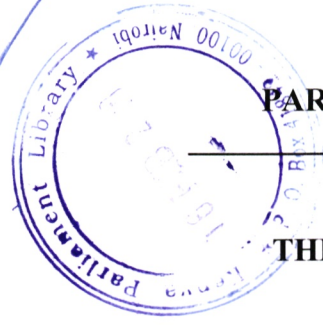


*land
by J. K. Njiru
16/6/2016*

PARLIAMENT
OF KENYA
LIBRARY

REPUBLIC OF KENYA
PARLIAMENT
OF KENYA
LIBRARY



PARLIAMENT

THE SENATE

① Sir
Forwarded for
consideration and
Tabling
15/06/16

② Rt. Hon. Speaker
You may approve
& tabling.
15/06/16

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

ELEVENTH PARLIAMENT- FOURTH SESSION

REPORT ON THE NATURAL RESOURCES (CLASSES OF
TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, (NATIONAL
ASSEMBLY BILL NO. 54 OF 2015)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

JUNE, 2016

TABLE OF CONTENTS

PREFACE	3
ACKNOWLEDGEMENT.....	4
1.0 INTRODUCTION.....	5
2.0 OVERVIEW OF NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, (NATIONAL ASSEMBLY BILL NO. 54 OF 2015).....	7
3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION.....	9
4.0 RECOMMENDATIONS OF THE COMMITTEE.....	11

Annexes

1. Proposed Committee Stage Amendments
2. Minutes of the Committee dated 2nd June, 2016, 8th June, 2016 and 14th June, 2016
3. The Natural Resources (Classes of Transactions Subject To Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015)
4. Public hearing advert
5. Attendance schedule

PREFACE

1. The Standing Committee on Land and Natural Resources was constituted on Thursday 27th February 2014 during the Second Session of the Eleventh (11th) Parliament pursuant to the provisions of Senate Standing Order No.208.
2. The Committee is mandated, under the Second Schedule of the Senate Standing Orders, *to consider all matters related to lands and settlement, environment, forestry, water resource management and mining,*
3. In executing its mandate, the Committee oversees the Ministries of:
 - a) Land, Housing and Urban Development;
 - b) Environment, Natural Resources and Regional Development Authorities;
 - c) Ministry of Water & Irrigation; and
 - d) Mining.
4. The Committee comprises the following Members:

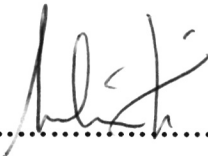
Sen. Lenny Kivuti	- Chairman
Sen. George Khaniri	- Member
Sen. Christopher Obure	- Member
Sen. DawsonMwazo	- Member
Sen. Henry Ndiema	- Member
Sen. Boy Juma Boy	- Member
Sen. Isaac Melly	- Member
Sen. Liza Chelule	- Member
Sen. Martha Wangari	- Member

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearing on the Water Bill, 2014. The Committee also thanks in particular the National Bio-safety Authority, the African Bio-safety Stakeholders' forum and members of the public who made submissions, both orally and in writing.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 203, to present a report of the Committee on Land and Natural Resources on the Natural Resources (Classes of Transactions Subject To Ratification) Bill, 2015, (National Assembly Bill No. 54 Of 2015) for consideration by the House.

SIGNED.....

DATE.....14/6/2016.....

**SEN. LENNY KIVUTI, M.P. CHAIRPERSON,
SENATE STANDING COMMITTEE ON LAND & NATURAL
RESOURCES.**

1.0 INTRODUCTION

Mr. Speaker Sir,

The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015) originated in the National Assembly and was passed with amendments on 9th March, 2016 and subsequently referred to the Senate. The Bill was sponsored by Sen. Kithure Kindiki, the Leader of Majority in the Senate.

The Bill was read a first time in the Senate on 14th April, 2016 and committed to the Standing Committee on Land and Natural Resources pursuant to Standing Order 130(1).

Pursuant to Article 118 of the Constitution and Standing Order No. 130 (4), of the Senate Standing Order, the Standing Committee of the Senate on Land and Natural Resources facilitated a public hearing forum that was held on 2nd June, 2016 at Shimba Hall, Kenyatta International Convention Center to take into account the views and recommendations of the public while preparing this report.

According to its objects and memoranda, the Bill seeks to give effect to Article 71 of the Constitution which applies to any transaction that may have been entered into on or after the date contemplated under Article 260 of the Constitution regarding Natural resources (the date that the Constitution came into force). It requires that the category of transactions set out in its schedule be ratified by Parliament on account that the transactions give a right or concession for the exploitation of a natural resource in Kenya. It applies to transactions involving both the National and county governments as well as concessions by private persons.

The Committee at its meetings held on Tuesday 8th June, 2016 and on Tuesday 14th June, 2016, considered the submissions from the public hearing and stakeholders and recommended that the Natural Resources (Classes Of Transactions Subject To Ratification) Bill, 2015, (National Assembly Bill No. 54 Of 2015) be adopted subject to the amendments contained in *Annex I* to be moved at the Committee Stage.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

2.0 OVERVIEW OF NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

Part 1: Provides for definition of concession, exploitation, natural resources and transaction

The Bill defines them as follows—

- (a) Concession is a right to exploit natural resources pursuant to an agreement or a permit issued under national or county legislation;
- (b) Exploitation is an activity that grants a benefit on the beneficiary of an agreement to exploitation of resources set out in the schedule;
- (c) Natural resources includes sunlight, surface and ground water, forests biodiversity, genetic resources, rocks, minerals, fossil fuels and other sources of energy; and
- (d) Transaction means an arrangement between a grantor and a beneficiary under which a beneficiary acquires a right to exploit natural resources in Kenya.

Part 2: Provides for Classes of transactions exempt from classification

The Bill set out in its schedule the classes of transactions subject to ratification by Parliament.

Despite this provision there are classes of transactions that will be exempted from the aforementioned provision, the exemptions apply to the exploitation of a natural resource whose quantities falls below the thresholds prescribed by the Cabinet Secretary by notice in the Gazette or agreements of exploitation of natural resources below the value of US \$ 500 Million.

Part 3: Provides for the Process of ratification

The Bill provides for the procedure for ratification before any exploitation of natural resources by interested parties as follows—

- (a) Submission of the agreement together with a memorandum to the Cabinet Secretary not later than fourteen days after entering into a transaction;
- (b) Within seven days of receiving the agreement and the memorandum the Cabinet Secretary shall submit the two documents for ratification to Parliament as per the provisions of Article 71 of the Constitution.

Part 4: Provides for the Salient administrative provisions

The Bill provides that the Cabinet Secretary in charge of environmental affairs shall have the responsibility to maintain a register of all the transactions and also observe other forms of due diligence including maintaining confidentiality of certain transactions to the extent that it doesn't violate the provisions of Article 35 of the Constitution which safeguards the right to access of important information affecting the nation.

The Bill further provides that decisions on confidentiality of transactions as provided by the Cabinet Secretary may be challenged by any person in the High Court.

Consequences of the Bill

The Bill will ensure that the transactions on natural resources, that have been entered into, since the promulgation of the Constitution, have all been ratified by Parliament. This Bill will essentially increase transparency of important transactions, expand the space for scrutiny of transactions and accessibility of important transactions to the members of the public.

The **ss. 4 (1), 4 (2) (ec)** provides for the classes of transactions subject to ratification.

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 130 (4), the Committee held a one day public hearing at Shimba Hall, Kenyatta International Convention Center on 2nd June, 2015 and received the following representations concerning the Natural Resources (Classes Of Transactions Subject To Ratification) Bill, 2015, (National Assembly Bill No. 54 Of 2015) under consideration;-

Submission from the African Bio-safety Stakeholders Forum

1) Dr. Margaret Karembu – Africa Biotechnology Stakeholders Forum (ABSF)

- ABSF was representing the umbrella body of the stakeholders in the biotechnology field.
- Commented that ratification by Parliament would discourage domestic and international investors;
- Genetically modified research had already been included in the Biosafety Act; and it should therefore be deleted from the bill.

2) Dr. Willy Tonui – CEO National Bio-safety Authority

- There already exists a bio-safety act that governs biotechnology;
- There are already existing bio-safety regulations which are quite elaborate;
- Kenya has already ratified some of the international treaties like the Nagoya Protocol and the Cartagena Protocol;
- There are clear contradictions between the new bill and the existing Bio-safety Act;
- The bill should therefore be amended to exclude issues of GMOs as they are already catered for elsewhere.

3) Mr. Daniel Otunge - AATF

- Under ABSF and fully supported what the sentiments of ABSF

4) Ms Grace Murila - KALRO

- Supported what NBA and ABSF said;
- Research deals with accessing natural resources through writing projects which are time bound. If they need permits to access this work, they will never get the work done.

- Called for deletion of clauses of the last two items in the schedule of list of items to be ratified by Parliament since material transfer agreements are covered in other institutions.
- 5) Ashitiva & Co – on behalf of Energy Solutions Africa Ltd
- Clients are happy with the bill;
 - The bill should factor in the context in which it is applied;
 - Natural gas and oil as part of the agreements that require ratification is already covered in section 58 of the petroleum bill though the product sharing contract;
 - Kenya needs predictability in order to attract the kind of investment;
 - The role of Parliament should be to look at the strategic aspects and leave operational aspects to the executive.
- 6) Ashitiva & Co – Absolute Energy
- Emphasised on the production sharing contract therefore Parliament should then be ratifying the production sharing contract not the extraction;
 - The bill unpredictability to the investor;
 - The bill conflicts with the freedom of information since one says that a challenge should be taken to the high court while the other says that a challenge should be taken to the Ombudsman;
 - Problems in implementing Section 10 which says that an agreement ratified under this section shall no become law.
 - a) Have the generic term in schedule 1 replaced
 - b) Have issues with Sec 12
 - c) Sec 3 – a subsection 3 is inserted – shall not be regarded as law
- 7) Merlin Achoki – Institute of Environment and Water Management
- The issue of equity and inclusivity is ambiguous. Issues of gender should be included in the bill
- 8) Dr. Richard Oduor
- The issues of genetic material and genetic resources are misplaced in the bill. They should be removed.
- 9) Kenya Youth Biotechnology
- Emphasised the use of NBA Act instead of the bill; and
 - The bill will impede job creation among the youth because of the time required to ratify research by Parliament.

4.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee made the following general recommendations on the Natural Resources (Classes of Transactions Subject To Ratification) Bill, 2015, (National Assembly Bill No. 54 Of 2015)

- 1) On the clauses on the schedule concerning:
 - i) Grant of a permit to conduct field trials of Genetically Modified Organisms;
 - ii) Grant of an access permit or a material transfer agreement

The Committee Consider giving categories based on the scale of research to be undertaken and allow the National Biosafety Authority to issue grants for small/individual researches; but also seek Parliament's ratification for research to be undertaken by big organizations e.g. Monsanto e.t.c.

