Issue No.13/2019

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Legislative UPDATE

Dear Esteemed Member,

This Bulletin summarizes some of the key Bills, and Motions set for debate and consideration before Parliament in the week ending 17th May 2019.

THE NATIONAL ASSEMBLY

The House is on recess from 10th May 2019 and stands adjourned until 4th June 2019.

A recess refers is a break where a legislative body is released and reassembles at a later time. The members of the body are however expected to return soon in the case of a short recess.

THE SENATE

1. **THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO.31 OF 2018)**

The Bill seeks to establish a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities.

The Bill came up for a Second Reading and was referred to a Committee of the Whole.

2. THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO.4 OF 2018)

The Bill seeks to provide a general framework for effective public participation and to give effect to the constitutional principles of democracy and participation of the people under the Constitution.

The Bill came up for a Committee of the Whole but was deferred.

3. THE COUNTY EARLY CHILDHOOD EDUCATION BILL (SENATE BILLS NO.26 OF 2018)

The Bill seeks to provide a framework for the establishment of systems for the administration of early childhood education within a County.

The Bill came up for a Committee of the Whole but was deferred.

4. THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL (SENATE BILLS NO. 38 OF 2018)

The Bill seeks to amend the Kenya Medical Supplies Authority Act, to provide for collaboration between the Kenya Medical Supplies Authority and County Governments.

The Bill was coming up for a Second Reading, but it was deferred.

PETITIONS TABLED BEFORE THE SENATE

REPORT ON PETITION: THE PLIGHT OF COFFEE, TEA AND MACADAMIA NUT FARMERS IN KENYA

The Standing Committee on Agriculture received a Petition on the plight of coffee, tea and macadamia nuts farmers in Kenya. The Committee reported that they had considered the Petition and realized that there is a lot that requires to be done to improve the crops. It noted that the Senate is also considering the Tea Bill (Senate Bills No. 36 of 2018) which is addressing some of the issues that were raised by the Petition. Additionally, the Committee also noted that *improvement of coffee and regarding the issue of macadamia nuts farming, they are engaging the Ministry of Agriculture, Livestock and Fisheries on new regulations.*

MOTIONS TABLED BEFORE THE SENATE

1. REPORT OF THE MEDIATION COMMITTEE ON THE WAREHOUSE RECEIPT SYSTEM BILL, 2017

The Report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017) was tabled, the mediated version of the Bill was approved and passed.

The Senate Bill was drafted and published in 2017 and was considered by the House and sent to the National Assembly for concurrence. The National Assembly passed the Bill with amendments on 27th November 2018. The Senate considered the amendments forwarded by the National Assembly and adopted as well as rejected some of the National Assembly amendments. As such, the Bill was referred to mediation.

The Mediation Committee was tasked with negotiating a version of the Bill that could be passed by both Houses. Among the amendments agreed upon by the Committee include:

a. *That the County governments should undertake licensing of warehouses.*

b. *The establishment of a warehouse receipts dispute resolution committee in place of the warehouse receipts appeals committee. The reasoning behind this version was the fact that the dispute resolution committee could receive and make determinations on complaints that might be registered against those who may want to acquire licences.*

c. *Issuance of fraudulent warehouse receipts to attract imprisonment for a jail term not exceeding 10 years, or a fine not exceeding Kshs10 million.*

2. COMPLETION OF ALL STALLED PROJECTS UNDER COUNTY GOVERNMENTS THROUGH BUDGETARY MANAGEMENT

There was concern that diversion from the Vision 2030 blueprint as well as the President's "Big Four" Agenda would negatively impact the development trajectory that seeks to ensure a long-term microeconomic stability resulting in a revision of targets on the goals for socio-economic, cultural, environmental, technological and political transformation. Whereas the National Government's Budget is based on Vision 2030 and "Big Four" Agenda, the County Governments Budgets are based on their respective County Integrated Development Plans, (CIDPs) which are expected to dovetail with the overall national development blueprint.

There are glaring discrepancies in progress made in development among counties.

integrity, professionalism and remaining a blemish on the successes of devolution. Taking note of the tribulations, ridicule, pecuniary embarrassment and negative socio-economic impact that pending bills have had on the local business community who supplied or undertook a service for the county governments, and the attendant slowdown in actual project completion, the rise in stalled projects dotting counties, with County Governors prioritizing new projects instead of the completion of those which have stalled.

