REPUBLIC OF KENYA



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THE SENATE

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THE STANDING COMMITTEE

ON

**ENERGY** 



A REPORT ON A PUBLIC HEARING ON THE ENERGY BILL, (NATIONAL ASSEMBLY BILL NO. 50 OF 2015)

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



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#### 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 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.

## **ABBREVIATIONS**

KPLC Kenya Power and Lighting Company

PIEA Petroleum Institute of East Africa



## 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 Energy Bill (National Assembly Bill No. 50 of

Signed.

Date 13 07 2016

SEN. DANSON MWAZO, M.P,

VICE-CHAIRPERSON

STANDING COMMITTEE ON ENERGY.

#### INTRODUCTION

#### **CHAPTER ONE**

The Energy Bill (National Assembly Bill No. 50 of 2015) was passed by the National Assembly, with amendments, on 28<sup>th</sup> April, 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 Energy Bill (National Assembly Bill No. 50 of 2015)

This Bill seeks to consolidate the laws relating to energy and to provide a comprehensive framework for the regulation of the energy sector at the national and county levels of government. It also seeks to regulate the exploration and production of renewable energy as well as regulate midstream and downstream petroleum and coal activities.

#### 1.2 Overview of the Bill

Part I sets out the preliminary provisions of the Bill.

Part II of the Bill provides a framework for the development of a national energy policy and energy plans for the implementation of the policy particularly with respect to midstream and downstream petroleum, coal, renewable energy and electricity by the Cabinet Secretary. It also requires every national energy service provider to develop and submit plans for the provision of energy services and county government to develop and submit county energy plans in respect of its energy requirements to the Cabinet Secretary which are subsequently consolidated into an integrated national energy plan. It further compels the Government implement a strategy that would ensure that all households are connected to a supply of electricity by 2030 and to provide a conducive environment for investment in the energy sector.

Part III of the Bill provides for the establishment of entities at the national level of government which are to be involved in the energy sector. It provides for the

establishment of the Energy Regulatory Commission whose principle role is to regulate the exploration, generation or production and distribution of electrical energy, petroleum and petroleum products, renewable energy and coal and the regulation and implementation of connected activities. For this purpose, the Commission shall be responsible for the issuance and revocation of permits and licenses, the setting of tariffs, approval of electrical power purchase and network service contracts and determine disputes relating to licensing of parties under the Act. Of noting is the fact that the funds of the Commission are to consist of, among other funds, levies not exceeding 0.5% on the sales of electricity and petroleum products.

This Part also provides for the establishment of the Energy and Petroleum Tribunal which shall be responsible for hearing and determining disputes and appeals relating to the energy and petroleum sector and referred to it under the Act.

Part III also provides for the establishment of the Rural Electrification and Renewable Energy Corporation whose principal role is to oversee the implementation of the Rural Electrification Programme and for this purpose, management Rural Electrification Programme Fund, develop rural electrification master plans in consultation with the county governments, support the establishment of energy centers in the counties and promote the production and use of renewable energy. This Part also provides for the establishment of the Energy and Petroleum Tribunal to determine disputes and appeals under the Act.

This Part further provides for the establishment of the Nuclear Power, Energy and Petroleum Agency whose principal role is to be the nuclear energy programme implementing organization, to promote the development of nuclear electricity generation and to carry out research, development and dissemination activities in the energy and petroleum sector.

Part IV of the Bill provides a framework for the regulation of renewable energy resources and for this purpose provides for the establishment of an inter-ministerial Renewable

Energy Resources Advisory Committee whole role shall be to advise the Cabinet Secretary on any dealings in renewable energy. This Part also provides a framework for the licensing of persons involved in the extraction of geothermal licenses. It also establishes a renewable energy feed-in-tariff system to facilitate the supplement of renewable energy through local generation and distribution and innovation in renewable technology.

