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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

*Paper laid by the
Hon. Adh. Kesuwa Mubwa
Committee on Delegated Legislation
morning
Wed 10th Nov, 2021.
Afternoon sitting.*

TWELFTH PARLIAMENT- FIFTH SESSION (2021)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE ENVIRONMENTAL
MANAGEMENT AND COORDINATION (IMPACT ASSESSMENT AND AUDIT)
(AMENDMENT) REGULATIONS, 2016

(Legal Notice No. 149 of 2016)

NOVEMBER 2021

*The Directorate of Audit, Appropriations & other Select Committees
The National Assembly,
Parliament Buildings,
NAIROBI.*

*Approved for Tabling
10/11/21
AS
DSNA*



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ABBREVIATIONS

LN	Legal Notice
NBA	National Biosafety Authority
NEMA	National Environmental Management Authority
OFAB	Open Forum on Agricultural Biotechnology in Africa
RMA	Regulatory Making Authority
SO	Standing Order
SOBIFAK	Society for Biotech Farmers of Kenya (SOBIFAK)

CHAIRPERSON'S FOREWORD

The Cabinet Secretary for Environment, Natural Resources and Regional Development Authorities, in exercise of the powers conferred by section 147 of the Environmental Management and Coordination Act (*No. 8 of 1999*), made the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016. The Regulations were made *vide LN No. 149 of 2016* published in the Gazette on the 16th August 2016.

The Clerk of the National Assembly was in receipt of a letter dated 13th November, 2020 from Society for Biotech Farmers of Kenya (SOBIFAK) inquiring whether the regulations subject matter herein, were submitted to the National Assembly and a further letter dated 16th September, 2021 from the Open Forum on Agricultural Biotechnology in Africa (OFAB), inviting the Select Committee on Delegated Legislation to consult, confer and deliberate on the subject matter.

Section 12(2) of the Statutory Instruments Act, 2013, gives the committee the mandate (which mandate may be applied retrospectively) to scrutinize regulations published at any time, including legislation considered prior to the coming into force of the Act.

Pursuant to section 16 of the Statutory Instruments Act, the Committee held a meeting on the 28th September, 2021, with the National Biosafety Authority, OFAB, where members raised a number of concerns in respect to the regulations and a further meeting with the Ministry of Environment and Forestry attended by National Environment Management Authority (NEMA) on 15th September, 2021.

The Committee scrutinised the Legal Notice 149 of 2016 in light of its conformity to the Constitution, the Environmental Management and Co-ordination Act, (*No. 8 of 1999*), the Interpretation and General Provisions Act (*Cap 2*) and the Statutory Instruments Act (*No. 23 of 2013*) which regulate the making, scrutiny and publication of the instrument and made various observations which informed the decision to annul the Regulations in entirety.

Statutory Timelines – It was observed that Regulations published as LN No.149 of 2016 were not submitted for tabling in the National Assembly contrary to the requirements of section 11(1) of the Statutory Instruments Act, (*No. 23 of 2013*).

Public participation – The Ministry of Environment and Forestry and the National Environment Management Authority (NEMA) did not conduct public participation as required under Articles 10 and 118 of the Constitution and sections 5,5A and the Schedule to the Statutory Instruments Act, read with the Environmental Management and Coordination Act, 1999.

Having examined the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016 published *vide (Legal Notice No, 149 of 2016* in line with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), the Environmental Management and Co-ordination Act, (*No. 8 of 1999*, pursuant to which they are made, the Committee resolved to recommend *Committee on Delegated Legislation: Report on the Consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, published vide Legal Notice Number 149 of 2016.*

to the House **to annul in its entirety** for noncompliance with the Constitution and the relevant Statutes.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Environmental Management and Coordination (Impact Assessment And Audit) (Amendment) Regulations, 2016 (LN No 149 of 2016.)**

HON. WILLIAM KASSAIT KAMKET, M.P.

1. PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to scrutinize statutory instruments submitted to the National Assembly for consideration. The Committee is expected to consider in respect of any statutory instrument, conformity with the Constitution, the Act pursuant to which it is made or other relevant written laws and the Standing Orders.
2. The Committee, during scrutiny is guided by the principles of good governance, rule of law and in particular considers whether the statutory instrument-
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiaty Constituency

KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. William Kamoti, M.P.

Rabai Constituency

Orange Democratic Movement

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

Orange Democratic Movement

The Hon. Jennifer Shamalla, M.P.

Nominated

Jubilee Party

Committee on Delegated Legislation: Report on the Consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, published vide Legal Notice Number 149 of 2016.

The Hon. Munene Wambugu, M.P.
Kirinyaga Central Constituency
Jubilee Party

The Hon. Patrick Mariru, M.P.
Laikipia West Constituency
Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

Wiper Democratic Movement – Kenya
The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Mr. Mohamed Jimale
Clerk Assistant II (Team Leader)

Ms. Ruth Mwhaki Gakuya
Clerk Assistant II

Mr. Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Fiona Musili
Research Assitant II

Ms. Noelle Chelangat
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Mr. Muriithi Theuri
Parliamentary Intern

2.0 CONSIDERATION OF THE ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT) (AMENDMENT), 2016 (LN NO. 149 OF 2016)

2.1 Introduction

The Cabinet Secretary in the Ministry of Environment, Natural Resources and Regional Development Authorities, in exercise of the powers conferred by section 147 of the Environmental Management and Coordination Act (*No. 8 of 1999*), made the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016. The Regulations were published in the Gazette vide LN No. 149 of 2016 on the 16th August 2016.

The Committee, pursuant to section 12(2) of the Statutory Instruments Act, 2013, may scrutinize instruments published at any time including instruments published prior to the commencement of the Act.

On 28th September, 2021, the committee held a joint meeting, with the National Biosafety Authority, Open Forum on Agricultural Biotechnology in Africa (OFAB), and representatives from the University of Nairobi (UoN) where the committee raised a number of concerns.

Further, on 15th October, 2021, the committee held a meeting with the Ministry of Environment and Forestry and National Environment Management Authority (NEMA) to respond to the concerns raised by the committee

During the said meetings, the committee raised *inter alia* the following concerns-

(i) Tabling before the House

It was observed that Regulations published as LN No.149 of 2016 were not submitted for tabling in the National Assembly in accordance with Section 11(1) of the Statutory Instruments Act, (*No. 23 of 2013*).

(ii) Public Participation and Consultation

The Committee noted, with concern that in contravention of Article 10 and 118 of the Constitution and sections 5 and 5A of the Statutory Instruments Act, the Ministry and the National Environment Management Authority (NEMA) did not conduct public participation as required under the said provisions.

Concerns by Stakeholders

The Concerns by the National Biosafety Authority and Open forum on Agricultural Biotechnology were on the operationalization of the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016 (*Legal Notice No, 149 of 2016*).

It was brought to the attention of the Committee that L.N. No. 149, 2016 sought to amend the fifth schedule to the principal Regulations to adjust the fee payable for application for registration as an Environmental Impact Assessment/Audit expert and the various fees payable for categories of licenses to be issued by the Authority.

Adoption of Biotechnology in Africa

The Committee was apprised on the cause of slow adoption of biotechnology in African countries, including Kenya, and were notified that biotechnology is well appreciated in the developed nations.

Committee on Delegated Legislation: Report on the Consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, published vide Legal Notice Number 149 of 2016.

(iii) Delay of engaging the Committee on Delegated Legislation

The committee-raised concerns on why it took so long for the stakeholders to engage with the Committee on Delegated Legislation since the implementation of the said Regulations were in 2016. The National Biosafety Authority and OFAB demonstrated their efforts and attempts to raise the matters with the Ministry, in vain as may be demonstrated with the annexed letters presented to the committee.

(iv) Previous attempts to consult the Ministry on the subject matter

The Committee was informed that several attempts to consult the Ministry had been made in vain, by both National Biosafety Authority and NEMA and letters regarding the same were availed before the committee (Annexure 3).

2.2 Scrutiny of the Instrument

5. The Committee considered the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016 to check its conformity with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Environmental Management and Coordination Act (*No. 8 of 1999*), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), pursuant to which they are made, which regulates the making, scrutiny and publication of the Regulations.

2.3 Summary of the Regulations

6. The Cabinet Secretary sought to amend Regulations 9 and 10 of the principal Regulations, which would have an effect of —:
- (a) reducing the number of days within which the Authority (NEMA) shall take action in relation to comments on a project report submitted to the Authority.
 - (b) reducing from seven (7) to five (5) days, the timeline within which, upon receipt of the EIA project report, the Authority would submit a copy of the project report to —
 - (i) each of the relevant lead agencies; and
 - (ii) the relevant District Environment Committee and from thirty to fourteen;
 - (c) reduce days or any time prescribed by the authority, where more than one district is involved, to the relevant Provincial Environment Committee, for their written comments which comments are to be submitted to the Authority.
 - (d) reduce from forty five to thirty days the time within which, when the Authority does not receive comments, they proceed to determine the project report.
 - (e) reduce from forty five to thirty days the time within which when the Authority upon determination of the project report, communicates their decision together with the reasons thereof to the proponent.
7. The Cabinet Secretary further amended the fifth schedule to the principal Regulations to adjust the fee payable for application for registration as an Environmental Impact Assessment/Audit expert and the various fees payable for categories of licenses to be issued by the National Environmental Management Authority.

3.0 COMMITTEE OBSERVATIONS AND FINDINGS

8. Following comprehensive scrutiny of the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016, the Committee made the following observations:-

1. **THAT**, section 147(1) of EMCA provides that *“The Cabinet Secretary may, on the recommendation of the Authority and upon consultation with the relevant lead agencies, make regulations...”*

The enactment clause of the Regulations has no mention of any recommendation of the Authority nor consultation with the relevant lead agencies and the same is not demonstrated. This infringes Article 259(11) of the Constitution, which requires mandatory recommendations, or consultation with another institution, when so required under a statute, and which must be sufficiently demonstrated at the enactment clause of the Regulations.

Article 259(11) of the Constitution provides that-

“If a function or power conferred on a person under this Constitution is exercisable by the person only on the advice or recommendation, with the approval or consent of, or on consultation with, another person, the function may be performed or the power exercised only on that advice, recommendation, with that approval or consent, or after that consultation, except to the extent that this Constitution provides otherwise”.

2. **THAT**, contrary to the requirements set out in section 11(1) and 12 (1) and (2) of Statutory Instruments Act, (No. 23 of 2013) the Regulations published as LN No.149 of 2016 were not submitted to, and therefore were not tabled in, the National Assembly. This implies that the ought to have ceased to have effect on the last day for it to be so laid, hence lapsed by operation of law.

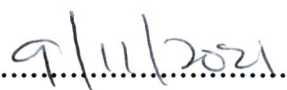
3. **THAT**, the Ministry and the National Environment Management Authority (NEMA) did not conduct public participation as required under Articles 10 and 118 of the Constitution and sections 5,5A and the Schedule to the Statutory Instruments Act, read with the Environmental Management and Coordination Act, 1999.

