

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

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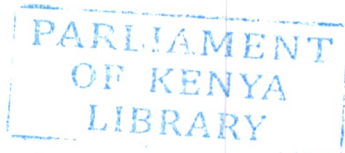
THE STANDING COMMITTEE

ON

ENERGY  
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A REPORT ON THE PETROLEUM (EXPLORATION, DEVELOPMENT AND  
PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2015)

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Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
**NAIROBI.**

Paper laid by Sen.  
Sang on 26/07/16



14

JULY, 2016

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## ABBREVIATIONS

KEPSA	Kenya Private Sector Alliance
KPLC	Kenya Power and Lighting Company
PIEA	Petroleum Institute of East Africa

## **PREFACE**

### **Establishment of the Committee**

The Senate Standing Committee on Energy is established pursuant to standing order 208 of the Senate Standing Orders. The Committee is mandated *to consider all matters relating to fossil fuels exploration, development, production, maintenance and regulation of energy.*

In the execution of its mandate, the Committee oversees the Ministry of Energy and Petroleum.

### **Membership of the Committee**

The Committee is comprised of the following members;

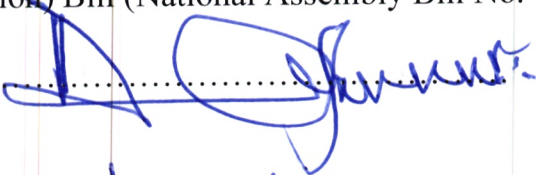
1. Sen. Gideon Moi, MP **-Chairman**
2. Sen. Danson Mwazo, MP **-Vice- Chairman**
3. Sen. Kiraitu Murungi, MP
4. Sen. Abu Chiaba, MP
5. Sen. David Musila, MP
6. Sen. Elizabeth Ongoro, MP
7. Sen. Kimani Wamatangi, MP
8. Sen. John Munyes, MP
9. Sen. Kipchumba Murkomen, MP

### **Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate, for the support extended to it in the conduct of the public hearings. Similarly, the Committee extends gratitude to the institutions/Organisations that made submissions on the Bill, both orally and in writing.

**Mr. Speaker Sir,**

It is my pleasant duty, pursuant to Standing Order 201, to present a Report of the Standing Committee on Energy, on the The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)

Signed.....

Date.....14/07/2015.....

**SEN. DANSON MWAZO, M.P,**  
**VICE-CHAIRPERSON**  
**STANDING COMMITTEE ON ENERGY.**

The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) was passed by the National Assembly, with amendments, on 3<sup>rd</sup> May, 2016 and transmitted to the Senate for its consideration and passage.

The Bill was read a first time in the Senate on 2<sup>nd</sup> June, 2016 and Committed to the Standing Committee on Energy, pursuant to Standing Order 130(1) of the Senate Standing Orders.

### **1.1 OBJECTS OF THE BILL**

The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) seeks to provide a framework for the contracting, exploration, development and production of petroleum.

### **1.2. OVERVIEW OF THE BILL**

Part II of the Bill provides a framework for the development of a National Upstream Petroleum Policy and Plan through a consultative process and an upstream petroleum strategic plan in line with the national policy. This Part prohibits the engagement by any person of any upstream petroleum operations unless such person has obtained the approval of the Cabinet Secretary or Authority. Of noting is the fact that the Bill provides that the National Government may conduct upstream petroleum operations on its own, through the national oil company, through contractors or as may be prescribed under the Act.

Part III of the Bill sets out the institutions that are to be involved in the implementation of the Bill. It sets out the role of the Cabinet Secretary who has the overall responsibility in as far as reviewing applications for licences, entering or revoking agreements and overseeing the undertaking of upstream petroleum operations and matters relating to policy. This Part also provides for the establishment of a National Upstream Petroleum Advisory Committee whose main responsibility is to advise the Cabinet Secretary on matters relating to upstream petroleum operations and matters pertaining to petroleum



agreements. This Part also provides for the establishment of an Upstream Petroleum Regulatory Authority whose key role is to monitor and regulate upstream petroleum operations in Kenya, the collection and provision of information relating to such operations for purposes of fees and tax collection and the enforcement of health, safety and quality standards in the upstream petroleum sector. It also compels provides for an appeals process to the Energy and Petroleum Tribunal established under the Energy Act, by any person aggrieved by the decision of the Authority. It also compels the Authority to establish a national data centre for the storage, analysis and management of petroleum data from sedimentary basis and filed operations.

Part IV of the Bill provides for upstream petroleum rights and management of petroleum resources. It provides for the vesting of all petroleum existing in its natural condition in the National Government in trust for the people of Kenya and provides for the division of Kenya into blocks for the purposes of exploration. It imposes an obligation on any person intending to conduct upstream petroleum operations to enter into a petroleum agreement Cabinet Secretary and to obtain an operational permit from the Authority and set out the procedure for these processes. It for the obtaining of a non-exclusive exploration permit from the Authority for the purpose of conducting reconnaissance and general investigations in an area by a person who intends to engage in upstream petroleum operations.

This Part also compels a contractor who discovers the existence of petroleum to notify the Cabinet secretary within forty eight hours of the discovery and makes it an offence for the contractor to notify the public. This Part also requires submission of a Field Development Plan to Parliament for ratification once the commerciality of a block is declared by a contractor. It sets out the process of obtaining a production permit and related processes as well as the circumstances under which a unitization agreement may be entered into in relation to blocks that are adjacent to each other in respect of which petroleum agreements are held by different contractors. It also sets out the process of decommissioning a plant and the submission of a field decommissioning plan to the Authority prior to the issuance of a production permit. In addition, this Part provides for

the establishment of a decommissioning fund in respect of each development area for use in the implementation of a decommissioning plan and the disposal of decommissioned facilities which are all to revert to the National Government.

Part V of the Bill provides a framework for the submission of information by a contractor to the Authority and prohibits the disclosure of such information without the consent of the person from whom the information was obtained except in the case of disclosure to the Cabinet Secretary or person involved in the upstream operations.

Part VI provides a framework for local content and training and compels a contractor and sub-contractor to give priority to local goods and employment engagement of Kenyans in the operations. It also provides for the establishment of a training fund for the purpose of training Kenyans in upstream petroleum operations and requires any institution intending to provide capacity building in upstream petroleum operations to be accredited in accordance with regulations to be made under the Act. The funds of the Training Fund shall consist of monies raised by contractors as training contribution.

Part VII provides a framework for the financial and fiscal obligations of contractors under the Act with regard to the payment of annual fees and a signature bonus and the sharing of profits derived from upstream petroleum operations between a contractor and the National Government, the County Government and the local community. In particular, it provides that the County Government's share shall be twenty percent of the National Government's share and that of the local community shall be five percent, payable to a trust fund which is to be managed by a board of trustees established by the County Government in consultation with the local community.

Part VIII provides a framework for the compliance with environmental, health and safety standards including waste management, the need for proper maintenance of property with respect to a contract area, safety precautions and emergency preparedness as well as disaster management.



Part IX of the Bill provides for the process of accessing and entry into land for the purpose of carrying out upstream petroleum operations including investigations and exploration of such land. It also sets out a framework for consent and for compensation once the private land of a person has been entered into for the purpose of preliminary investigations and upstream petroleum operations.

