

NATIONAL CONSTRUCTION AUTHORITY (NCA)

**International Construction Research Conference and
EXHIBITION (ICoRCE)**
(Kenyatta International Convention Centre, Nairobi Kenya, 7 – 9 November, 2018)
**TOPIC: The Role of Parliament in Promoting Development of
Construction Industry in Kenya**

A PRESENTATION BY:

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I) INTRODUCTION:

- **History of Parliament:** In 1215, the tenants-in-chief secured Magna Carta from King John, which established that the King may not levy or collect any taxes (except the feudal taxes to which they were hitherto accustomed), save with the consent of his Royal Council, which gradually developed into a Parliament
- Magna Carta, although largely a peace treaty, is generally regarded as the foundation of modern parliaments, constitutions and constitutionalism.

- The highly acclaimed Brazilian lyricist and novelist, Paulo Coelho says this about people and politics:-

“Everybody is a political person, whether you say something or you are silent. A political attitude is not whether you go to parliament, it is how you deal with your life, your surroundings”.

- Equally, Malcolm Bligh Turnbull, a former Australian Prime Minister, has this to say about the role of Parliament.

“It is our job, as Members of Parliament, to legislate with an eye to the long term future, to look over the horizon beyond the next election and ensure that as far as we can, what we do today will make our Country (Australia) a better place, a safer place, for future generations to live in”.

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- The unwritten objective, therefore, of any law-making exercise has to be about making our environments better and safer places for ourselves and future generations.
 - Nothing captures this more than the Construction Industry in any nation.

This paper will cover the above topic under the following sub-headings:-

- The Role of Parliament In Promoting Development of the Construction Industry in Kenya.
- A Brief Review of the National Construction Authority Act, 2011.
- Way Forward.

**II) THE ROLE OF PARLIAMENT IN PROMOTING
DEVELOPMENT OF THE CONSTRUCTION
INDUSTRY IN KENYA AND THE NCA ACT, 2011:**

➤ The key problem facing the construction sector in Kenya, like in most developing countries, is the inability of the industry to cope with rapid population increase. There is no denying that the construction industry is a major part of the Kenyan economy. But it still remains largely fragmented, with key players in the industry still falling under the Micro, Small and/or Medium Enterprises (MSMEs). Because of this fragmentation, issues of co-ordination, and correct skill sets remain. Other challenges are:-

- (i) Lack of adequate local capacity, both human and machine
- (ii) Cost-effectiveness and affordability for most citizens
- (iii) Quality Assurance
- (iv) Safety
- (v) Digital collaboration to bridge the yawning gap between demand and supply.

It is with these challenges in mind that Parliament of Kenya enacted the National Construction Authority Act, 2011.

The main object for which the National Construction Authority is established is to oversee the construction industry and coordinate its development.

Without prejudice to the generality of the above, the Authority shall:-

- a) promote and stimulate the development, improvement and expansion of the construction industry;
- b) advise and make recommendations to the Minister on matters affecting or connected with the construction industry;
- c) undertake or commission research into any matter relating to the construction industry;

- d) prescribe the qualifications or other attributes required for registration as a contractor under this Act;
- e) assist in the exportation of construction services connected to the construction industry;
- f) provide consultancy and advisory services with respect to the construction industry;
- g) promote and ensure quality assurance in the construction industry;

h) encourage the standardization and improvement of construction techniques and materials;

i) initiate and maintain a construction industry information system;

j) provide, promote, review and co-ordinate training programmes organized by public and private accredited training centers for skilled construction workers and construction site supervisors;

k) **accredit and register contractors and regulate their professional undertakings;**

l) **accredit and certify skilled construction workers and construction site supervisors;**

m) **develop and publish a code of conduct for the construction industry, and**

n) **do all other things that may be necessary for the better carrying out of its functions under the Act.**