Part V of the Bill regulates midstream and downstream petroleum activities and provides a framework for the licensing of, or issuance of permits to, businesses involved in such operations. It also compels a person intending to construct any structures for the transport, storage or dissemination of petroleum products to obtain a license and compels every county government to provide a place exclusively reserved for parking of petroleum tankers. This Part also creates offences with regards to the dealings in petroleum products and also provides for the making of regulations to operationalize Part IV with respect to the dealings in downstream petroleum operations.

Part VI of the Bill provides a framework for the regulation of downstream coal activities and for this purpose, provides for the licensing of persons to carry out energy production from coal as well as the construction of facilities for the production of coal energy. It also sets out offences relating downstream coal activities.

Part VII of the Bill provides a framework for the licensing of persons involved in the generation, exportation, importation, transmission, distribution and retail supply of electricity. It provides a regulatory framework over the generation, transmission, distribution including the retail supply of electricity. It also provides for the establishment and implementation of a rural electrification programme. It also regulates the metering of electrical energy in terms of connection, supply and circumstances under which such metering may be refused or discontinued.

Part VIII of the Bill provides for rights of way, wayleaves and use of land for energy resources and infrastructure. It confers on the relevant officers, power of entry and

inspection for the purpose of determining the suitability for use of land under the Bill, compulsory acquisition of land in accordance with existing land laws and the maintenance of land and the structures or infrastructure therein. It also confers specific obligations on the national and county governments with respect to the enforcement of the Act and in ensuring the efficient use and conservation of energy. It also sets out an appeals mechanism to the Tribunal.

Part X of the Bill sets out miscellaneous provisions. It imposes an obligation on persons carrying out any works under the Act to comply with local content requirements in all operations and for this purpose, to prepare local content plans that outline the manner of compliance with the requirements. It also provides for the establishment of a Consolidated Energy Fund to consist of appropriations from Parliament and contributions from energy sector players, Government securities and corporate bonds as well as assets recovered from proceeds of crime in the energy sector.

Part XI of the Bill provides for repeals, savings and transitional provisions. In particular, it provides for the repeal of the Energy Act, the Kenya Nuclear Electricity Board Order and the Geothermal Resources Act.

The First Schedule sets out the provisions relating to the conduct and affairs of the entities established under the Act. The Second Schedule sets out the provisions relating to the appointments, terms of office, removal and audit and accounts of the entities under the Bill. The Third Schedule sets out the entities that are required to establish offices in such manner as to ensure accessibility their services. The Fourth Schedule sets out transitional provision with respect to the entities that succeed the bodies under the repealed laws. The Fifth Schedule sets out a distribution of functions as demarcated between the national and county levels of Government under the energy sector.

## CHAPTER TWO

# PUBLIC PARTICIPATION / STAKEHOLDER CONSULTATIONS ON THE ENERGY BILL, 2015.

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 Energy Bill (National Assembly Bill No. 50 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 Petroleum Institute of East Africa, Ministry of Energy and Petroleum and Kenya Power and Lighting Company.

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

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
1.	Clause 2	Petroleum Institute of East Africa  Ministry of Energy and Petroleum	<ul> <li>Interpretation of local community and local content should be synchronized with the interpretation found in the Petroleum (Exploration, Development and Production Bill(National Assembly Bills No. 44 of 2015)</li> <li>The objective of both Bills is to serve the nation and its citizens. Synchronizing the definitions will avoid potential conflict of interpretation.</li> <li>Delete or retain definition of "consumer" as the same definition has been assigned to both "customer" and "consumer"</li> </ul>
2.	Clause 42	Petroleum Institute of East Africa	<ul> <li>There exists a department in the Ministry of Energy and Petroleum that is already undertaking the functions that have been assigned to the Rural Electrification and Renewable Energy Corporation established in clause 42. The department is inclusive of a devolved structure for the achievement of its goals that are referred to as national energy centres.</li> <li>To avoid duplication and for purposes of efficiency</li> </ul>

