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By the champion
Hon. James Wamau
on Tuesday
27/10/2015

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- THIRD SESSION - 2015

THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION
AND INFORMATION

REPORT ON THE
PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION)
BILL, 2015

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDING
NAIROBI

OCTOBER 2015

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1.0 PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Energy, Communication and Information and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Petroleum (Exploration, Development and Production) Bill, 2015. The Bill was committed to the Committee on 19th August, 2015 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

1.1 Mandate of the Committee

The Departmental Committee on Energy, information & Communication is one of the twelve Departmental committees of the National Assembly established under **Standing Order 216** whose mandates are as follows pursuant to the **Standing Order 216 (5)** which outlines functions of the Committee as being:

- a) 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;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) **To study and review all the legislation referred to it;**
- d) To study, access and analyse the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:-Fossil fuels exploration, Development of energy, Production of energy, Maintenance and regulation of energy, Communication, Information, Broadcasting and Information Communications Technology (ICT) development and management

1.2 Committee Membership

The Committee on Energy, Communication and Information was constituted by the House in May, 2013 comprising of the following Members:

1. The Hon. Jamleck Kamau, EGH, MP.....**Chairperson**
2. The Hon. Jackson Kiptanui, MP**Vice –Chairperson**
3. The Hon. Mohammed Elmi, EGH, MP
4. The Hon. Edick Anyanga, MP
5. The Hon. (Eng.) James Rege, MP
6. The Hon. Mithika Linturi, MP
7. The Hon. Zebedeo Opore, MP
8. The Hon. Mary Mbugua, HSC, MP
9. The Hon. Aburi Mpuru, MP
10. The Hon. Aramat Lemanken, MP
11. The Hon. Arthur Odera, MP
12. The Hon. Banticha Abdullahi, MP
13. The Hon. Dan Kazungu, MP
14. The Hon. Esther Gathogo, MP
15. The Hon. Fathia Mahbub, MP
16. The Hon. James Lomenen, MP
17. The Hon. Joe Mutambu, MP
18. The Hon. John Munuve, MP
19. The Hon. Junet Sheikh, MP
20. The Hon. Cecily Mbarire, MP
21. The Hon. Nicholas Ngikor, MP
22. The Hon. Onesmus Njuki, MP
23. The Hon. Rachael Amolo, MP
24. The Hon. RobaDubu, MP
25. The Hon. Ndung’u Gethenji, MP
26. The Hon. (Eng.) Vincent Musau, MP
27. The Hon. William Kisang’, MP
28. The Hon. Richard Tongi, MP
29. The Hon. Moses Kuria, MP

1.3 Consideration of the Bill

The Petroleum (Exploration, Development and Production) Bill, 2015 was published and read for a First Time on 19th August, 2015 and thereafter committed to the departmental Committee on Energy, Communication and Information for consideration pursuant to Standing Order 127.


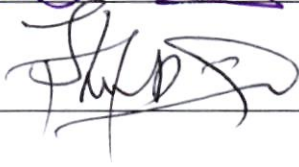
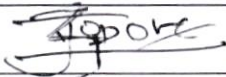
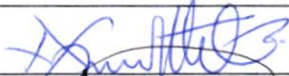

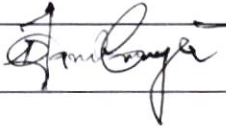


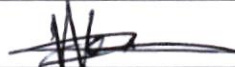
In processing the Bill, the Committee invited comments from the public by placing advertisements in the dailies namely, Nation and Standard newspapers on 27th August, 2015 pursuant to Article 118 of the Constitution. The Committee also met with the officers from the Ministry of Energy and Petroleum, the Kenya Private Sector Alliance and the Kenya Civil Society Platform on Oil and Gas. The Committee received memoranda from the Kenya Private Sector Alliance and the Kenya Civil Society Platform on Oil and Gas and the views are captured and contained in the body of the Report.


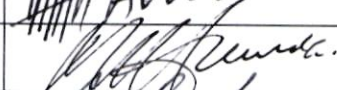


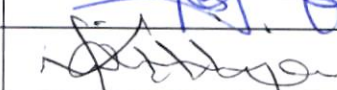

The Ag. Cabinet Secretary for the Ministry of Energy and Petroleum, Mr. Henry Rotich made the summary presentation which mainly addressed the amendments raised by the stakeholders.

The Committee having held meetings with the various stakeholders, analyzed submissions from the public observed that the bill is critical in the management of the Petroleum Industry in a more effective and efficient manner but also falls short in certain areas to which the Committee will be proposing amendments during the Committee Stage of the Bill.

1.4 Adoption of the Report

We the Members of the Departmental Committee on Energy, Communication and Information have, pursuant to Standing Order 199 adopted this Report on the Petroleum (Exploration, Development and Production) Bill, 2015 and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Tuesday 27th October 2015.