The National Treasury in its circular No. 9/2018 detailed the five hundred and forty five (545) projects which have stalled in the 47 Counties, and their status of completion, collectively amounting to an estimated project cost of three hundred and sixty six (366) Billion Kenya shillings.

The Senate recommended that the National Treasury in partnership with the Controller of Budget, Commission on Revenue Allocation, the Council of Governors and the County Assemblies Forum to-

1) *Ensure that all the County Integrated Development Plans (CIDP‟s) and Annual Development Plans (ADP‟s) are aligned to Vision 2030 with an implementation, monitoring, and evaluation framework in place;*
2) *Address Pending Bills by prioritizing their payment, creating clear timeframes for payment and publishing a schedule of payment of the same; and*
3) *Prioritize the completion of stalled development projects prior to undertaking or funding new projects.*

However, the motion was deferred.

3. REALIZATION OF GENDER EQUITY IN ELECTIVE AND APPOINTIVE POSITIONS IN KENYA

The House was notified that the Policy framework to enhance gender equality has been developed, and includes the National Gender and Development Policy 2000, the Kenya Vision 2030, Sessional paper No. 2, of 2006, the National Land Policy, the National Policy for Response to Gender Based Violence, and the National Policy for the Abandonment of Female Genital Mutilation. Despite there being sound Constitutional provisions and elaborate policy framework to realise gender equity, both national government and county governments have not done enough to realise the achievement of gender equality.

It is a concern that women in Kenya experience hardships when it comes to elective offices and are underrated by society with most opportunities for elective and appointive offices being awarded to men. Therefore, the Senate resolved;

(i) *That Parliament fast track the enactment of the law that shall give effect to the one third gender rule; and,*
(ii) *That pursuant to Article 81 of the Constitution both the National and County governments observe the principle of equality and empowers the female gender by increasing the appointive position to at least fifty per cent.*

SENATE DEPARTMENTAL COMMITTEE ISSUES

1. OIL SPILLAGE AT KIBOKO AREA IN MAKUENI COUNTY

The Standing Committee on Energy was tasked with providing a statement on the oil spillage that occurred at Kiboko in Makueni County on 30th March 2019, where the new pipeline leaked and released diesel fuel into Kiboko River and other water facilities in Makueni County. The Committee was tasked to address the following specific issues:

1) State the reasons why the National Environment Management Authority (NEMA) has not issued a Restoration Order under section 108 and 109 of the Environmental Management and Co-ordination Act.

2) State the reasons why the said new pipeline was designed, constructed and handed over without any leak detection system to detect oil spillage.

3) State the amount of oil product that spilled into the environment at Kiboko on the said date and the distance of the said spillage.

4) Provide a written recovery plan of the said product with timelines thereof.

5) Give the following details-
a. Name of the contractor and whether the contract was completed.
b. Cost of construction of the pipeline.
c. Whether the contract had a defect liability period.

6) State the reasons why the Water Resources Management Authority (WARMA) and National Environment Management Authority (NEMA) have not issued a warning to residents of Kiboko, 30 days later about the effects of the oil products in their water.

7) State the mitigation measures adopted by the management of Kenya Pipeline Company (KPC) and in particular-
a. Provision of water to the residents of Kiboko and its environs; and,
b. Recovery of the said products from the underground water source.

8) State whether the KPC has procured an expert to conduct an Environmental Impact Social Assessment Report and when they intend to share the said Report with National Environmental Management Authority (NEMA), WARMA and the County Government of Makueni.

9) State whether NEMA has caused the KPC to deposit a bond as appropriate security for good environmental practice due to the frequent spillages as required by Section 28 of the Environmental Management Act.

10) State when the people of Makueni should expect a detailed water analysis report on the Kiboko Spring, Kiboko River and other nearby water bodies.

2. TERMINATION OF TEACHER TRAINING FOR STUDENTS WITH D+ MINIMUM GRADE

The Standing Committee on Education was tasked with providing a Statement concerning a move by the Ministry of Education to terminate the training of 3,265 students with D+ minimum grades. It was noted that the earlier decision to allow students with lower grades to join teachers training colleges was meant to improve the teacher-student ratio especially in hardship areas, which has worsened in the recent years. However, the recent move by the Ministry of Education has created confusion among thousands of affected students and parents. In the Statement, the Committee was tasked to:

1) Explain what informed the Ministry of Education to change its earlier decision a year later after students had been enrolled at the colleges;

2) Explain the fate of 3,265 students now that they have been forced out of teachers training colleges; and

3) Explain what plans the Ministry of Education is making to compensate the students as most of them had already paid fees for the course.

