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MEDIATION COMMITTEE ON THE ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

REPORT ON THE ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2014)



JOINT CLERKS' CHAMBERS
PARLIAMENT OF KENYA
NAIROBI

MAY 2015

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ACRONYMS

CIDPsCounty Integrated Development Plans
CEAPsCounty Environment Action Plans
NEAPNational Environment Action Plans
NEMANational Environment Management Authority

1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the Environmental Management and Coordination Bill (National Assembly Bill No. 31 of 2014) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) and the Speaker of the Senate on 29th April, 2015, and 6th May, 2015, respectively.

The members of the Committee were:-

1. Sen. Lenny Kivuti, M.P. - Chairperson
2. Hon. Amina Abadalla, M.P. - Vice Chairperson
3. Sen. George Khaniri, M.P. - Member
4. Hon. Ronald Tonui, M.P. - Member
5. Sen. Liza Chelule, M.P. - Member
6. Hon. William Kamoti, M.P. - Member

1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was established to develop a version of the Environmental Management and Coordination Bill (National Assembly Bill No. 31 of 2014) and in particular Clause 10, 20, 23 and 25 that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6).

The specific clauses of the Bill that were in contention were Clause 10, 20, 23 and 25.

1.3 Committee Sitzings

The Committee held its first meeting on 13th May 2015 and elected Sen. Lenny Kivuti and Hon. Amina Abdalla as Chairperson and Vice Chairperson respectively. The Committee thereafter deliberated on Clause 10, 20, 23 and 25 of the Environmental Management and Coordination Bill (National Assembly Bill No. 31 of 2014) which were in contention.

The Committee also held its second and final meeting on 21st May, 2015 to consider and adopt its Report.

1.4 Committee Resolutions

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the bill is hereby appended to this report.

1.5 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 155 (1), to present a report of the Mediation Committee on the Environmental Management and Coordination Bill (National Assembly Bill No. 31 of 2014) for consideration by the House.

SIGNED.....



SIGNED:



SEN. LENNY KIVUTI, M.P.

HON. AMINA ABDALLA, MP

CHAIRMAN

VICE CHAIRPERSON

DATE.....



DATE.....



MEDIATION COMMITTEE ON ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

2.0 BACKGROUND

The Environmental Management and Coordination Bill (National Assembly Bill No. 31 of 2014) was published in the Kenya Gazette Supplement No. 114 of 25th July, 2014 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Constitution and National Assembly Standing Orders and was passed on 4th December, 2014 and then referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142 where it was read for the first time on Wednesday, 11th February 2015.

The Senate subjected the Bill to a public participation forum which was held on 26th February, 2015 at Shimba Hills Hall, Kenyatta International Convention Centre to take into account the views and recommendations of the public. The Bill was passed by the Senate with amendments on 1st April, 2015.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly on 13th April, 2015, seeking the concurrence of the National Assembly to the amendments made to the Environmental Management and Co-ordination (Amendment) Bill, 2014.

The National Assembly, on its Sitting of 21st April, 2015 considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments on Clauses 10, 20, 23 and 25 of the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154 the Bill and specifically Clauses 10, 20, 23 and 25 of the Bill were referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

**3.0 CONSIDERATION OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL
(NATIONAL ASSEMBLY BILL NO. 31 OF 2014)**

**3.1. Senate amendments to the Environmental Management and Coordination Bill
(National Assembly Bill No. 31 of 2014)**

Clause 9

THAT clause 9 of the Bill be amended in paragraph (a), in the proposed new paragraph (ba), by inserting the words “and their utilization and conservation”, immediately after the words Kenya.

Clause 10

THAT clause 10 of the Bill be amended in paragraph (d), by deleting the proposed new subsection (1) (f) and substituting therefor the following new subsection—

- (1) (f) one person nominated by the Council of County Governors.