NO.	NAME	SIGNATURE
1.	HON. JAMLECK KAMAU, EGH, MP (CHAIRPERSON)	
2.	HON. JACKSON KIPTANUI, MP (VICE CHAIR)	
3.	HON. OMONDI ANYANGA, MP	
4.	HON.(ENG.) JAMES REGE, MP	
5.	HON. MOHAMMED ELMI, EGH, MP	
6.	HON. MITHIKA LINTURI, MP	
7.	HON. ZEBEDEO OPORE, MP	
8.	HON. ABURI MPURU, MP	
9.	HON. ARAMAT LEMANKEN, MP	
10.	HON. ARTHUR ODERA, MP	
11.	HON. BANTICHA ABDULLAHI, MP	
12.	HON. DANIEL KAZUNGU, MP	
13.	HON. ESTHER GATHOGO, MP	
14.	HON. ROBA DUBA, MP	
15.	HON. FATHIA MAHBUB, MP	
16.	HON. JAMES LOMENEN, MP	
17.	HON. JOE MUTAMBU, MP	
18.	HON. JUNET SHEIKH, MP	
19.	HON. CECILY MBARIRE, MP	
20.	HON. MARY MBUGUA, HSC, MP	

21.	HON. JOHN MUNUVE, MP	
22.	HON. NDUNG'U GETHENJI, MP	
23.	HON. NICHOLAS NGIKOR, MP	
24.	HON. ONESMUS NJUKI, MP	
25.	HON. RACHEAL AMOLO, MP	
26.	HON. (ENG.) VINCENT MUSAU, MP	
27.	HON. WILLIAM KISANG', MP	
28.	HON. RICHARD TONGI, MP	
29.	HON. MOSES KURIA, MP	

1.5 Acknowledgment

Mr. Speaker, Sir,

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made valuable contribution in the compilation and production of the report.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Energy, Petroleum (Exploration, Development and Production) Bill, 2015 in the House pursuant to Standing Order 127.

Signed  Date..... 27/10/15

HON. JAMLECK KAMAU, EGH, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION AND
INFORMATION

2.0 BACKGROUND

The Bill seeks to provide a framework for the contracting, exploration and development of petroleum together with production of petroleum discovered within licensed petroleum exploration blocks. The Bill also provides a framework for the safe cessation of upstream petroleum operations. The Bill proposes to repeal the Petroleum (Exploration and Production) Act Chapter 308 of the Laws of Kenya. The Bill further seeks to give effect to the relevant Articles of the Constitution of Kenya, 2010 in so far as they apply to upstream petroleum operations.

3.0 CONSIDERATION OF THE STAKEHOLDER VIEWS ON PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2015

The Committee received submissions from the Kenya Private Sector Alliance (KEPSA) and the Kenya Civil Society Platform on Oil and Gas. They submitted proposed rafts of Amendments to the Committee as follows;

3.1.1 The Kenya Private Sector Alliance (KEPSA)

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
2 (Page: 2318)	<p><i>“good international petroleum industry practices” means such practices, methods, standards and procedures generally accepted and followed internationally by prudent, diligent, skilled and experienced operator in upstream petroleum operations, including practices, methods, standards and procedures intended to;</i></p> <p><i>(a) conserve petroleum by maximizing recovery of petroleum in a technically and economically sustainable manner;</i></p> <p><i>(b) promote operational safety and prevention of accidents; and</i></p> <p><i>(c) protect the environment by minimizing the impact of upstream petroleum operations;</i></p>	<p>The term “best petroleum industry practices’ is onerous. In lieu of this the term, “good international petroleum industry practice” is the industry norm.</p>
2 (Page: 2319)	<p><i>“block” has the meaning assigned to it in section 51 of this Act;</i></p>	<p>This definition uses the undefined term “acreage” may be confusing when read together with section 51.</p> <p>It is most prudent for this definition to cross-reference section 51 where the term ‘block’ has been defined to avoid the possibility of confusion and contradiction.</p> <p>We have also explained in our comments to section 51 below that the reference to ‘geographical coordinates’ will place an unnecessary limitation on the method of</p>

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
		mapping that the relevant authority may want to use based on the circumstances at the time or advances in technology.
2 (Page: 2319)	<i>“Contract area” means a block in respect of which a Contractor has entered into a Petroleum Agreement with the Government to conduct upstream petroleum operations.</i>	A block could potentially be granted on the basis of a lease, permit, license or other arrangement on the terms set out in the petroleum agreement. The word ‘licensed’ could therefore have different meanings that may confuse or limit the application of the definition.
2.16(j) (Page: 2333)	<i>MoE & P to advice.</i>	<p>The Energy Bill in clause 37(1) of the Energy Bill provides that, the Energy and Petroleum Tribunal established under the Bill shall have jurisdiction to and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.</p> <p>In addition, the Energy Bill provides in clause 37(4) that the said Tribunal shall have original civil jurisdiction on any dispute arising out of the bidding rounds carried out under the Upstream Petroleum law. There is therefore likelihood that there will be confusion as to whether a dispute should be taken before the Authority or the Tribunal.</p> <p>If the intention is not to make the Authority both “executor/regulator” and “adjudicator” then there is need to have clause 17(w) re-drafted.</p> <p>If the intention is to make upstream disputes resolved at first instance by the Authority, then there is proposed that sub-clauses 37(1) and (4) of the Energy Bill should be deleted.</p>
2.16(o) (Page: 2334)	<i>(o) issue operational permits and reconnaissance permits in accordance with this Act.</i>	The term “non-exclusive exploration permits” should be re-named to distinguish it with the right of the contractor to undertake exploration.
10(6)(b) (Page: 2328)	<i><u>Shifting of section to another part.</u></i> <i>Delete 10 (6) (b)</i>	This sub-clause should be deleted and transferred to clause 43 so that the offence is in reference to documents produced or statements made to the Authority.
10(5) (Page: 2328)	<i>A person who is an occupier of or is in charge of any building, structure, place, vehicle, vessel, aircraft, machinery or equipment shall provide the Cabinet Secretary or his authorized representative with all reasonable facilities and assistance to carry out his duties under this Act.</i>	For clarity, it is important to state that the assistance and facilities being granted are for purposes of fulfilling the Cabinet Secretary’s duties under the Act.
34(4) (Page: 2343)	<i>Where it is suspected that an undertaking is being carried contrary to any licence, permit or regulations issued under this Act, an officer or</i>	The power granted in this sub-clause has the potential to lead to far-reaching consequences and should only be exercised on the basis of a court order which would

