



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)

THE SENATE

ORDER PAPER

AFTERNOON SITTING

WEDNESDAY, JUNE 07, 2023 AT 2.30 PM

PRAYER

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers (as listed in the Appendix)
6. Notices of Motion
7. Questions and Statements (as listed in the Appendix)
8. ***THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2022)**
(Sen. Samson Cherarkey, MP)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 6th June, 2023)

(Mover to Reply)

9. **COMMITTEE OF THE WHOLE**
***THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 5 OF 2022)**
(Sen. Danson Mungatana, MP)
10. **COMMITTEE OF THE WHOLE**
***THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 6 OF 2022)**
(Sen. Danson Mungatana, MP)

11. **COMMITTEE OF THE WHOLE**
***THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 7 OF 2022)**
(Sen. Danson Mungatana, MP)

12. ***THE LEARNERS WITH DISABILITIES BILL (SENATE BILLS NO. 4 OF 2023)**
(Sen. (Prof.) Margaret Kamar, MP and Sen. Crystal Asige, MP)

(Second Reading)

(Resumption of debate interrupted on Wednesday, 3rd May, 2023 – Afternoon Sitting)

13. ****THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 16 OF 2023)**
(The Chairperson, Standing Committee on Finance and Budget)

(Second Reading)

14. ***THE PERSONS WITH DISABILITIES BILL (SENATE BILLS NO. 7 OF 2023)**
(Sen. Crystal Asige, MP)

(Second Reading)

15. ***THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 8 OF 2023)**
(The Chairperson, Standing Committee on Labour and Social Welfare)

(Second Reading)

16. ****THE COFFEE BILL (SENATE BILLS NO. 10 OF 2023)**
(Chairperson, Standing Committee on Agriculture, Livestock and Fisheries)

(Second Reading)

17. ***THE PREVENTION OF LIVESTOCK AND PRODUCE THEFT BILL (SENATE BILLS NO.12 OF 2023)**
(Sen. Samson Cherarkey, MP)

(Second Reading)

18. **MOTION – STATE OF MENTAL HEALTH OF POLICE OFFICERS**
(Sen. Hamida Kibwana, MP)

AWARE THAT, police officers are usually first responders and are often exposed to traumatic scenes and chronic stressors such as, dangerous situations, injuries and violence coupled with the need to report and testify about psychologically stressful scenes;

...../Motion

COGNIZANT OF, a survey done by the National Police Service Commission in 2022 which indicated that at least 12 to 13 percent of the 110,000 police officers have mental health challenges stemming from work related issues;

CONCERNED THAT, there has been a recent spike of incidents involving police officers, including murder and suicide which have been linked to the state of mental wellbeing;

NOW THEREFORE, the Senate urges the National Government and the National Police Service through the Ministry of Interior and National Administration to –

1. declare the current mental health situation within the police service a national emergency;
2. urgently establish a specialized facility to cater for police officers with mental illness;
3. develop and implement policies to reduce the stigma surrounding mental health issues within law enforcement agencies and encourage officers to seek help when needed; and
4. prioritise mental health as a priority health and socio-economic agenda within the Police Service and that in cases of deployment and transfers the service considers the health of the affected officers.

*(Resumption of debate interrupted on Wednesday, 31st May, 2023
(Morning Sitting) – Balance of time - 1hr 29mins)*

19. **MOTION - COMPENSATION TO THE KENYAN VICTIMS OF THE 1998 BOMBING OF THE UNITED STATES EMBASSY IN NAIROBI**

(Sen. Agnes Kavindu Muthama, MP)

THAT, AWARE THAT, disaster is defined as an overwhelming event and circumstance that tests the adaptation of responses of a community or individuals beyond their capability and leads momentarily to massive disruption of function for a community or individual that often exceeds their capacity to cope using existing resources;

FURTHER AWARE THAT, such was the case with the 1998 US Embassy Bomb disaster in Nairobi in which many of the Kenyan casualties resulted from the collapse of adjacent buildings located within a two to three block radius, and with reverberations being felt in most parts of Nairobi that resulted in 213 Kenyans and 12 Americans killed and over 5000 citizens of both countries being seriously injured;

...../Motion

NOTING THAT, US Allies, including Kenya, have endured the great burden of death, and long-term and in many instances permanent, physical and psychological injury;

FURTHER NOTING THAT, the United States Government has since compensated some of the victims and families of US citizens, leaving the families of Kenyan citizens and certain other victims uncompensated;

NOW, THEREFORE, the Senate resolves that the Ministry of Foreign Affairs:

- (i) Advances friendship and co-operation between the United States and Kenya by supporting the eligibility of Kenyan and American victims and their personal representatives, surviving spouses and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act; and
- (ii) Partners with the Ministry of Health to explore subsidized medical treatment for the surviving victims of the bomb blast.