3. OPERATIONALIZATION OF THE MENSTRUAL HYGIENE MANAGEMENT POLICY

A statement was made on the operationalization of the menstrual hygiene management policy. In early 2017, the Ministry of Health developed the National Menstrual Hygiene Management Policy and Strategy with support from Non-Governmental Organisations (NGOs), the private sector and various area experts. The policy was an initiative by the national Government to break the silence on menstruation and provide more adequate services to girls and women in our country. However, the policy has not been made operational.

Senator Halake stated that a Bill was being prepared which Bill will ensure that the local production of sanitary towels is zero-rated as it is unfair to tax women because they are menstruating because as it is a biological function that they have no control over. As such, all aspects that regard management of the menstrual hygiene should be operationalized.

The Policy examines the prevailing social, economic, cultural and demographic contexts on menstrual health for women and girls, including implications for consequences to their health. Menstrual Hygiene Management (MHM) is closely linked to healthcare, education, water, sanitation and hygiene and a healthy and clean environment for all. Therefore, the Policy has a section requiring that these rights are addressed within the existing regulatory environment of our Constitution.

In addition, the Policy has outlined principles, objectives and priority areas for the management of menstrual health, coordination and provision of services, roles and responsibilities for different stakeholders. Some of the action plans that will help in managing menstrual health are highlighted as follows:

places, work places, correctional facilities and healthcare facilities to integrate MHM;

b) Undertake MHM as a right-based intervention for all, with emphasis on hard to reach areas, humanitarian situations and Persons with Disabilities (PWDs);

c) Ensure access to clear and correct information and knowledge on available for options for managing menstruation;

d) Ensure that women and girls have access to a range of menstrual hygiene management products; and

e) Ensure that counties include MHM in their County Integrated Development Plans (CIDPs) and County Health Strategic Plans (CHSPs) and have a dedicated budgetary allocation for MHM activities.

It was noted that though the Policy is a good initiative to curb the problems women and girls face during menstruation, it needs to be revised to have pragmatic steps or activities to achieve the objects and action plans in the Policy. The Policy should be a pragmatic strategy or framework that can be implemented to bring out the results sought.

KEY WORDS AND THEIR MEANING

- ✓ ***Committee of the Whole -*** *This is a Committee composed of all Senators in plenary. At Committee, the Senate considers the Bill clause by clause and may amend the clauses. Any Senator, other than the sponsor of the Bill, who wishes to move an amendment to the Bill, must give written notification of the amendment to the Clerk at least twenty-four (24) hours before commencement of the sitting at which the amendment is to be considered.*

- ✓ ***Concurrence of the National Assembly -*** *A Bill that is passed by the Senate must be submitted to the National Assembly. A certified copy of the Bill is forwarded to the Clerk of the National Assembly together with a Message signed by the Speaker requesting concurrence of the Assembly. If the National Assembly agrees with the Bill and does not propose any amendments, the Senate forwards the Bill to the President for assent. If the National Assembly proposes amendments to the Bill, the amendments are submitted to the Senate and are circulated to the Senators. The amendments are then considered in the Committee of the Whole. The Senate may then pass the Bill by including all the amendments or may reject any or all the amendments. Where an amendment is rejected, the Bill is referred to a mediation committee.*

- ✓ ***Defer -*** *Postponing the Bill to a later time.*

- ✓ ***Mediation Committee*** *– Whenever the Senate does not agree to any of the amendments proposed by the National Assembly or rejects a Motion that a Bill which originated in the National Assembly be read a second or third time, the Speakers of both Houses appoint a Mediation Committee, consisting of an equal number of Senators and Members of the National Assembly to develop a version of the Bill that is agreeable to both Houses. If* *passed.*

- ✓ ***Recess*** *- Basically a break where a legislative body is released and reassembles at a later time. The members of the body are however expected to return back soon in the case of a short recess.*

- ✓ **Second Reading** - A stage where the Senators debate the essence and principles of the Bill and give their views on the Bill.

Your comments will be most appreciated - please send to kepsappd@kepsa.or.ke

Best regards,

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