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
	<p><i>agent of the Authority may, in the course of his duty and upon obtaining a court order from the High Court allowing him to do so, lock up, seal, mark or otherwise secure—</i></p> <p><i>(a) any building, room, place, receptacle or item of plant;</i></p> <p><i>(b) any goods or materials in a factory; and</i></p> <p><i>(c) aircraft, vessels, vehicles or containers.</i></p>	<p>determine the reasonableness of the suspicion.</p> <p>Some of these facilities if locked up would attract very high stand by costs (e.g. drilling rigs that attract a standby rate of approx 20,000- 40,000 USD per day, exclusive of the demobilization costs associated with this)which the Contractor would have to bear without possible/expedient recourse from the Government in the event the suspicion is discovered to have been unfounded.</p>
<p>34(3)</p> <p>(Page: 2342)</p>	<p><i>(3) Where—</i></p> <p><i>(a) the premises to which this section relates are unoccupied;</i></p> <p><i>(b) the owner, occupier or person in charge thereof is temporarily absent; or</i></p> <p><i>(c) entry thereon is refused or obstructed; the member of the committee, officer, employee or agent may, upon obtaining a court order from a court of competent jurisdiction allowing forcible entry, use such force as is reasonably necessary to effect entry.</i></p>	<p>In keeping with the rule of law, it is important to appreciate that forcible entry is a criminal offence. Section 90 of the Penal Code provides that:</p> <p>“Any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether the violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, and whether he is entitled to enter on the land or not, is guilty of the misdemeanour termed forcible entry”.</p> <p>A person wishing to make any forcible entry must obtain a court order allowing him/her to do so.</p>
<p>34(1)</p> <p>(Pages: 2341; 2342)</p>	<p><i>(1) A committee, member, officer, employee or agent appointed under section 33 may, upon giving reasonable notice, during office hours and upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—</i></p> <p><i>(a) enter upon any premises at which any undertaking is carried out or an offence under this Act is or is suspected to have been committed;</i></p> <p><i>(b) inspect any process, installation, works or other operation which is or appears likely to be carried out in those premises;</i></p> <p><i>(c) be accompanied by a police officer(s) if there is a reason to believe that any serious obstruction may occur.</i></p> <p><i>Delete 1 (d) (e) (f) (g)</i></p>	<p>The powers granted in sub-clause (b) should not include testing. If testing resulted in damage to equipment and other installations who will bear responsibility for such damage</p> <p>The powers granted in sub-clauses (d) to (f) appear to be too pervasive and invasive. The exercise of these powers would be an infringement of the right to privacy which every “person” is entitled to under the Constitution. Article 31 of the Constitution provides that every person has the right to privacy, which includes the right not to have :</p> <ul style="list-style-type: none"> (a) their person, home or property searched; (b) their possessions seized; (c) information relating to their family or private affairs unnecessarily required or revealed; or (d) the privacy of their communications infringed. <p>The term “person” includes a company, association or other body of persons whether incorporated or unincorporated.</p>
<p>43(3)</p>	<p><i>An application under this section shall be</i></p>	<p>The word ‘Regulations’ is not defined.</p>

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
(Page: 2346)	<i>accompanied by the requisite information to be specified in the regulations made under this Act.</i>	
43(2)(b) (Page: 2346)	<p><i>A person who wishes to undertake upstream petroleum operations shall—</i></p> <p><i>(a) apply to the Cabinet Secretary for a petroleum agreement; or</i></p> <p><i>(b) apply to the Authority for a reconnaissance permit in accordance with section 49.</i></p>	For clarity- would suggest a re-draft of this section. The Cabinet Secretary provides the exclusive license whereas the Authority will grant the reconnaissance permits.
43(1)(b) (Page: 2346)	<p><i>No person shall engage in upstream petroleum operations without either –</i></p> <p><i>b) obtaining a reconnaissance permit in respect of an area specified therein for the purpose of obtaining geological, geophysical and geochemical information granted in accordance with Section 59.</i></p>	The term “non-exclusive exploration permits” should be re-named to distinguish it with the right of the contractor to undertake exploration.
44(2) (Page: 2346)	<i>The Contractor shall maintain financial, technical and professional capacity throughout the length of the petroleum agreement.</i>	The defined term “petroleum agreement” should be used here instead of ‘contract’ which is not defined.
44(1) (Page: 2346)	<p><i>(1) Where the National Government enters into a petroleum agreement, under this Act, it shall do so fairly, equitably, transparently, competitively and cost effectively:</i></p> <p><i>Provided that the National Government shall enter into a petroleum agreement only with a persons who shall have the financial, technical and professional capacity necessary to fulfil the contractor’s obligations under the petroleum agreement.</i></p>	<p>Contractor has been defined in the Bill to mean person who have entered into an agreement with the National Government.</p> <p>A person only becomes a “contractor” after entering into a petroleum agreement with the Government.</p>
49(6) (Page: 2350)	<i>(6) A person who conducts a non-exclusive exploration reconnaissance survey without being issued with a non-exclusive exploration reconnaissance permit by the Authority commits an offence and upon conviction shall be liable to a fine-not exceeding more than ten million shillings.</i>	Rather than setting a minimum fine and an imprisonment term, this provision should set a maximum fine which is the usual manner of drafting similar provisions as it allows the court enough opportunity to exercise its judgment and determine each case on its merits.
46(1) (Page: 2348)	<p><i>Notwithstanding any other written law and subject to this Act and regulations made thereunder, there shall be an express obligation in every petroleum agreement on the contract to –</i></p> <p><i>(i) provide such information, data, reports and samples concerning upstream petroleum operations to the Cabinet Secretary or Authority as may be prescribed in regulations made under this Act and</i></p> <p><i>(j) conduct all upstream petroleum operations in accordance with good</i></p>	<p>The furnishing of information, the content of the reports, the duration of confidentiality of information released by the Contractor, the frequency with which the information will be furnished taking into consideration the time and resources needed to make the information available etc will all need to be thought through and hence further clarity needs to be given under regulations.</p> <p>Reference to good international petroleum industry practice as compared to best petroleum international petroleum industry practice which may not be easily ascertainable.</p>