4.0 **THAT** Contrary to section 11(2) of the Statutory Instruments Act, there was no explanatory memorandum made for the Regulations providing for the purpose of the Statutory instrument, the Legislative context, policy background, consultation outcome, its impact on fundamental rights and freedom, modalities of monitoring and review which would have guided the committee’s consideration during scrutiny.

5.0 COMMITTEE RECOMMENDATION

Having examined the conformity of the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016 published *vide* (Legal Notice No, 149 of 2016, with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), and the Environmental Management and Co-ordination Act, (No. 8 of 1999) pursuant to which they are made, **the Committee recommends that the House annuls in entirety the said statutory instrument** for noncompliance with the Constitution, the relevant Statutes and the National Assembly Standing Orders.

Signed.....

Date.....

THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)

6.0 ANNEXURES

- 1. Adoption List**
- 2. Legal Notice Number (*L.N. No. 149 of 2016*)**
- 3. Committee Minutes**
- 4. Letter from OFAB**
- 5. Letter from the Clerk National Assembly.**

MINUTES OF THE 58th SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 15TH OCTOBER, 2021 AT 1400 HRS. AT PRIDEINN PARADISE BEACH RESORT, MOMBASA COUNTY.

PRESENT

1. The Hon. Kassait Kamket, M.P. - Chairperson
2. The Hon. Muriuki Njagagua, M.P. - Vice Chairperson
3. The Hon. Robert Mbui, M.P.
4. The Hon. Daniel Maanzo, M.P.
5. The Hon. George Murugara, M.P.
6. The Hon. Martha Wangari, M.P.
7. The Hon. Robert Gichimu, M.P.
8. The Hon. Kamoti Mwamkale, M.P.
9. The Hon. Timothy Wanyonyi, M.P.
10. The Hon. Edith Nyenze, M.P.
11. The Hon. Munene Wambugu, M.P.
12. The Hon. Jennifer Shamalla, M.P.
13. The Hon. (Dr.) Wilberforce Oundo, M.P.
14. The Hon. Ronald Tonui, M.P.
15. The Hon. Nicholas Tindi Mwale, M.P.

ABSENT WITH APOLOGY

1. The Hon. Abdi Tepo, M.P.
2. The Hon. Cecily Mbarire, MGH, M.P.
3. The Hon. Patrick Mariru, M.P.
4. The Hon. Waihenya Ndirangu, M.P.
5. The Hon. Alice Wahome, M.P.
6. The Hon. Sammy Seroney, M.P.
7. The Hon. William Cheptumo, M.P.
8. The Hon. Gideon Mulyungi, M.P.

IN-ATTENDANCE

National Assembly Secretariat

1. Mr. Mohamed Jimale - Clerk Assistant II
2. Mr. Wilson Dima Dima - Principal Legal Counsel
3. Josephat Motonu - Senior Fiscal Analyst
4. Beatrice Auma - Senior Executive Personal Assistant
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Noelle Chelagat - Media Relations
7. Mr. Anthony Wamae - Serjeant-at-Arms
8. Mr. Mureithi Theuri - Intern

Ministry of Environment and Forestry.

1. Hon. Mohammed Elam - Chief Administrative Secretary Ministry of Environment and Forestry

2.Mamo B. Mamo	- Director General, National Environment Management Authority
3.Linda C. Kosgei	- AG. Director National Environment Management Authority
4.Annie Syombua	- Ministry of Environment and Forestry
5.Titus W. Simiyu	- CEO National Environment Management Authority (NEMA)
6.Joseph Makau	- NEMA Environment Officer
7.Rodney Omari	- Senior Secretary Ministry of Environment and Forestry
8.Erick F.N. Akotsi	- AG- Environment Secretary, Ministry of Environment and Forestry

MIN.NO. /NA/CDL/2021/254 PRAYER AND PRELIMINARIES

The Chairperson called the meeting to order at 3.12 p,m, with the Prayer. A round of self-introductions was then conducted.

**MIN.NO. /NA/CDL/2021/ 255 LEGAL ANALYSIS OF THE ENVIRONMENTAL
(IMPACT ASSESSMENT AND AUDIT)
(AMENDMENT) REGULATIONS, 2021 L.N.149 AND L.N. NO.
150 OF 2016**

Members were informed as follows -

- 1.That, the Legal Notice 149 of August 2016:** was subsequently overtaken by events after the Cabinet Directive suspended all EIA related fees in January 2017.
- 2.Ease of Doing Business (EODB) as Global Trend:** The Environmental Impact Assessment (EIA) was mapped out as a key construction permitting procedure that impacts on time and cost of doing business.
- 3.That, Legal Notice No. 150 of 19th August 2019** did not introduce the EIA requirement for major developments in biotechnology but only grouped the second schedule of EMCA, 1999 into risk categories for the projects required to undertake an EIA.
- 4.That, Legal Notice 150 of August 2016:** The EIA study process as administered by NEMA is the regulatory tool that accords the Authority a platform with a wider scope in application of precautionary principle, development of Environmental and social management and monitoring plans and institution with the appropriate safeguards to guarantee a clean, healthy and sustainable environment for all.
- 5.That, Biotechnology as a High Risk:** While recognizing the importance of Biotechnology ,we are cognizant of the environmental, health and social risks, uncertainties and potential adverse impacts that it poses to genetic diversity (genetic bottlenecks that threaten the survival of target and non-target species), ecosystems integrity, geo-chemical cycles, public health and security. This thus requires Risk Management (an agency decision-making process that entails consideration of health, environmental, social estimation, economic estimation, policy judgment and Risk-Benefit control) and Risk Communication (an opportunity to address risk perception and provide Public “Relief”).
- 6.That,** the Statutory Instrument were not tabled before the Committee on Delegated Legislation, further the two Legal Notices were not tabled in Parliament after gazettelement within the stipulated timeframe.

- 7. That, Public Participation:** That a team of relevant Ministries, Departments Agencies, Counties (MCDAs) and private sector representation was constituted in February 2016 to research on the review of the statutory EIA levy and the risk-based categorization of projects. The institutions represented were; Kenya Private Sector Alliance, Kenya Association of Manufacturers, Kenya Oil and Gas Association, Petroleum Institute of East Africa, Geothermal Development Corporation, Tullow Kenya, Council of Governors, University of Nairobi, Moi University, Environmental Institute of Kenya, The National Treasury, Ministry of Energy & Petroleum, Ministry of Water & Irrigation, LAPSSET Corridor Development Authority, Kenya Urban Roads Authority, Kenya National Highways Authority, Kenya Ports Authority, Kenya Electricity Transmission Company Limited, Kenya Electricity Generating Company and NEMA
- 8. That,** EIA guidelines are necessary to safeguard the Genetic Natural resources which are our natural capital from exploitation by foreign researches.
- 9. That , NEMA** developed the following gazette notices:
- a) Legal Notice No. 149 of 19th August 2016, amending the Environmental (Impact Assessment and Audit) Regulations, 2003 to reduce the timelines for processing of Medium Risk projects from forty-five (45) to thirty (30) days and from 90 days to 60 days for the High Risk (EIA Study) Reports.
 - b) Legal Notice No. 150 of 19th August 2016, amending the Second Schedule of the Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) to categorize projects according to the risks they pose to the environment (Low Risk Projects, Medium Risk Projects and High Risk Projects).

Member's observations

1. Members sought Clarity on what was being regulated, the environment or safety.
2. Who between the Cabinet Secretary Environment and Forestry and the Cabinet Secretary Education, Science and Technology and that there was need to Ensure that both Ministries are involved and other relevant stakeholders.
3. That LN. No 150 of 2016 was not tabled in the National Assembly.
 - The Cabinet Secretary Ministry of Environment, has the powers to Amend the 2nd schedule of EMCA
4. That if Biotech is well regulated it will be a good solution to food insecurity in this country.
5. The committee sought to know whether public participation was targeted or open.
 - Public participation was targeted and only to the very relevant stakeholders.

Recommendations.

Having examined the Regulations against the Constitution, the interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*), the Environmental Management and Coordination Act (No. 8 of 1999) and the Biosafety Act of 2009, pursuant to which they are made, the Committee **resolved to** annul the Environmental (Impact Assessment And Audit) (Amendment) Regulations, 2021(Legal Notice No. 149 of 2021), having been proposed by Hon. George Murugara, M.P and seconded by Hon. Jennifer Shamalla, M.P.

MIN.NO. /NA/CDL/2021/256 ADJOURNMENT

There being no other business the meeting was adjourned at 1631 hrs. Next meeting will be called on Notice.

Signed.....

**HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

Date.....

o

MINUTES OF THE 58th SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 15TH OCTOBER, 2021 AT 2.30. P.M. AT PRIDE INN PARADISE BEACH RESORT, MOMBASA COUNTY

PRESENT

- | | | |
|--|---|-------------------------|
| 1. The Hon. Kassait Kamket, M.P. | - | Chairperson |
| 2. The Hon. Muriuki Njagagua, M.P. | - | Vice Chairperson |
| 3. The Hon. Robert Mbui, M.P. | | |
| 4. The Hon. Daniel Maanzo, M.P. | | |
| 5. The Hon. George Murugara, M.P. | | |
| 6. The Hon. Martha Wangari, M.P. | | |
| 7. The Hon. Robert Gichimu, M.P. | | |
| 8. The Hon. Kamoti Mwamkale, M.P. | | |
| 9. The Hon. Timothy Wanyonyi, M.P. | | |
| 10. The Hon. Edith Nyenze, M.P. | | |
| 11. The Hon. Munene Wambugu, M.P. | | |
| 12. The Hon. Jennifer Shamalla, M.P. | | |
| 13. The Hon. (Dr.) Wilberforce Oundo, M.P. | | |
| 14. The Hon. Ronald Tonui, M.P. | | |
| 15. The Hon. Nicholas Tindi Mwale, M.P. | | |

ABSENT WITH APOLOGY

1. The Hon. Abdi Tepo, M.P.
2. The Hon. Cecily Mbarire, MGH, M.P.
3. The Hon. Patrick Mariru, M.P.
4. The Hon. Waihenya Ndirangu, M.P.
5. The Hon. Alice Wahome, M.P.
6. The Hon. Sammy Seroney, M.P.
7. The Hon. William Cheptumo, M.P.
8. The Hon. Gideon Mulyungi, M.P.

IN-ATTENDANCE

National Assembly Secretariat

- | | |
|-------------------------|---|
| 1. Mr. Mohamed Jimale | - Clerk Assistant II |
| 2. Mr. Wilson Dima Dima | - Principal Legal Counsel |
| 3. Josephat Motonu | - Senior Fiscal Analyst |
| 4. Beatrice Auma | - Senior Executive Personal Assistant |
| 5. Mr. Charles Ayari | - Superintendent of Electronics (Audio) |
| 6. Noelle Chelagat | - Media Relations |
| 7. Mr. Anthony Wamae | - Serjeant-at-Arms |
| 8. Mr. Mureithi Theuri | - Intern |

Ministry of Environment and Forestry.