- 2) On Schedule (ss) 4(1), 4(2)(e) - Classes of Transactions Subject to Ratification

The Committee rejected amending the schedule by deleting item 1 on crude oil and natural gas because it is covered under the Petroleum Act.

- 3) Clause 12 on Confidentiality

The Committee rejected making any insertions on the grounds that it was not necessary

- 4) On Clause 10, on insertion,

The Committee rejected the amendment because contracts will remain contracts under the contracts law.

Annex 1: Proposed Committee Stage Amendments

13th June, 2016

The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS: THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015

NOTICE is given that Sen. Lenny Kivuti, the Chairperson of the Standing Committee on Lands and Natural Resources, intends to move the following amendments to the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, at the Committee Stage-

NEW CLAUSE 9A

THAT the Bill be amended by inserting the following new clause immediately after clause 9 —

Procedure for
approval by
Parliament.

9A. (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses —

(a) approve the ratification of an agreement; or

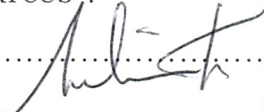
(b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

SCHEDULE

That the Schedule be amended by -

- (a) deleting the tenth row that provides for "Genetic material"; and
- (b) deleting the eleventh row that provides for "Genetic Resources".

.....


**SEN. LENNY KIVUTI, CHAIRPERSON
COMMITTEE ON LANDS AND NATURAL RESOURCES**

Annex II: Minutes of the Committee dated 8th June, 2016 and
14th June, 2016

MINUTES OF THE 72ND MEETING OF THE STANDING COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON TUESDAY, 14TH JUNE, 2016 AT KICC, 3RD FLOOR, ROOM 304 FROM 10.00 AM.

MEMBERS PRESENT

- | | |
|---------------------------------|---------------|
| 1. Sen. Lenny Kivuti, M.P. | - Chairperson |
| 2. Sen. George Khaniri | - Member |
| 3. Sen. Isaac Melly, M.P. | - Member |
| 4. Sen. Dawson Mwazo, M.P. | - Member |
| 5. Sen. Christopher Obure, M.P. | - Member |
| 6. Sen. Henry Ole Ndiema, M.P. | - Member |
| 7. Sen. Boy Juma Boy, M.P. | - Member |
| 8. Sen. Liza Chelule, M.P. | - Member |

MEMBERS ABSENT WITH APOLOGY

- | | |
|------------------------------|----------|
| 1. Sen. Martha Wangari, M.P. | - Member |
|------------------------------|----------|

SENATE SECRETARIAT

- | | |
|-----------------------|-----------------------------|
| 1. Ms. Brenda Ogembo | -Clerk Assistant |
| 2. Ms. Mwanate Shaban | -Clerk Assistant |
| 3. Mr. Kefa Omoti | -Principal Research Officer |
| 4. Mr. Leonard Koech | -Legal Counsel |
| 5. Ms. Sarah Rukwaro | -Serjeant At Arms |

MINUTE SEN/SCLNR/424/2016: PRELIMINARIES

The meeting was called to order at 10.15 a.m. and there followed a word of prayer by Sen. Boy Juma Boy, M.P.

MINUTE SEN/SCLNR/425/2016: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Chelule and seconded Sen. Mwazo as follows;

Prayer

1. Preliminaries;
2. Adoption of Agenda;
3. Confirmation of Minutes No. 64 – 71;
4. Matters Arising from the Previous Minutes;
5. Review of the Forest Conservation and Management Public Hearing Matrix
6. Review and Adoption of the Committee Report on the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015);
7. Any Other Business;
8. Adjournment and Date of Next Meeting.

MINUTE SEN/SCLNR/426/2016: CONFIRMATION OF MINUTES 64 – 71

- 1) Minutes of the 64th meeting of the Standing Committee on Lands and Natural Resources held on Tuesday, 3rd May, 2016 At KICC 3rd Floor Room No. 304 at 11.00 am were confirmed as the true record of the proceedings after being proposed by Sen. Melly and seconded by Sen. Chelule.
- 2) Minutes of the 65th meeting of the Standing Committee on Lands and Natural Resources held on Tuesday, 17th May, 2016 at KICC 3rd Floor Room No. 304 from 11.00 am were confirmed as the true record of the proceedings after being proposed by Sen. Juma Boy and seconded by Sen. Chelule.
- 3) Minutes of the 66th meeting of the Standing Committee on Lands and Natural held on Tuesday, 31st may, 2016 in the Speaker's boardroom from 10.00 a.m. were confirmed as the true record of the proceedings after being proposed by Sen. Juma Boy and seconded by Sen. Mwazo
- 4) Minutes of the 67th meeting of Standing Committee on Lands and Natural held on Tuesday, 31st May, 2016 in the Speaker's boardroom from 12.30 p.m. were confirmed as the true record of the proceedings after being proposed by Sen. Mwazo and seconded by Sen. Melly.
- 5) Minutes of the public hearing on the Forest Conservation and Management Bill, 2015 by the Standing Committee on Lands and Natural held on Thursday, 2nd June, 2016 in Shimba hall, 1st floor KICC from nine am were confirmed as the true record of the proceedings after being proposed by Sen. Mwazo and seconded by Sen. Chelule.
- 6) Minutes of the public hearing on the Natural Resources (Classes of Transactions Subject to Ratification), bill 2015 by the Standing Committee on Lands and Natural held on Thursday, 2nd June, 2016 in Shimba hall, 1st floor KICC from 11.50 am were confirmed as the true record of the proceedings after being proposed by Sen. Mwazo and seconded by Sen. Chelule.
- 7) Minutes of the 70th meeting of the Standing Committee on Lands and Natural held on Friday, 3rd June, 2016 in Mashua conference hall, Serena beach hotel and resort in Mombasa were confirmed as the true record of the proceedings after being proposed by Sen. Mwazo and seconded by Sen. Juma Boy
- 8) Minutes of the 71st meeting of the Standing Committee on Lands and Natural held on Wednesday, 8th June, 2016 at KICC, 3rd floor room 304 at 11.00 a.m. were confirmed as the true record of the proceedings after being proposed by Sen. Ole Ndiema and seconded by Sen. Juma Boy.

MINUTE SEN/SCLNR/427/2016: MATTERS ARISING FROM THE PREVIOUS MINUTES

Members resolved to postpone this minute item to the next meeting so that they may be able to deal with the substantive agenda before the Committee.

MINUTE SEN/SCLNR/428/2016: REVIEW OF THE FOREST CONSERVATION AND MANAGEMENT PUBLIC HEARING MATRIX

The Committee discussed the bill and acknowledged that Bill had some real issues but due to the time constrains, they resolved the following:

- 1) The Committee was to meet with the Council of Governors on Tuesday 14th June, 2016 so that the COG can give their input to the two bills. The Council of Governors sent apologies that they would not be able to come but they would sent their amendments in written form by the end of Tuesday, 14th June, 2016;
- 2) The bill touched on real issues concerning the people living near the forests, in the forests and those who had been allocated land in the forests. The secretariat was tasked to insert a clause for people who had been lawfully alienated land; and
- 3) The researcher was tasked to do a paper on Mau Forests on issues of boundaries and caveat.
- 4) The Committee would go over the public hearing matrix on Thursday 16th June, 2016 at 10.00am

The Committee also resolved to review the briefs of the bills below which had been committed to the Committee and were due for a public hearing on Tuesday 21st June, 2016:

- a) The Community Land Bill (National Assembly Bills No. 45 of 2015); and
- b) The Land Laws (Amendment) Bill (National Assembly Bills No. 55 of 2015).

MINUTE SEN/SCLNR/429/2016: REVIEW AND ADOPTION OF THE COMMITTEE REPORT ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, (NATIONAL ASSEMBLY BILL NO. 54 OF 2015);

The Committee reviewed the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, and unanimously adopted the report.

MINUTE SEN/SCLNR/430/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:10p.m. the date of the next meeting was set to Thursday 16th June at 10.00am.

SIGNATURE.....

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

DATE.....

MINUTES OF THE 71ST MEETING OF THE STANDING COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON WEDNESDAY, 8TH JUNE, 2016 AT KICC, 3RD FLOOR ROOM 304 AT 11.00 A.M.

MEMBERS PRESENT

1. Sen. Christopher Obure, M.P. - Ag. Chairperson
2. Sen. Henry Ole Ndiema, M.P. - Member
3. Sen. Boy Juma Boy, M.P. - Member
4. Sen. Liza Chelule, M.P. - Member

MEMBERS ABSENT WITH APOLOGY

1. Sen. Lenny Kivuti, M.P. - Chairperson
2. Sen. George Khaniri - Member
3. Sen. Isaac Melly, M.P. - Member
4. Sen. Dawson Mwazo, M.P. - Member
5. Sen. Martha Wangari, M.P. - Member

SENATE SECRETARIAT

1. Mr. Charles Ngatia - Clerk Assistant
2. Mr. Kefa Omoti - Principal Research Officer
3. Mr. Leonard Koech - Legal Counsel

MINUTE SEN/SCLNR/418/2016: PRELIMINARIES

The meeting was called to order at 11:26 a.m. and there followed a word of prayer by Sen. Boy Juma Boy, M.P.

MINUTE SEN/SCLNR/419/2016: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded Sen. Henry Ndiema, M.P. and Sen. Boy Juma Boy, M.P. as follows;

Prayer

1. Review of the Public Hearing matrixes on the:
 - a) Forest Conservation and Management Bill, 2015 (National Assembly Bill No. 49 of 2015);
 - b) Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015);
2. Bills read a First Time;
3. Any Other Business;
4. Adjournment and Date of Next Meeting.

MINUTE SEN/SCLNR/420/2016: REVIEW OF THE PUBLIC HEARING MATRIX ON NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

The legal counsel took the Committee through the proposals made during the public participation exercise on the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015).