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
	<i>international petroleum industry practices.</i>	
46(g) (Page: 2348)	<p><i>Notwithstanding any other written law and subject to this Act and regulations made thereunder, there shall be an express obligation in every petroleum agreement on the contract to –</i></p> <p><i>(a)</i></p> <p><i>(g) give preference to the use of locally available raw materials, products, equipment, manpower, services and continuously and build local capacity ;</i></p>	<p>Provisions on local content have been addressed below.</p> <p>Unless technology transfer is done on mutually agreed terms between the owner of the technology and the licensee or other transferee, it will amount to expropriation of intellectual property rights. This would be unconstitutional. This regulation does not safeguard the intellectual property rights of the owners of technology and should be deleted.</p> <p>Alternatively define what exactly is meant as “technology transfer”.</p>
49 (Page: 2349)	<p><i>(1) A person who intends to carry out a reconnaissance survey shall apply to the Authority for a reconnaissance permit in the prescribed form and accompanied by the prescribed fee.</i></p> <p><i>(2) The Authority shall issue a reconnaissance permit for a geographically delineated area.</i></p> <p><i>(3) The Authority may issue reconnaissance permits to different persons in respect of different reconnaissance activities in the same geographically delineated area.</i></p> <p><i>(4) A reconnaissance permit shall state—</i></p> <p><i>(a) the date of issue of the permit;</i></p> <p><i>(b) the area to which the permit relates;</i></p> <p><i>(c) the type of reconnaissance activity for which the permit is issued;</i></p> <p><i>(d) the conditions under which the permit is issued; and</i></p> <p><i>(e) confidentiality requirements.</i></p>	<p>The exploration undertaken by a contractor is distinct from any reconnaissance that may be carried out. Reconnaissance work should not be referred to as the term “exploration” has a particular meaning as set out in the Bill.</p>
50 (Page: 2350)	<p><i>(1) The Authority may issue an applicant with a reconnaissance permit and the Authority may impose such conditions as it may deem fit on the permit;</i></p> <p><i>(2) The Authority shall give access to information relating to reconnaissance permits to any person who applies for it in the prescribed form;</i></p> <p><i>(3) The Authority shall inform each County Government affected by the reconnaissance activities of the nature and status of such reconnaissance activities.</i></p>	<p>Enhancing clarity- reference to non-exclusive permits should be reference to reconnaissance permits.</p>
52 (Page: 2352; 2353)	<p><i>Delete 52 (1) (2) and (3) (a)(b) (i) (ii) and (iii)</i></p>	<p>This is covered under the PSC, it is thus duplication to cover it under the Bill.</p>
57(1)	<p><i>“Commercial field” means the geological structure or feature which hosts one or more</i></p>	<p>The term “commercial field” should be defined. The</p>

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
(Page: 2356)	<p><i>reservoirs from which petroleum production may be commercially undertaken through a defined set of facilities.</i></p> <p><i>(1) Where a commercial field is established, such field shall be developed by the contractor within such time as may be prescribed in this Act and the petroleum agreement.</i></p>	suggested definition is lifted from the PSC. (Page 2398)
58	<p><i>This clause proposes that parliament shall ratify the Field development plan after a declaration of commerciality by the contractor, and the adoption by the Cabinet Secretary.</i></p>	It is proposed that the ratification of the Field Development Plan is a highly Technical activity which in our view will be laborious for Parliament to approve. The same should be handled by the technocrats at the ministry. Therefore we propose that this clause be deleted in its entirety.
66 (Page: 2361)	<p><i>66. Decommissioning shall be undertaken in accordance with and subject to the provisions of the petroleum agreement.</i></p>	The provisions under this section are covered under the PSC. The current clause should be deleted and replaced with a general clause which requires that decommissioning be done in accordance with the PSC.
67 (Page: 2361; 2362)	<p><u><i>See proposed section 66 above i.e.</i></u></p> <p><i>66. Decommissioning shall be undertaken in accordance with and subject to the provisions of the petroleum agreement.</i></p>	<p>The provisions under this section are covered under the PSC. The current clause should be deleted and replaced with a general clause in clause 66 which requires that decommissioning be done in accordance with the PSC.</p> <p>PSC requirement is for contractors to book accruals as per current PSC, therefore no requirement for decommissioning fund under the Act.</p>
68 (Page: 2362)	<p><u><i>See proposed section 66 above i.e.</i></u></p> <p><i>66. Decommissioning shall be undertaken in accordance with and subject to the provisions of the petroleum agreement.</i></p>	The provisions under this section will be more appropriately covered in clause 17 of the PSC.
69 (Page: 2362; 2363)	<p><i>(1) Where the Decommissioning Plan is silent on time limits, the Authority may issue directions relating to the time limit for disposal of decommissioned facilities:</i></p> <p><i>Provided that all decommissioned facilities shall revert to the National Government.</i></p> <p><i>(2) Directions issued under subsection (1) shall take into consideration factors such as the economic efficiency, technical viability, safety and any environmental concerns as well as consideration for other users.</i></p>	Authority should be allowed to issue time limits where the Decommissioning Plan is silent.