1. Hon. Mohammed Elmi - Chief Administrative Secretary, Ministry of Environment and Forestry
2. Mr. Mamo B. Mamo - Director General, National Environment Management Authority
3. Ms. Linda C. Kosgei - AG's Office. Director National Environment Management Authority
4. Ms. Annie Syombua - Ministry of Environment and Forestry
5. Mr. Titus W. Simiyu - National Environment Management Authority (NEMA)
6. Mr. Joseph Makau - NEMA Environment Officer
7. Mr. Rodney Omari - Senior Secretary Ministry of Environment and Forestry
8. Mr. Erick F.N. Akotsi - AG- Environment Secretary, Ministry of Environment and Forestry

MIN.NO. /NA/CDL/2021/254 PRAYER AND PRELIMINARIES

The Chairperson called the meeting to order at 3.15 p,m, with the Prayer. A round of self-introductions was then conducted.

**MIN.NO. /NA/CDL/2021/ 255 LEGAL ANALYSIS OF THE ENVIRONMENTAL
(IMPACT ASSESSMENT AND AUDIT)
(AMENDMENT) REGULATIONS, 2021 L.N.149 AND L.N. NO.
150 OF 2016**

Members were informed as follows -

9. **That, the Legal Notice 149 of August 2016:** was subsequently overtaken by events after the Cabinet Directive suspended all EIA related fees in January 2017.
10. **Ease of Doing Business (EODB) as Global Trend:** The Environmental Impact Assessment (EIA) was mapped out as a key construction permitting procedure that impacts on time and cost of doing business.
11. **That, Legal Notice No. 150 of 19th August 2019** did not introduce the EIA requirement for major developments in biotechnology but only grouped the second schedule of EMCA, 1999 into risk categories for the projects required to undertake an EIA.
12. **That, Legal Notice 150 of August 2016:** The EIA study process as administered by NEMA is the regulatory tool that accords the Authority a platform with a wider scope in application of precautionary principle, development of Environmental and social management and monitoring plans and institution with the appropriate safeguards to guarantee a clean, healthy and sustainable environment for all.
13. **That, Biotechnology as a High Risk:** While recognizing the importance of Biotechnology ,we are cognizant of the environmental, health and social risks, uncertainties and potential adverse impacts that it poses to genetic diversity (genetic bottlenecks that threaten the survival of target and non-target species), ecosystems integrity, geo-chemical cycles, public health and security. This thus requires Risk

Management (an agency decision-making process that entails consideration of health, environmental, social estimation, economic estimation, policy judgment and Risk-Benefit control) and Risk Communication (an opportunity to address risk perception and provide Public “Relief”).

14. **That**, the Statutory Instrument were not tabled before the Committee on Delegated Legislation, further the two Legal Notices were not tabled in Parliament after gazettelement within the stipulated timeframe.
15. **That, Public Participation:** That a team of relevant Ministries, Departments Agencies, Counties (MCDAs) and private sector representation was constituted in February 2016 to research on the review of the statutory EIA levy and the risk-based categorization of projects. The institutions represented were; Kenya Private Sector Alliance, Kenya Association of Manufacturers, Kenya Oil and Gas Association, Petroleum Institute of East Africa, Geothermal Development Corporation, Tullow Kenya, Council of Governors, University of Nairobi, Moi University, Environmental Institute of Kenya, The National Treasury, Ministry of Energy & Petroleum, Ministry of Water & Irrigation, LAPSET Corridor Development Authority, Kenya Urban Roads Authority, Kenya National Highways Authority, Kenya Ports Authority, Kenya Electricity Transmission Company Limited, Kenya Electricity Generating Company and NEMA
16. **That**, EIA guidelines are necessary to safeguard the Genetic Natural resources which are our natural capital from exploitation by foreign researches.
17. **That , NEMA** developed the following gazette notices:
 - a) Legal Notice No. 149 of 19th August 2016, amending the Environmental (Impact Assessment and Audit) Regulations, 2003 to reduce the timelines for processing of Medium Risk projects from forty-five (45) to thirty (30) days and from 90 days to 60 days for the High Risk (EIA Study) Reports.
 - b) Legal Notice No. 150 of 19th August 2016, amending the Second Schedule of the Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) to categorize projects according to the risks they pose to the environment (Low Risk Projects, Medium Risk Projects and High Risk Projects).

Member’s observations -

The following matters arose from the presentation:

1. Members sought Clarity on what was being regulated, the environment or safety.
2. Who between the Cabinet Secretary Environment and Forestry and the Cabinet Secretary Education, Science and Technology and that there was need to Ensure that both Ministries are involved and other relevant stakeholders.
3. That LN. No 149 of 2016 was not tabled in the National Assembly.
4. The Cabinet Secretary Ministry of Environment, has the powers to amend the 2nd schedule of EMCA through LN. No 150 of 2016
5. That if Biotech is well regulated it will be a good solution to food insecurity in this country. The committee sought to know whether public participation was targeted or open. Public participation was targeted and only to the very relevant stakeholders.

Recommendations

Having examined the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016 (Legal Notice No. 149 of 2016), against the Constitution, the interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*), the Environmental Management and Coordination Act (No. 8 of 1999) and the Biosafety Act of 2009, pursuant to which they are made, the Committee **resolved to annul** the said instrument as having been proposed by Hon. George Murugara, M.P and seconded by Hon. Jennifer Shamalla, M.P.


MIN.NO. /NA/CDL/2021/256 ADJOURNMENT

There being no other business the meeting was adjourned at 1631hrs. Next meeting will be called on Notice.

Signed.....

Date.....

HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)

 THE NATIONAL ASSEMBLY PAPERS T AID	
DATE: 10 NOV 2021	DAY: Wed PM
TABLED BY:	Member Delegated legislation
CLERK-AT THE-TABLE:	M. Lemwa

MINUTES OF THE 53rd SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 28TH SEPTEMBER, 2021 AT 8.00 A.M. AT LILIAN TOWERS SAFARI CLUB HOTEL 1ST FLOOR.

PRESENT

1. The Hon. Kassait Kamket, M.P. - Chairperson
2. The Hon. Muriuki Njagagua, M.P. - Vice Chairperson
3. The Hon. Timothy Wanyonyi, M.P.
4. The Hon. Robert Mbui, M.P.
5. The Hon. Daniel Maanzo, M.P.
6. The Hon. George Murugara, M.P.
7. The Hon. Martha Wangari, M.P.
8. The Hon. Edith Nyenze, M.P.
9. The Hon. Abdi Tepo, M.P.
10. The Hon. Robert Gichimu, M.P.
11. The Hon. Kamoti Mwamkale, M.P.

ABSENT WITH APOLOGY

12. The Hon. Cecily Mbarire, MGH, M.P.
1. The Hon. Patrick Mariru, M.P.
2. The Hon. Waihenya Ndirangu, M.P.
3. The Hon. Alice Wahome, M.P.
13. The Hon. Sammy Seroney, M.P.
4. The Hon. Munene Wambugu, M.P.
5. The Hon. Jennifer Shamalla, M.P.
6. The Hon. William Cheptumo, M.P.
14. The Hon. Gideon Mulyungi, M.P.
7. The Hon. (Dr.) Wilberforce Oundo, M.P.
8. The Hon. Ronald Tonui, M.P.
9. The Hon. Nicholas Tindi Mwale, M.P.

IN-ATTENDANCE

National Assembly Secretariat

1. Mr. Mohamed Jimale - Clerk Assistant II
2. Mr. Wilson Dima Dima - Principal Legal Counsel
3. Mr. Charles Ayari - Superintendent of Electronics (Audio)
4. Mr. Anthony Wamae - Serjeant-at-Arms
5. Mr. Mureithi Theuri - Intern

National Biosafety Authority

Prof. Dorrington Oyugi - CEO, National Biosafety Authority (NBA)

Open Forum on Agricultural Biotechnology Kenya (OFAB)

1. Dr. Margaret Karembu - Chair, Open Forum on Agricultural Biotechnology Kenya (OFAB)
2. Jane Achando - Legal officer, OFAB
3. Daniel Magundu - Chair, Society for Biotech Farmers of Kenya (SOBIFAAK)

Kenya Agricultural and Livestock Research Organization (KALRO)

1. Dr. Catherine Taracha - Director – KARLO, Biotechnology Centers
2. James Karanja - KALRO Scientist
3. Ms. Patricia A. Ngutu - Ag. PLO KALRO Principal Legal Officer
4. Prof Douglas Miano - University of Nairobi (UON)
5. Ms. Doris Wangari - Program for Biosafety Systems(PBS)- International Food Policy Research Institute (IFPRI)

African Union Development Agency

- 1) Silas Obukosi - African Union Development Agency-New Partnership for Africa's Development (AUDA-NEPAD)
- 2) Ms. Oumou Barry - African Union Development Agency-New Partnership for Africa's Development (AUDA-NEPAD)

International Service for the Acquisition of Agri-biotech Applications (ISAAA-COMMS)

1. Brian Okinda - International Service for the Acquisition of Agri-biotech Applications (ISAAA-COMMS)
2. Bibiana Irari Kipkorir - International Service for the Acquisition of Agri-biotech Applications Africenter (ISAAA)
3. Auma Makuna Rweria - International Service for the Acquisition of Agri-biotech Applications Africenter (ISAAA)
4. Anthony Nderitu - International Service for the Acquisition of Agri-biotech Applications Africenter (ISAAA)
5. Godfrey M. Ngure - Programme Associate
6. Joel W. Ochieng - Programme Leader
7. Ezekiel Ngang'a - Media Consultant

MIN.NO. /NA/CDL/2021/234

PRAYER AND PRELIMINARIES

Remarks by the Chairperson

The Chairperson called the meeting to order at 9.15 a.m and commenced with the Prayer. A round of self-introductions was then conducted before proceeding with the business of the day. The Chairperson reiterated the role of the Committee in scrutinizing statutory instruments, both published and prepublication scrutiny. He thereafter welcomed all participants to the meeting. And invited Dr. Margaret Karembu, Chairperson of the Open Forum on Agriculture Biotechnology in Africa (OFAB) to make her remarks.

Remarks from the Chairperson OFAB.

Dr. Karembu thanked the committee for acceding to their invitation of meeting with the stakeholders to deliberate on the operationalization of the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016 (*Legal Notice No, 149 of 2016*) and the replacement of the Second Schedule to Environmental Management and Coordination Act, 1999 *vide* LN No. 150 of 2016 relating to the Environmental Impact Assessment.

She further informed the meeting the purpose of the consultative meeting was to bring to the attention of the committee on the concerns by the stakeholders regarding the publication of the *LN No. 149 and LN No. 150 of 2016* and hoped that it will address the concerns on the operationalization of the two sets of the instruments.

