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REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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COMMITTEE CHAIR
HON. DAVID RUKARIA
MP ON 12.4.2018

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DEPARTMENTAL COMMITTEE ON ENERGY

TWELFTH PARLIAMENT-SECOND SESSION



REPORT

ON

THE CONSIDERATION OF THE PETROLEUM (EXPLORATION,
DEVELOPMENT AND PRODUCTION) BILL, 2017

NATIONAL ASSEMBLY BILL NO. 48

VOL 1

Directorate of Committee Services
Clerk's Chambers
Parliament Building
NAIROBI

April, 201

Abbreviation and Glossary

KEPSA -Kenya Private Sector Alliance

KOGA - Kenya Oil and Gas Association

TUCUSA- Turkana County University Student Association

ACTS -African Centre for Technology Studies

COG - Council of Governors.

FDP - Field Development Plan

KCSOP - Conservation Alliance of Kenya (Kenya Society of East Africa on Wildlife)

Chairperson's Foreword

The Petroleum (Exploration, Development and Production) Bill, 2017 underwent the first reading on 14th February, 2018 and thereafter committed to the Committee on Energy as provided for in the Standing order 127(1).

The Bill seeks to provide a framework for the contracting, exploration and development of petroleum together with production of petroleum discovered within the licensed petroleum exploration blocks. The Bill also provides a framework for cessation of upstream petroleum operations. The Bill proposes to repeal the Petroleum (Exploration and Production) Chapter 308 of the Laws of Kenya while

The Committee while considering the Bill pursuant to Article 118(b) and Standing Order 127(3), invited the public and stakeholders to submit representation/comments they might have on the Bill. This invitation was done through, a notification which was placed in the mainstream print media on 22nd February, 2018.

Having received many written submission from non-state actors as well as from county governments that mainly host geothermal, petroleum and other energy resources, the Committee saw the important need to directly engage with the Community and carry out an extensive public participation as envisioned in the Standing orders to collect views and oral submissions related to the Energy Bill, 2017.

Pursuant to article 118 of the Constitution as well as the provisions of Standing order 127 of the National Assembly and in order to make informed and fitting recommendations to the House regarding the proposed Petroleum (Exploration, Development and Production) bill, 2017, the Committee set out to conduct public hearings in the counties of Turkana, Nakuru, Narok, Muranga, Kitui and Lamu.

To this end therefore, the Committee held a total of 25 Sittings with the residents of these counties to receive oral submissions regarding the bill. The Committee has provided an annexures of attendance these meetings and submissions to the Committee in form of public hearing report attached to this report. The Committee also took cognizance of the concerns raised by Honorable Members of Parliament from the counties where the Committee visited.

This report on Public hearings may not be exhaustive enough but it is sufficient to inform and to guide the House while considering the Petroleum (Exploration, Development and Production) Bill, 2017. It is my belief that it contains far reaching observations and

recommendations which if incorporated into the proposed legislation would afford the Public an opportunity to participate in the legislative process of the bill.

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the Secretariat for their technical support during the compilation of the report.

Hon. David Gikaria, M.P

1.0 Preface

Hon Speaker,

On behalf of the Departmental Committee on Energy and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Petroleum (Exploration, Development and Production) Bill, 2017

The Bill was committed to the Committee on Wednesday 14th February, 2018 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

1.1 Mandate of the Committee

The Departmental Committee on Energy is established pursuant to provisions of Standing Order 216 (5). Under the provisions of Standing Order 216 (5) the Committee is mandated to inter alia:

- (i) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (ii) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (iii) To study and review all legislation referred to it;*
- (iv) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) To 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;
- (vi) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (vii) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Departmental Committee on Energy oversees the performance of the following State departments:-

- (i) Energy, and
- (ii) Petroleum.

1.2 Composition of the Committee

The Committee comprises the following Members-

- | | | |
|--|---|-------------------------|
| 1. The Hon. David Gikaria, M.P. | - | Chairperson |
| 2. The Hon. (Dr.) Robert Pukose, M.P. | - | Vice Chairperson |
| 3. The Hon. Cecily Mbarire, M.P. | | |
| 4. The Hon. Ekomwa Lomenen James, M.P. | | |
| 5. The Hon. Joseph Wathigo Manje, M.P. | | |
| 6. The Hon. Lemanken Aramat, M.P. | | |
| 7. The Hon. Oscar Sudi, Kipchumba, M.P. | | |
| 8. The Hon. (Eng.) Vincent Musyoka Musau, M.P. | | |
| 9. The Hon. Amina Gedow Hassan, M.P. | | |
| 10. The Hon. Abdikhaim Osman Mohamed, M.P. | | |
| 11. The Hon. Clement Muturi Kigano, M.P. | | |
| 12. The Hon. Elisha Odhiambo, MP | | |
| 13. The Hon. Elsie Muhanda, MP | | |
| 14. The Hon. Gitau Faith Wairimu, M.P. | | |
| 15. The Hon. Julius Musili Mawathe, MP | | |
| 16. The Hon. Ken Chonga, MP | | |
| 17. The Hon. Tindi Nicholas Mwale, MP | | |
| 18. The Hon. Walter Owino, MP | | |
| 19. The Hon. Mohammed Ali Lokiro, MP | | |

1.2.1 Committee Secretariat

The Committee is resourced with the following technical staff, representing the Office of the Clerk;

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|--------------------------|---|----------------------------------|
| 1. Mr. Benjamin Magut | - | First Clerk Assistant–Lead Clerk |
| 2. Mr. Douglas Katho | - | Third Clerk Assistant |
| 3. Ms. Brigita Mati | - | Legal Counsel |
| 4. Ms. Jemimah Waigwa | - | Legal Counsel |
| 5. Mr. Eugene Apaa | - | Research Officer |
| 6. Mr. Moge Abdinasir | - | Fiscal Analyst |
| 7. Mr. Joseph Okong'o | - | Media Relations Officer |
| 8. Mr. John Ng'ang'a | - | Audio Recording Officer |
| 9. Ms. Sheila Chebotibin | - | Sergeant at Arms |

1.3 Consideration of the Petroleum (Exploration, Development and Production) Bill, 2017

Hon. Speaker,

The Petroleum (Exploration, Development and Production) Bill, 2017 underwent the first reading on 14th February, 2018 and thereafter committed to the Committee on Energy as provided for in the Standing order 127(1).

Pursuant to Article 118(b) of the Constitution of Kenya 2010 and National Assembly Standing Order 127(3), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 22nd February, 2018 informing the public that the Committee was considering the Energy Bill, 2017 and inviting them to submit any representation they might have on the Bill.

Hon. Speaker,

The Committee received written memoranda and held meetings with the officials from the Ministry of Petroleum and Mining to consider pertinent issues that the Bill was seeking to address. Among the stakeholders the Committee received written memoranda are:

1) Ministry of Petroleum and Mining

The Ministry is responsible for policy formulation in the; the contracting, exploration and development of petroleum together with production of petroleum discovered within the licensed petroleum exploration blocks, regulation of the midstream and downstream petroleum sector.

The Ministry's presentation included proposals to amend the bill by moving the whole of Part V of the Energy Bill, 2017 to the Petroleum (Exploration, Development and Production) Bill, 2017. Part V of the Energy Bill, 2017 deals with the provisions on Midstream and Downstream petroleum sector which ideally should be in the Petroleum (Exploration, Development and Production) Bill, 2017.

2) Council of Governors-COG

The COG is an inter-governmental body established under Section 19 of the inter-governmental Act. Its mandate is to provide a platform for a coordinated action approach between the two levels of governments.

The submissions from COG address the need to provide an effective and meaningful consultation framework between the two levels of governments on matters related to exploration of petroleum resources e.g. crude oil. Secondly, it reiterates the need for deletion of the "cap" provisions in the Bill related to the county governments and local community share of revenues arising from exploration of energy resources.

3) Kenya Private Sector Association-KEPSA

KEPSA is the apex body of the private sector which focuses on advocacy on behalf of the private sector in respect to high level national cross-cutting issues.

KEPSA submissions are focused on proposing amendments expected to help nature an appropriate governance and institutional framework that shall guarantee a predictable investment climate in the capital intensive petroleum sector, provisions to consolidate licenses/permits to improve ease of doing business in Kenya and review of penalties regime in the Bill to provide for a penalty ceiling not the penalty floor as currently in the Bill among other submissions.

4) Kenya Oil and Gas Association-KOGA

KOGA is an association established in 2012, whose membership comprises of industry players in the upstream oil and gas sector. The objective of the association is to create awareness on the upstream oil and gas industry. KOGA's proposed amendments seek to reduce/consolidate the many statutory licenses created in the Bill and provide for transitional and savings clauses that are geared at ensuring a predictable business climate for the sector among other submissions.

5) The Natural Justice

The Natural Justice is non-profit making organization that comprises of community lawyers who specialize in conducting comprehensive research on environmental & human rights matters to enable their engagement in key national and international

process. They offer support to communities impacted by every increasing demand of land and natural resources.

The organization's submissions are geared at; enhancing the provisions on protection of community rights on natural resources, enhancing the public participation aspect on several process as provided in the Bill, providing for alignment of this Bill with Mining Act, 2016 when necessary and finally providing for strict compliance with protection of environment.

6) Turkana County Assembly and Turkana County Government

Turkana County government's submissions seek to address; the definition of a "local community". county's reservation to the formula to be used to manage sharing of revenues in particular the need to delete the proposed "caps" proviso in revenue sharing framework between National, County government and local communities, enhancement of the share of revenue meant for local community from current 5% to 10%, review of provision on local content in the Bill and provision meant to enhance the involvement of the county governments on such processes like approval of Field Development Plan (FDP) and Decommissioning process among other submissions.

7) African Centre for Technology Studies-ACTS

This is an intergovernmental non-profit organization founded in 1988 by Prof. Caletous Juma to promote policy-oriented research on science and technology in development that is sustainable to the economy, society and environment. ACTS submitted that the Bill must provide for promotion of domestic capabilities by promotion of local actors, building strong innovation systems, building of industrial manufacturing base and focus on research.

8) Conservation Alliance of Kenya (Kenya Society of East Africa on Wildlife)

This is a limited liability membership organization registered in Kenya as an umbrella body to advance the preservation, protection and management of wildlife and its habitats.

In its submissions, the Alliance proposes amendments to section 206(1) to exempt protected areas from being used to host oil infrastructure facilities. These protected areas include forests, rivers, parks, government properties, streets, canals etc. Secondly, the Alliance proposes the introduction of new clauses in the Bill to entrench the provisions of

Hon. Speaker,

While conducting public participation in the above mentioned counties the Committee made the following observations:-

- (i) Communities emphasized the need to have provisions of the Bill dealing with the local content expounded to address the needs of the locals where natural resources is being explored.
- (ii) On Community land, the County Assembly of Turkana was of the opinion that, while it is desirable that the contractor notifies the Cabinet Secretary of the need to set apart land for purposes of upstream petroleum operations, it is of best interest that the County Government (as the body constitutionally mandated to hold community land in trust on behalf of the communities) and the local community be involved in the process.
- (iii) It was of the opinion of the Communities that the bill ought to state expressly that the membership of the Advisory Committee and the Upstream Petroleum Authority ought to include representatives from counties where petroleum production is taking place.
- (iv) The Communities recommended that as an alternative to the capping of revenues allocated to the county government as stated in Section 85(2) of the Bill, the law instead create a sovereign or stabilization wealth fund to safeguard counties and communities from the volatility of commodity prices.

1.4 Adoption of the Report

We the members of the Departmental Committee on Energy have pursuant to Standing Order 199 adopted this Report on the Petroleum (Exploration, Development and Production) Bill, 2017 and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Thursday 5th April, 2018:-

1. The Hon. David Gikaria, M.P. -Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chair
3. The Hon. Cecily Mbarire, M.P.
4. The Hon. Ekomwa Lomenen James, M.P.
5. The Hon. Joseph Wathigo Manje, M.P.
6. The Hon. Lemanken Aramat, M.P.
7. The Hon. Oscar Sudi, Kipchumba, M.P.
8. The Hon.(Eng.) Vincent Musyoka Musau, M.P.
9. The Hon. Amina Gedow Hassan, M.P.
10. The Hon. Abdikhaim Osman Mohamed, M.P.
11. The Hon. Clement Muturi Kigano, M.P.
12. The Hon. Elisha Odhiambo, MP
13. The Hon. Elsie Muhanda, MP
14. The Hon. Gitau Faith Wairimu, M.P.
15. The Hon. Julius Musili Mawathe, MP
16. The Hon. Ken Chonga, MP
17. The Hon. Tindi Nicholas Mwale, MP
18. The Hon. Walter Owino, MP
19. The Hon. Mohammed Ali Lokiro, MP

1.5 Acknowledgment

Hon. Speaker,

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the Secretariat for their technical support during the compilation of the report.

On behalf of the Committee, and pursuant to Standing Order No. 127 (4) of the National Assembly, It my honor and privilege to present the Committee Report on the Petroleum (Exploration, Development and Production) Bill, 2017 to House for consideration and adoption.

Thank you

Signed.....

Hon. David Gikaria, M.P

CHAIRMAN DEPARTMENTAL COMMITTEE ON ENERGY

DATE.....10th Apr, 2018

2.0 Consideration of the Petroleum (Exploration, Development and Production) Bill, 2017

2.1 Background

Hon. Speaker,

The Ministry of Petroleum and mining is responsible for policy formulation in the; exploration, development and sustainable use of energy sources; Rural electrification program; Renewable Energy promotion & development; Energy regulation, security & conservation and Fossil fuel exploration and Development.

Currently the sector is guided by among other legislation, the Energy Act, 2006, Geothermal Resources Act, 1982, Kenya Energy Generation Company Act-Cap 486, Kenya Power and Lighting Act -Cap 486, Kenya Electricity Transmission Company Act, Rural Electrification Authority Act, Energy Regulation Commission Act 2006. These legislations provides for the management, development, conservation, exploitation and utilization of the energy resources

2.2 Committal of the Petroleum (Exploration, Development and Production) Bill, 2017

Hon. Speaker,

The Petroleum (Exploration, Development and Production) Bill, 2017 underwent first reading on 14th February, 2018 and thereafter committed to the Committee on Energy as provided for in the Standing order 127(1).

However, while the Committee was considering the Bill it become apparent that the time provided to consider the Bill as per the Standing orders (S.O 127 (5) would not be enough for Committee to adequately engage the Public through the public hearings and therefore the Committee sought from the Speaker an extension of the period to consider the Bill by another 21 days which was granted by the House on Tuesday 13th March, 2018.

2.3 Objectives of the Bill

The Bill seeks to provide a framework for the contracting, exploration and development of petroleum together with production of petroleum discovered within the licensed petroleum exploration blocks. The Bill also provides a framework for cessation of upstream petroleum

upstream petroleum operations. The Bill proposes to repeal the Petroleum (Exploration and Production) Chapter 308 of the Laws of Kenya while

The Bills consist of the following parts-

Part I- deals with preliminary issues such as definition of terms as used in the Bill, scope of the Bill and supremacy of the Bill on matters relating to upstream petroleum operations

Part II- deals with the National Upstream Petroleum Policy and Plan. This part provides that the Cabinet Secretary shall develop, publish and review upstream strategic plan. This part places the obligation on the National Government to create a conducive environment for upstream petroleum operations.

Part III- deals with petroleum institutions. This part details the powers and functions of the Cabinet Secretary, National Upstream Petroleum Advisory Committee and Upstream Petroleum Regulatory Authority.

Part IV- deals with upstream petroleum rights and management of petroleum resources. This part vest all petroleum existing in its natural condition on the National Government in trust for people of Kenya.

Part V - deals with information and reporting. This part provides for the report requirement of the contractor and information that may be required by the Cabinet Secretary. The part also provides for offences relating to refusal to provide information and furnishing of false information to the Cabinet Secretary or Authority.

Part VI - deals with local content and training. Local content has been defined to mean the added value brought to the Kenyan economy from petroleum related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for sharing of accruing benefits.

Part VII - deals with payment and revenues. This part obligates all contractors to pay all relevant fees and levies as may be prescribed in the petroleum agreement and any other relevant legislation. This part also provides that all payments due National government under the Bill shall be made using international acceptable and freely convertible currency. Further, it provides that profit derived from upstream operations shall be shared between the contractor and National government.

Part VIII- deals with environment, health and safety in upstream petroleum operations. The part obligates all contractors to comply with all environment, health, safety and maritime laws in upstream petroleum operations. This part further prohibits venting and flaring of oil and natural gas except with authorization of the authority and National government agency responsible for environment during production, testing or for emergency reasons.

Part IX - deals with use of land in upstream petroleum operations

Part X - deals with miscellaneous provisions

Part XI - deals with repeals, savings and transitional provisions

2.4 Public Participation

Hon. Speaker,

Article 118(1) (b) of the Constitution of Kenya, 2010 provides that “Parliament shall facilitate public participation and involvement in the legislation and other business of the Parliament and its Committees.” Standing Order 127(3) of the National Assembly Standing Orders provides that “the Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the House.”

Arising from the foregoing the Committees, placed a notification in the two mainstream print media on 22nd February, 2018 informing the public that the Committee was considering the Petroleum (Exploration, Development and Production) Bill, 2017 and invited them to submit any representation they might have on the Bill.

The Committee received written memoranda and submissions from a total of 10 organizations/individuals for which the Committee proceeded to consider. The written submissions were received from the following organizations/individuals:-

- 1) Council of Governors-COG
- 2) Kenya Private Sector Association-KEPSA
- 3) Kenya Oil and Gas Association-KOGA
- 4) The Natural Justice
- 5) Turkana County Assembly and Turkana County Government
- 6) Keekonyokie Community (Narok County)

- 7) African Centre for Technology Studies-ACTS
- 8) Conservation Alliance of Kenya (Kenya Society of East Africa on Wildlife)
- 9) Turkana University and College students association
- 10) Nakuru & Narok County Governments

Hon. Speaker,

In addition to receiving the written memoranda from the stakeholders, the Committee held public hearings in the counties mentioned below to receive oral submissions from general public and whose report are annexed to this report.

- 1) Turkana County (Turkana East, Turkana South and Turkana Central sub counties)
- 2) Nakuru County (Menengai, Bahati, Nakuru County Assembly, Naivasha)
- 3) Narok County (Suswa ward)
- 4) Muranga County (Mathioya Constituency)
- 5) Nairobi County (County Hall-Parliament Buildings)
- 6) Lamu County (Kwasasi, Pate and Lamu Fort Hall)

Hon. Speaker,

The Committee held meetings with the Ministry of Energy and several stakeholders to deliberate on pertinent issues that the Bill was seeking to address. Among the stakeholders are:-

- 1) Council of Governors-COG
- 2) Kenya Private Sector Association-KEPSA
- 3) Kenya Oil and Gas Association-KOGA
- 4) The Natural Justice
- 5) Turkana County Government and Turkana County Assembly
- 6) County Government of Nakuru and Narok
- 7) Association of Oil & Gas Transporters
- 8) African Centre for Technology Studies-ACTS
- 9) Conservation Alliance of Kenya (Kenya Society of East Africa on Wildlife)
- 10) Nature Kenya
- 11) Oil & Gas Contractors Association of Kenya

3.0 Submissions by Stakeholders on Bill, 2017

3.1 Submission by Council of Governors

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	Clause 2 Interpretation	Insert the following definitions “development and production sharing contract” means a production sharing contract pursuant to which a contractor is granted an exclusive right to develop and produce from a Field including drilling wells, entry of wells, servicing of wells and construction of related facilities pursuant to a Field Development Program. “exploration and production sharing contract” means a Production Sharing Contract pursuant to which a contractor is granted an exclusive right to explore for Petroleum and, in the event of Commercial Discovery from a Field, to develop and produce Petroleum from the Field pursuant to a Field Development Program.	The Act provides for a petroleum agreement as the general term for (1) production sharing agreement (2) concession agreement and (3) service contracts For the production sharing agreements, it should include separate definitions The underpinning for the Act is the attraction of legitimate investment to identify and exploit commercial discoveries. More legal guidance will ensure attraction and management of commerciality.
3	Scope of the Act (1) This Act shall apply to all upstream petroleum operations being carried out in Kenya. (2) The scope of this Act shall not include midstream or downstream petroleum operations.	Delete sub clause (1) and substitute with the following new clause- This Act shall apply to all upstream petroleum operations including- a) legal aspects of the upstream petroleum sector being carried out in Kenya; b) institutional arrangements	There is need to include a clear statement on the purpose and intent of the Act. The Act should set out the governance framework for the entire sector. The proposed amendments will streamline the Act to focus on key issues.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		regulating the sector; c) Kenya's non-renewable petroleum resources; and d) Benefit sharing of commercial development of petroleum resources.	
5	National upstream petroleum policy The Cabinet Secretary shall ensure that relevant stakeholders participate effectively in the making of the national policy on upstream petroleum operations.	Insert the words "County Governments" The Cabinet Secretary shall ensure that county governments and relevant stakeholders participate effectively in the making of the national policy on upstream petroleum operations.	The implementation of this policy including functions of natural resource management and county public land is by the county government; therefore it is important for these county governments to be involved as partners in the policy formulation process.
6	Clause 6(3) National upstream petroleum strategy The Cabinet Secretary shall prescribe Regulations in relation to the content and timelines for the preparation of the upstream petroleum strategic plan	Insert the words "County Governments" The Cabinet Secretary shall, in consultation with county governments, prescribe Regulations in relation to the content and timelines for the preparation of the upstream petroleum strategic plan.	The implementation of these Regulations will be done in consultation with county governments therefore they should be involved in the formulation of the Regulations.
8	Clause 8(4) Conduct of upstream operations Subject to this Act, and in accordance with the terms and conditions of a petroleum agreement, the National government may authorize a contractor to engage in upstream petroleum operations within a specified area.	Insert the words "County Governments" Subject to this Act, and in accordance with the terms and conditions of a petroleum agreement, the National government, in consultation with the relevant county government, may authorize a contractor to engage in upstream petroleum operations within a specified area.	Consultation of county governments will ensure that the County Governments are aware of the contractor's activities and can offer support to ensure that his/her activities do not interfere adversely with the infrastructure and environment of the particular county government.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
8	Clause 8(5) Conduct of upstream operations Notwithstanding the provisions of this Clause, the "national government may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than upstream petroleum operations within an area covered by a petroleum agreement	Notwithstanding the provisions of this section, the national government, in consultation with the relevant county government, may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than upstream petroleum operations within an area covered by a petroleum agreement.	This will ensure coordinated efforts in implementing the shared functions by both levels of government including land, energy and natural resources.
9	Promotion of upstream petroleum 9(3)	In its effort to promote upstream petroleum operations and investments, the national government in consultation with county governments shall facilitate access to land for exploration activities in accordance with the Constitution and any other written law	Under Article 63, County government are in charge of community land held in trust for the communities which might be having oil minerals for exploration and they should be consulted in the reclaiming of that land for exploration.
15	Clause 15 Functions of the Authority The functions of the Authority shall be to- (t) develop guidelines, in consultation with other statutory authorities, in relation to the implementation of treaties, conventions or protocols affecting the upstream petroleum sector	The functions of the Authority shall be to- (t) develop guidelines, in consultation with county governments and other statutory authorities, in relation to the implementation of treaties, conventions or protocols affecting the upstream petroleum sector that have been ratified by Kenya.	The implementation of these guidelines will be by County Governments under Fourth Schedule of the Constitution therefore County governments need to be consulted in their formulation. If these functions are lacking in the Bill, there

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		Insert paragraph (da) Include: (d) Collect, maintain upstream data, assess field development plans, verify the recovery cost of oil and gas due to the parties, audit contractors for cost recovery, monitor compliance and their trade practice to ensure competition and fair practice	will be a question on who will have the mandate to verify the cost given by the contractor.
17	Clause 17 Board of directors of the Authority	Insert new subparagraph (iii) (iii) a representative of the Council Governors	Energy being a concurrent function it is prudent that a representative from the Council of Governors be a member of the Upstream Regulatory Authority
37	Clause 37 National Data Centre. The Authority shall establish a national data centre which shall be used for the storage, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations.	Insert the words: The Authority shall establish a national data centre which shall be used for the storage (including storage of cores and samples, geoscience, spatial and other critical data) , analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations.	These provisions will stresses the need of National Data Centre is sufficiently reflected. There is also need for more information on how petroleum rights and resources will be reported on, managed and assessed for commerciality. It may be useful to specify which petroleum resources management system will be used (i.e., in line with the Society of Petroleum Engineers, PRMS).

