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DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

ELEVENTH PARLIAMENT-SECOND SESSION

REPORT

ON

THE CONSIDERATION OF THE CLIMATE CHANGE BILL, 2014

THE FIFTH REPORT OF THE SECOND SESSION, 2014

THE CLERK'S
CHAMBERS

JULY 2014

CHAPTER 1

1 Introduction

1.1 Committee Mandate and Membership

The departmental committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216(1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, assess and analyses the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;
- e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the departmental committee on Environment and Natural Resources are stated in the second schedule of the National Assembly Standing Orders No. 216(f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Current Committee Membership

1. Hon. Amina Abdalla, M.P., **Chairperson**
2. Hon. A. K. Kosgey, M.P., **Vice Chairperson**
3. Hon. Alice Ng'ang'a, M.P.
4. Hon. Samuel Ndiritu, M.P.
5. Hon. AishaJumwaKarisa, M.P.
6. Hon. EjidiusNjoguBarua, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Moitalel Ole Kenta, M.P.
9. Hon. KathuriMurungi, M.P.
10. Hon. Sunjeev Birdi, M.P.
11. Hon. Jackson K. Rop, M.P.
12. Hon. Abdi Noor Ali, M.P.
13. Hon. Joyce Emanikor, M.P.
14. Hon. Abdulaziz Farah, M.P.
15. Hon. Ronald Tonui, M.P.
16. Hon. (Dr.) R. Wanyonyi, M.P.
17. Hon. Gideon Mwiti, M.P.
18. Hon. Hassan Dukicha, M.P.
19. Hon. Zainab Chidzuga, M.P.
20. Hon. Chachu Ganya, M.P.
21. Hon. Opiyo Wandayi, M.P.
22. Hon. Charles G. Mongare, M.P.
23. Hon. (Dr.) Wilber K. Ottichilo, M.P.
24. Hon. Khatib Mwashetani, M.P.
25. Hon. George O.ogalo, M.P.
26. Hon. (Major) Muluvi Mutua, M.P.
27. Hon. Mohamed, Diriye M.P.
28. Hon, Peter Kinyua, MP.
29. Hon. Shukra Hussein Gure, M.P

1.3 The Climate Change Bill, 2014

Referral to the Committee

The Climate Change Bill, 2014 was introduced and read the first time in the House. The Bill thereafter stood committed to the committee for consideration pursuant to the provisions of the National Assembly Standing Orders No. 127(1).

The Bill seeks to provide a framework for mitigating and adapting to the effects of Climate Change on various sectors of the economy. It also seeks to provide a mechanism for coordination and governance of matters relating to climate change through the formulation of programmes and plans to enhance the resilience of human and ecological systems against the impacts of climate change. It seeks to achieve this by establishing the National Climate Change Council and vesting in the Council functions and powers to coordinate national climate change issues including supporting the implementation of the national climate change strategies.

The Bill also establishes a Climate Change Fund, into which monies appropriated from the consolidated fund and other donations received in the form of donations, endowments, grants or gifts or monies raised by the Council would be paid and subsequently utilized for the achievement of the mandate and objectives of the Council. The Bill sets out the mandate of County Governments in the fight against Climate Change in line with Article 110 (1) (a) and the Fourth Schedule of the Constitution regarding the functions and powers of county governments. The Bill also provides for a mechanism for coordination of measuring, verification and reporting of climate interventions.

1.1.1 Conduct of the review inquiry

In line with the constitutional requirement for public participation in legislative processes, the committee advertised call for public participation in Local Daily Newspapers; the copy of the advertisement is attached to the report as **annex 1**.

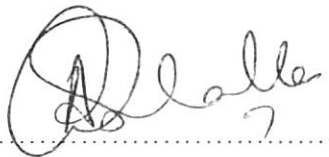
The submissions are listed in **annex 2** and are available with the committee secretariat. These submissions were made through written memoranda and verbally by the interested parties.

The Committee held meetings which involved receiving stakeholders input and a clause by clause review of the bill. **Annex 3**.

1.1.2 Output of the Review Inquiry process

The review process concluded with a list of agreed amendments that the committee will be presenting to the house for consideration and possible adoption. In making its recommendations, the Committee examined the Bill clause by clause. Where objections were registered with respect to a particular clause in the Bill, the Committee proposed Amendments by consensus using the available information and triangulating different sources of submissions made on the provisions of the clause to be amended. The Committee intends to move these amendments at the third reading stage of the Climate Change Bill, 2014.

