide a maximum of 45 days within which disputes must be resolved, with the following time frame: An applicant to lodge a dispute together with supporting evidence on Day 1, a respondent to provide its response within 14 days, and Tribunal to make a determination within 14 days (This totals 35 days, and therefore leaves a buffer of an additional 10 days within the maximum prescribed 45 days).

Similarly there is no defined timeline for provision of a valuation under **section 45** of the Bill, which can lengthen the processes and should be integrated timelines above.

Given Kenya's leadership in digital platforms, FSD Kenya would encourage the integration of a digital interface, whereby all tribunal applications and determinations will be available on a digital portal. This will assist in promoting strict timelines kept by the Tribunal and promote the availability of data on market rentals – which in itself would promote efficiencies in the Tribunal.

ii) Equitable risk sharing to promote affordable housing provision

Section 25 (1c) states that a landlord can terminate a lease without reference to a tribunal if a tenant has defaulted for 3 consecutive months.

In line with the Making Markets work for the Poor approach, FSD suggests that the period after which a landlord can terminate a lease without reference to the tribunal should be linked to the period of security deposit held by the landlord. So for example, if a landlord holds 2 months' security deposit, then the landlord needs to wait for a 2 months' period of rent default prior to terminating the lease. Even with the security deposit in hand, the landlord is likely to bear some financial expenses in relation to a defaulting tenant including unpaid utilities, repairs and a further agent commission etc. Further, as landlords are required to pay tax on residential income when it is due by the lease – whether it is received or not – the pre-paid tax paid to KRA is very difficult to recover, and in practical sense, a financial loss. Therefore, having too long a period before a landlord can get back its housing unit will disincentivize investment in the sector.

Section 59 and Section 60 of the Bill require the landlord to keep a unit for 60 days in case of a tenant's death or abandonment. This places undue burden/hardship on a landlord for events outside its control.

FSD suggests a period of 30 days in case of death of a tenant and 15 days in case of abandonment of goods by a tenant.

iii) Applicability of the Bill

§ 3(1) (iii) states the Bill will not apply to residential premises whose monthly rent does not exceed such amount as the Cabinet Secretary may prescribe.

It is currently not clear whether the act will not apply to informal settlements as it is unknown what the rent floor will be. Hence, extensive stakeholder consultation is required in determining this rent floor, and the same should be adjusted in line with market forces at a minimum of every 5 years.

FSD strongly supports all financial inclusion measures following the making markets work for the poor framework. We would implore upon this esteemed Committee to also give regard to the far-reaching positive measures which can transform the development of affordable housing markets in Kenya in the appropriate legislative framework.

These include:

1. Supporting the creation of positive credit histories for tenants who pay their rent diligently to enable them access credit for their economic empowerment. FSD would also support the implementation of such a law if enacted, given our experience in developing the movable property collateral registry.
2. Providing a modest flat tax of say, 3%, on gross rents for units rented for less than KShs. 15,000 per month gross. This figure can be indexed and the flat tax made applicable no matter the size landlord's portfolio in this income bracket– only then will institutions be incentivized to invest and develop massive housing units needed to cater for those living in informal settlements.

We thank you for the opportunity to provide our comments and remain at your disposal for continuous engagement. FSD's commitment to the development of the rental sector in Kenya is shown by FSDAI's investment of GBP 5 million in International Housing Solutions, a housing offtaker for formal housing in urban areas. We expect this will improve the product offering, management and attract long term funding from domestic capital markets, once the risk reward equation is demonstrated.

11

Kenya Private Sector Alliance (KEPSA)



KEPSA SUBMISSIONS ON THE LANDLORD AND TENANT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 3 OF 2021)