	CLAUSE STAKEHOLDER PROPOSED AMENDMENT			
			as well as cutting costs, the existing department can have its mandate enhanced to meet the new	
			additional roles that have been outlined in the functions and powers of the corporation.	
3	Clause 53(1)	Ministry of Energy and Petroleum	• Delete the word "Petroleum" appearing immediately before the word "Agency" as the Bill does not refer to Petroleum.	
4	Clause 57 and 75	Petroleum Institute of East Africa	<ul> <li>There is no representation from non-public institutions in the proposed Nuclear Power, Energy and Petroleum Agency established under clause 57 and the inter-ministerial Renewable Energy Resources Advisory Committee in clause 75.</li> <li>To further promote public/private sector engagement, institutional private sector representatives should be included in the both entities.</li> </ul>	
5	Clause 194 (Marginal note)	Ministry of Energy and Petroleum	<ul> <li>Penalty and compensation for failure and defects in electricity supply</li> </ul>	
6	Clause 194	Ministry of Energy and Petroleum	• Subject to any agreement which may be entered into between a licensee and a consumer as provided for under this Act, whenever the licensee makes default in supplying electrical energy to any consumer, the licensee shall be liable in respect of each default to a penalty as prescribed by regulations in that behalf.	
		Kenya Power and Lighting Company	• The provisions relating to compensation be reviewed as they are premature and unworkable for the following reasons:	
			<ul> <li>Redundancy level of the system is far below 50%</li> <li>Financial burden will reduce the company's</li> </ul>	

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			resources for maintaining and developing the
			system
			> KPLC cannot be penalised for outages that are
			not due to is faults
			> Some outages are planned for maintenance
			purposes
7.	Proposals	Kenya Power and	• The proposals on penalties would negate the
	on	Lighting	deterrent effect of stiff penalties, give an
	penalties	Company	opportunity for misuse of discretion and fuel illegal
			trade.

#### COMMITTEE RECOMMENDATIONS

The Senate Standing Committee on Energy, at its retreat held on 23<sup>rd</sup> June, 2016, considered the Energy Bill (National Assembly Bill No. 50 of 2015) based on the submissions received during public participation and makes the following recommendations;

## a) Clause 2: Interpretation:

- i. "Local community" definition be amended to refer to sub counties in place of wards.
- ii. definition of "consumer" be deleted.

# b) Clause 53(1) Establishment of the Nuclear Power, Energy and Petroleum Agency

Clause 53(1) be amended by deleting the word "Petroleum" appearing immediately before the word "Agency" to align name of the agency to its role.

#### c) Clause 57 Board of Directors of the Agency

Clause 57 (e) of the Bill be amended to provide for the categories of persons to be appointed by the Cabinet Secretary from the private sector.

## d) Clause 194 Liability of licensee to compensate for outages

The marginal note in clause 194 be amended to read: Penalty and compensation for failure and defects in electricity supply.

### e) Clause 249 General penalty

Clause 249 be amended to retain the penalty as a minimum penalty and leave the Courts to determine whether to impose a higher penalty depending on the nature of the offence.

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

2. Sen. Abu Chiaba, MP

3. Sen. Kiraitu Murungi, MP.

4. Sen. Kimani Wamatangi, MP

5. Sen. Elizabeth Ongoro, MP

## -Vice-Chairman

-Member

-Member

-Member

-Member

## ABSENT WITH APOLOGY

1. Sen. Gideon Moi, MP

2. Sen. David Musila, MP

3. Sen. Kipchumba Murkomen, MP

4. Sen. John Munyes, MP

#### - Chairman

-Member

- Member

-Member

#### IN-ATTENDANCE

1. Ms Josephine Kusinyi

2. Ms Joyce Aluoch

3. Mr. Wellington Namenge

#### Senate Secretariat

- Legal Counsel

-Clerk Assistant

- 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:

#### STANDING COMMMITTEE 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

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	BOARD MEMBER			
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LEONARD D'CUNHA	MANAGING DIRECTION L. JOS (EOS) CO. LTD.	r leonard@eos.co.ke	0717969521	DIS
CHARLES WANGUHU	COURDINATION R. 162NA CIVIL SUCISTY PLATFORM ON OIL & GAS	warguhu @kuspay.urg	0716159499	do
ROSE KIMOTHO	PROGRAMME MANAGER INSTITUTE FOR 19 HUMAN RIGHTS 19 BUSINESS	rose. Kinstho @ Thro. org	0721427730	B.