The Committee noted that the Kenya Climate Change Working Group had done extensive consultations and Public Participation by holding public forums across the country and engagements with the County Governments.

SIGNED 

CHAIRPERSON
(HON.AMINA ABDALLA, MP)

DATE 22/7/2014

CHAPTER 2

2 The Rational for the Review of the Climate Change Legal Framework

Climate change is the most serious global challenge of our time. The United Nations Framework Convention on Climate Change (UNFCCC), defines climate change as a “change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods”

While weather refers to conditions like rain, temperature and wind over hours to days. Climate refers to average weather conditions over a long period of time, for example for about 30 years. Climate Change is what is experienced when the climatic conditions permanently shift either upwards or downwards of the average. Shifts in the start or end of the rainfall season, the length of the season, the number of rainy days, the number, length and intensity of dry spells, or changes in the total seasonal rainfall, among others, can also signify climate change. Climate change is also evidenced by a notable shift in the intensity and frequency of extreme climate events, such as drought, floods, storms, and strong winds, among others. Climate change is closely related to global warming.

Global warming is described as the general increase in the earth’s near-surface air and ocean temperatures due to rising greenhouse gas (GHG) emissions attributed to industrialization, fossil fuel consumption, land use conversion, deforestation and other human influences since the mid-twentieth century. In the 19th century, there was an initial awareness that accumulated carbon dioxide in the Earth’s atmosphere could create a “greenhouse effect” and increase the temperature of the planet. This was as a side-effect of the industrial age and its production of carbon dioxide and other such “greenhouse gases.” By the middle of the 20th century, it was becoming clear that human action had significantly increased the production of these gases, and the process of “global warming” was accelerating.

2.1 Impact of Climate Change

While the consensus among scientists is that there is conclusive evidence of Climate Change, this is apparent to the layman as well. Climate Change affects the sectors that communities are largely dependent. This threatens the economic development and stability of the community and Kenya. Some of the sectors which are vulnerable to Climate Change include as agriculture, health, water resources, energy, tourism and infrastructure.

2.1.1 Short-term and Mid-term impact of Climate Change

The period between 2016-2035 high temperatures will result in more frequent hot days, more intense droughts and increase in tropical cyclones. These impacts are already evident since Kenya has in recent years had its share of climate-related impacts including rising temperature and changes in rainfall

resulting in prolonged droughts. The In 1999/2000 La Niña droughts left approximately 4.7 million Kenyans facing starvation. The recent (2010-2011) Horn of Africa drought crisis demonstrated how vulnerable Kenya is to climate change.

Weather changes have also resulted in frost in some of the productive agricultural areas, hailstorms; extreme flooding and receding lake levels, drying of rivers and other wetlands have also been evident in many parts of the country. These changes have had a direct impact the food security of communities and economic ability as well as the loss of the through loss property and livelihood. Many of these extreme climate events have led to displacement of communities and migration of pastoralists into and out of the country resulting in conflicts over natural resources especially among pastoralist communities.

Scarce resources associated with climate change also lead to competition over resulting in human-wildlife conflicts. In addition increased average temperatures have led to the spread of vector-borne diseases like malaria to areas where the disease is not known to be endemic. Other climate change impacts include sea-level rise, and depletion of glaciers on Mount Kenya.

Globally, most of the hottest years on record have occurred during the past two decades. In Europe, the heat wave in the summer of 2003 resulted in over 30,000 deaths. In India, temperatures reached 48.1 degrees Centigrade. The devastating Hurricane Katrina in the United States was attributed in large part to the elevated water temperatures in the Gulf of Mexico. Another alarming evidence of Climate Change was when in 2008, 160 square miles of territory broke away from the Antarctic coast in 2008 because its bindings to Antarctica melted away. Short term effects of Climate change.

2.1.2 Long-term effects of Climate Change

The 2013-2014 IPCC Fifth Assessment Report considers "long-term" to be between 2080-2100. Future climate change is expected to result in more very hot days and fewer very cold days. Heat waves are expected to increase over most land areas while presently dry regions may be affected by an increase in the risk of drought. Over and wet tropical regions, extreme rainfall will very likely become more intense and frequent resulting in flooding. On a global scale, the frequency of tropical cyclones will probably decrease or be unchanged.