The Committee further heard THAT -

1. OFAB is a platform bringing together stakeholders in biotechnology and enables interactions between scientists and other professionals.
2. Kenya researchers were facing challenges in the field of agricultural biotechnology in delivering improved biotech seeds to farmers due to the overlapping mandates of environmental management and coordination regulations legal notices No. 149 and 150 of 2016 and the Biosafety Act of 2009.
3. The regulation overlap introduces bottlenecks in the biosafety framework, stifling agricultural biotechnology research, development and deployment process to the detriment of achieving food security.
4. Africa was missing out on opportunities due to its slow adoption of biotech, i.e. on Biotech Cotton with only two countries in Africa; South Africa (2.68 million Ha) in 2019 and Sudan (236,200 Ha) having adopted, further that 80% of the world cotton is genetically produced.
5. There should be trust in science and hence application of science based and efficient GM crop regulations are very necessary, further reward scientists working on improving animal breeds and crops.
6. Biotech ensures caution against unprecedented disruption of production/distribution of food raising food that cause food insecurity.
7. The regulations were not submitted to the national assembly for tabling as required under section 11(1) of the statutory instrument Act No. 23 of 2013.
8. No public participation was conducted which is a contravention of Article 10 and 118 of the constitution and sections 5, 5A and the schedule to the statutory instruments Act No. 23 of 2013.

Setbacks in cultivation of Biotech Crops.

1. The implementation of the Biotech Cotton programme was approved in 2018 and later approved by Cabinet in 2019 due to the Environmental Impact Assessment (EIA) Requirements.
2. Introduction of the Brown Streak Disease resistant cassava approved by National Biosafety Authority in June 2021 but has to undergo Environmental Impact Assessment.

3. Biotech Maize approved by the National Biosafety Authority in 2016 but delayed due to EIA until 2019; but awaiting cabinet approval due to GM Ban before commercialization.

Why Biotechnology?

1. The emergence of new pests with climate change causing recurrent drought.
2. To attract the youth back to farming, thus make it efficient, smart and have pleasurable tools.
3. To cope with pandemic impacts that interrupt food production and distribution.
4. To maximize the health of humans, animals, plants, and their shared environment.
5. To increase the income benefits for farmers due to high yields and low cost of production.
6. For instance use of Biotech cotton in Sudan has increased yields by 2-3 times higher than the conventional varieties.
7. To ensure environmental safety since with Biotech seeds that are disease and pest resistance very little spraying is need.
8. To enable us tap the potential of New Breeding Techniques e.g. genome editing for the agriculture, health, environment, industries.
9. Grow foods faster to meet the demand.

MIN.NO. /NA/CDL/2021/235 ANALYSIS OF THE L.N. 149 AND L.N. 150 OF 2016

Overview of the LN. No. 149 and LN No.150

Ms. Jane Achando, the Legal Officer, African Agricultural Technology Foundation (AATF), took Members through the analysis of the LN. No. 149 and LN No.150 and stated as follows:-

- (1) **Legal Notice 149 of August 2016:** Amended the fifth schedule to the principal Regulations so as to adjust the fee payable for application for registration as an Environmental Impact Assessment/Audit expert and the various fees payable for categories of licenses to be issued by the Authority
- (2) **Legal Notice 150 of August 2016:** Introduced the need for a full Environmental Impact Assessment (EIA) for major developments in biotechnology including the introduction and testing of genetically modified organisms (GMOs).
- (3) Both set of Regulations were not submitted for tabling in Parliament as required under **Section 11(1) Statutory Instruments Act.**
- (4) There was no **public participation** conducted as required under Articles 10 and 118 of the Constitution of Kenya, 2010.
- (5) No consultation with the lead agencies i.e. **National Biosafety Authority** and **National Environmental Management Authority** as required under Article 259 (11) of the Constitution of Kenya, 2010 and Section 58 (4) of **Environmental Management Coordination Act, 1999**
- (6) Article 2 and 4 of the Constitution provides that any law (including subsidiary legislation) that contravenes any provision of the constitution is void to the extent of its inconsistency.
- (7) While it is clear that NBA is the lead agency on biotechnology, LN No. 150 of 2016 has created a confusion on the mandates of NEMA and NBA and this is delaying research in the Country. The need for a full Environmental Impact Assessment (for

major developments in biotechnology including the introduction and testing of genetically modified organisms (is best handled by the NBA which is the lead agency on the subject matter).

Implications of the Legal Notices

- a) Legal Notice 150 sought to regulate major developments in Biotechnology which is a mandate of the National Biosafety Authority as outlined under the Biosafety Act of Kenya.
- b) This Legal Notice thus contravenes the Biosafety Act and Section 13 (of the Statutory Instruments Act, 2013, which states that every statutory instrument should conform to the Constitution, the Act under which it is written and any other Law.

Impact on Agriculture

- a) Delay in implementing food security under the Big 4 Agenda.
- b) Loss of livelihoods to farmers and their families.
- c) Loss of jobs in the Agriculture sector.
- d) Delay in implementing Biotechnology Projects.
- e) Discourage investment in the Biotechnology sector hence derailing Projects in the development sector.

Plenary discussions -

1. The Legal Notices 149 and 150 of 2016 were published on 19th August, 2016 by the Cabinet Secretary for Environment, Natural Resources and Regional Development Authorities.
2. **Tabling before the House** - It was observed that both sets of Regulations were not submitted for tabling in the National Assembly in accordance with Section 11(1) of the Statutory Instruments Act, (*No. 23 of 2013*) and that the Ministry of Environment and Forestry and the National Environment Management Authority (NEMA) did not conduct public participation as required under Articles 10 and 118 of the Constitution and sections 5,5A and the Schedule to the Statutory Instruments Act, read with the Environmental Management and Coordination Act, 1999. The Regulations were not tabled and were enforce since it was published in 2016.
3. **Concerns by Stakeholders** - the Concerns by the National Biosafety Authority and Open forum on Agricultural Biotechnology were –
 - (i) on the operationalization of the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2016 (*Legal Notice No, 149 of 2016*) and the replacement of the Second Schedule to Environmental Management and Coordination Act, 1999 *vide* LN No. 150 of 2016 relating to the Environmental Impact Assessment
 - (ii) The L.N. No. 149 of 19th August, 2016 amended the fifth schedule to the principal Regulations so as to adjust the fee payable for application for registration as an Environmental Impact Assessment/Audit expert and the various fees payable for categories of licenses to be issued by the Authority while the L.N No. 150 of 19th August, 2016 introduced the need for a full

Environmental Impact Assessment (EIA) for major developments in biotechnology including the introduction and testing of genetically modified organisms (GMOs).

- (iii) The Legal Notice 150 sought to regulate major developments in biotechnology which is a mandate of the National Biosafety Authority as outlined under the Biosafety Act, 2009, thus contravenes the Biosafety Act and Section 13(a) of the Statutory Instruments Act which provides that every statutory instrument should conform to the Constitution, the Act under which it is made and any other written Law.

15. **Adoption of Biotechnology in Africa** - What is causing the slow adoption of biotechnology in African countries while it's well appreciated in the developed nations?

16. **Delay of engaging the Committee on Delegated Legislation** - Why did it took so long for the stakeholders to engage with the Committee on Delegated Legislation since the implementation of the said Regulations were in 2016? i.e. National Biosafety Authority (NBA) to bring forward the complains.

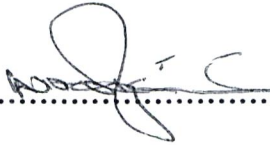
Resolution

The Committee resolved that the Cabinet Secretary of the Ministry of Environment and Forestry appear before the Committee on Friday 15th October, 2021 in Mombasa to brief the Committee on the propriety or otherwise of the said Regulations.

MIN.NO. /NA/CDL/2021/236 ADJOURNMENT

There being no other business the meeting was adjourned at 10.15 am. Next meeting will be called on Notice.

Signed.....



Date.....

9/11/2021

**HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

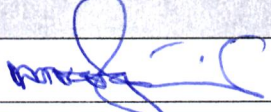


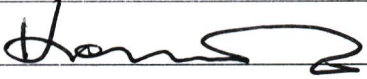
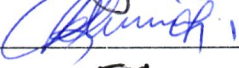
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on the Consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016 (Legal Notice Number 149 of 2021).

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 08/01/2021 VENUE: County Hall, Mini Chamber.

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Cecily Mbarire, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Robert Mbui, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Ronald Kiprotich Tonui, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	
12.	Hon. Gideon Mulyungi, MP	
13.	Hon. George Gitonga Murugara, MP	
14.	Hon. Jennifer Shamalla, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Patrick Kariuki Mariru, MP	
17.	Hon. (Dr.) Wilberforce Oundo, MP	
18.	Hon. Abdi K. Tepo, MP	
19.	Hon. Edith Nyenze, MP	
20.	Hon. Robert Githinji Gichimu, MP	
21.	Hon. Sammy Seroney, MP	
22.	Hon. Tindi Mwale, MP	
23.	Hon. William Cheptumo, M.P	

(Legislative Supplement No. 63)

LEGAL NOTICE NO. 149

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT

(No. 8 of 1999)

IN EXERCISE of the powers conferred by section 147 of the Environmental Management and Coordination Act, 1999, the Cabinet Secretary for Environment, Natural Resources and Regional Development Authorities makes the following Regulations—

THE ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT)
(AMENDMENT) REGULATIONS, 2016

1. These Regulations may be cited as the Environment (Impact Assessment and Audit) (Amendment) Regulations, 2016. Citation.
2. Regulation 9 of the Environmental (Impact Assessment and Audit) Regulations, 2003, in these Regulations referred to as the “principal Regulations” is amended— Sub-leg.
 - (a) in sub-regulation (1)—
 - (i) by deleting the word “seven” and substituting therefor the word “five”;
 - (ii) by deleting the words “twenty one” and substituting therefor the word “fourteen” in paragraph (c);
 - (b) in sub-regulation (2) by deleting the words “thirty” and substituting therefor the word “fourteen”.
3. Regulation 10 (1) of the principal Regulations is amended by deleting the words “forty-five” and substituting therefor the word “thirty”.
4. The principal Regulations are amended by deleting the Fifth Schedule and substituting therefor the following new Schedule—

FIFTH SCHEDULE

FEES

1. Application for registration as an Environmental Impact Assessment/Audit expert

<i>Category</i>	<i>Citizen (KSh.)</i>	<i>Non-Citizen (KSh.)</i>
(a) Associate expert	4,000	12,000
(b) Lead expert	6,000	18,000
(c) Firm of experts	10,000	30,000

2. Annual licence to practice as an Environmental Impact Assessment Expert

	<i>Category</i>	<i>Citizen (Ksh)</i>	<i>Non-Citizen (Ksh)</i>
(a)	Associate expert	6,000	18,000
(b)	Lead expert	10,000	30,000
(c)	Firm of experts	40,000	120,000

3. Environmental Impact Assessment License for low risk projects.....0.1% of the total cost of the project subject to a minimum of Kenya Shillings Ten Thousand (10,000) and a maximum of Kenya Shillings Three Million (KSh. 3,000,000).

