

Approved for tabling. *Pat SNA*
25/7/19

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - THIRD SESSION - 2019

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY
(AMENDMENT) BILL, 2019 (NO.26 OF 2019)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 25 JUL 2019	DAY: THURSDAY
TABLED BY:	<i>Hon. Ali Wario</i>
CLERK AT THE TABLE:	<i>Lemuna Moses.</i>

Directorate of Committee Services,
Clerk's Chambers,
Parliament Buildings,
NAIROBI

July, 2019

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LIST OF ABBREVIATIONS AND ACRONYMS

ASAL	Arid and Semi-Arid Lands
Hon	Honourable
MP	Member of Parliament
NA	National Assembly
NDMA	National Drought Management Authority
PFMA	Public Finance Management Act

LIST OF ANNEXURES

Annexure 1: Minutes of Committee sittings on the consideration of the Bill

Annexure 2: Adoption Schedule

Annexure 3: Newspaper Advert

Annexure 4: Memoranda from the public

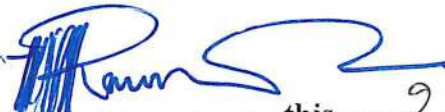
CHAIRPERSON'S FOREWORD

The National Drought Management Authority (Amendment) Bill (National Assembly Bill No. 26 of 2019), underwent First Reading on 2nd May, 2019. Thereafter, the Bill was committed to the Departmental Committee on Labour and Social Welfare to review and report to the House pursuant to the provisions of Standing Orders 127 (4) and 216(5) (c).

Consequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 127 (3), invited submissions from members of the public on the above Bill via advertisements in national dailies on 9th May, 2019. During its Sittings held on 20th May, 2019 and 4th July 2019 the Departmental Committee on Labour and Social Welfare considered the submissions on the Bill from key stakeholders. Thereafter, the Committee retreated to consider the submissions and deliberate on the provisions in the Bill. The Committee met with the National Drought Management Authority, the State Department for the Development of Arid and Semi-Arid Lands(ASAL) and the National Treasury on 4th July 2019 to receive both oral and written submissions. Having considered the submissions from the key stakeholders, the Committee recommends that the Bill be agreed to without amendments.

May I take this opportunity to commend the Committee members for their devotion and commitment to duty in the consideration of the Bill and express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing technical and logistical support.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the National Drought Management Authority (Amendment) Bill (National Assembly Bill No. 26).

Signed  this 25th day of July 2019

HON. ALI WARIO, M.P.,

Chairperson, Departmental Committee on Labour and Social Welfare.

CHAPTER ONE

1.1 Mandate of the Committee

1. The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
 - iii. *To study and review all legislation referred to it;*
 - iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
 - vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
 - vii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*
2. The Committee is mandated to consider the following subjects: -
 - i. Labour,
 - ii. Labour relations,
 - iii. Manpower or Human Resource Planning,
 - iv. Gender,
 - v. Youth,
 - vi. Social Welfare and Security,
 - vii. Children`s Welfare,
 - viii. And Persons Living with Disabilities.

1.2 Oversight

3. In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. The State Department for Labour
- ii. The State Department for Social Protection
- iii. The State Department for Gender
- iv. The State Department for Youth
- v. The State Department for Arid and Semi-Arid Lands
- vi. National Gender and Equality Commission

1.3 Committee Membership

4. The Committee comprises of the following members -

1. **The Hon. Ali Wario, MP - Chairperson**
2. **The Hon. Joyce Korir, MP- Vice Chairperson**
3. The Hon. Gladys Wanga, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Janet Nangabo Wanyama, MP
6. The Hon. Ronald Kiprotich Tunoi, MP
7. The Hon. James Onyango Koyoo, MP
8. The Hon. Rose Museo, MP
9. The Hon. Alfred Kiptoo Keter, M.P
10. The Hon. Charles Kanyi Njagua, MP
11. The Hon. Catherine Wambilyanga, MP
12. The Hon. Fabian Kyule Muli, MP
13. The Hon. Abdi Mude Ibrahim, MP
14. The Hon. Michael Mwangi Muchira, MP
15. The Hon. Safia Sheikh Adan, MP
16. The Hon. Tom Odege, MP
17. The Hon. Omboko Milemba, MP
18. The Hon. Ole Sankok David, MP
19. The Hon. Wilson Sossion, MP

1.4 Committee Secretariat

1. Mr. Adan Gindicha - Clerk Assistant 1
2. Mr. John Mugoma - Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel I
4. Mr. Said Osman - Researcher Officer
5. Ms. Amran Mursal - Fiscal Analyst

CHAPTER TWO:

2.0: OVERVIEW OF THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 26 OF 2019)

2.1 ANALYSIS OF THE BILL

5. The National Drought Management Authority (Amendment) Bill, sponsored by the Leader of the Majority Party, Hon. Aden Duale, M. P was referred to the Departmental Committee on Labour and Social Welfare for consideration, undertake public participation and reporting to the House.

2.1.1 Objective of the Bill

6. The Principal Objective of this Bill is to amend the National Drought Management Authority Act, No. 4 of 2016 by repealing the sections providing for the establishment of the coordinating committees and those relating to establishment of the management of the National Drought Emergency Fund in the Act in order to enable the enactment of the National Drought Emergency Fund, Regulations under the Public Finance Management Act, 2012.

2.1.2 Analysis of Clauses

7. Clause 1 of the Bill provides for the short title. Clause 2 of the Bill seeks to amend section 2 of the National Drought Management Authority Act which section has defined the term Fund. Clause 3 of the Bill seeks to amend section 7 of the National Drought Management Authority Act by deleting the words “establish and” appearing in subsection (1) (a) and deleting subsection (2). Clause 4 of the Bill seeks to repeal section 18 of the National Drought Management Authority Act in order to delete the provisions establishing the National Drought Emergency Fund and substituting with provisions providing for the funds of the Authority.
8. The Bill does not limit fundamental rights and freedoms.
9. The enactment of this Bill shall not occasion additional expenditure of public funds.

2.2: PUBLIC PARTICIPATION

10. Through an advertisement on 8th May, 2019 (annexure 3), the Committee invited the public to present submissions on the National Drought Management Authority (Amendment) Bill, 2019.
11. The Committee received submissions on the National Drought Management Authority (Amendment) Bill, 2019 from the following stakeholders-
 - (i) Ministry of Devolution and Arid and Semi-Arid Lands;
 - (ii) The National Drought Management Authority (NDMA); and
 - (iii) The Treasury.
12. The details of the submissions are annexed to this report as annexure 4. The Committee extensively considered the contents of the submissions in a meeting held on the 20th May, 2019 and the details of the deliberations and the Committee's observations and resolutions as relates to specific clauses are contained in Part C of this report.

