



# Exclusive Legislative Update

## February 2024



**KEYNOTE - 01: GOVERNMENT STRUCTURE**

The Republic of Kenya has two forms of Governments, which are the National Government and County Government. These two governments have unique responsibilities that are independent, interdependent and sometimes may co-share or agree on how to best surrender certain roles to a desired government to take charge as long as the arrangement is within the law.

The governments have legislative houses, whereby the National Government has two legislative houses (National Assembly, and Senate) while the County Government has only one (County Assembly).

**KEYNOTE – 02: LEGISLATIVE UPDATE**

The Legislative Update is provided as a snippet of part of Ong'anya Ombo Advocates LLP's Public Affairs, Stakeholder Mapping & Engagement, and Policy Monitoring services, which is heavily focused on corporate entities that are keen on similar solutions.

This is a general legislative update and is meant to serve as a general purpose on certain current developments but is not considered as an advisory. You are advised to engage us for advisory, stakeholder engagement or policy monitoring where necessary or your preferred professional advisor on other arising items.

**KEYNOTE – 03: SOME IMPORTANT TOPICS FOR FEBRUARY 2024**

- Development of Satellite Based Climate Change Monitoring Policy.
- Establishment of International Vaccine Institute.
- Investigations into or regularization of Buy-Now-Pay-Later businesses.
- Interest in regulations focusing on Irrigation Infrastructure.
- KETRACO is interested in wayleave corridor (acquisition of land).
- Specifications or codes of practice relating to Chemical, Financial Services, Food, Leather and Textile, among others are in effect.

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## NATIONAL ASSEMBLY

### Papers

The following are some of the Papers that were laid on the Table of the National Assembly for Consideration:

1. Legal Notice No.170 of 2023 relating to the Capital Markets (Alternative Investment Funds) Regulations, 2023, and the Explanatory Memorandum from the National Treasury.
2. Legal Notice No.171 of 2023 relating to the Capital Markets (Credit Rating Agencies) Regulations, 2023, and the Explanatory Memorandum from the National Treasury;
3. Legal Notice No.172 of 2023 relating to the Capital Markets (Public Offers, Listing and Disclosures) Regulations, 2023, and the Explanatory Memorandum from the National Treasury;
4. Legal Notice No.173 of 2023 relating to the Capital Markets (Collective Investment Schemes) Regulations, 2023, and the Explanatory Memorandum from the National Treasury;
5. The Public Procurement Capacity Building Levy Order 2023, from the National Treasury;
6. The proposed Public Private Partnerships Regulations 2023, from the National Treasury;
7. Report of the Joint Committee of the Departmental Committee on Finance and National Planning and Housing, Urban Planning and Public Works, on its consideration of the Affordable Housing Bill (National Assembly Bill No.75 of 2023).
8. Legal Notice No.44 of 2024 relating to the Computer Misuse and Cybercrime (Critical Information Infrastructure and Cybercrime Management) Regulations, 2024) and the Explanatory Memorandum from the Ministry of Interior and National Administration.
9. The 2024 Budget Policy Statement;
10. The 2024 Medium-Term Debt Management Strategy;
11. The Medium-Term Revenue Strategy for the Financial Years 2024/2025, 2025/2026 and 2026/2027; and,
12. The 2024 Budget Policy Statement (Non-Financial Indicators) for the Financial Year 2024/2025 and the Medium-Term
13. Legal Notice No.221 of 2023 relating to the Revision of Laws Order, 2023 and the Explanatory Memorandum from the Office of the Attorney-General.
14. Legal Notice No.220 of 2023 relating to the Public Finance Management (Wildlife Conservation Trust Fund) Regulations, 2023 from The National Treasury
15. Legal Notice No.39 of 2024 relating to the Refugees (General) Regulations, 2024, from the Ministry of Interior and National Administration;
16. Report to Parliament on all new loans contracted by Government of Kenya from 1st September 2023 to 31st January 2024 from the National Treasury and Economic Planning.
17. Implementation of the Constitutional two-thirds gender principle and implementation of the MSWG Report from Ministry of Gender, Culture, the Arts and Heritage.
18. Reports of the Departmental Committee on Transport and Infrastructure on its consideration of the National Transport and Safety Authority (Amendment) Bill (National Assembly Bill No. 36 of 2023).
19. Report of the Public Debt and Privatisation Committee on its Consideration of the 2024 Medium-Term Debt Management Strategy.
20. Report of the Departmental Committee on Justice and Legal Affairs on its consideration of Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.67 of 2023 together with the compendium of Reports of seven Departmental Committees on the consideration of the Bill.