*(Resumption of debate interrupted on Tuesday, 2nd May, 2023 –
Balance of time – 1hr 46mins)*

20. **MOTION - REPOSSESSION OF MOVABLE ASSETS BY LENDING INSTITUTIONS DUE TO NON-PERFORMING LOANS**

(Sen. Wahome Wamatinga, MP)

THAT AWARE THAT the high unemployment rate in Kenya has pushed many Kenyans to seek loans from Saccos, Microfinance Institutions and Banks to start Small and Medium Enterprises (SMEs) to sustain their livelihoods;

NOTING THAT the youth in particular have invested in movable assets, including vehicles and motorcycles, to start business in the transport industry and most of them have signed up to the ride hailing apps including but not limited to Uber, Taxify, Bolt and Little cab;

COGNIZANT THAT the Banking Act 2015 CAP 488 does not provide for renegotiation on the loan repayment agreement whenever the business environment becomes unfavorable as a result of the high cost of living, lowered earnings from the App providers and high interest rates;

NOW THEREFORE the Senate urges the National Treasury and Economic Planning to come up with a policy framework to review the Banking Act in order to renegotiate the repayment terms of the loans and provide cushion for Kenyans with non-performing loans and prevent the loss of their movable assets.

...../Motion

21. **MOTION - ARBITRARY ARRESTS OF KENYAN FISHERMEN BY UGANDAN AUTHORITIES**

(Sen. (Dr.) Oburu Oginga, MP)

THAT AWARE THAT the communities around the lake rely on fishing as their main economic activity, their source of food and employment;

CONCERNED THAT the fishermen have reported harassment from the Ugandan security personnel including arbitrary arrests and imposition of unreasonable fines;

FURTHER CONCERNED THAT in November, 2021 the Kenya International Boundaries office formed a Joint Committee with the Ugandan

authorities that did not effectively delineate the boundaries that would have helped avoid conflict between the two Countries;

NOW THEREFORE the Senate resolves that-

- a) the Ministry of Foreign and Diaspora Affairs in collaboration with the Ministry of East African Community (EAC), the ASALs and Regional Development engages the counterpart ministries in the Republic of Uganda to;
 - i) Fast-track the delineation of the Kenya-Uganda boundary;
 - ii) Develop measures to curb the arrests of Kenyan fishermen by Ugandan authorities;
 - iii) Institute a protocol for sustainable development of the Lake Victoria Basin on the sharing of resources between partner states; and
- b) The Ministry of Interior and National Administration to deploy the Kenya Coast Guard in the territorial waters of Lake Victoria to enforce maritime security and safety.

22. **MOTION - INTEGRATION OF ETHNIC MINORITIES AND MARGINALIZED COMMUNITIES IN KENYA**

(Sen. William Cheptumo, MP)

AWARE THAT, Kenya is a multi-ethnic country with a rich diversity of cultures, languages and traditions;

FURTHER AWARE THAT, ethnic minorities and marginalized communities face significant social, economic and political challenges including discrimination, marginalization and exclusion;

...../Motion

ACKNOWLEDGING THAT Articles 10 (2)b, 21(3), 27, 56, 91(1)(e), 100, 174(e), 177(1) (c),204(3)(b),216(4) and the Fifth Schedule to the Constitution of Kenya obligate the state to promote and protect the welfare of ethnic minorities and marginalized communities;

APPRECIATING THAT, the Government has put in place policies, legal and institutional frameworks including affirmative action programs to address the needs of other special interest groups namely children, persons with disabilities (PWDS), youth, women and the elderly;

CONCERNED THAT, ethnic minorities and marginalized communities remain largely unaddressed through similar interventions due to lack of an existing national policy and legislative framework;

NOW THEREFORE the Senate resolves that the Ministry of Public Service, Gender and Affirmative Action, the National Gender and Equality Commission and any other relevant state departments in collaboration with the Council of Governors: -

- i.) Initiate measures to identify and address the specific needs and challenges faced by ethnic minorities and marginalized communities in Kenya; and
- ii.) Develop and implement national policy and legislative framework for the integration of ethnic minorities and marginalized communities in Kenya as envisaged in the Constitution of Kenya.

23. **MOTION - DEVELOPMENT OF A POLICY AND LAW FOR SOCIAL RISK MANAGEMENT IN INFRASTRUCTURE DEVELOPMENT PROJECTS IN KENYA**

(Sen. Catherine Mumma, MP)

AWARE THAT the Constitution has entrenched a strong Bill of Rights in Chapter 4, which recognizes human rights including socio-economic rights and the principle of equality and non-discrimination;

FURTHER AWARE THAT Kenya lacks a policy for guiding the management of these Social Risks in the design and implementation of infrastructure projects;

CONCERNED THAT inadequate attention to social risks in the planning and implementation of development projects at both national and county levels makes them unacceptable and end up costing the taxpayer colossal sums of money in suits filed before the courts and tribunals by local communities and affected interest groups seeking protection from such social risks;

...../**Motion**

NOW, THEREFORE, the Senate resolves that:

1. The National and County Governments develop a Social Risk Management Policy that outlines the standards, guidelines and procedures for guiding infrastructure and other development projects both at the national and county governments; and
2. The national executive establishes an independent multi-sectoral agency under the authority of the Cabinet secretary in charge of Social Security and Protection to design a mechanism that can factor in the inclusion of Social Impact Assessments standards and monitor their implementation in infrastructure and other development projects in Kenya.