Part X sets out miscellaneous provisions. It encourages the adoption of alternative forms of dispute resolution by parties to a dispute as well as the indemnity by a contractor under a petroleum agreement of the National Government against any action or liability. It also provides for the development by the Cabinet Secretary, of a framework for reporting, transparency and accountability in the petroleum sector and the publication of information relating to this sector. It also provides for the forfeiture of property in addition to any other penalty that may be imposed by a person who commits an offence under the Act. It also sets out a number of offences including the illegal dealing in land acquired for a project under the Act and the destruction of petroleum infrastructure.

This Part also provides for the protection of community rights to information, participation, compensation, sensitization and capacity building. It further confers on the Cabinet Secretary the power to make regulations to operationalize the Act once it comes into force and sets out a deadline of one year for the making of the regulations.

Part XI provides for the repeal of the existing Petroleum (Exploration and Production) Act and for the saving of statutory instruments and subsidiary legislation for as long as it is not inconsistent with the provisions set out in the Bill as well as existing contractual rights and obligations. It also confers on the Energy Regulatory Commission the powers and the functions conferred on the Authority prior to the establishment of such Authority.

The First Schedule to the Bill sets out the procedures to be followed by the Board in the conduct of its meetings. The Second Schedule sets out a model production sharing contract which may be adopted by parties to a petroleum agreement.

## CONSULTATIONS

Pursuant to Article 118 of the Constitution and Standing Order No. 130 (4), the Senate Standing Committee on Energy, held a public hearing on The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015). The public hearing was held on Wednesday, 15<sup>th</sup> June, 2016 in the Mini Chamber, First Floor, County Hall, Parliament Buildings, Nairobi. The Committee received submissions from Kenya Private Sector Alliance (KEPSA), Petroleum Institute of East Africa, Strathmore Extractives Industry Centre, Kenya Oil and Gas Working Group, Kenya Civil Society Platform on Oil and Gas, Ministry of Energy and Petroleum, Kenya Power and Lighting Company and Kenya Law Reforms Commission.

The submissions received by the Committee on Energy are summarized as below:

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
1.	Long title and short title	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>In the long title, the Bill intends to provide a framework for the contracting, exploration, development and production of petroleum, among other objectives. In the short title however, the word “contracting is omitted.</li> <li>The long title also makes reference to “relevant articles of the Constitution” but does not specify them, which creates ambiguity.</li> </ul>
2.	Clause 2	Kenya Oil and Gas Working Group  Petroleum Institute of East Africa	<ul style="list-style-type: none"> <li>The Bill defines “local community” geographically to mean a sub-county or sub-counties where a petroleum resource is exploited. The definition should instead refer to the communities living within areas of upstream operation</li> <li>The definition of the phrases local content and local community be synchronized with the definition in the Energy Bill (National Assembly Bills No. 50 of 2015)</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The aim of both laws is to protect the nation and its people. Therefore, synchronizing the definitions will help avoid potential conflicts in the definition.</p>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>The Bill defines “compulsory acquisition” to mean acquisition as provided for under any relevant law.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>This definition is vague. There should be reference to the specific laws to avoid any doubt.</p> <ul style="list-style-type: none"> <li>The following words are poorly defined-</li> </ul> <p>“associated natural gas”, best petroleum industry practices”, “midstream petroleum operations”, “natural gas”, “non-associated natural gas”, “operational permit”, “petroleum agreement”, “upstream petroleum operations” and “waste”.</p> <p style="text-align: center;"><b>Rationale</b></p> <p>It is improper to define a word by using the same word.</p>
3.	Clause 4	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 4(2) should be deleted and the specific Acts that give the consent, amended to align to this Act.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>Clause 4(1) is sufficient and does not need reinforcement in clause 4(2).</p>
4.	Clause 5	Kenya Law Reform Commission  Strathmore University Extractives Industry Centre  Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 5(1) be amended by deleting the words “at least” appearing immediately before the words “every five years” and substituted therefor the word “once”.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>As the provision is, it does not specify the number of times.</p> <ul style="list-style-type: none"> <li>Clause 5(2) be deleted since public participation is a constitutional principle that does not need any more emphasis.</li> <li>Clause 5(2) is one of the few provisions of the Bill that call for participation of all stakeholders. The policy is more likely to be successful if it is the product of an all-inclusive process that is open and participatory</li> <li>There is need to mention what happens after the report provided for in clause 5(3) has been published.</li> </ul>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
5.	Clause 6	Strathmore University Extractives Industry Centre  Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>There is need to ensure that the strategic plan provided for under clause 6(1) is comprehensive. The approach should provide the government with a framework to better understand and implement initiatives.</li> <li>Clause 6(1) be amended by inserting the word “national” immediately after the words “publish and review”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The marginal note should tally the provisions of the clause.</p>
6.	Clause 8	Kenya Law Reform Commission  Kenya Civil Societies Petroleum Oil and Gas Working Group  Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 8(1) is a penal provision and should be placed accordingly.</li> <li>Clause 8(2) should be re-drafted. Use of the words “terms and conditions of a petroleum agreement” is incorrect. If there are any terms and conditions that require legislative recognition, they should be substantively mentioned.</li> <li>Clause 8(4) needs to clarify the meaning of “specified area”. This term should be defined and on a clause of its own.</li> <li>The words “Participation agreement” appearing immediately before the words “entered into” in clause 8(6) should be defined</li> <li>The terms and conditions of the participation agreement referred to in clause 8(6) should be mentioned specifically.</li> </ul>
7.	Clause 10	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li><b>Clause 10 is too long and needs to be re-drafted and broken into paragraphs. The language also needs to be changed. The marginal note does not reflect the substance of the clause.</b></li> </ul>





CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		<p style="text-align: center;"><b>Rationale</b></p> <ul style="list-style-type: none"> <li>• The principles on sentencing namely of proportionality, fairness and equality as provided for in the Judiciary Taskforce: <b>Sentencing Policy Guidelines</b> be applied.</li> <li>• Fines and sentences introduced under the Petroleum Bill tend to be discriminative and contrary to the Judiciary Sentencing Policy as enumerated below.</li> <li>• Several sections in the Petroleum Bill introduce very punitive fines and custodial sentences.</li> <li>• That offences related to breach (wilful or otherwise) to life, environment or property be expunged from the Petroleum Bill as they are covered under other substantive statutes such as the Penal Code and Environmental Management and Coordination Act and Occupational Safety and Health Act .</li> <li>• The Petroleum Bill to a very large extent prescribes minimum sentences and fines as opposed to maximum sentences and fines.</li> <li>• The sentences proposed under the Petroleum Bill are excessive and subject those persons governed by the said bill to unfair treatment in comparison to those governed by other legislation e.g. Penal Code (Cap 63), Mining Bill and Energy Bill). <b>See Appendix 3 for details</b></li> <li>• The <b>Sentencing Policy Guidelines</b> as prepared by <b>Judiciary Taskforce</b> led by Justice Mbogholi Msagha and endorsed by the Chief Justice of Kenya <b>Hon. Willy Mutunga</b> provide that: <ul style="list-style-type: none"> <li>i. The principles of Proportionality, Equality, Uniformity, and Parity be observed. <b>Article 50(1) of the Constitution of Kenya</b> upholds the right to have a fair determination of a matter where fairness demands that the sentence imposed should neither be excessive nor less than merited;</li> <li>ii. Legislation empowers the judiciary to determine the most suitable sentence for each individual offender. However the said powers, among other factors, contribute towards the disparities in the sentences imposed upon offenders who have committed similar offences under similar circumstances. This lack of uniformity and certainty in sentencing undermines public confidence in the Judiciary;</li> </ul> </li> </ul>



CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		<p>iii. That even with the wide discretionary powers of sentencing, there is a requirement for judicial officers to be accountable for the sentence imposed;</p> <p>iv. The sentences imposed have sometimes failed to take into account overarching objectives of sentencing.</p>
8.	Clause 11 Strathmore University Extractives Industry Centre	The Bill should define what constitutes Best Petroleum Industry practices since contractors subscribe to different standards.
9.	Clause 12 Strathmore University Extractives Industry Centre  Kenya Law Reform Commission  Kenya Oil and Gas Working Group  Kenya Civil Societies Petroleum Oil and Gas Working Group  Petroleum Institute of East Africa	<ul style="list-style-type: none"> <li>• Clause 12(2) should provide for the participation or consultation from the stakeholders in the industry in order to improve accountability</li> <li>• Clause 12(3) should specify which Director-General will be the Secretary to the Advisory Committee. Whether the Director General of the Authority or of NEMA</li> <li>• Clause 12(4) of the Bill: the four other members mentioned should include representatives from the National Land Commission, Kenya Maritime Authority, Chamber of Commerce, a representative from the CSOs nominated by the NGO Council.</li> </ul> <p>Amend clause 12(4) of the Bill to read-</p> <p>“The Advisory Committee may co-opt such other members as they deem necessary but in any case not more than four members shall be co-opted and provided further that such other co-opted members comply with the requirements under section 17(2) and other requirements set out in Chapter six of the Constitution and the individuals have no personal or institutional conflict of interest.</p> <p style="text-align: right;"><b>Rationale</b></p> <p>This will make sure that the co-opted members meet the</p>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			<p>minimum standards set out in the Act. It will help achieve consistency.</p> <ul style="list-style-type: none"> <li>Given the role of National Upstream Petroleum Advisory Committee which included giving technical advice to the Cabinet Secretary on Petroleum Policy and Statutes as well negotiate with investors on the terms of the licensed in Petroleum blocks. While it is noted that subsection (4) provides for co-option, it is not guaranteed that those to be co-opted will be from private sector and if at all the proviso will be effected.</li> <li>It is critical to include institutional private sector representatives should be included in the National Upstream Petroleum Advisory (NUPAC) Committee to ensure appropriate inclusivity of Public-Private stakeholder consultative engagements in matters of National significance.</li> </ul>
10.	Clause 13	Kenya Civil Societies Petroleum Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Insert a new clause 13(3) as follows-</li> </ul> <p>“Parliament shall review the Cabinet Secretary’s discretion.</p> <p style="text-align: center;"><b>Rationale</b></p> <p>The Cabinet Secretary is granted excessive power and the creation of this body, even though a Parliamentary Committee, results in creation of an entity that gives taxpayers value for their money.</p>
11.	Clause 15	KEPSA	<ul style="list-style-type: none"> <li>That the Bill be amended by inserting the following new subsection (2);</li> </ul> <p><i>(2) The provisions of the Competition Act shall not apply to upstream petroleum operations and transactions regulated under the powers of the Authority as envisioned in this section.</i></p> <p style="text-align: center;"><b>Rationale</b></p> <p>Ambiguity in this role of the Authority seeing that, this section provides for the power to “<i>ensure that competition and fair trade practice is maintained...</i>”. This conflicts with other sector regulators e.g. the Competition Authority as under Section <b>5</b> of the <b>Competition Act</b>, the role of <b><i>promoting and protecting competition</i></b> is bestowed to the Competition Authority.</p>





CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
	<p data-bbox="375 369 630 548">Kenya Civil Societies Petroleum, Oil and Gas Working Group</p> <p data-bbox="375 996 550 1108">Kenya Law Reform Commission</p>	<p data-bbox="694 145 1508 257">Authority as 2 Civil Society Organisation representatives, 2 representatives from the community and a representative from the academia.</p> <p data-bbox="1005 268 1141 302"><b>Rationale</b></p> <p data-bbox="654 302 1508 380">There has been no criteria provided for use by the Cabinet Secretary when appointing members to the Board.</p> <ul data-bbox="654 459 1300 492" style="list-style-type: none"> <li>• Clause 17(2) be amended by deleting (b) (vii).</li> </ul> <p data-bbox="1005 560 1141 593"><b>Rationale</b></p> <p data-bbox="654 593 1492 638">The provisions of this paragraph negate the other qualifications.</p> <ul data-bbox="654 750 1252 784" style="list-style-type: none"> <li>• Inserting a new paragraph (f) as follows –</li> </ul> <p data-bbox="654 851 1380 896">“(f) has no personal or institutional conflict of interest”</p> <p data-bbox="1005 929 1141 963"><b>Rationale</b></p> <p data-bbox="654 963 1524 1153">There is fear that certain individuals and organisations will place themselves in a position to be considered for these positions on the Board of Directors of the Authority, despite conflicts of interest they have between personal or professional interests and those of the Authority.</p> <ul data-bbox="654 1187 1524 1265" style="list-style-type: none"> <li>• Clause 17(2) be deleted and substituted therefor the following new clause-</li> </ul> <p data-bbox="654 1332 1524 1444">“A person shall be qualified for appointment as a chairperson or member of the Board sub-section (1)(a) or a member under (1)(e) if that person-</p> <ul data-bbox="718 1444 1524 1870" style="list-style-type: none"> <li>(a) holds a degree from a university recognized in Kenya; and</li> <li>(b) has knowledge and experience in any of the following fields- <ul data-bbox="774 1624 1109 1870" style="list-style-type: none"> <li>(i) engineering;</li> <li>(ii) physical sciences;</li> <li>(iii) law;</li> <li>(iv) finance;</li> <li>(v) economics; or</li> <li>(vi) energy.</li> </ul> </li> </ul>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			<p>Amendment to apply <i>mutatis mutandis</i> in clause 23(3)(b) for the appointment of a Director General.</p> <p style="text-align: center;"><b>Rationale</b></p> <p>The current provision seems to mean that a person is qualified for the appointments if such a person holds degrees and has experience in all the disciplines, which is impractical.</p>
14.	Clause 18	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 18(1) should be aligned with the Mwongozo code of governance for state corporations which states that every board member can sit on the Board for a term of three years renewable once.</li> </ul>
15.	Clause 34	KEPSA	<ul style="list-style-type: none"> <li>The Bill be amended in clause 34(5) by deleting the words <b>“not less than one million shillings or to an imprisonment for a term not exceeding two years or both”</b> and substituting therefor the words <b>“not exceeding five hundred thousand shillings”</b>.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b)</p> <ul style="list-style-type: none"> <li>The Bill be amended in clause 34(6) by deleting the words <b>“not exceeding one hundred thousand shillings”</b> and substituting therefor the words <b>“not exceeding five thousand shillings”</b></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b)</p> <p>Also- Daily penalty needs to be aligned to what other statutes regulating comparable industries, provide.</p>
16.	Clause 35	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>The Bill is not clear how the authority will ensure the transparency provided for in paragraph (d).</li> </ul>
17.	Clause 42	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>The Bill is not clear as to what will inform the opening up of certain areas of the country into blocks. This may lead to more negative impacts than the positive impacts. Strategic Environmental Assessments can help account for impacts within the wider strategy making process, before irreversible decisions are enacted at project sites.</li> </ul>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
18.	Clause 43	KEPSA  Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>The Bill be amended in clause 43(4) by deleting the words <b>“not less than twenty million or to an imprisonment for a term not exceeding five years or to both.”</b> and substituting therefor the words <b>“not exceeding ten million shillings.”</b></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b)</p> <p>The imprisonment term of “not less than two years” proposed in clause 43(4) is not commensurate to the proposed fine of “not less than ten million shillings”</p> <p>The imprisonment term should be “three years” as in clause 10(6)”</p>
19.	Clause 44	Strathmore University Extractives Industry Centre  Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>The Bill should provide a list of what competitive means would be employed under Clause 44(1)</li> </ul> <p>Clause 44(3) does not provide for a penalty in case the contractor breaches its provisions. A new sub-clause (4) should be added to provide for the penalty.</p>
20.	Clause 45	KEPSA          Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>The Bill be amended in clause 45(1) by deleting the words <b>“in the form prescribed in the First Schedule to this Act.”</b> appearing at the end of that sub-clause and substituting therefor the following <b>“The form set out in the First Schedule of this Act shall guide negotiations of any Petroleum Agreement under this section”.</b></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The intention of including a model petroleum agreement in the legislation is not that the actual agreement entered into should be exactly in the form set out in the model as this sub-clause suggests.</p> <p>The negotiated agreement only needs to be substantially similar to the model. As a safe guard, Section 46 (1) of the proposed Bill lists express rights that must be contained in any Petroleum Agreement and at a minimum these should and would be included in any Petroleum Agreement.</p> <ul style="list-style-type: none"> <li>Clause 45(4) is not clear as to the content of the notice to be given, if it is only for information or it invites the members of public to raise any objections for consideration during the</li> </ul>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		Kenya Law Reform Commission	<p>negotiation. It also is not clear whether the outcome will also be made public. It lacks provisions as to the feedback mechanism to the unsuccessful applicants.</p> <p>Clause 45(7) should provide for a further appeal either to the Court of Appeal or to the High Court for the avoidance of doubt.</p>
21.	Clause 48	KEPSA	<ul style="list-style-type: none"> <li>The Bill be amended in clause 48(1) by deleting the words <b><i>“with the approval of the Cabinet Secretary”</i></b></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>Manner in which holders of participating interests in a PSC govern their relationship should be left to them and their decision as to who should be the operator under their joint operating agreement should not be subject to approval, otherwise it is undue interference.</p>
22.	Clause 49	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>The fine provided for in clause 49(6) is not commensurate with the imprisonment term imposed. It should be corrected to align with the other provisions of the Bill.</li> </ul>
23.	Clause 50	Strathmore University Extractives Industry Centre  Kenya Civil Societies Petroleum, Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 50(2) should not apply only to the non-exclusive permits but all other permits issued.</li> </ul> <p>Clause 50(3) be amended to read as follows-</p> <p>“The Authority shall publish information relating to non-exclusive exploration permits which shall be publicly available.”</p> <p style="text-align: center;"><b>Rationale</b></p> <p>The mining cadastre avails all the information including applications, exploration permits and mineral rights agreements. It does not make much sense that Petroleum law does not offer the same transparency.</p>
24.	Clause 51	KEPSA	<ul style="list-style-type: none"> <li>Clause 51(2) be deleted and replaced with-</li> </ul> <p><i>(2) Despite the generality of sub-section (1), a contractor shall apply to the Authority for an operational permit to—</i></p> <p><i>(a) develop and produce petroleum;</i></p> <p><i>(b) decommission or abandon an upstream petroleum facility;</i></p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
	Kenya Oil and Gas Working Group	<p style="text-align: center;"><b>Rationale</b></p> <p>The Petroleum Bill requires that the contractor obtains, during the life of the project <b>over 30 Permits/Consents/ Approvals</b>. These are <i>in addition</i> to the other Permits/Consents/ Approvals that the Contractor will be required to obtain under other statutes e.g. the Energy Bill, the Water Act, Occupational Safety and Hazards Act, Environmental Management &amp; Coordination Act, etc</p> <p>The Ministry of Energy and Petroleum’s position is that the Government needs to balance the need of <i>efficient operations</i> and the <i>need for information</i>. However, this can still be accessed through furnishing of notices and reports by the Contractors under the mechanisms of the Petroleum Agreements (PSCs) without the need for approvals/permits and licenses as currently envisaged, as is the practice now.</p> <p>The proliferation has an impact on delay of processes and project timelines and financial burdens. Reduce permit requirements in a manner similar to those of comparable industries.</p> <ul style="list-style-type: none"> <li>• Clause 51(3) be amended to read-</li> </ul> <p><i>(3) Unless waived by the Authority, a contractor shall notify the Authority prior to drilling each well-</i></p> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as in the amendment for clause 51(2)</p> <p>-Clause 51(4) be amended by deleting the introductory part and substituting therefor the following-</p> <p><i>(4) Contractor shall provide the following prior to commencement of drilling operations:-</i></p> <p>Further Clause 51(4) will be amended by deleting paragraph (a)</p> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as in the amendment for clause 51(2).</p> <ul style="list-style-type: none"> <li>• Clause 51(8) be amended by deleting the words <i>“not less than ten million or imprisonment to a term not exceeding two years or to both.”</i> and substituting therefor the words <i>“not exceeding one million shillings.”</i></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause</p>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			<p>10(6)(b)</p> <p>Clause 51(7) should be strengthened in the regulations to ensure the local community effectively participates. The communities should be given sufficient time, information and expert support to be able to participate. The regulations contemplated under clause 18 should provide for who to participate, where and the procedure.</p>
25.	Clause 52	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 52(2) be amended by deleting the word “reasonable” appearing immediately before the words “notice in writing” and substituted therefor with a specific time frame.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The provision is ambiguous since the word reasonable has not been defined.</p>
26.	Clause 53	Kenya Oil and Gas Working Group  Kenya Civil Societies Petroleum, Oil and Gas Working Group	<ul style="list-style-type: none"> <li>A fine of not less than ten million shillings or a term of imprisonment of not less than be imposed on one who transfers interests without the permission of the Cabinet Secretary should be imposed.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>Contractors will not feel obligated to seek permission to transfer interests if there is no penalty. <ul style="list-style-type: none"> <li>Insert a new clause 53(2)(d) to read as follows-</li> </ul> <p>“(d) the transaction has been assessed for all relevant taxes under Kenyan Law”</p> <p style="text-align: center;"><b>Rationale</b></p> <p>Transferring of interests in countries such as Uganda has resulted in litigation due to the assessment of taxes. This new provision will help protect the Cabinet Secretary’s right to prevent transfer until such taxes are ascertained. <ul style="list-style-type: none"> <li>Amend clause 53(9) by deleting the words “an exploration company or any joint venture” appearing immediately after the words “ownership or control” and substitute therefor the word “any”.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>Exploration company is not defined and joint venture will only capture some contractors and not all.</p> </p></p>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
27.	Clause 54	KEPSA	<p>-clause 54(3) be amended by deleting the words <i>“not less than twenty million”</i> and replacing therefor the words <i>“not exceeding twenty million”</i></p> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b).</p>
28.	Clause 55	KEPSA	<ul style="list-style-type: none"> <li>Clause 55(3) be amended by deleting the words <i>“not less than twenty million or to a term of imprisonment of not less than five years or both”</i> and substituting therefor the words <i>‘not exceeding twenty million shillings.’</i></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b).</p>
29.	Clause 58	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>Clause 58(1) is not clear whether ratification will involve public participation and to what extent.</li> </ul>
30.	Clause 60	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Alteration of a development plan without informing the authority should be classified as an offence with a fine of not less than ten million, or a term of imprisonment of not less than five years or both, to serve as a deterrence for contractors.</li> </ul>
31.	Clause 62	KEPSA	<ul style="list-style-type: none"> <li>Clause 62(2) be amended by deleting the words, <i>“not less than twenty million shillings or to imprisonment for a term of not less than five years or to both.”</i> and substituting therefor the words <i>“not exceeding twenty million shillings.”</i></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b).</p>
32.	Clause 63	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 63(7)(b) be amended by deleting the word “eh” appearing immediately after the words “production of” and substituting therefor the word “the”.</li> </ul>
33.	Clause 64	Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Amend clause 64(2) by deleting the word “to” appearing immediately before the words “accommodate the third party”.</li> </ul>
34.	Clause 70	KEPSA	<ul style="list-style-type: none"> <li>Clause 70(3) be amended by deleting the words, <i>“not less than ten million shillings or to imprisonment for a term of</i></li> </ul>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			<p><i>not less than two years or to both.</i>” and substituting therefor the words “<i>not exceeding ten million shillings.</i>”</p> <p style="text-align: center;"><b>Rationale</b></p> <ul style="list-style-type: none"> <li>The same rationale as for the proposed amendment in Clause 10(6)(b).</li> </ul>
35.	Clause 72 & 73	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>The Bill should integrate a requirement to surrender information on request of the public at a fee. The lack of an enabling law on access to information may limit how information is procured and utilised.</li> </ul>
36.	Clause 75	KEPSA	<ul style="list-style-type: none"> <li>Clause 75 be amended by deleting the words, “<i>not less than twenty million shillings or to imprisonment for a term of not less than five years or to both.</i>” and substituting therefor the words “<i>not exceeding twenty million shillings.</i>”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <ul style="list-style-type: none"> <li>The same rationale as for the proposed amendment in Clause 10(6)(b).</li> </ul>
37.	Clause 77	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>The government should invest in training and certification options since there are many locals with skills and expertise but lack certification provided for under Clause 77(1)(c). the clause should also clarify what the proviso means.</li> <li>The regulations contemplated under clause 77(4) and clause 78(2) should be subjected to Parliament for approval.</li> </ul>
38.	Clause 79	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 79(5) be amended by inserting the words “in accordance with the regulations made under section 119” immediately after the word “created”.</li> </ul>
39.	Clause 80	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>Clause 80(3) needs clarity so as to create certainty as to what is being paid</li> </ul>
40.	Clause 82	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>The money paid as signature bonus in clause 82(1) could be utilized for the project itself which turns out to be a recoverable cost. The fiscal implications of clause 82(1) are negative.</li> </ul>
41.	Clause 85	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>The provision of clause 85(1) is not clear with regard to the communities’ share of the profit. It is unclear as to who will hold such profits on behalf of the communities.</li> </ul>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>The national government share under clause 85(1) should include revenue and profits. The proviso should be clear that the county governments referred to are the county governments where the upstream petroleum resource is exploited.</li> </ul>
42.	Clause 86	Kenya Law Reform Commission  Kenya Oil and Gas Working Group	<p>Insert a new clause after clause 86(2)(a) to require the contractor to ensure the safety, health and welfare of persons in or about the contract are, not engaged in any of its operations.</p> <p>There is need to expand ecosystem in clause 86(2)(h) to include sea, forest, wildlife and marine.</p>
43.	Clauses 86,87, 88 and 92	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>There should be a special body corporate that will be mandated to deal with environmental issues with respect to the upstream sector since NEMA is overwhelmed.</li> <li>There also needs to be established a special body that deals primarily with Occupational Health and Safety issues with respect to the upstream petroleum sector.</li> </ul>
44.	Clause 87	KEPSA  Kenya Oil and Gas Working Group  Kenya Law Reform Commission	<ul style="list-style-type: none"> <li>Clause 87(5) be amended by deleting the words, <b><i>“not less than twenty million shillings or to imprisonment for a term of not less than five years or to both.”</i></b> and substituting therefor the words <b><i>“not exceeding twenty million shillings or to a term of imprisonment not exceeding five years or both.”</i></b></li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <ul style="list-style-type: none"> <li>The same rationale as for the proposed amendment in Clause 10(6)(b)</li> <li>Poor waste management under clause 87(1) should be reviewed to attract a term of imprisonment of not less than ten years due to the crucial nature of waste management.</li> </ul> <p>It is not clear how clause 87(5) will apply to juristic persons.</p>
45.	Clause 88	KEPSA	<ul style="list-style-type: none"> <li>Clause 88(3) be amended by deleting the words, <b><i>“not less than one million shillings or to imprisonment for a term of not less than five years or to both.”</i></b> and substituting therefor</li> </ul>