The long-term impact is not only on large animals, but also on smaller animals such as insects, frogs and fish face extinction which will affects the food chain and puts stress on the surviving animals to find adequate food. The extinction of animals and plants eventually affects human choices for food as well. Rising temperatures and unstable climates can also lead to rapid spread of disease. For example, infectious diseases, such as malaria and West Nile virus, will likely infect more people in a warmer climate. In addition, many medicines are derived from plant-based sources, and the long-term extinction of those source plants may limit access to the medications. Increased air pollution also correlates with the number of lung-related illnesses, such as asthma and lung cancer

Another long term impact of global warming is that glaciers melt and the added water contributes to sea-temperature changes. This affects marine ecosystems. Melting also causes sea levels to rise, which is a threat to coastal ecosystems. There is a potential long-term threat to human-made structures that are

situated precariously close to the water's edge as the sea level rise. As sea levels and temperatures rise, access to resources such as clean water and land decreases. This could raise the threat of political conflicts.

2.2 Existing Policies on Climate Change

2.2.1 Kenyan Policies

The Climate Change Bill, 2014 seeks to provide a framework for mitigating and adapting to the effects of Climate Change on various sectors of the economy. Climate Change Mitigation refers to efforts undertaken to reduce our emissions of heat-trapping, 'greenhouse' gasses in the atmosphere, which cause climate change. Greenhouse gasses are for example carbon dioxide which is related to the use of fossil fuel and methane. Climate Change Adaptation refers to efforts undertaken to minimize the impacts of climate change.

Kenya ratified the United Nations Framework Convention on Climate Change in 1994 and the Kyoto Protocol in 2005. Kenya Vision 2030 – the long-term development blueprint for the country aims to transform Kenya into “a newly industrialising, middle-income country providing a high quality of life to all its citizens in a clean and secure environment.” The impact of Climate Change on every sector of the economy threatens this vision. Mitigating and adapting to the impacts of Climate Change also enables Kenya to achieve the Millennium Development Goals (MDGs) and other internationally agreed development goals.

The Bill seeks to provide a legislative framework for Kenya's efforts to combat Climate Change as envisioned in the landmark National Climate Change Response Strategy (NCCRS) developed in 2010 which recognised the importance of climate change impacts to Kenya's development. The National Climate Change Action Plan, 2013- 2017 developed in 2012 seeks to implement the NCCRS by reducing Kenya's vulnerability to climate change and to improving Kenya's ability to take advantage of the opportunities that climate change offers.

2.2.1.1 The National Climate Change Response Strategy, 2010 (NCCRS)

In response to the challenge of climate change, Kenya developed the National Climate Change Response Strategy whose mission is to strengthen and focus nationwide actions towards climate change adaptation and GHG emission mitigation. It sought to achieve by ensuring commitment and engagement of all stakeholders while taking into account the vulnerable nature of Kenya's natural resources and society. The objectives of the NCCRS included enhancing understanding of the global climate change regime which includes the negotiation process, international agreements, policies and processes. It also sought to assess the evidence and impact of climate in Kenya and subsequently recommend adaptation and mitigation measures needed to minimize risks associated with climate change. It also sought to recommend research and technological, needs to respond to climate change impact and a conducive and enabling policy, legal and institutional framework to combat climate change.

2.2.1.2 National Climate Change Action Plan, 2013-2017 (NCCAP)

The National Climate Change Action Plan (NCCAP) was developed with the aim of implementing the NCCRS. It was developed through an extensive consultative process. The NCCAP is expected to inform national development and policy decisions in all sectors of the economy. A wide range of actors including Government agencies, private sector and civil society organizations are expected contribute to the implementation of the NCCAP since climate change planning affects all sectors of the economy. The recommended actions will be tracked continuously and that the NCCAP will be revised and updated on a five yearly cycle in line with the national planning and budgetary processes.

2.2.2 Regional Policies

The East Africa Community (EAC) Secretariat has recognized the negative impact of climate change on local economies and had taken a strong stance in providing policy direction to the East Africa Community in implementing a framework to mitigate and adapt to the impact of climate change.

Some of the policy instruments include Cap.19 of the EAC Treaty on Environment and Natural Resources (Articles 111, 112 and 114), Protocol on Environment and Natural Resources Management (Articles 23, 24 and 35), Protocol on Sustainable Development of Lake Victoria Basin, Article 40 of the Common Market Protocol on Environmental Management, EAC Summit Declaration on Climate Change and Food Security (2011), EAC 4th Development Strategy (2011/12) and (2015/16) and the EAC Climate Change Strategy and Master Plan (2013-2017).