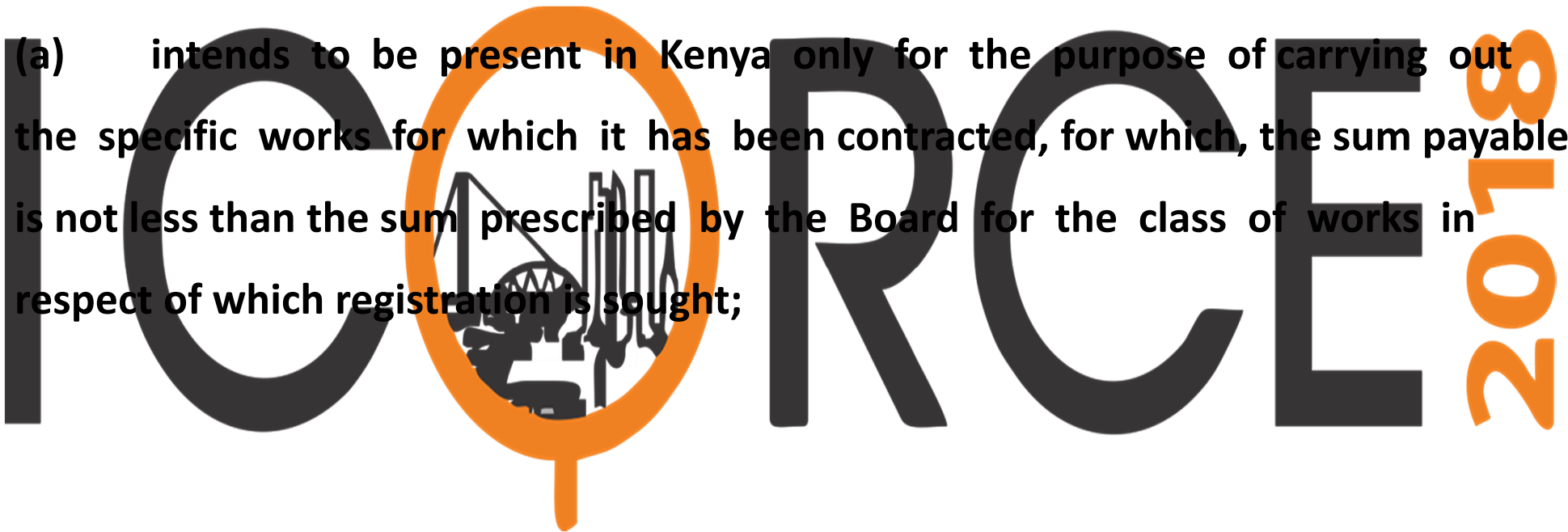
Besides the above functions, The Authority also (with the approval of the Minister in Charge) has power to facilitate, or promote the establishment or expansion of companies, corporations or other bodies to carry out on any activities related to construction either under the control or partial control of the Authority or independently.

Clause 7 of the Act establishes the apex organ of the Authority, its Board, which is allowed under Clause 14 to co-opt experts/consultants and also establish committees. Recognizing inadequate local capacity, and Kenya's bilateral obligations, the Act also empowers the Authority to register Foreign Contractors (under Clause 18) where it provides that:-

The Board may accredit a firm incorporated outside Kenya to carry out construction works in Kenya for a prescribed period where the firm meets the conditions prescribed by the Board and satisfies the Board that the firm:-

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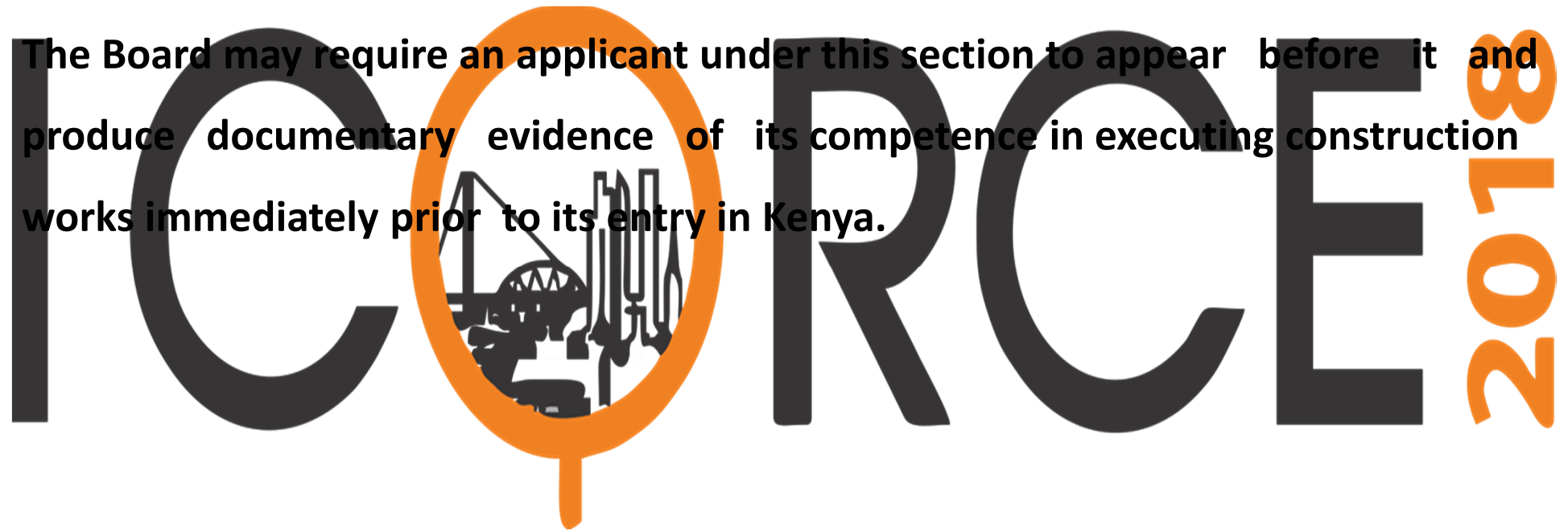
(a) intends to be present in Kenya only for the purpose of carrying out the specific works for which it has been contracted, for which, the sum payable is not less than the sum prescribed by the Board for the class of works in respect of which registration is sought;