	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			of one hundred million.
47.	Clause 99	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>The Bill should provide a framework on how damages will be assessed and a mechanism for the local community to follow in seeking compensation</li> </ul>
48.	Clause 100	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 100(2)(b) should define land ownership to include community land ownership.</li> <li>The proviso to the clause should not restrict advertisement to only the newspaper mode but rather allow the use of other channels accessible to the local community. The notification period should be increased from 15 to 30 days.</li> </ul>
49.	Clause 102	Strathmore University Extractives Industry Centre  Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 102(1) be amended by deleting the word “<b>may</b>” appearing after the words “section 100” and substituting therefor the word “<b>will</b>”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>Given the sensitivity of land, especially community land, consent must be in writing.</p> <p>The compensation should also be done in accordance with the prevailing market rates.</p> <p>Clause 102 does not provide safeguards when it comes to negotiations. This may be detrimental to the owner as in most cases the contractor has more bargaining power than the community member.</p> <p>There is need for the proviso to refer to the constitution and other relevant laws on land acquisition where compensation should be pegged on current market valuation.</p>
50.	Clause 105	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Delete the words “as far as possible” appearing after the words “former condition” in clause 105(2).</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>There is need for a contractor to deposit a decommissioning fund before commencing the upstream activities, to be used in restoring the environment to its former position state.</p>
51.	Clause 107	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>This provision gives too much leeway to the contractor. This may lead to the destruction of the ecosystem and occasion catastrophic dangers not only to the environment but the people within and without the transportation corridor.</li> <li>Amend clause 107(1) by deleting the words “including</li> </ul>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		Kenya Civil Societies Petroleum, Oil and Gas Working Group	<p>forests, national parks, reserves and heritage sites,” appearing immediately after the words “National Government property”.</p> <p style="text-align: center;"><b>Rationale</b></p> <p>The words override the provisions of the Forest Act, 2005, Wildlife Conservation and Management Act, 2013 and the National Museums and Heritage Act, 2006. It is highly contentious that petroleum interests are being put ahead of these key sectors of our environment and Kenyan heritage.</p> <ul style="list-style-type: none"> <li>Amend clause 107(2) by deleting the words “notwithstanding the provisions of any other written law, but subject to the provisions of this Section” appearing at the beginning of that clause.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The provision is a bold attempt to override the other laws. This is irregular considering that throughout the Bill reference to other legislation that will offer assistance in implementation of the Act.</p>
52.	Clause 109	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Provisions for dispute resolution should be in a stand alone part due to the important role they play in consolidating the gains in a contract.</li> </ul>
53.	Clause 111	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>Clause 111(1) is not adequate. It should expressly provide that such framework shall involve all stakeholders pertinent to the upstream petroleum sector and they shall be involved throughout the petroleum chain. It will ensure transparency and accountability both at the national and county level and also with respect to revenues.</li> </ul>
54.	Clause 113	KEPSA  Kenya Oil and Gas	<ul style="list-style-type: none"> <li>Clause 113 (1)(e) be amended by deleting the words, “<i>not less than one hundred million shillings or to imprisonment for a term of not less than fifteen years or to both.</i>” and substituting therefor the words “<i>not exceeding one hundred million shillings or to a term of imprisonment not exceeding fifteen years or both.</i>”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b)</p>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
		Working Group	<ul style="list-style-type: none"> <li>The offences provided for under clause 113(1)(e) that related to economic crimes, should have the custodial sentence reviewed downwards to ten years imprisonment and a fine not exceeding twenty million.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>While acknowledging the need to protect upstream infrastructure, the fines levied and the imprisonment terms should be reasonable.</p>
55.	Clause 116	KEPSA	<ul style="list-style-type: none"> <li>Clause 116 be amended by deleting the words, “<i>not less than five million shillings</i>” and substituting therefor the words “<i>not exceeding one million shillings.</i>”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The same rationale as for the proposed amendment in Clause 10(6)(b)</p>
56.	Clause 118	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>The regulations contemplated under clause 118 should include offshore activities.</li> </ul>
57.	Clause 120	KEPSA	<ul style="list-style-type: none"> <li>Clause 120(f) be amended to read- <ul style="list-style-type: none"> <li><i>(f) the contractual rights, privileges, liabilities and obligations existing pursuant to the Petroleum (Exploration and Production) Act are preserved.</i></li> </ul> </li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <ul style="list-style-type: none"> <li>Fiscal and regulatory uncertainty will delay or impede investment.</li> <li>Petroleum Bill needs to be aligned with Section 23(1)(c) of the Interpretation and General Provision Act(Cap 2) provides that where written law repeals/ re-enacts another written law unless a contrary intention appears shall not affect the right, privilege, obligation or liability acquired under a written law so repealed.</li> <li>Additionally the Kenya Law Reform Commission Guide to the Legislative Process in Kenya (at pages 56 &amp; 57) provides that:- <ol style="list-style-type: none"> <li>i. The purpose of saving provisions in law is to <b>preserve or save a law, a right, a privilege or an obligation which would otherwise be repealed or cease to have effect.</b></li> <li>ii. The function of transitional provisions is to <i>make special</i></li> </ol> </li> </ul>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			<i>provision for the application of legislation to the circumstances which exist at the time the legislation comes into force.</i>
58.	New clause	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>The offences and penalties throughout the Bill should be consolidated in one part rather than being spread out for ease of reference.</li> </ul>
59.	Clause 2 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Delete the word “maximising” appearing after the words “environment by” in paragraph (c) in the definition of “best petroleum industry practices” and substituting therefor the word “minimising”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>It is not practical to protect the environment by maximising the impact of operations.</p>
60.	Clause 5 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>There is need to specify the forms that are acceptable under clause 5(7) rather than leaving it to the discretion of the Cabinet Secretary.</li> <li>There should be a proviso in the agreement to the effect that any powers exercised by the Cabinet Secretary in this agreement shall be exercised upon recommendation of the Upstream Petroleum Advisory Committee.</li> </ul>
61.	Clause 6 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>There is need to define the specific government ministry or department in clause 6(1) the surface fees should be paid to.</li> </ul>
62.	Clause 7 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>There is need to set specific standards and qualify what the word “reasonable” referred to under clause 7(2) &amp; (4) mean in this case as it may be subjective to the standards of the Cabinet Secretary.</li> </ul>
63.	Clause 8 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 8(3) is confusing as contractors are meant to abide by the legal standards set for obtaining the relevant permits and there is no peculiar need for the Cabinet Secretary to give directions to other state authorities outside the relevant law.</li> </ul>
64.	Clause 10 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 10(2). As relates to compensation, the same can be decided by a competent redress mechanism such as arbitrators or a court of law. Reference to an expert in this clause does not offer sufficient information as one is unsure as to which area of expertise is being referred to.</li> </ul>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
65.	Clause 12 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>There is need for a contingency fund before undertaking the upstream operations to protect the marine environment and the people. Therefore in clause 12(2), both the parties require an equal chance in selecting the expert.</li> </ul>
66.	Clause 15 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>In clause 15(1) the process of reporting daily to two organs within one ministry may lead to confusion. Since the Authority is the sector regulator directly under the supervision of the Cabinet Secretary, it should receive the reports on behalf of the Ministry.</li> </ul>
67.	Clause 16 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Delete the word “material” appearing in clause 16(6) of the Bill.</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>Any damage however insignificant should not be allowed.</p> <ul style="list-style-type: none"> <li>Delete the words “forty-eight hours” appearing in clause 16(8) and substitute therefor the words “twenty four hours”</li> </ul> <p style="text-align: center;"><b>Rationale</b></p> <p>The proposed forty eight hours are too long in case of an emergency.</p> <ul style="list-style-type: none"> <li>Clause 16(9) gives the Authority mandate to take any necessary measures for the contractor to correct a wrong. Clause 10(2) provides for an independent expert to determine compensation for damage caused. This may cause a conflict as to who supersedes the other between the independent expert and the Authority.</li> </ul>
68.	Clause 22 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>There is need to define who “<b>indigenous Kenyans</b>” referred to in clause 22(5)(b) are.</li> </ul>
69.	Clause 25 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 25(3) needs to specify the costs payable. They should be borne by the State so as to avoid conflict of interests.</li> </ul>
70.	Clause 26 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>Clause 26(3) as it is, is tantamount to encroaching. Therefore it should be revised for contractors to use the established channels under the law to acquire any property for their upstream activities.</li> </ul>