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
	<p>(3) A contractor shall comply with the directions of the Authority regarding the disposal or decommissioning of upstream petroleum operations even where a production permit has lapsed.</p> <p>(4) Where the ownership of a facility has been transferred in accordance with this Act, the contractor and the owners shall comply with the directions of the Authority in relation to the disposal or decommissioning of the facilities.</p> <p>(5) The Authority direct that facilities used in upstream petroleum operations shall continue to be used for upstream petroleum operations by another contractor or for other purposes and the other contractor or other user of the facilities shall comply with the directions of the Authority regarding the disposal or decommissioning of the facilities.</p> <p>(6) Where directions relating to the disposal or decommissioning of a facility are not carried out by a contractor or a user authorized by the Authority as directed by the Authority, the Authority may take the necessary measures on behalf of the contractor or that other user.</p> <p>(7) Where the Authority takes any measures under subsection (6) on behalf of a contractor or that other user, any risks or costs incurred arising out of that measure, shall be borne by the contractor or that other user as the case may be.</p>	
70 (Page: 2363; 2364)	<u>See proposed section 66 above</u>	The provisions under this section will be more appropriately covered in clause 17 of the PSC.
71 (Page: 2364)	<u>See proposed section 66 above</u>	The provisions under this section are covered under the PSC. The current clause should be deleted and replaced with a general clause which requires that decommissioning be done in accordance with the PSC.
72 (Pages: 2364; 2365)	<i>The Contractor shall, in accordance with the provisions of the petroleum agreement, submit reports to the Authority on geological, geochemical, geophysical surveys, drilling, completion and production data and any other information.</i>	The PSC already provides for the provision of information, data and reports by the Contractor to the Authority (clauses 14 and 15 of the PSC).
73 (Page: 2365)	<i>Information obtained under a petroleum agreement in respect of upstream petroleum operations shall not be published or otherwise</i>	Disclosure of information obtained from Contractors may be confidential or of a proprietary or commercial nature. This needs to be protected alongside the

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
	<p><i>disclosed to a third party without prior consent in writing from the person from whom the information was obtained.</i></p> <p><i>Provided that nothing in this section shall that nothing in this section shall limit the disclosure of information as required by law or provided for under regulations.</i></p>	<p>privacy rights and intellectual property rights guaranteed under the constitution and commercial protection envisaged to be guaranteed under the Access to Information Act (See section 6 of the Access to Information Bill).</p>
<p>74 (Page: 2365)</p>	<p><i>It shall be the duty of every contractor to furnish the Cabinet Secretary and the Authority as the case may be at such times and in such form and manner as is prescribed in regulations made under this Act, such information relating to the contractor's operations under a petroleum agreement as the Cabinet Secretary and the Authority may in writing reasonably require.</i></p>	<p>This clause is too broad. It should be limited by requiring the form and manner prescribed under the regulations.</p>
<p>83 (Page: 2369)</p>	<p><i>Delete 83</i></p>	<p>These obligations should be set out in the petroleum agreement rather than in the Act.</p>
<p>86(1) and (2) (Pages: 2370; 2371)</p>	<p><i>(1) A contractor shall carry out upstream petroleum operations in the contract area in accordance with all the applicable environment, health, safety and maritime laws and good international petroleum industry practices.</i></p> <p><i>(2) Without prejudice to the generality of the sub-section (1), the contractor shall—</i></p> <p><i>(g) prevent water or any other matter entering any petroleum reservoir through the wells in the exploration or development area, except when required by, and in accordance with good international petroleum industry practices;</i></p>	<p>This should read "good international petroleum industry practice" as discussed under "interpretation section"</p>
<p>87 (Page: 2372)</p>	<p><i>(1) A contractor shall ensure that the management of production, transportation, storage, treatment and disposal of waste arising out of upstream petroleum operations is carried out in accordance with all the applicable environment, health, safety and maritime laws and good international petroleum industry practices.</i></p> <p><i>(2) A contractor may contract a separate entity to manage the transportation, storage, treatment, spillage or disposal of waste arising out of upstream petroleum operations.</i></p> <p><i>(3) For the avoidance of doubt the contractor shall remain responsible for the activities of the entity referred to under subsection (2).(4) A person contracted by the contractor under subsection (2) shall not carry out those activities without being registered and licensed by the Government agency responsible for</i></p>	<p>This should read "good international petroleum industry practice" as discussed under "interpretation section"</p>

CLAUSE UNDER PETROLEUM BILL, 2015	PROPOSED AMENDMENT	ANALYSIS/COMMENT/RECOMMENDATION
	<i>environment and any other relevant government entity.</i>	
90 (Page:2374)	<i>Delete 90 (1)</i>	This provision is adequately covered in <u>clause 16(8)</u> of the PSC and there is no need to duplicate it here.
93(2) (Page: 2374)	<i>The contractor shall ensure that the persons referred to in subsection (1)(a) are duly informed of those precautions.</i>	Insurance is appropriately addressed under the model PSC- see <u>clause 18.(page 2422)</u>
92 (Page: 2374)	<i>Upstream petroleum operations shall be conducted in such a manner as to enable a high level of safety to be maintained and further developed in accordance with technological advancement, good international petroleum industry practices, the Occupational Safety and Health Act as amended from time to time and any other applicable laws.</i>	This should read "good international petroleum industry practice" as discussed under "interpretation section"