The Committee made the following observations of the proposal on the Bill;

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
<p>Clauses on the schedule concerning:</p> <p>i) Grant of a permit to conduct field trials of Genetically Modified Organisms;</p> <p>ii) Grant of an access permit or a material transfer agreement</p>	<p>The African Biotechnology Stakeholders Forum (ABSF) & The National Biosafety Authority</p>	<ul style="list-style-type: none"> - These clauses are already addressed in detail by other existing laws and specifically the Biosafety Act of 2009. Further, any additional layers of regulatory obstacle requiring Parliament ratification on grant of permits for research on GMOs will seriously limit agricultural research, product development and Kenya's competitiveness by denying the country access to and utilization of a modern technology that has already been used safely by more than 28 countries over the last 20 years. - We recommend that the two clauses on schedule requiring Parliament ratification for conducting confined field trials on genetically modified organisms and material transfer agreements should be deleted from the Bill. This is because they contradict or duplicate the Biosafety Act of 2009 and subsequent implementing Biosafety regulations. Grant of material transfer agreements is also an administrative issue handled at the research institutions level and subjecting the 	<p>Consider giving categories based on the scale of research to be undertaken and allow the National Biosafety Authority to issue grants for small/individual researches; but also seek Parliament's ratification for research to be undertaken by big organizations e.g. Monsanto e.t.c.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
		<p>process to Parliament ratification would grossly inhibit research and injure Kenyans development of new technologies.</p> <ul style="list-style-type: none"> - Direct implications of the proposed Parliamentary ratification of field trials include: <ul style="list-style-type: none"> - 1. Delay in research and product delivery to the end users: The need for Parliament to ratify issuance of permit will require additional time for the applicant to make the application to parliament and for parliamentarians to familiarise themselves with the issue, have it discussed and the decision communicated to the applicant. This is an additional obstacle to research and product development, which is not the case with other competing countries, hence Kenyans will be directly disadvantaged. - 2. Discouragement of domestic and international investors leading to food insecurity and youth unemployment: With prevailing resource limitations where investments are attracted by predictability of the regulatory systems and the associated ease of doing business as has been previously promoted in Kenya under the one-stop centres for investors, the requirement for additional and less predictable 	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
		<p>approval such as Parliamentary ratification is a straight discouragement and contradiction to the general call to enhance ease of investing in Kenya. This is particularly important given that investment in GMO field trials is investment in food security and youth employment to cover the resultant technology transfer jobs.</p> <p>- 3. Weakening the robust research policy that the government has set up: The need for additional time for Parliamentary ratification will make research in Kenya costly hence negate the government policy to enhance research. This is because each unit of time spent on research has to be paid for in personnel as well as use of relevant equipment. In addition, resource constraints are limiting funding to research that has potential for commercialization and where an obstacle clearly stands in the way of commercialization or utilization of the research product, the research may not receive favourable consideration. The proposal therefore contradicts the government research agenda as contained in Vision 2030 and the Medium Term Plan.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
<p>Schedule (ss) 4(1), 4(2)(e)</p> <p>Classes of Transactions Subject to Ratification</p>	<p>ASHITIVA & COMPANY ADVOCATES</p>	<ul style="list-style-type: none"> - That, the Bill be amended in the Schedule by deleting item 1 on crude oil and natural gas; - OR - That, the Bill be amended in the Schedule by deleting item 1 on crude oil and natural gas and substituting thereof with the following new item 1(Crude Oil and Natural Gas): - “Petroleum Agreements as defined under the relevant Act it is subject to.” - JUSTIFICATION - I. Constitutionality:- - (a) The constitutional intent under Article 71 of the Constitution is for concessions for the exploitation of any natural resource to be the subject of ratification by Parliament; - (b) As can be seen from Appendix-1, under the Petroleum Act/Petroleum Bill, 2015, the concessions/transaction that grants the right to exploit natural resources is the Petroleum Agreement (which includes Production Sharing Contract (“PSCs”)); - (c) In ratifying the PA/PSCs, Parliament will indeed have an opportunity to review, interrogate the proposed terms and conditions before the Government/Investor makes the commitment. - (d) It is the Petroleum Agreement that determines how revenue/benefits will be shared between the State and an Investor. See 	<p>Rejected- because it is covered under the Petroleum Act.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
		<p>Appendix- 2, extract of Clause 5 of the Petroleum Act and Clause 45(1) & (2) of the Petroleum Bill, 2015 and clause 37-38 of the Model Production Sharing Contract;</p> <ul style="list-style-type: none"> - (e) This intention is aptly covered in Clause 58(1) of the Petroleum Bill and it is our submission that the position presented under the Petroleum Bill represents a true picture of the oil and gas cycle as actual extraction of crude oil will only begin once the exploration phase of the oil and gas cycle has been completed, accordingly, Constitutional intent is aptly covered under Clause 58(1) of the Petroleum Bill. See also Appendix-2 for the extract. - Accordingly, reference to transactions on crude oil and natural gas under this Ratification Bill, should be deleted in light of the Petroleum Bill that already adequately addresses the issue. - 2. Unpredictability/Impracticality:- - (a) The term “to extract crude oil or natural gas...” is generic and in the absence of clarity, can be interpreted to require that at every stage of the entire oil and gas cycle, the holder of a PSA/PSCs shall have to seek Parliamentary ratification, given that at every stage, of the oil & gas 	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
		<p>cycle, there is some level of extraction e.g. extraction of samples for testing/analysis, extraction of crude for purposes of evaluation and establishing flow rates, extraction for purposes of production and export etc;</p> <ul style="list-style-type: none"> - (b) This will render the oil and gas projects impractical and susceptible to unpredictability; Also, the Petroleum Law already provides that no samples may be removed or petroleum produced/exported without the Ministry's consent/permit/license. (See Clause 59 & 62 of Petroleum Bill). - (c) In the case of Production leading to Export, the generic nature of the term "to extract oil or natural gas..." the Investor is not assured of monetizing the investment it has made on a "sole risk basis" under the PSA/PSCs that have been executed. [It is inconsistent with international industry practice, to subject an investor to an additional requirement of ratification, when it now wants to produce the crude so as to monetize its sole risk investment made in exploring for the crude oil and gas- See Appendix-3 on comparative analysis]. - 3. Additional Approval Requirements:- - (a) The Petroleum Bill, 2015 already provides for ratification of PSA/PSCs. 	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
		<p>This Ratification Bill if not amended, is likely to be interpreted to require the same PSA/PSC or licenses issued pursuant to the said PSA/PSCs to be subject to further approvals/permitting requirements i.e. Parliamentary Ratification.</p>	
<p>Clause 12 on Confidentiality</p>		<ul style="list-style-type: none"> - That, the Bill be amended in Clause 12 by inserting the following sub-clause after sub-clause 3: - “Any reference to the High Court and any subsequent appeal shall be determined expeditiously.” - JUSTIFICATION - Inclusion is necessary; to give assurance to parties involved, that such an issue will be handled with urgency and predictability in the same way clause 8 and 9 provides predictability as to how long Parliament shall take to consider a transaction for ratification. 	<p>Rejected-Not necessary.</p>
<p>Clause 10</p>		<ul style="list-style-type: none"> - That, the Bill be amended in the clause 10 by inserting a new sub-clause (3); - “For greater certainty, an agreement ratified by Parliament under this clause shall not be regarded as having the status of law.” - JUSTIFICATION - For the sake of clarity, the Bill should address the status of agreements that are submitted to Parliament for ratification. - Do these agreements acquire status of law? - Which provisions in the 	<p>Rejected- because contracts will remain contracts under the contracts law.</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT AND RATIONALE	COMMITTEE RESOLUTION
		<p>agreement if desired to be amended as between the investor and the Ministry responsible (or as between the parties in the case of an agreement between private persons), would be subject to Parliamentary ratification again, if at all?</p> <p>- It is humbly submitted, that the intention of Article 71, was not to give the transactions the status of law and that this clarification can be made and the Cabinet Secretary, be empowered (as already provided under Clause 13, to provide regulations on this matter).</p>	

MINUTE SEN/SCLNR/421/2016: REVIEW OF THE PUBLIC HEARING MATRIX ON FOREST CONSERVATION AND MANAGEMENT BILL, 2015 (NATIONAL ASSEMBLY BILL NO. 49 OF 2015)

The legal counsel took the Committee through a highlight of the proposals made during the public participation exercise on the Forest Conservation and Management Bill, 2015 (National Assembly Bill No. 49 of 2015).

The Committee made the following observations on the Bill;

- a) The Bill and the proposals were extensive and therefore more time was needed to go through the Bill and the proposed amendments;
- b) The Secretariat was tasked to gather information on the issues afflicting communities living near forests;
- c) There was need to understand the fate of communities living in forests and who were allocated the land by Government though the forests have not been degazetted;
- d) Concession on public forests under clause 44, should give priority to local residents living near the forests;

The Committee resolved to hold a retreat in Naivasha so as to go through all the Bills before the Committee. The secretariat was tasked to propose dates for the retreat and invite the relevant Ministry.

MINUTE SEN/SCLNR/422/2016: BILLS READ A FIRST TIME

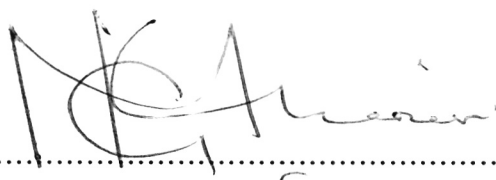
The Committee was informed that on Thursday 2nd July, 2016; the following Bills were read a First Time;

- a) The Community Land Bill (National Assembly Bills No. 45 of 2015); and
- b) The Land Laws (Amendment) Bill (National Assembly Bills No. 55 of 2015).

The Committee resolved to hold a public hearing on the two Bills on Tuesday, 21st June, 2016 noting that the Bills had a constitutional enactment deadline of 27th August, 2016.

MINUTE SEN/SCLNR/423/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:16 p.m.

SIGNATURE.....

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

DATE.....14/6/2016.....

4.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee made the following general recommendations on the Natural Resources (Classes of Transactions Subject To Ratification) Bill, 2015, (National Assembly Bill No. 54 Of 2015)

- 1) On the clauses on the schedule concerning:
 - i) Grant of a permit to conduct field trials of Genetically Modified Organisms;
 - ii) Grant of an access permit or a material transfer agreement

The Committee Consider giving categories based on the scale of research to be undertaken and allow the National Biosafety Authority to issue grants for small/individual researches; but also seek Parliament's ratification for research to be undertaken by big organizations e.g. Monsanto e.t.c.

- 2) On Schedule (ss) 4(1), 4(2)(e) - Classes of Transactions Subject to Ratification

The Committee rejected amending the schedule by deleting item 1 on crude oil and natural gas because it is covered under the Petroleum Act.

- 3) Clause 12 on Confidentiality

The Committee rejected making any insertions on the grounds that it was not necessary

- 4) On Clause 10, on insertion,

The Committee rejected the amendment because contracts will remain contracts under the contracts law.

Annex 1: Proposed Committee Stage Amendments

13th June, 2016

The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS: THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015

NOTICE is given that Sen. Lenny Kivuti, the Chairperson of the Standing Committee on Lands and Natural Resources, intends to move the following amendments to the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, at the Committee Stage-

NEW CLAUSE 9A

THAT the Bill be amended by inserting the following new clause immediately after clause 9 —

Procedure for approval by Parliament.