Clause 12

THAT clause 12 of the Bill be amended in the marginal note of the proposed new section 14 by deleting the word “Board” appearing immediately after the words “of the” substituting therefor the word “director-General and Directors”

Clause 20

THAT clause 20 of the Bill be deleted and substituted therefor with the following clause—

The principal Act is amended in subsection (1) of section 31 –

- (a) by deleting the words “Public complaints Committee” wherever it appears and substituting therefor the words “National Environmental Complaints Committee”;
- (b) by deleting the words “two members” appearing at the beginning of paragraph (f) and substituting therefor the words “one member”; and
- (c) by inserting the following new paragraph immediately after paragraph (f);
- (g) one person who has demonstrated competence in environmental matters, nominated by the Council of County Governors.

Clause 23

THAT clause 23 of the Bill be amended in the proposed new section 37 –

- (a) by deleting the word “three” appearing immediately after the words “shall, within”, in subsection (1), and substituting therefor the word “two”; and

- (b) by deleting the word “six” appearing immediately after the words “Plan every”, in subsection (5), and substituting therefor the word “three”.

Clause 25

THAT clause 25 of the Bill be amended in the proposed new section 40 –

- (a) by deleting subsection (1) and substituting therefor the following new subsection–
- (1) Every County Environment Committee shall within one year of the commencement of this Act and every three years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly”; and
- (b) by deleting the word “Cabinet Secretary” appearing immediately after the words “subsection (1) to the”, in subsection (3), and substituting therefor the word “Authority”.

Clause 40

THAT clause 40 of the Bill be amended in the proposed new section 56A, by deleting the words “the Authority” appearing at the beginning of the proposed new section and substituting therefor the words “the Cabinet Secretary”.

3.2. The National Assembly Comments on Senate Amendments

The National Assembly considered the proposed amendments by the Senate and recommended as follows:-

- a) Clause 9 in the proposed new paragraph (ba)

Proposed amendment to clause 9 agreed to.

Justification

The amendment provides for the audit of utilization and conservation of resources.

- b) Clause 10

Proposed amendment to clause 10 was rejected.

Justification

The Senate proposal deletes the provision for the Attorney General or his representative to sit on the Board of the Authority and instead provides for a person nominated by the Council of County Governors. The Committee was of the opinion that National Environment and Management Authority (NEMA) is a national body mandated to perform functions that are vested in the National Government in accordance with the Act and in line with the Fourth schedule to the Constitution.

Therefore there is no policy or legal justification for a representative of the Council of Governors to sit on the Authority. Further the proposed amendment seeks to replace the Attorney General or his representative with the representative of the Council of Governors therefore inadvertently placing the role of the representative of the Council of Governors at the same level as the legal advisory role the Attorney General plays, which is not the case.

c) Clause 12

Proposed amendment to clause 12 agreed to.

It seeks to amend the marginal note of the proposed new section 14 by deleting the word “Board” appearing immediately after the words “of the” and substituting therefor the word “director-General and Directors”

Justification

The marginal note is misleading as it refers to “Remuneration of the Board” however the clause actually deals with remuneration of the “Director-General and Directors”.

d) Clause 20

Proposed amendment to clause 20 (a) agreed to, however (b) & (c) rejected.

Justification

The Senate proposal seeks to reduce the members appointed by the Minister under section 31(1) (f) from two members to one member appointed by the Minister for their active role in environmental management.

The proposal further provides for one person nominated by the Council of County Governors. The National Environmental Complaints Committee is established to investigate allegations or complaints against any person or the National Environment and Management Authority in relation to the condition of the environment in Kenya. It is therefore a national body mandated to perform functions that are vested in the National Government in accordance with the Act and in line with the Fourth schedule to the Constitution. Consequently there is no policy or legal justification for a representative of the Council of Governors to sit on the National Environmental Complaints Committee.

e) Clause 23

Proposed amendment rejected.

The Senate proposal reduces the time within which the Authority shall formulate the National Environmental Action Plan from three years to two years within commencement of the Act.

The proposal also reduces the time within which the action plan shall be reviewed from every six year to every three years.

Justification

Based on experience, having an annual state of the environment report is unrealistic; the longer the planning period the better the report. The national environmental action plan also needs to be fed by the county plans which if done every three years would not be feasible.

f) Clause 25

Proposed amendment rejected.

The Senate proposal reduces the time within which the County Environment Committee shall prepare the county environment action plan from “two years of the commencement of this Act and every five years thereafter” to “one year of the commencement of this Act and every three years thereafter”.