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
42	Clause 42(1) Constitution of blocks For the purposes of this Act, the Cabinet Secretary may, by notice in the Gazette, divide Kenya and its continental shelf into numbered areas which shall be defined by specific geographical co-ordinates, and each area shall be described as a "block".	For the purposes of this Act, the Cabinet Secretary after consultation with the Advisory Committee may by notice in the divide Kenya audits continental shelf into numbered areas which shall be defined by specific geographical co-ordinates, and each area shall be described as a "block".	This is important to ensure consultative process of mapping out Kenya into specific co-ordinates.
45	Clause 45 Negotiation, award and execution of petroleum agreements.	The Act refers to "application", "bidding rounds", and "direct negotiations" but is silent on processes, how it will be determined whether bidding or not, etc. More clarity is required.	Review and revise the details on bidding/guidance on the award of petroleum rights. Very specific information is the crux of how rights will be awarded, more detail that clearly explains key aspects is needed, i.e. a) eligibility; b) remove use of the term "petroleum agreement" and state the precise name of the agreement and how those rights may be obtained; c) application; d) bidding process (i.e., site visits, short lists, rounds); e) direct negotiation; and f) overlapping areas.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
51	Clause 51(1) Operational permit A contractor who intends to conduct upstream Operational petroleum operations shall apply to the Authority for an operational permit.	A contractor who intends to conduct upstream Operational petroleum operations shall apply to the Authority for an operational permit and notify the relevant county government.	As a result of County Governments in land, environment, infrastructure and public works, they should be consulted or notified during the issuance of operational permits to contractors.
51	Clause 51(8) Operational permit The Authority, in collaboration with the contractor and any other relevant stakeholder, shall give the local community in a place where upstream petroleum operations are to be permitted adequate opportunity to participate in the process of reviewing and awarding permits under this Act.	The Authority, in collaboration with the relevant county government , the contractor and any other relevant stakeholder, shall give the local community in a place where upstream petroleum operations are to be permitted adequate opportunity to participate in the process of reviewing and awarding permits under this Act.	Under the Fourth Schedule of the Constitution, County Governments have a role in ensuring and coordinating participation of communities in governance at the local level therefore should be consulted in the participation process with communities before awarding of these operational permits.
55	Clause 55 (1) Notification prior to abandonment A contractor shall give the Authority notice of thirty days where the contractor intends to abandon a well.	A contractor shall give the Authority and County Government notice of thirty days where the contractor intends to abandon a well.	This is in accordance with the role of County Governments in the protection of the environment and other natural resources.
56	Clause 56(3) Surrender of blocks Where a contractor intends to partially surrender a block, that contractor shall submit to the Cabinet Secretary and the Authority the geological and geophysical data in relation to the block.	Where a contractor intends to partially surrender a block, that contractor shall submit to the Cabinet Secretary, the relevant County Government and the Authority the geological and geophysical data in relation to the block.	County Governments have a role and should be consulted in line with their role of county physical and spatial planning

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
59	Clause59 Petroleum production A contractor shall apply to the Authority for a Petroleum production permit and the application shall be accompanied production.	A contractor shall apply to the Authority and notify the relevant County Government for a Petroleum production permit and the application shall be accompanied production.	This is in line with the functions of county governments in infrastructure and environment protection.
67	Clause 67(8) Decommissioning funds The management of the decommissioning fund shall be done by a committee consisting of representatives of the National Government and the contractor, in such manner as may be prescribed by regulations.	The management of the decommissioning fund shall be done by a committee consisting of representatives of the National Government, County Government and the contractor, in such manner as may be prescribed by regulations.	This is in line with the functions of county governments in environment protection.
70	Clause70 Removal of property by contractor Where a production permit has been surrendered, expired, or has been relinquished by a contractor, the Authority shall by notice in writing served on the contractor, direct the contractor to remove from the area which was subject to the production permit all property brought into that area by any person who was engage or concern with upstream petroleum operations	Where a production permit has been surrendered, expired, or has been relinquished by a contractor, the Authority shall by notice in writing served on the contractor and copied to the relevant County Government, direct the contractor to remove from the area which was subject to the production permit all property brought into that area by any person who was engage or concern with upstream petroleum operations	This is in line with the County government function in environmental protection and conservation

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
74	Clause 74 Contractor to furnish information It shall be the duty of every contractor to furnish the Cabinet Secretary and the Authority as the case may be at such times and in such form and manner, such information as the Cabinet Secretary and the Authority may in writing require.	It shall be the duty of every contractor to furnish the Cabinet Secretary," the relevant County Government" and the Authority as the case may be at such times and in such form and manner, such information as the Cabinet Secretary and the Authority may in writing require.	This is to assist the relevant County Government know what is happening in their county and offer assistance where needed.
77	Part IV Local Content and Training	Insert new 77 (1) (d) set aside twenty per cent of the work program on local content for local communities.	
85	Clause 85 (3) Sharing petroleum resource The local community's share shall be equivalent to five percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community: Provided that the amount allocated in accordance with this subsection shall not exceed one-quarter of the amount allocated to the county government by Parliament in the financial year under consideration.	Delete sub clause 3 and substitute therefor with the following new clause- The local community's share shall be equivalent to ten (10) percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community.	The current provision undermines the objects of devolution under Article 174 of the Constitution on the right to recognize communities managing their own affairs and ensuring equitable sharing of national and local resources in Kenya. This also violates the object on the rights of the host communities receiving an equitable share of the natural resources. This alleged inability to manage their own affairs is therefore unconstitutional.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			If the petroleum revenue is estimated at 100billion, the Bill provides that Counties are allocated 20%and the local community 5% respectively. This means that Counties will get 20 billion and the Community 5billion. However, in the event that the National Assembly proposes that community share 5% should not exceed a quarter of the Counties equitable share then this would be unacceptable. This is based on the fact that Counties equitable share is prorated on various parameters across 47 counties which the benefit sharing formula does not consider including land area, population, fiscal responsibility.
87	Clause 87 Waste Management A person contracted by the contractor under subsection (2) shall not carry out those activities without being registered and licensed by the National Government agency responsible for environment and any other relevant National Government entity.	A person contracted by the contractor under subsection (2) shall not carry out those activities without being registered and licensed by the National Government agency responsible for environment and any other relevant National and County Government entity.	This is in line with the functions of county government in environment protection.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
89	Clause 89(1) Venting and flaring of natural gas. A contractor shall not vent or flare natural gas in the course of the conduct of upstream petroleum operations except with the prior authorization of the Authority in consultation with the National Government agency responsible for environment and safety and another National Government entity	A contractor shall not vent or flare natural gas in the course of the conduct of upstream petroleum operations except with the prior authorization of the Authority in consultation with the National Government agency responsible for environment and safety and another National and County Government entity.	This is in line with the functions of county government in environment protection.
96	Clause 96 Disaster Preparedness prevention and management unit. (1) The Cabinet Secretary shall establish a disaster preparedness, prevention and management unit within the Ministry to co-ordinate response to accidents, disasters and other emergencies that may occur within upstream petroleum operations. (2) The disaster preparedness, prevention and management unit shall collaborate with the National Disaster Operations Centre and other relevant institutions to ensure a timely response and emergency preparedness resource sharing.	(1) The Cabinet Secretary shall establish a disaster preparedness, prevention and management unit within the Ministry to co-ordinate response to accidents disasters and other emergencies that may occur within upstream petroleum operations. (2) The disaster preparedness, prevention and management unit shall collaborate with the National Disaster Operations Centre, County Governments and other relevant institutions to ensure a timely response and emergency preparedness Resource sharing.	Under the Fourth Schedule of the Constitution, disaster management is a function of both the national and county governments.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
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3.2 Submission by Turkana County Assembly

2	“local community” means a people living in a sub-county within which a petroleum resource under this Act is situated and are affected by the exploitation of that petroleum resource;	“local community” means a consciously distinct and organized group of users of land who are citizens of Kenya and share any of the following attributes— (a) common ancestry; (b) similar culture or unique mode of livelihood; (c) socio-economic or other similar common interest; (d) geographical space; (e) ecological space; or (f) ethnicity, restricted to a sub- county or counties within which a petroleum resource under this Act is situated and are affected by the exploitation of that petroleum resource;	Communities in most counties enjoy social, economic and cultural bonds that go beyond the administrative constructs of “sub-counties”. By seeking to allocate benefits to communities on the basis of artificial administrative units, this law is likely to disrupt and upset relationships that have existed for decades before oil exploration. It poses the risk of sowing economic imbalances that could disrupt the cohesiveness of communities living in Counties that will be hard to reverse. Petroleum resources can be found in blocks that bestride more than one sub-County or even County.
12	Establishment of Upstream Petroleum Advisory Committee	Insert new paragraph (j) immediately after paragraph (i)- (j) a representative of the Council Governors from a county undertaking substantive petroleum operations	To ensure adequate representation from the county governments

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
17	Clause 17 Board of Directors of the Authority	Insert new subparagraph (iii) (iii) a representative of the Council Governors from a county undertaking substantive petroleum operations	To ensure adequate representation from the county governments
58	Clause 58 (3) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.	Insert the following sub-clause immediately after sub-clause (3)- “(3A) upon submission of the field development plan, the Authority shall consult with the relevant county government where petroleum resource is to be developed.”	
85	Clause 85 (3) Sharing petroleum resource	Delete proviso	The notion of capping contradicts the transformative potential of devolution of power and resources to the counties and the lowest levels of governance. This aspiration has been reiterated by the Government through its Vision 2030 and Big Four priorities, whose achievement will be realized at the local levels.
85	Clause 85 (4) Sharing petroleum resource	Insert the words “including the establishment of a sovereign wealth fund” immediately after the words utilization of funds” Insert the following new sub clause (5) immediately after (4)- (5) The fund created under	To safeguard counties and communities from the volatility of commodity prices.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		Section 85(4) shall comprise of- (i) a percentage of the county revenue share as determined by the respective county government's; and (ii) all funds allocated to the county government and the community that are not utilized in the financial year.	
2	Definition of local content	By deleting the definition of local content and substituting therefor the following new term- "local content" means maximizing the level of usage of local goods and services, people, businesses and financing;"	The amendment should mirror the definition set out in the local content Bill, 2016
8	Conduct of Upstream Petroleum Operations (3) The national government may conduct upstream petroleum operations either— (a) on its own through the national oil company; (b) through contractors in accordance with petroleum agreements; or (c) as may be prescribed by this Act or any other written law.	Insert a definition in the section to read as: (3A) In this section "national oil company" means the National Oil Corporation of Kenya	National Oil Corporation of Kenya is already the established National Oil Company having been established in 1981. The Corporation has undertaken extensive work in the development of the upstream beginning with the demarcation of the blocks. The Corporation is currently undertaking exploration activities in Block 14T aimed at developing local capacity in exploration

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			development and production of oil. The Corporation has also been the custodian and manager of Data and is currently running the National Data Centre.
37	Clause 37 National Data Centre	The Bill be amended by deleting clause 37 and substituting therefor the following new clause- "37. The Authority shall oversee the operations of the national data centre which shall be used for the storage, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations."	The current provision implies that there is no National Data Centre in place as yet whereas National Oil Corporation has already installed a National Data Centre that is fully operational.
80	Section 80 (3): Payments and Revenues (3) Taxes, profit petroleum and royalties from upstream petroleum operations shall be collected in accordance with the relevant tax laws and accounts provided to the National Government agency responsible for collection of taxes in the manner it prescribes."	Inserting the following new subclause immediately after subclause (3) (3) The National Oil Corporation of Kenya shall be the Government agency responsible for marketing and selling Profit Petroleum and the proceeds realised shall be payable to the Central Bank of Kenya and accounts provided to the National Treasury.	To ensure that the Government gets proper value for its share of profit petroleum, the Government should receive and sell its own share through its appointed agent. Governments have since moved away from the situation where the operator would sell the profit petroleum on behalf of the Governments as this has resulted in losses either from under accounting or the operators demanding a huge agency fee. National

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			Oil companies now handle this role on behalf of Government.
85	(4)	By deleting subclause (4) and substituting therefor the following new subclause- (4) The respective county government shall legislate on- (i) the establishment of the board of ' trustees and the, prudent utilization of the funds received under this section for the benefit of present and future generation; (ii) mechanism of appointing and removal from office members of the Board of trustees including minimum qualifications, representation as provided for under the Constitution; and (iii) mechanisms to check on the usage of the funds.	The oil resource has currently been discovered in Turkana. However exploration is ongoing in other areas. It is therefore imperative that the Management of the community revenue share is uniform across the country to forestall misuse of funds and ensure that the resource benefits the local community.
96		The Bill be amended by inserting a new subclause immediately after subclause (3)- (4) The disaster preparedness, prevention and management unit shall in liaison with the Contractor carry out public awareness and sensitization forums for local communities resident in areas surrounding ongoing Upstream Operations.	It is important that the local community is aware of the role of the disaster preparedness, prevention and management unit and how the community can benefit from it.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
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3.4 Submission by the Natural Justice Kenya and KCSPOG

9	Promotion of upstream petroleum (3) In its effort to promote upstream petroleum operations and investments, the national government shall facilitate access to land for exploration activities in accordance with the Constitution and any other written law.	(3) In its effort to promote upstream petroleum operations and investments, the national government through the Ministry in charge of land, the National Land Commission and the Council of Governors shall facilitate access to land for exploration activities in accordance with the Constitution and any other written law.	proposal to include the Ministry of Land, National Land Commission and the Council of Governors in facilitating access to land as they have the legal mandates and the relevant technical expertise
12	Establishment of the National Upstream Petroleum Advisory Committee. (5) The Advisory Committee shall, in co-opting members to sit in the Committee, ensure that the persons co-opted have the necessary knowledge and experience in the matters under consideration by the Committee.	Insert a new subclause to read as: "(6) In the composition of advisory committee, no more than two-thirds of the members shall be of one gender and the Board shall also reflect the regional and ethnic."	There should also be gender considerations in the establishment of the National Upstream Petroleum Advisory Committee. Similar to what is provided for under Section 19 on the establishment of a Board of Directors for the Upstream Petroleum Regulatory Authority-
15	Functions of the Authority.	Insert new paragraphs immediately after paragraph (w)- “(x) provide such information concerning upstream petroleum operations in Kenya to the general public on request and on its website ; (y) develop guidelines on how public consultations will be done with local communities when developing infrastructure and operations for the upstream petroleum sector.”	The following additions to the functions of the authority concerning public participation (Article 10) and access to information (Article 35) are important factors in the proper functioning of the authority.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
16	Powers of the Authority (2) The Director Public Prosecutions may, on the request of the Authority, appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting offences under this Act.	The Director Public Prosecutions shall , appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting offences under this Act.	It is vital that there is an officer within the office of the Director of Public prosecutions that shall deal with criminal offences committed with regards to the upstream petroleum industry. Thus we request that the authority ought to designate an official to this task as soon as possible.
17	Board of Directors of the Authority. 17.(1) The management of the Authority shall vest in a Board of Directors which shall consist of— (e) five other members appointed by the Cabinet Secretary out of whom - (i) one person shall be nominated by the Kenya Private Sector Alliance;	Delete 17 (1) (e) (i)	There is a risk of conflict of interest with KEPSA membership including oil companies of which the regulator is expected to oversee. The BOD is responsible for the hiring of the director general of the authority thus members of the board should not include a representative of the private sector.
35	How Authority shall exercise its powers and functions.	Insert the following the following new paragraph immediately after paragraph (f)- (g) Ensure compliance with environmental laws and upholding of human rights by the contractors towards their employees and the local communities. Ensuring compliance shall be done in conjunction with the	The Authority should also ensure that environmental laws and human rights are adhered to by contractors.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		National Environment Management Authority and the Kenya National Commission on Human Rights	
48	Operator (2) A contractor may substitute one operator for another operator as may be provided for in the petroleum agreement and in this Act.	Insert the following subclause immediately after subclause (2)- “(3) The public shall be informed of the changes to the operator by way of a gazette notice, a newspaper of nationwide circulation and a radio of local coverage in the area in which the operations are being undertaken.	When there is a change in the operator, the public should be informed more so the local community. This will ensure that they understand who to relate to and present their grievances if any
50	Grant of non-exclusive exploration permit (3)The Authority shall inform each County Government affected by the non-exclusive exploration activities of the nature and status of such non-exclusive exploration activities.	Insert the following subclause immediately after (3)- “(4) The Authority may impose such conditions as it may deem fit upon issuing an exploration permit including but not limited to the requirement for an environment sensitivity analysis in conjunction with the National Environmental Management Agency.”	The Bill is silent on whether an applicant for a non-exclusive permit ought to inform the National Environmental Management Agency and get their permission. propose the addition of a section to provide for a sensitivity analysis which will not be as detailed as the process of applying for an Environment Impact Assessment License but instead results in the grant of a permit
51	(9)The Authority shall, in carrying out public participation under subsection (8)–	In paragraph (a) (ii) by inserting the words “of at least twenty one working days” immediately after the words “sufficient notice”	Provide additions with regard to public participation.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	(a) conduct the public participation through such means as may be necessary to ensure that the citizens within the respective county and the relevant stakeholders – (ii) have sufficient notice of any decisions to be made or permits to be issued which may affect them; and (iii) have an opportunity to obtain information with respect to any permit issued or decision made under sub-paragraph (i) or to submit their concerns or any information that they may have with respect to the issue under consideration; (c) publish any notices required for the purpose of informing the public through such forums including at least one newspaper of local circulation within the local community which is to be affected by the issue under consideration.	In paragraph (a) (iii) by inserting the words “within twenty one working days” immediately after the words “obtain information” By deleting paragraph 9 (c) and substituting therefor the following new paragraph- (c) publish any notices required for the purpose of informing the public through such forums including at least one newspaper, the Kenya Gazette and one radio station of local circulation within the local community which is to be affected by the issue under consideration.	
53	Transfer of interest in petroleum agreement.	Insert a new subclause (13) immediately after subclause (12)- "(13) Once a transfer of interest in a petroleum agreement has been concluded the Cabinet Secretary shall ensure publication of the details of the transfer including the new entrant in a notice in	Propose that once a transfer has been concluded, the local community and general public should be notified through notices in the Kenya Gazette and Newspapers. This will ensure that the

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		the Kenya Gazette and two newspapers of nationwide circulation"	public is duly informed per Article 35 of the Constitution of Kenya, 2010
55		Insert a new subclause (4) Once the permission of the Authority has been obtained, the Contractor shall cause to be published a notice in a newspaper of local circulation, an announcement in the local radio station and a notice in the Kenya Gazette of the abandonment.	Once the contractor has been allowed to abandon a "well" they ought to communicate the fact this to the general public.
58	(3) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.	By deleting subclause (1) and substituting therefor the following new subclause- 58(1) The Cabinet Secretary shall within thirty days of Exercising his powers under Section 45 of awarding a petroleum agreement shall submit the production sharing contract to parliament for ratification in accordance with Article 71 prior to the Execution of the Petroleum agreement. (3) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation by providing 21 working days, after the publication of a notice, within which the public shall be invited to submit memoranda on the proposed Product Sharing Contract.	Article 71 of the Constitution provides that any transaction that involves the grant of a right of concession for the exploitation of any natural resource of Kenya is subject to ratification by Parliament. We thus propose the following addition to ensure that an agreement must be ratified before execution. In line with ensuring adequate public participation. We submit that parliament should provide for 21 working days after publication of a notice for the public to submit comments.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	(5) If Parliament does not within ninety days communicate its decision to either ratify or refusal to ratify the production sharing contract, it shall be deemed to have been ratified and the Cabinet Secretary may proceed to conclude the development plan with the Contractor.	Delete subsection (5)	Subsection (5) poses concerns because contracts will be deemed to have been ratified if Parliament does not communicate a decision within 90 days. This Clause 58 (5) be deleted as it contravenes the Article 71 of the Constitution of Kenya, 2010 which requires that parliament must ratify agreements relating to Natural Resources.
77	Local content requirements.	Insert the following new paragraphs- (i) consultancy services; (j) construction services; (k) hospitality services; (l) transport services; (m) security services; (n) clearing and forwarding services; and (o) Inspection services.	Propose that Clause 77 (3) should contain the following in the local content plan.
95	Emergency Preparedness Measures	Insert the following new subclause- “(4) As far as is practicable, the contractor shall involve the Authority, National Environment Agency, the Council of Governors and the relevant local communities in the preparation of emergency preparedness measures.”	Propose that the contractor should involve the National Environment Management Agency, the Council of Governors and the relevant local communities should be involved in the Emergency Preparedness Measures. We thus propose the inclusion of the following section.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
100	Access to Land (2) A person who wishes to enter upon any land, other than that person's land to— (a) undertake exploratory activities relating to upstream petroleum operations; or (b) carry out a survey of the land for the purposes of paragraph (a); shall seek the prior consent of the owner of such land, which consent shall not be unreasonably withheld: Provided that where the owner cannot be traced, the applicant shall give thirty days' notice, by public advertisement, in at least two newspapers of nationwide circulation and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists.	Insert the following words in the proviso- Provided that where the owner cannot be traced, the applicant shall give thirty days' notice, by public advertisement, in at least two newspapers of nationwide circulation, a radio of local coverage, the Kenya Gazette and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists.	Propose to increase more avenues for public advertisement before securing access to land.
107	Installation of upstream petroleum infrastructure along roads, railways, etc	Insertion of new subclause immediately after subclause(1)-(1A) The contractor when working in an ecologically sensitive area shall consult and obtain the permission of the Authority, the National Land	proposal that when installation happens on government property classified as ecologically sensitive, the following measures should be taken

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		Commission, the National Environment Management Authority (NEMA) and one of the following bodies depending on the nature of the area. i. Kenya Water Towers Agency (KWTa) ii. Kenya Wildlife Service (KWS) iii. Kenya Forest Service (KFS) iv. Kenya Forest Research Institute (KEFRI) (1B) The contractors shall perform its work as swiftly as possible and leave the area with only the necessary equipment. The contractor shall at all-time be accompanied by an official of the National Environment Management Authority (NEMA) during the construction period. If the contractor needs to inspect the facility, they shall be escorted by an official of any of the bodies listed above.	
118	Regulations by Cabinet Secretary	Insert the following paragraphs immediately after paragraph (mm)- (nn) the manner in which information on upstream petroleum can be accessed; (oo) the method of public consultations and participation; (pp) a grievance redress process to the Authority;	Proposal that the cabinet secretary should make regulations with regards to access to information and public participation.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
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3.5 Submission by Turkana County University Student Associations

42	Constitution of blocks	Insert the following subclause immediately after 42 (2)TECUSA 42(3) The Cabinet Secretary may publish information contemplated under subsection (1) through the official online platform.	Registry of oil blocks with details of negotiations, awards, licences, tenders and contracts agreements issued by the national Government in each area should be disclosed to the public.
66	(1) A contractor shall submit a field decommissioning plan to the Authority before a production permit to install and operate the facilities issued.	Insert a new subsection The plan contemplated under subsection (1) shall be availed to the public by the Authority in print in at least two local dailies and by conducting public participation.	The amendment seeks to provide for plans submitted to the Authority to be made public.
85	Sharing petroleum resource (2) The county government's share shall be equivalent to twenty percent of the national government's share. Provided that the amount allocated in accordance with this section shall not exceed the amount allocated to the county government by Parliament in the financial year under consideration	Delete the provision	The notion of capping contradicts the transformative potential of devolution of power and resources to the counties and the lowest levels of governance. This aspiration has been reiterated by the Government through its Vision 2030 and Big Four priorities, whose achievement will be realized at the local levels. By capping this allocation as the Bill currently does, the Bill bases it on criteria developed by the Commission on Revenue Allocation. It

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			is our submission that the CRA formula should not be the basis for calculating revenue sharing in respect of a sector as volatile as the petroleum sector. This formula distorts or disregards other important considerations such as irreversible environmental damage, loss of land use etc. which should determine benefits to communities.

3.6 Submission by KEPSA and KOGA

45	Negotiation, award and execution of petroleum agreements 1) Subject to section 50 the Cabinet Secretary shall negotiate, award and execute a petroleum agreement, on behalf of the National Government, in the form prescribed in the Second Schedule to this Act.	Delete the words “in the form prescribed in the Second Schedule to this Act.” Insert a new sub clause (1a) The form set out in the Second Schedule of this Act shall guide negotiations of any Petroleum Agreement under this section”.	The intention of including a model petroleum agreement in the legislation is not that the actual agreement entered into should be exactly in the form set out in the model as this sub-clause suggests. The negotiated agreement only needs to be substantially similar to the model. As a safe guard, Section 46 (1) of the proposed Bill lists express rights that must be contained in any Petroleum Agreement and at a minimum these should
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CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			and would be included in any Petroleum Agreement.
51	Operational Permits (3) Despite the generality of sub-section (1), a contractor shall apply to the Authority for an operational permit to— (a) drill a well; (b) develop and produce petroleum; (c) construct petroleum gathering systems in the field; (d) build a crude oil storage facility; (e) plug or abandon an individual well; (f) operate an underground injection control well; (g) convert an individual well to an underground injection control well; (h) decommission or abandon an upstream petroleum facility; (i) develop, build, construct or operate a gas processing facility; or (j) remediate and reclaim upon the abandonment of a well or facility. 4) A contractor shall apply to the Authority for an operational permit for each well.	By deleting subclause (3) and substituting therefor the following new clause- “(3)Despite the generality of sub-section (1), a contractor shall apply to the Authority for an operational permit to— (a) drill an exploration well; (b) drill an appraisal well; (c) drill a development and production well; (d) develop, build, construct or operate a gas processing facility; and (e) decommission, abandon, remediate or reclaim an upstream petroleum well or facility. Delete subclause (4) and substitute therefor the following- (4)Unless otherwise authorised by the Authority, a contractor shall notify the Authority prior to drilling each well. Delete the requirement for application and oblige the	Proliferation of permits/ Ease of doing business. The Petroleum Bill requires that the contractor obtains, during the life of the project over 30Permits/Consents/ Approvals. These are in addition to the other Permits/Consents/Appr ovals that the Contractor will be required to obtain under other statutes e.g. the Energy Bill, the Water Act, Occupational Safety & Hazards Act, Environmental Management & Coordination Act, etc. The Ministry of Energy and Petroleum’s position is that the Government needs to balance the need of efficient operations and the need for information. Proliferation of permits/ Ease of doing business

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	(5)An application for an operational permit shall include— (a) drilling permit for exploration, appraisal, development and production wells; (b) the global positioning system (GPS) location of each well; (c) a commitment by the contractor of the contractor's ability to construct a well site, access road to the well site, facilitate mobility of equipment, supplies, and materials to the well site during drilling, monitoring, appraisal and evaluation activities (10) A person who contravenes the provisions of this section commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to a term of imprisonment of not less than two years or both.	contractor to provide information where required. The subclause should read as follows- (5) A Contractor shall provide the following prior to commencement of drilling operations- (a) the global positioning system (GPS) location of each well; (b) a commitment by the contractor of the contractor's ability to construct a well site, access road to the well site, facilitate mobility of equipment, supplies, and materials to the well site during drilling, monitoring, appraisal and evaluation activities; By deleting the words "less than ten million shillings or to a term of imprisonment of not less than two years or both" and substituting therefor the words "not exceeding one million shillings".	Proliferation of permits/ Ease of doing business. If proposal to do away with permits for drilling wells is accepted, it follows that this section will also have to be amended as the permits will no longer be required. There is need to maintain wording on the proposed sentences to reflect principles of proportionality, equality, uniformity and parity as recommended under the Sentencing Policy Guidelines prepared by the Judiciary Taskforce and reflected in other statutes regulating natural resources i.e. Energy and Mining.
54	Report of discovery of Petroleum (3) A contractor who notifies the public of the discovery of petroleum or any other resource without having reported the	By deleting the words "a penalty of not less than" and substituting therefor the words " a fine not exceeding"	Equality, Uniformity, and Parity

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	discovery to the Cabinet Secretary or who notifies the public of the discovery without the approval of the Cabinet Secretary commits an offence and on conviction shall be liable to a penalty of not less than twenty million shillings.		
55	Notification prior to abandonment. (3) A person who contravenes the provisions of this section commits an offence and upon conviction shall be liable to a fine of not less than twenty million shillings or to a term of imprisonment of not less than five years or both.	By deleting the words “less than twenty million shillings or to a term of imprisonment of not less than five years or both” and substituting therefor the words “ not exceeding twenty million shillings ”	Equality, Uniformity, and Parity
58	Ratification by Parliament (1) The Cabinet Secretary shall, within thirty days of the approval of a field development plan submitted in accordance with the terms of a production sharing contract entered into under this Act, submit the production sharing contract together with the field development plan to Parliament for ratification in accordance with Article 71 of the Constitution.	By deleting subsection (1) and substituting therefor the following new subclause- “(1) Pursuant to Article 71 of the Constitution, the Cabinet Secretary shall, within thirty days of receipt of production sharing contract submit to Parliament for ratification all production sharing contracts entered into pursuant to this Act and regulations made under this Act.”	The constitutional intent under Article 71 of the Constitution is for concessions for the exploitation of any natural resource to be the subject of ratification by Parliament; Under the Petroleum Bill, 2017, the concessions/transaction that grants the right to exploit natural resources is the Petroleum Agreement (which includes Production Sharing Contract (“PSCs”));

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			In ratifying the PSCs, Parliament will indeed have had an opportunity to review, interrogate the proposed terms and conditions before the Government/Investor makes the commitment since it is the PSC that determines how revenue/benefits will be shared between the State and an Investor. (Ref: section 45(1)& (2) of the Petroleum Bill, 2017 and clause 37-38 of the Model Production Sharing Contract); Cognizant of the good intentions, it must be mentioned that the Field Development Plan (FDP) is a heavy technical document best scrutinized at the technocrat level with the Authority and the Cabinet Secretary who is still accountable to Parliament. Due regard should also be given to potential impact under section 4(1), 4(2)(e) of the Natural Resources (Classes of Transactions for Ratification) Act

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
62	Restriction on removal of petroleum and samples (2) Any person who contravenes the provisions of sub-section (1) commits an offence and is liable on conviction to a fine of not less than twenty million shillings or to imprisonment for a term of not less than five years or to both.	Delete the words “not less than twenty million shillings or to imprisonment for a term of not less than five years or to both” and substitute therefore the following words “ not exceeding twenty million shillings ”	Proportionality, Equality, Uniformity, and Parity
70	Removal of Property by the contractor (3) A person to whom directions are given under subsection (1) who refuses or neglects to comply with such directions within the period specified in the notice, commits an offence and shall on conviction be liable to a fine not less than ten million shillings or imprisonment for a term not exceeding two years or both.	Delete the words “not less than ten million shillings or to imprisonment for a term of not less than two years or to both” and substitute therefore the following words “ not exceeding ten million shillings. ”	Proportionality, Equality, Uniformity, and Parity
75	False Information A person who refuses to furnish the information requested under section 74 or who makes a false statement or a statement which he has reason to believe is untrue, to the Cabinet Secretary, and to the Authority, as required under this Act, commits an offence and shall, on conviction, be liable to a fine of not less than twenty million shillings or to a term of imprisonment of	Delete the words “not less than twenty million shillings or to imprisonment for a term of not less than five years or to both” and substitute therefore the following words “ not exceeding twenty million shillings. ”	Proportionality, Equality, Uniformity, and Parity

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	not less than five years or both.		
87	Waste Management (5) A person who carries on the management of the production, transportation, storage, treatment, clean up or disposal of waste arising out of upstream petroleum operations without a license or fails to comply with the terms and conditions prescribed in the license issued under subsection (4) commits an offence and is liable on conviction to a fine of not less than twenty million shillings or imprisonment of not less than five years or both.	Delete the words “not less than twenty million shillings or to imprisonment for a term of not less than five years or to both” and substitute therefore the following words “ not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or to both ”	Proportionality, Equality, Uniformity, and Parity EMCA effectively addresses waste management violations
88	Maintenance of property (3) A contractor who contravenes subsection (1) commits an offence and shall on conviction, be liable to a fine of not less than one million shillings or to a jail term of not less than six months or both.	Delete the words “not less than one million shillings or to a jail term of not less than six months or both.” and substitute therefore the following words “ not exceeding one million shillings. ”	
116	General penalty Where any default in or contravention of any of the provisions of this Act is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall on conviction be liable to a fine of not less than five million shillings.	Delete the words “not less than five million shillings.” and substitute therefore the following words “ not exceeding one million shillings. ”	Proportionality, Equality, Uniformity, and Parity

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
120	Repeals, savings and transitional provisions. (2) Notwithstanding the provisions of subsection (1)— (f) the contractual rights and obligations existing pursuant to the Petroleum (Exploration and Production) Act are preserved	By inserting the words “privileges, liabilities” immediately after the words “contractual rights”	Petroleum Bill needs to be aligned with Section 23(1)(c) of the Interpretation and General Provision Act (Cap 2) provides that where written law repeals/re-enacts another written law unless a contrary intention appears shall not affect the right, privilege, obligation or liability acquired under a written law so repealed.
120	(3) The powers and functions of the Authority under this Act shall in the interim period before the Authority is operationalized be exercised by the Energy Regulatory Commission established under section 4 of the Energy Act, 2006.	The Bill be amended in clause 120 by deleting subclause (3) and substituting therefor the following new subclause- (3) The powers and functions of the Authority under this Act shall in the interim period be exercised by, the Energy Regulatory Commission established 'Under' section 4 Of the Energy Act 2006 save for Data custody, maintenance and management which shall be maintained with National Oil Corporation of Kenya until such a time when the Authority is operation.	Petroleum Data custody, maintenance and management is currently managed by National Oil Corporation of Kenya and ERC may not have capacity to handle Petroleum Data.