2.2.3 International Policies and Agreements

The impact of Climate Change was first widely recognized as a global problem in the 1980s where it was mentioned in the Brundtland Report published in 1987. In 1988, the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) set up the Intergovernmental Panel on Climate Change (IPCC) to provide an objective source of scientific information.

In 1992, the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, also known as the “Earth Summit”, produced the United Nations Framework Convention on Climate Change (UNFCCC) as a first step in tackling the problem. There has been a series of Conference of the Parties (COPs) to the UNFCCC since then. Two main outcomes of these COP meetings have been the Kyoto Protocol (COP 3 of 1997) and the Marrakesh Accords (COP 7 of 2001), which contains the detailed rules for the implementation of the Kyoto Protocol. The Kyoto Protocol set standards for certain industrialized countries.

In December 2009 at the UN Climate Change Conference in Copenhagen, The Copenhagen Accord was agreed to by Heads of State, Heads of Government, Ministers and other heads of delegation. In December 2010, climate change talks in Cancun concluded with a package of decisions to help countries advance towards a low-emissions future. Dubbed the “Cancun Agreements,” the decisions

include formalizing mitigation pledges and ensuring increased accountability for them, as well as taking concrete action to protect the world's forests.

In 2011 the UN Climate Change Conference in Durban, South Africa produced the Durban Platform. In Durban, governments decided to adopt a universal legal agreement on climate change as soon as possible, but not later than 2015. In December 2012, after two weeks of negotiations at Doha conference, nations moved forward on climate change and extended the Kyoto Protocol since the targets were set to expire in 2012. The renewal will keep existing climate targets until a new international agreement comes into effect in 2020, pending a new pact to be decided on by 2015.

There have also been global efforts towards mitigation, adaptation, finance, technology development and transfer, governance as well as the role of land-use and land-use change and forestry (LULUCF) in climate change mitigation especially in developing countries.

2.3 Provisions of the Climate Change Bill, 2014

Article 42 of the Constitution provides that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures particularly those contemplated in Article 69. Article 69 sets out the obligations of the state with regard to the environment while article 70 covers the enforcement of environmental rights.

Preamble

The Bill seeks to provide for the legal and institutional framework for the mitigation and adaptation to the effects of climate change, to facilitate and enhance response to climate change, to provide for the guidance and measures to achieve low carbon climate resilient development and for connected purposes.

Part I – Preliminary

The part of the Bill sets out the preliminary provisions. Clause 3 provides the objects and purposes of the Act.

Part II – Establishment, Powers and Functions of the National Climate Change Council

Clause 4 Establishes the National Climate Change Council as a body corporate. It provides for the functions and powers of the Council. Clause 7 provides that the Council shall be guided by the provisions of Articles 42 and 69 of the Constitution in discharging its mandate as well as the national values and principles of governance contained in Articles 10 and 232. Some of the provisions in this

section include the establishment of a Board of the Council, the modalities of appointment of members of the Board, its functions, committees, and delegation of powers and the code of conduct.

Part III — Climate Change Response Measures and Actions

The section gives the Council the mandate to prepare and implement climate change action plans, strategies and policies. It also describes the role of the Council with regard to climate change policies formulated by the Government.

Part IV — Duties Relating To Climate Change

The section provides Climate Change Duties with regard to the implementation of climate change action plans, strategies and policies .It also give Guidance to Public and Private Entities with regard to Reporting, Monitoring Compliance and Enforcement of Rights Relating to Climate Change.

Part V- Financial Provisions

The section establishes a Climate Change Fund and sets out the modalities of its management.

Part VI– Miscellaneous Provisions

This section include the Management of Information whereby the Council is to publish and publicize all important information within its mandate affecting the nation based on conditions provided, a Public Engagement Strategy to be published every twelve months by the Council .It also guidance on Conflict of Interest issues by members of the Board or Council and Protection from Personal Liability. It further provides for the Offences and Penalties on contravening the Council. It makes provision for an annual Report by the Council.

Part VII-Delegated Legislation

Provides for the Cabinet Secretary to make additional regulations with regard to Climate Change

First Schedule

Makes provisions for public consultation

Second Schedule

Makes provisions as to the conduct of the business and affairs of the Board.

CHAPTER 3

3.0 The Review Process for the Climate Change Bill, 2014

3.1 Background

The Kenya Climate Change Working Group (KCCWG) in collaboration with the KNA came up with the Climate Change Bill 2012 that successfully went through both the first and second reading but unfortunately the former president failed to assent it into law citing lack of public participation. KCCWG, KNA, in collaboration with Kenya Association of Manufacturers (KAM), Ministry Of Environment, Water and Natural Resources, Transparency International KENYA (TI), Kenya Private Sector Alliance (KEPSA) and other stakeholders have embarked on the process again which has seen the climate change Bill 2014 go through the first reading at the parliament.