2.2.1 Submissions by the State Department for the Development of Arid and Semi Arid Lands

13. The State Department for the Development of Arid and Semi- Arid Lands submitted their views on the Bill through a letter dated 23rd May 2019 supporting the amendments and presented that, in collaboration with the National Treasury and NDMA, it had developed the draft Public Finance Management (National Drought Emergency Fund) Regulations. The object of the fund is to -
 - (a) improve effectiveness and efficiency of the drought risk management systems in the country;
 - (b) facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts; and

(c) provide a common basket emergency fund in order to facilitate faster transparent, predictable and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.

14. The Ministry further submitted that the Public Finance Management Act (PFMA), 2012 provides that a national public fund be established with the approval of the Cabinet Secretary to the National Treasury and the National Assembly. Accordingly, the provisions establishing the National Drought Emergency Fund in the NDMA Act require to be amended to avoid duplication of laws, inconsistency with the PFM Act and pave way for seamless operationalization of the proposed Public Finance Management (National Drought Emergency Fund) Regulations.

2.2.2 Submissions by the National Drought Management Authority and National Treasury

15. The National Drought Management Authority (NDMA), the State Department for the Development of Arid and Semi- Arid Lands and the National Treasury appeared before the Committee on 4th July 2019 and made the following joint submission–The joint team was led by the Chief Executive Officer of the NDMA Mr. James Odour.

(a) The rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not retaining the same in the National Drought Management Authority Act, 2016 is that the PFM Act, is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section 6 (e) of the PFMA, 2012 provides that the PFMA shall prevail in case of any inconsistency in establishment, administration and management of any public Fund. Further, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly. In view of this, there was need to amend the National Drought Management Authority Act, 2016 to align it to the provisions of the PFM Act, 2012 to avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.

- (b) The governance structure of the National Drought Emergency Fund will be as follows-
- i. The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority Board;
 - ii. The Chief Executive Officer of the Authority shall be the Fund's accounting officer/ administrator; and
 - iii. The NDMA Staff will provide Secretariat services to the Fund.
- (c) On whether the proposed National Drought Management Authority (Amendment) Bill, 2019 concerns County Governments pursuant to Article 110 of the Constitution, the National Drought Management Authority submitted that it is a national government institution fully funded from the equitable share of the National Government. Section 7 (2) of the NDMA Act, 2016 had provided for administrative structures to counties through delegation when implementing NDMA programmes and initiatives at the counties to facilitate effective and efficient delivery of service by the Authority. NDMA was therefore of the view that proposed amendments under the NDMA Amendment Bill, 2019 therefore do not in any way concern County Governments as provided for under Article 110 of the Constitution given that the draft Public Finance Management (National Drought Emergency Fund) Regulations will be actualizing the provisions of the Act.
- (d) The Cabinet Secretary responsible for matters relating to drought will be responsible for the National Drought Emergency Fund and for policy direction of the Fund. As it stands currently and as per the Executive Order No. 1 of 2018 (revised), this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs.

2.3: CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

16. This part deals with the Clause by Clause consideration of the Bill by the Committee after taking into consideration the views of the aforementioned stakeholders.

- **CLAUSE 2- AMENDMENT OF SECTION 2 OF THE NATIONAL DROUGHT MANAGEMENT ACT**

17. Clause 2 provides –

The National Drought Management Authority Act, in this Act referred to as the “principal Act” is amended in section 2 by deleting the definition of “Fund”.

▪ **Stakeholder views**

18. The Ministry of Devolution and ASALs, NDMA and The National Treasury supported the amendment as it is necessary to delete the Fund from the NDMA Act to avoid duplication of laws, inconsistency with the PFM Act and enable the operationalization of the proposed Public Finance Management (National Drought Emergency Fund) Regulations.

▪ **Committee observations and recommendation on clause 2**

19. **The Committee observed** that the amendment to section (2) is necessary as it seeks to delete the definition of the term “Fund” from the NDMA Act in view of the amendments seeking to repeal the National Drought Emergency Fund from the Act. Further, it was observed that the Counties will be involved

20. **The Committee recommends that Clause 2 be agreed to.**

▪ **CLAUSE 3- AMENDMENT OF SECTION 7 OF THE NATIONAL DROUGHT MANAGEMENT ACT**

21. Clause 3 provides –

3. *Section 7 of the “principal Act” is amended—*

- (a) *in subsection 1(a), by deleting the words “establish and”; and*
- (b) *by deleting subsection (2).*

▪ **Stakeholder Views**

22. **NDMA** supported the amendments to section 7 regarding repeal of the provisions on the drought coordination institutional framework. In the proposed draft regulations, it is proposed that a new governance structure of the National Drought Emergency Fund will be established as follows-

- (a) The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority Board;
- (b) The Chief Executive Officer of the Authority shall be the Fund's accounting officer/administrator; and
- (c) The NDMA Staff will provide Secretariat services to the Fund.

▪ **Committee observations and recommendation on clause 3**

23. **The Committee observed that** the amendments were in order as the retention of one coordination framework will ensure ease of policy guidance by NDMA by having one centre of command. Further, the Draft Public Finance Management (National Drought Emergency Fund) Regulations make alternative arrangements for oversight of the Fund in line with the provisions of the PFM Act. The regulations also provide for establishment of a steering committee being a consultative forum (like the IBEC) to allow involvement of country governments and coordination of various activities and different roles as performed by each of the two arms of governments.

24. **The Committee recommends that clause 3 be agreed to.**

▪ **CLAUSE 4 - AMENDMENT OF SECTION 18 OF THE NATIONAL DROUGHT MANAGEMENT ACT**

25. Clause 4 provides –

4. The "principal Act" is amended by repealing section 18 and replacing it with the following new section —

Sources of funds for the Authority.

18. The funds of the Authority shall be—

- (a) such monies as may be appropriated by Parliament;*
- (b) such monies as may accrue to or vest in the Authority in the course of the exercise of its powers or performance of its functions under this Act;*
- (c) such monies including fees as may be payable to the Authority pursuant to this Act or any other written law; and*

(d) such grants and donations, gifts or bequests as may be given to the Authority.

▪ **Stakeholder views**

26. The Ministry of Devolution and ASALs, NDMA and The National Treasury supported the amendment as it is necessary to delete the Fund from the NDMA Act to avoid duplication of laws, inconsistency with the PFM Act and enable the operationalization of the proposed Public Finance Management (National Drought Emergency Fund) Regulations.