24. **MOTION - DESIGNATION OF A MONTHLY CAR FREE DAY AND COUNTY CAR FREE ZONES**

(Sen. Crystal Asige, MP)

THAT AWARE THAT, Kenyans have a right to a clean and healthy environment pursuant to Article 42 of the Constitution;

NOTING THAT the National Climate Change Action Plan identifies transportation as the fourth largest contributor to greenhouse gas emissions which if uncontrolled, will result to negative impact of climate change that will adversely affect millions of Kenyans;

CONCERNED THAT the number of private vehicles has significantly grown leading to increased road accidents, carbon emission and vehicle congestion costs which are in excess of Kshs. 100 billion in GDP per year;

NOW THEREFORE the Senate urges the Ministry of Roads and Transport, in collaboration with the Council of Governors, and the National Climate Change Council to;

- i.) identify, publicize and execute suitable monthly car-free days and County car-free zones in urban areas;
- ii.) provide affordable, safe and efficient public transport including but not limited to development of Bus Rapid Transport (BRT) in the urban areas;
- iii.) encourage the use of electric hybrid buses and provide appropriate incentives for their use; and
- iv.) design an infrastructure that can support non – motorized transport facilities such as pedestrian and bicycle access within urban centers; and

...../Motion

- v.) ensure inter-modal connectivity among the various transport modes.

NOTICE

The Senate resolved on 15th February, 2023 as follows:-

THAT, pursuant to Standing Order 111 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

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

KEY

******- Denotes a Majority /Minority Party Bill**

*****- Denotes a National Assembly Bill**

****- Denotes a Committee Bill**

***- Denotes any other Bill**

-----**XXX**-----

NOTICE OF AMENDMENTS

A. *THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 5 OF 2022)

(Sen. Danson Mungatana, MP)

NOTICE is given that the Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022) at the Committee Stage —

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the words “The Parliamentary Powers and Privileges (Amendment) Act, hereinafter referred to as” at the beginning of the introductory clause.

INSERTION OF NEW CLAUSE 3A

THAT the Bill be amended by inserting the following new clause immediately after clause 3 –

3A. Section 16 of the principal Act is amended in paragraph (d) by deleting the expression “38” appearing immediately after the words “under section” and substituting therefor the expression “37”.

CLAUSE 4

THAT clause 4 of the Bill be amended –

(a) in the introductory clause by deleting the words “Parliamentary Powers and Privileges Act hereinafter referred to as the” appearing immediately after the word “The”;

(b) by deleting the proposed new section 23A and substituting therefor the following new section –

23A. In this Part, “responsible officer” means –

(a) a Cabinet Secretary;

(b) a county governor;

(c) the chairperson of a commission established under the Constitution;

- (d) the Auditor-General;
 - (e) the Controller of Budget;
 - (f) the chairperson and the accounting officer of a corporate body; and
 - (g) a public officer to whom a resolution or report of a House or a Committee of Parliament is submitted in accordance with this Act.
- (c) in the proposed new section 23C –
- (i) by renumbering the existing provision as subsection (1); and
 - (ii) inserting the following new subsection immediately after the new subsection (1)–
 - (2) A person liable for an offence under subsection (1) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

B. *THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 6 OF 2022)

(Sen. Danson Mungatana, MP)

- i. **NOTICE** is given that the Chairperson to the Standing Committee on Land, Environment and Natural Resources, intends to move the following amendments to the Natural Resources (Benefit Sharing) Bill 2022, (Senate Bills No. 6 of 2022), at the Committee Stage—

CLAUSE 3

THAT clause 3 of the Bill be amended by—

- (a) deleting paragraph (b) and substituting therefor the following new paragraph (b) —
 - (b) surface and underground water;
- (b) inserting the following new paragraphs immediately after paragraph (f) —
 - (g) geothermal resources;
 - (h) minerals; and
 - (i) petroleum.

CLAUSE 4

THAT clause 4 of the Bill be amended by inserting the following new paragraph immediately after paragraph (f)—

- (g) environmental protection and restoration.

HEADING TO PART II

THAT the Bill be amended by deleting the heading to Part II.

CLAUSE 5

THAT the Bill be amended by deleting clause 5.

CLAUSE 6

THAT clause 6 of the Bill be amended—

- (a) in subclause (1) by—

- (i) deleting the word “Commission” appearing immediately after the word “The” and substituting therefor the word “Authority”; and
 - (ii) inserting the words “and upon conducting public participation” immediately after the words “national government entities”;
- (b) in subclause (3) by deleting the words “payments or benefit sharing” appearing immediately after the words “the royalty, fees,” and substituting therefor the words “or payments”; and
- (c) in subclause (4) by—
- (i) deleting the word “Commission” appearing immediately after the word “The” and substituting therefor the word “Authority”; and
 - (ii) deleting the words “or any other written law” appearing immediately after the words “to this Act”.