3.7 Submission by A & K Co. Advocates

53	(5) Transfer of interest in petroleum agreement.	Insert a new subparagraph (c) immediately after 5(b)- (c) the control provided for under subparagraph (b) does	There is need to have specific thresholds for a change of control. Without a specific
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CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
		not include the acquisition of a minority stake below twenty per cent of the voting securities of an undertaking held solely for the purpose of passive investment and without exercising influence over its affairs	threshold it would not be possible for legal practitioners to determine whether a transfer of 30 % or 40% would contribute to a change of control.
58	Clause 58 Ratification by Parliament	The interpretation of Clause 58 of the Bill, is that only production sharing contract and the field development plan would require ratification. This conflicts with the provisions of the Natural Resources (Classes of Transactions subject to ratification) Act, 2016.s	There is need for Parliament to review other documents other than FDP and PSC only
77	Clause 77(3) Local Content and Training Subclause (3)	By deleting subclause (3) and substituting therefor the following new clause- Without limiting the generality of subsection (2), a local content plan shall address- (a) employment and skills development plan; (b) research and development plan; (c) technology transfer plan; (d) financial services plan; (e) succession plans for Kenyans ; and (f) such other plans as the cabinet secretary may prescribe.	The local content plan should be aligned to the local content plan as provided for in the local content Bill.
	Subclause (4)	Delete subclause (4)	The local content Bill, 2016 provides for the framework to facilitate the local ownership,

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
			control and financing of activities connected with exploitation of gas, oil and other mineral resources.
78	Clause 78(1) Local Content and Training Monitoring and enforcement of local content. (1) The Authority shall supervise, co-ordinate, and manage the development of local content	Delete subclause (1)	This function of the Authority is similar to the functions of the local content development committee which is created under the local content Bill. The powers and functions with regards to local content should vest solely in either the Authority or the Committee to avoid a conflict in the discharge of such obligations.
79	Clause 79(2) Local Content and Training Training and Training Fund (2) There shall be established a fund to be known as the Training Fund for the purpose of training Kenyan nationals in upstream petroleum operations.	Delete subclause (2)	The local content Bill, 2016 under section 45 (1) establishes the local content training and development fund. An operator is required to annually remit a non-tax deductible training levy as the CS may determine. It is assumed that the contributions made in both bills are the same i.e the Petroleum Bill and the local content Bill. The training fund should be under the local content Bill and the fund in this bill should be deleted to avoid confusion.

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
101	Clause 101 Power of entry to inspect land. The National Land Commission may authorize in writing, any person to enter upon any land specified in section Error! Reference source not found. to inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose. Provided that if there is any damage resulting from such entry the applicant shall pay in full, just compensation as is payable under the relevant written laws.		Reference to “just compensation” under the Land Act and Land Regulations in Kenya is in relation to compulsorily acquired land. Compensation as per the land laws is only in relation to compulsorily acquired land which cannot be equated to the compensation referred to under clause 101 of the Bill for damage resulting from entry into a person's land. There is need to insert a clause specifying how the compensation referred to will be calculated. This can be included in the regulations to be made by the CS.
107(1)	Installation of upstream petroleum infrastructure along roads and railways 107. (1) For the purpose of the production and transportation of upstream petroleum, a contractor may erect, fix, install or lay any oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or National Government property in	107. (1) For the purpose of the production and transportation of upstream petroleum, a contractor may erect, fix, install or lay any oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or National Government property in the manner and on the conditions as provided in this Act, subject to an Environmental Impact Assessment and any relevant	The Bill falls short of the need to protect the environment. The provision as it is, poses a threat to critical ecological systems as it fails to exempt protected areas from infrastructure associated with energy production, conveyance and supply. There is need to subject any development to an EIA in accordance to EMCA and other sectoral laws

CLAUSE	CURRENT PROVISION ON PETROLEUM BILL, 2017	PROPOSED AMENDMENT	RATIONALE
	the manner and on the conditions as provided in this Act.	law.	such as wildlife Act, Forest and Conservation Act among others
107	Installation of upstream petroleum infrastructure along roads, railways, etc	In clause 107 - (a) in subclause (1) by deleting the words "National Government Property; (b) in subclause (2) by deleting the words "National Government Property; (c) by inserting a new subclause immediately after subclause (2)- "No oil or gas pipelines, other infrastructure or apparatus may be erected, fixed, installed or laid in, through, upon, under, over, or across. National parks, forest reserves, national monuments, sites of cultural or national importance, key biodiversity areas, indigenous forests and wetlands, unless approved by parliament after an independent strategic environmental assessment with full public participation"	It is against Kenya's national interest to give full access to petroleum companies on all Government properties. The necessity of structures going through these protected areas should be negotiated in a manner that respects the value of our natural resources, heritage and energy.

4.0 Committee Observation

The Committee considered the submissions of the stakeholders and made the following observations –

1. There is need to harmonize the Energy Bill and the Petroleum (Exploration, Development and Production) Bill so as to ensure that the midstream and downstream petroleum operations are contained in the Petroleum Bill and not in the Energy Bill.
2. The definitions of the term local community in the Bill is sufficient as it mirrors the devolution units as provided for in the County Governments Act.
3. The minimums on the local content requirements in terms of percentages should be provided for in the regulations to be prescribed by the Cabinet Secretary.
4. The County Governments are recognized in the Bill in that there is a representative of the Council of Governors who is a member of the Authority.
5. There is need to enlarge the matters that the local content plans can address to include such other matters as transport services, consultancy services and security services.
6. There is need to recognize the role of county governments in upstream petroleum operations in line with their functions as provided for in the Fourth Schedule which is environment conservation and disaster management.
7. There is need as a principle to recognize importance of minimum sentences rather than maximum sentences noting the gravity of the offences in the Bill.

The office of the Director of Public Prosecutions should appoint officers to deal with criminal offences committed in relation to the Bill.

National Data Centre should also be established by the Authority and used for storage of cores, samples, geoscience and other critical data.

Cabinet Secretary should divide Kenya audits continental shelf into numbered blocks as blocks only after consultation with the Advisory Committee.

11. The Bill should be clear on the provisions relating to the participation of the local communities and ensure that they are also aware on the manner in which the activities relating to upstream petroleum operations are conducted.
12. The contractors should also conduct their activities subject to the relevant written laws including the Constitution, environmental and land laws.

5.0 Committee Recommendation

The Committee having considered the Petroleum (Exploration, Development and Production) Bill, 2017 and submissions from various stakeholders recommends that –

- (1) The Committee agreed with clauses 5, 6, 7, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 88, 89, 90, 91, 92, 93, 94, 97, 98, 99, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 115, 116, 117, 118 and the Schedules to the Bill.
- (2) The Committee agreed to insert Part V of the Energy Bill into the Petroleum Bill and further harmonize the amendments.

(3) The Committee has proposed amendments to the following clauses-

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
	Long Title AN ACT of Parliament to provide a framework for the contracting, exploration, development and production of petroleum; cessation of upstream petroleum operations; to give effect to relevant articles of the Constitution in so far as they apply to upstream petroleum operations; and for connected purposes	Amend to include reference to midstream and downstream petroleum operations.	To align the Bill with the amendments made to Part V of the Energy Bill		Adopted
1	Short Title	Amend to Petroleum Bill, 2017	To align the Bill with the amendments made to Part V of the Energy Bill.		Adopted
2	Interpretation	CLAUSE 2 THAT, clause 2 of the Bill be amended to include the following new definitions- To include definitions on—	To align the Bill with the amendments made to the Energy Bill on Part V.		Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
		(a) Adulterated Petroleum; (b) Agent; (c) Building; (d) Consumer; (e) Danger; (f) Downstream petroleum operations; (g) Environmental social impact and Social Impact assessment (h) Exclusive economic zone; (i) Factory; (j) Kenya Standards; (k) Licence; (l) Licensing authority; (m) Liquefied petroleum gas; (n) Minimum operational stocks; (o) Natural gas; (p) Open tendering system; (q) Open access (r) Person;			

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
		(s) Petroleum Business; (t) Pipeline; (u) Refine'; (v) Refined petroleum products; (w) Refinery; (x) Retail dispensing site; (y) Retail supply licence; (z) Specification; (aa) Storage depots; (bb) Strategic environmental assessment; (cc) Strategic stocks; (dd) Street; (ee) Undertaking (b); (ff) Vandalise To delete the definition of the Upstream Petroleum Regulatory Authority to Petroleum Regulatory Authority.			
3	Scope of the Act (1) This Act shall apply to all upstream petroleum	THAT clause 3 of the Bill be amended- (a) by inserting the words	The scope of the Bill need to be amended to take into account the		Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
	operations being carried out in Kenya. (2) The scope of this Act shall not include midstream or downstream petroleum operations.	“midstream and downstream” immediately after the words “all upstream” appearing in sub-clause (1); (b) by deleting sub-clause (2).	midstream and downstream operations and align the amendments made to the Energy Bill.		
4	Act to Prevail 4(1) Where there is a conflict between this Act and any other Act regarding upstream petroleum operations, this Act shall prevail. (2) For the avoidance of doubt, a provision of any Act that provides for a person or body to grant or deny any permission for any work shall not be construed as granting that person or body any power in relation to upstream petroleum operations.	THAT clause 4 of the Bill be amended to include the words “midstream and downstream” immediately after the word “upstream” in sub-clause (1) and (2).	To align with the amendments made to the Energy Bill		Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
15	The Functions of the Authority	THAT clause 15 of the Bill be amended by- (a) inserting the following paragraphs immediately after paragraph(a)- a) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil; b) protect consumer, investor and other stakeholder interests; c) provide such information and statistics to the Cabinet Secretary as the Cabinet Secretary may from time to time require; d) develop testing and certification procedures, in conjunction with relevant statutory agencies, for certification and testing	Amendments necessary to align the Bill with the amendments made to Part V of the Energy Bill.		Adopted.

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
		for energy consumption of equipment and appliances; e) ensure, in collaboration the Kenya Bureau of Standards, that only energy efficient and cost effective appliances and equipment are imported into the country; f) promote, in consultation with the Kenya National Accreditation Service, the establishment of accredited laboratories for energy efficiency; (2) In addition amend the clause in light of the amendments made to the Energy Bill to introduce reference to midstream and downstream petroleum operations.			

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
16	Powers of the Commission	THAT clause 16 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (a)- (aa)issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the petroleum sector; (ab)set, review and approve contracts, tariffs and charges for common user petroleum logistics facilities and petroleum products; (ac)prescribe the form and manner in which any application for any authority, licence, consent or approval under this Act shall be made and the fees payable in respect of such application; (ad)make and enforce directions to ensure compliance with this Act and with the conditions of	The amendments are necessary to align the Bill with the amendments made to Part V of the Energy Bill.		Adopted.

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
		licenses issued under this Act; (ae)issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled; (af)investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act.			
16(2)	Powers of the Authority. (2)The Director Public Prosecutions may, on the request of the Authority, appoint any officer of the Authority or an advocate of the High Court to be a	THAT clause 16 be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause- (2) The Director Public	It is vital that there is an officer within the office of the Director of Public prosecutions that shall deal with criminal offences relating to the petroleum industry.	KCSPOG and Natural Justice	Adopted.

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
	public prosecutor for the purposes of prosecuting offences under this Act.	Prosecutions shall, appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting offences under this Act.			
17	Board of Directors of the Authority. 17(1)The management of the Authority shall vest in a Board of Directors which shall consist of— (e)five other members appointed by the Cabinet Secretary out of whom - (i)one person shall be nominated by the Kenya Private Sector Alliance; (ii)one person with knowledge and experience in matters relating to petroleum from an institution of higher education.	THAT clause 17 of the Bill be amended by inserting the following new sub-paragraph immediately after sub-paragraph (ii) - (iii)a representative of the Council Governors	There is need to include a representative of the Council of Governors in the Upstream Petroleum Regulatory Authority as county planning and development including energy regulation is a function of the county governments.	Council of Governors	Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
29	Funds of the Authority 29(1). The funds of the Authority shall consist of-	THAT clause 29 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (a)- (aa) levies not exceeding one half of a percent on the sales of petroleum products; (bb) licence fees.	To align the Bill with the amendments proposed to the Energy Bill.	Ministry of Petroleum and Mining	Adopted
37	National Data Centre 37. The Authority shall establish a national data centre which shall be used for the storage, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations	THAT the Bill be amended by deleting clause 37 and substituting therefor the following clause- 37. The Authority shall establish a national data centre which shall be used for the storage including storage of cores and samples, geoscience, spatial and other critical data, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations.	There is need to amend clause 37 to provide clarity that the National Data shall be used for the storage of among other things cores and samples.	Council of Governors	Adopted.

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
42	Clause 42(1) Constitution of blocks (1) For the purposes of this Act, the Cabinet Secretary may, by notice in the Gazette, divide Kenya and its continental shelf into numbered areas which shall be defined by specific geographical co-ordinates, and each area shall be described as a "block".	THAT clause 42 of the Bill be amended by inserting the words "after consultation with the Advisory Committee" immediately after the words "the Cabinet Secretary".	This is important to ensure a consultative process of mapping out Kenya into specific co-ordinates.	Council of Governors	Adopted
48	Operator (2) A contractor may substitute one operator for another operator as may be provided for in the petroleum agreement and in this Act.	THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)- (3) The public shall be informed of the changes to the operator by way of a gazette notice, a newspaper of nationwide circulation and a radio of local coverage in the area in which the operations are being undertaken.	When there is a change in the operator, the public should be informed more so the local community.	KCSPOG and Natural Justice	Adopted.

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
51	Petroleum production. 9(c)(ii) have sufficient notice of any decisions to be made or permits to be issued which may affect them.	THAT clause 51(9)(c)(ii) of the Bill be amended by inserting the words “of at least twenty one working days” immediately after the words “sufficient notice”.	There is need to be clear on what the term sufficient notice means in terms of timelines.	KCSPOG and Natural Justice	Adopted
67	Decommission funds (8) The management of the decommissioning fund shall be done by a committee consisting of representatives of the National Government and the contractor, in such manner as may be prescribed by regulations.	THAT clause 67(8) of the Bill be amended by inserting the words “County Government” immediately after the words “National Government”.	This is in recognition of the functions of county governments in environment protection.	Council of Governors	Adopted.
77	Local content requirements.	THAT clause 77 of the Bill be amended in sub-clause (3) by inserting the following new paragraphs immediately after paragraph (h)- (i) consultancy services; (j) construction services; (k) hospitality services; (l) transport services; (m) security services;	There is need to amend sub-clause (3) to expand the scope of the local content plans.	KCSPOG and Natural Justice	Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
		(n) clearing and forwarding services; (o) Inspection services; (p) other goods, works and services as may be prescribed in the regulations.			
85	Clause 85 (3) Sharing petroleum resource The local community's share shall be equivalent to five percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community: Provided that the amount allocated in accordance with this subsection shall not exceed one-quarter of the amount allocated to the county government by Parliament in the financial year under consideration.	Delete sub clause 3 and substitute therefor with the following new clause- The local community's share shall be equivalent to ten (10%) percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the county government in consultation with the local community.	The current provision undermines the objects of devolution under Article 174 of the Constitution on the right to recognize communities managing their own affairs and ensuring equitable sharing of national and local resources in Kenya. This also violates the object on the rights of the host communities receiving an equitable share of the natural resources. This alleged inability to manage their own affairs is therefore unconstitutional.	Council of Governors	Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
87	Waste Management (4)A person contracted by the contractor under subsection (2) shall not carry out those activities without being registered and licensed by the National agency responsible for environment and any other relevant National Government entity.	THAT clause 87 of the Bill be amended in sub-clause (4) by deleting the words “and any other relevant National Government entity” and substituting therefor the words “and any other relevant entity”	This is in recognition of the functions of county governments in environment protection.	Council of Governors	Adopted
95	Emergency Preparedness Measures	THAT clause 95 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)- (4) As far as is practicable, the contractor shall involve the Authority, National Environment Agency, the Council of Governors and the relevant local communities in the preparation of emergency preparedness measures.”	There is need to recognize the function of the County Governments in disaster management.	Council of Governors	Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
96	Disaster Preparedness prevention and management unit. (1) The Cabinet Secretary shall establish a disaster preparedness, prevention and management unit within the Ministry to coordinate response to accidents, disasters and other emergencies that may occur within upstream petroleum operations. (2) The disaster preparedness, prevention and management unit shall collaborate with the National Disaster Operations Centre and other relevant institutions to ensure a response and preparedness	THAT clause 96 of the Bill be amended by- (a) inserting the words "County Governments" immediately after the words "National Disaster Operations Centre" in sub-clause (2); (b) inserting the following new sub-clause (4) immediately after sub-clause (3)- (4) The disaster preparedness, prevention and management unit shall in liaison with the Contractor carry out public awareness and sensitization forums for local communities resident in areas surrounding on going Upstream Operations.	There is need to recognize the function of the County Governments in disaster management. It is also important that the local community is made aware of the role of the disaster preparedness prevention management unit.	Council of Governors and National Oil Corporation	Adopted

Clause

100

Access to land

100

100

			Rationale	Proposing entity	Committee Resolution
	Provided that where the owner cannot be traced, the applicant shall give thirty days' notice, by public advertisement, in at least two newspapers of nationwide circulation and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists	THAT clause 100(2) of the Bill be amended by inserting the words "a radio of local coverage, the <i>Gazette</i> " immediately after the words "at least two newspapers of nationwide circulation" appearing in the proviso.	There is need to provide that public advertisement shall be made also through publication in the Kenya Gazette and radio of local coverage so as to ensure that information is widely published within the local communities.	KCSPOG and Natural Justice	Adopted
101	Power of entry to inspect land. Provided that if there is any damage resulting from such entry the applicant shall pay in full, just compensation as is payable under the relevant written laws.	THAT clause 101 of the Bill be amended by inserting the words "and as shall be prescribed by Regulations" immediately after the words "relevant written laws" appearing in the proviso.	The just compensation payable by an applicant to the owner of land should be prescribed in the relevant written laws and regulations	ANJARWALLA & KHANA	Adopted
107	Installation of upstream petroleum infrastructure along roads and railways 107. (1) For the purpose of the production and	THAT clause 107 of the Bill be amended in sub-clause (1) by inserting the words "and any other relevant law" immediately after the words "in this	There is need to ensure that contractors in undertaking installation of upstream petroleum infrastructure complies	Conservation of Alliance of Kenya; the East African Wild Life Society;	Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
	transportation of upstream petroleum, a contractor may erect, fix, install or lay any oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or National Government property in the manner and on the conditions as provided in this Act.	Act".	with the relevant written laws.		
113	Offences deemed to be economic crimes	THAT clause 113 of the Bill be amended by- (a) deleting the word "encroaches" in paragraph (a); (b) deleting paragraph (e).	There is need to provide clarity on what acts constitute economic crimes and not misdemeanors.		Adopted
119	Cabinet Secretary to make Regulations	THAT the Bill be amended by inserting the following new paragraphs after paragraph (mm)- (nn) the manner in which information on upstream petroleum can be accessed;	There is need to confer upon the Cabinet Secretary power to also make regulations on access to information, public participation and the redress processes of the Authority.	KCSPOG and Natural Justice	Adopted

Clause Clause Narrations

Amendments	Amendment	Rationale	Proposing entity	Committee Resolution
	(oo) the method of public consultations and participation; (pp) a grievance redress process to the Authority.			
120	Repeals, savings and transitional provisions. (2) Notwithstanding the provisions of subsection (1)— (f) the contractual rights and obligations existing pursuant to the Petroleum and (Exploration and Production) Act are preserved. (3) The powers and functions of the Authority under this Act shall in the interim period before the Authority is operationalized be exercised by the Energy Regulatory Commission established under section 4 of the Energy Act, 2006.	THAT clause 120 of the Bill be amended- (a) in sub-clause (2) by inserting the words “ privileges, liabilities” immediately after the words “contractual rights” appearing in paragraph (f); (b) in sub-clause (3) by inserting the words “and the Ministry of Petroleum” immediately after the words “Energy Regulatory Commission established under section 4 of the Energy Act, 2006”. There is need to align clause 120 with the provisions of section 23 of the Interpretation and General Provisions Act. Further sub-clause (3) need to be amended to provide that the Ministry of Petroleum shall perform the functions of the Authority until the Authority is fully operationalized.	KEPSA, KOGA and the Ministry of Petroleum and Mining.	Adopted

Clause	Clause Narrations	Amendment	Rationale	Proposing entity	Committee Resolution
Part V	Part V of the Energy Bill, 2017	Insert Part V of the Energy Bill, 2017 into the Bill	To align the Bill with the amendments made to the Petroleum Bill.	Ministry	Adopted.

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ENERGY

TWELFTH PARLIAMENT-SECOND SESSION

REPORT

ON

PUBLIC HEARINGS ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION,
DEVELOPMENT AND PRODUCTION) BILL, 2017 IN THE COUNTIES OF
TURKANA, NAKURU, NAROK, MURANGA, KITUI AND LAMU.

The Clerk's Chambers
National Assembly
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1.0 PREFACE

Hon. Speaker,

The Departmental Committee on Energy is established pursuant to provisions of Standing Order 216 (5). Under the provisions of Standing Order 216 (5) the Committee is mandated to inter alia:

- (i) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (ii) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (iii) To study and review all legislation referred to it;*
- (iv) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) To 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;
- (vi) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (vii) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Departmental Committee on Energy oversees the performance of the following State departments:-

- (i) Energy, and
- (ii) Petroleum.

1.2 Composition of the Committee

The Committee comprises the following Members-

- | | | |
|--|---|-------------------------|
| 1. The Hon. David Gikaria, M.P. | - | Chairperson |
| 2. The Hon. (Dr.) Robert Pukose, M.P. | - | Vice Chairperson |
| 3. The Hon. Cecily Mbarire, M.P. | | |
| 4. The Hon. Ekomwa Lomenen James, M.P. | | |
| 5. The Hon. Joseph Wathigo Manje, M.P. | | |
| 6. The Hon. Lemanken Aramat, M.P. | | |
| 7. The Hon. Oscar Sudi, Kipchumba, M.P. | | |
| 8. The Hon. (Eng.) Vincent Musyoka Musau, M.P. | | |
| 9. The Hon. Amina Gedow Hassan, M.P. | | |
| 10. The Hon. Abdikhaim Osman Mohamed, M.P. | | |
| 11. The Hon. Clement Muturi Kigano, M.P. | | |
| 12. The Hon. Elisha Odhiambo, MP | | |
| 13. The Hon. Elsie Muhanda, MP | | |
| 14. The Hon. Gitau Faith Wairimu, M.P. | | |
| 15. The Hon. Julius Musili Mawathe, MP | | |
| 16. The Hon. Ken Chonga, MP | | |
| 17. The Hon. Tindi Nicholas Mwale, MP | | |
| 18. The Hon. Walter Owino, MP | | |
| 19. The Hon. Mohammed Ali Lokiro, MP | | |

1.2.1 Committee Secretariat

The Committee is resourced with the following technical staff, representing the Office of the Clerk;

- | | | |
|--------------------------|---|----------------------------------|
| 1. Mr. Benjamin Magut | - | First Clerk Assistant–Lead Clerk |
| 2. Mr. Douglas Katho | - | Third Clerk Assistant |
| 3. Ms. Brigita Mati | - | Legal Counsel |
| 4. Mr. Eugene Apaa | - | Research Officer |
| 5. Mr. Moge Abdinasir | - | Fiscal Analyst |
| 6. Mr. Joseph Okong'o | - | Media Relations Officer |
| 7. Mr. John Ng'ang'a | - | Audio Recording Officer |
| 8. Ms. Sheila Chebotibin | - | Sergeant at Arms |

1.3 Acknowledgment

Hon. Speaker,

The Petroleum (Exploration, Development and Production) Bill, 2017 and the Energy Bill, 2017 underwent the First reading on 14th February, 2018 and thereafter committed to the Committee on Energy as provided for in the Standing order 127(1).

Pursuant to Article 118(b) and Standing Order 127(3), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 22nd February, 2018 informing the public that the Committee was considering the Energy Bill, 2017 and the Petroleum (Exploration, Development, Production) Bill, 2017 and inviting them to submit any representation they might have on the Bill.

While acknowledging the fact that many institutions and indeed counties that have geothermal and Petroleum resources sent out written submissions consideration by the Committee, the committee noted that there was need to directly engage with the Community and carry out an extensive and an exhaustive public participation as envisioned in the Standing orders to collect views and oral submissions in ensuring that the public views are considered in the two bills that are before the Committee.

Pursuant to article 118 of the constitution as well as the provisions of Standing order 127 of the National Assembly, the Committee set out to conduct public hearings in the counties of Turkana, Nakuru, Narok, Muranga, Kitui and Lamu a view to making fitting recommendations to the House regarding the proposed Energy Bill, 2017 and the Petroleum (Exploration, Development and Production) Bill, 2017. To this end therefore, the Committee held a total of 25 working Sitzings with the residents of these counties to receive oral submissions regarding the two bills. The committee has provided an annexures of attendance these meetings and submissions to the committee. The Committee also took note of the concerns raised by Hon Members of Parliament from the counties where the energy and petroleum resources are found.

This report on Public hearings may not be conclusive enough but it is exhaustive to inform and to guide the Committee when considering the proposed Energy Bill, 2017 and the Petroleum (Exploration, Development and Production) Bill, 2017. It is my belief that it contains far reaching observations and recommendations which if incorporated

into the final Bill, would have afforded the Public an opportunity to participate in the legislative process of the two bills.

It is therefore, my pleasant duty and privilege, on behalf of the Departmental Committee on Energy, to present this report to the House for noting.

Sign.....Date.....

THE HON. DAVID GIKARIA, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENERGY

2.0 Introduction

Article 124 (1); each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees. The Departmental Committee on Energy established on 20th December, 2017 commenced its work in December 2017.

The Departmental Committee on Energy is established under the provisions of S.O. No. 216 and mandated to:-

- i. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii. study and review all legislation referred to it;
- iv. study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. 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;
- vi. to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments) ; and
- vii. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Departmental Committee on Energy oversees the Ministry of Energy and the State Department of Petroleum under the Ministry of Energy and Petroleum.

The Departmental Committee on Energy also oversees the following State parastatals: - Kenya Power & Lightening Company; the Kenya Pipeline Corporation; Kenya Electricity Generation Company; Kenya Electricity Transmission Company; Geothermal Development Company; Energy Regulation Commission; the Kenya Nuclear Energy Board among others.

2.1 Public Participation

Standing order No. 127 of the National Assembly Standing Orders on Committal of Bills to Committees and public participation provides that a Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question put; and a committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the House.

In line with these provisions and pursuant to the provisions of Article 118 (1) (b) of the Constitution the Committee undertook to conduct public hearings in the counties of Turkana, Nakuru, Narok, Muranga, Kitui and Lamu so as to take into account the views and recommendations of the members of the public regarding the above two Bills.

2.2 Public Participation as Provided for in the Constitution

The Constitution of Kenya, 2010¹ provides for enhancing of participatory governance, both at national and county levels as per the provisions highlighted below:-

Article 1 provides that all sovereign power belongs to the people of Kenya and may be exercised either directly or through their democratically elected representatives;

Article 10 sets out the national values and principles of governance which include- patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability; and sustainable development;

Article 174 provides one of the objects of devolution as to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;

Article 118 requires Parliament to conduct its business in an open manner, and its sittings and those of its committees to be open to the public. Further, Parliament is expected to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Article 196 makes provision for the same with regard to the County Assembly.