9A. (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses —

(a) approve the ratification of an agreement; or

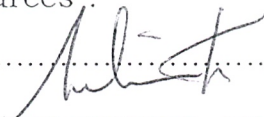
(b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

SCHEDULE

That the Schedule be amended by -

- (a) deleting the tenth row that provides for "Genetic material"; and
- (b) deleting the eleventh row that provides for "Genetic Resources".

.....


**SEN. LENNY KIVUTI, CHAIRPERSON
COMMITTEE ON LANDS AND NATURAL RESOURCES**

Annex II: Minutes of the Committee dated 8th June, 2016 and
14th June, 2016

MINUTES OF THE PUBLIC HEARING ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION), BILL 2015 BY THE STANDING COMMITTEE ON LANDS AND NATURAL RESOURCES HELD ON THURSDAY, 2ND JUNE, 2016 IN SHIMBA HALL, 1ST FLOOR KICC FROM 11.50 AM.

MEMBERS PRESENT

- | | |
|------------------------------|---------------|
| 1. Sen. Lenny Kivuti, M.P. | - Chairperson |
| 2. Sen. George Khaniri, M.P. | - Member |
| 3. Sen. Liza Chelule, M.P. | - Member |
| 4. Sen. Dawson Mwazo, M.P. | - Member |

MEMBERS ABSENT WITH APOLOGY

- | | |
|---------------------------------|----------|
| 1. Sen. Christopher Obure, M.P. | - Member |
| 2. Sen. Henry Ole Ndiema, M.P. | - Member |
| 3. Sen. Boy Juma Boy, M.P. | - Member |
| 4. Sen. Isaac Melly, M.P. | - Member |
| 5. Sen. Martha Wangari, M.P. | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|-----------------------------|
| 1. Ms. Mwanate Shaban | -Clerk Assistant |
| 2. Mr. Kefa Omoti | -Principal Research Officer |
| 3. Mr. Leonard Koech | -Legal Counsel |
| 4. Ms. Sarah Rukwaro | -Serjeant At Arms |

IN ATTENDANCE

The public (as per attached list)

MINUTE SEN/SCLNR/407/2016: PRELIMINARIES

The meeting was called to order at 11.50 a.m. followed with a word of prayer. The Chairman welcomed the participants, followed by introductions by all present.

MINUTE SEN/SCLNR/408/2016: ADOPTION OF AGENDA

The agenda of the meeting was generally adopted as follows;

Prayer

1. Introductions
2. Adoption of Agenda;
3. Submissions for the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015)
4. Any Other Business & Adjournment;

MINUTE SEN/SCLNR/409/2016: Submissions for the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015)

Members of the public made the following submissions to the bill

- 1) Dr. Margaret Karembu – Africa Biotechnology Stakeholders Forum (ABSF)
 - ABSF was representing the umbrella body of the stakeholders in the biotechnology field.

- Commented that ratification by Parliament would discourage domestic and international investors;
 - Genetically modified research had already been included in the Biosafety Act; and it should therefore be deleted from the bill.
- 2) Dr. Willy Tonui – CEO National Biosafety Authority
- There already exists a biosafety act that governs biotechnology;
 - There are already existing biosafety regulations which are quite elaborate;
 - Kenya has already ratified some of the international treaties like the Nagoya Protocol and the Cartagena Protocol;
 - There are clear contradictions between the new bill and the existing Biosafety Act;
 - The bill should therefore be amended to exclude issues of GMOs as they are already catered for elsewhere.
- 3) Mr. Daniel Otunge - AATF
- Under ABSF and fully supported what the sentiments of ABSF
- 4) Ms Grace Murila - KALRO
- Supported what NBA and ABSF said;
 - Research deals with accessing natural resources through writing projects which are time bound. If they need permits to access this work, they will never get the work done.
 - Called for deletion of clauses of the last two items in the schedule of list of items to be ratified by Parliament since material transfer agreements are covered in other institutions.
- 5) Ashitiva & Co – on behalf of Energy Solutions Africa Ltd
- Clients are happy with the bill;
 - The bill should factor in the context in which it is applied;
 - Natural gas and oil as part of the agreements that require ratification is already covered in section 58 of the petroleum bill though the product sharing contract;
 - Kenya needs predictability in order to attract the kind of investment;
 - The role of Parliament should be to look at the strategic aspects and leave operational aspects to the executive.
- 6) Ashitiva & Co – Absolute Energy
- Emphasised on the production sharing contract therefore Parliament should then be ratifying the production sharing contract not the extraction;
 - The bill unpredictability to the investor;
 - The bill conflicts with the freedom of information since one says that a challenge should be taken to the high court while the other says that a challenge should be taken to the Ombudsman;
 - Problems in implementing Section 10 which says that an agreement ratified under this section shall no become law.
 - a) Have the generic term in schedule 1 replaced
 - b) Have issues with Sec 12
 - c) Sec 3 – a subsection 3 is inserted – shall not be regarded as law

7) Merlin Achoki – Institute of Environment and Water Management

- The issue of equity and inclusivity is ambiguous. Issues of gender should be included in the bill

8) Dr. Richard Oduor

- The issues of genetic material and genetic resources are misplaced in the bill. They should be removed.

9) Kenya Youth Biotechnology

- Emphasised the use of NBA Act instead of the bill; and
- The bill will impede job creation among the youth because of the time required to ratify research by Parliament.

MINUTE SEN/SCLNR/410/2016: ANY OTHER BUSINESS & ADJOURNMENT

There being no other participants who wished to comment on the bill, the meeting was adjourned at 1.15 p.m.

SIGNATURE.....

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

DATE.....14/6/2016

The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 54 of 2015)

**THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS
SUBJECT TO RATIFICATION) BILL, 2015**

(A Bill published in the Kenya Gazette Supplement No. 139 of 2015 and passed by the National Assembly, with amendments, on March 9th, 2016)

N.A. /B/No. 54/2015

**THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS
SUBJECT TO RATIFICATION) BILL, 2015**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Application.

PART II—CLASSES OF TRANSACTIONS

- 4—Classes of transactions.

PART III—SUBMISSION OF AGREEMENTS TO PARLIAMENT

- 5—Submission of agreement to Cabinet Secretary.
- 6—Submission of agreement to Parliament.
- 7—Validity of agreements.
- 8—Consideration by Parliament.
- 9—Relevant considerations on transactions subject to ratification.
- 10—Procedure in case of different resolutions.

PART IV—ADMINISTRATIVE ARRANGEMENTS

- 11—Register of transactions.
- 12—Confidentiality.

PART V—MISCELLANEOUS

- 13—Regulations.
- 14—Computation of time.
- 15—Savings.

**SCHEDULE—CLASSES OF TRANSACTIONS SUBJECT TO
RATIFICATION**

**THE NATURAL RESOURCES (CLASSES OF
TRANSACTIONS SUBJECT TO RATIFICATION)
BILL, 2015**

A Bill for

**AN ACT of Parliament to give effect to Article 71 of the
Constitution of Kenya, 2010 and for connected
purposes**

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Natural Resources Short title.
(Classes of Transactions Subject to Ratification) Act, 2015.

2. In this Act, unless the context otherwise requires— Interpretation.

“concession” means the right to exploit a natural resource pursuant to an agreement between the grantor and the beneficiary or a permit issued under national or county legislation;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to environment;

“days” means calendar days;

“effective date” has the meaning assigned to it in Article 260 of the Constitution;

“exploitation” means an activity that confers or is aimed at conferring a benefit on the beneficiary of the grant of the concession or right but does not include an activity that is exploratory in nature;

“grantor” means the person who or which under an agreement relating to natural resources has granted to another the concession or right to exploit a natural resource of Kenya;

“natural resources” has the meaning assigned to it in Article 260 of the Constitution;

“permit” includes a licence or other authorization validly issued under national or county legislation;

“state organ” has the meaning assigned to it in Article 260 of the Constitution; and

“transaction” means an arrangement or other dealing between a grantor and a beneficiary under which the

beneficiary lawfully acquires a concession or a right to exploit a natural resource of Kenya.

3. (1) This Act applies to any transaction entered into on or after the effective date which, under Article 71 of the Constitution, is subject to ratification by Parliament on account of the fact that the transaction—

Application.

- (a) involves the grant of a right or concession by or on behalf of any person to another person for the exploitation of a natural resource of Kenya; and
 - (b) falls within the class of transactions designated as subject to ratification by section 4 of this Act.
- (2) This Act applies to any transaction involving the –
- (a) national government, county government, state organ and all county government entities; and
 - (b) grant of a right or a concession by a private person in cases in which such transaction is required by this Act to be ratified by Parliament.

PART II—CLASSES OF TRANSACTIONS

4. (1) The classes of transactions set out in the Schedule are subject to ratification by Parliament pursuant to Article 71 of the Constitution.

Classes of Transactions.

(2) Notwithstanding subsection (1), the following classes of transactions shall not be subject to ratification by Parliament—

- (a) subject to paragraph (e), the grant of a concession or right to exploit a natural resource through a permit, licence or other authorization issued in accordance with the requirements of national or county government legislation;
- (b) the grant of a concession or right by a private person to exploit a natural resource through an agreement or a contract;
- (c) the grant of a concession or right to exploit a natural resource for scientific research, educational or other non-commercial purposes unless the exploitation involves taking the natural resource or an portion of it outside of the jurisdiction of Kenya;
- (d) the exploitation of a natural resource by a Kenyan

national for subsistence purposes in circumstances in which the law does not require that a permit, licence or other authorization be obtained; and

- (e) the exploitation of a natural resource in quantities falling below a threshold prescribed by the Cabinet Secretary by notice in the Gazette or below a threshold specified in the Schedule to the Act

PART III—SUBMISSION OF AGREEMENTS TO PARLIAMENT

5. (1) As soon as practicable, but not later than fourteen days after entering into a transaction, a beneficiary shall submit an agreement or other instrument evidencing the transaction to the Cabinet Secretary responsible for the natural resource that is the subject of the transaction.

Submission of agreement to Cabinet Secretary.

(2) The agreement shall be accompanied by a memorandum in the prescribed form.

6. Within seven days of receiving the agreement and the memorandum, the Cabinet Secretary responsible for the natural resource that is the subject of the transaction shall submit the agreement and memorandum to Parliament for ratification in terms of Article 71 of the Constitution.

Submission of agreement to Parliament.

7. (1) A transaction which under this Act, is subject to ratification by Parliament shall only be effective once it is ratified, and where Parliament has declined to ratify any transaction under this Act, the transaction shall be null and void.

Validity of agreements.