CLAUSE NUMBER	CURRENT CLAUSE	PROPOSED AMENDMENT	RATIONALE/JUSTIFICATION
3 (1) (a) (ii)	<p>Clause 3 (1) (a) (ii) of the Bill reads;</p> <p>(1) This Act applied to –</p> <p>(a) All residential premises, other than –</p> <p>(ii) residential premises let on service tenancies; and</p>	<p>Definition of the word ‘service tenancy’</p>	<p>To ensure clarity on the application to the said head of application.</p>
3 (1) (a) (iii)	<p>Clause 3 (1) (a) (iii) of the Bill reads;</p> <p>(1) This Act applied to –</p> <p>(a) All residential premises, other than –</p> <p>(iii) residential premises whose monthly rent does not exceed such amount as the Cabinet Secretary may prescribe.</p>	<p>Amend clause 3 (1) (a) (iii) to reflect the following;</p> <p>The power to grant the exception to the application of the Bill be vested on a nonpolitical office, rather than to the Cabinet Secretary.</p>	<p>The Cabinet Secretary has been given wide autonomous powers.</p> <p>This may be used as a political tool to appease the citizenry for instance during electioneering periods.</p>
5 (p)	<p>Clause 5 (p) of the Bill reads;</p> <p>(5 A Tribunal shall have all powers generally necessary for the execution of its functions under this Act, and without prejudice to the</p>	<p>Amend to add the following rider under clause 5 (p) as follows;</p>	<p>Section is improved by adding a rider excepting fair wear and tear.</p>

	generality of the foregoing a Tribunal shall have power to— (p) order for refund of deposit or any other sum paid by a tenant on account of rent being a sum irrecoverable by the landlord under this Act.	Provided that the tenant has restored the premises to the condition in which it was at the time when the tenancy commenced excepting fair wear and tear and has paid all the utility bills.	
5 (p)	Clause 5 (p) of the Bill reads; A Tribunal shall have all powers generally necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing a Tribunal shall have power to— (p) order for refund of deposit or any other sum paid by a tenant on account of rent being a sum irrecoverable by the landlord under this Act.	There is not provided the period within which the landlord should refund the tenant's deposit that was held as security. Provide a determinable period for return of the renter's deposit.	To enhance enforceability of the refund of deposits
7 (2)	Clause 7 (2) of the Bill reads; An appeal shall lie from the decision of a Tribunal to the High Court only on points of law.	Delete the words 'High Court' and substitute therefor the word 'Environment and Land Court'	To clearly align to jurisdiction and conform to the provisions of Article 162 (2) (b) of the Constitution and Section 13 of the Environment and Land Court Act.
20 (1)	Clause 20 (1) of the Bill reads; A landlord who is lawfully entitled to increase the rent charged to a tenant for premises may do so only if at least twelve months, in the case of residential premises	Removal of the '12-month rule' and the 24-month rule' of rent increment.	The 24-month rule for commercial premises defeats the purpose of the ideal of the percentage change from year to year in the Consumer Price Index for prices of goods and

	and twenty-four months, in the case of business premises have elapsed since the date—		services as reported monthly by the Kenya National Bureau of Statistics. It does not take into account the average twelve-month period that ends at the end of December of the previous calendar year.
25 (1) (a)	<p>Clause 25 (1) (a) of the Bill reads;</p> <p>(1) A landlord shall be entitled to terminate a tenancy without reference to the Tribunal upon the following grounds that—</p> <p>(a) the landlord has given prior notice of not less than twenty four months in the case of business premises, and not less than twelve months in the case of a residential premises;</p>	Reducing the notice periods of 24 and 12 months for the commercial premises and residential premises respectively.	The notice period is too long yet most tenancy relationships are on a month- to month basis and not fixed terms.
25 (1) (c)	<p>Clause 25 (1) (c) of the Bill reads;</p> <p>A landlord shall be entitled to terminate a tenancy without reference to the Tribunal upon the following grounds that—</p> <p>(c) the tenant has defaulted in the payment of rent for three consecutive months following the last date such rent became due and payable;</p>	<p>Amend clause 25 (1) (c) to reads as follows;</p> <p>the tenant has defaulted in the payment of rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent.</p>	To correct the contradiction between Clauses 25.(1)(c) and 27 (1)(b)