In a sensitization workshop held on 9th May, 2014, hosted by the Kenya Climate Change Working Group (KCCWG) and attended by several stakeholders representative from the Ministry of Environment, Water and Natural Resources.

3.2 Issues Raised in Submissions by the stakeholders and the Public

Stakeholders who made submissions to the Committee regarding the Bill include:

- National Task Force on Climate Change
- Kenya Climate Change Working Group (KCCWG)
- ACT! (Act , Change and Transform)
- CRM (Changieni Rasili Mali)
- Ministry Of Environment, Water and Natural Resources

The major concerns raised by stakeholders included:

- A) Institutional framework
- B) Establishment of the Climate Change Directorate
- C) Reporting
- D) Public Participation
- E) Mainstreaming Climate Change into County Development
- F) Public Participation
- G) The Climate change Fund/Financial Provisions

3.1.1 Institutional Framework (administrative, regulatory and oversight functions)

In presentations made in the stakeholder sensitization workshop on 9th May 2014 by KCCWG it was noted that there was contention with regard to the Institutional structure provided in the Bill with regard to administrative, regulatory and oversight functions. The Bill proposes an institutional architecture in terms of administrative, regulatory and oversight and institutional architecture-with climate change fund and how it would be applied.

The National Steering Council (NSC) convened by the Cabinet Secretary cited the structure proposed was informed by:

- desire to separate between high level advisory and coordination functions with technical coordination function
- The desire not to create an additional state corporation but to have the institutional structure within the civil service as it is.
- Climate change as envisaged through research in the action plan and the draft climate change bill would be undertaken through mainstreaming.

3.1.2 National Climate Change Council

Stakeholders raised concern that there was ambiguity with regard to whether the proposed National Climate Change Council is to be an institution based in the Presidency or the Ministry of Environment, Water and Natural Resources. It was suggested that having the climate change council anchored at the presidency would provide the coordination role due to the cross cutting nature of climate change. Members of the Taskforce cited that taskforce looks at climate change as a development issue as opposed to an environmental agenda. A contrary opinion noted that it would not be fair for the stakeholders to create amorphous institutions. The Council would be an independent body and coordination can be undertaken under the Ministry hence the Council should be under the Ministry.

Clarification of roles between the Council and NEMA was a discussed specifically with regard to **Section 5 (k) (i)**. Stakeholders submitted that there was an overlap of functions with regard to which institution had the authority to set targets for the regulation of greenhouse gas emissions. The Taskforce clarified that the council would set targets for GHG emissions while NEMA would have enforcement and compliance role adding that it would not be practical to have a department under the civil service carrying out the enforcement function.

There was further concern between the functions of the two institutions with regard to issues of reporting in terms of who would be reporting to the parliament, whether NEMA would be doing the reporting or the institutions themselves. Further, there was concern that the Bill seemed to be leaning more on NEMA yet they have limited capacity which would make it difficult for it to handle the task and safeguard the country. It was proposed that a climate change regulatory board specifically to deal with matters to do with climate change could be established as opposed to adding more work to

NEMA. This was addressed by the Taskforce who pointed out the taskforce could not foresee a department under the civil service carrying out compliance but NEMA would be in a better position to do this due to its existing mandate. This should be clarified to avoid institutional conflicts.

3.1.3 Functions of the Council (Section 5)

Some of the issues were raised with regard to the Composition of the Council and its functions included the necessity to condense the rules and functions of the council. It was suggested that the number of members of the Board should be condensed to seven or nine. With regard to the members, there was concern over the rationale of having the Institute of Climate change, The University of Nairobi Section (8(1)(ii)) under Section 8(Composition of the council). Questions were raised as to why it was specific to UoN and not any other University. Concern was also raised as to the basis for the required qualification on Section 7(b) -expertise and experience in matters of climate change, climatology, economy, climatology. It was suggested that it should not be too limiting.

3.1.4 Membership of the Board of the council

With regard to the membership of the Board, the some stakeholders suggested that KEPSA should represent the private sector instead of having one representation of the private sector nominated by a National Consortium of Private Sector Organization. This was addressed by the taskforce who felt that although KEPSA is the umbrella body for the private sector the fear of being specific is that in the event that such an entity ceased existing, there would be no equivalent representation of the private sector to the council hence the use of a generic term. Other organizations may also feel they are not represented.