CLAUSE 7

THAT clause 7 of the Bill be amended—

- (a) deleting subclause (2) and substituting therefor the following new subclause—
- (2) The Kenya Revenue Authority shall declare and pay monies collected under subclause (1) to the Consolidated Fund by the fifth day of every month.
- (b) in subclause (4) by deleting the word “Commission” appearing immediately after the words “account to the” and substituting therefor the word “Authority”; and
- (c) inserting the following new subclauses immediately after subclause (4)—
- (5) The Authority shall submit to the respective county government declarations received from the Kenya Revenue Authority under subsection (4) at least once every quarter.
- (6) The county executive committee member in the respective county shall submit to the respective local community declarations received from the Authority under subsection (5) within twenty one days of receipt.

CLAUSE 8

THAT clause 8 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following new subclause —
 - (1) The revenue collected under this Act shall, subject to subsection (3), be shared between the National Government and respective county governments in the ratio of sixty per cent to the National Government and forty per cent to the county governments.
- (b) by deleting subclause (2);
- (c) in subclause (3) by—
 - (i) deleting the word “forty” appearing immediately after the words “At least” and substituting therefor the word “sixty”; and
 - (ii) deleting the word “sixty” appearing immediately after the words “community projects and” and substituting therefor the word “forty”;
- (d) in subclause (4) by deleting the word “Commission” appearing immediately after the words “more counties the” and substituting therefor the word “Authority”;
- (e) in subclause (5) by deleting the word “Commission” appearing immediately after the words “subsection (4) the” in the introductory clause and substituting therefor the word “Authority; and
- (f) in subclause (6) by deleting the word “Commission” appearing immediately after the word “The” and substituting therefor the word “Authority”.

CLAUSE 10

THAT clause 10 of the Bill be amended—

- (a) in subclause (2) by deleting paragraph (b) and substituting therefor the following new paragraph (b)—
 - (b) the county executive committee member responsible for matters relating to natural resources;
- (b) in subclause (3) by inserting the words “be appointed by the county governor and” immediately after the words “subsection (2)(d) shall”; and

(c) by inserting the following new subclause immediately after subclause (5)—

(5A) The county chief officer responsible for matters relating natural resources shall serve as the secretary to the County Benefit Sharing Committee.

CLAUSE 11

THAT clause 11 of the Bill be amended in paragraph (a) by inserting the words “in consultation with the respective local community and upon conducting public participation” before the words “negotiate the terms”.

CLAUSE 12

THAT clause 12 of the Bill be amended in subclause (2) by deleting the word “Commission” appearing immediately after the words “deposited with the” and substituting therefor the word “Authority”.

CLAUSE 13

THAT clause 13 of the Bill be amended in subclause (3) by inserting the words “be appointed by the respective county executive committee member responsible for matters relating to natural resources and” immediately after the words “sharing forum shall”.

CLAUSE 14

THAT the Bill be amended by deleting clause 14 and substituting therefor the following new clause—

Funds of
the
Authority.

14. The funds of the Authority shall consist of—

- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such money as may be provided by the National Assembly for defraying expenses incurred in the implementation of this Act;
- (c) all monies from any other source provided for or donated or lent to the Authority; and
- (d) such other monies that may lawfully accrue in the discharge of functions of the Authority under this Act.

CLAUSE 16

THAT clause 16 of the Bill be amended in subclause (1) by deleting the word “Commission” appearing immediately after the words “furnished to the” in paragraph (a) and substituting therefor the word “Authority”.

CLAUSE 17

THAT the Bill be amended by deleting clause 17 and substituting therefor the following new clause 17—

Transitional provisions. **17.** (1) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a natural resource under this Act shall be deemed to be authorised to conduct such exploitation under this Act.

(2) Despite subsection (1), an affected entity shall comply with the provisions of this Act within two years of the commencement of the Act.

CLAUSE 18

THAT clause 18 of the Bill be amended in subclause (1) by inserting the words “in consultation with the Authority and the Council of County Governors” immediately after the words “Cabinet Secretary may”.

CLAUSE 19

THAT the Bill be amended by deleting clause 19 and substituting therefor the following new clause 19—

Amendment to section 183 of Act No. 12 of 2016. **19.** Section 183 of the Mining Act is amended by deleting subsection (5) and substituting therefor the following new subsection (5)—

(5) The royalty received by the State under this section shall be paid into the Consolidated Fund and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

NEW CLAUSES

THAT the Bill be amended by inserting the following clauses immediately after clause 4—

PART II – ESTABLISHMENT AND MANAGEMENT OF THE BENEFIT SHARING AUTHORITY

Establishment of the Benefit Sharing Authority. **5.** (1) There is established the Benefit Sharing Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Functions of the Authority. **5A.** (1) The functions of the Authority shall be to—