(b) has a certificate of compliance from the Registrar of Companies showing that it is, or immediately prior to entering Kenya, was, trading as a contractor in the capacity which satisfies the Board with respect to its suitability to serve the public as a qualified contractor; and

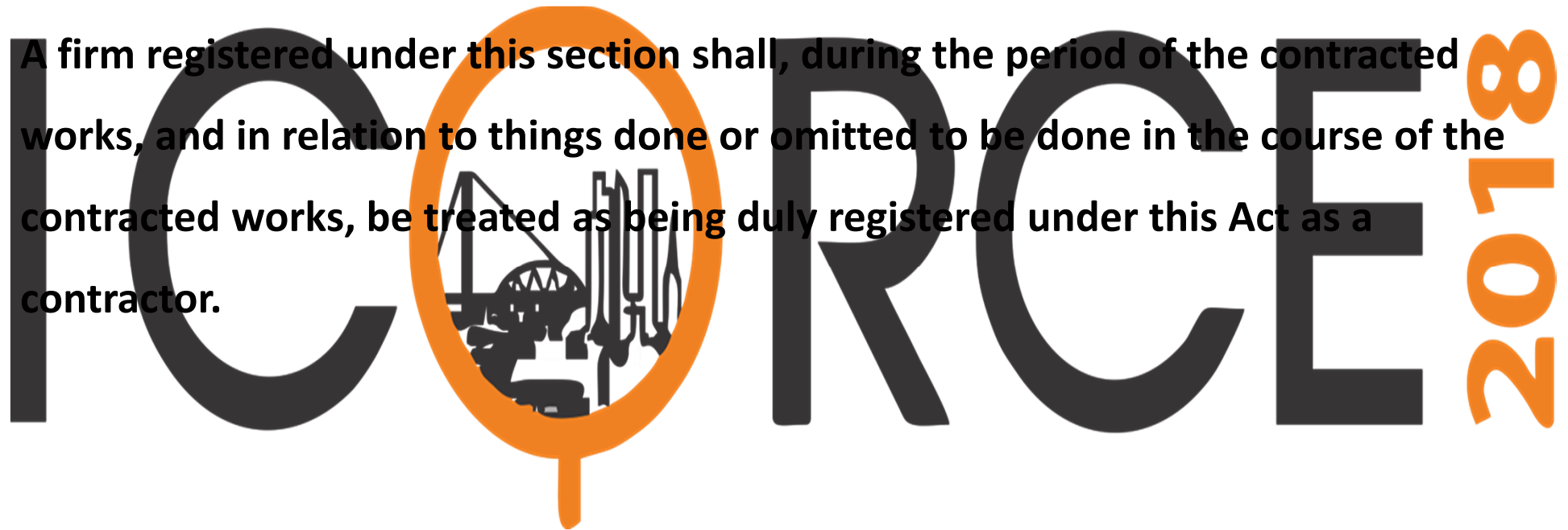
(c) has lodged an affidavit with the Board to the effect that, once the contracted works are completed and the period of defects liability or maintenance has elapsed, it shall wind up business and shall not engage itself in the construction business within Kenya.

The Board may require an applicant under this section to appear before it and produce documentary evidence of its competence in executing construction works immediately prior to its entry in Kenya.



Registration of a firm under this section shall entitle it to undertake work only for the period of time prescribed by the Board in subsection (1), and on the expiry of that period that firm shall cease to be so registered, and shall return the registration certificate to the Board.

A firm registered under this section shall, during the period of the contracted works, and in relation to things done or omitted to be done in the course of the contracted works, be treated as being duly registered under this Act as a contractor.



Notwithstanding the provisions of this section and sections 14 and 16, the Minister, in consultation with the Board, shall make regulations stipulating ownership structures of foreign firms seeking registration under this Act, clearly stating the categories of contracts for which foreign firms may apply and those which shall be strictly reserved for local contractors.

**In the performance of its function to inquire into the conduct of a contractor,
Clause 23 empowers the Board to appoint an investigating officer.**

**A major omission of the Act, however, remains the penalties applicable where an
investigating officer is obstructed by a contractor from performing their duty.**

Among the Financial Provisions (Part V of the Act) is the construction levy of 0.5% of the value of contracts in excess of Kenya Shillings five million. It is understood the application of this levy has since been suspended.