### Messages

The Senate sought concurrence of the National Assembly the passage of the following Bills;

1. The Equalisation Fund Appropriations Bill (Senate Bill No.30 of 2023)
2. The County Licensing (Uniform Procedure) Bill (Senate Bill No.9 of 2022).

3. The Agricultural and Livestock Extension Services Bill (Senate Bill No.12 of 2022).
4. The Mung Beans Bill (Senate Bill No.13 of 2022).
5. The Start-Up Bill (Senate Bill No.14 of 2022).
6. The Persons with Disabilities Bill (Senate Bill No.7 of 2023).
7. The Kenyan Sign Language Bill (Senate Bill No.9 of 2023).

The House designated co-sponsors of the Bills. The Bills were accordingly read for the first time in the House and committed to the relevant committees.

### **Communication on the Two-Thirds Gender Principle**

The Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle was appointed by His Excellency the President to develop and recommend a framework for the implementation of the two-thirds gender principle as provided for in Articles 27(8) and 81(b) of the Constitution. The Report of the Multi-Sectoral Working Group recommends;

- constitutional amendments to provide for gender top-up through party lists.
- that the Elections Act, 2011, be amended to provide for submission of party lists that comply with the two-thirds gender principle.
- that the Political Parties Act, 2011, be amended to provide for the establishment of the Women Inclusion and Political Participation Fund for purposes of financing education and training, mentorship and capacity building, including support for women seeking elective positions.
- the enactment of equality law and legislation to implement Article 100 of the Constitution.
- a raft of recommendations that require administrative action aimed at achieving gender equality and empowerment of women, at the earliest available opportunity.

The Report was referred to the Departmental Committee on Justice and Legal Affairs for consideration and appropriate action.

### **Bills**

1. The following Bills were read for the First time and ordered to be referred to the relevant Committee.
  - The Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024).
  - The Mung Beans Bill (Senate Bill No.13 of 2022).
  - The Startup Bill (Senate Bill No.14 of 2022).
  - The Kenyan Sign Language Bill (Senate Bill No.9 of 2023).
  - The Equalisation Fund Appropriation Bill (Senate Bill No. 30 of 2023).
  - The County Licensing (Uniform Procedure) Bill (Senate Bill No. 9 of 2022).
  - The Agricultural and Livestock Extension Services Bill (Senate Bill No. 12 of 2022).
  - The Persons with Disabilities Bill (Senate Bill No. 7 of 2023).
  - The Public Audit Bill (National Assembly Bill No. 4 of 2024).
  - The Universities (Amendment) (No. 5) Bill (National Assembly Bill No.79 of 2023).
2. The following Bills came up for Second Reading
  - The National Government Coordination (Amendment) Bill, 2023 (National Assembly Bill No.25 of 2023).
  - The Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.68 of 2023).
  - The Employment (Amendment) Bill (Senate Bill No. 11 of 2022).
  - The Cotton Industry Development Bill (Senate Bill No. 5 of 2023).
  - The National Government Coordination (Amendment) Bill (National Assembly Bill No.25 of 2023).



- The Public Service Commission (Amendment) Bill (National Assembly Bill No.6 of 2023).
- The National Government Coordination (Amendment) Bill (National Assembly Bill No.25 of 2023).

3. The following Bill was read a Third Time and accordingly passed.

- The Affordable Housing Bill (National Assembly Bill No.75 of 2023).