4. Environmental Impact Assessment License for medium risk projects.....0.1% of the total cost of the project subject to a minimum of Kenya Shillings Twenty Thousand (KSh. 20,000) and a maximum of Kenya Shillings Ten Million (KSh. 10,000,000).

5. Environmental Impact Assessment License for high risk projects.....0.1% of the total cost of the project subject to a minimum of Kenya Shillings Fifty Thousand (KSh. 50,000) and a maximum of Kenya Shillings Forty Million (KSh. 40,000,000).

6. Surrender, transfer or variation of Environmental Impact Assessment licence.....Kenya Shillings Ten Thousand (KSh. 10,000)

Dated the 18th May, 2016.

JUDI W. WAKHUNGU,
*Cabinet Secretary for Environment, Natural Resources
and Regional Development Authorities.*

LEGAL NOTICE NO. 150

THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT

(No. 8 of 1999)

REPLACEMENT OF THE SECOND SCHEDULE

IN EXERCISE of the powers conferred by section 58(4) of the Environmental Management and Coordination Act, 1999, the Cabinet Secretary for Environment, Natural Resources and Regional Development Authorities deletes the Second Schedule to the Act and substitutes therefor the following Schedule—

SECOND SCHEDULE (s 58 (1))

PROJECTS TO UNDERGO ENVIRONMENTAL IMPACT
ASSESSMENT

1. Low Risk Projects.

RECEIVED
20 SEP 2021
Directorate of Departmental Committees



DC - Mr. Nduhi, Nseleat. ONA 17/9/21

16th September, 2021

The Clerk of National Assembly
P.O. Box 40326 - 00100
Nairobi

*DDC-1107
8,7109/21*

Re: CONSULTATIVE BREAKFAST MEETING WITH NATIONAL ASSEMBLY COMMITTEE ON DELEGATED LEGISLATION ON ENVIRONMENTAL MANAGEMENT AND COORDINATION REGULATIONS LN No. 149 AND 150 OF 2016, AT THE SERENA HOTEL, NAIROBI ON THE 28TH OF SEPTEMBER 2021.

Our attention was brought to your letter Ref: NA/DCS/CDL/CORR/2020/083 dated 11th December 2020 by one of our members – Society for Biotech Farmers of Kenya (SOBIFAK), herein attached. This was in reference to their inquiry letter dated 13th November 2020 in respect to the Environmental Management and Coordination Regulations LN No. 149 and 150 of 2016 which are Statutory Instruments published under the purview of the Ministry of Environment and Forestry.

The Open Forum on Agricultural Biotechnology in Africa (OFAB) Kenya chapter and partners from the scientific community, invites members of the National Assembly Committee on Delegated Legislation to a consultative breakfast meeting on the 28th September, 2021 from 9:00 am to 11:00 am at the Nairobi Serena Hotel on this subject matter.

The objective of this meeting is to consult with the Committee and to bring to the attention of the Committee, among other issues, the publication of LN No. 149 and 150 which it is established were not submitted to the National Assembly and have a number of provisions in breach of the Constitution, the Statutory Instruments Act, the Environmental Management and Coordination Act, the Biosafety Act,

OFAB shall apprise the Committee on the challenges Kenyan researchers working in the field of agricultural biotechnology are experiencing in delivering improved biotech seeds to farmers due to overlapping mandates of Environmental Management and Coordination Regulations Legal Notices No. 149 and 150 of 2016 with the Biosafety Act of 2009. We have established that these Environmental Regulations were not submitted for tabling in the National Assembly as required under section 11(1) of the Statutory Instrument Act No. 23 of 2013. In addition, no public participation was conducted in contravention of Article 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act (No. 23 of SI).

Whereas the Biosafety Act No.2 of 2009 requires submission of Environmental Risk Assessment (ERA) for any GMO to be introduced to the environment, the Environmental Management and Co-ordination Act (Revised Edition 2012 [1999], and Legal Notice No.149 and 150 of 2016) duplicates this regulation by seeking Environmental Impact Assessment (EIA) for the same application. This regulatory overlap introduces a bottleneck in the biosafety framework, stifling agricultural biotechnology research, development and deployment process to the detriment of achieving Food Security. In addition, the overlap results in duplication of roles and mandates between the regulatory authorities implementing the two Acts namely; the National Biosafety Authority (NBA) and the National Environment Management Authority (NEMA). OFAB Kenya requests for your intervention and guidance in resolving this matter.

OFAB Kenya in partnership with KALRO and NACOSTI provides stakeholders a forum to engage on matters of Science Technology and Innovation and the potential contribution of agricultural biotechnology to the country's socio-economic development. The platform has facilitated national dialogues on Agricultural Biotechnology and works closely with universities, the ministries of Industrialization, Trade and Enterprise Development; Agriculture, Livestock, Fisheries and Cooperatives in engaging stakeholders on these national matters.

I look forward to your positive consideration of this request.

Yours sincerely,

Margaret Karembu, PhD, MBS
Chair, OFAB Kenya Programming Committee

*Esther Ngunyo
To the facilitator
28/9/21*

RECEIVED
16 SEP 2021
CLERK'S OFFICE

cc. *Chairman, National Assembly Committee on Delegated Legislation
Chairman, Society for Biotech Farmers of Kenya (SOBIFAK)*



REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2848000/2221291
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref: NA/DCS/CDL/CORR/2020/083

11th December, 2020

Chairperson
Society for Biotech Farming of Kenya (SOBIFAK)
P.O. Box 460 -10300,
WANG'URU, KIRINYAGA.

Dear *Chair*

RE: ENVIRONMENTAL MANAGEMENT AND COORDINATION REGULATIONS (LEGAL NOTICES NO. 149 AND 150 OF 2016) ON APPROVAL PROCESS OF GMO IN KENYA VS BT COTTON SEED ACCESS TO FARMERS

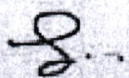
We refer to the above subject matter and your letter dated 13th November, 2020 and wish to respond as hereunder.

You wrote to inquire, among other issues, whether Regulations published vide Legal Notices No. 149 and 150 of 2016, were submitted for tabling in the National Assembly as required under section 11(1) of the Statutory Instruments Act, (No 23 of 2013).

We have perused our records both at the Registry and the Table Office and do confirm that the said Regulations were not submitted to the National Assembly as required under the Statutory Instruments Act.

Kindly note that your letter has been forwarded to the National Assembly Committee on Delegated Legislation, for further action.

Yours


JEREMIAH W. NDOMBI
For: CLERK OF THE NATIONAL ASSEMBLY



ANNEXURES

Ministry of Environment, Water and Natural Resources
State Department of Environment and Natural Resources
P.O. Box 30126-00100, NAIROBI

12 APR 2016
PS OFFICE
RECEIVED



Annex 1

THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

STATE HOUSE
P.O. Box 40530-00100
NAIROBI, KENYA

Ref. No. **OP/CAB.58/4A**
and date

1st April, 2016, 20.....

Mr. Julius Korir
Principal Secretary/Industry
Ministry of Industry, Investment & Trade
NAIROBI.

Dr. Chris Kiptoo
Principal Secretary/Trade
Ministry of Industry, Investment & Trade,
NAIROBI.

Dr. Kamau Thugge, CBS
Principal Secretary
National Treasury
NAIROBI.

All Principal Secretaries

Dear

RE: EASE OF DOING BUSINESS IN KENYA - SURVEY 2016

I refer to the **Fourth Cabinet Meeting 2016**, held on **1st April, 2016** during which Ease of Doing Business in Kenya was discussed under **Any Other Business**.

Cabinet noted with concern that the Country was still ranked poorly in the Index of Ease of Doing Business. This could be attributed to the multiple fees levied by Government Agencies on Business.

Following discussion, Cabinet:

- (i) **Directed** that no new levies should be charged on business without approval of Cabinet.
- (ii) **Directed** that issuance of Business Permits/Certificates by Statutory Authorities should be done in thirty (30) days or less.





- (iii) **Directed** the Cabinet Secretary for Industry, Investment & Trade; the Cabinet Secretary for the National Treasury; and all Cabinet Secretaries to liaise with Kenya Revenue Authority (KRA) for the collection of Government related levies.
- (iv) **Directed** all Cabinet Secretaries to ensure Kenya's position in the Index of Doing Business improves in the next assessment and to provide the way forward in the next one week.
- (v) **Directed** the Cabinet Secretary for Industry, Investment & Trade; the Cabinet Secretary for the National Treasury; and all Cabinet Secretaries to take appropriate action.

Please proceed and initiate action as directed by Cabinet.

Yours

JOSEPH K. KINYUA, EGH
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Copy to:

Mr. Adan Abdulla Mohammed
Cabinet Secretary
Ministry of Trade, Investment and Industry
NAIROBI.

Mr. Henry K. Rotich, EGH
Cabinet Secretary
The National Treasury
NAIROBI.

All Cabinet Secretaries



3

MINUTES OF THE STAKEHOLDER CONSULTATIVE PLANNING MEETING TO RESEARCH ON THE REVIEW OF STATUTORY ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LICENSE FEE HELD ON 21STJANUARY 2016 AT THE NEMA HEADQUATERS BOARDROOM, STARTING 10:00 AM.

MEMBERS PRESENT

1. Zephaniah Ouma- NEMA (Chair)
2. Georgina Wachuka- Kenya Association of Manufacturers
3. Luca Dragonetti- ENI Kenya BV (Kenya Oil and Gas Association)
4. Martina Mumanyi- ENI Kenya BV (Kenya Oil and Gas Association)
5. Cornelius Ndeti- Kenya Electricity Generating Company.
6. Abdilatif Hussein – LAPSSET Corridor Development Authority
7. Cyprian K. Riungu – Environment Institute of Kenya
8. Mohammed A. Hassan – Kenya Ports Authority
9. Kevin Adundo Otieno – Petroleum Institute of East Africa (PIEA)
10. John K. Maina-Ministry of Energy and Petroleum
11. Ranat Godana- KETRACO
12. Herbert Mwachiro- Environment Institute of Kenya
13. Ken Wafula- Kenya Urban Road Authority
14. Lencer Obondo- NEMA