3.1.2 Kenya Civil Society Platform on Oil and Gas

Provision under Petroleum Bill	Proposed Amendment	Justification
N/A	Add the following wording at the end of section 1: ", and shall come into effect upon assent by the President". The title in the right hand column should also be amended to read	Section 1: The Bill does not expressly state when the Act will come into effect. I assume that, like the Energy Bill, the Act would become effective upon Presidential assent.
Section 10 (3) Where the Cabinet Secretary rejects the recommendations of the Authority under this section, the Cabinet Secretary shall provide the Authority reasons of such refusal in writing, within fourteen days.	New section 10 (3) (1) Where the cabinet secretary exercises his powers under clause 3. i) In the signing of contracts The reasons and justifications shall be shared in memorandum to parliament when seeking ratification of agreements by the national assembly ii) In the cancellation of licenses legal advice of office of government's legal advisor shall be sought.	The advisory committee being a multi-stakeholder committee offers crucial advice to the CS on sector specific technicalities. Where this advise is ignored justification must be given. The constitution seeks to prevent a situation where crucial decisions tying down the government to several years contracts are left in the hands of one individual.
Section 10(1)(i) empowers the Cabinet Secretary to order "the cessation of any operations and withdrawal of all persons from any structure or building that is being used in connection with upstream petroleum operations".	"where such cessation of operations or evacuation would be required for emergency or safety reasons".	We would suggest amending this section to limit its application only to instances of emergency or safety concerns to prevent arbitrary actions by CS that may lead to litigation
Section 12	Proposed inclusion:	Provides for the creation of a National

	<p>"Co-opted members shall be from organizations with relevant expertise in the sector including specialized government agencies, private sector organization and non-governmental organizations"</p> <p>"Co-opted Members shall be required to comply with leadership and integrity provisions as per chapter 6 of the Kenyan Constitution"</p> <p>"co-opted members shall not participate in issues where conflict of interest exist"</p>	<p>Upstream Petroleum Advisory Committee composed of now 8 members, all state officers representative of other institutions and therefore already required to comply with the leadership, integrity and no conflicts principles of Chapter 6 of the Constitution. However, as previously mentioned, members may co-opt up to 4 other members <u>without</u> any minimum qualification or integrity requirements, which is a concern. Qualification and integrity requirements should be added for co-opted additional members or the additional co-opted members should not have any voting right on the advisory committee.</p>
Section 17 and 23	<p>Proposed addition All staff appointed by the authority under Section 17 and Section 25 shall comply with the Leadership and Integrity provisions of the Constitution</p>	<p>Under Sections 17 and 23, all members of the Authority and the Director General are required (whether expressly by the Bill by virtue of being state officers) to comply with, among things, the requirements as to leadership, integrity and no-conflicts of Chapter 6 of the Constitution. However, under Sections 25 and 33, the Authority is given broad power to appoint staff and delegate powers to officers, employees and agents but there is no obligation that such delegates comply with the same minimum qualification requirements as to leadership, integrity and no conflicts. This should be added.</p>
Section 22	<p>Section 22 does not grant any right to the members of the Board of the Authority to present a defense, whilst section 24(2)(b) does so in favour of the Director General and Authority Secretary. We believe that all members should be granted a right of defense against removal.</p>	
Section 42: The Cabinet Secretary has the authority to zone Kenya into blocks	<p>Proposed for inclusion "The cabinet secretary shall subject the zoning to public consultation. The final zoning map shall be published"</p>	<p>Once final, the zoning map should be widely published to avoid risks or concerns that the map may be made available only to business partners and cronies of people in power and there should be a competitive tender for the blocks opened for upstream petroleum operations. Also, the zoning or at least the tender should be subject to the completion of certain environmental and social assessments, the results of which should also be published for transparency.</p>
Section 44: Petroleum agreements are to be entered into with "a contractor who shall have the financial, technical and	<p>Proposed addition: both to sub-section (1) but also to sub-sections (2) and (3): "sufficient experience, history of compliance and ethical conduct</p>	<p>We believe that the following standards should also be added</p>

<p>professional capacity necessary to fulfil the contractor's obligations under the petroleum agreement".</p>		
<p>Section 45(2) provides that a petroleum agreement may be executed between the Cabinet Secretary and a contractor after the conclusion of the bidding rounds</p>	<p>Proposed addition: replace the words "a contractor" with the words "the winning contractor"</p>	<p>To enable clarity.</p>
<p>Section 45(1) gives authority to the Cabinet Secretary to negotiate and award the petroleum agreements in the prescribed form on behalf of the Government and the of production sharing contract is pretty much a form full of blanks for periods and figures.</p>	<p>Proposed addition: Petroleum agreements shall have a maximum duration period of 20 years</p>	<p>The Bill should really set out the maximum duration for petroleum agreements (e.g. 20 years) to avoid risks of collusion with cronies or business partners to grant them near perpetual petroleum agreements on advantageous terms. Any extension would be possible if the projected production life of the relevant block extends beyond the original duration of the petroleum agreement, but it would be subject to another limit (e.g. 5 or 10 years) and full approval by the relevant authorities. Also, the Bill should also set the principle of fairly short exclusive exploration periods, in order to facilitate the surrender of portions of the permitted area and therefore free the area for others.</p>
<p>Section 49: Non Exclusive exploration license</p>	<p>Proposed addition: The grant of a non exclusive exploration license shall be subject to an environmental and Social impact assessment, published and approved by relevant authority.</p>	<p>Whilst the details can be left to regulations, the Bill should set the overall requirement that the grant of a non-exclusive exploration license should be subject to an environmental and social impact assessment being carried out, published and approved by the relevant authority and to an open, transparent, non-discriminatory and competitive bidding process (just like the petroleum agreements).</p>
<p>Section 59</p>	<p>Proposed addition The cabinet secretary shall table the production sharing contract for ratification by parliament.</p>	
	<p>Proposed addition The contractor shall offer access to local communities to common infrastructure such as roads where use will not have an impact on contractors activities</p>	<p>Communities should be given access to common infrastructure especially as in the instance of roads they are likely to be the best roads</p>