### **Motions**

The following Notice of Motions were given on the Floor of the House:

- Regarding the development of a Satellite-Based Climate Change Monitoring Policy. The Motion sought for the House to resolve that the Ministry of Environment, Climate Change and Forestry develop a policy on information technology that deploys the use of satellites in the monitoring and forecasting of climatic conditions, with the objective of ensuring timely and accurate data collection to enhance the country's capacity to respond to weather-related risks and vulnerabilities including climate change.
- That the House adopts the Report of the Departmental Committee on Health on its consideration of the Agreement on the Establishment of the International Vaccine Institute (IVI) and pursuant to the Treaty Making and Ratification Act, 2012, approves the Ratification of the Agreement on the Establishment of the International Vaccine Institute (IVI).
- That the House adopts the Second Report of the Departmental Committee on Agriculture and Livestock on the inquiry into the Maize Flour Subsidy Programme for the Financial Year 2022/2023.
- Regarding the review of the Eligibility Age for enrolment of older persons to the Inua Jamii Cash Transfer Programme. The Motion sought for the House to urge the National Government, through the Ministry of Labour and Social Protection, to revise the eligibility age for enrolment of older persons of society to the Inua Jamii Programme from 70 to 60 years in line with the Constitution.
- Regarding the Priority Boarding Protocol for KDF Personnel. The Motion sought for the House to urge the national Government, through the Ministry of Roads, Transport and Public Works, encourages local airlines to establish a priority boarding protocol for the Kenya Defence and Kenya Special Forces personnel which grants them the privilege to board local aircraft before the general public.
- That the House adopts the Report of the Public Debt and Privatisation Committee on its consideration of the 2024 Medium-Term Debt Management Strategy.
- Regarding Supporting and Promoting Local Fertiliser Manufacturing Industries. The Motion sought for the House to resolve that the National Government through the Ministry of Agriculture and Livestock Development, supports and promotes local fertiliser manufacturing industries by investing in research and development to bolster the domestic fertiliser manufacturing sector.

### **Statements**

- A Statement was sought from the Chairperson of the Departmental Committee on Finance and National Planning regarding the measures and mechanisms the Government has put in place to regulate the activities of the Buy-Now-Pay-Later (BNPL) models BNPL

providers in the country including addressing rogue lending institutions responsible for violations of consumers' rights and the plans the Government has put in place to develop alternative financing models that are fair, transparent and genuinely empower bodaboda operators.

- A Statement was sought from the Chairperson, Departmental Committee on Health regarding remittances to hospitals following numerous complaints from Kenyans regarding their dissatisfaction with NHIF services.

### **Petitions**

The following petitions were presented:

- A Petition regarding the proliferation of Lesbians, Gay, Bisexuals, Trans-gender and Queer (LGBTQ) in the country praying that the House through the Public Petitions Committee:
  - a) Intervenes with a view to have the Ministry of Interior and National Administration strictly enforce the provisions of the Penal Code Act that prohibit homosexuality in the country.
  - b) Investigates into the possibility of approved curriculum or content by the Ministry of Education through the Kenya Institute of Curriculum Development as regards to LGBTQ in the country.
  - c) Recommends consideration and fast-tracking of the Family Protection Bill, 2023, into law.
  - d) Makes any other orders or directions that it deems fit in the circumstances of the matter.
- A Petition regarding enactment of legislation on irrigation infrastructure
  - a) Changing the 'Road Maintenance Levy Fund' to 'Infrastructure Development and Maintenance Levy Fund' and provide that part of the Fund shall be employed to develop irrigation infrastructure in all parts of Kenya; and,
  - b) Providing that the National Irrigation Authority shall be allocated funds from the 'Infrastructure Development and Maintenance Levy Fund' which shall be allocated equally to all the 290 Constituencies to fund and develop various irrigation projects in the Country.