MINUTE/DISCUSSION	RESPONSE/WAYFORWARD	ACTION/TIMEFRAME
<p>Min 1/21/01/16:Preliminaries.</p> <p>The meeting was called to order at around 1030 hours by Zephaniah Ouma being the session chair, and opened with a word of prayer from Georgina Wachuka.</p> <p>Self-introduction by the members was done after which the Agenda item was adopted as follows;</p> <ol style="list-style-type: none"> 1. Introductions 2. Preliminaries 3. Approach to the assignment 4. Roadmap 5. Funding options <p>The chair gave a brief of why the meeting was called and history of the EIA license fee in relation to the capping. He also informed the members on the previous deliberations that had been made to come up with a reasonable cap. He explained that the proposed capping had been arrived at after a risk analysis of the projects had been conducted during a research and comparison of the fee done with those of other countries. The chair went ahead to clarify to the members that the meeting was meant to plan on how</p>	<p>The members welcomed the idea of capping and recommended that comprehensive stakeholder analysis be done to ensure all stakeholders are involved in the research and proper representation ensured during deliberations.</p>	

to go about with the research and not a negotiation.		
<p>Min 2/21/01/16: Approach to the assignment.</p> <p>The members discussed and came up with three major approaches to the assignment</p> <p>The approaches included:</p> <ul style="list-style-type: none"> • Data analysis on project categories based on the risk assessment. • Bench marking- comprehensive data on other countries to capture the best practices. • Converge on a three day retreat to harmonize comments and finalize a gazette notice for presentation to the Director General NEMA. 	<p>NEMA to share the data available on the risk analysis with the stakeholders.</p> <p>Members to engage on research and comprehensive data analysis and capture the best practices.</p> <p>Members to converge for a three days retreat to deliberate on the findings of the research and eventually reach a ZOPA that is reasonable and acceptable to all the stakeholders on the capping.</p>	
<p>Min 3/21/01/16: Roadmap</p> <ul style="list-style-type: none"> • Data analysis on project categories based on the risk assessment. • Bench marking- comprehensive ^{study} data on other countries to capture the best practices. • ^{Summarize and} Harmonizing of the findings • Converge on a three days retreat to harmonize comments and finalize a gazette notice for presentation to the Director General NEMA. 	<p>NEMA to share the data available on the risk analysis with the stakeholders.</p> <p>Members to engage on ^{Bench marking} research and comprehensive data analysis and capture the best practices.</p> <p>The secretariat to ^{Summarize and} harmonize the findings by the stakeholders for discussion and deliberations during the retreat</p> <p>Members to converge for a three days retreat to deliberate on the findings of the research and eventually reach a ZOPA that is reasonable and acceptable to all the stakeholders on the capping.</p>	<p>By the end of the day 22nd January 2016</p> <p>By 5th February 2016</p> <p>Between 8th and 12th February 2016</p> <p>On 23rd, 24th and 25th February 2016</p>
<p>Min 4/21/01/16: Funding Options</p> <p>It was agreed by the members that NEMA should meet the cost of the conference facility for the retreat and that the members should facilitate their own accommodation.</p>	<p>NEMA to cater for conference facility.</p> <p>Institutions to cater for the accommodation of their members</p>	<p>On 23rd, 24th and 25th February 2016</p>

5

MIN 5/21/01/16: RECOMMENDATIONS

After discussions, the following recommendations were made;

- Considerations to be done to include other stakeholders in the research including:
 1. Ministry of Water
 2. Academia (UON, KU, MOI and JKUAT)
 3. National Irrigation Board
 4. Council of Governors
 5. The National Treasury
 6. Institution of Engineers of Kenya
 7. Architectural Association of Kenya
 8. Geothermal Development Company

The risk analysis data to be sent should be accompanied by guidance on the format in which the response should be made.

- Invitation letters for the retreat to be sent in good time to enable the stakeholders prepare in good time and a tentative program of the retreat be attached to the invitation letter.

The Secretariat to do letters to the said stakeholders to nominate a representative.

As soon as possible

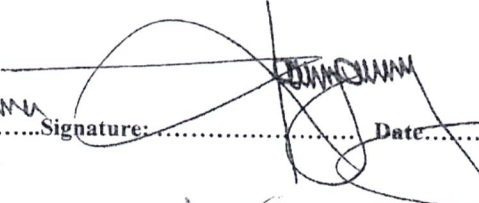
The secretariat to ensure this is done


The secretariat to ensure this is done

MIN 6/21/01/16: AOB

There being no other business the meeting was adjourned at 11.50a.m. by a closing prayer from Lencer Obondo

Minutes Confirmed by:

Chair: Zephania Ouma Signature:  Date: 1/2/2016

Secretary: L. Obondo Signature:  Date: 1/2/16



MINISTRY OF ENVIRONMENT, NATURAL RESOURCES AND REGIONAL
AUTHORITIES

Office of the Principal Secretary

Telegrams: "NATURE", Nairobi
Telephone: 254-20-2730808/9
Fax: 254-20-2734722
Email: psoffice@environment.go.ke
Web site: www.environment.go.ke

NHIF BUILDING
RAGATI ROAD
P.O. BOX 30126-00100
NAIROBI

Ref: DENR/EMC/1/VOL.II(13)

Date: 26th January, 2016

Prof. Geoffrey Wahungu
Director General
National Environment Management Authority
NAIROBI

**REVIEW OF THE STATUTORY ENVIRONMENT IMPACT
ASSESSMENT (EIA) LICENSE FEE**

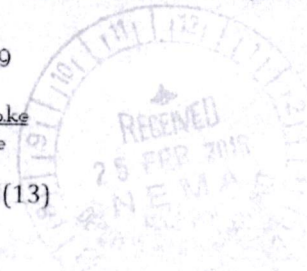
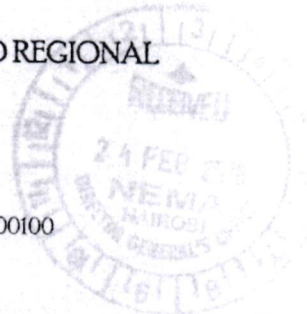
Reference is made to your letter ref. No. NEMA/5/2/VOL.XXVI of
4th November, 2015 on the above mentioned subject.

This is to require you to let us know the current status on the
formation of the multi-agency team and the progress already made
on this matter.

Charles T. Sunkuli
Principal Secretary



② Amwanya
Att: Proogan
Let's discuss the
preparation for the
Retreat. Amwanya
26/2/16



25/2/2016
Ag DCE
pls update & transmit
myself
JL



nema
mazingira yetu | uhchi wetu | wopbu wetu

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Tel: (254-020)-6005522 / 3 / 6 / 7, 6001945, 6008767
Mobile line: 0724 253 398, 0723 363 010, 0735 013 046, 0735 010 237
Telkom Wireless: 020-2101370
Fax: (254-020)-6008997
Hotline: 020-8077233, 020-6006041

P. O. Box 67839 - 00200
Popo Road, Nairobi, Kenya
E-mail: dgnema@nema.go.ke
website: www.nema.go.ke

NEMA/5/2/VOL. XXVII

17th February 2016

Principal Secretary
Ministry of Energy and Petroleum
Nyayo House
P.O Box 30582-00100
Nairobi

Att: Mr. John Maina; 0722655161

Ag. Managing Director & Chief Executive
Officer
Kenya Electricity Transmission Company
Capitol Hill Square, 2nd floor, Chyulu Road,
Upper Hill,
P.O Box 34942-00200
Nairobi

Att: Mr. Richard Godana; 0720537137

Managing Director
Kenya Electricity Generating Company
Stima Plaza, Phase III, Kolobot Road, Parklands
P.O Box 47936-00100
Nairobi

Att: Mr. Hussein Somow; 0721514071

Ag. Director General
Kenya Urban Roads Authority
1KM Place, 5th Ngong Avenue
P.O. Box 41727-00100
Nairobi

Att: Mr. Ken Wafula; 0726644392

Managing Director
Kenya Ports Authority
P.O Box 95009-80104
Mombasa

**Att: Mr. Hohamed A Hassan;
0722369747/0732616689**

Director General
Kenya National Highways Authority
Blue Shield Towers, Hospital Road, Upper Hill,
First Floor, Hospital Road
P.O. Box 49712-00100

Nairobi

**Att: Eng. David Muchilwa & Mr. Walter
Nyatwang'a; 020-8013842**

Director General
LAPSSET Corridor Development Authority
Chester House Building
P.O Box 45008-00100
Koinange Street

Nairobi

Att: Mr. Raymond Ben Ogalo; 0711963958

Chief Executive Officer
Kenya Private Sector Alliance (KEPSA)
5th Floor, Shelter Afrique Building,
Mamlaka Road
P.O Box 3556-00100

Nairobi

**Att: Dr. Mohanjeet Brar, Mr. Mr. Luca
Dragonetti Ms. Martina Mumanyi
0720340949/0735999979**

General Manager
Petroleum Institute of East Africa (PIEA)
4th Floor, Bruce House,
Standard Street
P.O Box 8936-00200

Nairobi

**Att: Mr. Joseph Momanyi & Mr. Kevin
Adundo; 0724512144 & 0717479561**

ZOO/Reag



8

Chief Executive Officer
Kenya Association of Manufacturer (KAM)
15 Mwanzi Road opp. West Gate
P.O Box 30225 - 00100
Nairobi
Att: Mr. Victor Gathogo; 0722201368

Environment Institute of Kenya (EIK)
P.O. Box 5087-00506
Nyayo Stadium
Nairobi
Att: Mr. Herbert Mwachiro & Mr.
Cyprian Riungu; 0722373329 &
0733846749

Principal Secretary
Ministry of Water and Irrigation
Maji House, Upper hill, Off Ngong road,
P.O Box 49720 - 00100
Nairobi
Att: Eng. John M. Muiruri; 0725513219

Vice Chancellor
University of Nairobi, Main Campus
P.O Box 30197, 00100,
Nairobi

Vice Chancellor
Kenyatta University
P.O Box 43844-00100
Nairobi
Att: Dr. Peter Kamau; 0712761716

Vice Chancellor
Moi Univeristy
P.O Box 3900
Eldoret
Att: Prof. Ambrose Kiprop

Vice Chancellor
Jomo Kenyatta University of Agricultural and
Technology
P.O Box 62,000 - 00200
Nairobi
Att: Prof. Glaston M. Kenji; 0722295988

Chairman
The Council of Governors
Delta Corner, 2nd Floor, Opp PWC Chiromo
Road, Off Waiyaki Way
P.O Box 40401 - 00100
Nairobi
Att: Florence Oduk; 0729777281

Principal Secretary
National Treasury
Nairobi, Harambee Ave, Nairobi City
P.O Box 30007-00100
Nairobi
Att: Mr. Charles M. Mwikya

The Institution of Engineers of Kenya
Transcom House, KRBC Annex, 1st Floor,
P.O Box 41346 - 00100
Nairobi

Executive Officer
Architectural Association of Kenya
The Professional Center,
Parliament Road
P.O Box
Nairobi

Managing Director
Geothermal Development Corporation
Kawi House, South C Bellevue, Off Mombasa
Road, Red Cross Road
P.O Box 100746 - 00101
Nairobi
Att: Ahmed Fankey; 0719036000

ZOO/Reag

RE: INVITATION FOR A THREE DAY RETREAT IN NAIVASHA TO DELIBERATE ON THE FINDINGS OF THE RESEARCH ON THE REVIEW OF STATUTORY ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LICENSE FEE.

The above subject matter refers.

Following the recommendation of the meeting held on the 21st January 2016 at NEMA head office, it was agreed that the research team members will convene for a three day retreat to deliberate on the research findings and eventually reach a zone of possible agreement (ZOPA) that is reasonable and acceptable to all the stakeholders.

In view of the above the National Environment Management Authority (NEMA) hereby invites you to attend the above meeting in Naivasha between the 07th to the 11th March 2016 to harmonize the findings by the stakeholders.