#### STANDING COMMMITTEE 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

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
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CASTRO OGUÍO	LEGAL ASSISTANT PO PETROLEUM LEGAL APUSON		07.245\$5488 -	gue.
Wanjiko Manyara	General Munuejed- Petrolum Institute of East Aprica	cnumprae petrolom. co.re	074 211 838	syppenmy are
	,			

#### STANDING COMMMITTEE 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

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	Sumaya Monamed	Popul affici	Sabrashvem Ogmail.com	072223746	Smy
2	Mujuri DAMAU	Mational Goodinator 120 GKIG	Mutur Kamau 89 Dgmail Com	0715236637	A.
3,	Jonah Mhgola	Struthmore Extractives Inclusing Centre (SEIC)	jmngola @ shailimo 12. edu	6722870530	
4	JOJEPH ODHIAMBO	7,10	Ahiamb ojegmail. 20		all
5	Buge Wasioya	Senius Manager Powersyste Energy Rog. Commission	ay buge wastern exc. go le	0721573328	APMAN

#### STANDING COMMMITTEE 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

NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
Fobile Comordi	Kenya Nuder Fec.	Comord @nuclearco le	0927768593	R
DORIC KIMITEI	Kenga Power Plighting Co Had	Himitei@tak.co.ko	0716/13364	The 'f
ANGELA MOTINOSI	KPLC	Amutundintlengeokpu	0717271627 (o.ke -	KGE-
UDODA JUSTUS GORC	KPLC	Joduda @ Kpic.co. Ke	0711802286	Thurson
Dr Kasomi	Morr.	fmkasomi@gmaii	6000 67912446	2 Cont

# STANDING COMMMITTEE 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

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
1	PAUL WARBURTON	V P UPSTREAM BG KENYA	paul. weirburton	0715 598-951	Phartin
		(KEPSA)			
2	. FAMAU SHUKRI	Kowg (oil & gas)	famu 2008 Cyahoo- com	0723963533	Alarrus
3	AHMED A. FARUCO	OIL AND GAS	ahmedaminoo050gmail	0710121627	Amil Querree'
	Salim All	KOWG/10WB	Scilinari ne 4@ gmail in	0721929497	Hall
5	HARITH MOHAMED	Kogna	hanthmohamed 74 Egmail co	0724921913	All John

#### STANDING COMMMITTEE 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

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	MISEBA WINNE	WORKING GROUP-HATION	winniemiseda@ynhesico.uk.	0720496554	Minkie
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3	JOSEPH CHULTONGA MONANYI		monagereschool@ fetroleum. C. K	6724512144	- Smal
4	Adundo Karin Ohano	Petroleum luttute OF East Africa.	analyst @ Potro leum. Co. He	0717479561	P
5	FRANKLIN JUMA	KENYA PRIVATE SECTOR ALLIANCE (KERSA)	franklin-juma@tvllowoil-com	0712661879	Jule 1:

#### STANDING COMMINITIEE 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

	NAMES	DESIGNATION	E-MAIL ADDRESS	PHONE NUMBER	SIGNATURE
	ENG. FRANCIS X.	ASST. MANDER ENERLY PLANNING - KENGEN	fmanhamækengen. Ga. Ke	V720 -893 460	Danier
2	Stephen muang	BOTHER MEMBER	Kenenja-mnangi@	072240891	6 BC
3	ERNEST ORITO	BOARD MEMBER. KNE 13.	ernestmutiru@yaho.	0724178605	Maty
4	Anthony G. Mwangi	KEPSA	Jullowoul. Com	0720 718533	Josephinis
5					

#### **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:

- Public Hearings shall be held on Wednesday, 15th 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, Nalrobi, hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to csenate@parliament.go.ke, to be received on or before Wednesday, 15th 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.

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