- (a) coordinate the preparation of benefit sharing agreements between an affected county and an affected entity;
- (b) review, and where appropriate, determine the royalties payable by an affected entity engaged in natural resource exploitation;
- (c) identify counties that are required to enter into a benefit sharing agreement under this Act in consultation with the respective county governments;
- (d) oversee the administration of funds set aside for community projects to be implemented under a benefit sharing agreement;

- (e) facilitate and monitor the implementation of a benefit sharing agreement entered into between a county government and an affected entity;
- (f) conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya;
- (g) determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements;
- (h) advise the national government on policy and the enactment of legislation relating to benefit sharing in resource exploitation;
- (i) oversee the establishment of benefit sharing committees and forums established under this Act;
- (j) ensure the proper and timely payment of funds to counties and local communities as provided under this Act;
- (k) build the capacity of local communities in negotiations for benefit sharing and implementation of related projects;
- (l) prepare national guidelines on benefit sharing in consultation with the relevant stakeholders;
- (m) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resources;
- (n) promote value addition in natural resources;
- (o) promote local content initiatives on the exploration and exploitation of natural resources under this Act; and
- (p) promote the restoration of the environment after the exploitation of a natural resource in an affected county.

(2) The Authority may, in furtherance of its functions, collaborate with such other bodies or organizations within or outside Kenya as it may consider necessary for the better performance of its functions under this Act.

(3) The Authority shall have regard to the following in the performance of its functions—

- (a) all existing law regulating the natural resources sector in Kenya;
- (b) all existing arrangements for benefit sharing between local communities and an affected entity under any law in Kenya; and
- (c) obligations imposed on Kenya under any international treaty or agreement relating to the exploitation of natural resources.

Board of the Authority.

5B. (1) The management of the Authority shall vest in a Board which shall consist of—

- (a) a chairperson appointed by the President with the approval of Parliament;
- (b) the Principal Secretary responsible for finance or a designated representative;
- (c) the Principal Secretary responsible for mining or a designated representative;
- (d) the Principal Secretary responsible for petroleum or a designated representative;
- (e) the Principal Secretary responsible for energy or a designated representative;
- (f) two persons of opposite gender nominated by the Council of County Governors to represent such communities as the council shall determine;

- (g) one person nominated by a registered association representing a majority of members of county assemblies to represent local communities;
- (h) one person nominated by an umbrella body representing the interests of the private sector in Kenya; and
- (i) the Director-General appointed by the Board in accordance with section 5K.

(2) The chairperson shall be competitively recruited by the Public Service Commission and appointed by the President by notice in the *Gazette*.

(3) The Cabinet Secretary shall, with the approval of Parliament, appoint the persons nominated under subsection (1)(f), (g) and (h) by notice in the *Gazette*.

(4) In nominating and appointing persons as members of the Board, the nominating authorities and the Cabinet Secretary shall—

(a) have regard to—

- (i) the principles of non-discrimination on the basis of gender, disability, youth and marginalized persons under the Constitution; and
- (ii) the requirements of chapter six of the Constitution; and

(b) ensure that the nominations reflect the regional diversity of the people of Kenya.

Tenure of office. of **5C.** (1) The members of the Board other than the Director-General shall—

- (a) hold office for a term of three years and shall be eligible for reappointment for one further term; and
- (b) serve on a part-time basis.

(2) Paragraph (1)(a) shall not apply to principal secretaries who serve as members of the board.

...../Notice of Amendments

Qualifications for appointment. **5D.** A person is qualified for appointment as the chairperson or a member of the Board under section 5B(1) (f), (g) and (h) if that person—

- (a) holds a degree from a university recognised in Kenya; and
- (b) has knowledge and at least seven years' experience in—
 - (i) law;
 - (ii) environmental management;
 - (iii) economics;
 - (iv) public finance;
 - (v) mining;
 - (vi) community development; or
 - (vii) any other related field.

Vacation of office. **5E.** The office of the chairperson or a member of the Board appointed under section 5B(1)(f), (g) and (h) shall become vacant if the chairperson or member—

- (a) is unable to perform the functions of the office by reason of mental or physical incapacity;
- (b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) resigns in writing addressed, in the case of the chairperson, to the President and in the case of a member appointed under section 5B(1) (f), (g) or (h), to the Cabinet Secretary;

(g) fails to declare their interest in any matter being considered by the Board; or

(h) dies

Powers of the Board.

5F. (1) The Board shall have all the powers necessary for the performance of the functions of the Authority under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have the power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established;
- (c) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements therefrom in accordance with the provisions of this Act;
- (d) require from any person such information as it considers necessary for the performance of its functions under this Act; and
- (e) open and operate a bank account for the funds of the Authority into which all moneys received by the Authority shall be paid in the first instance and out of which all payments made by the Authority shall be made.

(2) The Board shall consult the respective Cabinet Secretary responsible for an affected natural resource in carrying out its functions under this Act.

Committees of the Board.

5G. (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may invite any person whose knowledge and skills are found necessary for the performance of its functions to sit in any committee established under subsection (1).