NB:

1. Transport will depart from NEMA (only NEMA) on the 07th March 2016 at 2:00 pm.
2. Members will cater for their own accommodation during the retreat.

Attached please find a tentative programme.



DAVID ONGARE
FOR: DIRECTOR GENERAL

CC: Principal Secretary
Ministry of Environment, Natural Resources &
Regional Development Authorities
NHIF Building
P.O. Box 30126
NAIROBI

Encl. 1

TENTATIVE PROGRAMME

DATE	ACTIVITY	RESPONSIBILITY
07 th March 2016	Arrival	All
08 th March 2016	Registration	Secretariat
	Introductions	All
	Presentations by NEMA	NEMA
	Presentations by Lead Agencies	Lead Agencies
09 th March 2016	Deliberations	All
10 th March 2016	Deliberations	All
	Drafting of Gazette Notice	All
	Way forward	All
11 th March 2016	Departure	All

ZOO/Reag

11



The Voice of Private Sector in Kenya

February 25, 2016

Prof. Geoffrey M. Wahungu
Director General
National Environment Management Authority
P.O. Box 67839-00200
Popo Road-Off Mombasa Road
NAIROBI

23 FEB 2016

Dear Prof. Wahungu,

RE: NOMINATION OF A TEAM TO RESEARCH ON THE REVIEW OF STATUTORY ENVIRONMENTAL IMPACT ASSESSMENT (EAI) LICENSE FEE

Further to our letter dated November 10, 2015 (copy enclosed), we wish to revise our nominees in the team that was to research on incorporating a tiered risk based system.

We hereby revise our nominees as follows:

1. Mr. Suresh Patel – Chair, KEPSA Environment Sector Board
2. Mr. Luca Dragonetti – Member, KEPSA Energy & Extractives Sector Board
3. Ms. Laureen Wesonga – KEPSA Secretariat

We thank you for your continued support and cooperation.

Yours Sincerely,

Carole Kariuki, HSC, MBS
Chief Executive Officer

Handwritten notes: 29-2-2016, Mr. Luca Dragonetti, For Mr. Suresh Patel

c.c. David Ongare
National Environment Management Authority
Popo Road-Off Mombasa Road
NAIROBI

Handwritten notes: ③ Oluwuyi, Mr. Dragonetti, Sew, 7/3/16



The Voice of Private Sector in Kenya

November 10, 2015

Prof. Geoffrey M. Wahungu
Director General
National Environment Management Authority
P.O. Box 67839-00200
Popo Road-Off Mombasa Road
NAIROBI.

Dear Prof. Wahungu,

RE: NOMINATION OF A TEAM TO RESEARCH ON THE REVIEW OF STATUTORY ENVIRONMENTAL IMPACT ASSESSMENT (EAI) LICENSE FEE

We write in reference to your letter Ref: NEMA/5/2/VOL.XXVII dated 4th November 2015 on the above subject.

KEPSA is pleased to be part of the team that shall research on incorporating a tiered risk based system. We hereby nominate the following KEPSA members for your consideration:-

1. Dr. Mohanjeet Brar - KEPSA Environment Sector Board
2. Bernard Osawa - KEPSA Energy & Extractives Sector Board
3. Peter Muraya - KEPSA Land Housing & Urban Development Sector Board

We thank you for your continued support and cooperation.

Yours Sincerely,

Carole Kariuki, HSC, MBS
Chief Executive Officer

c.c. David Ongare
National Environment Management Authority
Popo Road-Off Mombasa Road
NAIROBI.

D.G



MAR 2016

MINISTRY OF ENVIRONMENT, WATER & NATURAL RESOURCES
STATE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Telegrams: "NATURE", Nairobi
Telephone: 254-20-2730808/9

Fax: 254-20- 2710015
Website: www.environment.go.ke

NHIF BUILDING
RAGATI ROAD
P.O. BOX 30126
NAIROBI

Ref: DENR/ADM/66

Date: 29th February, 2016

Director General
NEMA
P.O. Box 67839
NAIROBI

Handwritten notes:
27.2.16
Mr. Omondi
For info
1205

RE: RESEARCH ON THE REVIEW OF STATUTORY ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LICENSE FEE

The Ministry of Environment, Natural Resources and Regional Development Authorities acknowledges receipt of your letter Ref. NEMA/5/2/VOL. XXVII dated 29th January, 2016 requesting for a nominee to above stated exercise.

The purpose of this letter therefore is to inform you Mr. David K. Rono, Deputy Director, Policy Formulation, Interpretation and Implementation has been nominated to represent the Ministry.

PAUL KERE
FOR: PRINCIPAL SECRETARY

Cc. Mr. David K. Rono for information

Handwritten notes:
11/3/2016
D. DCE
RB

Handwritten notes:
Aurany 9
1st
Rengon
Complete
[Signature]



NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Tel: (254-020)-6005522 / 3 / 6 / 7, 6001945, 6008767
Mobile line: 0724 253 398, 0723 363 010, 0735 013 046, 0735 010 237
Telkom Wireless: 020-2101370
Fax: (254-020)-6008997
Hotline: 020-8077233, 020-6006041

P. O. Box 67839 - 00200
Popo Road, Nairobi, Kenya
E-mail: dgnema@nema.go.ke
website: www.nema.go.ke

NEMA/5/2/VOL. XXVIII

04th March 2016

Principal Secretary
Ministry of Energy and Petroleum
Nyayo House
P.O Box 30582-00100
Nairobi

Att: Mr. John Maina; 0722655161

Ag. Managing Director & Chief Executive
Officer
Kenya Electricity Transmission Company
Capitol Hill Square, 2nd floor, Chyulu Road,
Upper Hill,
P.O Box 34942-00200
Nairobi

Att: Mr. Richard Godana; 0720537137

Managing Director
Kenya Electricity Generating Company
Stima Plaza, Phase III, Kolobot Road, Parklands
P.O Box 47936-00100
Nairobi

Att: Mr. Hussein Somow; 0721514071

Ag. Director General
Kenya Urban Roads Authority
IKM Place, 5th Ngong Avenue
P.O. Box 41727-00100
Nairobi

Att: Mr. Ken Wafula; 0726644392

Managing Director
Kenya Ports Authority
P.O Box 95009-80104
Mombasa

**Att: Mr. Hohamed A Hassan;
0722369747/0732616689**

Director General
Kenya National Highways Authority
Blue Shield Towers, Hospital Road, Upper Hill,
First Floor, Hospital Road
P.O. Box 49712-00100
Nairobi

**Att: Eng. David Muchilwa & Mr. Walter
Nyatwang'a; 020-8013842**

Director General
LAPSSET Corridor Development Authority
Chester House Building
P.O Box 45008-00100
Koinange Street
Nairobi

Att: Mr. Raymond Ben Ogalo; 0711963958

Chief Executive Officer
Kenya Private Sector Alliance (KEPSA)
5th Floor, Shelter Afrique Building,
Mamlaka Road
P.O Box 3556-00100
Nairobi

**Att: Dr. Mohanjeet Brar, Mr. Mr. Luca
Dragonetti Ms. Martina Mumanyi
0720340949/0735999979**

General Manager
Petroleum Institute of East Africa (PIEA)
4th Floor, Bruce House,
Standard Street
P.O Box 8936-00200
Nairobi

**Att: Mr. Joseph Momanyi & Mr. Kevin
Adundo; 0724512144 & 0717479561**

ZOO/Reag

Chief Executive Officer
Kenya Association of Manufacturer (KAM)
15 Mwanzi Road opp. West Gate
P.O Box 30225 - 00100
Nairobi
Att: Ms. Georgina Wachuka;

Environment Institute of Kenya (EIK)
P.O. Box 5087-00506
Nyayo Stadium
Nairobi
**Att: Mr. Herbert Mwachiro & Mr.
Cyprian Riungu; 0722373329 &
0733846749**

Principal Secretary
Ministry of Water and Irrigation
Maji House, Upper hill, Off Ngong road,
P.O Box 49720 – 00100
Nairobi
Att: Eng. Samuel Muriu;0721434669

Vice Chancellor
University of Nairobi, Main Campus
P.O Box 30197, 00100,
Nairobi

Vice Chancellor
Kenyatta University
P.O Box 43844-00100
Nairobi
Att: Dr. Peter Kamau; 0712761716

Vice Chancellor
Moi Univeristy
P.O Box 3900
Eldoret
Att: Prof. Ambrose Kiprop

Vice Chancellor
Jomo Kenyatta University of Agricultural and
Technology
P.O Box 62,000 – 00200
Nairobi
Att; Prof. Glaston M. Kenji; 0722295988

Chairman
The Council of Governors
Delta Corner, 2nd Floor, Opp PWC Chiromo
Road, Off Waiyaki Way
P.O Box 40401 - 00100
Nairobi
Att: Florence Oduk; 0729777281

Principal Secretary
National Treasury
Nairobi, Harambee Ave, Nairobi City
P.O Box 30007-00100
Nairobi
Att: Mr. Charles M. Mwikya; 07275854

The Institution of Engineers of Kenya
Transcom House, KRBC Annex, 1st Floor,
P.O Box 41346 - 00100
Nairobi

Executive Officer
Architectural Association of Kenya
The Professional Center,
Parliament Road
P.O Box
Nairobi

Managing Director
Geothermal Development Corporation
Kawi House, South C Bellevue, Off Mombasa
Road, Red Cross Road
P.O Box 100746 - 00101
Nairobi
Att: Mr. Ahmed Fankey; 0719036000

ZOO/Reag

16

RE: RESCHEDULING OF THE NAIVSHA RETREAT TO NAIROBI AT NEMA HEADQUARTERS.

The above subject matter refers.

Due to unforeseen circumstances and the efforts by the Government to ensure cost cutting in its operations; the intended Naivasha retreat to harmonize the research findings on the review of the statutory Environmental Impact Assessment (EIA) License fee by the stakeholders has been **RESCHEDULED** and will now be held **IN NAIROBI AT NEMA HEADQUARTERS** main board room on **the 08th and 09th of March 2016**.

Any inconvenience caused is highly regrettable.

Attached please find a tentative programme.



DAVID ONGARE
FOR: DIRECTOR GENERAL

CC: Principal Secretary
Ministry of Environment, Natural Resources &
Regional Authorities
NHIF Building
P.O. Box 30126
NAIROBI
Att: Mr. Kinguru Wahome

ZOO/Reag

17

TENTATIVE PROGRAMME

DATE	ACTIVITY	RESPONSIBILITY
08 th March 2016	Arrival & Registration	Secretariat
	Introductions	All
	Presentations by NEMA	NEMA
	Presentations by Lead Agencies	Lead Agencies
09 th March 2016	Deliberations	All
	Drafting of Gazette Notice	All
	Way forward	All

ZOO/Reag

MINUTES OF THE STAKEHOLDER CONSULTATIVE MEETING TO RESEARCH ON THE REVIEW OF STATUTORY ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LICENSE FEE HELD ON 08th AND 09th MARCH 2016 AT THE NEMA HEADQUARTERS BOARDROOM, STARTING 10:00 AM.