2.3 Procedure for public participation in considering a Bill

When a Bill has been introduced in the House and upon referral to the relevant Committee, the Committee places adverts in the mainstream media requesting for public views;

The public is required to make submissions, in the form of statements on oath/written memoranda to the Committee, within seven (7) days from the date of the advertisement;

The Committee may resolve to hold public hearings within or outside the precincts of Parliament. Technical expertise may be sought in certain specialized subjects;

The Committee holds meetings with the relevant stakeholders including Government Ministries and Agencies and other recognized institutions/organizations;

The Committee takes into consideration the views of the public while considering the Bill and while preparing its report pursuant to Standing Order 127(1).2

2.4 Objectives of Conducting Public Participation

- (i) To meet the requirements of the Constitution and the National Assembly Standing Order as they relate to public participation.
- (ii) To get first hand views and recommendations from the local community and other stakeholders on the two Bills.
- (iii) Provide a forum for the interaction between the local communities and other stakeholders with the Departmental Committee on Energy regarding the two Bills.
- (iv) Provide Members of the Committee with a forum to appreciate other energy related issues that affects the local communities and other stakeholders in the energy sector.

2.5 Expected Outcomes

- (i) The views and recommendations obtained from the public on the two Bills will be considered when the committee makes its final report to the House.
- (ii) The local community and other stakeholders on the ground to have a better understanding of the two Bills.

3.0 COMMITTEE PUBLIC HEARINGS IN TURKANA COUNTY

3.1. Meeting with Tullow Oil Company Limited at Kapese in Turkana County.

The Committee received submissions from the Tullow oil and made the following observations: -

- i. Tullow oil is Canadian company established in 16 countries, majority of about 60% being in Africa.
- ii. Tullow oil has a five-year license which is one of the over fifty licenses that the government of Kenya has issued for the purposes of exploring oil wells.
- iii. Tullow has drilled about 40 wells and another 80 wells have been drilled by parties with interest to Total Company.
- iv. Tullow oil informed the Committee that petroleum extraction is divided into three phases which are exploration, development and production.
- v. The exploration and the development phases normally lasts for 5 to 10 years each while the production phase would last between 20 to 50years depending on the oil resource.
- vi. The Committee was informed that the company is working towards achieving an early oil by June 2018.

- vii. Tullow oil informed the Committee that there are many opportunity available in the supply chain as well as the social infrastructure to the local community.
- viii. The community is the first line of defence and therefore they do not envisage any threats or sabotage along the proposed pipeline.
- ix. Tullow oil explained that the sustainability of the local community is dependent on the social infrastructure that they have put in place, capacity building on training as well as the alternative source of livelihood.
- x. Tullow oil has recorded a tremendous 80% success rate in the exploration phase.

2.2. Public hearing in Turkana Sub-county at Lokichar town

Members of the public made the following submissions:-

- i. The Community was concern with the composition of the advisory board and the board of trustees in the trust fund.
- ii. The Community also informed the committee on how the resources should benefit everyone in an equitable way.
- iii. They advised the Committee that the community should decide on how the resources would benefit everyone and it is their wish that the revenue share to be 10%, 20% and 70% shared to the host Community, the County government and the National government respectively whereas other was of the opinion that revenue share should be 50%-50% basis.
- iv. The Community raised concerns with environment and that and that a proper assessment should be done to ensure that the effects of the production of oil are not adverse and if need be there should be in place a mechanism to mitigate on these effects.

2.3. Meeting with Turkana South Professionals at Lokichar

Members of the public made the following submissions:-

- i. They informed the Community that based on the resource requirement and demand on the community, they recommend a 10% revenue share to the local community.
- ii. They were also concerned with any environmental degradation that will come with oil production should be dealt with before the start of the production.
- iii. They also expressed their reservation on the capping of revenue share that it should be removed to ensure that the marginalized areas are well developed.
- iv. The professional informed the Committee that punitive measures should be put in place to ensure adherence to 30% procurement opportunities for women, the youth, and people living disabilities.
- v. The Committee was informed that compensation should be taken into account both at the natural resource level as well as the human resource levels especially when compensation workers such as drivers.

- vi. The Professional also informed the Committee that to avoid encroachment into forest reserves when constructing the pipeline; the contacting company should be able to transport the crude fuel by road so as to provide more opportunity for the locals.
- vii. The local content should be applied strictly on tenders and opportunities herein too.
- viii. The professional Concluded by urging the committee to ensure an exit plan that is very sustainable to the local community and also very punitive measures on people who would violate the law.

2.4. Meeting with Turkana East Professionals at Lokori

Members of the public made the following submissions:-

- i. They expressed the need to maintain the percentages as 10% for the local Community and 20% for the County government while the rest 70% for the national government.
- ii. That the capping of the revenue share should be done away with completely in the Bill.
- iii. That the compensations should be done promptly and that the road to Kapedo to be concluded and also inclusion of the youth in the opportunities.
- iv. They asked the Committee to define the Community land in the bill and that all aspects of training need to be given preference to the local community since the literacy level are not encouraging in Turkana County.
- v. The Community informed the Committee that the 10% of the revenue share to be used for social infrastructure projects.
- vi. A resource center should be set up for people living with disability and a thoughtful consideration of the people who are living with disability on job placements in the Oil projects.
- vii. The Community also informed the Committee that the taxation on rates paid for compensation should be done away with.

2.5. Meeting with Turkana East Professionals at Nakukulass

- i. The people of Nakukulass informed the Committee that they wish to select the persons who should sit on the trust fund and send the names to the County Assembly for consideration and approval and not that the County leadership to nominate.
- ii. The Community was also concern that the local content should be able to facilitate more social infrastructure to the Community.
- iii. The elders of Nakukulass also informed the committee that representation of the Communities that produce oil resources need to be done at all entities that deal with oil such as the Trust funds and the regulatory authorities specified in the bill.

2.6 Meeting with the Turkana County Government.

The Governor of the Turkana County Government made submissions as follows: -

- i. The Turkana County Government appreciates the establishment of the Upstream regulatory authority and recognized the inclusion of Kips in that the membership and therefore urged the Committee to recommend that the counties that are oil producing of should also be represented in that Authority.
- ii. The sharing of the proceeds residual to decommissioning of the production should be treated as oil revenue and therefore the sharing shall be 20% to the County Government.
- iii. That, the local Content to the County government preserved at 20%.
- iv. That the County Government to be allowed to make regulations to provide for the membership and the composition of the trust fund.
- v. That the revenue share will not be realized because of the capping. Though absorption capacity may the reason for the capping, however the county government proposes that a fund be established to direct the capped fund allocated is safe.
- vi. That the definition of the host community to remain as a sub-county.
- vii. The oil field in Turkana East and South are prone to insecurity and therefore the security of the pipeline is very paramount and therefore the County government proposed that a national disaster operation Centre be established to deal with any occurrence.
- viii. The Ministry of Petroleum needs to sensitize people on the early oil project.
- ix. That the information flow from the County to the head of state is not seamless and that thee Security agencies have no clue of what is going on at the community level.
- x. The Committee was informed that the Ministry or rather Tullow oil has not provided enough briefs to allow them make informed decision.
- xi. The County Government urged the Committee that the approach of the public participation and problem solving should be bottom-up to allow for exhaustion of all mechanisms of the grassroots level.

2.7 Meeting with the Turkana County Assembly

- i. Future areas with natural resources such as Geothermal, coal and solar can borrow from this national legislation of petroleum.
- ii. Revenue share to the local community to be 10% while other governments to be 90% and that capping to be removed from the provisions of the bill completely.
- iii. That the Commission for Revenue Allocation formulae is based on issues that are not relevant to Petroleum and that Petroleum production will alter change in land use.
- iv. To avoid low absorption rate of resources the procurement laws should be simplified since Turkana County needs at least 40B to actualize the County Integrated Development plan.
- v. That the trust fund its membership is very key in the utilization of the revenue share and that an extensive public participation and civic education should be carried out.

2.8 Meeting with the Turkana County Assembly

- i. That the indigenous community should be accorded their territorial ownership of land.
- ii. National values of accountability to be entrenched when sharing the oil revenue.
- iii. The capping of the oil revenue to be removed and the revenue share for the community to be 10% of the oil extracted from the ground before expenses.
- iv. That an ESIA should be provided to the public to make decisions and that compensation of land use should be introduced in the bill.
- v. The community to form cooperatives to ensure that they tap on the opportunities available as the development and the production of oil is being carried on.
- vi. That the women, youth and elders of these host community to be given opportunities which should be specified in the bill to avoid being short-changed.
- vii. That the People Living disabilities to be given 5% opportunity and should not be lumped together with the youth and women in providing opportunity.
- viii. The contracts signed to be circulated to the community and that Community representation must be adhered to.
- ix. The government should be barred from borrowing Money received from petrol proceeds as well as importation of energy from Ethiopia.
- x. The definition of a local personnel to be distinct from a local coming from the host community.
- xi. The investors need to put up a waste management program on hazardous deposits.
- xii. The production costs of the oil will have to be audited to enable the community to avoid losing out on profits and to ascertain the revenue realized from Petrol.

4.0 COMMITTEE PUBLIC HEARINGS IN NAKURU AND NAROK COUNTIES

4.1. Public Hearings at Wanyororo Garage in Bahati Constituency

The Committee received submissions from the residents of Wanyororo Garage in Bahati Constituency as follows:-

- i. The Community informed the committee that the investments opportunities available should be allocated to the local Community up to 75%.
- ii. The Community informed the Committee that the relationship between the Community and the Current Geothermal Development Company is very much strained and needs to be re-worked.
- iii. That employment opportunity for the host Community should be at 30%.
- iv. The community requested that an audit of the Geothermal Development Company should be undertaken since its inception to ensure that the board members to be from the power generation sub-counties.
- v. The public submitted that the GDC should atleast sensitize members of the community on matters of that will restore the confidence of the host Community in GDC such as the side effects of environmental degradation.
- vi. The Community informed the Committee that in order to ensure that the power generated at the GDC is well utilized, there is need to set up an industrial park in Menengai.
- vii. The Community also informed the members of the Energy Committee that the steam that is Generated form the geothermal power can be utilized for other uses such as tanning of leather and therefore creating opportunity especially for the youth.
- viii. The Community also informed the Committee that the forest land within Menegai has been leased which is an anomaly.

4.2. Public hearing in at the Nakuru County Assembly

Members of the public made the following submissions:-

- i. The revenue sharing should be based on production target.
- ii. The opportunity for employment should have a basis in the new law especially to take care of the interest of the.
- iii. The interests of the people living with Disability should be able to secure opportunities especially in the area of procurement.
- iv. The people of Nakuru East Constituency informed the Committee that the President reservation on the Bill is very important and that the Committee ought to take that into consideration the reservations when they are handling the provisions in this Bill to ensure that it does not get bottle necks in the legislation process.

- v. The Committee was informed that the corporate social responsibility CSR to be entrenched into the bill to ensure compliance of the law and it becomes an obligation.
- vi. The Committee was informed the monopoly of the Kenya Power and Lightening Company should be discouraged in the bill so as to allow a robust competition
- vii. The Committee was also informed that alternative sources of Energy such as Biogas and wind power need to be explored to reduce over-reliance on the thermal power.
- viii. The Committee was informed that the environmental effects on the Bill should not be able to override the benefits of the Bill.
- ix. The Boards of these statutory authorities in the Energy and Petroleum Sectors ought to incorporate the locals to ensure that the interests of the host community are taken care of.

4.3. Public Hearings at Kamere in Naivasha Sub-county

Members of the public made the following submissions:-

- i. The Corporate Social Responsibility to be entrenched as law in the bills.
- ii. The inter-boundaries should be well defined to prevent conflict over geothermal resources.
- iii. There needs to be very adverse penalty or fines on the interference of the beacons or boundaries.
- iv. Interference of Human settlement should be compensated in a systematic manner.
- v. The Local community to have atleast 15% to the local Community and 30%-40% for the County Government.
- vi. The Companies should offer training and support in essential skills allow local community to get involved into the tendering processes by atleast 50%.
- vii. The water is very scarce and not available and therefore the residents are alleging that not of their young people cannot be enlisted into the KDF.
- viii. The Electricity tariff should be zoned to cushion the areas that are near the power generating station.
- ix. The Company's generating power need to get involved in promoting the cultural heritage of the host communities and any other alternative livelihoods so that they don't over rely on the companies.

4.4. Public Hearings at Suswa in Narok East Sub-County

The Committee received submissions from the Local Community in Narok Suswa and noted the following:-

- i. That the local community should benefit from the royalties up to 15% whereas the opportunities in the companies should be able get about 50% of the tenders available in the Company.
- ii. The drilling companies must provide an alternative to the livelihood since the Community is dependent on environment for provisions.

- iii. The host community should be given opportunity to purchase shares in the company that is undertaking the generation of thermal power.
- iv. The inter-county boundaries to be specified to avoid conflicts.
- v. The host Community to be represented in the advisory Committee and various boards required.
- vi. The definition of the local community to be defined as a radius of 15KM.
- vii. Compensation should be prompt to the displaced community.
- viii. The Corporate Social Responsibility should be consultative with the leadership local community and opportunities provided for employment adequately.
- ix. The development company should strategically focus on imparting skills and provision of resources to the host community for sustainability of the Community.

5.0. COMMITTEE PUBLIC HEARINGS IN COUNTIES OF MURANGA / KITUI

5.1 Submissions from the Kenya Tea Development Agency (KTDA) Holdings Ltd

Members were informed that KTDA Holdings invested in eight subsidiary companies which it fully owns so as to maximize returns to shareholders. The subsidiary companies provide specialized services which are integrated with our core services.

KTDA Power Company (KTPC POWER) one of the subsidiary companies was incorporated in January 2010, it invests in the energy sector and manages small hydro-power projects owned by Factory Companies. The pilot was Imenti Mini-hydro Power Plant. The hydro plant is capable of generating 1MW of electricity, out of which the factory consumes about 0.5 MW.

The Vision of KTPC Power is to be the preferred energy management and Consultancy Company. Its mandate is to set up to spearhead development of renewable energy starting with small hydro power projects across the tea growing regions as a way of addressing the increasing energy costs in the factories

Members were informed that KTPC is ready to commence on alternative forms of energy i.e. solar for 40% of the factories that have no access to hydro potential sites. Members were also taken through operational plants, projects under construction and those in the pipeline.

5.2 Presentation by Metumi Small Hydro Project

The Committee was taken through an overview of the KTDA and small holder Tea sub-sector in Kenya. They were informed the mandate of KTDA which include to promote tea production/cultivation among small holders; Develop and maintain tea husbandry; and Collect, weigh and handle green leaf among other roles. Members were also briefly taken through the tea industry in Kenya and the global tea business.

Some of the challenges the tea industry was experiencing include:

- i. Fluctuating foreign exchange rates & tea prices.
- ii. Climate change.
- iii. Rising cost of production - farm inputs, taxes/levies, fuel, labour etc.
- iv. Decreasing smallholder farm sizes/land policy
- v. Multiple levies from counties
- vi. Political instability in some key markets i.e. Yemen & Russia.
- vii. Changing consumer tastes & preferences
- viii. Global over-production and competition

Members challenged the KTDA members to adopt energy efficiency measures like using of Boiler pre-heaters which will help to cut down on cost of production. Later the Committee was taken through a tour of the Metumi Small Hydro project where they were shown various stages involved in power production.

5.3 Memorandum by KTDA Zone III Tea Factories

The Representatives of the KTDA Zone III Tea Factories presented a memorandum to the Committee that listed various issues which include;

i. Wood fuel Sourcing

The committee was informed that the factories are supporting the current ban on logging in the forest. However, they noted that ban should exempt private owned plantations established to provide fuel for factories. They noted that they have initiatives for afforestation/re-afforestation programs all-inclusive and that the ban is bringing factories to a standstill and may soon close. KTDA has also partnered with various organizations to promote energy saving stoves for household use. They noted that loggers have caused damage to power station canals by using them to transport contraband timber from forests. Members noted their concerns and promised to follow up with the relevant authorities to see if the ban can exempt private owned forest plantations. The committee also encouraged the factories to adopt energy efficiency measures and try to do away with wood fuel.

ii. Power Distribution

The committee was informed that power distribution should be liberalized which will allow them to distribute power to local schools, hospitals, farmers & local community. They noted that currently they are selling the power they are generating to Kenya power at much lower price thus losing a lot on revenues.

The committee informed them that the current energy Bill 2017 has liberalized power distribution in the country and thus when it's adopted they can apply for license to distribute power.

iii. Tax and Duty Exemption

The representatives noted that the Government should improve incentives through tax and duty exemptions on equipment, construction materials and fuel oil.

5.6 The Proposed Amendments to the Energy Bill, 2017 by the Members of the National Assembly from Kitui County.

The Committee had set out to conduct a public hearing in Mwingi, Kitui County but was unable to get to the area where coal is being explored due to bad weather and inaccessible roads.

To this end, the Members of Parliament of Ukambani Region submitted a memorandum to the Committee which proposed the following amendments to the Energy Bill, 2017

- i. The local community share in terms of royalties should be increased from five percent to ten percent of the National Government share payable to a trust fund managed by a board of trustees consisting of the elected leaders representing the sub-counties.
- ii. There is need to make provision that prior to the production of coal, land adjudication should be undertaken in terms of determining and authenticating ownership of land through issuance of title deeds to the members of the local communities.
- iii. There is also need to amend the Bill to make provision for compensation of land acquired for purposes of producing coal. The process of compensating the owners of land should however be undertaken once negotiations with the local communities have been done and concluded. There is also need to take into account the cultural values of the local communities in determining the amount of compensation to be given to the owners of land proposed to be displaced.
- iv. The Bill should also be amended to require the Government and licensees/investors to undertake corporate social responsibilities projects including supply of water in areas where the coal is being produced.
- v. The Bill should also be amended to include that prior to a license of production of coal being granted to a person, the Environmental Impact Assessment must be undertaken.
- vi. The Bill should also be amended to provide that the Coal production plant should be located in the Coal Basin.
- vii. There is also need to amend the Bill on the provisions for local content requirements so as to provide that the local content requirements should not be less than seventy percent. Further the amendment should provide that employment at all levels in an company or institution involved in the production of coal shall be given first to the local people where the coal resource is being produced.

6.0. PUBLIC HEARINGS IN LAMU COUNTY.

6.1. Courtesy call on the office of the Governor of Lamu County.

The Office of the County Commissioner of Lamu County received the delegation of the Members of the National Assembly of the departmental Committee on Energy in Lamu and thereafter them to the office of the governor of Lamu County.

The Office of the Governor welcomed the Committee and informed the Committee that Lamu is a destination for many projects that are of benefit to the Country as a whole as well as attracting tourists.

The Governor was confident that the challenge of Insecurity if well addressed will ensure that Lamu becomes the best destination for tourism and business solutions.

6.2. Submissions by the residents of Kwasasi in Lamu at the proposed coal plant site.

The residents of the Kwasasi area, the proposed coal plant area made oral presentations on the Energy Bill, 2017.

They asked the Committee to ensure that the benefits of the coal plant should be entrenched into the bill as a law especially on the areas of corporate social responsibility, local content, revenue sharing, compensations and environmental degradations.

6.2.1 Ms. Halima Majid representing the women.

The Committee was informed that the Kwasasi Community is in appreciation of the government efforts to set up the project in the areas of marginalised communities.

The community acknowledged that they are not all that learned and that their main source of livelihood is farming and that AMU power project must find an alternative ay of livelihood for them.

They informed the Committee that the government should speed up compensation for the affected persons on the land that they will use for the AMU Coal project.

6.2.2 Hussein Kombo – Chairman of the Kwasasi residents.

The Chairperson of the Kwasasi residents said urged the Committee to ignore the voices of the civil Society organisations and the NGO's who are not based in Lamu and are opposed to the installation of the Coal plant. The Committee was informed that these CSO's and NGO's are not helping the community to achieve their goals.

He informed the Committee that Lamu will achieve the hopes of education, Health and Clothing when the farmers will be compensated and the benefits accrued will improve the lives of the residents of Lamu.

6.2.3 Abdi Rahman Abud

He informed the Committee that there are enough forests in Lamu and that the Ministry of energy has already sensitised the Community and that the Amu Power Project will have immense benefits to the Country as a whole.

He urged the Committee to entrench the establishment of an industrial park in the Bill and that employment opportunity to the locals should be pegged at 70% with about 30% being for the management team from the local Community.

They also said that the Community liaison for the project should be a local who understands the host community and is able to get their concurrence and prioritise issues especially when they are undertaking the Corporate Social Responsibility.

The Committee was informed that the Community should decide on the projects to be undertaken as part of the CSR and that the locals to be given priority especially on the tenders and suppliers.

6.3 SUBMISSIONS BY RESIDENTS OF LAMU AT THE LAMU FORT

The Committee received submissions from the residents of Lamu in Amu Island in the following groups:-

- a. Save Lamu
- b. Farmers Association
- c. Water resources Association
- d. Lamu Hope Initiative among others

The submissions were not opposed to the installation of the Coal plant in Lamu but are concern about the benefits of the local Community, their compensations, the degradation of the environment, the livelihood of the farmers and the fear of not acquiring opportunities form the coal plant.

The Committee was also informed that access to information is a very important matter that has been ignored in many instances of putting up such projects and therefore that urged the committee to be able extensively undertake the public participation and to provide adequate information to the public on the details of not only the coal plant project but also other mega projects as well.

The Committee was also informed that the project consultants should be able to comply with the EMKA and Mining Act so as to ensure environmental protection and relevant laws are adhered to.

6.4 Submissions by the Sarara Oil and Gas Company in Pate Island.

The objective of the Lamu Integrated Gas to Power is to drill and to prove up the resources, which have a mid-case aggregate gross estimate of approximately 1 trillion cubic feet of gas. (Sufficient to produce 1,000MW for 15+years).

The gas in Lamu was discovered in by Shell in 1970s but due to due to technical difficulties the reservoir was not drilled beyond 10 metres and was not logged or tested. There is therefore uncertainty of gas volume, flow rate or water saturation.

The project is proposed to be undertaken in a phased development whereby phase I - Pate 2 & Pate 3 wells, production of 50-200MW through an early production system (1st electricity production targeted for 2020). Thereafter Then Phase II – additional drilling to support a 300MW permanent facility and consequently Phase III & IV – additional drilling and expansion to 1,000MW which is at an advantageous positioned by Lamu port and foot of LAPSSET project

The Objectives Pate 2 and Pate 3 Wells is that Pate 2 is to re-drill of Pate 1 to a planned depth of 4,513m whereas Pate 3 is too deviated well to prove up sufficient reserves from two wells for a 50-200 MW early production scheme development.

The Post drilling activities success case are the USTDA Feasibility study which is underway, a cconcept design for Gas Treatment, a Concept design for Power Plant, an Interconnection studies to Kenyan National grid as well as an ESIA for gas field development and power production.

Other requirements are the sourcing of the of the equipment and finance together with the Legal & regulatory framework which includes the Power Purchase Agreement (PPA), the Interconnection Agreement, the Shareholder Agreement as well as the Permits, licences and approvals

An Implementation plan is already up-to-date and the drilling start date is in mid-April 2018. Land, Environment, Local content, Employment, gender balance and Community Social Responsibility is also required to be as practical as possible.

7.0 Committee Observations.

While conducting public participation in the above mentioned counties the Committee made the following observations:-

- (i) Communities emphasized the need to have provisions of the Bill dealing with the local content expounded to address the needs of the locals where natural resources is being explored.
- (ii) On Community land, the County Assembly of Turkana was of the opinion that, while it is desirable that the contractor notifies the Cabinet Secretary of the need to set apart land for purposes of upstream petroleum operations, it is of best interest that the County Government (as the body constitutionally mandated to hold community land in trust on behalf of the communities) and the local community be involved in the process.
- (iii) It was of the opinion of the Communities that the bill ought to state expressly that the membership of the Advisory Committee and the Upstream Petroleum Authority ought to include representatives from counties where petroleum production is taking place.
- (iv) The Communities recommended that as an alternative to the capping of revenues allocated to the county government as stated in Section 85(2) of the Bill, the law instead create a sovereign or stabilization wealth fund to safeguard counties and communities from the volatility of commodity prices.

8.0 Committee Recommendations

The Committee therefore recommends that

1. The Bill should also make it mandatory for the licensee to restore land to its former condition in the first instance where there is damage that is occasioned to land.
2. The definitions of the term local community in the Bill is sufficient as it mirrors the devolution units as provided for in the County Governments Act.
3. The minimums on the local content requirements in terms of percentages should

be provided for in the regulations to be prescribed by the Cabinet Secretary.

4. There is need to enlarge the matters that the local content plans can address to include such other matters as transport services, consultancy services and security services.
5. There is need as a principle to recognize importance of minimum sentences rather than maximum sentences noting the gravity of the offences in the Bill.
6. The office of the Director of Public Prosecutions should appoint officers to deal with criminal offences committed in relation to the Bill.
7. The Cabinet Secretary should divide Kenya audits continental shelf into numbered areas known as blocks only after consultation with the Advisory Committee.
8. The Bill should be clear on the provisions relating to the participation of the local communities and ensure that they are also aware on the manner in which the activities relating to upstream petroleum operations are conducted.
9. The contractors should also conduct their activities subject to the relevant written laws including the Constitution, environmental and land laws.
10. The national integrated energy plan would have several implications on the participants in the energy sector and Kenyans at large. The plan should therefore be developed in consultation with the private sector and other stakeholders.
11. There is need for the licensing authority to formulate safeguards against licensees who obtain licenses for speculation purposes. Such grounds should be used for rejecting application for renewal as required under clause 78(5) of the Bill.
12. The licensee should only have the first option of extracting the mineral once they receive the Mining License or Permit and should pay royalties in accordance with the Mining Act.

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - FIRST SESSION

In matters of consideration by the National Assembly – The Petroleum (Exploration, Development and Production) Bill, 2017.

Article 118(1)(b) of the Constitution provides that “Parliament shall facilitate public participation and involvement in the legislation and other business of the Parliament and its Committees.” Standing Order 127(3) of the National Assembly Standing Orders provides that “the Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the House.”

The Petroleum (Exploration, Development and Production) Bill, 2017, seeks to provide a framework for the contracting, exploration and development of petroleum together with production of petroleum discovered within the licensed petroleum exploration blocks. The Bill also seeks to provide a framework for safe cessation of upstream petroleum operations and for connected purposes. The Bill proposes to repeal the Petroleum (Exploration and Production) Chapter 308 of the Laws of Kenya..

The Petroleum (Exploration, Development and Production) Bill, 2017 has undergone First Reading pursuant to Standing Order 127 (3) and is now committed to the Departmental Committee on Energy for consideration and thereafter report to the House..

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127, the Committee invites members of the public to submit any representations they may have on **The Petroleum (Exploration, Development and Production) Bill, 2017**. The representations may be forwarded to the **Clerk of the National Assembly, P.O Box 41842-00100, Nairobi**; or hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi**; or emailed to clerk@parliament.go.ke; to be received **on or before Wednesday 28th February, 2018 at 5:00 pm.**

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

MINUTES OF THE 54TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD IN THE COMMITTEE ROOM 7 ON TUESDAY 10TH APRIL 2018 AT
3.00PM

MEMBERS PRESENT

- | | | |
|--|---|------------------|
| 1. The Hon. David Gikaria, M.P. | - | Chairperson |
| 2. The Hon. (Dr.) Robert Pukose, M.P. | - | Vice Chairperson |
| 3. The Hon. Cecily Mbarire, M.P. | | |
| 4. The Hon. Gitau Faith Wairimu, M.P. | | |
| 5. The Hon. Lemanken Aramat, M.P. | | |
| 6. The Hon. Tindi Nicholas Mwale, MP | | |
| 7. The Hon. Ekomwa Lomenen James, M.P. | | |
| 8. The Hon. Ken Chonga, MP | | |
| 9. The Hon. Vincent Musyoka Musau, M.P. | | |
| 10. The Hon. Joseph Wathigo Manje, M.P. | | |
| 11. The Hon. Walter Owino, MP | | |
| 12. The Hon. Clement Muturi Kigano, M.P. | | |
| 13. The Hon. Abdikhaim Osman Mohamed, M.P. | | |
| 14. The Hon. Elsie Muhanda, MP | | |
| 15. The Hon. Amina Gedow Hassan, M.P. | | |
| 16. The Hon. Julius Musili Mawathe, MP | | |
| 17. The Hon. Oscar Sudi, Kipchumba, M.P. | | |

ABSENT WITH APOLOGY

1. The Hon. Elisha Odhiambo, MP
2. The Hon. Mohammed Ali Lokiro, MP

IN ATTENDANCE:

NATIONAL ASSEMBLY

- | | | |
|------------------------|---|---------------------|
| 1. Mr. Benjamin Magut | - | Lead Clerk |
| 2. Mr. Douglas Katho | - | Clerk Assistant III |
| 3. Ms. Jemimah Waigwa | - | Legal Counsel |
| 4. Mr. Moge Abdulyusuf | - | Fiscal Analyst |
| 5. Ms. Fatuma Abdi | - | Audio Officer |

MIN. NO. 179/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

**MIN. NO. 180/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS
SITTINGS AND CONSIDERATION OF MATTERS ARISING
THEREOF.**

The minutes of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st sittings were read and confirmed as true records of proceedings as follows: -

The 5st Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 6th Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 7th Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

The 8th Sitting proposed by the Hon. Ken Chonga, MP and seconded by the Hon. Vincent Musyoka Musau, M.P.