The proposal further provides for the submission of the County Environment Action plan by the County Executive Committee for incorporation into the national environment action plan to the “Authority” as opposed to the Cabinet Secretary.

Justification

Having a county environment action plan within one year of the commencement of the Act is unrealistic, further based on experience the longer the planning period the better the report produced.

Further the Cabinet Secretary is the person responsible for reporting of the national environment action plan therefore it goes that the submission of the county environment action plan should be to the Cabinet Secretary so that it can be incorporated into the national environment action plan.

g) Clause 40

Proposed amendment to clause 12 agreed to.

Justification

Regulation making and issuance of guidelines is a function of the Cabinet Secretary.

4.0 RESOLUTIONS OF THE MEDIATION COMMITTEE

The Committee met on the 13th May, 2015 and unanimously resolved the contention on Clauses 10, 20, 23 and 25 as follows:-

a) Clause 10

The appointment of the Attorney General to the Board be retained as proposed in Clause 10 (d).

b) Clause 20

Clause 31 (d) of the Principal Act is amended so that a representative of the Council of Governors replaces that of the non-governmental organizations to the Public Complaints Committee so as to read as follows:-

‘One person who has demonstrated competence in environmental matters, nominated by the Council of County Governors and who shall be the secretary to the Complaints Committee’.

c) Clause 23

- i. Clause 23 of the principal Act be amended in the proposed new section 37 (1) to read as follows;

‘The Authority shall, within two years of the commencement of this Act and every six years thereafter formulate the National Environment Action Plan and shall ensure that it has undertaken public participation before the adoption of the Plan’;

- ii. Clause 23 of the principal Act be amended in the proposed new section 37 (5) to read as follows;

‘The Authority shall review the National Environmental Action Plan every three years.’

d) Clause 25

- i. The amendment by the Senate on Clause 25 of the Bill as proposed in the new subsection 40 (1) be adopted as follows;

‘Every County Environment Committee shall within one year of the commencement of this Act and every five years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly’

- ii. The amendment by the National Assembly on Clause 25 of the Bill as proposed in the new subsection 40 (3) be adopted as follows;

‘The respective county Executive Committee Members of every County shall submit the County Environment Action Plan referred to in subsection (1) to the Cabinet Secretary for incorporation into the national environment action plan referred to in section 37.’

Appendix 1: Minutes of the Mediation Committee's Deliberation

MINUTES OF THE MEDIATION COMMITTEE ON THE CONSIDERATION OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2014) HELD ON WEDNESDAY 13TH MAY, 2015 AT MAIN PARLIAMENT BUILDINGS, CPA ROOM AT 11:00 A.M.

Members Present

- | | |
|------------------------------|--------------------|
| 1. Sen. Lenny Kivuti, M.P. | - Chairperson |
| 2. Hon. Amina Abadalla, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, M.P. | - Member |
| 4. Hon. Ronald Tonui, M.P. | - Member |
| 5. Sen. Liza Chelule, M.P. | - Member |
| 6. Hon. William Kamoti, M.P. | - Member |

In- attendance Secretariat

- | | |
|-----------------------|--------------------------------------|
| 1. Mr. Charles Ngatia | -Clerk Assistant (Senate) |
| 2. Ms. Chebet Koskei | -Clerk Assistant (National Assembly) |
| 3. Ms. Lucy Radoli | -Legal Officer (Senate) |
| 4. Ms. Lynette Otieno | -Legal Officer (National Assembly) |
| 5. Ms. Ann Kigoro | -Research Officer (Senate) |

MIN. NO. KNA/SEN/MED/1/2015: PRAYER

The meeting was opened with a word of prayer by Sen. Lenny Kivuti at 11:07 a.m.

MIN. NO.KNA/SEN/MED/2/2015: ELECTION OF CHAIRPERSON & VICE CHAIRPERSON

Sen. Lenny Kivuti was elected as Chairperson of the Committee after he was proposed by Hon. Amina Abdalla, M.P. and seconded by Hon. Ronald Tonui, M.P.