### **THE SENATE**

#### **Papers**

The following are some of the Papers that were laid on the Table of the Senate for Consideration:

1. Reports of the Auditor-General on various Government Entities and reports of various for FY 2022/2023 and 2023/2024.
2. The National Government Budget Implementation Review Report for Financial Year 2022/2023.
3. The National Government Budget Implementation Review Report for the First Three Months for the Financial Year 2023/2024.
4. The County Governments Budget Implementation Review Report for the First Quarter for Financial Year 2023/2024.
5. Report of the Select Committee on County Public Investments and Special Funds on Non-remittance of Pension Deductions to the Pension Schemes by county government entities.
6. Report of the National Dialogue Committee.
7. The 2024 Budget Policy Statement.
8. The 2024 Medium Term Revenue Strategy for Financial Year 2024/2025 to 2026/2027.
9. The Draft Division of Revenue Bill, 2024.
10. The Draft County Allocation Revenue Bill 2024
11. The Draft County Governments Additional Allocations Bill, 2024
12. The Medium-Term Debt Management Strategy, 2024.

13. The Refugees (General) Regulations Legal Notice No.39 of 2024.
14. Committee Report on the Water (Amendment) Bill (National Assembly Bills No.33 of 2023).
15. Report of the Mediation Committee on the County Governments Additional Allocations Bill (National Assembly Bills No. 23 of 2023)
16. The Revision of the Laws Order, 2023 (Legal Notice No. 221 of 2023).
17. The National Government Budget Implementation Review Report for the First Six Months of the Financial Year 2023/2024.
18. Report of the Standing Committee on Devolution and Intergovernmental Relations on its consideration of the County Governments (Amendment) Bill (Senate Bills No.25 of 2023).
19. Report of the Standing Committee on Devolution and Intergovernmental Relations on its consideration of the County Assembly Services (Amendment) Bill, (Senate Bills No.34 of 2023).

### Messages

The Senate received messages from the National Assembly regarding the passage of the following Bills:

1. Conflict of Interest Bill (National Assembly Bills No.12 of 2023).
2. The Gambling Control Bill (National Assembly Bills No.70 of 2023).
3. The Affordable Housing Bill (National Assembly Bills No.75 of 2023).

Bills originating in the National Assembly are preceded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading.

### Bills

4. The following Bills were read for the First time and ordered to be referred to the relevant Senate Committee.
  - The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No.46 of 2023).
  - The Nuts and Oil Crops Development Bill (Senate Bills No.47 of 2023).
  - The Constitution of Kenya (Amendment) (No. 2) Bill (Senate Bills No.52 of 2023).
  - The Fire and Rescue Services Professionals Bill (Senate Bills No.55 of 2023).
  - The Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill (Senate Bills No.1 of 2024).
  - The Conflict of Interest Bill (National Assembly Bills No.12 of 2023).
  - The Gambling Control Bill (National Assembly Bills No.70 of 2023).
  - The Affordable Housing Bill (National Assembly Bills No.75 of 2023).
  - The Co-Operative Societies (Amendment) Bill (Senate Bills No.53 of 2023).
  - The Early Childhood Education (Amendment) Bill (Senate Bills No.54 of 2023).
5. The following Bills came up for Second Reading
  - The Water (Amendment) Bill (National Assembly Bills No.33 of 2023).
  - The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bills No.46 of 2022).
  - The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No.37 of 2023).
6. The following Bills were read a Third Time and accordingly passed.
  - The County Licensing (Uniform Procedure) Bill (Senate Bills No.9 of 2022).
  - The Start-Up Bill (Senate Bills No.14 of 2022).
  - The Kenyan Sign Language Bill (Senate Bills No.9 of 2023).

### Motions

- A Motion was moved, for the Senate to adopt the Report of the Standing Committee on Energy on the inquiry into the high cost of electricity in the country. The Committee undertook an inquiry into the distribution, generation and consumption of electricity in Kenya.



## Statements

- A Statement was sought from the Standing Committee on Trade, Industrialisation and Tourism regarding the police raid on businesses in Eastleigh, Nairobi City County, over counterfeit products.