(2) A public officer shall not give effect to or otherwise take cognisance of a transaction subject to ratification under this Act which has not been ratified in accordance with this Act.

8. Parliament shall deal with any agreement submitted to it under this Act within sixty days of receiving such agreement in accordance with the laid down procedures.

Consideration by Parliament.

9. (1) The following shall be relevant considerations in deciding whether or not to ratify an agreement—

Relevant considerations on transactions subject to ratification.

- (a) the applicable Government policy;
- (b) recommendations of the relevant regulatory agency;
- (c) comments received from the county government

within whose area of jurisdiction the natural resource that is the subject of the transaction is located;

- (d) adequacy of stakeholder consultation;
- (e) the extent to which the agreement has struck a fair balance between the interests of the beneficiary and the benefits to the country arising from the agreement;
- (f) the benefits which the local community is likely to enjoy from the transaction; and
- (g) whether, in granting the concession or right the applicable law has been complied with.

10. (1) Where one House of Parliament resolves to ratify the transaction but the other House resolves not to ratify the transaction, the matter shall be dealt with in accordance with the procedures and mechanisms provided in Articles 112 and 113 of the Constitution and the relevant Standing Orders of both Houses.

Procedure in case of different resolutions.

(2) Where a mediation committee is constituted under subsection (1), the period for dealing with the agreement shall be extended by thirty days.

PART IV—ADMINISTRATIVE ARRANGEMENTS

11. (1) The Cabinet Secretary shall establish and maintain a central register of agreements relating to natural resources and other transactions which have been ratified as provided under this Act.

Register of transactions.

(2) The Register shall be maintained in electronic format and any member of the public may inspect it without the payment of any fee.

(3) Upon request and on payment of a reasonable fee, any member of the public may obtain an authenticated printout of an agreement from the Cabinet Secretary.

(4) The Cabinet Secretary shall, on an annual basis, publish a report on the summary of the transactions submitted under this Act and the status of ratification of transactions.

12. (1) The Cabinet Secretary responsible for the transaction that is subject to ratification may, pursuant to

Confidentiality.

Article 35 of the Constitution, grant a request that the agreement or portions of it ought not to be publicly disclosed on account of commercial confidentiality, national security or other public interest considerations.

(2) Where the request for confidentiality is granted, the Cabinet Secretary responsible for the natural resource that is subject of the transaction shall submit the agreement to Parliament which shall conduct the process of ratification in camera without disclosing any confidential material, but a summary of the agreement shall be made available to the public.

(3) The decision of the Cabinet Secretary on the request for confidentiality may be challenged by any person through appropriate proceedings in the High Court, and the High Court shall have the power to call for and examine the Agreement in camera before determining the matter.

PART V—MISCELLANEOUS

13. (1) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for the applicable natural resource, make regulations for giving effect to the provisions of this Act and prescribing anything required under the Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations made under this section may—

- (a) prescribe the particular classes of transactions, entered into between the effective date and the commencement date which should be audited, the modalities for conducting such audits and the use for which such findings may be put;
- (b) define the thresholds, quantitatively, qualitatively or a combination of both, below which transactions need not be subject to ratification;
- (c) prescribe requirements and provide guidelines on the memorandum to accompany the agreement under section 5; and
- (d) prescribe procedures for making applications and requests to the Cabinet Secretary.

(3) The regulations to be prescribed under subsection 2(a) shall be made within two years of the commencement of this Act.

14. Where under this Act the computation of time depends on the Parliamentary calendar, the period during Computation of time.

The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015

which Parliament is not in session shall be excluded in the computation.

15. A transaction that is subject to ratification by Parliament, which was lawfully entered into on or after the effective date but before the commencement date, shall continue in effect and be deemed valid and lawful notwithstanding the absence of ratification by Parliament. ^{Savings.}

SCHEDULE (ss. 4(1), 4(2)(e))

CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION

<i>Resource</i>	<i>Transaction requiring Parliament Ratification</i>
Crude Oil and Natural Gas	Authorization to extract crude oil or natural gas.
Minerals	Mineral agreements with a threshold of US \$ 500 million.
Water resources	The extraction of sea water within the territorial sea for private commercial use.
Underground water resources	The extraction of underground steam within a water conservation or other water resource protected area.
Wildlife	Extraction of oil, gas, and minerals within a wildlife conservation area or other wildlife protected area.
Wildlife	Export and re-export of endangered wildlife species.
Wildlife	Excision or change of boundaries of gazetted national park or wildlife protection area.
Forests	Long term concession of a gazetted forest resource.
Forests	Excision or change of boundaries of gazetted public forests or nature reserves
Genetic material	Grant of an access permit or a material transfer agreement.
Genetic resources	Grant of a permit to conduct field trials of Genetically Modified Organisms
	Any other transaction subject to ratification under an Act of Parliament.

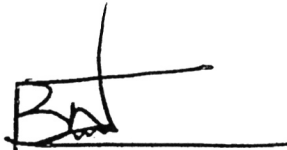
The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 9th March, 2016.



Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



Speaker of the National Assembly

REPUBLIC OF KENYA



**ELEVENTH PARLIAMENT
THE SENATE**

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

In the Matter of Consideration of

- 1) The Forest Conservation and Management Bill, 2015 (National Assembly Bills No. 49 of 2015), and
- 2) The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bills No. 54 of 2015)

Article 118 of the Constitution and Standing Order 130 of the Senate Standing Orders.

PUBLIC HEARING/ RECEIPT OF MEMORANDA

Following the introduction of the above listed Bills to the Senate, the Bills were committed to the Standing Committee on Land and Natural Resources for consideration pursuant to Standing Order 130 of the Senate Standing Orders.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4) of the Senate Standing Orders, the Standing Committee on Land and Natural Resources now invites interested members of the public and organizations to submit any representations that they may have on the above Bills.

The representations may be made orally or by submission of written memoranda in the following manner:-

1. Public Hearings shall be held on **Thursday, 2nd June, 2016 in Shimba Hall, 1st Floor Kenyatta International Convention Centre (KICC), Nairobi as follows:**
 - a) The Forest Conservation and Management Bill - from 9:00 a.m.
 - b) The Natural Resources (Classes of Transactions Subject to Ratification) Bill - from 11.00 am
2. Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Building, Nairobi** or emailed to senatebills@parliament.go.ke, to be received on or before **Thursday, 2nd June, 2016 at 5.00 p.m.**

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/plone/senate>.

**J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

①

THE SENATE

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES.

GUEST ATTENDANCE LIST

PURPOSE: PUBLIC HEARING ON THE FOREST CONSERVATION & MANAGEMENT BILL & THE NATURAL RESOURCES BILL (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION)
DATE: 02 JUNE 2016.
VENUE: SHIMBA HALL BILL

	NAME	DESIGNATION & ORGANIZATION	CONTACT	SIGNATURE
✓ 1	Daniel Otunge	AATF	0731990046	
✓ 2	Kennedy Oyugi	ABSF	0721865317	
✓ 3	Flouida Maritim	KALRO	0722763787	
✓ 4	Josphat Mudiri	NBA	072266522	
✓ 5	NGETICH NEHEMIAH	NBA	0722271545	
✓ 6	GRACE MURELLA	KALRO	0722612079	
✓ 7	ASHIVA IHACHI NELSON	Ashitira & Co.	0722860725	
✓ 8	DORRIS MWIRIGI KINYA	Ashitira & Co	0722934700	
✓ 9	Achori Marlene	IENM	0725564577	
✓ 10	DORIS WANGARI	PBS	0720659254	
✓ 11	KEVIN OYALE	ABSF	0714562151	

mus

2

THE SENATE

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES.

GUEST ATTENDANCE LIST

PURPOSE: PUBLIC HEARING ON THE FOREST CONSERVATION BILL & NATURAL RESOURCES BILL DATE: 2/6/16

VENUE: SHIMBA HALL KICC FIRST FLOOR

	NAME	DESIGNATION & ORGANIZATION	CONTACT	SIGNATURE
1	Kennedy Kioko Mulwa ✓	Legal researcher	0702927931	<i>[Signature]</i>
2	Yabir Kiptum ✓	FOREST INDIGENOUS PEOPLES NETWORK	0726806100	<i>[Signature]</i>
3	JOHNSON TAKUVA ✓	MT ELGON FOREST	071412348	<i>[Signature]</i>
4	COSMAS C. MURUNGA ✓	MT. ELGON FOREST	0707797638	<i>[Signature]</i>
✓ 5	MOSES LELEU LAIMA ✓	SENATE LAW COUNSELLOR	0703816859	<i>[Signature]</i>
✓ 6	DICKSON K. ROTICH ✓	SENATE LAW COUNSELLOR	0726230888	<i>[Signature]</i>
7	Science Nyadhiri *	Camera man	0723962663	<i>[Signature]</i>
8	Paul John Sino Njeru	Regulatory Affairs Officer	0786-666-087	<i>[Signature]</i>
9	Joel W. Mwangela	Min. of Interior	0725523833	<i>[Signature]</i>
✓ 10	Ty Mills Tom ✓	CEO, NBA	0721283353	<i>[Signature]</i>
✓ 11	Prof. Donington Ogun ✓	DTS, NBA	0721353772	<i>[Signature]</i>
✓ 12	DR. MARGARET KAREMBU	ABSF/ISAAA	0722826154	<i>[Signature]</i>

3








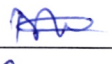

THE SENATE

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES.

PUBLIC HEARING ON THE GUEST ATTENDANCE LIST

PURPOSE: FOREST CONSERVATION & MANAGEMENT BILL ^{THE NATURAL RESOURCES CLASSES OF TRANSACTIONS} SUBJECT TO RATIFICATION BILL 2015 DATE: 02 JUNE 2016

VENUE: SHIMBA HALL, KICC FIRST FLOOR

	NAME	DESIGNATION & ORGANIZATION	CONTACT	SIGNATURE
1	ARNOLD MAHERO	AGHIVA ADVOCATES	0721687680	
2	MANITI MUSTOKA	NACD FA	0723670314	
3	DR. MARGARET KAREMBU	ISAAA AFRICENTER	0722826154	
4	Dr. Jehu Richard	KUBICO	0702931951	
5	Pai Chigo	ISAAA AFRICENTER	0723883557	
6	EZEKIEL NGUNJI	ISAAA AFRICENTER	0723732850	
7	LEAIT AMBANI	ABSF	0722872778	
8	MARY MWANGANGI	ABCF	0701112037	
9	Bibiana Iraki	ISAAA AFRICENTER	0702643448	
10				
11				



THE SENATE

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES.