26	<p>Clause 26 of the Bill reads;</p> <p>(1) A tenant may terminate a tenancy at the end of the period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with this Act.</p> <p>(2) The notice given under subsection (1) shall be given—</p> <p>(a) in the case of residential premises, one month before the termination of the tenancy; and</p> <p>(b) in the case of business premises, two months before the termination of the tenancy.</p>	<p>Amend clause 26 of the Bill to read;</p> <p>1) A tenant may terminate a tenancy <u>at any time prior to the end of the period of the tenancy or at any time prior to the end of the term of a tenancy</u> for a fixed term by giving notice of termination to the landlord in accordance with this Act.</p> <p>(2) The notice given under subsection (1) shall be given—</p> <p>(a) in the case of residential premises, <u>the length of which shall not be less than the period to which rent is payable, and the tenancy terminates on the day on which rent is payable; and</u></p> <p>(b) in the case of business premises, <u>the length of which shall not be less than the period to which rent is payable in relation to agricultural land the period shall be for six months, and tenancy terminates on the day on which rent is payable.</u></p>	<p>1. Residential Premises: A lot of flexibility is required to accommodate extraneous circumstances such as work relocation, retirement, disability/advance in age rendering the premises no longer functional for the individual, <i>et cetera</i>.</p> <p>2. Business Premises: In the current economic climate in addition to other extraneous circumstances such as business growth, emigration, relocation, change of business, tenants of business premises have shown that they would wish to get shorter-term leases or terminate their leases mid-term for convenience.</p> <p>3. Fairness to the Tenant: The bill has taken into considering most of the Landlord's conveniences specifically in sections 25, 27, 28 and 29. The same consideration should be extended to the Tenant.</p>
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33	<p>Clause 33 of the Bill reads;</p> <p>(1) A tenant may apply to the Tribunal for an order to determine whether the landlord has unreasonably withheld consent to an assignment or subletting.</p> <p>(2) Where the Tribunal determines that the landlord has unreasonably withheld consent to an assignment or sublet by tenant, the Tribunal may order the assignment or sublet.</p> <p>(3) The Tribunal may issue terms and conditions of the assignment or sublet.</p> <p>(4) If an order is made under subsection (2), the assignment or sublet shall have the same legal effect as if the landlord had consented to it.</p>	Delete the provision	<p>The provision curtails the right to the Landlord to deal with the property in a manner they so wish.</p> <p>It infringes on their ownership right in a manner that the tenant with the assistance of the tribunal can deal with the property as they so wish to the detriment and dissatisfaction of the landlord.</p>
49	<p>Clause 49 of the Bill reads;</p> <p>A landlord and any agent or servant of a landlord who—</p> <p>(a) evicts a tenant without the authority of a Tribunal; Or</p> <p>(b) wilfully subjects a tenant to any annoyance with the intention of inducing or compelling the tenant to vacate the premises or to pay, directly or indirectly, a higher rent for the premises, commits an</p>	Inclusion of penalty for subjecting the landlord to annoyance.	<p>To take into account the rights of the landlord in the tenancy relationship and making the tenant more responsible in his/her obligation towards the landlord.</p> <p>To strike a balance between the rights and obligations of both the landlord and the tenant to each other and making the tenant liable for the</p>

	offence and is liable on conviction to a fine not exceeding two months' rent of the premises or to imprisonment for a term not exceeding six months, or to both.		commissions and omissions to the landlord.
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Institute of Certified Public Accountants of Kenya (ICPAK)

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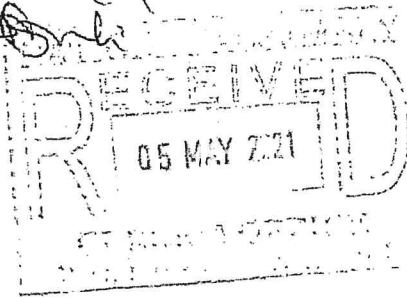
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Our Ref: ICPAK/CE-PPR/04/2021

27th April 2021

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



Ahmed salim
pls facilitate
consideration
NA 10/5/21

Dear Mr. Sialai,

RE: ICPAK SUBMISSION ON THE LANDLORD AND TENANT BILL, 2021

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under by the Accountants Act of 1978 and repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession. The Institute is further mandated under Section 8 of the Act to advise the Cabinet Secretary on matters relating to financial accountability in all sectors of the economy.

Following your Public Notice dated 20th April 2021 requesting for comments on the The Landlord and Tenant Bill, 2021, the Institute reviewed the Bill and developed a set of submissions for your consideration.

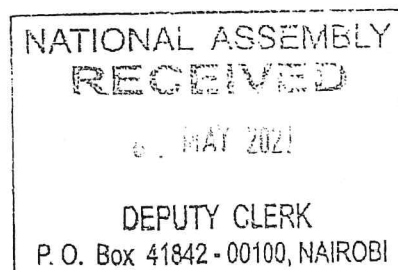
Attached herein, please find a copy of the Institute's submission.