Committee observations and recommendation on clause 4

27. **The Committee observed that –**

- (a) The PFM Act is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section 6 (e) of the PFM Act, 2012 provides that the PFM Act shall prevail in case of any inconsistency in establishment, administration and management of any public Fund. Further, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly. It is necessary to delete the Fund from the NDMA Act to avoid duplication of laws and inconsistency with the PFM Act;
- (b) The Cabinet Secretary responsible for matters relating to drought will be responsible for the National Drought Emergency Fund and for policy direction of the Fund. As it stands this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs;
- (c) The amendments will enable the operationalization of the proposed Public Finance Management (National Drought Emergency Fund) Regulations;
- (d) The regulations provide for proper fund oversight mechanisms that are attuned to the provisions of the PFM Act.

28. **The Committee recommends that Clause 4 be agreed to.**

CHAPTER THREE:

3.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

3.1 COMMITTEE'S OBSERVATIONS

29. As relating to the Bill, the Committee observed that -

- (a) The PFM Act is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section 6 (e) of the PFM Act, 2012 provides that the PFM Act shall prevail in case of any inconsistency in establishment, administration and management of any public Fund. Further, Section 24 (4) of the PFM Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly;
- (b) The Ministry of Devolution and Arid and ASALs had developed the draft Public Finance Management (National Drought Emergency Fund) Regulations which seek to improve effectiveness and efficiency of the drought risk management systems in the country, facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts and provide a common basket emergency fund in order to facilitate faster transparent, predictable and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.
- (c) It is therefore necessary to amend the NDMA Act to delete the National Drought Emergency Fund from the NDMA Act to avoid duplication of laws and inconsistency with the PFM Act;
- (d) The amendments will enable the operationalization of the proposed Public Finance Management (National Drought Emergency Fund) Regulations;

- (e) The Cabinet Secretary responsible for matters relating to drought will be responsible for the National Drought Emergency Fund and for policy direction of the Fund. As it stands this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs;
- (f) The regulations provide for proper fund oversight mechanisms that are attuned to the provisions of the PFM Act;
- (g) The amendments are in order as the retention of one coordination framework will ensure ease of policy guidance by NDMA by having one centre of command. Further, the Draft Public Finance Management (National Drought Emergency Fund) Regulations make alternative arrangements for oversight of the Fund in line with the provisions of the PFM Act. The regulations also provide for establishment of a steering committee being a consultative forum (like the IBEC) to allow involvement of County Governments and coordination of various activities and different roles as performed by each of the two arms of governments.
- (h) Article 110(3) of the Constitution stipulates that before either House considers a Bill, the Speakers of the National Assembly and Senate jointly resolve any question as to whether a Bill is a Bill concerning County Governments and whether it is a special Bill or ordinary Bill. Accordingly, the Constitution adequately stipulates the manner of resolution of the issue of whether the NDMA (amendment) Bill concerns County Governments or not.

3.2 COMMITTEE'S RECOMMENDATION

30. The Committee, having considered the Bill proposes that the Bill be agreed to without amendments.



HON. ALI WARIO, M.P.,

CHAIRPERSON,

25/07/19

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the Matter of consideration of:

The National Drought Management Authority (Amendment) Bill, 2019
SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, *“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”* Standing Order 127(3) provides that, *“the Departmental Committee to which a Bill is committed shall facilitate public participation through appropriate mechanism, including inviting submission of memoranda and holding public hearing and shall take into account views and recommendations of the public when the Committee makes its report to the House.”*

The National Drought Management Authority (Amendment) Bill, 2019 seeks to amend the National Drought Management Act, 2016 by amending the sections providing for the establishment of the coordinating committees and establishment of the management of the National Drought Emergencies Fund in the Act in order to enable the enactment of the National Drought Emergency Fund, Regulations under the Public Finance Management Act, 2012.

The Bill has undergone First reading and stands committed to the **Departmental Committee on Labour and Social Welfare** for consideration and reporting to the House, pursuant to Standing Order 127(1)

Pursuant to Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Committee invites interested members of the public to submit any presentations they may have on the aforementioned Bills. The representations or written submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or

emailed to the clerk@parliament.go.ke; to be received by Close of Business on Wednesday 15th May ,2019.

MICHAEL. R SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



THE PRESIDENCY
MINISTRY OF DEVOLUTION AND ASAL
OFFICE OF THE CABINET SECRETARY

Fax No.: 3343654
Telephone: 254-02-2250246
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Email: csdevolution.planning@kenya.go.ke

Treasury Building
P.O. Box 30004-00100
NAIROBI

OUR REF: MODA/ASALS/1/40(2)

9th July, 2019

Clerk of the National Assembly
P.O Box 41842-0010
NAIROBI

RE: SUBMISSION OF ADDITIONAL MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT (AMENDMENT) BILL 2019

Reference is made to your letter Ref. No NA/DCLSW/2019(33) dated 28th June, 2019 and the meeting held on 4th July 2019 between representatives from the Ministry of Devolution and the ASALS, the National Treasury, National Drought Management Authority and the National Assembly Committee on Labour and Social Welfare. During the meeting, it was agreed that the Ministry of Devolution and the ASALS, as lead government agency, will submit a memorandum on the following:-

- a) Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act, 2012 and not the National Drought Management Authority Act, 2016;
- b) The governance structure of the National Drought Emergency Fund;
- c) Whether the proposed National Drought Management Authority(Amendment) Bill, 2019 affects counties pursuant to Article 110 of the Constitution; and
- d) The Cabinet Secretary responsible for the National Drought Emergency Fund.

The Ministry wishes to respond to the above raised issues as follows:-

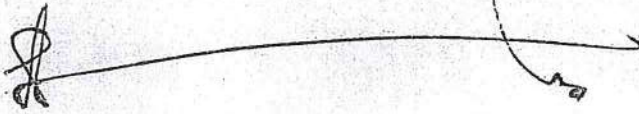
- a. **Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not the National Drought Management Authority Act, 2016:-** PFMA, 2012 is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section 6 (e) of the PFMA, 2012 provides that the PFM Law shall prevail in case of any inconsistency in establishment, administration and management of any public Fund. Further, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly. In view of this, there was need to amend the National Drought Management Authority Act (NDMA), 2016 to align it to the provisions of the PFMA, 2012 to avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.
- b. **The governance structure of the National Drought Emergency Fund:** - The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority board; the Chief Executive Officer of the Authority shall be the Funds' accounting officer/ administrator; and the NDMA Staff will provide Secretariat services to the Fund
- c. **Whether the proposed National Drought Management Authority (Amendment) Bill, 2019 affects counties pursuant to Article 110 of the Constitution:** - National Drought Management Authority is a national government institution fully funded from the equitable share of the national government. Section 7 (2) of the NDMA act, 2016 had provided for administrative structures to counties through delegation when implementing NDMA programmes and initiatives at the counties. The proposed amendments under the NDMA Amendment bill, 2019 therefore do not affect in any way counties as provided for under Article 110 of the Constitution given that the Fund Regulations will be actualizing the provisions of the Act. Towards this end, Section 7 (2) had

brought on board counties as administrative units under delegation to facilitate effective and efficient delivery of service by the Authority.