Hon Amina Abdalla was elected as the Vice Chairperson of the Committee after she was proposed by Sen. Lenny Kivuti, M.P. and seconded by Sen. Liza Chelule, M.P.

MIN. NO.KNA/SEN/MED/3/2015: PRELIMINARIES

Introductions were done, following which the Chairperson informed members on the agenda of the meeting as follows:-

1. Prayer,
2. Election of Chairperson & Vice Chairperson,
3. Consideration of Clauses 10, 20, 23 & 25 of EMCA Bill 2014,
4. Any Other Business
5. Adjournment

MIN. NO.KNA/SEN/MED/4/2015: CONSIDERATION OF CLAUSES 10, 20, 23 & 25
OF THE EMCA BILL, 2014

1) Clause 10

The National assembly's views were as follows:-

- i. The Board of the Authority (NEMA) was a National institution and therefore there was no need for representation of counties in its membership;
- ii. The Fourth Schedule of the Constitution clearly mandated the establishment of a system for the protection of the environment and natural resources to the National Government and therefore the Constitution of the Board was a function of the National Government;
- iii. The Cabinet Secretary should have full authority without reference to any other institution to nominate members of the board;
- iv. Counties may create agencies through County Assemblies to implement policies on the environment and therefore their representation in national policy formulation was not necessary;
- v. It was important to have legal background in the composition of the members of the board and therefore it was necessary to retain the appointment of the Attorney General in the board.

The Senate's views were as follows:-

- i. There was no objection to the appointment of the Attorney General to the board;
- ii. Representation of counties in the board would minimize the tendency of county governments to create parallel boards at the county level;
- iii. Schedule four of the Constitution does not limit national institutions from having membership that represents counties;

Resolution on Clause 10

Members unanimously agreed that;

- i. The appointment of the Attorney General to the Board be retained;
- ii. The Senate amendment to Clause 10 (f) which states that 'one person nominated by the Council of Governors' be deleted.

2. Clause 20

Members unanimously resolved that:-

- i. Clause 31 (d) of the Principal Act is amended so that a representative of the Council of Governors replaces that of the non-governmental organizations to the Environmental Public Complaints Committee so as to read as follows:-
'One person who has demonstrated competence in environmental matters, nominated by the Council of County Governors and who shall be the secretary to the Complaints Committee'.

Justification

There was need for representation of counties so as to ensure that there was an avenue to raise the environmental issues affecting counties at a national body.

3. Clause 23 & 25

The National Assembly's views were as follows:-

- i. It was practically not possible for NEMA to prepare a National Environmental Action Plan (NEAP) within one year of the commencement of the Act;
- ii. The review of NEAPs after three years was too soon and did not give enough time for implementation;

The Senate's views were as follows:-

- i. That it was possible for the NEMA to prepare the NEAPs within one year since the document would be a reflection of the 47 County Environmental Action Plans (CEAPs);
- ii. County Governments had the capacity to prepare the CEAPs since they had prepared the County Integrated Development Plans (CIDPs) in a period of one year yet they are more involving to prepare;
- iii. It was important to consider that implementation of the NEAP was dependent on the Government in power whose term was five years and it was on that basis that the five year period to prepare a new plan was arrived at.

Resolution on Clause 23

Members unanimously agreed that:-

- i. Clause 23 of the principal Act be amended in the proposed new section 37 (1) to read as follows:-
'The Authority shall, within two years of the commencement of this Act and every six years thereafter formulate the National Environment Action Plan and shall ensure that it has undertaken public participation before the adoption of the plan'; the plan would be reviewed within three years of the commencement of this Act'.
- ii. Clause 23 of the principal Act be amended in the proposed new section 37 (5) to read as follows:-
'The Authority shall review the National Environmental Action Plan every three years.

Resolution on Clause 25

Members unanimously agreed that;

- i. The amendment by the Senate on Clause 25 of the Bill as proposed in the new subsection 40 (1) be adopted as follows;

'Every County Environment Committee shall within one year of the commencement of this Act and every five years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly'

- ii. The amendment by the National Assembly on Clause 25 of the Bill as proposed in the new subsection 40 (3) be adopted as follows:


'The respective County Executive Committee members of every county shall submit the county environment action plan referred to in subsection (1) to the Cabinet Secretary for incorporation into the national environment action plan referred to in section 37.'