In case of need for clarification, please do not hesitate to contact the undersigned on ceo@icpak.com.

Thank you in advance for your kind consideration and continued support.

Yours Sincerely,

CPA EDWIN MAKORI
CHIEF EXECUTIVE OFFICER



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A world class professional accountancy Institute.



Institute of Certified Public Accountants of Kenya

SUBMISSION

ON

THE LANDLORD AND TENANT BILL, 2021

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April 2021

1.0 BACKGROUND

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda. The Institute has reviewed the Landlord and Tenant Bill, 2021 and developed a detailed submission on areas that require improvement as highlighted in the table below.

2.0 SUBMISSIONS ON THE LANDLORD AND TENANT BILL, 2021

The Institute has developed the following for specific consideration and adoption:

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Clause 2: Interpretation	The term "agent" has been used frequently and needs to be defined.	Amend by inserting a new paragraph under subclause 1 to read: "Agent" means any person, who acts on behalf of landlord or tenant or both in a transaction of renting of any premises and receives remuneration or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective landlord and tenant to	For easy interpretation of the bill.

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			each other for negotiation for renting of premises and includes property dealers, brokers, or middlemen, by whatever name called;	
		The term "sub-tenant" needs to be defined.	Amend by inserting a new paragraph to read: "sub-tenant" means a person to whom the tenant sublets whole or part of the premises held by him/her or transfers his/her rights accrued under the tenancy agreement or any part thereof upon entering into a supplementary agreement to the existing tenancy agreement;	For easy interpretation of the bill.
2.	Clause 4(2)(c): Establishment of Tribunals	The Bill does not expressly specify the specific professions from which the persons to be appointed under Clause 4(2)(c) would be drawn from. The Bill should expressly list all the applicable professions that would qualify under "...matters relevant to the tribunal."	Amend paragraph (c) to read: "three other members, one of whom shall have expert knowledge of matters relating to the valuation of premises and another person who shall be appointed by the Chief Justice representing the Institute of Certified Public Accountants of Kenya."	There is need to specifically source member who is a financial expert, meaning that he or she has the necessary qualifications and expertise in financial management or accounting and is a bona-fide member of a professional body regulating the Accountancy

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
				profession, and in compliance with the requirements thereof.
3.	Clause 13: Removal of a member of Tribunal	The Judicial Service Commission should remove a member from the Tribunal if he/she commits professional misconduct that poses a risk to the Tribunal/profession.	Insert a new paragraph (f) immediately after paragraph (e) to read: <i>"professional misconduct in case of members belonging to professional associations."</i>	To enhance professionalism and strengthen the regulatory role of professional institutions.
4.	Clause 17(1): Fair rent	The Bill is unclear on the amount of security deposit the landlord can ask legally. There is need to standardize the security deposit by fixing it to one to two months depending on what amenities the residential premises offer to a tenant.	Amend by inserting a new paragraph (a) immediately after Clause 17(1) to read: "The security deposit to be paid by the tenant in advance shall be such as may be agreed upon between the landlord and the tenant in the tenancy agreement, which shall – i. not exceed two months' rent, in case of residential premises; and ii. not exceed six months' rent, in case of business premises. The security deposit shall be refunded to the tenant on the date of	For clarity and standardization in setting rent security deposits

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			taking over vacant possession of the premises from the tenant, after making the due deduction of any liability of the tenant."	
		<p>There are cases where Landlords even when they are holding three months' deposits from Tenants do the following: -</p> <p>i. Charge penalties for late rent payment after 10th of each month yet they DO NOT PAY interest on the deposits held by them.</p> <p>ii. Lock -up the business premises for delayed rent payment for one month and yet they are holding three-months' rent deposits which are not earning any interest</p>	<p>Amend by inserting a new paragraph (b) immediately after Sub-clause 1(a) to read:</p> <p>1. "Where Rent deposits are held by the Landlord No penalties should be levied by the Landlord otherwise Rent deposits should also attract interest because they are being put into personal use by the Landlord;</p> <p>2. Rent deposits act as Security for unpaid rent and therefore unless the unpaid rent exceeds or equal to the rent deposits, Landlords should not be allowed to lock-up business premises of tenants until the rent arrears are equal or greater than the rent deposits held by the Landlord."</p>	<p>This treatment will provide fairness to the Tenant who has been oppressed by some Landlords for a long time because of the absence of such a legal framework.</p>