The 9th Sitting proposed by the Hon. Joseph Wathigo Manje, M.P. and seconded by the Hon. Walter Owino, MP

The 10th Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P

The 11th Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 12th Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 13th Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 14th Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

The 15th Sitting proposed by the Hon. Ken Chonga, MP and seconded by the Hon. Vincent Musyoka Musau, M.P.

The 16th Sitting proposed by the Hon. Joseph Wathigo Manje, M.P. and seconded by the Hon. Walter Owino, MP

The 17th Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P

The 18th Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 19th Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 20th Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 21st Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

The 22ND Sitting proposed by the Hon. Ken Chonga, MP and seconded by the Hon. Vincent Musyoka Musau, M.P.

The 23RD Sitting proposed by the Hon. Joseph Wathigo Manje, M.P. and seconded by the Hon. Walter Owino, MP

The 24TH Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P

The 25TH Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 26TH Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 27TH Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 28TH Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

The 29TH Sitting proposed by the Hon. Ken Chonga, MP and seconded by the Hon. Vincent Musyoka Musau, M.P.

The 30TH Sitting proposed by the Hon. Joseph Wathigo Manje, M.P. and seconded by the Hon. Walter Owino, MP

The 31ST Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P

The 32ND Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 33RD Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 34TH Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 35TH Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

The 36TH Sitting proposed by the Hon. Ken Chonga, MP and seconded by the Hon. Vincent Musyoka Musau, M.P.

The 37TH Sitting proposed by the Hon. Joseph Wathigo Manje, M.P. and seconded by the Hon. Walter Owino, MP

The 38TH Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P

The 39TH Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 40th Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P.

The 41st Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 42nd Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 43rd Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 44TH Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

The 45TH Sitting proposed by the Hon. Ken Chonga, MP and seconded by the Hon. Vincent Musyoka Musau, M.P.

The 46TH Sitting proposed by the Hon. Joseph Wathigo Manje, M.P. and seconded by the Hon. Walter Owino, MP

The 47TH Sitting proposed by the Hon. Clement Muturi Kigano, M.P. and seconded by the Hon. Abdikhaim Osman Mohamed, M.P.

The 48TH Sitting proposed by the Hon. Elsie Muhanda, MP and seconded by the Hon. Dr. Robert Pukose, MP.

The 49TH Sitting proposed by Hon. (Dr.) Robert Pukose, M.P. and seconded by the Hon. Cecily Mbarire, M.P.

The 50TH Sitting proposed by the Hon. Gitau Faith Wairimu, M.P. and Seconded by Hon. Lemanken Aramat, M.P.

The 51ST Sitting proposed by the Hon. Tindi Nicholas Mwale, MP and seconded by the Hon. Ekomwa Lomenen James, M.P.

MIN. NO. 181/2018: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE ENERGY BILL, 2017.

The Committee Members unanimously adopted the Report on the consideration of the Energy Bill, 2017 on a proposal by the Hon. Cecily Mbarire and Seconded by the Hon. Dr. Robert Pukose, MP.

MIN. NO. 182/2018: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Committee Members considered and adopted the report on the Petroleum (exploration, development, production) Bill, 2017 on a proposal by the Hon. Cecily

Mbarire and Seconded by the Hon. Dr. Robert Pukose, MP with a recommendation that clause 85 of the bill be amended to increase the revenue share for local community from 5% to 10%.

The Committee further resolved that any member of the Committee or any other Member of Parliament may introduce an amendment to the bill during the Committee stage amendments of which the Hon. James Ekomwa Lomenen agreed to.

MIN. NO. 182/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Four O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10th Apr, 2018

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD SHARK CONFERENCE ROOM IN DIANI REEF BEACH RESORT AND
SPA THURSDAY 5TH APRIL 2018 AT 2.30PM

MEMBERS PRESENT

- | | | |
|--|---|------------------|
| 1. The Hon. David Gikaria, M.P. | - | Chairperson |
| 2. The Hon. (Dr.) Robert Pukose, M.P. | - | Vice Chairperson |
| 3. The Hon. Gitau Faith Wairimu, M.P. | | |
| 4. The Hon. Lemanken Aramat, M.P. | | |
| 5. The Hon. Tindi Nicholas Mwale, MP | | |
| 6. The Hon. Elisha Odhiambo, MP | | |
| 7. The Hon. Ekomwa Lomenen James, M.P. | | |
| 8. The Hon. Mohammed Ali Lokiro, MP | | |
| 9. The Hon. Ken Chonga, MP | | |
| 10. The Hon. Vincent Musyoka Musau, M.P. | | |
| 11. The Hon. Joseph Wathigo Manje, M.P. | | |
| 12. The Hon. Walter Owino, MP | | |
| 13. The Hon. Julius Musili Mawathe, MP | | |
| 14. The Hon. Clement Muturi Kigano, M.P. | | |
| 15. The Hon. Abdikhaim Osman Mohamed, M.P. | | |
| 16. The Hon. Amina Gedow Hassan, M.P. | | |
| 17. The Hon. Elsie Muhanda, MP | | |

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MINISTRY OF ENERGY AND THE MINISTRY OF
 PETROLEUM TECHNICAL TEAM

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

- | | | |
|------------------------|---|---|
| 1. Mr. Peter Chemweno | - | Deputy Director Committee Services (NA) |
| 2. Mr. Benjamin Magut | - | Lead Clerk |
| 3. Mr. Douglas Katho | - | Clerk Assistant III |
| 4. Mr. Eugene Apaa | - | Research Officer |
| 5. Ms. Jemimah Waigwa | - | Legal Counsel |
| 6. Ms. Brigita Mati | - | Legal Counsel |
| 7. Mr. Moge Abdulyusuf | - | Fiscal Analyst |
| 8. Mr. Dan Kirwa | - | In Charge- Security |
| 9. Mr. John Nganga | - | Audio Recording Officer |
| 10. Mr. Robert Langat | - | Office Assistant |

MIN. NO. 170/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

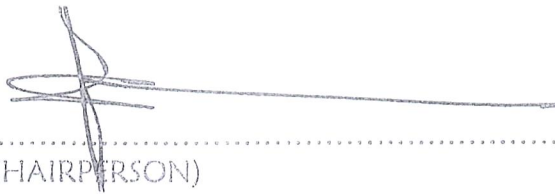
MIN. NO. 171/2018: CONSIDERATION OF THE PETROLEUM

(EXPLORATION, The Committee made the following general observations on the Petroleum (Exploration, Development and Production) Bill, 2017:

1. There is need to harmonize the Energy Bill and the Petroleum (Exploration, Development and Production) Bill so as to ensure that the midstream and downstream petroleum operations are contained in the Petroleum Bill and not in the Energy Bill.
2. The definitions of the term local community in the Bill is sufficient as it mirrors the devolution units as provided for in the County Governments Act.
3. The minimums on the local content requirements in terms of percentages should be provided for in the regulations to be prescribed by the Cabinet Secretary.
4. The County Governments are recognized in the Bill in that there is a representative of the Council of Governors who is a member of the Authority.
5. There is need to enlarge the matters that the local content plans can address to include such other matters as transport services, consultancy services and security services.
6. There is need to recognize the role of county governments in upstream petroleum operations in line with their functions as provided for in the Fourth Schedule which is environment conservation and disaster management.
7. There is need as a principle to recognize importance of minimum sentences rather than maximum sentences noting the gravity of the offences in the Bill.
8. The office of the Director of Public Prosecutions should appoint officers to deal with criminal offences committed in relation to the Bill.
9. The National Data Centre should also be established by the Authority and used for storage of cores, samples, geoscience and other critical data.
10. The Cabinet Secretary should divide Kenya audits continental shelf into numbered areas known as blocks only after consultation with the Advisory Committee.
11. The Bill should be clear on the provisions relating to the participation of the local communities and ensure that they are also aware on the manner in which the activities relating to upstream petroleum operations are conducted.
12. The contractors should also conduct their activities subject to the relevant written laws including the Constitution, environmental and land laws.

MIN. NO. 172/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Eight O'clock in the evening.

A handwritten signature in dark ink, consisting of a stylized 'S' or 'J' shape followed by a long horizontal line.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-4-2018

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD SHARK CONFERENCE ROOM IN DIANI REEF BEACH RESORT AND
SPA THURSDAY 5TH APRIL 2018 AT 9.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Lemanken Aramat, M.P.
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Elisha Odhiambo, MP
7. The Hon. Ekomwa Lomenen James, M.P.
8. The Hon. Mohammed Ali Lokiro, MP
9. The Hon. Ken Chonga, MP
10. The Hon. Vincent Musyoka Musau, M.P.
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Walter Owino, MP
13. The Hon. Julius Musili Mawathe, MP
14. The Hon. Clement Muturi Kigano, M.P.
15. The Hon. Abdikhaim Osman Mohamed, M.P
16. The Hon. Amina Gedow Hassan, M.P
17. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MINISTRY OF ENERGY AND THE MINISTRY OF
PETROLEUM TECHNICAL TEAM

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Peter Chemweno - Deputy Director Committee Services (NA)
2. Mr. Benjamin Magut - Lead Clerk
3. Mr. Douglas Katho - Clerk Assistant III
4. Mr. Eugene Apaa - Research Officer
5. Ms. Jemimah Waigwa - Legal Counsel
6. Ms. Brigita Mati - Legal Counsel
7. Mr. Moge Abdulyusuf - Fiscal Analyst
8. Mr. Dan Kirwa - In Charge- Security
9. Mr. John Nganga - Audio Recording Officer
10. Mr. Robert Langat - Office Assistant

MIN. NO. 167/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 168/2018: CONSIDERATION OF THE ENERGY BILL, 2017

The Committee made the following general observations on the Bill:

1. There is need to harmonize the Energy Bill and the Petroleum (Exploration, Development and Production) Bill so as to ensure that the midstream and downstream petroleum operations are contained in the Petroleum Bill and not in the Energy Bill.
2. The Bill should be amended to create an offence for drivers who adulterate petroleum.
3. The area where there is exploration of energy resources should be fenced by the contractor to avoid conflict with the local community.
4. Part V of the Bill on Midstream and Downstream Petroleum should be moved to Petroleum Bill so as to move all functions dealing with Petroleum to the Petroleum Bill.
5. The national integrated energy plan would have several implications on the participants in the energy sector and Kenyans at large. The plan should therefore be developed in consultation with the private sector and other stakeholders.
6. There is need to broaden the scope of qualifications for members of the Boards by removing requirement for specific degrees and leaving it open because all one needs to seat on the board is managerial skills.
7. There is need for the licensing authority to formulate safeguards against licensees who obtain licenses for speculation purposes. Such grounds should be used for rejecting application for renewal as required under clause 78(5) of the Bill.
8. The Bill has vested exclusive power on the Cabinet Secretary to make a determination without reference to any advisory or oversight organ.
9. There is need for a clearer and elaborate mechanism that informs decision-making by the Cabinet Secretary on the grant of a geothermal resource licence.
10. The licensee should only have the first option of extracting the mineral once they receive the Mining License or Permit and should pay royalties in accordance with the Mining Act.

11. The Bill should also make it mandatory for the licensee to restore land to its former condition in the first instance where there is damage that is occasioned to land.

MIN. NO. 169/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past One O'clock.

SIGNED.....

(CHAIRPERSON)

DATE.....

10-4-2018

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD SHARK CONFERENCE ROOM IN DIANI REEF BEACH RESORT AND
SPA WEDNESDAY 4TH APRIL 2018 AT 2.30PM

MEMBERS PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. David Gikaria, M.P. | - | Chairperson |
| 2. The Hon. (Dr.) Robert Pukose, M.P. | - | Vice Chairperson |
| 3. The Hon. Gitau Faith Wairimu, M.P. | | |
| 4. The Hon. Lemanken Aramat, M.P. | | |
| 5. The Hon. Tindi Nicholas Mwale, MP | | |
| 6. The Hon. Elisha Odhiambo, MP | | |
| 7. The Hon. Ekomwa Lomenen James, M.P. | | |
| 8. The Hon. Mohammed Ali Lokiro, MP | | |
| 9. The Hon. Ken Chonga, MP | | |
| 10. The Hon. Vincent Musyoka Musau, M.P. | | |
| 11. The Hon. Joseph Wathigo Manje, M.P. | | |
| 12. The Hon. Walter Owino, MP | | |
| 13. The Hon. Julius Musili Mawathe, MP | | |
| 14. The Hon. Clement Muturi Kigano, M.P. | | |
| 15. The Hon. Abdikhaim Osman Mohamed, M.P | | |
| 16. The Hon. Amina Gedow Hassan, M.P | | |
| 17. The Hon. Elsie Muhanda, MP | | |

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MINISTRY OF ENERGY AND THE MINISTRY OF
PETROLEUM TECHNICAL TEAM

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

- | | | |
|------------------------|---|---|
| 1. Mr. Peter Chemweno | - | Deputy Director Committee Services (NA) |
| 2. Mr. Benjamin Magut | - | Lead Clerk |
| 3. Mr. Douglas Katho | - | Clerk Assistant III |
| 4. Mr. Eugene Apaa | - | Research Officer |
| 5. Ms. Jemimah Waigwa | - | Legal Counsel |
| 6. Ms. Brigita Mati | - | Legal Counsel |
| 7. Mr. Moge Abdulyusuf | - | Fiscal Analyst |
| 8. Mr. Dan Kirwa | - | In Charge- Security |
| 9. Mr. John Nganga | - | Audio Recording Officer |
| 10. Mr. Robert Langat | - | Office Assistant |

MIN. NO. 164/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 165/2018: CONSIDERATION OF THE ENERGY BILL, 2017

(1) The Committee made amendments to the following clauses-

ENERGY BILL, 2017 Clause in the Bill	PROPOSED AMENDMENT	RATIONAL	Proposing entity	Adopted
2	Adulterated; Downstream Petroleum; Minimum Operational Stocks; Open tendering System; Petroleum Business; Refine; Refined Petroleum Products; Refinery; Liquefied Petroleum Gas; Retail dispensing site; Storage depots; Strategic stocks; Undertakings (b) 'open access' 'works	Definitions to be inserted in Petroleum	Ministry	Adopted
2	"building" has the meaning assigned to it under the Physical Planning Act;	"building" has the meaning assigned to it under the relevant written law";	To conform to the law	Adopted
	"consumer" means any person supplied or entitled to be supplied with electrical energy	in the definition of "consumer" by deleting the words "or petroleum";	To align it with Energy Bill	Adopted

	or petroleum;22				
	“distribution licensee” means a licensee authorised to operate and maintain a distribution system for supplying energy to the consumers in its area of supply;	“distribution licence”, means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;	To avoid confusion with retail licenses this need not have any network.		Adopted
	Delete local content and substitute “local content” means the use of Kenyan local expertise, goods and services, people, businesses and financing for the systematic development of national capacity and capabilities for the enhancement of the Kenyan economy;	“local content” means the added value brought to the Kenyan economy from petroleum related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits;	To broaden the scope and align it with Petroleum Bill.		Adopted
		Energy Delete the words” (excluding upstream petroleum and coal activities)	To align it with Energy Bill		Adopted
		Amend ‘license’ “delete the words authorizing the importation, exportation, refining, storage and sale of petroleum or”	To align it with Energy Bill		Adopted
		“Pipeline” (a) Delete the words “petroleum” and substitute the word “transportation”; (b) by deleting paragraph (a).	To align it with Energy Bill		Adopted

		by deleting paragraph (b)	To align it with Energy Bill	
13	If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters: (b) (b) on importation, exportation, refinement, transportation, storage, and sale of petroleum products or gas	By deleting paragraph (b) and substituting paragraph (b)- save where this Act expressly provides otherwise, any license granted or anything done under this Act shall not affect the right, privilege, obligation or liability acquired by any licensee or other person in any contract or under any written law prior to the commencement of the is Act.	To align it with Energy Bill	
4	National Energy Policy (1) The Cabinet Secretary shall develop and publish a national energy policy which shall be reviewed every five years.	Insert the words: "in consultation with the relevant stakeholders" immediately after the words "Cabinet Secretary shall"	The proposed national energy policy would undoubtedly have implications on all participants in the energy sector. Before implementing the national energy policy, the private sector and other stakeholders' views should be obtained before the policy is published.	MINISTER WALLA KHANA MINISTER Y
4		THAT, clause 4 of the Bill be amended in subclause (1) by inserting the words "in consultation with relevant stakeholders" immediately after the word "Cabinet Secretary"		Ministry
5	Integrated national energy plan 5(1) The Cabinet Secretary shall develop, publish and review	THAT, clause 5 of the Bill be amended in subclause (1), by deleting the words "midstream and downstream petroleum"	To align it with Energy Bill	Ministry

	respect of midstream and downstream petroleum, coal, renewable energy and electricity so as to ensure delivery of reliable energy services at least cost.				
5	Integrated national energy plan 5(1) The Cabinet Secretary shall develop, publish and review energy plans in respect of midstream and downstream petroleum, coal, renewable energy and electricity so as to ensure delivery of reliable energy services at least cost.	Insert the words " in consultation with the relevant stakeholders" immediately after the words " Cabinet Secretary shall"	The integrated national energy plan would have several implications on the participants in the energy sector and Kenyans at large. The plan should be developed in consultation with the private sector and other stakeholders.	ANJAR WALLA& KHANA	Adopted
10	The functions of the Commission shall be to— (a) regulate- (ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;	THAT clause 10 of the Bill be amended in paragraph (a) by deleting subparagraph (ii).	Moving functions dealing with Petroleum Business under the Energy Bill to the Petroleum Bill.	Ministry	Adopted
11	The Commission shall have all powers necessary for the performance of its functions under this Act and in particular, the	THAT clause 11 of the Bill be amended by deleting paragraph (b)	To align it with Energy Bill	Ministry	Adopted

	Commission shall have the power to				
	(b) set, review and approve contracts, tariffs and charges for common user petroleum logistics facilities and petroleum products;				
12	(1) The management of the Commission shall vest in the Board of Directors of the Commission consisting of (b) the Principal Secretary responsible for Energy and Petroleum or his representative;	THAT clause 12 of the Bill be amended - (a) in subclause(1) (i) in paragraph (b) by deleting the words "and petroleum"; (ii) in paragraph (c) by deleting the words " and petroleum"; (b) in subclause (2) (b) by deleting "in the fields of engineering, physical sciences, law, finance, environment studies, economies, social sciences or energy"	To align it with Energy Bill and broaden the scope of qualifications for members of the Board	Ministry	Adopted
	(2) A person shall be qualified for appointment as a Chairperson under subsection (1) (a) or member of the Board under subsection (1) (d) if such person- - (b) holds a degree from a university recognized in Kenya or its equivalent in the fields of engineering, physical sciences, law, finance, environmental studies, economics, social sciences or energy.				
20	(1) The funds of the Commission shall consist of	THAT, clause 20(1) of the Bill be amended by deleting the words	To align it with Energy Bill	Ministry	Adopted

	(a) levies not exceeding one half of a percent on the sales of electricity and petroleum products; (b) licence fees;	"sales of electricity and petroleum products" and substitute therefor the words "sale of electricity products"			
22	Powers of Committees or agents (1) A committee, member, officer, employee or agent appointed under section Error! Reference source not found. may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—	Insert a new subclause That clause 22 of the Bill be amended by inserting the words "Subject to any other written law" immediately before the words "A committee member"	The powers exercised in clause 22 should be subjected to constitutional thresholds in Articles 31 and 40.	ANJAR WALLA & KHANA	Adopted.
26	(3) The Chairperson, Vice Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.	THAT, clause 26 of the Bill be amended in subclause (3) by inserting the word "of" immediately after the words "of their terms".	Typographical		Adopted
26	Members of the Energy and Petroleum Tribunal 26 (1) The Tribunal shall consist of not more than seven members as follows — (a) a Chairperson and vice Chairperson who shall be of	By deleting the word "vice chairperson". By inserting a provision to the effect that the Tribunal shall at its first sitting appoint a vice-chairperson who shall be a person with similar qualifications as	While the Bill indicates that the President shall appoint the Chair and Vice Chair of the Tribunal, the practice is for the vice chair to be a person of the opposite gender and appointed by fellow members at the first sitting of the Tribunal.	KEPSA	Adopted.

	opposite gender, nominated by the Judicial Service Commission from among persons qualified to be judges of the High Court possessing at least five years' experience in energy and petroleum;	the chairperson.			
32	Arrangement of business (4) The rules of procedure of the Tribunal shall be published in the <i>Gazette</i> .	Insert the words "by the chairperson" immediately after the words " in the Gazette"	Tribunals are usually crippled upon formation since it takes too long for the Cabinet Secretary to come up with rules of procedure. It will make sense for the Chairperson to publish the rules of procedure upon appointment.	ANJAR WALLA& KHANA	Adopted.
35	Remuneration (1) The Tribunal shall, in consultation with the Cabinet Secretary and upon the advice of the Salaries and Remuneration Commission ,pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.	Insert a new subclause "(3) The members to the Tribunal shall serve on a part time basis."	The tribunal is unlikely to be busy to warrant full time employment. There is need to save funds by placing the members on part time basis.	ANJAR WALLA& KHANA	Adopted.
36	Jurisdiction of the Tribunal (1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other	Delete the words " or any other Act"	This is in order to prevent conflict of laws and conflict of jurisdiction with other statutory body. It is noted that the intention that the tribunal will also have jurisdiction to hear under the proposed petroleum Bill, 2017, it is the view that the petroleum Bill, rather than the energy	ANJAR WALLA& KHANA	Adopted.

	Act.		Bill should contain provisions referring to disputes to the tribunal.		
36	(4) The Tribunal shall have original civil jurisdiction on any dispute arising out of the bidding rounds carried out under the Upstream Petroleum law.	THAT, clause 36 of the Bill be amended by deleting the words "upstream"	To align it with Energy Bill	Ministry	Adopted
38	(3) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.	THAT, clause 38 of the Bill be amended in subclause (3) by inserting the words "and rules of evidence of a similar nature" immediately after the words "natural justice"	This inclusion that the rules of Evidence Act similar to the rules of natural justice be observed. It would be an injustice if hearsay evidence is admitted in such complex and high value dispute.	Ministry	Adopted
38	Procedure of the Tribunal (3) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.	Insert the words " and rules of evidence of a similar nature" immediately after the words "natural justice.	This inclusion that the rules of Evidence Act similar to the rules of natural justice be observed. It would be an injustice if hearsay evidence is admitted in such complex and high value dispute.	A&K	Adopted.
		NEW CLAUSE THAT, the Bill be amended by inserting a new clause immediately after clause 40— Protection from personal liability. 40A.A matter or thing or act done by a member of the Tribunal or any officer, employee or agent of the Tribunal shall not, if the matter or thing is done bona fide for executing the functions, powers or	To provide for persons serving in the tribunal for protection from personal liability from actions done bona fide in the execution of functions and powers.	Ministry	Adopted

		duties of the Tribunal, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.			
41	Any reference that has been made to the court. The Tribunal shall have appellate jurisdiction to hear and determine appeals to all disputes arising from decisions of the Commission or licensing authority relating to energy matters and any matter referred to the Commission or any licensing authority.	Insert the words "under this Act" immediately after the words "any licensing authority"	This is to prevent any conflict of laws or conflicts with other statutory bodies	A&K	Adopted
43	(i) The Corporation shall perform such functions and exercise such powers as may be necessary under this Act to— (j) develop and promote, in collaboration with other agencies, the use of renewable energy and technologies, including but not limited to biomass, biodiesel, bio-ethanol, charcoal, fuel-wood, solar, wind, tidal waves, small	CLAUSE 43 THAT, clause 43 of the Bill be amended in subclause (1) — (a) by deleting paragraph (j) and substituting therefor the following new paragraph— "(j) develop, promote and manage in collaboration with other agencies, the use of renewable energy and technologies, including but not limited to biomass (biodiesel, bio-ethanol, charcoal, fuel-wood, bio-gas) municipal waste, solar, wind,	To align it with the Energy Bill	Ministry	Adopted

	hydropower, biogas, co-generation and municipal waste, but excluding geothermal;	tidal waves, small hydropower and co-generation but excluding geothermal;" (b) by deleting the word "Institute" and substituting therefor the word "Agency" in paragraph (k).			
43	43 (1) (k) formulate, in conjunction with the Institute, a national strategy for coordinating research in renewable energy; 43 (1) (l) undertake, in conjunction with the Institute, research, development and dissemination of appropriate renewable energy technologies;	Delete the word "institute" and substitute therefor the word "Agency"	It is a typographical error.	KEPSA	Adopted.
44	Board of the Corporation. (b) the Principal Secretary in the Ministry responsible for energy and petroleum or his representative;	THAT, clause 44 of the Bill be amended in sub-clause (1) by deleting the words "and petroleum" appearing in paragraph (b).	To align it with the Petroleum Bill	Ministry	Adopted
45	(2) The Chief Executive Officer shall be appointed through a competitive selection process.	THAT, clause 45 of the Bill be amended in subclause (2) by deleting the word "selection" and substituting therefor the word "recruitment".	To align it with the Petroleum Bill	Ministry	Adopted
50	A matter or thing or act done by a member of the Board or any	THAT, clause 50 of the Bill be amended by inserting the word "liable" immediately	Typographical error	Ministry	Adopted

	officer, employee or agent of the Corporation shall not, if the matter or thing is done <i>bona fide</i> for executing the functions, powers or duties of the Corporation, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.	after the words "directions personally"			
57	The management of the Agency shall vest in the Board of Directors of the Agency which shall consist of-- (e) not more than four other members appointed by the Cabinet Secretary out of whom (i) one person shall be nominated by the Kenya Private Sector Alliance;	THAT, clause 57 of the Bill be amended by deleting paragraph (e) (i) and substituting therefor the following new paragraph— "(i) One person shall be a registered nuclear energy engineer with an experience of five years."	To provide for membership of the Board	Ministry	Adopted
75	(2) The Renewable Energy Resource Advisory Committee is composed of principal secretary in the Ministry of Energy and Petroleum or his	CLAUSE 75 THAT, clause 75(2) of the Bill be amended by deleting the words "and Petroleum".	To align the Energy Bill	Ministry	Adopted

	or her representative who shall be the Chairperson;				
78	Cabinet Secretary to authorize search of geothermal resources	THAT clause 78 be amended in sub-clause (4) by deleting the words "force for a period of one year" and substituting therefor the words "force for a period of two years". The clause should also be amended to include that where a person under sub-section (1) has not undertaken any activity as authorized for a period of five years upon being authorized by the Cabinet Secretary, it shall be a ground for revocation of the authority so granted.	The amendment seeks to increase the period of authority granted under sub-section (4). Further the amendment seeks to include an additional ground for revocation of authority to guard against speculation.		Adopted
79	Cabinet Secretary may grant a geothermal license 79. (1) The Cabinet Secretary on receiving an application for the extraction of geothermal resources in respect of any land, may, on the advice of the Commission grant a licence over part or the whole of a geothermal resources area under such terms and conditions as the Cabinet Secretary may determine in	THAT, clause 79 of the Bill be amended in subclause (1) by deleting the words "on advice of the Commission" and substitute therefor the words "and in consultation with the Renewable Energy Resource Advisory Committee".	The advisory role is vested with the Renewable Energy Resource Advisory Committee	Ministry	Adopted

	accordance with Article 71 of the Constitution.				
79	Cabinet Secretary may grant a geothermal resources licence	Delete the words "The Cabinet Secretary on receiving an application for the extraction of geothermal resources in respect of any land, may, on the advice of the Commission" and substitute therefor the words "The Cabinet Secretary may, on receiving an application for the extraction of geothermal resources in respect of any land, and in consultation with the Renewable Energy Resource Advisory Committee"	There is need for a clearer and elaborate mechanism that informs decision-making by the Cabinet Secretary on the grant of a geothermal resource licence. S. 78 (1) has vested exclusive power on the Cabinet Secretary to make a determination without reference to any advisory or oversight organ	KEPSA	Adopted.
80	Rights under license. (1) Without prejudice to Part VIII, a licence issued under section Error! Reference source not found. shall, subject to this Act, confer upon the licensee the right— (a) to enter upon the land being the subject of the licence to sink a well and to extract geothermal resources and to do all such things as are reasonably necessary for the conduct of those operations;	Insert the words "within the confines of this Act and other relevant laws"	The right should be subject to the land Act, the Land Registration Act; the Community Land Act; and the Land Control Act.	A&K	Adopted.
80 (2)	(2) Where any by-product obtained	(2) Where any by-product obtained in	The licensee should only have the first	Natural Justice	Adopted.

	in the production of geothermal resources may be reclaimed for further use or sale and is a mineral within the meaning of the law governing mining, the licensee shall exploit the same without requiring an additional licence notwithstanding the provisions of any other written law.	the production of geothermal resources may be reclaimed for further use or sale and is a mineral within the meaning of the law governing mining, the licensee shall extract and sell the mineral and shall apply for a mining license or permit under the Mining Act, 2016 within three months of discovering and extracting the resource, this application and sale shall be done in accordance with the provisions of other written law.	option of extracting the mineral once they receive the Mining License or Permit and should pay royalties in accordance with the Mining Act.		
80	Rights under a license	CLAUSE 80 THAT, clause 80 of the Bill be amended— in subclause (1) by inserting the words “within the confines of this Act and other relevant laws” immediately after the words “those operations”; by deleting subclause (2) and substituting therefor the following new clause— “(2) Where any by-product obtained in the production of geothermal resources may be reclaimed for further use or sale and is a mineral within the meaning of the law governing mining, the licensee shall extract and sell the mineral and shall apply for a mining license or permit under the		Ministry	Adopted

		Mining Act, 2016 within three months of discovering and extracting the resource, this application and sale shall be done in accordance with the provisions of other written law. Provided the by product in this case is not a mineral within the meaning of the law governing mining and such by-product is a product produced as a consequence of exploiting and extracting of geothermal resources the licensee shall exploit the same without requiring an additional license"		
84(4)	Royalty (4) Notwithstanding subsection (3), where the resource is being exploited in one or more counties the Cabinet Secretary shall, in consultation with the Commission for Revenue Allocation, determine the rate of apportionment of the county share between the counties concerned based on the extent of the investment in each County.	By deleting the words "concerned based on the extent of the investment in each county"	To remove conditions to be applied in determining the rate of apportionment of county share.	Adopted
119	Offences and attempted offences	THAT clause 119 be amended in sub clause (1)-	Amendment seeks to create deterrence against adulteration of	Adopted

		(a) by inserting the following new paragraph immediately after paragraph (o)- (p) is in charge or in control of a petroleum tanker transporting or carrying adulterated petroleum or discharges export petroleum in the country; (b) by deleting the words "and (k)" appearing in sub-paragraph (i). and substituting therefor the words "(k) and (p)".	petroleum and discharging of export petroleum in the country.		
		DELETION OF A PART THAT, the Bill be amended by deleting Part V of the Bill	Align it with Petroleum Bill	Ministry	Adopted.
120	Contraventions by petroleum carrying ships (3) A person who, while within Kenya's Exclusive Economic Zone and Outer Continental Shelf, discharges or allows to escape into the – (a) petroleum or water mixed with petroleum; (b) water from bilges or tanks; (c) water used for flushing pipes and connections; or	Insert a new subclause (3A)- "The government or a relevant agency shall as is reasonably practicable restore the environment to its former condition and such costs shall be recoverable from the owner or master of ship"	A clause should be included that allows the government to clean the water and later recover the costs from the owner or master of ship in the event of failure by the owner to undertake the clean up.	A&K	Adopted.