## UPDATES FROM THE KENYA GAZETTE, FEBRUARY 2024

### Legislative Supplements

1. The Survey (Electronic Cadastre Transactions) (Amendment) Regulations, 2023.
2. The Valuers (Forms and Fees) (Amendment) Rules, 2023.
3. The Land (Amendment) Regulations, 2023.
4. The Community Land (Amendment) Regulations.
5. The Survey (Amendment) Regulations, 2023.
6. The Export Processing Zones Act—Declaration of Zones, etc.
7. The Land Registration (Revocation) Regulations, 2023.
8. The Land Registration (General) (Amendment) Regulations, 2023.
9. The Computer Misuse and Cybercrime (Critical Information Infrastructure and Cybercrime Management) Regulations, 2024.
10. The Energy (Energy and Petroleum Regulatory Authority Petroleum Levy) Regulations, 2024.
11. The Kenya Citizenship and Immigration (Amendment) Regulations, 2023.
12. The Refugees (General) Regulations, 2024.
13. The Mining (Mine Support Services) (Amendment) Regulations, 2024.

### National Assembly Bills, 2024

1. The Statutory Instruments (Amendment) Bill, 2024.
2. The Public Audit (Amendment) Bill, 2024.
3. The Treaty Making and Ratification (Amendment) Bill, 2024.
4. The Cooperatives Bill, 2024.
5. The Breastfeeding Mothers Bill, 2024.

### Senate Bills, 2024

1. The Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill, 2024.

### Updates from the Cabinet

- The Cabinet Secretary for Interior and National Administration declared GOOD NEWS INTERNATIONAL MINISTRIES to be an organized criminal group for purposes of the Prevention of Organized Crimes Act.
- The Cabinet Secretary for Youth Affairs, Creative Economy and Sports appointed the Preparatory and Management Team for the Olympic and Paralympic Games in Paris, France 2024. The Team shall oversee the preparation and participation of Team Kenya in the Olympic and Paralympic Games in Paris, France 2024.

### Appointments

- The President of Kenya appointed Philip Salau Mpaayei and Peter Gathenya Githinji, as members of the Board of Directors of the Kenya Railways Corporation, with effect from the 23<sup>rd</sup> February, 2024 upto the 5<sup>th</sup> October, 2024.
- The Cabinet Secretary for the National Treasury and Economic Planning appointed members of the Public Procurement Administrative Review Board, for a period of three (3) years, with effect from the 23<sup>rd</sup> February, 2024.
- The Cabinet Secretary for Tourism and Wildlife appointed the Advisory Committee on the Transfer of the Amboseli National Park to advise on the framework for the transfer of function of the Amboseli National Park (ANP) to the County Government of Kajiado.
- The Cabinet Secretary for Gender, Culture, the Arts and Heritage has extended the term of the Multi-Agency Working Group on the Realization of the Two-Thirds Gender Principle, for a period of six (6) months, with effect from the 15<sup>th</sup> February, 2024.

- Following the sanctioning of the Safari Rally as a World Rally Championship (WRC) Event by the International Motorsport Federation (FIA) to be held in Kenya in 2024, 2025 and 2026, the Cabinet Secretary, Ministry of Youth Affairs, Creative Economy and Sports, established and appointed members of the Project Oversight Team (POT) for the WRC Safari Rally Project consisting of— Cabinet Secretary, Ministry of Youth Affairs, Creative Economy and Sports; and Principal Secretary, State Department of Sports.
- The Attorney General appointed Alosa Samson Onyango to be a member of the Council of Legal Education, for a period of three (3) years, with effect from the 9<sup>th</sup> February, 2024.
- The Cabinet Secretary for Roads and Transport appointed Abdi Bare Duale to be the Chairperson of the Board of Directors of the Kenya Railways Corporation, for a period of three (3) years, with effect from the 9<sup>th</sup> February, 2024.
- The President of the Republic of Kenya appointed Muhumed Abdi Mohamed to be the Chairperson of the Board of Directors of the Kenya Electricity Transmission Company Limited, for a period of three (3) years, with effect from the 9<sup>th</sup> February, 2024, revoking the appointment of Abdi Bare Duale is revoked.
- The National Government Constituencies Development Fund Board appointed with the approval of the National Assembly, the member of National Government Constituencies Development Fund Committee for a period of two (2) years, effective 3<sup>rd</sup> November, 2023.