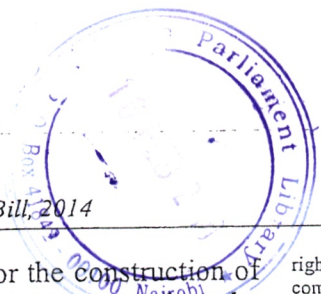
GUEST ATTENDANCE LIST

PURPOSE: THE FOREST CONSERVATION & MANAGEMENT BILL DATE: 2 JUNE 2016

VENUE: SHIMBA THE NATURAL RESOURCES BILL HALL

	NAME	DESIGNATION & ORGANIZATION	CONTACT	SIGNATURE
1	Vicent Msiings	WWF	0719118343	
2	FRIDAH KARIMI GATARI	WWF	0716576714	
3	MUSYOKA MANZI			
4				
5				
6				
7				
8				
9				
10				
11				

Vol 3



The Water Bill, 2014

permit or any extension of that time for the construction of works authorised by the permit, the rights granted to the permit holder under the permit shall cease, and any works constructed, erected, fixed or acquired at the date of such determination may be taken over and operated, or disposed of, in such manner as the Authority or Regulatory Board may specify.

rights if works not completed within time allowed.

7. (1) Every permit holder shall maintain and retain his or her works in a good, proper and workman like manner to the satisfaction of the Authority or Regulatory Board.

Works to be kept in repair.

(2) Pursuant to subparagraph (1), every permit holder shall ensure that-

- (a) the works at all times are of sufficient strength and capacity for the fulfilment of the purposes for which they were constructed; and
- (b) no damage occurs to any road, property or work in their vicinity.

THIRD SCHEDULE (s. 37)
EASEMENTS

1. The acquisition of an easement in accordance with this schedule shall not affect the burden or benefit of any encumbrance on the land existing at the date of the acquisition or the liability or right of any person in respect thereof.

Encumbrances.

2. (1) An easement shall include the right of access, along a route to be approved by the Authority or Regulatory Board after consultation with the owner, to any piece of land contiguous to the water of the permit holder in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the permit holder and for any purpose necessary for the effective enjoyment of the easement.

Easement includes rights of access.

(2) The permit holder shall be the occupier of the land in respect of his or her interest in the land.

3. A permit holder who has acquired an easement which authorises the construction of a canal—

Permit holder to avoid flooding lands and maintain canal satisfactorily.

- (a) shall take and maintain adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying; and
- (b) shall not cause damage to any land in respect of which the easement is held by permitting the accumulation of weeds, silt or any other obstruction or nuisance which might cause flooding, or any other damage.

4. (1) If damage is caused, as the result of works of a permit holder to the land over which the easement is held, the landholder may require the permit holder to construct such additional works as are necessary, in the opinion of the Authority to prevent such damage, and the Authority may by order require the permit holder to construct such additional works at his or her sole expense.

Damage caused by works of permit holder.

(2) If the permit holder fails to comply with an order of the Authority given under this paragraph, the Authority may cancel the permit.

5. (1) A permit holder who has acquired an easement for the construction of works on another landholder's land which prevents the landholder passing freely over or on the land or interferes with his or her existing works, structures or devices upon the land shall, at his or own expense, construct and maintain in repair, to the satisfaction of the Authority or Regulatory Board and under such conditions as it may prescribe—

Permit holder to construct works to enable landholder to enjoy his works if interfered with.

- (a) such bridges and other structures and devices as shall make communication safe and convenient; or
- (b) such works, structures or devices as the Authority or Regulatory Board considers necessary to enable the landholder to enjoy the use of any work, structure or device interfered with.

(2) Any permit holder who fails to comply with the provisions of this paragraph commits an offence.

6.(1) A permit holder claiming an easement under this

Permit holder desiring easement

Act shall serve a notice on the holder of the land on, over or through which the permit holder desires to acquire the easement, and shall in the notice state the following particulars, and such further particulars as may be required by Regulations made under this Act—

to serve notice on landholder.

- (a) a description of the proposed works and a statement of their use;
- (b) a statement of the quantity or discharge of water, if any, to be diverted or dealt with;
- (c) a map showing clearly the nature and locality of any works or area of swamp or land to be reclaimed, if the easement is for reclamation of a swamp or lands;
- (d) a statement of the area of the land (if any) which is or will be—
 - (i) occupied by the works;
 - (ii) flooded as a result of the works;
 - (iii) required for the purposes of inspection and maintenance of the works;
 - (iv) required for the excavation or collection of material for the works, or for the deposit of soil or material derived from the works;
 - (v) required for a road or roads to obtain access to the works; or
 - (vi) required for the control or prevention of pollution of the water to be used; and
- (e) a statement of the compensation which is offered and the period of time during which the permit holder wishes to enjoy the easement.

(2) A copy of the notice shall be sent by the permit holder to the Authority or Regulatory Board.

7. If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the permit holder—

Consent of landholder to easement.

- (a) shall execute a deed including the particulars of the claim as agreed and any other relevant matter; and

- (b) after the execution of the deed by the parties concerned, shall send two copies of the deed certified by the Registrar of Titles to the Authority.

8. If the landholder does not, within two months after the service of the notice provided for in paragraph 6 of this Schedule, agree to the claim for an easement or to any other matter necessary for an easement, the permit holder may apply to the Authority, in the prescribed manner, for an easement, and shall serve notice of such application upon the landholder.

Application where landholder does not consent.

9. (1) The Authority may either dismiss the claim for an easement or grant the claim with or without modification and subject to such conditions, and to the payment of such compensation, as the Authority shall deem just.

Determination of application for easement.

(2) The Authority shall notify the permit holder and the landholder of its decision.

(3) When the claim for an easement has been granted the permit holder shall embody the particulars and other matters pertaining to an easement granted under subparagraph (1) of this paragraph in a deed or other instrument suitable for registration, and shall tender the deed or instrument, together with the amount of any award of compensation made, to the landholder for execution.

(4) If the landholder fails within such time as may be specified by the Authority to execute and deliver the deed or instrument to the permit holder, the Authority may do so on his or behalf, and thereupon the deed or instrument shall have the same effect as if it had been executed by the landholder.

(5) The Registrar of Titles shall register the deed or instrument against the title affected, and two copies of such deed or instrument, certified by the Registrar of Titles, shall be sent by the permit holder to the Authority.

(6) Where an appeal has been lodged under subparagraph (2) of this paragraph, no action shall be taken under subparagraphs (3), (4) or (5) of this paragraph until the appeal has been decided.

10.(1) An easement acquired under this Act shall

Lapse of easement.

lapse-

- (a) if the works authorised are not completed and the water is not utilized within one year from the date of acquiring the easement or within such further period as the Authority may determine; or
- (b) if, at any time, substantial use is not made of the permit in accordance with the terms of the permit for a continuous period of two years, or such longer period as the Authority may, from time to time, determine.

(2) Upon the lapse of an easement, the Authority shall notify the Registrar of Titles, who shall, without charge, cancel the registration of the easement against the title affected.

11. (1) if any work constructed on the land of a person other than the permit holder is out of repair or require cleaning, the permit holder or his or her agent shall, if required in writing by the landholder, repair or clean such works within a reasonable time.

Permit holder to keep works in state of repair.

(2) If the permit holder fails to keep the works in a state of repair the landholder may r carry out the necessary repairs or cleaning and may recover the cost from the permit holder in any court of competent jurisdiction.

(3) The repairs or cleaning under this paragraph shall not be unreasonably demanded, and, in the event of a dispute between the parties, the Authority shall decide what constitutes reasonable repairs or cleaning.

(4) A permit holder who allows any such works to fall into disrepair or, in the opinion of the Authority to be in such a state as to require cleaning, shall be liable for all damage which may arise as a consequence.

12. (1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Authority either before or after the construction of any works, apply for a permit to make use of such works or the proposed works for the diversion, abstraction, storage or use of whatever water he or she may become entitled to divert, store or use under this Act.

Land holder may demand and obtain use of works.

(2) Before such a permit or authorisation is issued by the Authority —

- (a) the landholder shall prove, to the satisfaction of the Authority, that the works of the permit holder can be satisfactorily used for the purpose of the landholder and without material detriment to the permit holder; and
- (b) a proportionate cost of the works shall be paid by the landholder to the permit holder who constructed or is constructing the works as may be agreed on between the parties or, failing agreement, as may be determined by the Tribunal.

(3) The permit holder may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the works made use of, until either party has in writing surrendered such right of user and, in the event of disagreement, the matter shall be decided by the Tribunal.

(4) If such works require modification to enable the landholder to enjoy their use, he or she shall, unless the matter is otherwise agreed, pay to the permit holder—

- (a) the entire cost of modifying them in the manner approved by the Authority; and
- (b) the cost of constructing and maintaining such devices for apportioning the quantities of water as the Authority may prescribe or approve.

(5) When it is proved to the satisfaction of the Authority that due to altered conditions it is just and equitable to revise the rate of payment, the Authority shall inform the parties concerned, and, failing agreement between such parties on any such revision of the rate of payment, the matter shall be referred to and decided by the Tribunal.

13. When works have been excavated by a permit holder on another person's land—

- (a) any land used solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the landholder for his or her own purposes; and

Landholder may use land occupied by excavated material for own purposes.

- (b) the landholder may remove such excavated material except that, no damage shall be done to the works of the permit holder, nor shall the works be obstructed or interfered with by such removal.

14. The deed or other instrument creating an easement acquired under this Schedule shall be registered against the title affected, and a plan, which shall be approved and signed by, or by the Authority of, the Director of Surveys, shall be attached to each document granting the easement.

Easements to be registered.

15. (1) An easement acquired under this Act shall determine if and when the permit for the exercise of rights under which the easement has been acquired is cancelled as provided for in this Act.

Determination of easement.

(2) On the determination of the relevant permit, any works constructed by the permit holder on the lands of another person shall, where the permit holder is the sole permit holder, become the property of such other person unless removed by the permit holder—

- (a) voluntarily, within two years from the date of such determination; or
- (b) at the order of the Authority at the request of the other person.

16. On the determination or variation of an easement, the Authority shall notify the landholder over whose land the easement was granted, and the Registrar of Titles and the landholder concerned may, at the expense of the person in whose name the easement is registered, take such action as is necessary to cause his or her title to be freed from the easement or to record the variation, as the case may require.

Registration of determination or variation of easement.

FOURTH SCHEDULE (s.54)

ABSTRACTION OF GROUND WATER

1. This Schedule shall apply to the extraction of ground water.

Application of this Schedule.

2. (1) A person shall not construct or begin to construct a borehole or well without having first given to the Authority notice of his or her intention to do so.

Notice of intention to construct well.

(2) A person intending to construct a borehole or well

shall apply to the Authority for a permit and shall comply with such requirements as may be imposed by the Authority.