	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			<ul style="list-style-type: none"> <li>• Clause 26(4) and (5). The provision on government granting permission to contractors should mention that the permission to be given is subject to applicable laws such as land and environment laws.</li> </ul>
71.	Clause 53 of the Model Contract	Kenya Oil and Gas Working Group	<ul style="list-style-type: none"> <li>• Regarding dispute resolution there should be clarification as to which rules apply, who sets the rules and who bears the costs on expert determination.</li> </ul>
72.	Model Contract Part VI	Strathmore University Extractives Industry Centre	<ul style="list-style-type: none"> <li>• The Local content and training provided for under clause 20(2) should ensure that a person carrying out upstream petroleum operations shall ensure marginalised, minority groups; especially women and youth are provided for opportunities. Ethnic, gender and regional considerations should also be provided for.</li> </ul>
73.	Model Contract Clause 32	KEPSA	<ul style="list-style-type: none"> <li>• Clause 37 of the model contract be amended- Form of the R-factor shares can be left unchanged. However the actual ratio of share should be left undefined as per the current model PSC, to be negotiated between Contractor and Government at the time of award.</li> <li>• If the fiscal terms do not account for external factors and the volatility of the markets, Oil &amp; Gas companies will be very selective about where to invest, with an inclination to invest in areas where the fiscal arrangement is preferred;</li> <li>• Contractor and Government should be allowed to negotiate, noting that the model contract will be subject to Parliamentary ratification.</li> </ul>

The Senate Standing Committee on Energy, at its retreat held on 23<sup>rd</sup> June, 2016, considered The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) based on the submissions received during public participation and makes the following recommendations;

**a) Long title**

The long title be amended by deleting the word “contracting”.

**b) Clause 2**

The definition of the “local community” be amended to confine it to persons found in a sub-county within which an energy resource is located and who are affected by the exploitation of that natural resource. thus aligning it to the definition in the Energy Bill (National Assembly Bill No. 50 of 2015).