Section 67:	<p>Proposed addition "for the purpose of <u>covering the full estimated costs of implementation of the decommissioning plan</u>".</p>	<p>The decommissioning fund seems to be funded for the purpose of <u>costs related to decommissioning</u>. The fund should really be established "for the purpose of covering the full estimated costs of implementation of the decommissioning plan". Otherwise, there is no assurance that there will indeed be sufficient funds to cover those costs.</p>
Part V Section 72	<p>Section 72: Consistent with Section 111, contractors should disclose, annually, information on all payments and deemed payments made to the Government and Government agencies, monetary or in kind in connection with upstream petroleum operations, in accordance with applicable law.</p> <p>Proposed for inclusion "All disclosures of payments under this Section shall be reported to an independent administrative body and shall be published and verified in accordance with the principles of the Extractive Industries Transparency Initiative as prescribed in the regulations and with Section 111".</p> <p>Proposed new section: Cabinet Secretary should publish in the Gazette and by any other appropriate means to inform interested persons: (i) all key petroleum sector production, revenue and expenditure data; (ii) calls to competitive tenders under this Act; (iii) notices of grant of permits and petroleum agreements and the grounds for the grants and a summary of the terms of the permits and petroleum agreements; (iv) a summary of the field development plans, decommissioning plans and local content plans; and (v) notices of termination or revocation of permits and petroleum agreements. If possible, full permits and petroleum agreements and background information relating to the grant of such permits and petroleum agreements should be made available for disclosure on a website. A register of permits and petroleum agreements and any variation and notices in connection therewith should also be kept and be open for public access in accordance with applicable law.</p>	<p>Kenya is not a member of the Extractive Industries Transparency Initiative but the form of production sharing contract refers to it.</p>
Disclosure	<p>Proposed addition</p> <p>"The Upstream regulatory authority shall establish and maintain of a register of petroleum agreements, licenses, permits and authorizations by the Cabinet secretary and ratified by parliament and modalities for access of the register to the public."</p>	<p>Contract Disclosure We propose an inclusion similar to the Ghanaian law below</p>
PART VI	<p>Proposed addition Section 77(3): The local content plan should also ensure "that a person carrying out upstream petroleum operations shall ensure marginalised, minority groups especially women and youth are provided for opportunities.</p>	<p>To ensure that women and youth are given opportunities in the upstream sector.</p>
	<p>Proposed for inclusion</p>	<p>In order to ensure compliance with that</p>

Section 111 (1) Cabinet Secretary shall develop regulations for reporting, transparency and accountability in the upstream petroleum sector, which includes the publication of all petroleum agreements, records, annual accounts and reports of revenues, fees, taxes, royalties and other charges, as well as, beneficial ownership of companies fulfilling their local content quotas any other relevant data and information that support payments made by the contractor and payments received by the National Government, County Governments, and local communities.

Proposed for inclusion "Confidentiality clauses or other clauses in a petroleum agreement that prevent disclosure of information on any payments made and revenues received in connection with upstream petroleum operations conducted in Kenya shall be void to the extent required for disclosure of such information as set out in the Kenyan constitution and this act"

requirement, the following provision should also be added to prevent confidentiality clauses to become a hindrance

3.1.3 Ministry of Energy and Petroleum

The Ministry agreed with a number of proposals by KEPSA and the Kenya Civil Society Platform on Oil and Gas and made submission, albeit with modification as follows:

- (1) Definitions of the terms "best petroleum industry practices", "local content", "block" and "non-exclusive exploration permit" are more appropriate as drafted in comparison to the KEPSA proposals.
- (2) Proposed definitions of community land, compulsory acquisition, private land and public land by KEPSA were adopted. It was also agreed to define common user facility, being petroleum infrastructure owned and maintained any person that may be used by third parties.
- (3) The term local community would be better defined as a ward or wards in which an upstream petroleum resource is exploited; while ward has the meaning assigned to it in the Constitution.
- (4) Missing in the draft is the meaning of a national oil company, being an oil company established by the Government for purposes of conducting upstream petroleum operations on behalf of the Government, including participating in the commercial interests during development and production.
- (5) The Ministry agrees with KEPSA in the definition of a petroleum agreement (Section 2) and in improving clarity of Section 10 (5) by adding the words "*to carry out his duties under this Act*".
- (6) Section 8 regarding conduct of upstream petroleum operations is better as drafted in the Bill, while there is no conflict between the functions of the CS in Section 10 and those of the Authority in Section 16.
- (7) It is not in order to transfer the provision on making a false statement to the CS as provided in Section 10 (6) (b) to Section 43 which deals with licensing.