Power to delegate. **5H.** The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

Remuneration and allowances. **5I.** The remuneration, allowances, expenses and other emoluments of members and staff of the Authority shall be determined by the Salaries and Remuneration Commission.

Conduct of business and affairs of the Board. **5J.** The Board shall conduct its affairs in accordance with the provisions of the Schedule.

Director-General. **5K.** (1) There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Board on such terms and conditions as the Board shall determine.

(2) A person qualifies for appointment as a Director-General under subsection (1) if such person —

- (a) holds a degree from a university recognized in Kenya; and
- (b) has knowledge and at least ten years' experience in —
 - (i) law;
 - (ii) environmental management;
 - (iii) economics;
 - (iv) public finance;
 - (v) mining;
 - (vi) community development; or
 - (vii) in any other related field.

(3) The Director-General shall be an *ex-officio* member of the Board and shall have no right to vote at any meeting of the Board.

Tenure of office of the Director-General. **5L.** The Director-General shall be appointed for a term of four years and shall be eligible for reappointment for one further term.

Functions of the Director-General. **5M.** (1) The Director-General shall be the chief executive officer of the Authority and secretary to the Board.

(2) The Director-General shall, for the effective performance of the functions under this Act and subject to the direction of the Board, —

- (a) be responsible for the day-to-day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of the staff of the Authority;
- (d) cause to be prepared for the approval of the Board—
 - (i) the strategic plan and annual plan of the Authority; and
 - (ii) the annual budget and audited accounts of the Authority; and
- (e) perform such other duties as may be assigned by the Board.

Tenure of office of the Director-General. **5N.** The Board may terminate the appointment of the Director-General in accordance with the terms and conditions of service for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;

- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service

Common seal of the Authority.

50. (1) The common seal of the Authority shall be kept in the custody of the Director-General or such other person as the Board may direct and shall not be used except with the express authority and direction of the Board.

(2) The common seal of the Authority shall be authenticated by the signature of the chairperson and the Director-General of the Board or in the absence of either person, such other member of the Board who shall be designated by the Board for that purpose.

(3) The common seal of the Authority shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved, any order or authorization by the Board under this section shall be presumed to have been duly given.

Staff of the Authority.

5P. (1) The Board may employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act.

(2) The staff employed under subsection (1) shall serve on such terms and conditions as the Board may, subject to section 5I, determine.

Protection from personal liability.

5Q. No matter or thing done by a member of the Board or by any officer, employee or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand.

Liability of the Authority to damages. **5R.** Section 5Q shall not relieve the Authority of liability to pay compensation or damages to any person for any injury to them, their property or any of their interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

NEW CLAUSES

THAT the Bill be amended by inserting the following clauses immediately after clause 14—

Financial year. **14A.** The financial year of the Authority shall be the period of twelve months ending on thirtieth June in each year.

Accounts. **14B.** (1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

(2) Within three months of the end of each financial year, the Authority shall submit to the Auditor-General, the accounts of the Authority together with—

(a) a statement of the income and expenditure of the Authority during that financial year; and

(b) a statement of the assets and liabilities of the Authority as at the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act.

No. 34 of 2015. (4) The Authority may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of employees of the Authority and may grant pensions and gratuities from any such fund to the said employees upon their resignation, retirement or separation from the service of the Authority or, as the case may be, to the dependants of any such employee upon such employee's death.

Annual Report.

14C. (1) Within three months of the end of each financial year, the Authority shall submit—

(a) to the Auditor-General, the accounts of the Authority in respect of that year together with—

(i) a statement of the income and expenditure of the Authority during that year; and

(ii) a statement of the assets and liabilities of the Authority as at the last day of that financial year; and

(b) to the President and Parliament, an annual report in respect of that year containing—

(i) the financial statements of the Authority including—

(A) a statement of the income and expenditure of the Authority during that year; and

(B) a statement of the assets and liabilities of the Authority as at the last day of that financial year;

(ii) a list of institutions contributing to benefit sharing under this Act, the proportion of benefit and the local community that benefited;

(iii) the total sums contributed towards benefit sharing and its distribution;

(iv) the progress made in the implementation of the Authority's functions; and

(v) any other information that the Authority may consider necessary.

(2) The Authority shall publish the annual report in the *Gazette* and in at least one newspaper of national circulation.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 19—

Amendment to section 7 of Act No. 47 of 2013. **20.** Section 76 of the Wildlife Conservation and Management Act is amended by—

...../Notice of Amendments

(a) deleting subsection (1) and substituting therefor the following new subsection —

(1) The revenue received by the National Government under this Act shall be paid into the National Treasury and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

(b) deleting subsection (2);

(c) deleting subsection (3); and

(d) deleting subsection (4).

Amendment to section 85 of Act No. 1 of 2019.

21. Section 85 of the Energy Act is amended by—

(a) deleting subsection (3) and substituting therefor the following new subsection (3)—

(3) The royalty received by the National Government under this section shall be paid into the National Treasury and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

(b) deleting subsection (4).