It was noted that it would not be important to have all the other cabinet secretaries as the cabinet secretary responsible for climate change who would also couple as the chair was a member of the board. He proposed that the all the other cabinet secretary is changed to the principle secretaries in Section 7 (a) (i)-(viii)). It was noted that having the Director General NEMA in the board would be double representation since he reports to the cabinet secretary responsible for the environment. Similarly, concern that the cabinet secretary responsible for climate change did not exist yet he/she is named as a member of the council from the public sector. It was suggested that there is no justification to have the cabinet secretary responsible for foreign affairs.

Concern was raised with qualification 3(i)-One member competent in climate change matters from a recognized Kenyan University. This would lock out qualified persons who might have acquired the skills and experience on climate change from learning institutions outside Kenya.

It was noted that there was no clear representation of women on the board especially on Section 7(a) (VIII)-Chairperson of the council of governors. It was reiterated that all the County governors are men.

In addition, concern was raised that if the representation of the CSOs and that of the private sector is left open, there would be a difficulty in knowing or choosing who would represent the respective groups so would be the case if in choosing the organization to represent the marginalized. CSO is a wide and loose term which could be scrapped off by the parliament thereby proposing to go by the National NGO Council.

3.1.5 Establishment of the climate change directorate

This was proposed by the Task force who brought to the attention of the stakeholders that the directorate would take up some roles of the climate change council. It would be a department under the civil service thus the directorate would be established as a department in the state department responsible for climate change affairs within the Ministry.

The climate change directorate would deliver technical coordination on matters of climate change for the government at the national level and also report to the CS. He added that it was proposed that the directorate is headed by the director of climate change to be recruited by the PSC with proposed qualifications by the task force which would reflect various competencies. The Taskforce also pointed out that the director would deliver the mandate of the directorate and advise the CS on matters relating to legislation, policy and climate change governance.

Issues raised with regard to the Proposed Climate Change Directorate was that changes had not been made on the qualifications to be a member to the council; 10 years' experience in environmental sciences, environmental studies....(8(3)(b)). However it was noted that the directorate of climate change would be handling bargaining, negotiation and human resources issues among others therefore emphasizing on the criteria for such a person to have scientific background could be limiting.

3.1.6 Reporting

Issues raised with regard to reporting. It was noted that reporting annually to the parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development was impractical. It would be impractical for a legislation to pass annual reporting yet the status rarely changes annually

3.1.7 Public Participation

Issue was raised with the function on Section 5 (h) of the Bill and what it sought to achieve. It was recommended that there should be capacity development for public participation in climate change responses through awareness creation, consultation and access to information hoped to achieve in response to climate change. A program could be developed and approved by the council but have it

implemented by different ministries. There should be a coordinated public information mechanism to mainstream gender and future generations on how well to deal with climate change. The program would be more applicable if it is a product of the climate change council and not that of the ministry

3.1.8 Mainstreaming climate change into county development

In the Taskforce that when the Climate Change bill was being drafted, there was no provision for devolution. The taskforce proposed the creation of a statutory obligation for the county governments to integrate and mainstream climate change into their various functions. The taskforce proposed to delete the requirement for the preparation of county climate change action plan in the Climate Change bill 2014 and utilize County Integrated Development Plans (CIDPs) as the mechanism for mainstreaming climate change at the county level.

Concern was raised on how operations at the county level are linked up at the national level. She also wanted to know where the counties would get funds to carry out climate change obligations and also if the CIDPs were already in existence

3.1.9 The Climate Change Fund/financial provisions

The Taskforce brought to the attention of the stakeholders that the proposed fund would be vested at the national treasury and managed by the board. The sources of the funds would be grants, consolidated funds, penalties and monies payable by any Act of the Fund. The Fund proposes regulations for tracking climate finance, mobilization and application in Kenya. The Taskforce also brought to the attention of the stakeholders that with the entry of oil and petroleum, there is a proposal for the sovereign fund which would intersect with climate change adding that such funds would facilitate climate change intervention.

Clarification was sought by other stakeholders on the justification for creating a Board to manage the funds yet the council could manage it. It was also raised that the ministry already has structures in place in terms of personnel including the accountants who could handle such matters. The Taskforce brought to the attention of the stakeholders that there are mechanisms that had worked in the country e.g. the strategic grains reserve fund which was successfully managed by the trustees. It was suggested that the climate change fund should be put in place, a trustee within the government structure should be put in place to manage the resources instead of creating another entity.