- d. **The Cabinet Secretary responsible for National Drought Emergency Fund:** - The Cabinet Secretary responsible for policy direction of the Fund will be the Cabinet Secretary responsible for matters relating to drought. Currently and as per the Executive Order No. 1 of 2018 (*revised*), this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs.

The purpose of this letter therefore, is to submit additional memorandum to clarify issues raised during the Committee meeting.

Your prompt attention and action on this matter will be highly appreciated.



HON. EUGENE WAMALWA, EGH
CABINET SECRETARY

Copy to: Henry Rotich, EGH
Cabinet Secretary
National Treasury & Planning
NAIROBI.

Chairperson
National Assembly's Committee on Labour and Social Welfare
Parliament Building
NAIROBI

501

REPUBLIC OF KENYA



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NAIROBI

OUR REF:MODA/ASALS/1/40

23rd May 2019

Clerk of the National Assembly
P.O Box 41842-0010
NAIROBI

11 D/cons
Please deal.
28/05/19

2. G. Njoroge
for consideration to
the committee
29/5/19

Dear

RE: SUBMISSION OF MEMORANDA ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT AMENDMENT BILL 2019

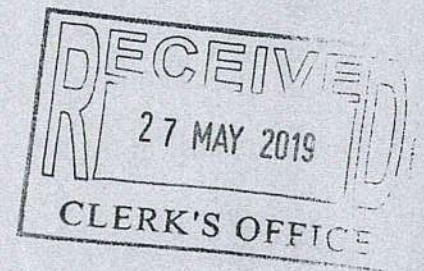
We appreciate the invitation for submission of memoranda on the National Drought Amendment Bill 2019 which we regret having not submitted on time.

The Ministry of Devolution and ASALs has no concern on the contents of the National Drought Management Act Bill 2019, as published. Unless any views to the contrary are brought forth by any other party, the Ministry is of the view that the Bill be passed in the manner it was Published.

We enclose herein the memoranda for your consideration.

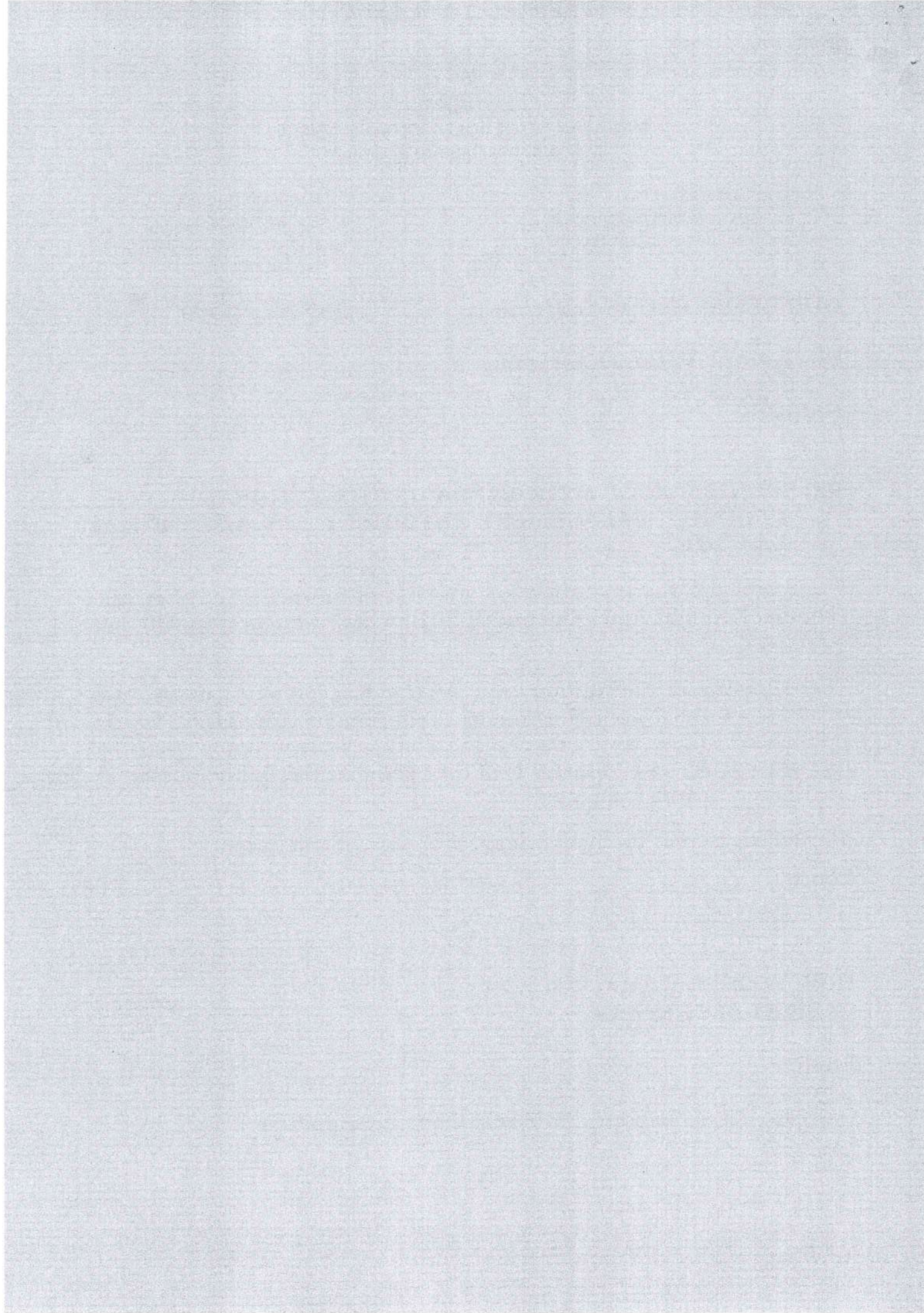
Yours

**HON. EUGENE WAMALWA, EGH
CABINET SECRETARY**



Encl.