It is also noted that the Third Schedule of the Act, which lists Classes of Contract Works is not in tandem with the definition of “Construction Works” and omits such major construction works like railway lines, cable ways and cable cars, canals, dams, ports and harbours, aerodromes and airports, gas and oil pipelines, etc.

III) WAY FORWARD

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Article 94(5) of the Constitution of Kenya, 2010, provides that:-

No person, or body, other than Parliament, has the power to make provision having the force of Law in Kenya except under Authority conferred by this Constitution or Legislation.

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For the Authority to contribute effectively in the development agenda of Kenya, it must engage Parliament actively in ensuring the following:-

- (i) Promoting and ensuring quality in the Construction Sector by having arresting powers. A regulator without arresting powers is no better than a toothless mongrel.

(ii) Undertake continuous research in modern construction techniques and materials through encouraging and supporting home-grown solutions to access to construction materials and methods. With the advent of devolved units of governance in Kenya, the Authority must actively support the establishment of cottage industries engaged in manufacture of low-cost, high-quality construction materials in all the 47 Counties.

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(iii) In order to grow domestic capacity, Clause 18 of the Act should be amended to strictly reserve contracts of upto KSh. 1.5 Billion STRICTLY for indigenous Kenyans.

All young economies have to provide certain levels of protection for their citizens and Kenya has absolutely no apologies to make to anyone in this pursuit. If there is lack of capacity, both human and equipment among indigenous contractors, then it has to be the duty of the Authority to build that capacity.

After all, which country in the world has grown by empowering foreigners? Which country in the world ever attained “First World” status at infancy? Perhaps some illustration here would suffice.



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About a century ago, having toured lots of factories in a developing country, an Australian Consultant told the government officials who had invited him:

“My impression as to your cheap labour was soon disillusioned when I saw your people at work. No doubt they are lowly paid, but the return is equally so; to see your men at work made me feel that you are a very satisfied easy-going race who reckon time is no object. When I spoke to some managers they informed me that it was impossible to change the habits of national heritage.”

Of course you notice the Australian consultant was being exceedingly polite. What he was struggling to say was simply that the workers he saw in that country were exceedingly lazy.

How many of us here today would accept the country the Australian was referring to was Japan in 1915?

Before their economic take-off of the mid-19th Century, the Germans were typically described by the British as “a dull and heavy people”. In fact the British considered the Germans not only slow-witted “who were never open to new ideas” but they were “not distinguished by enterprise or activity” and the German roads were considered some of the worst in the world. British travelers of the early 19th Century also thought the Germans were dishonest people.

Similarly, about a hundred years ago, a British Socialist described Koreans as “12 million of dirty degraded, sullen, lazy and religionless savages who slouch about in dirty white garments of the most inept kind and who live in filthy mudhuts”.

So, there you have it: **Hardly a century ago, the Japanese were lazy rather than hard-working, independent-minded rather than loyal, . . . living strictly for today rather than considering the future A century and a half ago, the Germans were indolent rather than efficient; individualistic rather than co-operative; emotional rather than rational; stupid rather than clever; dishonest and thieving rather than law-abiding.**

Who then is to say that in the year 2118, Kenya will not be ruling the world in every way imaginable?

It is therefore our duty to set our people on the path to greatness instead of subjecting them to voluntary and unnecessary road-blocks at the expense of outsiders!!!

(iv) NCA should actively engage Parliament and the executive to re-introduce the Construction Levy of 0.5%. Claims that this levy makes construction costs unmanageable is both a fallacy and a lie. 0.5% of anything is statistically insignificant. After all, why are we not more concerned with levies being introduced by County Governments which in some cases are as much as three (3) times the NCA levy?

But there is even a more fundamental point here. There is nothing as bad as having a regulator which is far more powerless than industry operators (CAK/KCAA).

(v) NCA should engage Parliament to have it's mandates expanded to include inspection of buildings, particularly those under construction.

(vi) More research needs to go into looking for ways of achieving enhanced productivity in the construction sector together with more cost-effective construction methods to realize savings and deliver better quality finished products at cheaper rates. Building Information Modelling (BIM) should now be at the heart of all construction projects in Kenya, with the focus being on data utilization and digital collaboration through the entire construction life-cycle for maximum attainment of value and quality.

(vii) NCA should liaise with Parliament so that the Third Schedule of the Act (Classes of Contract Works), is expanded to be in tandem with the definition of “Construction Works” in the Interpretation Clause, Clause 2.

THANK YOU

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NAIROBI, 7TH NOVEMBER, 2018