MIN. NO.KNA/SEN/MED/5/2015: ANY OTHER BUSINESS

Members resolved that the Departmental Committees on Environment of the National Assembly and that of Lands and Natural Resources of the Senate should invite either committee, when considering Bills so as to understand the views taken into consideration by either committee.

MIN. NO.KNA/SEN/MED/6/2015: ADJOURNMENT

Having concluded the business of the day, the meeting was adjourned at twenty four minutes to One O'clock (12: 36 p.m.).

SIGNATURE..... 

DATE..... 21st May 2015

(SEN. LENNY KIVUTI, M.P - CHAIRPERSON.)

SIGNATURE..... 

DATE..... 21/MAY/2015

(HON. AMINA ABDALLA, M.P - VICE CHAIRPERSON)

MINUTES OF THE MEDIATION COMMITTEE ON THE CONSIDERATION OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2014) HELD ON THURSDAY 21ST MAY, 2015 AT MAIN PARLIAMENT BUILDINGS, SENATE COMMITTEE ROOM 5 AT 11:00 A.M.

Members Present

1. Sen. Lenny Kivuti, M.P. - Chairperson
2. Hon. Amina Abadalla, M.P. - Vice Chairperson
3. Sen. George Khaniri, M.P. - Member
4. Hon. Ronald Tonui, M.P. - Member
5. Sen. Liza Chelule, M.P. - Member

Apologies

1. Hon. William Kamoti, M.P. - Member

In- attendance Secretariat

1. Mr. Boniface Lenairoshi - Clerk Assistant (Senate)
2. Mr. Charles Ngatia -Clerk Assistant (Senate)
3. Ms. Chebet Koskei -Clerk Assistant (National Assembly)
4. Ms. Lucy Radoli -Legal Officer (Senate)
5. Ms. Lynette Otieno -Legal Officer (National Assembly)
6. Ms. Ann Kigoro -Research Officer (Senate)

MIN. NO. KNA/SEN/MED/7/2015: PRAYER

The meeting was opened with a word of prayer by Sen. Lenny Kivuti at 11:30 a.m.

MIN. NO.KNA/SEN/MED/8/2015: PRELIMINARIES

The Chairperson informed members on the agenda of the meeting as follows:-

1. Prayer
2. Adoption of the Agenda
3. Confirmation of the Minutes of the Previous sitting,
4. Matters Arising
5. Consideration of the Mediation Committee Report
6. Any Other Business
7. Adjournment

MIN. NO.KNA/SEN/MED/9/2015: ADOPTION OF THE AGENDA

The Agenda of the meeting was unanimously adopted after being proposed by Hon. Ronald Tonui, M.P and seconded by Sen. Liza Chelule, M.P.

MIN. NO.KNA/SEN/MED/10/2015: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The Minutes of the previous Meeting were confirmed as a true record of the proceedings after they were proposed by Sen. George Khaniri, M.P and seconded by Hon. Ronald Tonui, M.P.

Min. No.KNA/SEN/MED/11/2015: CONSIDERATION AND ADOPTION OF THE MEDIATION COMMITTEE REPORT

The Committee considered the Report and resolved that it be adopted and tabled in Parliament pursuant to Standing Orders No. 150 and 155 of the National Assembly and the Senate respectively. The Report was adopted after being proposed by Sen. George Khaniri, M.P and seconded by Hon. Ronald Tonui, M.P.

MIN. NO.KNA/SEN/MED/12/2015: ADJOURNMENT

Having concluded the business of the day, the meeting was adjourned at twenty minutes to One O'clock (12: 40 p.m.).

SIGNATURE.....

DATE.....

(SEN. LENNY KIVUTI, M.P - CHAIRPERSON.)

SIGNATURE.....

DATE.....

(HON. AMINA ABDALLA, M.P - VICE CHAIRPERSON)

*Appendix 2: Agreed Version of the Environmental Management and Coordination Bill
(National Assembly Bill No. 31 of 2014)*