Copy to: Chair, Labour and Social Welfare Committee



REPUBLIC OF KENYA



**MINISTRY OF DEVOLUTION AND ARID AND SEMI ARID
LANDS**

SUBMISSION OF MEMORANDA

TO

THE CLERK OF THE NATIONAL ASSEMBLY

ON

**THE NATIONAL DROUGHT MANAGEMENT AUTHORITY
(AMENDMENT) BILL, 2019**

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL, 2019

1.0 OBJECTIVE

1.1 The objective of this memorandum is to appraise the Clerk of the National Assembly on the proposed National Drought Management Authority (Amendment) Bill, 2019.

2.0 BACKGROUND

2.1 The Ministry of Devolution and ASALs , the National Treasury and Planning and the Attorney General developed the Public Finance Management (National Drought Emergency Fund) Regulations 2019 pursuant to section 24 of the Public Finance Management Act 2012. The object of the fund is to;

- (a) improve the effectiveness and efficiency of the drought risk management systems in the country;
- (b) facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts; and
- (c) provide a common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for drought risk management as well as receive financial resources

from development partners who support government on drought risk management interventions.

2.2 Section 24 of the Public Finance Management Act, 2012 provides that a national public fund be established with the approval of the Cabinet Secretary to the National Treasury and Parliament.

2.3 Accordingly the provisions establishing the Fund under the National Drought Management Act 2016 require to be amended to avoid inconsistency and duplication of laws and pave way for the seamless operationalisation of the Public Finance Management (National Drought Emergency Fund) Regulations 2019;

3.0 JUSTIFICATION

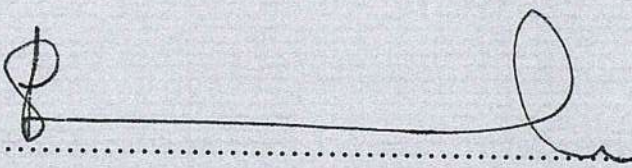
3.1 The Amendment bill will facilitate the operationalisation of the Public Finance Management (National Drought Emergency Fund) Regulations 2019, as the existing inconsistency and duplication in law in the National Drought Management Act and Fund regulations will be cured;

3.2 The Amendment bill has aligned the provisions of the National Drought Management Act, 2016 and the Public Finance Management Authority Act, 2012 in regard to establishment of the Fund while maintaining the letter and

spirit of the National Drought Management Act, 2016 as well as the desired Government Objective.

5.0 RECOMMENDATIONS

The Ministry of Devolution and ASALs has no concerns on the contents of the National Drought Management Act Bill 2019, as published. Unless any views to the contrary are brought forth by any other party, the Ministry is of the view that the Bill be passed in the manner it was Published.

Sign..........

EUGENE WAMALWA, EGH

Cabinet Secretary, Ministry Of Devolution and Arid and Semi-Arid Lands

Date

REPUBLIC OF KENYA



**MINISTRY OF DEVOLUTION AND ARID AND SEMI ARID
LANDS**

SUBMISSION OF MEMORANDA

TO

THE CLERK OF THE NATIONAL ASSEMBLY

ON

**THE NATIONAL DROUGHT MANAGEMENT AUTHORITY
(AMENDMENT) BILL, 2019**

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL, 2019

1.0 OBJECTIVE

1.1 The objective of this memorandum is to appraise the Clerk of the National Assembly on the proposed National Drought Management Authority (Amendment) Bill, 2019.

2.0 BACKGROUND

2.1 The Ministry of Devolution and ASALs , the National Treasury and Planning and the Attorney General developed the Public Finance Management (National Drought Emergency Fund) Regulations 2019 pursuant to section 24 of the Public Finance Management Act 2012. The object of the fund is to;

- (a) improve the effectiveness and efficiency of the drought risk management systems in the country;
- (b) facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts; and
- (c) provide a common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for drought risk management as well as receive financial resources

from development partners who support government on drought risk management interventions.

2.2 Section 24 of the Public Finance Management Act, 2012 provides that a national public fund be established with the approval of the Cabinet Secretary to the National Treasury and Parliament.

2.3 Accordingly the provisions establishing the Fund under the National Drought Management Act 2016 require to be amended to avoid inconsistency and duplication of laws and pave way for the seamless operationalisation of the Public Finance Management (National Drought Emergency Fund) Regulations 2019;

3.0 JUSTIFICATION

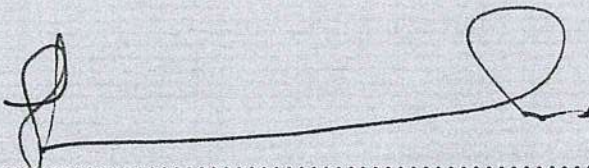
3.1 The Amendment bill will facilitate the operationalisation of the Public Finance Management (National Drought Emergency Fund) Regulations 2019, as the existing inconsistency and duplication in law in the National Drought Management Act and Fund regulations will be cured;

3.2 The Amendment bill has aligned the provisions of the National Drought Management Act, 2016 and the Public Finance Management Authority Act, 2012 in regard to establishment of the Fund while maintaining the letter and

spirit of the National Drought Management Act, 2016 as well as the desired Government Objective.

5.0 **RECOMMENDATIONS**

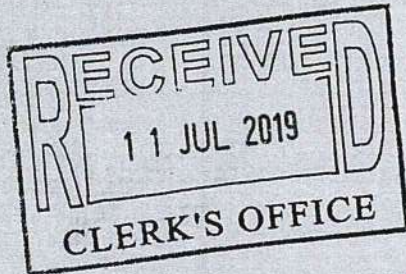
The Ministry of Devolution and ASALs has no concerns on the contents of the National Drought Management Act Bill 2019, as published. Unless any views to the contrary are brought forth by any other party, the Ministry is of the view that the Bill be passed in the manner it was Published.

Sign.....

EUGENE WAMALWA, EGH

Cabinet Secretary, Ministry Of Devolution and Arid and Semi-Arid Lands

Date



REPUBLIC OF KENYA



THE PRESIDENCY
MINISTRY OF DEVOLUTION AND ASAL
OFFICE OF THE CABINET SECRETARY

D/contto^e 917
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11/07

Fax No.: 3343654
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Treasury Building
P.O. Box 30004- 00100
NAIROBI

OUR REF: MODA/ASALS/1/40(2)

9th July, 2019

Clerk of the National Assembly
P.O Box 41842-0010
NAIROBI

~~2. John Sobah~~
2. John Sobah
For Counselor
by the
Committee
577

RE: SUBMISSION OF ADDITIONAL MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT (AMENDMENT) BILL 2019

Reference is made to your letter Ref. No NA/DCLSW/2019(33) dated 28th June, 2019 and the meeting held on 4th July 2019 between representatives from the Ministry of Devolution and the ASALS, the National Treasury, National Drought Management Authority and the National Assembly Committee on Labour and Social Welfare. During the meeting, it was agreed that the Ministry of Devolution and the ASALS, as lead government agency, will submit a memorandum on the following:-

- a) Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act, 2012 and not the National Drought Management Authority Act, 2016;
- b) The governance structure of the National Drought Emergency Fund;
- c) Whether the proposed National Drought Management Authority(Amendment) Bill, 2019 affects counties pursuant to Article 110 of the Constitution; and
- d) The Cabinet Secretary responsible for the National Drought Emergency Fund.