CHAPTER 4

4.0 Committee Observations and Recommendations

4.1 General Observations

Climate Change is one of the greatest global challenges facing humanity. It is one of the most serious threats to sustainable development globally and its impact touches on every sector of the economy and society. The effects of climate change on Kenya cannot be underestimated and the necessity for a comprehensive legal framework is paramount. The Climate Change Bill, 2014 is set to provide a framework for mitigating and adapting to the effects of the changing climate on various sectors of the economy.

In particular the Bill comes in the heels of the Kenya's landmark policies on Climate Change, the National Climate Change Response Strategy, 2010 and a National Climate Change Action Plan, 2013. The Bill seeks to create a framework for coordination of mitigation and adaptation measures to the effects of climate change and the overall achievement of climate resilient and low —carbon development. It is noteworthy that Kenya is at the forefront in Africa in legislating on Climate Change and will set precedent in Africa as one of the few African countries that have a comprehensive legislation on Climate Change. The Committee was alive to the fact that this legislation will be a reference point for the region and other African countries and therefore took into account concerns raised by the stakeholders due to the diverse and cross-cutting nature of climate change. The committee accorded exceptional consideration to the views of the public on the proposed legislations and have gone beyond the clauses and sections of the Bill.

Consideration and analysis of view from stakeholders have formed part of the Bill review process. The committee has invested both resources and time to decipher and comprehend the various interrelated impacts of Climate Change and the existing policies and best practice. After the extensive consultations, deliberations and scrutiny of the Bill the committee has agreed on general categories that will guide specific amendments to the Bill to carry the views of the public and stakeholders as well as strengthen the legislative architecture of the sector.

The Committee made observations and agreed on proposed amendments that focused mainly on the following:

- A) Institutional framework
- B) Involvement of the County government
- C) Public Participation
- D) Penalties

4.2 Committee Observations and recommendations

4.2.1 Institutional Framework

The committee observed that in order to have an institution that inspires public confidence and in order to ensure accountability, it was necessary to reduce the number of the council members to have a lean and effective board. The Committee agreed that the number members on the Council should be a maximum of nine members.

The Committee further agreed that the Council should undertake its functions as an independent body in the Ministry of Environment, Water and Natural Resources rather than the office of the President since the Ministry has the capacity to undertake sectorial coordination. The Committee also agreed that the membership of the Council shall consist of the following members:

- (a) Members of the Council from the Public sector
 - i. Principal Secretary responsible for the National Treasury
 - ii. Principal Secretary responsible for Environment and Natural Resources, who shall be the Secretary to the Council
 - iii. Principal Secretary responsible for Economic Planning
 - iv. Principal Secretary responsible for Energy
 - v. Chairperson of the Council of Governors
 - vi. Principal Secretary responsible for Agriculture
- (b) All other members shall be appointed after approval of their nomination by the National Assembly, and the nomination and appointment shall take into account strong expertise and experience in matters of climate change, economy, finance, law, environment, public administration, as follows:
 - i. One representative of the private sector
 - ii. One representative nominated by a marginalized community group within the meaning of marginalization set out in article 260 of the constitution
 - iii. One representative to represent persons living with disabilities nominated by the National Council of Persons with Disabilities

4.2.2 Penalties

In order to avoid the overlap of function with NEMA and to ensure that each mandate institution has a clear mandate, the Committee agreed that the Penalties envisioned in the Bill should be deleted and the mandate to issue sanctions should be retained by NEMA so as to avoid a potential conflict between the two institutions

4.2.3 Involvement of County Governments

The Committee noted the impact of Climate Change on grass root communities and the importance of engaging the County government. However, Committee noted that the Bill was initiated in the National

Assembly and therefore must be concluded before it is sent to the Senate; nevertheless, the committee observed that it did not have adequate provisions on the engagement of County governments in the mitigation and adaptation to the impacts of climate change. The Committee agreed to include a section on the Bill that defines the role and mandate of the County Governments.

4.3 Recommendation for amendments

The Committee intends to propose detailed amendments to the Climate Change Bill, 2014 to the House for consideration. The Committee would generally be proposing the re-organization of various sections of the Bill and sequence it as appropriate and recommend editing and correction of typographical errors that could alter the intended meaning of certain provisions. The Committee will further be proposing amendments in line with the observations and recommendations made by the committee during the review of the Bill. The Committee proposes to move the agreed amendments during the third reading stage of the Climate Change Bill, 2014.