- (8) The powers of the Authority to enter any premises to ensure compliance with the Act will be seriously fettered by proposals of KEPSA to obtain search warrant (Section 16 (k)) and giving notice [Section 34 (1)].
- (9) There are clear distinctions between the roles of the Cabinet Secretary, the Authority and the Energy and Petroleum Tribunal, established under the Energy Bill 2015, to hear appeals against decisions of the Authority. Further, with regard to competition, the Authority's function of enhancing competition in upstream operations [Section 35 (c)] is not within the mandate of the Competition Authority.
- (10) The Ministry agrees with the amendment proposed by KEPSA in Section 44 that the government may enter into a petroleum agreement with a qualified person who then becomes a contractor.
- (11) To assure government and protect the national interest, it is necessary to retain the requirement for the CS to approve substitution of an operator in the petroleum agreement as provided in Section 48.
- (12) The requirement for operational permits pursuant to Section 51 does not amount to over-regulation as alleged by KEPSA. The Authority will need to balance the need for efficient operations and provision of information by the contractor. It will be necessary to put in place an expeditious system of granting the necessary approvals.
- (13) In Section 54, there is need to increase the time for reporting of discovery from 48 hours (two days) to seven days.
- (14) Ratification by Parliament (Section 58) which section presupposes that Parliament shall ratify the Field Development Plan herein after referred to as the (FDP) which are plans that an operator is required to provide before commencement of the actual exploration. Ratification by Parliament has been limited to instances where commerciality of discovery has been established; by way of submission of the field develop plans which detail how the resources will be exploited. The Ministry submits that Ratification of petroleum agreements that precede exploration will be unnecessary workload for Parliament, and in any case these are entered into through competitive bidding processes that ensure protection of national interests. During exploration, companies invest their own risk capital and as a frontier country, Kenya should be seen to attract credible investors by way of fairly predictable processes.
- (15) Regarding local content (Sections 77 and 78), technology transfer will be done in a manner that does not infringe on any intellectual property rights. In addition, minimum requirements for local content will be set through a participatory process to ensure that they are realistic.
- (16) With regard to the issue of excessive penalties, and in particular, the setting of minimum fines, the Ministry concurs with KEPSA and consequently proposes to review them as tabulated below:

Section	Offence	Current Penalty	Revised Penalty
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Section	Offence	Current Penalty	Revised Penalty
10 (6)	obstructs or hinders the Cabinet Secretary or makes false or misleading statement	not less than ten million shillings or to a prison term of not less than three years or both	not exceeding twenty million shillings or to a prison term of not exceeding five years or both
16 (1) (mm)	Violation	not less than ten thousand per violation per day	not exceeding five hundred thousand shillings per violation per day
34 (5)	opens, breaks, alters or in any way interferes with a lock, seal, mark or other fastening	not less than five hundred thousand shillings or to a prison term of not less than six months or both	not exceeding one million shillings or to a prison term of not exceeding two years or both
34 (6)	resists, hinders or obstructs any committee, officer, employee or agent	not less than five hundred thousand shillings or to a prison term of not less than six months or both	
43 (4)	engages in upstream petroleum operations without executing a petroleum agreement	not less than ten million shillings or to a prison term of not less than two years or both	not exceeding twenty million shillings or to a prison term of not exceeding ten years or both
49 (6)	carrying out non-exclusive surveys without a permit	not less than ten million shillings or to a prison term of not less than ten years or both	not exceeding ten million shillings or to a prison term of not exceeding five years or both
51 (8)	Carrying out work without permit	not less than ten million shillings or to a prison term of not less than two years or both	not exceeding ten million shillings or to a prison term of not exceeding five years or both
54 (3)	notifying the public of a discovery without having reported it to the CS within the period specified	not less than twenty million shillings	not exceeding twenty million shillings or to a prison term of not exceeding five years or both
55 (3)	abandoning a well without notice to CS	not less than twenty million shillings or to a prison term of not less than five years or both	not exceeding twenty million shillings or to a prison term of not exceeding ten years or both

Section	Offence	Current Penalty	Revised Penalty
62 (2)	removal of petroleum and sample without consent	not less than twenty million shillings or to a prison term of not less than five years or both	not exceeding twenty million shillings or to a prison term of not exceeding ten years or both
70 (3)	Failure by contractor to remove property	not less than ten million shillings or to a prison term of not less than ten years or both	not exceeding five hundred thousand shillings or to a prison term of not exceeding one year or both
75	refusing to furnish information or making a false statement	not less than twenty million shillings or to a prison term of not less than two years or both	not exceeding twenty million shillings or to a prison term of not exceeding five years or both
87 (2)	managing or disposing of waste arising from upstream petroleum operations without a licence	not less than thirty million shillings or to a prison term of not less than five years or both	not exceeding one hundred million shillings or to a prison term of not exceeding fifteen years or both
88 (3)	failing to maintain in good condition and repair, all structures, facilities, equipment and other property	not less than one million shillings or to a prison term of not less than six months or both	not exceeding five hundred thousand shillings or to a prison term of not exceeding one year or both
89 (4)	Venting and flaring of natural gas without authorization	not less than one hundred million shillings or to a prison term of not less than five years or both	not exceeding one hundred million shillings or to a prison term of not exceeding fifteen years or both
113 (1) (c)	Illegally acquires land, vandalizes infrastructure	not less than one hundred million shillings or to a prison term of not less than fifteen years or both	not exceeding one hundred million shillings or to a prison term of not exceeding fifteen years or both
116	general penalty where none is expressly provided	not less than five million shillings	not exceeding ten million shillings or to a prison term of not exceeding five years or both

5.0 COMMITTEE OBSERVATIONS

- a. The Committee observed that some proposals for amendment of the Bill from the stakeholders were proper as they sought to improve the current version of the Bill. However it is worth noting that proposed amendments from the stakeholders were varied as their proposals sought to cater for their divergent interests. The Committee will therefore at a later stage introduce amendments to the Bill for consideration during the Committee Stage.
- b. The Committee further observed that the proposed Bill is one that concerns County Governments within the meaning of Article 110 of the Constitution and is therefore an ordinary Bill.

6.0 COMMITTEE RECOMMENDATIONS

In view of the above proposals from the stakeholders and the Ministry of Energy and Petroleum; the Committee is preparing amendments to the Bill which it will then table before the House at a later date upon further clarifications and consultations with the stakeholders and the Ministry of Energy and Petroleum.