The Ministry wishes to respond to the above raised issues as follows:-

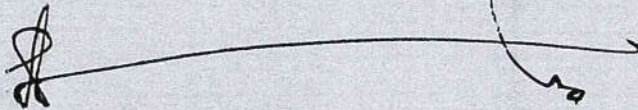
- a. **Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not the National Drought Management Authority Act, 2016:-** PFMA, 2012 is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section 6 (e) of the PFMA, 2012 provides that the PFM Law shall prevail in case of any inconsistency in establishment, administration and management of any public Fund. Further, Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly. In view of this , there was need to amend the National Drought Management Authority Act(NDMA), 2016 to align it to the provisions of the PFMA, 2012 to avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.
- b. **The governance structure of the National Drought Emergency Fund:** - The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority board; the Chief Executive Officer of the Authority shall be the Funds' accounting officer/ administrator; and the NDMA Staff will provide Secretariat services to the Fund
- c. **Whether the proposed National Drought Management Authority (Amendment) Bill, 2019 affects counties pursuant to Article 110 of the Constitution:** - National Drought Management Authority is a national government institution fully funded from the equitable share of the national government. Section 7 (2) of the NDMA act, 2016 had provided for administrative structures to counties through delegation when implementing NDMA programmes and initiatives at the counties. The proposed amendments under the NDMA Amendment bill, 2019 therefore do not affect in any way counties as provided for under Article 110 of the Constitution given that the Fund Regulations will be actualizing the provisions of the Act. Towards this end, Section 7 (2) had

brought on board counties as administrative units under delegation to facilitate effective and efficient delivery of service by the Authority.

- d. **The Cabinet Secretary responsible for National Drought Emergency Fund:** - The Cabinet Secretary responsible for policy direction of the Fund will be the Cabinet Secretary responsible for matters relating to drought. Currently and as per the Executive Order No. 1 of 2018 (*revised*), this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs.

The purpose of this letter therefore, is to submit additional memorandum to clarify issues raised during the Committee meeting.

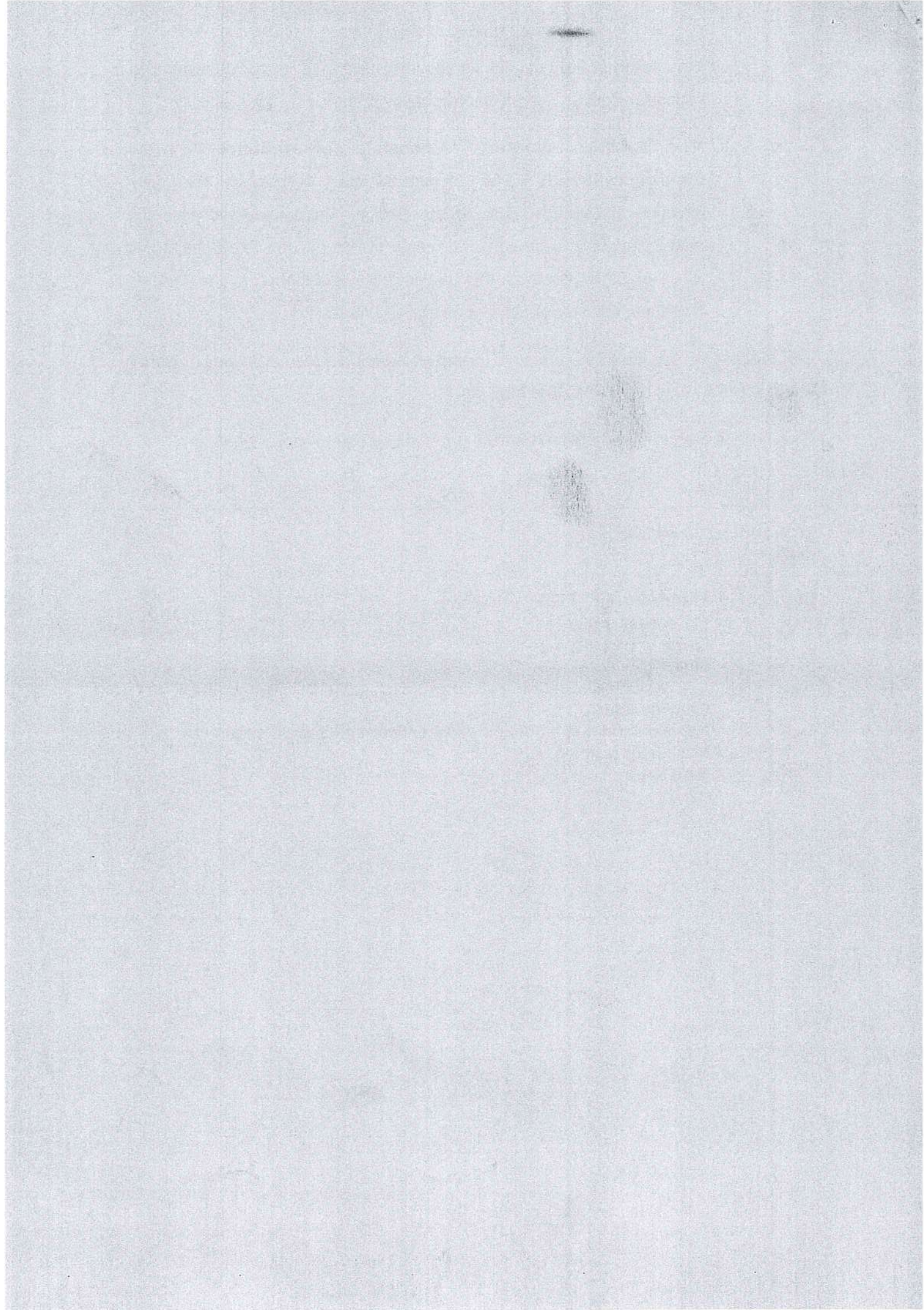
Your prompt attention and action on this matter will be highly appreciated.