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
5.	Clause 19(2)(b) Notice of termination	The bill should state the number of days required by the tenant to terminate the tenancy agreement before applying for eviction to Tribunal.	Amend paragraph b by inserting the word "within such period as agreed during payment of initial deposit or upfront payment" immediately after premises to read: "if the tenant does not vacate the premises within such period as agreed during payment of the initial deposit or upfront payment, the landlord may apply to the Tribunal for an order to terminate the tenancy and to evict the tenant."	This will provide clarity and fair administration and curb abuse by either party.
6.	Clause 19(2)(c): New paragraph	The Bill does not provide for the time required by the Tribunal in determination of eviction of the tenant.	Insert a new paragraph (c) immediately after paragraph (b) to read: "where an application to terminate the tenancy has been made the Tribunal shall make determination as soon as practicable and <i>not more than 21 days</i> from the day of application."	This will provide clarity for planning by the tenant/landlord and curb abuse by either party.

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
7.	Clause 21: Decrease in services.	The bill has not provided the definitive aspect of the prescribed services that should provide framework for rent reduction.	Amend Clause 21(2) to read: 21(1)A landlord shall decrease the rent charged to a tenant if the landlord ceases to provide any service as prescribed in the tenancy agreement with respect to the tenant's occupancy of the rental premises. 21(2)A decrease in rent under subsection (1) shall be proportionate to the decrease of the services and at the prevailing market rate of the withdrawn services.	To elaborate and provide clarity on prescribed services applicable as per the tenancy agreement
8.	Clause 23: Penalty for false statement in notice	The Bill under Clause 50 provides for offences and Clause 55 provides for Penalties	This should be provided for under Penalties and Offences section of the bill. Amend Clause 50 to provide for an offence for false statement in notice	For logical flow
9.	Clause 24: Form of Tenancy Agreement	The form of Tenancy Agreement should contain detailed information to avoid disagreements or any inconveniences to the tenant.	Amend by inserting other paragraphs immediately after paragraph (c) to read: "(d)The amount and purpose of the security deposit;	By making clear what you expect of the tenant and what they should expect of you- both can feel more at ease and the chances of a disagreement or

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			(e) the amount of any late charge; (f) notice periods required to bring the tenancy to an end; and (g) the rights and obligations of both parties."	dispute further down the line are reduced.
		The landlord shall not file or maintain an action against the tenant if he has not issued the tenant with the form of tenancy agreement.	Amend sub-clause 4 to read: "The landlord shall provide a signed copy of the tenancy agreement to the tenant within one month of its execution. Failure by the landlord to deliver such a tenancy agreement and statement shall not affect the validity of the agreement. Further, the landlord shall not file or maintain an action against the tenant in the Tribunal for any alleged lease violation until he has provided the tenant with the form of tenancy agreement."	Providing a copy of tenancy agreement ensures there is validity of the agreement between the landlord and the tenant.
		The landlord or his/her agent should issue a receipt to the tenant upon making the rent payment.	Amend by inserting a new sub-clause (7) to read: (1) Every landlord or his/her agent shall, on receipt of payment towards rent and other charges payable within the stipulated period as in the	A receipt will serve as evidence that payment has been done and help solve disputes.

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			tenancy agreement from the tenant, provide forthwith against acknowledgement, a duly signed receipt for the amount received by him/her."	
10.	Clause 29: Notice for demolition, conversion, or repairs	This clause is silent on what happens where a business has created Goodwill and is flourishing, and the landlord wants to terminate the tenancy.	Amend by inserting a new sub-clause (4) immediately after sub-clause (3) to read: "If the Landlord wishes to terminate the tenancy based on the reasons given under Clause 29, then there should be compensation for the destruction of the goodwill created by the business."	This action will promote equity in the treatment of the Tenant who may have invested much in the business creating Goodwill that will now be destroyed by the notice of tenancy termination
11.	Clause 39: Recovery of certain sums paid on account of rent	Fines should be tailored according to income to ensure every person experiences a proportional penalty.	Amend sub-clause 2(c) by deleting "ten thousand shillings" and substituting with "ten percent of entry referred in paragraph (a)" to read: "that person or landlord commits an offence and is liable on conviction to a fine not exceeding ten percent of entry referred to in paragraph (a), unless that person or landlord proves that at the time of the making of the	This will ensure there is fairness and equitable punishment.