MEMBERS PRESENT

Members present

NAME	ORG.	EMAIL	MOBILE
1. Ramat Godana	KETRACO	rgodana@ketraco.co.ke	0720537137
2. Raymond Ben Ogalo	LAPSET	rogalo@lapset.go.ke	0711963958
3. Edward Wabwoto	NEMA	ewabwotwo@nema.go.ke	0724403514
4. Hockley Simboyi	GDC	hsimboyi@gdc.co.ke	0724672827
5. Alex Mutiso	Tullow Kenya	alex.mutiso@gullowoil.com	0708988607
6. Yvonne Ogwang	COG	yvonne.ogwang@kog.go.ke	0711973639
7. Loktari Benson	COG	loktaribenson@gmail.com	0702080207
8. Zephania O. Ouma	NEMA	zouma@nema.go.ke	0721592567
9. Reagan Awino	NEMA	rawino@nema.go.ke	0726989293
10. Suresh Patel	KEPSA	suresh@elekea.co.ke	0725249249
11. Dr Rose Ramkat	Moi Univ.	chirirose@yahoo.com	0726647985
12. Mary Mutheki	NEMA	mmutheki@nema.go.ke	0721360695
13. Eng. Francis Makhanu	KENGEN	fmakhanu@kengen.co.ke	0720893465
14. Walter Nyatwang'a	KENHA	w.nyatwang'a@kenha.co.ke	0721884924
15. Prof. David N. Mungai	UoN	mungaidavid@uonbi.ac.ke	0714745481
16. Charles M. Muikya	Treasury	muikyacm@yahoo.com	0728275854
17. Mohammed A. Hassan	KPA	mahassan@kpa.co.ke	0722369747
18. Victor Gathogo	KAM	victor.gathogo@kam.co.ke	0725899898
19. Hussein Ali Somow	KENGEN	hsomomow@kengen.co.ke	0721514071
20. Samuel M. Muiru	Water	muirusamuel@yahoo.com	0721434669
21. Adunds Keven Otieno	PIEA	analyst@petroleum.co.ke	0717479561

20

22. John K. Maina MOEP maina@kcmr.com 0722655161
 23. Kennedy S. Wafula KURA kwafula@kura.go.ke 0726644392
 24. Georgina Wachuka KAM georgina.wachuka@kam.co.ke 0722348110

MEMBERS ABSENT WITH APOLOGY

1. Cyprian K. Riungu – Environment Institute of Kenya
2. Kinguru Wahome – Ministry of Environment, Natural Resources and Regional Authorities
3. Prof. Glaston M. Kenji – Jomo Kenyatta University of Agriculture and Technology

MINUTE	RESOLUTIONS	ACTION/TIMEFRAME
<p>Min 1/08/03/16: Preliminaries.</p> <p>The meeting was called to order at around 1030 hours by Mr. Zephaniah Ouma being the session chair, and opened with a word of prayer from Mr. Mohammed Hassan.</p> <p>Self-introduction by the members was done.</p>	<p>The Agenda item were adopted as follows:</p> <ol style="list-style-type: none"> 1. Introductions 2. Confirmation of the previous minutes 3. Presentations by NEMA and the Lead Agencies 4. Comments on the risk analysis presented by NEMA 5. Presentation on the best practices on the EIA fees 6. Deliberations 	
<p>Min 2/08/03/16: Confirmation of the previous minutes</p> <p>The members were taken through the minutes of the previous meeting by Mr. Reagan Awino.</p>	<p>The minutes was proposed by Mr. Ramat Godana and seconded by Ms. Georgina Wachuka as a true reflection of the proceedings of previous deliberations. The members adopted the minutes with a few amendment.</p>	
<p>Min 3/08/03/16: Presentations.</p> <p>The members were taken through various presentations by the stakeholders in regards to their findings of the research on the tiered risk analysis system.</p>	<p>➤ Presentation by NEMA</p> <p>This presentation was done by Mr. Ouma who took the members briefly through the Environmental and Social processing and monitoring fee , Environmental & Social Planning tools, Appreciating ESIA Administration in Kenya, Statistics of the ESIA Submissions, ESIA Processing Costs, Evolution of Environmental Assessment Fees, Comparison with other countries</p>	<p>The members to look at the WB document and scrutinize at the various categories of the classification of the projects in the environment sector.</p>

	<p>➤ Presentation by Ministry of Energy and Petroleum and the Departments under it (KENGEN, KETRACO, GDC)</p> <p>This presentation was done by Mr. John Maina who gave a brief presentation on the Energy sector viz a viz the Environmental Impact Assessments and the related costs in relation to the EIAs being done.</p> <p>The proposal for the upper capping was to be as follows: for the High Risk projects to have an upper capping of Kshs. 2M, for the Medium Risk projects to have an upper capping of Kshs. 1.5M and for the Low Risk projects to have an upper capping of Kshs. 1 M</p> <p>➤ Presentation by KURA and KENHA</p> <p>This presentation was done by Mr. Wafila looking at the risk criteria of the various environmental issues and how they are classified and ranked.</p> <p>The proposal for the capping was as follows: for the High Risk projects to have an upper capping of Kshs. 5 M, the Medium Risk projects to have an upper capping of Kshs. 2.5M and for the Low Risk projects to have an upper capping of Kshs. 1 M</p> <p>➤ Presentation by Ministry of Water and Irrigation.</p> <p>This was done by Eng. Samuel Muriu and indicated that most of their projects do enhance the environmental protection aspects and are of low risk in nature. Members were further informed that there is need for the categorization by NEMA to be looked into to be able to capture the water sector appropriately.</p> <p>➤ Presentation by KAM</p> <p>This was done by Mr. Victor Gathogo who gave a brief presentation on the role and how they advocate for their members objectively in various forums such as this. The</p>	
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<p>Min 4/08&09/03/16: Deliberations and Recommendations</p> <p>Members were taken through case scenarios of the EIA processing and monitoring of the low risk, medium risk and the high risk projects and the costs involved in the whole project cycle.</p> <p>Members held very fruitful deliberations after the presentations and agreed on the capping of the various categories of the projects as presented herein.</p>	<p>members were informed of the considerations to be made during the deliberations in terms of the nature and magnitude of the project and the economic significance they have to the country.</p> <p>The proposal for the capping was as follows: for the High Risk projects to have an upper capping of Kshs. 5 M, the Medium Risk projects to have an upper capping of Kshs. 2.5M and for the Low Risk projects to have an upper capping of Kshs. 1 M</p> <p>➤ Presentation by Kenya Ports Authority</p> <p>Mr. Mohamed did a presentation on the various projects that are being implemented by the KPA. The members were also informed that the NEMA criteria has not captured all the sectors i.e. sea ports and will need to be relooked at to ensure that it is comprehensive and exhaustive in nature to avoid guessing of where some of the projects fall in.</p> <p>The proposal for the capping was to be between Kshs. 3 to 5 Million as a flat rate and not based on percentages as is the case currently.</p> <ul style="list-style-type: none"> • After objective deliberations on the data presented by NEMA the members settled on the costs for the various project categorize as tabulated below based on the low scale & low risks projects, medium scale & medium risks projects and the high scale and high risk projects. <ul style="list-style-type: none"> • EIA License fee is 0.1% of the project cost to a minimum of K.shs. 10,000 	
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• Tiered Risk based system for the Low Scale and Low Risk Projects

EIA Processing Costs- Low Scale & Low Risks Projects	
Process	Costs
Dispatch to LA & CG	10,000
Site Verification by CDE, CEC and Panel Review at County Level	50,000
Harmonization of comments & Panel Review at NEMA	20,000
Monitoring of licence Conditions	200,000
Control Audits throughout the project life cycle	500,000 (50000/yr x 10 yrs)
Incorporating a contingency 10%	78,000
TOTAL	Kshs. 858, 000 rounded off to Kshs. 1,000,000

• Tiered Risk based system for the Medium Scale and Medium Risk Projects

EIA Processing Costs- Medium Scale & Medium Risks Projects	
Process	Costs
Dispatch to LA & CG	10,000
Site Verification by CDE, CEC and Panel Review at County Level	50,000
Harmonization of comments & Panel Review at NEMA	20,000
Monitoring of licence Conditions	200,000


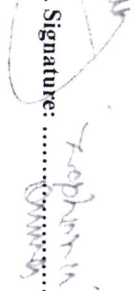
Control Audits throughout the project life cycle	1,000,000 (100,000/yr x 10 yrs)
Legal Related costs	100,000
Incorporating a contingency 10%	138,000
TOTAL	Kshs. 1,518,000 rounded off to Kshs. 2,000,000

• Tiered Risk based system for the Large Scale and High Risk Projects

EIA Processing Costs- Large Scale & High Risks Projects	Costs
Process	
Dispatch to LA & CG	10,000
Site Verification by CDE, CEC and Panel Review at County Level	50,000
Harmonization of comments & Panel Review at NEMA	20,000
Constitution & Review by TAC	1,000,000
Public Hearing and related costs	1,250,000
Monitoring of licence Conditions	300,000
Control Audits throughout the project life cycle	2,000,000 (200,000/yr x 10 yrs)
Legal Related costs	200,000
incorporating a contingency 10%	483,000
TOTAL	Kshs. 5,313,000 rounded off to Kshs. 5,000,000

<p>MIN 6/21/01/16:AOB</p> <p>There being no other business the meeting was adjourned at 1345 Hours by a closing prayer from Ms. Hockley Simboyi.</p>	<p>A technical team to be formed from the members to be able to look at the project risk based categorization criteria by NEMA to review and update it accordingly while referring to the World Bank classification and other internationally accepted classifications.</p> <p>NEMA to be the secretariat of the technical team with the following as the members;</p> <ul style="list-style-type: none"> ➤ KEPSSA to be represented by Mr. Suresh Patel as the chair of the team ➤ Ministry of Energy to be represented by Mr. John Maina, ➤ The roads sector to be represented by Mr. Kennedy Wafula ➤ Ministry of Water and Irrigation to be represented by Eng. Samuel Muiru ➤ PLEA to be represented by Mr. Kevin Adundo ➤ KAM to be represented by Mr. Victor Gathogo ➤ Academic Institutions to be represented by Prof. David Mungai ➤ The Treasury to be represented by Mr. Charles Mwikya ➤ Kenya Ports Authority to be represented by Mr. Mohamed Hassan 	<p>The team to meet on the 15th and on the 17th at KAM boardroom at 0900 hours to review and update categorization criteria of the various projects by NEMA.</p> <p>The draft is to be presented to the stakeholders on the 30/03/2016 for endorsement and subsequent presentation to the DG NEMA and NEMA Management on the 31/03/2016 (to be confirmed).</p>
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Minutes Confirmed by:

Chair:  Signature:  Date: 9.05.2016

Secretary:  Signature:  Date: 21/03/2016