HON. EUGENE WAMALWA, EGH
CABINET SECRETARY

Copy to: **Henry Rotich, EGH**
Cabinet Secretary
National Treasury & Planning
NAIROBI.

Chairperson
National Assembly's Committee on Labour and Social Welfare
Parliament Building
NAIROBI



**MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 4TH JULY, 2019 AT
10.00AM AT THE MINI-CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS**

PRESENT

1. **The Hon. David Ole Sankok, MP** - Chairing
2. The Hon. Janet Marania Teyiaa, MP
3. The Hon. Janet Nangabo, MP
4. The Hon. James Onyango K'Oyoo, MP
5. The Hon. Tom Mboya Odege, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Fabian Kyule Muli, MP
8. The Hon. Omboko Milemba, MP
9. The Hon. Safia Sheikh Adan, MP
10. The Hon. Catherine Wambilianga, MP

APOLOGY

1. **The Hon. Ali Wario, MP** - Chairperson
2. **The Hon. Joyce Korir, MP** - Vice Chairperson
3. The Hon. Gladys Atieno Wanga, MP
4. The Hon. Alfred K. Keter, MP
5. The Hon. Rose Museo Mumo, MP
6. The Hon. Ronald Kiprotich Tunoi, MP
7. The Hon. Michael Mwangi Muchira, MP
8. The Hon. Charles Kanyi Njagua, MP
9. The Hon. Wilson Sossion, MP

IN ATTENDANCE

Friend of the Committee

1. Hon. Ali Mbogo Menza, M.P - Petitioner

The National Assembly Secretariat

1. Mr. Adan Sora Gindicha -Clerk Assistant I
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani -Legal Counsel
4. Ms. Sheila Chebotibin -Sergeant-At-Arms
5. Ms. Farida Ngasura -Audio Officer
6. Ms. Whitney Asila -Intern Researcher

Office of the Attorney General

- | | |
|------------------------|----------------|
| 1. Ms. Beatrice Osicho | -State Counsel |
| 2. Mr. Mark Gakuru | -Ag. O.R |
| 3. Mr. Kenneth Gathuma | -Ag. DG, BRS |

National Drought Management Authority

- | | |
|-------------------------|------------|
| 1. Mr. James Oduor | - CEO |
| 2. Ms. Colleta Maweu | -PSC |
| 3. Mr. Sunya Orié | -DYS |
| 4. Mr. Joshua Musyoka | -Economist |
| 5. Mr. Geoffrey Malombe | -SDAG |

AGENDA

1. Prayers
2. Preliminaries
 - i. Introductions
 - ii. Communication from the Chairperson
 - iii. Confirmation of Minutes of previous Sitings
 - iv. Matters Arising
3. **Meeting with the Attorney General regarding the Petition by Hon. Ali Mbogo Menza, MP on non-payment of dues to former employees of the defunct African Safari Club @ 10am**
4. **Meeting with the National Drought Management Authority regarding the National Drought Management Authority (Amendment) Bill, 2019 @12noon**
5. Any Other Business
6. Adjournment/Date of the next Sitting

MIN.NO. DC/LSW/185/2019:- PRELIMINARIES

The acting Chairperson called the meeting to order at 10.13am and thereafter a prayer was said. This was followed by introductions.

The acting Chairperson then conveyed apology from the substantive chairperson who couldn't make it to the meeting due to other work related commitments.

MIN.NO. DC/LSW/186/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Abdi Mude Ibrahim, M.P and seconded by Hon. Fabian Kyule Muli, M.P respectively.

MIN.NO. DC/LSW/187/2019: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO. DC/LSW/188/2019: SUBMISSIONS BY THE OFFICE OF THE ATTORNEY GENERAL REGARDING THE PETITION BY HON. ALI MBOGO MENZA, MP ON NON-PAYMENT OF DUES TO FORMER EMPLOYEES OF THE DEFUNCT AFRICAN SAFARI CLUB.

The Office of the Attorney General Submitted as follows:-

1. That through a Petition by Universal Hardware Limited dated 9th March 2005, a winding up order was issued by the High Court in Mombasa against African Safari Club Limited on 19th June 2014. By the virtue of that order, the Official Receiver was appointed as provisional liquidator of the company.
2. From the records at the Companies Registry as at 15th July 2018, the company had four shareholders:
 - a) Karl Jacob Ruedin (deceased)
 - b) Air Agence Holding AG – Based in Switzerland
 - c) Coast Hotel Development Company Limited – based in Mombasa
 - d) Hans Peter Ruedin - resides in Switzerland.
3. The Company had five directors, namely –
 - a) Karl Jacob Ruedin (deceased) – Swiss National
 - b) Renato Fabrizio Bachmann – Swiss National
 - c) Brigitte Hutzli – Swiss National
 - d) Frank Helge Neuge Bauer – German National
 - e) Mutrtaza Hatimali Hassanali – Kenyan National
4. Efforts to trace the directors and shareholders were futile. Karl Jacob Ruedin died in 2013, while Renato Fabrizio Bachmann, Brigitte and Frank Helge Neuge Bauer have since returned to their respective countries.
5. The whereabouts of Murtaza is currently unknown.
6. As per the proof of debt filed by the creditors with official receiver, there are eight creditors owed a total of Kshs. 510, 507, 680.20
7. The Directors of the Company didn't file a statement of affairs regarding the assets of the company.
8. From the records obtained from the Companies registry and information from some of the creditors, the assets of the Company are:-
 - Subdivision N.859 Section 1 Mainland North Mombasa charged to Equitorial Commercial Bank Limited for a loan of Kshs. 130, 000, 000/=

- L.R. 32 Watamu charged to National Bank of Kenya Limited for a loan of Kshs. 7,000,000/=
 - L.R 1066/67 I MN Shanzu charged of National Bank of Kenya for an unspecified sum.
9. Tracing the company's assets has been a challenge since the three parcels of land were charged to different banks.
 10. The Watamu property is subject of a dispute between the Government and National Bank of Kenya. The High Court in HCC No. 130 of 2006 On 2nd Nov, 2010 placed an injunction order preventing sale or interference of the land.
 11. Since the company is a Limited Liability Company, liability cannot attach to the directors. The Company is a separate legal entity from its shareholders and therefore liability will only attach to the shareholders if the corporate veil is lifted.
 12. The records do not contain the list of employees of the company making it difficult to verify which claims are genuine and how much is owed.
 13. There are no employee records to verify the claims by the former employees since the directors did not provide a statement of affairs.
 14. Out of 756 employees, only 670 employees have filed their proof of debt forms with the Official Receiver.
 15. In creditors meeting dated 27th February 2019, one of the employees, representative brought it to the attention of the Official Receiver that some of the former employees of the company had instituted a civil case against the estate of the directors, Jacob Ruedin (deceased)
 16. Africa Safari Club was a limited liability Company and as such, it was illegal to attach matrimonial home of the private individual.