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			entry or the neglect or refusal to cause it to be deleted the landlord had a bona fide claim that the sum was recoverable."	
12.	Clause 40: Statement to be supplied as to rent	The current provision is open to abuse by either party. There is a contradiction on the basis the Tribunal will charge a fine not exceeding one month's rent of the premises.	Amend Sub-clause (2) by deleting the words "not exceeding one month's rent of premise" and substituting with "of twenty thousand shillings or six months imprisonment or both" as follows: "A landlord who, without reasonable excuse, fails to comply with a request under subsection (1) within fourteen days of receipt of the request, or supplies a statement which is false in any material particular, commits an offence and is liable on conviction to a fine of twenty thousand shillings or six months imprisonment or both of the premises."	To hear determination of appropriate penalty for this event and avoid contradiction between sub-clause (1) and (2).
13.	Clause 42: Removal of	The landlord should not apply to the Tribunal for permission on removal of tenants' furniture/soft furnishing. This is unfair and	Amend Clause 42(1) by deleting "apply to Tribunal for permission to do so" and substituting with "notify the tenant and replace them without	This provision is giving too much discretionary power to the Tribunal.



#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
	furniture by the Landlord	unnecessary since the Tribunal will have a lot of control on the two parties.	<p><i>jeopardizing the comfort of the tenant</i>" to read:</p> <p>"Subject to any agreement between the parties to a tenancy, where a landlord of any furnished premises wishes to remove the furniture or soft furnishings, or any of them, with which the premises were let, the landlord shall <i>notify the tenant and replace them without jeopardizing the comfort of the tenant.</i>"</p> <p>Delete Clause 42(2)</p> <p>Amend sub-clause 3 to be sub-clause (2) to read:</p> <p>"Where the <i>landlord and the tenant have agreed</i> and the furniture or the soft furnishings or any part thereof with which such premises were let is removed by the landlord, the rent of the premises shall be reduced—"</p> <p>Delete the entire sub-clause 3(b) and substitute with the following:</p>	

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			"the Tribunal should be the last resort in case the tenant and landlord don't agree"	
14.	Clause 43: Penalty for depriving tenant of service	The Bill under Clause 50 provides for offences and Clause 55 provides for Penalties	This should be provided for under Penalties and Offences section of the bill. Amend Clause 55 to provide for Penalty for depriving tenant of service.	For logical flow of the Act
15.	Clause 50: Offences	Clause 23 on Penalty for false statement in notice should be provided under Clause 50 of the bill.	Amend Clause 50 by inserting a new paragraph (Clause 23) immediately after paragraph (c) to read: "If a notice served under section 18 contains any statement or representation which is false or misleading in any material respect, the landlord commits an offence and is liable, upon conviction to a fine not exceeding twenty thousand shillings".	For logical flow of the Act.
		Clause 43(2) on Penalty for depriving tenant of service should be provided under Clause 50 of the bill.	Amend Clause 50 by inserting a new paragraph (d) (Clause 43(2) to read: (2) Any person who contravenes the provisions of Section 43(1) of	For logical flow of the Act.

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			depriving tenant of service without prior consent of law authority commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding six months, or to both.	
16.	Clause 59: Death of tenant	Members of the family of the deceased should provide identification documents before they are given an access to remove the tenant's property. This will prevent the family members from creating false identities	Amend Clause 59 (3)b by adding the words " <i>upon production of relevant identification and legal documents where necessary</i> " immediately after "property" to read: "afford the executor or administrator of the tenant's estate, or if there is no executor or administrator, a member of the tenant's family reasonable access to the rented premises for the purpose of removing the tenant's property <i>upon production of relevant identification and legal documents where necessary.</i> "	To curb malicious people against taking advantage of the situation.
17.	Clause 62(b): Abandonment	Members of the family of the tenant who has abandoned his/her premises should provide identification documents before	Amend Clause 60(2)b by adding the words " <i>upon production of relevant identification and legal documents</i> "	To curb malicious people against taking advantage of the situation.

#	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		they are given an access to remove the tenant's property.	where necessary" immediately after "property" to read: "afford the tenant, or a member of the tenant's family reasonable access to the rented premises for the purpose of removing the tenant's property upon production of relevant identification and legal documents where necessary."	