Amendment to section 58 of Act No. 2 of 2019.

22. The Petroleum Act is amended by deleting section 58 and substituting therefor the following new section 58—

Sharing of petroleum resource.

58. The National Government’s share of the profits derived from upstream petroleum under section 57 shall be apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

NEW SCHEDULE

THAT the Bill be amended by inserting the following new Schedule—

SCHEDULE
(s.5J)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD OF THE BENEFIT SHARING
AUTHORITY**

Meetings **1.** (1) The Board shall meet at least once in every
of the three months to conduct the business of the Board of
Board. the Authority.

(2) The first meeting of the Board shall be convened
by the chairperson and the Board shall meet
subsequently at such a time and place as it shall
determine.

(3) Notwithstanding the provisions of subparagraph
(1), the chairperson shall, upon a written request by at
least five members of the Board or at any time where
he or she considers it expedient for the transaction of
the business of the Authority, convene a special
meeting of the Board.

(4) The members of the Board shall elect a vice-
chairperson from among themselves—

- (a) at the first sitting of the Board; and
- (b) whenever it is necessary to fill the vacancy
in the office of the vice-chairperson.

(5) A meeting shall be presided over by the
chairperson or in her or his absence by the vice-
chairperson.

(6) Unless three quarters of the total number of the
members of the Board otherwise agree, at least five
days written notice of every meeting of the Board shall
be given to every member of the Board by the Director-
General.

(7) The Board may invite any person to attend any
of its meetings and to participate in its deliberations,
but such person shall not have a vote in any decision
of the Board.

...../Notice of Amendments

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

Quorum. **2.** (1) Subject to subparagraph (2), the quorum of a meeting of the Board shall be not less than half of the appointed members.

(2) Where there is a vacancy in the Board, the quorum of the meeting shall be not less than three appointed members.

Voting. **3.** Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or person presiding over the meeting shall have a casting vote.

Conflict of interest. **4.** (1) A member of the Board who has a direct or indirect personal interest in any matter being considered or to be considered by the Board shall, upon the relevant facts concerning the matter having come to their knowledge, disclose the nature of their interest to the Board.

(2) A disclosure of interest made by a member of the Board under subparagraph (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Board otherwise determines—

- (a) be present during the deliberation on the matter by the Board; or
- (b) take part in the decision of the Board on the matter.

(3) A member of the Board who makes a disclosure under subparagraph (1) shall not—

- (a) be present in the meeting of the Board held to determine whether or not the member should take part in the deliberations or decision of the Board in relation to the matter; or

(b) influence any other member of the Board in arriving at a particular decision in relation to the matter.

(4) A member or staff of the Authority shall not transact any business or trade with the Authority.

Rules of Procedure and minutes. **5.** (1) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board.

(2) The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the chairperson or the person presiding at the meeting.

CLAUSE 2

THAT clause 2 of the Bill be amended by—

- a) deleting the definitions of the terms—
 - (i) Commission;
 - (ii) fund;
 - (iii) futures fund;
 - (iv) natural resources fund; and
 - (v) sovereign wealth fund;
- b) inserting the following new definitions in the proper alphabetical sequence—

“Authority” means the Benefit Sharing Authority established under section 5;

“Board” means Board of the Benefit Sharing Authority constituted under section 5B; and

“Director-General” means Director-General of the Benefit Sharing Authority appointed under section 5K(1).

ii. **NOTICE** is given that the Senator for Nakuru County (Sen. Tabitha Karanja Keroche, MP) intends to move the following amendments to the Natural Resources (Benefit Sharing) Bill (Senate Bills No. 6 of 2022), at the Committee Stage—

CLAUSE 3

THAT clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (f)—

(g) geothermal resources.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 19—

Amendment **20.** Section 85 of the Energy Act is amended to section by—

85 of Act
No. 1 of
2019.

(c) deleting subsection (3) and substituting therefor the following new subsection —

(3) The royalty received by the National Government under this section shall be paid into the National Treasury and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

(d) deleting subsection (4).

APPENDIX

1. PAPERS

- i.) Report of the Auditor General for the County Governments (County Executives) (Volume 1) for the financial year 2021/2022.
- ii.) Report of the Auditor General for the County Governments (County Assemblies) (Volume 2) for the financial year 2021/2022.
- iii.) The Office of the Controller of Budget (CoB) Annual Report and Financial Statements for the financial year 2021/2023.
- iv.) Report of the Auditor General on the Financial Statements of the County Facilities Improvement Fund Board for the County Government of Taita Taveta for the year ended 30th June, 2022.
- v.) Report of the Auditor General on the Financial Statements of the Municipality of Rongo for the year ended 30th June, 2022.
- vi.) Report of the Auditor General on the Financial Statements of Migori County Water and Sanitation Company Limited for the year ended 30th June, 2022.
- vii.) Report of the Auditor General on the Financial Statements of Kikuyu Water Company Limited for the year ended 30th June, 2022.
- viii.) Report of the Auditor General on the Financial Statements of Karuri Water and Sanitation Company Limited for the year ended 30th June, 2022.
- ix.) Report of the Auditor General on the Financial Statements of Kiambu County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2022.
- x.) Report of the Auditor General on the Financial Statements on the Receiver of Revenue – Revenue Statements for the County Government of Kiambu for the year ended 30th June, 2022.
- xi.) Report of the Auditor General on the Financial Statements of Kiambu County Alcoholic Drinks Control Fund for the year ended 30th June, 2022.