Definition of “customer “be deleted.

**c) Clause 5 National Upstream Petroleum Policy**

Clause 5(1) be amended to provide clarity that the Cabinet Secretary should review the National Policy on Upstream Petroleum at least once in every five years.

Clause 5(3) be amended to provide for publication of a report of the implementation of the national upstream petroleum policy online and in a daily newspaper of nation-wide circulation.

**d) Clause 6 National Upstream Petroleum Strategic Plan**

Clause 6(1) be amended to align the provision of the sub-clause with the marginal note.

**e) Clause 10 Functions of the Cabinet Secretary**

Clause 10(1) be amended to confer on the Cabinet Secretary the powers to order the cessation of operations by a contractor where there has been a breach of the Act.

**f) Clause 12 Establishment of the National Upstream Petroleum Advisory Committee**

Clause 12 (2) be amended to include participation of a representative from the private sector who is competent and has the capacity.

Clause 12(3) be amended to clarify that the Director General of Petroleum Upstream Regulatory Authority would be the Secretary to the Advisory Committee and not the Director-General of National Environment Management Authority.

Clause 12(5) be amended to ensure that persons co-opted into the advisory Committee have the necessary knowledge and experience.

**g) Clause 15 Functions of the Authority**

Clause 15 (o) be amended to provide for a consultative process between the Authority and the Competition Authority with respect to monitoring operations of contractors in order to ensure that competition and fair practise is maintained.

**h) Clause 16 Powers of the Authority**

Clause (1) (g) of Clause 16 be amended to give powers to the Authority to take such action as is necessary to ensure the protection of the environment.

**i) Clause 17 Board of Directors of the Authority**

Clause 17(1) (e) be amended to provide for categories of persons to be appointed by the Cabinet Secretary from the private sector to include representation from Kenya Private Sector Alliance and an institution of higher education.

**j) Clause 45 Negotiation, award and execution of petroleum agreements**

Clause 45(4) be amended to provide for publication (including online publication) of the notice of intended direct negotiations results of a negotiation of a petroleum agreement.

A new sub clause (4A) to be inserted to clearly provide for the information that is required to be set out in the notice published under sub-clause (4).



**k) Clause 48 Operator**

Sub-clause (1) and (2) be amended by removing the requirement of the approval of the Cabinet Secretary in the appointment or replacement of an operator to ensure that a contractor has a free hand in determining the operators, given that the contractor is ultimately responsible for the performance of the contract.

**l) Clause 49 Application for non-exclusive exploration permit**

Sub-clause (1) and (2) amended by removing the requirement of the approval of the Cabinet Secretary in the appointment or replacement of an operator.

**m) Clause 50 Grant of no-exclusive exploration permit**

Sub-clause (2) be amended by replacing the existing provision providing for access to information in order to expand the requirement for access by making provision for the supply of information for inspection free of charge, supply of copies of the information or information through electronic means upon payment of a reasonable fee and the publication of such information on the website of the Authority and through such other means as it considers appropriate.

**n) Clause 51 Operational permits**

Clause 51 be amended by replacing the existing provision providing for access to information in order to expand the requirement for access by making provision for the supply of information for inspection free of charge, supply of copies of the information or information through electronic means upon payment of a reasonable fee and the publication of such information on the website of the Authority and through such other means as it considers appropriate.

**o) Clause 53 Transfer of interest in petroleum agreement**

Sub-clause (2) be amended by imposing a requirement for the assessment of tax prior to the transfer of an interest in a petroleum agreement.

Sub-clause (9) be amended in order to clarify that the provision should apply to any company with an interest in a petroleum agreement and not just to an exploration company or joint venture.

A new sub-clause (12) be introduced to impose a penalty for breach of the provisions of the clause.

**p) Clause 58 Ratification by Parliament**

A new sub-clause (2A) be introduced to impose a requirement on Parliament to carry out public participation the ratification of a production sharing contract pursuant to Article 71 of the Constitution.

**q) Clause 60 Variations or alterations in field development plan**

Clause 60 be amended to provide for a fine of not less than ten million shillings or imprisonment for a term of two years or both where a person alters or varies a field development plan without informing the Authority.

**r) Clause 77 Local content requirements**

Clause 77(1) be amended to provide for the adherence of local content where the cost of meeting such local content is at the prevailing market rate.

**s) Clause 86 Environmental compliance**

Clause 86 (2) (h) be amended to expand the ecosystem to include sea, forest, wildlife and marine.

**t) Clause 100 Access to land**

Clause 100(2) be amended to increase the days set out in the notice required for purpose of tracing the land owner from fifteen to thirty and further impose a requirement to track the owner through other mechanisms that allow for publication to the entire local community where the community has limited access to newspapers .

**u) Clause 102 Consent to proposal**

Clause 102(1) be amended to impose a requirement for granting of consent by a land owner to whom a request has been made subject to compensation within four (4) months.

**v) Clause 107 Installation of upstream petroleum infrastructure along roads, railways, etc.**

Clause 107 be amended to ensure the conservation of forests, national parks, reserves and heritage sites when carrying out operations under the Act.

**Second Schedule**

- Clause 2 (c) be amended by substituting the word “maximising” with the word “minimising”.
- Clause 16(6) be amended by deleting the word “material” so as to impose an obligation on the contractor to take measures to minimise any adverse impact, however small.
- Clause 16(8) be amended to reduce the time required for notification by a contractor to the Authority from forty eight hours to twenty four hours.
- Clause 20 be amended to compel a contractor to take into account marginalized groups when implementing local content.
- Clause 26 be amended by deleting paragraph (3).
- Clause 26 be amended by making provision that any way-leaves, easements or other permits are to be granted in accordance with the Land Act.



**MINUTES OF THE 36<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY 13<sup>TH</sup> JULY, 2016 AT 12.00P.M. IN THE BOARDROOM ON SECOND FLOOR KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC).**

**PRESENT**

- |                              |                |
|------------------------------|----------------|
| 1. Sen. Danson Mwazo, MP     | -Vice-Chairman |
| 2. Sen. Abu Chiaba, MP       | -Member        |
| 3. Sen. Kiraitu Murungi, MP  | -Member        |
| 4. Sen. Kimani Wamatangi, MP | -Member        |
| 5. Sen. Elizabeth Ongoro, MP | -Member        |

**ABSENT WITH APOLOGY**

- |                                |            |
|--------------------------------|------------|
| 1. Sen. Gideon Moi, MP         | - Chairman |
| 2. Sen. David Musila, MP       | -Member    |
| 3. Sen. Kipchumba Murkomen, MP | - Member   |
| 4. Sen. John Munyes, MP        | -Member    |

**IN-ATTENDANCE**

- |                           |                           |
|---------------------------|---------------------------|
|                           | <b>Senate Secretariat</b> |
| 1. Ms Josephine Kusinyi   | - Legal Counsel           |
| 2. Ms Joyce Aluoch        | -Clerk Assistant          |
| 3. Mr. Wellington Namenge | - Research Officer        |

**MIN. NO.197/2016**

**: PRELIMINARIES**

The Chairperson called the meeting to order at 12.00 p.m. followed by a word of prayer.

**MIN. NO. 198/2016**

**: ADOPTION OF THE AGENDA.**

The agenda of the meeting was adopted having been proposed by Sen. Abu Chiaba, MP, and seconded by Sen. Kiraitu Murungi MP, as follows;

1. Prayer
2. Adoption of the Agenda
3. Consideration and adoption of Reports on:
  - (i) **The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).**
  - (ii) **The Energy Bill (National Assembly Bill No. 50 of 2015)**
4. Any Other Business

5. Date of Next Meeting

6. Adjournment

**MIN. NO. 199/2016 : CONSIDERATION AND ADOPTION OF REPORTS**

**(I) The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).**

The Committee considered and adopted the Report on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).