(3) Unless otherwise exempted, a person constructing a well shall keep a record of the progress of the work which shall include—

- (a) measurements of the strata passed through and specimens of such strata;
- (b) measurements of the levels at which water was struck; and
- (c) measurements of the quantity of water obtained at each level, the quantity finally obtained and the rest level of the water.

(4) A person to whom subparagraph (2) applies shall allow any person authorized by the Authority, at any reasonable time—

- (a) to have access to the well;
- (b) to inspect the well and the material excavated from it;
- (c) to take specimens of such material and of water abstracted from the well; and
- (d) to inspect and take copies of or extracts from the record required to be kept under this paragraph.

(5) Where the person constructing a well on any land is not the occupier of the land, the obligation to allow any person authorized by the Authority to exercise his or her rights under this paragraph shall be the obligation of the occupier of the land as well as of the person constructing the well.

(6) The Authority may by notice, whether conditionally or subject to specified conditions, exempt any person, in such circumstances as may be specified in the notice, from the operation of subparagraphs (2) and (3).

3. A person constructing a well, if required to keep records under this Part, shall, within one month of the cessation of the construction send to the Authority —

Submission of records.

- (a) a complete copy of the record, together with the specimens referred to in the record;
- (b) particulars of any test made, before such

cessation of the construction, of the yield of water, specifying—

- (i) the rate of flow throughout the test and the duration of the test; and
 - (ii) where practicable, the water levels during the test and thereafter until the water level has returned to its natural level;
- (c) a statement of whether, in his opinion (as determined by tasting) the water is suitable for drinking or is highly mineralized, as the case may be; and
- (d) if required by the Authority, such water samples as it may consider necessary.

4. (1) Where any well is being constructed within the proximity of an existing well at a distance to be specified by the Authority, the Authority may by notice require the person constructing the well to apply tests, to be specified in the notice, to the existing well and to supply to the Authority the particulars of the results of such tests including the rate of pumping and rest levels of water.

Tests on neighbouring wells.

(2) Where the well to which the tests are to be applied is situated on the property of a person other than the person constructing the well and the person constructing the well is unable for any reason to apply the test, the Authority may, by notice, require the person upon whose property the existing well is situate to apply the tests to be specified in the notice to him or her, and to supply to the Authority the particulars of the results of such tests.

5. Where any borehole contractor constructs a borehole for the purposes of a well on land belonging to or occupied by any other person, the borehole contractor shall be deemed, for the purposes of this Act, to be the person constructing the well.

Contractor deemed to be constructor.

6. (1) A person constructing a well or the owner or occupier of the land on which construction takes place may give notice to the Authority requesting that—

Records may be required to be treated as confidential.

- (a) any copy of, or extract from, the record required to be kept under this Act; or
- (b) any specimen taken or any other particulars

connected with the well, be treated confidentially

(2) In response to such the notice mentioned in subparagraph (1), the Authority shall, if sufficient cause has been shown, to not allow such copy, extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person other than a member of the Authority without the consent of the person giving the notice.

(3) If at any time the Authority gives notice to the person constructing a well or the owner or occupier of the land on which the construction is being done, that, in its opinion, his or her consent is unreasonably being withheld the person may, within three months after the notice given by the Authority, appeal to the Tribunal.

(4) If, at the expiration of the period in the notice, no appeal has been made or, after hearing the appeal, the Tribunal does not make an order restraining it from doing so, the Authority may proceed as if such consent had been given.

7. (1) A person shall not, except with the written permission of the Authority —

Waste of ground water.

- (a) cause any ground water to run to waste from any well, except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the well;
- (b) abstract from any well water in excess of his reasonable requirements and which he cannot use in a reasonable and beneficial manner;
- (c) conduct the water from any well through any channel or conduit so that more than twenty per cent of the water is lost between the point of appropriation and the point of beneficial use except that, where the water from any well is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent of the water in conducting the water from the point of appropriation of the well water to the point of beneficial use;
- (d) use any water from any well for the purpose of

domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste: Except that, where ground water interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the Authority may, in any particular case, by notice permit such water to waste upon such conditions, regarding quantity and method of disposal, as the notice may specify.

8. (1) Any well which encounters salt water, in this Part referred to as a "defective well", shall be securely cased, plugged or sealed off by the owner of the well, so that the salt water is confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as effectively to prevent the salt water from escaping from the strata in which it was found into any other water-bearing strata or on to the surface of the ground except where the Authority or the Regulatory Board has approved the use of desalination systems to make such water potable.

Defective wells.

(2) This paragraph shall apply to wells constructed before or after the commencement of this paragraph.

9. Any person who re-cases or removes the plugs or seals from a defective well, or deposits, or causes or knowingly permits the deposit of, any dirt, rubbish or other material in any such well except with the written permission of the Authority commits an offence.

Interference with defective well.

10.(1) Before any defective well is re-cased or the plugs or removed, the owner of the well, or his duly authorized representative, shall file with the Authority an application for permission to carry out such re-casing or the removal of the plugs or seals.

Application to carry out work on a defective well.

(2) The application shall contain such information as the Authority may require in relation to—

- (a) the name and address of the owner of the well;
- (b) its location, depth and size;
- (c) the amount and location of casing or sealing in the well;
- (d) the distance below the surface of the ground to

the water level in the well;

- (e) the strata penetrated;
- (f) the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum; and
- (g) any other matter specified by the Authority in respect of the well.

(3) The application shall also state the methods proposed for re-casing, re-plugging or resealing of the well.

11. The Authority, after consideration of any application under paragraph 10, may call for additional data, and may make such investigation as it considers necessary, and if the well is found to contain salt water, shall by order give instructions to the applicant, specifying—

Instruction to deal with defective well.

- (a) the work that shall be done by the owner to place it in a satisfactory condition; and
- (b) the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

12. The Authority may on its own initiative, or upon information or complaint from any source, make an examination of any well suspected of containing salt water, and may by order issue instructions for curing any defects in the well.

Authority may inspect the well.

13.(1) Upon completion of the works in pursuance of any instructions issued under this Schedule—

Sworn statement to be submitted.

- (a) the contractor who carries out the work; or
- (b) if the work is done without a contractor, the owner of the well, shall file with the Authority a statement sworn or affirmed specifying in detail the manner in which such work was done.

(2) The statement shall be filed within thirty days after the completion of the work.

14. (1) Upon receipt of a statement under paragraph 13, the Authority shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily performed.

Additional work on defective well.

(2) If the Authority determines that the work has not

been satisfactorily performed, it shall by order issue additional instructions specifying the additional work required to place the well in a satisfactory condition, and specifying the time for the completion of such additional work.

(3) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the Authority as provided for in paragraph 13.

15. Every person abstracting ground water by means of a well shall, in order to prevent contamination or pollution of the water—

Contamination and pollution of ground water.

- (a) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;
- (b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe;
- (c) dispose of all return or waste water by means other than by return to the well;
- (d) extend the well casing to a point not less than twenty centimetres above the elevation of the finished pump house or pump pit floor;
- (e) use either welded or screw type well joints on the casing if made of metal;
- (f) dispose of effluents or drainage from any household, stable factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or ground water; and
- (g) carry out such other work as the Authority may by order direct, from time to time, for the prevention of contamination or pollution.

16. If—

- (a) during the construction of a well, water is encountered in an aquifer; and
- (b) water from a water table or lower aquifer tends to flow from the upper aquifer to the lower aquifer; and
- (c) in the opinion of the Authority this is likely to

Authority may order special measures to safeguard ground water resources.

prove detrimental to the ground water resources of the area,

- (d) the Authority may order what special measures shall be taken by the owner of the well so that the water from the higher aquifer cannot flow to the lower aquifer.

17. Every artesian well and every sub-artesian well shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow there from over the surface of the ground or wasting from the well through the strata through which it passes.

Artesian wells to be ceased.

18. (1) A person who neglects or fails to comply with any order or requirement given or imposed on him by or under this Schedule shall be guilty of an offence and liable on conviction to a penalty not exceeding one hundred thousand shillings.

Offence and penalty.

(2) Liability of any person under this paragraph is in addition to any liability of the person under paragraph 18.

(3) A licensee shall pay compensation on just terms to the owner or occupier, as the case may be, of any premises within the prescribed area in respect of—

- (a) any curtailment of or injury to his legal rights by restrictions imposed by such regulations; and
- (b) any expenses incurred by him complying with a requirement to construct and maintain any works, or take other action, which would not, but for the provisions of this Act, lawfully have been required,

and any disagreement as to the amount of such compensation shall be resolved and determined by the Tribunal.

(4) Where any person has failed to comply with a requirement notified to him —

- (a) he has not appealed against the requirement and the time for appeal has expired; or
- (b) his appeal has been dismissed or the requirement has been affirmed or varied in consequence of his appeal and he has failed to comply with the

requirement as so affirmed or varied, the licensee may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as varied on appeal and may in the Tribunal recover from the owner or occupier concerned, as a debt, expenses reasonably incurred by him in so doing.

(5) Expenses recoverable under subsection (8) do not include expenses incurred in respect of the licensee may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as varied on appeal and may in the Tribunal recover from the owner or occupier concerned, as a debt expenses reasonably incurred by him in so doing.

(6) Expenses recoverable under subsection (8) do not include expenses incurred in respect of —

- (a) works the construction of which; or
- (b) action which,

could not lawfully have been required otherwise than upon payment of compensation by the licensee.

(7) Two or more licensees may combine for the purpose of making and enforcing regulations under this section, and the provisions of this Act shall in any such case have effect as if references therein to a references were references to two or more such licensees acting jointly.

(8) Section 34 of the Interpretation and General Provisions Act shall not apply to any regulation made under this section.

MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill was submitted by the Cabinet Secretary for Environment, Water and Natural Resources. The main object of this Bill is to make provision for the regulation, management, conservation, use and development of water and sewerage services. A new statutory regime is necessitated by the need to conform to the Constitution, international instruments that Kenya has ratified (for instance the International Covenant on Economic and Social Rights) by virtue of Article 2(6) of the Constitution as well as Vision 2030 and the Millennium Development Goals.

PART I of the Bill provides for the preliminary provisions. **Clause 4** provides for the principles and values that should guide any person administering the Bill which include Articles 10, 43, 60 and 232 of the Constitution.

PART II of the Bill provides for the ownership, use and management of water resources. **Clause 5** vests every water resource in the national government to be held in trust for the people of Kenya. **Clause 8** provides for national public works which include water works for bulk distribution, and the provision of water services, inter-basin water transfer facilities and water storage; and empowers the Cabinet secretary to compulsorily acquire land for the purposes of such public works.