...../Appendix

- xii.) Report of the Auditor General on the Financial Statements of Kiambu County Emergency Fund for the year ended 30th June, 2022.

(The Senate Majority Leader)

2. QUESTIONS AND STATEMENTS

STATEMENTS

a) Pursuant to Standing Order 52(1)

The Senator for Nandi County (Sen. Samson Cherarkey, MP) to make a statement on the exemplary performance by Faith Kipyegon at the Wanda Diamond League 2023, Golden Gala in Tuscany, Italy.

b) Pursuant to Standing Order 53(1)

- (i) Nominated Senator (Sen. Tabitha Mutinda, MP) to seek a statement from the Standing Committee on Land, Environment and Natural Resources concerning regulation of sand harvesting in Kitui County.
- (ii) Nominated Senator (Sen. Hamida Kibwana, MP) to seek a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the challenges in the issuance of passport and alleged corruption in the Directorate of Immigration Services.
- (iii) Nominated Senator (Sen. Hamida Kibwana, MP) to seek a statement from the Standing Committee on Health concerning accessibility and affordability of Fistulla care in Kenya.
- (iv) Nominated Senator (Sen. Hamida Kibwana, MP) to seek a statement from the Standing Committee on Health concerning actions to make cancer treatment accessible and affordable in Kenya.
- (v) Nominated Senator (Sen. Beth Syengo, MP) to seek a statement from the Standing Committee on Trade, Industrialization and Tourism regarding the promotion and marketing of tourist sites in the Eastern Region of Kenya.
- (vi) The Senator for Murang'a County (Sen. Joe Nyutu, MP) to seek a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the safety and evacuation of Kenyans stranded in Sudan following unrest in the country.

- (vii) The Senator for Nairobi City County (Sen. Edwin Sifuna, MP) to seek a statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the non-payment of dairy farmers' dues by the New Kenya Cooperative Creameries (KCC).

NOTICE PAPER

Tentative Business for

Thursday, June 08, 2023

(Published pursuant to Standing Order 43 (1))

It is notified that the Senate Business Committee has approved the following **tentative** business to appear in the Order Paper for Thursday, June 08, 2023.

A. BILLS AT THE COMMITTEE OF THE WHOLE

- i.) *THE KENYAN SIGN LANGUAGE BILL (SENATE BILLS NO. 9 OF 2023)
(Sen. (Prof.) Margaret Kamar, MP and Sen. Crystal Asige, MP)
- ii.) *THE AGRICULTURE AND FOOD AUTHORITY (AMENDMENT) BILL (SENATE BILLS NO. 13 OF 2023)
(Sen. James Murango, MP)
- iii.) **THE EQUALIZATION FUND (ADMINISTRATION) BILL (SENATE BILLS NO.14 OF 2023)
(The Chairperson, Standing Committee on Finance and Budget)

B. MOTIONS

- i.) DECLARATION OF CATTLE RUSTLING AS A NATIONAL DISASTER AND ESTABLISHMENT OF A SPECIAL FUND FOR VICTIMS
(Sen. William Cheptumo, MP)
- ii.) REGULATION OF ELECTRONIC CIGARETTES IN KENYA
(Sen. Catherine Mumma, MP)
- iii.) REPORT OF THE 61ST SESSION OF THE ORGANISATION OF AFRICAN, CARRIBEAN AND PACIFIC STATES (OACPS) PARLIAMENTARY ASSEMBLY AND THE 42ND SESSION OF THE OACPS -EU JOINT PARLIAMENTARY ASSEMBLY HELD IN MAPUTO, MOZAMBIQUE ON 23RD OCTOBER TO 2ND NOVEMBER, 2022
(Sen. Tabitha Mutinda, MP)
- iv.) REPORT OF THE 146TH ASSEMBLY OF THE INTER - PARLIAMENTARY UNION (IPU) AND RELATED MEETINGS HELD IN MANAMA, KINGDOM OF BAHRAIN FROM 11TH TO 15TH MARCH, 2023.
(Sen. Kathuri Murungi, MP)

...../Notice Paper

- v.) RECORD OF THE PROCEEDINGS OF THE FIRST ORDINARY SESSION OF THE SIXTH PARLIAMENT OF THE PAN-AFRICAN PARLIAMENT (PAP) HELD IN GALLAGHER CONVENTION CENTRE, MIDRAND, SOUTH AFRICA ON 23RD OCTOBER – 12TH NOVEMBER, 2022.
(Sen. Danson Mungatana, MP)