	(d) sand used to absorb petroleum, commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings, or to a term of imprisonment of not less than five years, or to both such fine and imprisonment and be responsible, at his or her own cost, for cleaning the water and restoring it to its original status				
149	Factors to be considered in an application (1) The Commission shall, in granting or rejecting an application for a licence, take into consideration --	CLAUSE 149 THAT, clause 149 of the Bill be amended in subclause (1) by inserting a new paragraph immediately after paragraph (e) -- "(ea) the contractual rights, privileges, liabilities and obligations accrued to an existing licensee or any other person are not materially adversely affected;"	To take into consideration contractual rights	Ministry	Adopted
167	Obligations and rights of a distribution license (2) A distribution licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of a	CLAUSE 167 THAT, clause 167 of the Bill be amended by inserting a new subclause immediately after subclause (2) "(3) A distribution license shall not be granted in respect of any location which is less than one quarter of a square kilometer. Provided that this shall not apply in cases of islands in recognized	To provide for the minimum threshold in granting distribution licenses	Ministry	Adopted

	distribution network.	rivers, lakes and in the exclusive economic zone"			
173	Obligations and rights under retail license (3) A person issued with a retail licence shall discharge such duties, in relation to the supply and trade in electrical energy as may be specified by the Commission.	CLAUSE 173 THAT, clause 173 of the Bill be amended by inserting a new subclause immediately after subclause (3) — "(4) Where a licensee enters into a contract to supply electrical energy to a consumer who is receiving electrical energy from another licensee under this Act, the new licensee shall forthwith assume all obligations of the previous licensee relating to the subject consumer and previous contract shall cease and be extinguished."	To provide for certainty while dealing with change of contractual obligations between two or more contractors and a consumer	Ministry	Adopted
199	Power to develop energy infrastructure on any land (1) A person who wishes to enter upon any land, other than his own to— (b) carry out a survey of the land for the purposes of paragraph (a); shall seek the prior consent of the owner of such land, which consent shall not be unreasonably withheld; Provided that where the owner cannot be traced, the applicant shall give fifteen days'	Insert the words "through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation, an announcement in a radio station of local coverage for a period of two weeks.	The amendment seeks to ensure adequate public participation.	Natural Justice	Adopted.

	notice, by public advertisement, in at least two newspapers of nationwide circulation.				Adopted.
201 (3)	Consent to proposal (3) Where the owner of the land cannot be traced the applicant shall give thirty days' notice prior to the development of energy infrastructure on the land by way of public advertisement in at least two newspapers of nationwide circulation: Provided that no development shall commence unless the amount of compensation payable, if any as determined by the relevant government agency responsible for the management of that land, has been deposited into a special compensation fund held by the said agency.	Insert the words "through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation, an announcement in a radio station of local coverage for a period of two weeks.	The amendment seeks to task the National Land Commission in consultation with a representative of the Governor of the relevant County, with receiving the compensation as envisaged under section 201 (3)	Natural Justice	
20 4(2)	Power of licensee to enter land to inspect or repair energy infrastructure (2) Where energy infrastructure is removed, the surface of the land shall forthwith be restored to its	Delete subclause (2) and substitute therefore with the following new clause- (2) Where energy infrastructure is removed, the surface of the land shall forthwith be restored to its former condition as far as possible by	The amendment seeks to makes it mandatory for the licensee to restore land to its former condition in the first instance.	Natural Justice	Adopted.

	former condition as far as possible and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee.	the licensee and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee.			
20 6 (1)	Installation of energy infrastructure along roads, railways (1) For the purpose of the production, conveyance and supply of energy, a licensee may erect, fix, install or lay any electric supply lines, oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or Government property, including forests, National parks, reserves and heritage sites, in the manner and on the conditions as provided in this Act.	Insert the words " and any other relevant Act" immediately after the words "in this Act"	The amendment seeks to exclude the access and utilisation of forests, National Parks, reserves and heritages sites. These protected areas are mere 8% of the total land area. There is need to subject any development to an EIA in accordance to EMCA and other sectoral laws such as wildlife Act, Forest and Conservation Act among others	Nature Kenya; the East African Wild Life Society; Conservation Alliance of Kenya.	Adopted
20 9(1))	Declaration of energy resource areas (1) The Cabinet Secretary may, subject to the provisions of	The Cabinet Secretary may, subject to the provisions of subsection (3) and having taken into consideration of the recommendations made by the relevant	The amendment proposes to include other relevant agencies that the Cabinet Secretary may consult before declaring any area an energy resource	Natural Justice	Adopted

	subsection (3) and having taken into consideration the recommendations made by the implementing agencies that any area is suitable for the conservation and management of energy resource or is suitable for the promotion of energy development projects, by order published in the <i>Gazette</i> , declare such area as an energy resource area.	agencies that an area is suitable for the conservation and management of energy resource or is suitable for the promotion of energy development projects, by order published in the <i>Gazette</i> , declare such area as an energy resource area	area.		
209 (2)	(2) The Cabinet Secretary shall, prior to the declaration of any area as an energy resource area under sub-section (1), consult with the County Government which the Cabinet Secretary considers necessary or appropriate to consult in the declaration of such area as an energy resource area	(2) The Cabinet Secretary shall, prior to the declaration of any area as an energy resource area under sub-section (1), consult with the relevant County Government, local communities and any other relevant agency appropriate to consult in the declaration of such area as an energy resource area.	Before declaring an area an energy resource area, there is need to consult other stakeholders other than the county governments. Public participation should be increased under these circumstances due to the impact of the projects anticipated.	Nature Kenya	Adopted
244	Consolidated Energy Fund	Insert a new paragraph to read as- (i) applied research, technology development and innovation allied to energy sector including technology needs assessment, deployment and scaling up.	This amendment seeks to take into account salient areas that have been left out of the Consolidated Energy Fund	KIPSA	Adopted
25	Repeals and	CLAUSE 252	To give correct	Ministry	Adopted

2	savings	THAT, clause 252 of the Bill be amended— (a) in subclause (1) by deleting the figure "2013" and substituting therefor the expression "131 of 2012" (b) in subclause (2) , by deleting paragraph (f); Include a transitional provision to provide that save where this Act expressly provides otherwise, any license granted or anything done under this Act shall not affect the right. privilege, obligation or liability acquired by any licensee or other person in any contract or under any written law prior to the commencement of this Act.	expression of the KNEB order. To avoid duplicity as it has been provided for under amended clause.		
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MIN. NO. 166/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Seven O'clock in the evening.

SIGNED.....

(CHAIRPERSON)

DATE.....

10-04-2018

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD SHARK CONFERENCE ROOM IN DIANI REEF BEACH RESORT AND
SPA WEDNESDAY 4TH APRIL 2018 AT 9.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Lemanken Aramat, M.P.
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Elisha Odhiambo, MP
7. The Hon. Ekomwa Lomenen James, M.P.
8. The Hon. Mohammed Ali Lokiro, MP
9. The Hon. Ken Chonga, MP
10. The Hon. Vincent Musyoka Musau, M.P.
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Walter Owino, MP
13. The Hon. Julius Musili Mawathe, MP
14. The Hon. Clement Muturi Kigano, M.P.
15. The Hon. Abdikhaim Osman Mohamed, M.P
16. The Hon. Amina Gedow Hassan, M.P
17. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MINISTRY OF ENERGY AND THE MINISTRY OF
PETROLEUM TECHNICAL TEAM

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Peter Chemweno - Deputy Director Committee Services (NA)
2. Mr. Benjamin Magut - Lead Clerk
3. Mr. Douglas Katho - Clerk Assistant III
4. Mr. Eugene Apaa - Research Officer
5. Ms. Jemimah Waigwa - Legal Counsel
6. Ms. Brigita Mati - Legal Counsel
7. Mr. Moge Abdulyusuf - Fiscal Analyst
8. Mr. Dan Kirwa - In Charge- Security
9. Mr. John Nganga - Audio Recording Officer
10. Mr. Robert Langat - Office Assistant

MIN. NO. 161/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 162/2018: CONSIDERATION OF THE ENERGY BILL, 2017

The Committee considered the submissions of the stakeholders and made the following observations:-

- (1) The Committee agreed with clauses 1 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 37, 39, 40, 42, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 81, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100.
- (2) The Committee also agreed with clauses 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 168, 169, 170, 171, 172, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 200, 202, 203, 205, 207, 208, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 245, 246, 247, 248, 249, 250, 251 and the Schedules to the Bills.
- (3) The Committee further agreed to delete Part V of the Energy Bill and insert it in the Petroleum Bill and further harmonize the amendments.

MIN. NO. 163/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past One O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 47TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD SHARK CONFERENCE ROOM IN DIANI REEF BEACH RESORT AND
SPA TUESDAY 3RD MARCH, 2018 AT 2.30PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Lemanken Aramat, M.P.
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Elisha Odhiambo, MP
7. The Hon. Ekomwa Lomenen James, M.P.
8. The Hon. Mohammed Ali Lokiro, MP
9. The Hon. Ken Chonga, MP
10. The Hon. Vincent Musyoka Musau, M.P.
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Walter Owino, MP
13. The Hon. Julius Musili Mawathe, MP
14. The Hon. Clement Muturi Kigano, M.P.
15. The Hon. Abdikhaim Osman Mohamed, M.P
16. The Hon. Amina Gedow Hassan, M.P
17. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MINISTRY OF ENERGY AND THE MINISTRY OF
PETROLEUM TECHNICAL TEAM

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Peter Chemweno - Deputy Director Committee Services (NA)
2. Mr. Benjamin Magut - Lead Clerk
3. Mr. Douglas Katho - Clerk Assistant III
4. Mr. Eugene Apaa - Research Officer
5. Ms. Jemimah Waigwa - Legal Counsel
6. Ms. Brigita Mati - Legal Counsel
7. Mr. Moge Abdulyusuf - Fiscal Analyst
8. Mr. Dan Kirwa - In Charge- Security
9. Mr. John Nganga - Audio Recording Officer
10. Mr. Robert Langat - Office Assistant

MIN. NO. 158/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 159/2018: CONSIDERATION OF PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

(I) The Committee made amendments to the following clauses-

PETROLEUM (EXPLORATION, PRODUCTION AND DEVELOPMENT) BILL, 2017					
	Clause	Amendment	Rationale	Proposing entity	Committee Resolution
	Long Title AN ACT of Parliament to provide a framework for the contracting, exploration, development and production of petroleum; cessation of upstream petroleum operations; to give effect to relevant articles of the Constitution in so far as they apply to upstream petroleum operations; and for connected purposes	Amend to include reference to midstream and downstream petroleum operations.	To align the Bill with the amendments made to Part V of the Energy Bill		Adopted
1	Short Title	Amend to Petroleum Bill	To align the Bill with the amendments made to Part V of the Energy Bill.		Adopted
2	Interpretation	CLAUSE 2 THAT, clause 2 of the Bill be amended to include the following new definitions- To include definitions on— (a) Adulterated Petroleum; (b) Agent; (c) Building;	To align the Bill with the amendments made to the Energy Bill on Part V.		Adopted

		(d) Consumer; (e) Danger; (f) Downstream petroleum operations; (g) Environmental social impact and Social Impact assessment (h) Exclusive economic zone; (i) Factory; (j) Kenya Standards; (k) Licence; (l) Licensing authority; (m) Liquefied petroleum gas; (n) Minimum operational stocks; (o) Natural gas; (p) Open tendering system; (q) Open access (r) Person; (s) Petroleum Business; (t) Pipeline; (u) Refine’; (v) Refined petroleum products; (w) Refinery; (x) Retail dispensing site; (y) Retail supply licence; (z) Specification; (aa) Storage depots; (bb) Strategic environmental assessment; (cc) Strategic stocks; (dd) Street; (ee) Undertaking (b); (ff) Vandalise			
		To delete the definition of			

3	Scope of the Act (1) This Act shall apply to all upstream petroleum operations being carried out in Kenya (2) The scope of this Act shall not include midstream or downstream petroleum operations.	the Upstream Petroleum Regulatory Authority to Petroleum Regulatory Authority THAT clause 3 of the Bill be amended (a) by inserting the words "midstream and downstream" immediately after the words "all upstream" appearing in sub clause (1); (b) by deleting sub-clause (2)	The scope of the Bill need to be amended to take into account the midstream and downstream operations and align the amendments made to the Energy Bill.		Adopted
4	Act to Prevail 4(1) Where there is a conflict between this Act and any other Act regarding upstream petroleum operations, this Act shall prevail. (2) For the avoidance of doubt, a provision of any Act that provides for a person or body to grant or deny any permission for any work shall not be construed as granting that person or body any power in relation to upstream petroleum operations	THAT clause 4 of the Bill be amended to include the words "midstream and downstream" immediately after the word "upstream" in sub-clause (1) and (2)	To align with the amendments made to the Energy Bill		Adopted
8	Conduct of upstream petroleum operations (3) The national government may conduct upstream	THAT clause 8 of the Bill be amended in subclause (3) by deleting the words "the national oil company" appearing in paragraph (a) and substituting therefor the	to allow for the establishment of an oil company.	Hon Mawathe	Adopted

	petroleum operations either— (a) on its own through the national oil company;	words “a national oil company as shall be established by an Act of Parliament”.			
15	The Functions of the Authority	THAT clause 15 of the Bill be amended by- (a) inserting the following paragraphs immediately after paragraph(a)- (a) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil; (b) protect consumer, investor and other stakeholder interests; (c) provide such information and statistics to the Cabinet Secretary as the Cabinet Secretary may from time to time require; (d) develop testing and certification procedures, in conjunction with relevant statutory	Amendments necessary to align the Bill with the amendments made to Part V of the Energy Bill.		Adopted.

		agencies, for certification and testing for energy consumption of equipment and appliances (e) ensure, in collaboration the Kenya Bureau of Standards, that only energy efficient and cost effective appliances and equipment are imported into the country; (f) promote, in consultation with the Kenya National Accreditation Service, the establishment of accredited laboratories for energy efficiency; (2) In addition amend the clause in light of the amendments made to the Energy Bill to introduce reference to midstream and downstream petroleum operations		
16	Powers of the Commission	THAT clause 16 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (a)- (aa) issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the petroleum sector; (ab) set, review and approve contracts, tariffs and charges for common user petroleum logistics	The amendments are necessary to align the Bill with the amendments made to Part V of the Energy Bill.	Adopted.

		facilities and petroleum products; (ac)prescribe the form and manner in which any application for any authority, licence, consent or approval under this Act shall be made and the fees payable in respect of such application; (ad)make and enforce directions to ensure compliance with this Act and with the conditions of licenses issued under this Act; (ae)issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled; (af)investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act.			
16(2))	Powers of the Authority. (2)The Director Public Prosecutions may, on the request of the Authority, appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of	THAT clause 16 be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause- (2) The Director Public Prosecutions shall, appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting	It is vital that there is an officer within the office of the Director of Public Prosecutions that shall deal with criminal offences relating to the petroleum industry.	KCSPOG and Natural Justice	Adopted.

	prosecuting offences under this Act.	offences under this Act.			
17	Board of Directors of the Authority. 17(1)The management of the Authority shall vest in a Board of Directors which shall consist of— (e) five other members appointed by the Cabinet Secretary out of whom - (i) one person shall be nominated by the Kenya Private Sector Alliance; (ii) one person with knowledge and experience in matters relating to petroleum from an institution of higher education.	THAT clause 17 of the Bill be amended by inserting the following new sub-paragraph immediately after sub-paragraph (ii)- (iii)a representative of the Council Governors	There is need to include a representative of the Council of Governors in the Upstream Petroleum Regulatory Authority as county planning and development including energy regulation is a function of the county governments.	Council of Governors	Adopted
29	Funds of the Authority 29(1). The funds of the Authority shall consist of-	THAT clause 29 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (a)- (aa) levies not exceeding one half of a percent on the sales of petroleum products; (bb)licence fees.	To align the Bill with the amendments proposed to the Energy Bill.	Ministry	Adopted
37	National Data Centre 37. The Authority	THAT the Bill be amended by deleting clause 37 and substituting therefor the following	There is need to amend clause 37 to provide clarity that the National Data	Council of Governors	Adopted.

	shall establish a national data centre which shall be used for the storage, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations	clause- 37. The Authority shall establish a national data centre which shall be used for the storage including storage of cores and samples, geoscience, spatial and other critical data, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations.	shall be used for the storage of among other things cores and samples.		
42	Clause 42(1) Constitution of blocks (1) For the purposes of this Act, the Cabinet Secretary may, by notice in the Gazette, divide Kenya and its continental shelf into numbered areas which shall be defined by specific geographical co-ordinates, and each area shall be described as a "block".	THAT clause 42 of the Bill be amended by inserting the words "after consultation with the Advisory Committee" immediately after the words "the Cabinet Secretary".	This is important to ensure a consultative process of mapping out Kenya into specific co-ordinates.	Council of Governors	Adopted
48	Operator (2) A contractor may substitute one operator for another operator as may be provided for in the petroleum agreement and in this Act.	THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)- (3) The public shall be informed of the changes to the operator by way of a gazette notice, a newspaper of nationwide circulation and a radio of local coverage in the area in which the operations are being undertaken.	When there is a change in the operator, the public should be informed more so the local community.	KCSPOG and Natural Justice	Adopted.
51	Petroleum	THAT clause 51(9)(c)(ii)	There is need to be	KCSPOG	Adopted

	production. 9(c)(ii) have sufficient notice of any decisions to be made or permits to be issued which may affect them.	of the Bill be amended by inserting the words "of at least twenty one working days" immediately after the words "sufficient notice".	clear on what the term sufficient notice means in terms of timelines.	and Natural Justice	
67	Decommission funds (8)The management of the decommissioning fund shall be done by a committee consisting of representatives of the National Government and the contractor, in such manner as may be prescribed by regulations.	THAT clause 67(8) of the Bill be amended by inserting the words "County Government" immediately after the words "National Government".	This is in recognition of the functions of county governments in environment protection.	Council of Governors	Adopted.
77	Local content requirements.	THAT clause 77 of the Bill be amended in sub-clause (3) by inserting the following new paragraphs immediately after paragraph (h)- (i)consultancy services; (j) construction services; (k) hospitality services; (l) transport services; (m) security services; (n)clearing and forwarding services; (o) Inspection services; (p) other goods, works and services as may be prescribed in the regulations.	There is need to amend sub-clause (3) to expand the scope of the local content plans.	KCSPOG and Natural Justice	Adopted
87	Waste Management (4)A person contracted by the contractor under subsection (2) shall not carry out	THAT clause 87 of the Bill be amended in sub-clause (4) by deleting the words "and any other relevant National Government entity" and substituting therefor the	This is in recognition of the functions of county governments in environment protection.	Council of Governors	Adopted

	those activities without being registered and licensed by the National Government agency responsible for environment and any other relevant National Government entity.	words "and any other relevant entity"			
95	Emergency Preparedness Measures	THAT clause 95 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)- (4) As far as is practicable, the contractor shall involve the Authority, National Environment Agency, the Council of Governors and the relevant local communities in the preparation of emergency preparedness measures."	There is need to recognize the function of the County Governments in disaster management.	Council of Governors	Adopted
96	Disaster Preparedness prevention and management unit. (1) The Cabinet Secretary shall establish a disaster preparedness, prevention and management unit within the Ministry to co-ordinate response	THAT clause 96 of the Bill be amended by- (a) inserting the words "County Governments" immediately after the words "National Disaster Operations Centre" in sub-clause (2); (b) inserting the following new sub-clause (4) immediately after sub-clause (3)- (4) The disaster preparedness, prevention and management unit shall in liaison with the Contractor carry out public awareness and sensitization forums for	There is need to recognize the function of the County Governments in disaster management. It is also important that the local community is made aware of the role of the disaster preparedness prevention management unit.	Council of Governors and National Oil Corporation	Adopted

	to accidents, disasters and other emergencies that may occur within upstream petroleum operations (2) The disaster preparedness, prevention and management unit shall collaborate with the National Disaster Operations Centre and other relevant institutions to ensure a timely response and emergency preparedness resource sharing.	local communities resident in areas surrounding on going Upstream Operations			
100	Access to land Provided that where the owner cannot be traced, the applicant shall give thirty days' notice, by public advertisement, in at least two newspapers of nationwide circulation and through such other appropriate forum so as to ensure that the information is widely publicized within the local community in which the land exists	THAT clause 100(2) of the Bill be amended by inserting the words "a radio of local coverage, the <i>Gazette</i>" immediately after the words "at least two newspapers of nationwide circulation" appearing in the proviso	There is need to provide that public advertisement shall be made also through publication in the Kenya Gazette and radio of local coverage so as to ensure that information is widely published within the local communities	KCSPOG and Natural Justice	Adopted

101	Power of entry to inspect land. Provided that if there is any damage resulting from such entry the applicant shall pay in full, just compensation as is payable under the relevant written laws.	THAT clause 101 of the Bill be amended by inserting the words "and as shall be prescribed by Regulations" immediately after the words "relevant written laws" appearing in the proviso.	The compensation just payable by an applicant to the owner of land should be prescribed in the relevant written laws and regulations	ANJARW ALLA& KHANA	Adopted
107	Installation of upstream petroleum infrastructure along roads and railways 107. (1) For the purpose of the production and transportation of upstream petroleum, a contractor may erect, fix, install or lay any oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or National Government property in the manner and on the conditions as provided in this Act.	THAT clause 107 of the Bill be amended in sub-clause (1) by inserting the words "and any other relevant law" immediately after the words "in this Act".	There is need to ensure that contractors in undertaking installation of upstream petroleum infrastructure complies with the relevant written laws.	Conservati on Alliance of Kenya; the East African Wild Life Society;	Adopted
113	Offences deemed to be economic crimes	THAT clause 113 of the Bill be amended by- (a) deleting the word "encroaches" in paragraph (a); (b) deleting paragraph (c).	There is need to provide clarity on what acts constitute economic crimes and not misdemeanors.		Adopted
119	Cabinet Secretary to make	THAT the Bill be amended by inserting the following new paragraphs	There is need to confer upon the Cabinet Secretary	KCSPOG and Natural	Adopted

	Regulations	immediately after paragraph (mm)- (nn) the manner in which information on upstream petroleum can be accessed; (oo) the method of public consultations and participation; (pp) a grievance redress process to the Authority.	power to also make regulations on access to information, public participation and the redress processes of the Authority.	Justice	
120	Repeals, savings and transitional provisions. (2) Notwithstanding the provisions of subsection (1)— (f) the contractual rights and obligations existing pursuant to the Petroleum (Exploration and Production) Act are preserved. (3) The powers and functions of the Authority under this Act shall in the interim period before the Authority is operationalized be exercised by the Energy Regulatory Commission established under section 4 of the Energy Act, 2006.	THAT clause 120 of the Bill be amended- (a) in sub-clause (2) by inserting the words “privileges, liabilities” immediately after the words “contractual rights” appearing in paragraph (f); (b) in sub-clause (3) by inserting the words “and the Ministry of Petroleum” immediately after the words “Energy Regulatory Commission established under section 4 of the Energy Act, 2006”.	There is need to align clause 120 with the provisions of section 23 of the Interpretation and General Provisions Act. Further sub-clause (3) need to be amended to provide that the Ministry of Petroleum shall perform the functions of the Authority until the Authority is fully operationalized.	KEPSA, KOGA and the Ministry.	Adopted
Part V	Part V of the Energy Bill, 2017	Insert Part V of the Energy Bill, 2017 into the Bill	To align the Bill with the amendments made to the Petroleum Bill.	Ministry	Adopted.

MIN. NO. 160/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Eight O'clock in the evening.

 _____
(CHAIRPERSON)

SIGNED.....