**(II) The Energy Bill (National Assembly Bill No. 50 of 2015)**

The Committee considered and adopted the Report on the Energy Bill (National Assembly Bill No. 50 of 2015).

**MIN. NO. 200/2016: DATE OF THE NEXT MEETING**

The next meeting would be held on notice.

**MIN.NO.201 /2016 : ADJOURNMENT**

There being no other business, the meeting was adjourned at 2.15pm.

Signed.....

(VICE-CHAIRPERSON: (Sen. Danson Mwazo, M.P.)

Date: .....

14/07/2016

# THE SENATE





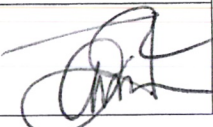
## STANDING COMMITTEE ON ENERGY

### PUBLIC HEARINGS ON:

- (i) The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).
- (ii) The Energy Bill (National Assembly Bill No. 50 of 2015)

WEDNESDAY, 15<sup>TH</sup> JUNE, 2016

### IN ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	Eddie Omondi	Kenya Nuclear Reg. Ag. Asst. Director	eomond@nuclear.co.ke	0927768543	
	DORIS KIMITEI	Kenya Power & Lighting Co. Ltd	dkimitei@kplc.co.ke	0716113364	
	ANGELA MUTINDI	KPLC	AmutindiNthenge@KPLC.co.ke	0717271627	
	JODDA JUSTUS OORO	KPLC	Jododa@kplc.co.ke	0711802286	
	Dr Kasomi	MOEF	fmkasomi@gmail.com	0749244652	



# THE SENATE

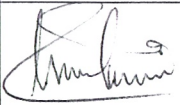

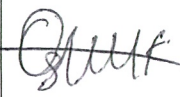
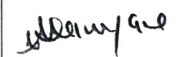
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WEDNESDAY, 15<sup>TH</sup> JUNE, 2016

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NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
Benson K. Bii	Personal Assistant Office of CS Energy & Petroleum	kipsapta10@gmail.com	0722581169.	
DANIEL KIPTOO	PETROLEUM LEGAL ADVISOR	kIPTOO@Energy.co.ke kIPTOODANIEL@gmail.com	0721814344	
CASTRO OGUTO	LEGAL ASSISTANT PO PETROLEUM LEGAL ADVISOR	castrooguto@yahoo.com	0724585488	
Wanjiku Mwangi	General Manager - Petroleum Institute of East Africa	cmwangi@petroleum.co.ke	0721811838	

# THE SENATE

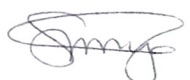



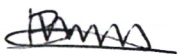
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WEDNESDAY, 15<sup>TH</sup> JUNE, 2016

### IN ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	Sumaya Mohamed	Project officer	Salbraashvem@gmail.com	072223746	
2	Muturi Kamau	National Coordinator KOGKEG	muturikamau89@gmail.com	0715236637	
3.	Jonah Mngola	Strathmore Extractives Industry Centre (SEIC)	jmgola@strathmore.edu	0722570530	
4	Joseph Odhiambo	KNERB-BOARD MEMBER	odhiamboj@gmail.com	0714327680	
5	Buge Wasioya	Senior Manager Power Systems Energy Reg. Commission	buge.wasioya@erc.go.ke	0721573328	

# THE SENATE




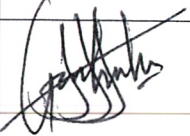
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WEDNESDAY, 15<sup>TH</sup> JUNE, 2016

### IN ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	ENG. FRANCIS X. MAKITANU	ASST. MANAGER ENERGY PLANNING - KENGEN	fmaxham@ken-gen- Co. Ke	0720-893468	
2	Stephen Mwangi	BOARD MEMBER KNER	kuwanjammwangi@ yahoo.com	0722408906	
3	ERNEST ORITO	BOARD MEMBER KNEB.	ernestmutira@yaho. com	0724178605	
4	Anthony G. Mwangi	KEPSA	Anthony.Mwangi@ fellowoil.com	0720 718533	
5					



# THE SENATE

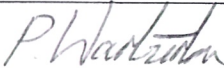
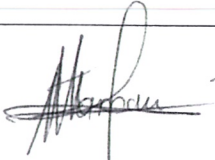
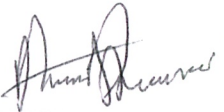
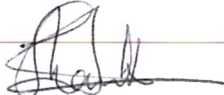

## STANDING COMMITTEE ON ENERGY

### PUBLIC HEARINGS ON:

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WEDNESDAY, 15<sup>TH</sup> JUNE, 2016

### IN ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	PAUL WARBURTON	V P UPSTREAM BG KENYA (KEPSA)	paul.warburton @bg-group.com	0715 598 951	
2	FAMAU SHUKRI	KOWG (oil & gas)	famau2008@yahoo.com	0723963533	
3	AHMED A. FARUQ	OIL AND GAS	ahmedamin140005@gmail.com	0710121627	
4	SALIM ALI	KOWG / IOWB	salimarine4@gmail.com	0721929497	
5	HARIH MOHAMMED	KOWG	harithmohamed74@gmail.com	0724921913	

# THE SENATE





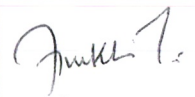
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WEDNESDAY, 15<sup>TH</sup> JUNE, 2016

### IN ATTENDANCE SCHEDULE

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	MISEDA WIMMIE	KENYA OIL & GAS WORKING GROUP-NATIONAL STEERING COMMITTEE MOMBASA COUNTY	winniemiseda@yahoo.co.uk	0720496554	
2	MERCY WASAI MGHANGA	KO G W G BNU NETWORK MOMBASA COUNTY	Mercymghanga@yahoo.com	0720723185	
3	JOSEPH ONYUONGA MOMANYI	PETROLEUM INSTITUTE OF EAST AFRICA	managerschool@petroleum.co.ke	0724512144	
4	Adundo Kevin Othman	Petroleum Institute of East Africa	analyst@petroleum.co.ke	0717479561	
5	FRANKLIN JUMA	KENYA PRIVATE SECTOR ALLIANCE (KEPSA)	franklin.juma@tullowoil.com	0712661879	

**REPUBLIC OF KENYA**



**ELEVENTH PARLIAMENT  
THE SENATE  
STANDING COMMITTEE ON ENERGY**

**In the Matter of Consideration of  
The Petroleum (Exploration, Development and Production) Bill  
(National Assembly Bill No. 44 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 Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) in the Senate, the Bill was committed to the Standing Committee on Energy 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 Energy now invites interested members of the public and organizations to submit any representations that they may have on The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).

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

1. Public Hearings shall be held on **Wednesday, 15<sup>th</sup> June, 2016 from 9:30 a.m. to 1:00 p.m. in the Mini Chamber, First Floor, County Hall, Parliament Buildings, 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 Buildings, Nairobi** or emailed to **[csenate@parliament.go.ke](mailto:csenate@parliament.go.ke)**, to be received **on or before Wednesday, 15<sup>th</sup> June, 2016 at 2.00 p.m.**

A Copy of the Bill can be found in the Senate portal of the Parliament website, **[www.parliament.go.ke/ senate](http://www.parliament.go.ke/senate)**.

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