#### **Financials**

- Maisha Microfinance Bank Limited, by resolution of the Board and approval of the Registrar of Companies, effected a change of name from Maisha Microfinance Bank Limited to On It Microfinance Bank Limited.

#### **The Judiciary**

- Hon. Lady Justice Fatuma Sichale was elected as a member of the Judicial Service Commission, for a period of five (5) years, with effect from the 26<sup>th</sup> January, 2024
- The Easter recess for the Supreme Court, Court of Appeal and the High Court of Kenya Easter will commence on Thursday, the 21<sup>st</sup> March, 2024, and terminate on Tuesday, the 2<sup>nd</sup> April, 2024, both days inclusive.

#### **Energy**

- The National Land Commission on behalf of Kenya Electricity Transmission Company Limited (KETRACO) issued a notice that the National Government intends to acquire a wayleave corridor on parcels of land for the construction of 220KV Transmission line in Mariakani – Dongo Kundu 220 KV Transmission Line in Kwale/Kilifi counties.
- The Energy and Petroleum Regulatory Authority gave notice on the following:
  - a) Prices for electrical energy will be liable to a fuel energy cost charge of plus 414 Kenya cents per kWh for all meter readings to be taken in February 2024.
  - b) Prices for electrical energy will be liable to a foreign exchange fluctuation adjustment of plus 321.85 Cents per kWh for all meter readings taken in February 2024.
  - c) Prices for electrical energy will be liable to a Water Resource Management Authority (WRMA) levy of plus 1.33 cents per kWh for all meter readings taken in February, 2024.

#### **General**

- The National Standards Council declared the specifications or codes of practice relating to Chemical, Financial Services, Food, Leather and Textile, Engineering, Agriculture, Electrotechnical and ICT that are currently in effect appearing in the Schedule hereto, to be Kenya Standards, with effect from the date of publication of this notice.
- The National Treasury and Economic Planning issued a Statement of Actual Revenues and Net Exchequer Issues as at 31<sup>st</sup> January, 2024.

- The Competition Authority of Kenya authorized the implementation of the proposed Acquisition of 31.25% Shares In Lake Turkana Wind Power Limited By Cpf Uk Holdings Limited.
- The Registrar of Societies has cancelled the registration of the Kenya India Business Council.
- The Ethics and Anti-Corruption Commission published the quarterly report setting out the number of reports made to the Director of Public Prosecutions.
- The deployment of the Kenya Defence Forces, as part of the East African Community Regional Force in the Democratic Republic of the Congo, ceased with effect from 8<sup>th</sup> December 2023, upon expiry of the mandate.

#### From the Counties

- The County Governments of Kajiado, Bomet and Meru have transferred initial functions such as waste management currently performed by respective County Departments to various Municipalities.
- The County Government of Siaya has gazettes the following health facilities, members of Management Committee Members in various health facilities and whose tenure runs for three (3) years from 8th June, 2023.
- The County Government of Lamu has appointed as members of the respective hospital management boards and health facility management committee in Lamu County.
- Murang'a County Public Service Board approved and adopted the Report on the Execution of the functions of the Board for onward transmission to the Murang'a County Assembly.
- Nairobi City County:
  - a) Has appointed persons to the Executive Bursary Committee and appointed Jane Muasya to sit on the Nairobi City County Assembly Service Board, representing the Azimio Coalition Party, to replace Catherine Okoth with effect from Wednesday, the 21<sup>st</sup> February, 2024.
  - b) Has given waivers ranging from 25% - 100% for various categories of general retail alcoholic licenses.
- Uasin Gishu County, Department of Health Services gazetted nine Primary Health Care Networks (PCN) in the County upon the Uasin Gishu County Executive.