DATE..... 10-04-2018

MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD SHARK CONFERENCE ROOM IN DIANI REEF BEACH RESORT AND
SPA TUESDAY 3RD MARCH, 2018 AT 9.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Lemanken Aramat, M.P.
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Elisha Odhiambo, MP
7. The Hon. Ekomwa Lomenen James, M.P.
8. The Hon. Mohammed Ali Lokiro, MP
9. The Hon. Ken Chonga, MP
10. The Hon. Vincent Musyoka Musau, M.P.
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Walter Owino, MP
13. The Hon. Julius Musili Mawathe, MP
14. The Hon. Clement Muturi Kigano, M.P.
15. The Hon. Abdikhaim Osman Mohamed, M.P.
16. The Hon. Amina Gedow Hassan, M.P.
17. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MINISTRY OF ENERGY AND THE MINISTRY OF
PETROLEUM TECHNICAL TEAM

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Peter Chemweno - Deputy Director Committee Services (NA)
2. Mr. Benjamin Magut - Lead Clerk
3. Mr. Douglas Katho - Clerk Assistant III
4. Mr. Eugene Apaa - Research Officer
5. Ms. Jemimah Waigwa - Legal Counsel
6. Ms. Brigita Mati - Legal Counsel
7. Mr. Moge Abdulyusuf - Fiscal Analyst
8. Mr. Dan Kirwa - In Charge- Security
9. Mr. John Nganga - Audio Recording Officer
10. Mr. Robert Langat - Office Assistant

MIN. NO. 155/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 156/2018: CONSIDERATION OF PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Committee considered the submissions of the stakeholders and made the following observations -

- (1) The Committee agreed with clauses 5, 6, 7, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 97, 98, 99, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 115, 116, 117, 118 and the Schedules to the Bill.
- (2) The Committee agreed to insert Part V of the Energy Bill into the Petroleum Bill and further harmonize the amendments.

MIN. NO. 157/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past One O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 45TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 AT THE BOARD ROOM ON 2ND FLOOR PROTECTION HOUSE ON TUESDAY 27TH MARCH, 2018 AT 9.30AM

MEMBERS PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. David Gikaria, M.P. | - | Chairperson |
| 2. The Hon. (Dr.) Robert Pukose, M.P. | - | Vice Chairperson |
| 3. The Hon. Gitau Faith Wairimu, M.P. | | |
| 4. The Hon. Lemanken Aramat, M.P. | | |
| 5. The Hon. Cecily Mbarire, M.P. | | |
| 6. The Hon. Tindi Nicholas Mwale, MP | | |
| 7. The Hon. Elisha Odhiambo, MP | | |
| 8. The Hon. Ekomwa Lomenen James, M.P. | | |
| 9. The Hon. Mohammed Ali Lokiro, MP | | |
| 10. The Hon. Ken Chonga, MP | | |
| 11. The Hon. Vincent Musyoka Musau, M.P. | | |
| 12. The Hon. Joseph Wathigo Manje, M.P. | | |
| 13. The Hon. Walter Owino, MP | | |
| 14. The Hon. Julius Musili Mawathe, MP | | |
| 15. The Hon. Abdikhaim Osman Mohamed, M.P | | |
| 16. The Hon. Amina Gedow Hassan, M.P | | |
| 17. The Hon. Elsie Muhanda, MP | | |

ABSENT WITH APOLOGY

1. The Hon. Clement Muturi Kigano, M.P.
2. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: THE OIL TRANSPOTERS ASSOCIATION
(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

- | | | |
|--------------------------|---|--------------------------|
| 1. Mr. Benjamin Magut | - | Lead Clerk |
| 2. Mr. Douglas Katho | - | Clerk Assistant III |
| 3. Mr. Eugene Apaa | - | Research Officer |
| 4. Mr. Moge Abdulyusuf | - | Fiscal Analyst |
| 5. Ms. Sheila Chebotibin | - | Serjeant-At-Arms |
| 6. Mr. John Nganga | - | Audio Recording Officer. |

MIN. NO. 152/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 153/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Committee received Submissions by the Oil Transporter Association as follows: -

1. The provisions of the Energy Bill 2017 should be read in concert with the Energy (Licensing of Petroleum Road Transportation Businesses) Regulations, 2011.
2. We propose that the Commission should in concert with the Treasury increase the price of kerosene which is the main component used in the adulteration of super petroleum. This will curb adulteration as well as close the illegal storage facilities.
3. We propose that our Association be involved through public participation at all levels of decision making. We would appreciate a slot in all the relevant authorities and bodies for instance ERC, KRA, KEBS, NTSA etc.
4. We propose that this Bill should contain in a Schedule, elaborate internationally accepted procedures in respect of loading and offloading of petroleum products.
5. We welcome the introduction of designated parking facilities in all counties for petroleum tankers and recommend a unified license/permit for the petroleum tankers which that will be acceptable in all counties.
6. We propose that the Commission or KEBS should issue a Certificate of Conformity for all petroleum tankers once it is shown that they are in conformity with the manufacturer's specifications as well as KEBS specifications for the transportation with of petroleum products.
7. We also propose that petroleum tankers be exempted from being weighed at weighbridges subject to production of a KEBS Certificate of Conformity aforesaid.
8. We propose that the Commission should refrain from issuing a blanket revocation of transporters licenses/permits when issues of non-compliance arise like what happened in the recent case of one of our members, A.O. Bayusuf Limited where the entire fleet was banned from transporting petroleum. We obtain individual licences/permits for each petroleum tanker hence the Commission should only revoke permits of specific petroleum tankers found to be in breach and not the whole fleet.
9. We propose that a Special Police unit be set up to deal with operators of illegal fuel dens, errant drivers and unscrupulous traders.
10. While we as transporters are committed to ensuring compliance and conformity of petroleum products while in transit, we seek the assistance of the relevant authorities to ensure that rogue employees/drivers are brought to book when found culpable.

MIN. NO. 154/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past One O'clock.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 44TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 AT PATE ISLAND ON 24TH MARCH, 2018 AT 9.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Tindi Nicholas Mwale, MP
4. The Hon. Ken Chonga, MP
5. The Hon. Joseph Wathigo Manje, M.P.
6. The Hon. Walter Owino, MP
7. The Hon. Amina Gedow Hassan, M.P
8. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Gitau Faith Wairimu, M.P.
3. The Hon. Lemanken Aramat, M.P.
4. The Hon. Elisha Odhiambo, MP
5. The Hon. Ekomwa Lomenen James, M.P.
6. The Hon. Mohammed Ali Lokiro, MP
7. The Hon. Vincent Musyoka Musau, M.P.
8. The Hon. Abdikhaim Osman Mohamed, M.P
9. The Hon. Clement Muturi Kigano, M.P.
10. The Hon. Julius Musili Mawathe, MP
11. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: THE SARARA OIL AND GAS IN PATE ISLAND, LAMU COUNTY

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Ms. Sheila Chebotibin - Serjeant-At-Arms
4. Mr. John Nganga - Audio Recording Officer.

MIN. NO. 149/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 150/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Committee received Submissions by the Sarara Oil and Gas Company in Pate Island as follows:-

The Objective of the Lamu Integrated Gas to Power is to drill and to prove up the resources, which have a mid-case aggregate gross estimate of approximately 1 trillion cubic feet of gas. (Sufficient to produce 1,000MW for 15+years).

The gas in Lamu was discovered in by Shell in 1970s but due to technical difficulties the reservoir was not drilled beyond 10 metres and was not logged or tested. There is therefore uncertainty of gas volume, flow rate or water saturation.

The project is proposed to be undertaken in a phased development whereby phase I - Pate 2 & Pate 3 wells, production of 50-200MW through an early production system (1st electricity production targeted for 2020). Thereafter Then Phase II - additional drilling to support a 300MW permanent facility and consequently Phase III & IV - additional drilling and expansion to 1,000MW which is at an advantageous position by Lamu port and foot of LAPSET project

The Objectives Pate 2 and Pate 3 Wells is that Pate 2 is to re-drill of Pate 1 to a planned depth of 4,513m whereas Pate 3 is too deviated well to prove up sufficient reserves from two wells for a 50-200 MW early production scheme development.

The Post drilling activities success case are the USTDA Feasibility study which is underway, a concept design for Gas Treatment, a Concept design for Power Plant, an Interconnection studies to Kenyan National grid as well as an ESIA for gas field development and power production.

Other requirements are the sourcing of the of the equipment and finance together with the Legal & regulatory framework which includes the Power Purchase Agreement (PPA), the Interconnection Agreement, the Shareholder Agreement as well as the Permits, licences and approvals

An Implementation plan is already up-to-date and the drilling start date is in mid-April 2018. Land, Environment, Local content, Employment, gender balance and Community Social Responsibility is also required to be as practical as possible.

MIN. NO. 151/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Two O'clock.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 43RD SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 AT LAMU FORT, LAMU ON 23RD MARCH, 2018 AT 3.30PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Tindi Nicholas Mwale, MP
4. The Hon. Ken Chonga, MP
5. The Hon. Joseph Wathigo Manje, M.P.
6. The Hon. Walter Owino, MP
7. The Hon. Amina Gedow Hassan, M.P
8. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Gitau Faith Wairimu, M.P.
3. The Hon. Lemanken Aramat, M.P.
4. The Hon. Elisha Odhiambo, MP
5. The Hon. Ekomwa Lomenen James, M.P.
6. The Hon. Mohammed Ali Lokiro, MP
7. The Hon. Vincent Musyoka Musau, M.P.
8. The Hon. Abdikhaim Osman Mohamed, M.P
9. The Hon. Clement Muturi Kigano, M.P.
10. The Hon. Julius Musili Mawathe, MP
11. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MEMBERS OF THE PUBLIC AT LAMU FORT IN LAMU ISLAND

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Ms. Sheila Chebotibin - Serjeant-At-Arms
4. Mr. John Nganga - Audio Recording Officer.

MIN. NO. 146/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 147/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Committee received submissions from the residents of Lamu in Amu Island in the following groups:-

- a. Save Lamu
- b. Farmers Association
- c. Water resources Association
- d. Lamu Hope Initiative among others

The submissions were not opposed to the installation of the Coal plant in Lamu but are concern about the benefits of the local Community, their compensations, the degradation of the environment, the livelihood of the farmers and the fear of not acquiring opportunities form the coal plant.

The Committee was also informed that access to information is a very important matter that has been ignored in many instances of putting up such projects and therefore that urged the committee to be able extensively undertake the public participation and to provide adequate information to the public on the details of not only the coal plant project but also other mega projects as well.

The Committee was also informed that the project consultants should be able to comply with the EMCA and Mining Act so as to ensure environmental protection and relevant laws are adhered to.

MIN. NO. 148/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Six O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 42ND SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 AT KWASASI, LAMU ON 23RD MARCH, 2018 AT 12.00PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Tindi Nicholas Mwale, MP
4. The Hon. Ken Chonga, MP
5. The Hon. Joseph Wathigo Manje, M.P.
6. The Hon. Walter Owino, MP
7. The Hon. Amina Gedow Hassan, M.P
8. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Citau Faith Wairimu, M.P.
3. The Hon. Lemanken Aramat, M.P.
4. The Hon. Elisha Odhiambo, MP
5. The Hon. Ekomwa Lomenen James, M.P.
6. The Hon. Mohammed Ali Lokiro, MP
7. The Hon. Vincent Musyoka Musau, M.P.
8. The Hon. Abdikhaim Osman Mohamed, M.P
9. The Hon. Clement Muturi Kigano, M.P.
10. The Hon. Julius Musili Mawathe, MP
11. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MEMBERS OF THE PUBLIC AT KWASASI PROPOSED SITE
FOR THE COAL PLANT

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Ms. Sheila Chebotibin - Serjeant-At-Arms

MIN. NO. 143/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 144/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM
(EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The residents of the Kwasasi area, the proposed coal plant area made oral presentations on the Energy Bill, 2017.

They asked the Committee to ensure that the benefits of the coal plant should be entrenched into the bill as a law especially on the areas of corporate social responsibility, local content, revenue sharing, compensations and environmental degradations.

a. Ms. Halima Majid representing the women.

The Committee was informed that the Kwasasi Community is in appreciation of the government efforts to set up the project in the areas of marginalised communities.

The community acknowledged that they are not all that learned and that their main source of livelihood is farming and that AMU power project must find an alternative way of livelihood for them.

They informed the Committee that the government should speed up compensation for the affected persons on the land that they will use for the AMU Coal project.

b. Hussein Kombo – Chairman of the Kwasasi residents.

The chairperson of the Kwasasi residents said urged the Committee to ignore the voices of the civil Society organisations and the NGO's who are not based in Lamu and are opposed to the installation of the Coal plant. The Committee was informed that these CSO's and NGO's are not helping the community to achieve their goals.

He informed the Committee that Lamu will achieve the hopes of Education, Health and Clothing when the farmers will be compensated and the benefits accrued will improve the lives of the residents of Lamu.

c. Abdi Rahman Abud

He informed the Committee that there are enough forests in Lamu and that the Ministry of energy has already sensitised the Community and that the Amu Power Project will have immense benefits to the Country as a whole.

He urged the Committee to entrench the establishment of an industrial park in the Bill and that employment opportunity to the locals should be pegged at 70% with about 30% being for the management team from the local Community.

They also said that the Community liaison for the project should be a local who understands the host community and is able to get their concurrence and prioritise issues especially when they are undertaking the Corporate Social Responsibility.

The Committee was informed that the Community should decide on the projects to be undertaken as part of the CSR and that the locals to be given priority especially on the tenders and suppliers.

MIN. NO. 145/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Two O'clock.

SIGNED.....

(CHAIRPERSON)

DATE.....

10-04-2018

MINUTES OF THE 41ST SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND
PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 IN
MUKOWE, LAMU ON 23RD MARCH, 2018 AT 9.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Tindi Nicholas Mwale, MP
4. The Hon. Ken Chonga, MP
5. The Hon. Joseph Wathigo Manje, M.P.
6. The Hon. Walter Owino, MP
7. The Hon. Amina Gedow Hassan, M.P
8. The Hon. Elsie Muhanda, MP

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Gitau Faith Wairimu, M.P.
3. The Hon. Lemanken Aramat, M.P.
4. The Hon. Elisha Odhiambo, MP
5. The Hon. Ekomwa Lomenen James, M.P.
6. The Hon. Mohammed Ali Lokiro, MP
7. The Hon. Vincent Musyoka Musau, M.P.
8. The Hon. Abdikhaim Osman Mohamed, M.P
9. The Hon. Clement Muturi Kigano, M.P.
10. The Hon. Julius Musili Mawathe, MP
11. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: OFFICE OF THE GOVERNOR FOR LAMU COUNTY
AND MEMBERS OF THE PUBLIC.

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Mr. Eugene Apaa - Research Officer
4. Mr. Abdulnasir Yusuf Moge - Fiscal Analyst
5. Mr. Onesmas Kiragu - Serjeant-At-Arms

MIN. NO. 140/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 141/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM
(EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Office of the County Commissioner of Lamu County received the delegation of the Members of the National Assembly of the departmental Committee on Energy in Lamu and thereafter them to the office of the governor of Lamu County.

The Office of the Governor welcomed the committee and informed the Committee that Lamu is a destination for many projects that are of benefit to the Country as a whole as well as attracting tourists.

The Governor was confident that the challenge of Insecurity if well addressed will ensure that Lamu becomes the best destination for tourism and business solutions.

MIN. NO. 142/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Eleven O'clock.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD IN BOARD ROOM ON 2ND FLOOR PROTECTION HOUSE ON
THURSDAY 22ND MARCH, 2018 AT 9.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Elisha Odhiambo, MP
4. The Hon. Ekomwa Lomenen James, M.P.
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Vincent Musyoka Musau, M.P.
7. The Hon. Ken Chonga, MP
8. The Hon. Mohammed Ali Lokeiro, MP
9. The Hon. Joseph Wathigo Manje, M.P.
10. The Hon. Lemanken Aramat, M.P.
11. The Hon. Abdikhaim Osman Mohamed, M.P
12. The Hon. Walter Owino, MP
13. The Hon. Amina Gedow Hassan, M.P
14. The Hon. Elsie Muhanda, MP
15. The Hon. Clement Muturi Kigano, M.P.

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Gitau Faith Wairimu, M.P.
3. The Hon. Julius Musili Mawathe, MP
4. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

GOVERNOR FOR NAKURU COUNTY AND
NAROK

1. Hon. Lee Kinyanjui - Governor, Nakuru County
2. Hon. Evalyn Aruasa - Deputy Governor, Narok County
3. Mr. James Wamugo - Legal Officer, Narok County
4. Mr. Grishon Githiomi - Director Liaison, Nakuru County
5. Mr. Moses Cherono - Technical Advisor, NCG

IN ATTENDANCE:

NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Mr. Eugene Apaa - Research Officer
4. Mr. Abdulnasir Yusuf Moge - Fiscal Analyst
5. Mr. Onesmas Kiragu - Serjeant-At-Arms

MIN. NO. 137/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 138/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM
(EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The governors for Nakuru and Narok appeared before the Committee and made the following submissions:-

- i. The Energy Bill vests geothermal resources solely with the National government. However geothermal resources are found in the counties and as such are a shared resource. Therefore geothermal resources should be vested in both National and County governments.
- ii. The royalty form geothermal resources should be based on a flat rate overall output. The current formulae calculates the royalties as a net value of the wellhead output after deduction expenses. As a result, an insignificant amount accrues to the government as royalty from such an important resource.
- iii. The share of revenues should be based on overall capacity not the utilized capacity. Geothermal companies drill steam and often take long to convert steam to power. This idle steam constitutes waste of resources.
- iv. Revenues accruing from geothermal resources should be shared between National and County governments. County governments should be left to come up with legislation for allocation to Communities. This is because the sharing of resources ought to be done within a legal framework subject to public scrutiny and county assembly is the best avenue.
- v. All decisions that affect overall management of geothermal resources must involve the County governments.
- vi. After exploration, the involved companies should bear restoration costs and reduce adverse effects to the Community.
- vii. Section 84(3) (a) provides that the royalty to County government should not exceed double the amount allocated to the county by the Commission for Revenue Allocation. There should not be capping of royalties as captured in the current energy Bill. There is no adequate rationale for the capping.

MIN. NO. 139/2018:

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Twelve O'clock.

SIGNED.....

(CHAIRPERSON)

DATE.....

10-04-2018

MINUTES OF THE 39TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD IN THE NEW SMALL DINNING IN THE NEW WING ON TUESDAY
20TH MARCH, 2018 AT 10.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
3. The Hon. Ekomwa Lomenen James, M.P.
4. The Hon. Walter Owino, MP
5. The Hon. Mohammed Ali Lokiro, MP
6. The Hon. Amina Gedow Hassan, M.P
7. The Hon. Elsie Muhanda, MP
8. The Hon. Tindi Nicholas Mwale, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Elisha Odhiambo, MP
12. The Hon. Joseph Wathigo Manje, M.P.
13. The Hon. Lemanken Aramat, M.P.
14. The Hon. Abdikhaim Osman Mohamed, M.P
15. The Hon. Clement Muturi Kigano, M.P.

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Gitau Faith Wairimu, M.P.
3. The Hon. Julius Musili Mawathe, MP
4. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Mr. Eugene Apaa - Research Officer
4. Mr. Abdulnasir Yusuf Moge - Fiscal Analyst
5. Ms. Sheila Chebotibin - Serjeant-At-Arms

MIN. NO. 134/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 135/2018: CONSIDERATION OF PROPOSED AMMENDMENTS TO THE
ENERGY BILL, 2017

The Committee was presented with a matrix for the proposed amendments to the Energy Bill, 2017 as follows:-

ENERGY BILL 2017 ANALYSIS OF MEMORANDUM SUBMITTED BY
STAKEHOLDERS ON THE ENERGY BILL, 2017 (NATIONAL ASSEMBLY BILL
NO. 50 OF 2017)

No.	Clause	Current Proposed Amendment	Past Proposed amendments by proposed amendments in 2015 Bill	Last Committee adopted amendment (Parliament proposed Amendments that was not carried in 2015 Bill)	Presidential reservation if any
Clause	ENERGY BILL, 2017 Clause in the Bill	PROPOSED AMENDMENT		RATIONAL F	Proposing entity
1 2	"local community" means a people living in a sub county within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource	"local community" means a consciously distinct and organized group of users of land who are citizens of Kenya and share any of the following attributes (a) common ancestry, (b) similar culture or unique mode of livelihood (c) socio-economic or other similar common interest (d) geographical space, (e) ecological space or (f) ethnicity, restricted to a sub- county or counties within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource		The amendment seeks to align the definition of the term local community so that of the community land Act and Article 66 of the Constitution. The amendment widens the scope of what a local community is. The definition proposed should include people living within sub-counties where energy resources are located and people who use the land from time to time. This will cater for pastoralist and nomadic communities who may not necessarily live in the area but use the land depending on the season of the year <i>Natural justice org</i>	Natural Justice
2	Insertion of a new definition	"renewable energy auction system" means competitive bidding that allows unbiased price discovery with the objective greater cost efficiency for electricity from renewable sources		Inclusion of the definition of auction system as the insertion of the auction system has been proposed in section 90	KEPSA
3	Delete	<u>MINISTRY OF ENERGY</u> Delete Section 3 (b)		This part to be moved to Petroleum Bill	
1	National Energy Policy (1) The Cabinet Secretary shall develop and publish a national energy policy which shall be reviewed every five years	<u>ANJARWALJA & KILANA</u> Section 4(1) Insert the words "in consultation with the relevant stakeholders" immediately after the words "Cabinet Secretary shall"	None	The proposed national energy policy would undoubtedly have implications on all participants in the energy sector. Before implementing the national energy policy, the private sector and other stakeholders views should be obtained before the policy is published.	
	Energy Policy and Plan	<u>KEPSA</u> Section 1 (2) be amended by inserting a new clause to read as Section 1(2A) "The Report on implementation of the national energy policy shall	<u>KEPSA</u> Section 1(2) be amended by providing that "Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national energy policy outlining progress on	Publication of this report in the media will help create awareness and public discourse on key issues	

		be published in at least one national newspaper in a form that the Cabinet Secretary shall consider prudent"	specific areas and parameters". Section 4 be amended by inserting a new clause after paragraph (2) to read as: Section 4(2)(A) "The Report on implementation of the national energy policy shall be published in at least one national newspaper in a form that the Cabinet Secretary shall consider prudent."		
5	Integrated National Energy plan	<u>ANJARWALLA& KHANA</u> Section 5(1) be amended by inserting the words " in consultation with the relevant stakeholders" immediately after the words " Cabinet Secretary shall"	None	The integrated national energy plan would have several implications on the participants in the energy sector and Kenyans at large. The plan should be developed in consultation with the private sector and other stakeholders.	
	Consolidated plans	<u>KEPSA</u> Section 5 be amended by deleting subclause (4) and thereafter substitute it with "The Cabinet Secretary shall consolidate the plans contemplated in subsection (2) and (3) into an integrated national energy plan which shall have a planning horizon appropriate to the nature of the service and shall be reviewed at least once every three years"	<u>KEPSA</u> Section 5 be amended by deleting subclause (4) and thereafter substitute it with "The Cabinet Secretary shall consolidate the plans contemplated in subsection (2) and (3) into an integrated national energy plan which shall be reviewed regularly at least once every three years"	It is recommended to prescribe a timeline for the integrated energy plans contemplated under section 5 (4). This will ensure that specific milestones can be established for review within the specified timeline and at regular rests.	
	5(5)The energy plans shall— (b) serve as a guide for energy infrastructure investments;	<u>ANJARWALLA& KHANA</u> Section 5(5) Insert the words " legislation and policies" immediately after the words " a guide for" in paragraph (b)	None	The energy plans will be prepared by a national energy service provider and the county governments and may contain vital information that would form the basis for legislation and policies.	
6	National Energy Policy	<u>NATURAL JUSTICE</u> Section 6. Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national energy policy outlining progress on specific	None	A report on specific progress against key parameters will enable implementation on energy reforms to be measured against specific targets set out under the national energy policy such as access to clean energy; functioning of energy	

7 8	N/A Promotion of energy investments	areas and parameters, KEPSA Section 8(1) The Cabinet Secretary shall develop a conducive environment for the promotion of investments in energy infrastructure development, including formulation of incentives and guidelines in collaboration with relevant County agencies on development of energy Projects and to disseminate them among potential investors."	KEPSA Section 8(1) The Cabinet Secretary shall develop a conducive environment for the promotion of investment in energy infrastructure development including formulation of incentives and guidelines in collaboration with relevant County agencies on development of energy Projects and to disseminate them among potential investors	markets interconnection and integration of energy networks There is need to make specific provision for incentives to facilitate Private Sector investment in energy infrastructure
9 10	N/A Functions of the Commission	<u>MINISTRY OF ENERGY</u> In Section 10 (a) delete paragraph a (ii) since it deals with petroleum (downstream) <u>ANJARWALLA & KHANA</u> Section 10 Insert the words "and renewable energy" immediately after the words "electrical energy" in paragraph (a) (i)	None None	All the functions stated in subparagraph (ii) fall within the activities in subparagraph (i) therefore delete subparagraph (ii) and include the words "renewable energy" in subparagraph (ii)
11	Powers of the Commission	<u>MINISTRY OF ENERGY</u> Amend Section 11 delete paragraph b <u>ANJARWALLA & KHANA</u> Section 11 Insert a new paragraph immediately after paragraph (b) (bA) set, review and approve incentives that encourage investments that take into consideration public interest	None None KEPSA The Authority shall have all powers necessary or expedient for the performance of its function under this Act and in particular	Provision deals with downstream petroleum operation which has moved to Petroleum Bill There needs to be a provision that mandates the Commission to use its powers in a manner that encourages investment while protecting the public and taking the public's interest into consideration This provision was enhanced to 100 000 per violation day and its capped at 30 days

			the Authority shall have the power to— (1) "Impose such sanctions and civil fines, being not exceeding ten thousand shillings per violation per day to secure compliance with orders issued under this Act"		
12	Composition of ERC Commission	<u>MINISTRY OF ENERGY</u> In Section 12(1) (b) Delete the words "and Petroleum" appearing after word Energy In Section 12(1) (c) Delete the words "energy and" appearing after words responsible for			
		<u>KEPSA</u> Section 12 be amended by providing that Board of Directors of the Commission consisting of - (d) five other members appointed by the Cabinet Secretary to represent the Private Sector with experience on energy matters and nominated by the most representative Private Sector body in Kenya.	<u>KEPSA</u> Section 12 be amended by providing that Board of Directors of the Commission consisting of - (d) five other members appointed by the Cabinet Secretary to represent the Private Sector with experience on energy matters and nominated by the most representative Private Sector body in Kenya.	It is necessary to allow the Private Sector nominate names for appointment by the Cabinet Secretary to ensure an inclusive management team that draws in participation from the government and the Private Sector.	
13-19	N/A				
20	Funds of the Commission	<u>MINISTRY OF ENERGY</u> In Section 20(1) (a) Delete the words "and Petroleum products" appearing after word Electricity	None		
		<u>ANJARWALLA& KHANA</u> Delete sub clause (1) (a) and substitute therefor the following- "(a) levies imposed at the discretion of the Cabinet Secretary;"		The proposed amendment should give the Cabinet Secretary the discretion to impose the levies as provided for under the Energy Act, 2006	
21	N/A				
22	Powers of Committees or agents	<u>ANJARWALLA& KHANA</u> Insert a new subclause (7) (7A) Any power exercised under		The powers exercised in clause 22 should be subjected to constitutional thresholds in Articles 31 and	

44		KEPSA	None	
45		Section 43 (1) paragraph (k) and (l) be amended by deleting the word "institute" and substitute therefor the word "Agency"		It is a geographical area. The Energy Bill (2017) replaced the Energy Bill (2015) that created the Energy and Petroleum Institute where the Institute was renamed to the Nuclear Power and Energy Agency.
		Section 43 (1) be amended by deleting paragraph (n)		There is a need to promote a shift to modern, clean and sustainable energy sources and not actively promote woody biomass.
		Section 43 (1) (n) be amended by deleting the word "turbines" appearing after the words "Solar systems" and substitute therefor the words "wind energy converters"		The provisions are related to renewable energy. Use of turbine is too general.
46-49	N/A			
50	Chief Executive Officer	<u>MINISTRY OF ENERGY</u> Section 45 (2) be amended by deleting the word "selection" appearing after the word "competitive" and substitute therefor the word "recruitment"		The right terminology is recruitments
51-56	N/A			
57	Protection from personal liability	<u>MINISTRY OF ENERGY</u> Section 50 be amended by inserting the word "liable" appearing after the word "personally"		Cleaning
58	N/A			
59	Board of Directors of the Agency	<u>MINISTRY OF ENERGY</u> Section 57 (c) (i) be amended by providing that one(1) of the four (4) nominee by the Cabinet Secretary must be an Engineer		
		<u>KEPSA</u> Section 57 be amended in (d) by providing that "not more than five other members, appointed by the cabinet Secretary, three of whom shall be drawn from the Private Sector with experience and expertise on energy matters drawn from the Private Sector and nominated by the most representative Private Sector body in Kenya"	<u>KEPSA</u> Section 57 be amended in (d) by providing that "not more than five other members, appointed by the cabinet Secretary, three of whom shall be drawn from the Private Sector with experience and expertise on energy matters drawn from the Private Sector and nominated by the most representative Private Sector body in Kenya"	