PART III of the Bill deals with the regulation of the management and use of water resources. **Clause 9** establishes the Water Resources Authority (Authority) as a body corporate. **Clause 10** provides for the functions of the Authority which include the formulation and enforcement of standards, procedures and regulations for the management and use of water resources and flood mitigation as well as the determination and collection of permit and water use fees and charges. **Clause 12** provides for the composition of a Board to exercise the functions of the Authority. **Clause 18** provides for the classification of water resources for the purpose of determining water resources quality objectives. Under **clause 19** the Authority is required to put in place a national monitoring and information system on waters resources. **Clauses 20 and 21** provide for the conservation of catchment areas and groundwater respectively. **Clause 22** empowers the Authority to designate certain areas as basin areas and **clause 23** provides for the establishment and composition of basin water resources committees for each basin area. **Clause 26** provides for the formulation of a basin area water resources management strategy by a basin water basin water resources committee in consultation with the Authority and the relevant county governments. **Clause 27** provides for the establishment and functions of water resources users associations as associations of water

resource users at the sub-basin level for purposes of collaborative management of water resources and the resolution of conflicts. **Clauses 28 and 29** establish the National Water Harvesting and Storage Authority and the Water Harvesting and Storage Board respectively. Under **clause 34** a permit is required for the use, drainage or discharge of a pollutant into any water resource. **Clause 37** allows a permit holder to acquire an easement on any land for the construction of water works. Under **clause 47** the Authority may cancel or vary a permit issued to a permit holder. **Clause 58** permits an authorized person to enter any land for purposes of enforcing the Act.

PART IV provides for water services generally. Under **clause 61** every person in Kenya has the right to clean and safe water in adequate quantities in accordance with Article 43 of the Constitution. **Clause 62** requires the Cabinet Secretary to formulate a National Water Services Strategy after public consultation. **Clause 63** establishes water works development boards as agencies of the national government for purposes of developing national public water works and the provision of technical assistance to the county government water services providers. **Clause 68** establishes the Water Services Regulatory Board (Regulatory Board) whose principal object is to protect the interests and rights of consumers in the provision of water services. **Clause 69** provides for a Regulatory Board to manage the affairs of the Regulatory Board while **clause 70** provides for the functions and powers of the Regulatory Board.

Clause 72 provides for the accreditation of water services providers by the Regulatory Authority. Under **clause 73**, the Regulatory Board is required to maintain a register of all accredited water services providers in the prescribed format. **Clause 75** empowers county governments to establish water service providers in accordance with the standards of commercial viability set out by the Regulatory Board. Under **clause 83**, a water services provider shall not provide water services unless issued by a licence by the Regulatory Board after a process of public consultation. Under **clause 91**, a water services provider may enter into a public private partnership for the exercise of any of its functions as a licensee. Under **clause 92** every county government is required to put in place measures for the provision of water services to rural areas that are not commercially viable for the provision of water services.

In **clause 100**, the regulatory authority in consultation with the respective county governments may impose a special regulatory regime on a licensee who persistently contravenes the requirements of the Bill. **Clause 106** imposes a duty on a licensee receiving trade effluent into its sewerage system to ensure that it puts in place appropriate measures for the receipt and handling of such effluent. Under **clause 107** the Regulatory Board

may impose a sewerage services levy on all water services to cover a part of the cost of disposing water.

PART V of the Bill provides for the Water Sector Trust Fund. **Clause 112** sets out the objects of the Fund which include the provision of conditional and unconditional grants to counties to assist in the development and management of water services in marginalized or unserved urban areas.

PART VI provides for dispute resolution. **Clause 117** establishes a Water Tribunal (Tribunal) while **clause 119** sets out the jurisdiction of the Tribunal. **Clause 122** provides for the right of appeal to the Environment and Land Court.

PART VII sets out the financial provisions in relation to the body corporates established in the Bill. **Clause 124** outlines the monies that shall constitute the funds of such body corporates and **Clause 125** provides for the financial year of the body corporates. **Clause 126** provides for the preparation of annual estimates of the body corporates before the end of each financial year.

PART VIII of the Bill contains the general provisions. **Clause 131** provides for the service of notices to applicable persons and **clause 137** provides for public consultation. **Clause 143** contains miscellaneous offences.

PART VI of the Bill provides transitional provisions.

The **First Schedule** provides for the membership procedure of boards and committees.

The **Second Schedule** provides for the conditions relating to the construction of works.

The **Third Schedule** contains provisions relating to the easements.

The **Fourth Schedule** contains provisions relating to the abstraction of groundwater.

This Bill is not a Bill concerning county governments.

The enactment of this Bill will occasion additional expenditure of public funds which shall be provided for through the estimates.

The Water Bill, 2014

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 7th July, 2015.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Speaker of the National Assembly

REPUBLIC OF KENYA



NATIONAL GOVERNMENT

COUNCIL OF GOVERNORS

MEMORANDUM OF UNDERSTANDING ON THE AMENDMENT OF THE WATER BILL, 2014

PREAMBLE

MINISTRY OF ENVIRONMENT, WATER AND NATURAL RESOURCES, a Government of Kenya Ministry charged with the mandate to promote, monitor, conserve, protect and sustainably manage the environment, forestry, wildlife and water resources for national development of P. O. Box Number 49720-00200, Nairobi (Hereinafter referred to as "the Ministry", which expression shall where the context admits so include its successors and assigns) on the one part.

-and-

THE COUNCIL OF GOVERNORS, a non-partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as "the Council", which expression shall where the context admits so include its successors and assigns) on the other part

SECTION 1

Article 1

In recognition of the fact that the right to water is a constitutionally recognized fundamental right of every Kenyan and that the government, both at the national and county level is the primary duty bearer in ensuring the promotion of this right;

Conscious of the role that the Water Bill 2014 has in ensuring access to the right to water through sectoral reforms and decentralization of water services;

In further recognition of the need to align the Water Act, 2002 with the Constitution of Kenya, 2010 and further subject it to stakeholder input hence the justification of the consultative meeting between the Ministry and the Council of Governors held on 29th May, 2014 at the School of Monetary Studies, Nairobi.

This memorandum is the out come of the above consultative meeting. The details of proposed amendments to the Water Bill 2014 are annexed to this memorandum.

Aware of the need for coordinated action between the national and county governments to ensure that the Water Bill, 2014 properly responds to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

IT IS HEREBY AGREED AS FOLLOWS:

Article 2

WATER WORKS DEVELOPMENT BOARDS

1. The Water Works Development Boards shall be established as and where the need arises by the Cabinet Secretary in consultation with the County Governments. Once the beneficiary Counties have established a joint institution to take over the functions of the Board, the Board shall transfer its functions to the County Governments and stand dissolved thereafter.
2. The Water Works Boards shall take over the functions of the Water Services Boards where they are needed. Accordingly, the Water Bill shall provide that the current functions of the WSBs will be performed on a transitional basis until county governments take over the functions.
3. Intra-county Water Services Board assets and liabilities associated to such assets shall be taken over by the counties in which they are located.
4. The Cabinet Secretary for the Ministry shall appoint members to the Boards in consultation with the Council of Governors.

Article 3

WATER AND SOIL CONSERVATION

1. Basin Water Resources Committees shall be established for the management of Water Resources.
2. The Basin Water Resources Committees will have jurisdiction over the basin areas in respect of which they are formed.

3. The Basin Water Resources Committees shall be established by the Cabinet Secretary for the Ministry.
4. The Basin Water Resources Committees shall constitute of representatives from all the counties and National Government.
5. The duties of the Basin Water Resources Committees shall include soil and water conservation.
6. There must be Soil and Water Conservation shall done in partnership with the community .
7. The Counties shall develop legislative framework to guide the water and soil conservation process.
8. Water use fees shall be used in water resources management and soil and water conservation through a specific agreement.
9. Water use fees shall be collected by the Water Resources Regulatory Authority and the apportionment, between Water Resources Regulatory Authority the national and an entity to be established by county governments for water and conservation, shall be decided by the CS in consultation with the Council of Governors.

Article 4

WATER SECTOR TRUST FUND

1. The Water Sector Trust Fund established under this Act shall mobilize resources but shall not obtain its finances from the Equalization fund as this will be unconstitutional.
2. The Fund shall not obtain its finances from the County governments but shall only make provision for the counties to contribute counter part funds for the implementation of particular projects within the counties.
3. The Fund shall be a resource mobilization tool as opposed to competing with the counties for funds.
4. The Counties may establish County Trust Funds which shall mobilize resources for the provision of water services.

Article 5

STANDARDS AND REGULATION GUIDELINES

Standards, regulations and guidelines shall be established to determine the qualifications of the water service provider


1. The standards of water service provision shall be set at the national level.
2. Regulation and enforcement is a shared responsibility between the national and county governments
- 3.

Article 6

LAW

This Memorandum of Understanding is governed by the Laws of Kenya

SIGNED



John Rao Nyaoro
For Principal Secretary
Ministry of Environment, Water
And Natural Resources
NAIROBI



Jacqueline Akhalemesi Mogeni
For Chairman Legal and Human Rights Comm.
Council of Governors
NAIROBI

REPUBLIC OF KENYA



**THE SENATE
ELEVENTH PARLIAMENT**

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

In the Matter of Consideration of

The Water Bill (National Assembly Bill No. 7 of 2014)

Article 118 of the Constitution and Standing Order 130 of the Senate Standing Orders.

PUBLIC HEARING/ RECEIPT OF MEMORANDA

Following the introduction of the above listed Bill to the Senate, the Bill was committed to the Standing Committee on Land and Natural Resources for consideration pursuant to Standing Order 130 of the Senate Standing Orders.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4) of the Senate Standing Orders, the Standing Committee on Land and Natural Resources now invites interested members of the public and organizations to submit any representations that they may have on the above Bill.

The representations may be made orally or by submission of written memoranda in the following manner:-

1. Public Hearings shall be held on **Wednesday 30th September, 2015 from 10:00 a.m. to 1:00 p.m. at Old Chamber, County Hall, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi,** hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Building, Nairobi** or emailed to senatebills@parliament.go.ke, to be received on or before **Wednesday 30th September, 2015 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/plone/senate>.

**J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

Annex V: Public Hearing Attendance Schedule

1. Eng. Robinson K. Gaita -Ministry of Water & Irrigation
2. Ms. Emerald Midega -Water Resources Management Authority (WARMA)
3. Ms. Janet Olewe -Water Resources Management Authority (WARMA)
4. Mr. Boniface K. Muthee -Water Action Group–WASREB
5. Mr. George Mungau Okonji -OWEAC Africa
6. Mr. Chekai Musa -Bunge La Mwananchi
7. Mr. Hanington Kangethe -Resident from Kasarani