In conclusion, the Committee was informed that:-

- Assets owned by the company were charged to secured creditors who retain priority over the said properties leaving nothing for the unsecured creditors.
- The National Assembly may summon the National Bank of Kenya Limited and Equatorial Bank of Kenya Limited to ascertain whether the assets were sold or give status update of the properties.
- The way forward was to commence the official process of liquidation of the company by having it struck off the companies register.

Committee Observations, Recommendations and Way Forward

- i. The Office of the A.G was not supportive since at one time they advised the complainants to drop the suit.
- ii. The receiver manager disposed off some assets without paying the creditors.
- iii. The Office of the Attorney General was not aware when the properties were sold.

- iv. The Office of the Attorney General was relying creditors information since it was difficult to get information from directors since they had never filed approvals.
- v. There was need to protect Kenyans against exploitive foreign investors.
- vi. The Office of the A.G should use the office of the DCI and Interpol to reach the foreign directors. (multiagency approach)
- vii. There office of the A.G should ascertain when were the properties sold and how was the disposal done.
- viii. The Office of the A.G should give legal opinion on how the creditor can be paid within the confines of the law.

Way forward

The Office of the Attorney General has two weeks to report on the following:-

- a) Number and value of the assets.
- b) Action taken to alleviate the suffering of the former employees.
- c) Any other way that the Government can compensate the creditors in case it's completely unable to trace the Directors.

MIN.NO. DC/LSW/189/2019: SUBMISSIONS BY THE NATIONAL DROUGHT MANAGEMENT AUTHORITY REGARDING THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL, 2019

The National Drought Management Authority submitted to the Committee that:-

1. The Ministry of Devolution and ASALs, the National Treasury and the Attorney General developed the PFM (National Drought Emergency Fund) Regulations 2019 pursuant to section 24 of the PFM Act 2012.
2. The object of the Fund is to;
 - i. Improve the effectiveness and efficiency of the drought risk management systems in the country;
 - ii. Facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of the drought.
 - iii. Provide a common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.
3. Section 24 of the PFM Act, 2012 provides that the national public fund be established with the approval of the Cabinet Secretary to National Treasury & Parliament.
4. The provisions establishing the Fund under the NDM Act, 2016 requires to be amended to avoid inconsistency and duplication of laws and pave way for the seamless operationalisation of the Public Finance Management (National Drought Emergency Fund) Regulations 2019.

5. The Amendment Bill will facilitate the operationalisation of the Public Finance Management (National Drought Emergency Fund) Regulations 2019 as the existing inconsistency and duplication in law in the NDM Act and Fund Regulations will be cured;
6. The Amendment Bill will align the provisions of the National Drought Management Act, 2016 and the Public Finance Management Authority Act, 2012 in regard to establishment of the Fund while maintaining the letter and spirit of the National Drought Management Act, 2016 as well as desired Government Objective.

The National Drought Management Authority further submitted as follows:-

I. Rationale for establishment of the National Drought Emergency Fund under Public Finance Management Act (PFMA), 2012 and not the National Drought Management Authority Act, 2016:-

- PFMA, 2012 is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section 6 (e) of the PFMA, 2012 provides that the PFM Law shall prevail in case of any inconsistency in establishment, administration and management of any public Fund.
- Section 24 (4) of the Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly.
- In view of this , there was need to amend the National Drought Management Authority Act(NDMA), 2016 to align it to the provisions of the PFMA, 2012 to avoid inconsistencies and duplication of laws and pave way for the seamless operationalization of the National Drought Emergency Fund.

II. The governance structure of the National Drought Emergency Fund: - The National Drought Emergency Fund shall be under the oversight of the National Drought Management Authority board; the Chief Executive Officer of the Authority shall be the Funds' accounting officer/ administrator; and the NDMA Staff will provide Secretariat services to the Fund

III. Whether the proposed National Drought Management Authority (Amendment) Bill, 2019 affects counties pursuant to Article 110 of the Constitution: -

- National Drought Management Authority is a national government institution fully funded from the equitable share of the national government. Section 7 (2) of the NDMA act, 2016 had provided for administrative structures to counties

through delegation when implementing NDMA programmes and initiatives at the counties.

- The proposed amendments under the NDMA Amendment bill, 2019 therefore do not affect in any way affect counties as provided for under Article 110 of the Constitution given that the Fund Regulations will be actualizing the provisions of the Act.
- Section 7 (2) had brought on board counties as administrative units under delegation to facilitate effective and efficient delivery of service by the Authority.

IV. The Cabinet Secretary responsible for National Drought Emergency Fund: -

- The Cabinet Secretary responsible for policy direction of the Fund will be the Cabinet Secretary responsible for matters relating to drought. Currently and as per the Executive Order No. 1 of 2018 (*revised*), this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs.

Committee Observations

County Government should be included in the formulation of regulations and not in the Main Act so as to guard against the conflict that might arise during the implementation process.

MIN.NO. DC/LSW/190/2019: ADJOURNMENT

There being no other business, the meeting was adjourned 12.25pm

SIGNED: 

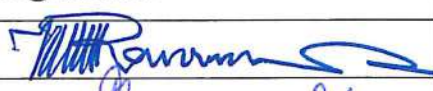
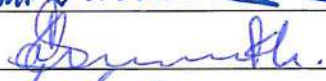

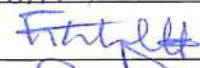
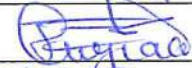
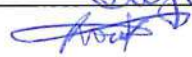




The Hon. Ali Wario, M.P
(Chairperson)

DATE: 25/07/19

ADOPTION SCHEDULE

REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL, 2019 (No. 26 of 2019)

Date: 25th July, 2019

No.	Name	Signature
1.	Hon Ali Wario	
2.	HON SAFWA SHEIKH ADAN	
3.	HON. TOM M. ODEGE	
4.	Hon. Fabian K. muli	
5.	HON JANET TETIAA	
6.	Hon RONARD TONU	
7.	HON. MICHAEL MACHARA	
8.	Hon Gladys Wangari	
9.	Hon. James O. Koyoo	
10.	Hon Abdi M. Ibrahim	
11.		
12.		
13.		
14.		
15.		