4.4 Conclusion

The Committee presents its report on the deliberations on the Climate Change Bill, 2014 to the National Assembly for consideration and adoption. The Committee subject to the consideration of the agreed amendments that will be moved during the third reading stage of the Bill recommends that the Climate Change Bill, 2014 be passed by the House.

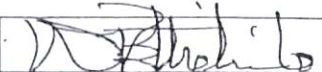




DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

ATTENDANCE / PAYMENT SCHEDULE

DATE: 21/07/2014 TIME: 2:30 PM AGENDA: CLIMATE CHANGE BILL 2014 VENUE: G.P.A

1	NAME	SIGNATURE
	Abdalla, Amina CHAIRPERSON	
2	Alexander Kosgey Vice Chairperson	
3	Dukicha, Hassan Abdi	
4	Emanikor, Joyce Akai	
5	Ganya, Francis Chachu	
6	Geni, Charles Mongare	
7	Gure, Shukra Hussein	
8	Ole Kenta, Richard Moitalel	
9	Mohamed, Diriye Abdullahi	
10	Murungi, Kathuri	
11	Ogalo, George Oner	
12	Sunjeev Kour Birdi	
13	Tonui, Ronald Kiprotich	
14	Dr. Wanyonyi, Reginalda N	
15	Farah, Abdulaziz Ali	
16	Barua, Ejidius Njogu	
17	Irea, Gideon Mwiti	
18	Chidzuga, Zainab Kalekye	
19	Muluvi, Marcus Mutua	
20	Mwashetani, Khatib	
21	Ndiritu, Samuel Mathenge	

22	Ottichilo, Wilber Khasilwa	
23	Rop, Jackson Kipkorir	
24	Abdinoor, Mohammed Ali	
25	Ng'ang'a, Alice Wambui	
26	Peter Kinyua	
27	Wandayi, James Opiyo	
28	Katana, Aisha Jumwa	
29	Jude Njomo	

AHMAD A. KADHI

FOR - CLERK OF THE NATIONAL ASSEMBLY

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 21ST JULY, 2014 AT 2.30 PM IN THE C. P. A. ROOM, MAIN PARLIAMENT BUILDING.

PRESENT

1. Hon. Abdalla Amina, M.P. – Chairperson
2. Hon. Alexander Kosgey, M.P. – Vice Chairperson
3. Hon. Emanikor Joyce Akai, M.P.
4. Hon. Ganya Francis Chachu, M.P.
5. Hon. Geni Charles Mong'are, M.P.
6. Hon. Ole Kenta Richard Moitalel, M.P.
7. Hon. Murungi Kathuri, M.P.
8. Hon. Barua Ejidius Njogu, M.P.
9. Hon. Wandayi James Opiyo, M.P.
10. Hon. Dr. Wanyonyi Reginalda N. M.P.
11. Hon. Chidzuga Zainabu Kalekye, M.P.
12. Hon. Ndiritu Samuel Mathenge, M.P.
13. Hon. Ottichilo Wilber Khasilwa, M.P.
14. Hon. Abdinoor Mohammed Ali, M.P.
15. Hon. Farah Abdulaziz Ali, M.P.

ABSENT WITH APOLOGIES

1. Hon. Dukicha Hassan Abdi, M.P.
2. Hon. Ng'ang'a Alice Wambui, M.P.
3. Hon. Peter Kinyua, M.P.
4. Hon. Ogalo George Oner, M.P.
5. Hon. Sunjeev Kour Birdi, M.P.
6. Hon. Tonui Ronald Kiprotich, M.P.
7. Hon. Muluvi Marcus Mutua, M.P.
8. Hon. Mohamed Diriye Abdullahi, M.P.
9. Hon. Gure Shukra Hussein, M.P.
10. Hon. Katana Aisha Jumwa, M.P.
11. Hon. Jude Njomo, M.P.
12. Hon. Irea Gideon Mwitii, M.P.
13. Hon. Rop Jackson Kipkorir, M.P.
14. Hon. Mwashetani Khatib, M.P.

IN-ATTENDANCE – THE NATIONAL ASSEMBLY

Mr. Ahmad Kadhi – First Clerk Assistant
Ms. Naserian Lotuai – Third Clerk Assistant
Mr. Joshua Ondari – Third Clerk Assistant

MIN. NO. 190/2014 – PRELIMINARIES

The Chairperson called the meeting to order at 2:45pm.
Proceedings commenced with a word of prayer.