58-68	N/A				
69	Funds of the Agency	<u>KEPSA</u> Section 69 be amended by deleting subclause (b)	<u>KEPSA</u> Section 69 be amended by deleting subclause (b) & (c)	The provisions in Section 69 (b) will increase the cost of doing business. The Authority should draw its funding from moneys voted by the National Assembly.	
70-71	N/A				
72	Vesting of renewable energy resources	<u>NATURAL JUSTICE</u> Section 72 be amended by deleting whole clause and thereafter replace it with " All unexploited renewable energy resources under or in any land vests in the National Government <i>and is administered on behalf of the people of Kenya</i> subject to any rights which, by or under any written law, have been or are granted or recognized as being vested in any other person".	None	The Bill provides that all renewable energy resources vest in the national government. The Constitution of Kenya, 2010 in Article 62 (2) states that public land vests in the National Government (County government) and is administered on behalf of the people of Kenya. Align it to Article 69 on obligations of the state to utilise the environment and natural resources for the benefit of the people of Kenya.	
73	Preparation of resource maps and renewable energy resources inventory	<u>KEPSA</u> Section 73 be amended by deleting subclause (2) and substituting it with "The Cabinet Secretary shall prepare a renewable energy resources and resource map in respect of each renewable energy resource area <i>taking into account changes in market conditions, available technologies, and other relevant factors</i> and thereafter prepare updates biennially which shall be published in the gazette".	<u>KEPSA</u> Section 73 (2) be amended by providing that "The Cabinet Secretary shall prepare a renewable energy resources inventory and resource map in respect of each renewable energy resource and thereafter prepare updates biennially <i>which shall be disseminated to the public</i> "	The reports should be comprehensive enough to inform decision makers e.g. on which technologies to prioritize.	
		<u>A&K ASSOCIATES</u> Section 73 (2) be amended by deleting word "biennially" and substitute therefor the word "annually"	None	Having only one -off countrywide survey is not efficient. Therefor there is need for a regular updated on the survey ordered by the CS. The update should be annually.	
74	Promotion of renewable energy	<u>KEPSA</u> Section 74 be amended in subclause (i) by deleting the words " charcoal, fuel wood" appearing immediately after the word "bioethanol" Section 74 be amended in subclause (2) (b) by deleting the words "and charcoal" appearing immediately after the word "geothermal" Section 74 be amended by deleting subclause (2) (c)	None	Wood contributes significantly to respiratory health problems faced by women in rural areas and urban slums and Kenya is suffering from a depletion of forest resources and it is inappropriate to encourage more cutting of trees for energy. The focus should be on encouraging cleaner cooking alternatives such as LPG. To include promotion of use	

75	Establishment of renewable energy resource advisory Committee	Section 74 be amended in subclause (2) (c) by deleting the word "turbines" appearing immediately words "solar systems and" and substitute therefor the word "energy converter" <u>KEPSA</u> Section 75 be amended by deleting subclause (3) and substituting it with 75 (3) "The Renewable Energy Resource Advisory Committee shall co-opt at least two members with experience on energy matters from the Private Sector and nominated by the most representative Private Sector body in Kenya including representation from a nationally recognized renewable energy association or body" <u>A&K ASSOCIATES</u> Section 75 be amended by inserting a new paragraph (h) immediately after paragraph (g)- "(h) Director-General of the Water Management Authority or his or her representative"	<u>KEPSA</u> Section 75 be amended by deleting subclause (3) and substituting it with 75 (3) "The Renewable Energy Resource Advisory Committee shall co-opt at least two members with experience on energy matters from the Private Sector and nominated by the most representative Private Sector body in Kenya" None	of RE in buildings and in the C&I sector The provisions are related to renewable energy use of turbine is too general In view of the functions set out under S 75 (4), it would be prudent to expand the composition of the committee to include Private Sector representation to reflect the voice of the Private Sector on issues like establishing the criteria for allocation of renewable energy resource The inclusion of the DC water management authority as a member of the committee is to align the water resources regulator under the water Act with the objectives of the Committee
76	Geothermal resources vested in the National Government	<u>NATURAL JUSTICE ORG</u> Section 76 be deleted and substituted a new clause h 76. "All un-extracted geothermal resources under or in any land shall vest in the National Government and shall be <u>administered on behalf of the people of Kenya</u>" <u>A&K ASSOCIATES</u> By deleting clause 76 and substituting therefor with the following new clause- 76 "All un-extracted (a) geothermal resources under or in any land, and (b) wind and hydro resources Shall vest in the National Government"	None None	Wind and hydro resources should be included into this category
77	N/A			
78	Cabinet Secretary authorize search geothermal resources to of	<u>KEPSA</u> Section 78 be amended in subclause (4) by deleting the	<u>KEPSA</u> Section 78 be amended by	The one year period provided for by the Authority to dig a well needs to be extended because it is

		words "one year from the date of issue" appearing immediately after the word "period of " and substitute therefor "not less than one year"	deleting subclause (4) and therefore substituting it with the following new subclause "An Authority granted under this section shall not be transferable, and shall be in force for a period of two years, but may be renewed for such period of time from the date of expiry thereof or from the expiration of any renewal".	not sufficient yet it involves significant investment.	
		<u>A&K ASSOCIATES</u> Section 78 be amended in subclause (4) by insert the words "except with the express approval of the Commission" immediately after the words " be transferable"	None	In energy projects, it is practice to have investors join into a project as soon as it is seen to be feasible. The amendment will enhance ease of doing business.	
79	Cabinet Secretary may grant a geothermal resources license	<u>KEPSA</u> Section 79 be amended by deleting subclause (1) and therefore substituting it with the following new subclause "The Cabinet Secretary may, on receiving an application for the extraction of geothermal resources in respect of any land, and in consultation with the Renewable Energy Resource Advisory Committee"	<u>KEPSA</u> None	There is need for a clearer and elaborate mechanism that informs decision-making by the Cabinet Secretary on the grant of a geothermal resource licence. S. 78 (1) has vested exclusive power on the Cabinet Secretary to make a determination without reference to any advisory or oversight organ	
		<u>A&K ASSOCIATES</u> No proposed amendments		It is unclear how the competitive issue of licenses will be undertaken by the Cabinet Secretary. The section should provide guidelines on how this process will be meted out.	
80	Rights under license	<u>A&K ASSOCIATES</u> Section 80 be amended in subclause (1) by inserting the words " within the confines of this Act and other relevant laws" immediately after the words "those operations"	None	The right should be subject to the land Act, the Land Registration Act; the Community Land Act; and the Land Control Act.	
		<u>NATURAL JUSTICE ORG</u> Section 80 be amended by deleting subclause (2) and therefore substituting it with the following new subclause (2) "Where any by-product obtained in the production of geothermal resources may be reclaimed for further use or sale and is a mineral within	None	The Bill should state that the holder of the Geothermal Resource License should apply to extract the mineral on either a small scale or large scale basis and make an application as required in the Mining Act, 2016. The licensee, however, should only have the first option of extracting the mineral once	Natural Justice

		the meaning of the law governing mining, the licensee shall extract and sell the mineral and shall apply for a mining license or permit under the relevant Mining Act within three months of discovering and extracting the resource, this application and sale shall be done in accordance with the provisions of other written law"		they receive the Mining License or Permit and should pay royalties in accordance with the Mining Act	
81-83 84	N/A Royalty	<u>A&K ASSOCIATES</u> Section 84 be amended by deleting subclause (1) and substitute therefor the following new subclause(1)- (1) "The licensee shall pay a royalty on the value at the wellhead of the geothermal resources extracted as prescribed by the Cabinet Secretary in consultation with the Commission". <u>KEPSA</u> Section 81 be amended in subclause (5) by inserting the words "in consultation with the Renewable Energy Resource Advisory Committee" immediately after the words "Cabinet Secretary may"	<u>KEPSA</u> Section 84 be amended in subclause (5) by inserting the words in consultation with the Renewable Energy Resource Advisory Committee" immediately after the words "Cabinet Secretary may"	This is in order to allow flexibility on the payments of royalty The power granted to the Cabinet Secretary under section 81 (5) to "waive suspend or reduce the royalty for any licence" is open to abuse and could create undue conflict over the payment of royalties	A&K
85-87 88	N/A Charges payable for extraction of geothermal resources for certain purposes	<u>A&K ASSOCIATES</u> Section 88 be amended by deleting subclause (2)	None	It is unclear why there exists levies/ rentals to the government as well as royalties. Imposing many charges will hinder investment. The government should either impose royalties under section 84 of the Bill or charges under this section but not to both	
89 90	N/A Part IV of the Act - Renewable Energy	<u>KEPSA</u> Section 90 be amended by inserting a new clause- "90 (A) There is established a renewable energy auction system with the objective of - (a) better planning for power capacity acquisition, (b) promoting transparency in the acquisition of renewable energy		Section 90 of the Act should deal with renewable energy feed in tariff and the Auction system. Regulations on Renewable Energy Auction System (RIAS) are under development by the MoL and are awaiting Cabinet Secretary's approval for projects larger than 10 MW. RIAS allows for competitive bidding that allows for price discovery and reductions and is the	

		capacities; (c) ensuring efficient geographical distribution of renewable energy projects; and (d) inspiring investor confidence and achieving price discovery and reduction for renewable energy technologies."		current international best practice.	
91	Regulation for feed-in-tariff system	<u>NATURAL JUSTICE</u> Section 91 be ammended by deleting subclause (1) and substitute therefor the following new subclause(1)- "(1)The Cabinet Secretary shall within one year after commencement of the Act and may upon recommendation of the Commission, make regulations necessary for the administration and implementation of the feed-in-tariff system"	None	The Bill should contain a definite time period within which the Cabinet Secretary shall make recommendations. Suggested period should be one year after commencement of the Act. This will promote certainty in legislation and assist all actors to make proper decisions.	
92	Regulations under Renewable Energy Feed-in-Tariff System (2) Regulations may be made under this section for the following purposes— (a) prescribing any forms that may be required for the purposes of this Act; (b) prescribing conditions upon or subject to which authorities and licences may be applied for, granted or renewed; (c) providing for the keeping of records and the furnishing of information and returns by persons authorized by or under this Act, and prescribing the nature of the records, information, and returns and the form, manner and time in which they shall be kept or furnished; (d) prescribing matters in respect of which fees, rents and royalties are to be payable under this Act and the amount of fees and rents, and persons liable to pay them;.....	<u>NATURAL JUSTICE</u> <u>Insertion</u> "prescribing the type of information available to the public under the Access to Information Act, 2016 and the procedure for ensuring public participation in the decision to grant a Geothermal Resource License."		There should be provision a sub-clause under Clause 92 providing for the Cabinet Secretary to make regulations concerning the dissemination of information and public participation with regards to Geothermal Energy Resources.	Natural Justice
92	Regulations on renewable energy	Insert the following new paragraph- (s)administration and implementation of the renewable energy auction system which may include- (i) volume of		Section 92(2) (a) to (r) does not adequately distinguish between the FIT and Auction System. There needs to be substantive provision in the	KEPSA

		auctions (ii) qualification requirements to be met by bids in renewable energy auctions (iii) auction procedure; (iv) winner selection process. (v) seller liabilities (vi) frequency of auctions, and (vii) participating technologies.	statute for the establishment of the renewable energy auction system as proposed in section 92 (2) (s)	
93	Requirements of licence for petroleum business. (3) (1) A person who wishes to-- (a) undertake refining, importation, export, bulk storage or transportation of petroleum crude or products must have a valid licence issued by the Commission;	Definition of the word "bulk"	The word "bulk storage of petroleum needs to be defined and quantified to avoid ambiguity	A&K
93	(2) A person who wishes to carry out the supply of petroleum products by means of a retail dispensing station, or of gas through a centralised reticulation system, must have a licence issued by the County Government; Provided that any retail dispensing station or gas reticulation system complies with section 106 on construction permits and are operated in accordance with National guidelines published by Commission.	Delete subclause (2) and substitute therefore with the following new subclause- " (2) A person who wishes to carry out the supply of petroleum products by means of a retail dispensing station, or of gas through a centralised reticulation system must comply with section 106 of this Act"	A person who carries on the above activity already requires the licensing authority's approval under section 16 of the Bill. The proposed licence seems to be a duplication of permits/ overlap in roles. This will increase investments costs	A&K
103	Transfer of a licence	Insert a new subclause	There is need to have	A&K

	or permit (1) A licensee shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon the licensee by the licence or permit without the consent of the licensing authority.	(1A) immediately after (i)- (1A) the transfer provided for under subsection (1) does not include the acquisition of a minority stake below twenty per cent of the voting securities of an licence held solely for the purpose of passive investment.		specific thresholds for a change of control. Without a specific threshold it would not be possible for legal practitioners to determine whether a transfer of 30 % or 40% would contribute to a change of control.	
117	(1) A person engaged in petroleum business shall comply with the applicable environmental, health and safety laws.	A person engaged in petroleum business shall comply with the applicable environmental, health and health and safety laws and shall make an environmental deposit bond as provided for in Section 28 of the Environmental Management and Co-ordination Act, 1999		Operators should contribute to an environmental deposit bond as established in the Environmental Management and Co-ordination Act, 1999.	
117 (2)	(2) In the event of a fire, explosion, oil spill, injury or fatality occurring in the course of operating a petroleum logistics facility, transportation or sale of petroleum, either by accident or through negligence, the operator or person transporting or selling the petroleum shall forthwith clean up the polluted or damaged environment, at the operator's own expense, to the satisfaction of the licensing authority and any other relevant authority: Provided that any person engaged in the storage, transportation or sale of petroleum and petroleum products shall have an oil clean-up plan in compliance with the	(2) In the event of a fire, explosion, oil spill, injury or fatality occurring in the course of operating a petroleum logistics facility, transportation or sale of petroleum, either by accident or through negligence, the operator or person transporting or selling the petroleum shall forthwith clean up the polluted or damaged environment, at the operator's own expense, to the satisfaction of the licensing authority, the <u>national body in charge of environmental management</u> and any other relevant authority.		The amendment seeks to include NEMA as one of the authorities that certifies compliance. NEMA is the authority in charge of ensuring compliance with environmental legislation as well as the body staffed with relevant experts.	

	National Oil Spill Policy, relevant environmental health and safety regulations or guidelines			
120	Contraventions by petroleum carrying ships (3) A person who, while within Kenya's Exclusive Economic Zone and Outer Continental Shelf, discharges or allows to escape into the (a) petroleum or water mixed with petroleum; (b) water from bilges or tanks; (c) water used for flushing pipes and connections; or (d) sand used to absorb petroleum, commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings, or to a term of imprisonment of not less than five years, or to both such fine and imprisonment and be responsible, at his or her own cost, for cleaning the water and restoring it to its original status	Insert a new subclause (3A)- "The government or a relevant agency shall as is reasonably practicable restore the environment to its former condition and such costs shall be recoverable from the owner or master of ship"	A clause should be included that allows the government to clean the water and later recover the costs from the owner or master of ship in the event of failure by the owner to undertake the clean up	A&K
121	121. Without limiting the generality of section 236, the Cabinet Secretary may, on the recommendation of the Commission, make regulations (a) defining the kind of petroleum to which the regulations shall apply, and dividing petroleum into classes	<i>insert</i> Prescribing the type of information available to the public under the Access to Information Act, 2016 and the procedure for ensuring public participation in the decision in the Downstream Petroleum Sector.	Provide for the Cabinet Secretary to make regulations concerning the dissemination of information and public participation with regards to Downstream Petroleum	Natural Justice

	or categories and making different provisions with regard to such classes or categories; (b) providing for the importation, refining, exportation, landing, loading, shipping, transportation, storage, wholesale and retail of petroleum and prescribing a system of licensing for the purposes aforesaid, the manner in which application for any such licence shall be made, the conditions of licence, the authorities which may grant such licences, the fees which may be charged and any other matters incidental thereto; (c) setting, reviewing and adjusting tariffs and charges for common user storage facilities and refining of petroleum;.....				
126	(1) The Commission shall, in granting or rejecting an application for a licence or permit, take into consideration— (a) the impact of the undertaking on the social, cultural or recreational life of the community; (f) economic and financial benefits to the country or area of supply of the undertaking;	Inserting the words- Clause 126 (1) (a): “including whether the affected community is a marginalized community” immediately after the word “community” Insert the words- Clause 126 (1)(f): “including the microeconomic impact to the locality” immediately after the words “undertaking”		To expand the scope on the factors to be considered in reviewing an application.	Natural Justice

133	Register of licences and permits 133(1) The Commission shall keep a register, in such form as it may determine of all licenses and permits granted and shall record therein, in respect of each licence or permit (a) the particulars required under sections 124 and 128; (b) particulars of any duplicate issued or any amendment of the licence or permit made under sections 125 and 131; (c) particulars of any suspension or revocation of the licence or permit under section 130 and 136; and (d) such other particulars as may be prescribed	insertion Clause 133 (4) The Commission shall maintain a register of license and permits of licenses on its website	The amendment seeks to align the Bill to the Access to information Act, 2016 in section 5 (3) (c)	Natural Justice
142	Compliance with environmental, health and safety laws (2) In the event of a fire, explosion, injury or fatality occurring in the course of operating a facility for energy production using coal, either by accident or through negligence, the operator of the facility shall forthwith clean up the polluted or damaged environment, at the operator's own expense, to the satisfaction of the Commission	(2) In the event of a fire, explosion, oil spill, injury or fatality occurring in the course of operating a petroleum logistics facility, transportation or sale of petroleum, either by accident or through negligence, the operator or person transporting or selling the petroleum shall forthwith clean up the polluted or damaged environment, at the operator's own expense, to the satisfaction of the licensing authority and the National body in charge of	The amendment seeks to task the operator to clean up to the satisfaction of the licensing authority, the National Environment Management Agency established in the Environmental Management and Co-ordination Act, 1999 and any other relevant authority. It is vital that NEMA is included as it is the authority in charge of ensuring compliance with environmental legislation as well as the body staffed with	Natural Justice

		environmental management.		relevant experts. Further the precautionary principle and polluter pays principle shall be applied in the event of pollution regardless of whether or not it is accidental.	
144	Regulations for use of coal for energy production 144 (1) Without limiting the generality of section 236, the Cabinet Secretary may, on the recommendation of the Commission, make regulations for the use of coal for energy production relating to— “(e) environmental, health and safety standards associated with the handling, storage and use of coal; (h) development and coordination of a National coal pollution response plan including measures to prevent coal pollution and a mechanism for compensation in the event of a coal pollution;	(e) environmental, health and safety standards associated with the handling, transportation, storage and use of coal in collaboration with the <u>National Environmental Management Agency, the Ministry of Health and the Council of Governors</u> (h) development and coordination of a National coal pollution response plan including measures to prevent coal pollution and a mechanism for compensation in the event of coal pollution in conjunction with the <u>National Environmental Management Agency and the Council of Governors</u> insertion (m) public participation and access to information regarding coal extraction and the usage of coal for energy production (n) Citizen participation in monitoring and enforcement		The proposed amendment seeks to involve other stakeholders in the making of regulations relating to the use of coal for energy production. It also seeks to introduce the aspect of public participation, access to information and citizen participation in the use of coal for energy production.	Natural Justice
144	Insertion of a new subclause (2) Sharing of proceeds from exploitation of	“(2) The Government’s share of proceeds raised from the exploitation of coal resources shall be		There is a need to ring fence revenue from coal (and other natural resources) from the overall	KEPSA

	coal resource	deposited in a national sovereign wealth fund	funds held by the National Treasury. This will ensure that such funds can be managed more efficiently for posterity and not used in financing recurrent expenditure.	
146	Offence relating to carrying out unauthorized activity 146. A person who carries out any electricity undertaking without a licence commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to a term of imprisonment not less than one year or to both such fine and imprisonment	By deleting the word "undertaking" and substituting therefor the words "distribution generation"	This provides clarity on the meaning and intent of S 146 with regard to distribution of generated electricity	KEPSA
149	Factors to be considered in an application. (2) The Commission shall process all applications for a licence within sixty days after the Commission confirms to the applicant, in writing, that the application is complete	By deleting the words "after the Commission confirms to the applicant, in writing, that the application is complete" and substituting therefor the following words "during which period the Commission shall confirm to the applicant, in writing, that the application is complete"	It is necessary to provide and clarify that 60 days is the maximum period within which, an application must be processed which includes confirmation to an applicant whether or not the application is in order. Having the 60 days period begin running after confirmation that the application is complete creates the risk of applications being delayed on account of administrative inaction in the absence of a clear time frame.	KEPSA
156	Keeping of register of licences and approvals. (3) The contents of the	Delete subclause (3) and substitute therefor the following clause- The contents of the	This is in line with developments in information technology.	A&K

	register shall be available for inspection by the public, during such hours and subject to the payment of such fee as may be prescribed by the Commission.	register shall be made available for inspection by the public through the official website of the Commission.			
158	Powers of the Commission to enter, inspect and investigate. (1) The Commission or any person authorized by the Commission in writing may—	Insert subclause (3) (A)- He Commission shall produce the license with a seven day written notice on any pending inspection		Only when the Commission reasonable suspects a breach of the license conditions. Laws and regulations can this proposed notice requirement be waived.	A&K
161	Hydro-electric generation (2) The Commission shall before issuing any hydro-electric power generation licence have particular regard to, whether or not in its opinion—	Insert a new subclause (2) (A) the Commission in making any decision on hydro-electric generation, he or she shall be in consultation with the agency responsible for water.		This is reduce conflict in decision making between governmental bodies.	A&K
162	Direction to operate a generating plant (2) For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the state, public order or a natural calamity or such other circumstances arising in the public interest.	Delete subclause (2)		Investors in the power sector are likely to view this provision as amounting to an arbitrary right for the government to curtail the production of their plants and it is likely that they will seek to have this risk mitigated through contractual mechanisms in the relevant agreements with off/takes and or governments	A&K
172	Electricity sales levy The Cabinet Secretary may impose a levy of up to five percent on all electricity consumed in the country, the proceeds of which shall go into the Rural	Amend the clause by deleting the word “impose” and substitute therefor the words “ may prescribe regulations imposing “			A&K

	Electrification Programme Fund, set up under section 198. Reference source not found.			
198	Power to develop energy infrastructure on any land A person may develop energy infrastructure, including but not limited to electric supply lines, petroleum or gas pipelines, geothermal or coal infrastructure, on, through, over or under any public, community or private land subject to the provisions of this Act and relevant written law.	198. A person may develop energy infrastructure, including but not limited to electric supply lines, petroleum or gas pipelines, geothermal or coal infrastructure, on, through, over or under any public, community or private land subject to the provisions of this Act, an Environmental Impact Assessment and relevant law	The clause appears to place energy infrastructure above any other national considerations, including the Constitution that entitles us to a clean and healthy environment. It seems to allow energy companies to build anything on any government property such as archeological sites, national parks and forests Kenya's national interest needs to be taken into account. Allowing unfettered access by such companies to these critical sites is a dangerous move. Therefore there is a need to curtail this free access by making it express for one to seek an environmental impact assessment before developing any energy infrastructure. The provision (CAK) presents the greatest threat to our critical ecological systems and it fails to exempt protected areas from infrastructure associated with energy production, conveyance and supply.	Nature Kenya- Environmental Society Conservation Alliance of Kenya
199	(1) A person who wishes to enter upon any land, other than his own to	(b) carry out a survey of the land for the purposes of paragraph (a).	The amendment seeks to ensure adequate public participation	Natural Justice

	(b) carry out a survey of the land for the purposes of paragraph (a); shall seek the prior consent of the owner of such land, which consent shall not be unreasonably withheld: Provided that where the owner cannot be traced, the applicant shall give fifteen days' notice, by public advertisement, in at least two newspapers of nationwide circulation.	<i>shall seek the prior and informed consent of the owner of such land, which consent shall not be unreasonably withheld</i> <i>Provided that where the owner cannot be traced, the applicant shall give fifteen days' notice, by public advertisement, in at least two newspapers of nationwide circulation, <u>an announcement in a radio station of local coverage for a period of two successive weeks and a notice in the Kenya Gazette</u></i>		
201(3)	(3) Where the owner of the land cannot be traced the applicant shall give thirty days' notice prior to the development of energy infrastructure on the land by way of public advertisement in at least two newspapers of nationwide circulation: Provided that no development shall commence unless the amount of compensation payable, if any as determined by the relevant government agency responsible for the management of that land, has been deposited into a special compensation fund held by the said agency.	<u>NATURAL JUSTICE</u> <i>Where the owner of the land cannot be traced the applicant shall give thirty days' notice prior to the development of energy infrastructure on the land by way of public advertisement in at least two newspapers of nationwide circulation <u>an announcement in a radio station of local coverage for a period of two successive weeks and a notice in the Kenya Gazette</u></i> Provided that no development shall commence unless the amount of compensation payable, if any as determined by the National Land Commission in conjunction with a representative of the Governor of the relevant County, has been deposited into a special compensation fund held by the said agency.		The amendment seeks to task the National Land Commission in consultation with a representative of the Governor of the relevant County, with receiving the compensation as envisaged under section 201 (3)

204(2)	(2) Where energy infrastructure is removed, the surface of the land shall forthwith be restored to its former condition as far as possible and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee	<u>NATURAL JUSTICE</u> (2) Where energy infrastructure is removed the surface of the land shall forthwith be restored to its former condition as far as possible and in default thereof restoration SHALL be carried out by the licensee	The amendment seeks to remove alleviate the burden imposed on the owner to restore land to its former condition. This is informed by the fact that the provision can potentially be unfair to communities who would be required to restore community land
206 (1)	Installation of energy infrastructure along roads, railways (1) For the purpose of the production, conveyance and supply of energy, a licensee may erect, fix, install or lay any electric supply lines, oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or Government property, including forests, National parks, reserves and heritage sites, in the manner and on the conditions as provided in this Act.	<u>NATURE KENYA;</u> <u>THE EAST</u> <u>AFRICAN WILD</u> <u>LIFE SOCIETY;</u> <u>CONSERVATION</u> <u>ALLIANCE OF</u> <u>KENYA.</u> Insert the words "subject to an Environmental Impact Assessment and any relevant law." Amendment from Nature Kenya Insert the words "subject to the provisions of the Constitution and the Environmental Management and Coordination Act."	The amendment seeks to exclude the access and utilisation of forests, National Parks, reserves and heritages sites. These protected areas are mere 8% of the total land area There is need to subject any development to an EIA in accordance to EMCA and other sectoral laws such as wildlife Act, Forest and Conservation Act among others
209(1)	Declaration of energy resource areas (1) The Cabinet Secretary may, subject to the provisions of subsection (3) and having taken into consideration the recommendations made by the implementing agencies that any area is suitable for the	<u>NATURAL JUSTICE</u> The Cabinet Secretary may, subject to the provisions of subsection (3) and having taken into consideration of the recommendations made by the <u>National Land Commission</u> and other implementing agencies that an area is suitable for the	The amendment proposes to include the National Land Commission as an agency that the Cabinet Secretary may consult before declaring any area an energy resource area.

	conservation and management of energy resource or is suitable for the promotion of energy development projects, by order published in the <i>Gazette</i> , declare such area as an energy resource area.	conservation and management of energy resource or is suitable for the <i>promotion of energy development projects, by order published in the Gazette</i> , declare such area as an energy resource area.			
209 (2)	(2) The Cabinet Secretary shall, prior to the declaration of any area as an energy resource area under sub-section (1), consult with the County Government which the Cabinet Secretary considers necessary or appropriate to consult in the declaration of such area as an energy resource area.	NATURE KENYA (2) The Cabinet Secretary shall, prior to the declaration of any area as an energy resource area under sub-section (1), consult with the relevant County Government , local communities any other relevant agency appropriate to consult in the declaration of such area as an energy resource area.		Before declaring an area an energy resource area, there is need to consult other stakeholders other than the county governments. Public participation should be increased under these circumstances due to the impact of the projects anticipated.	
233			Without limiting the generality of subsection (3), the local content plan shall include sub-plans on the following— (a) employment and training; (b) research and development; (c) technology transfer; (d) industrial attachment and apprenticeship; (e) legal services; (f) financial services;		

(g) insurance services;
 (h) consultancy services;
 (i) construction services;
 (j) hospitality services;
 (k) transport services;
 (l) security services;
 (m) clearing and forwarding services;
 (n) inspection services; and
 (o) Any other energy sector supply chain development.

243

Delete this section

244

Consolidated Energy Fund

244.(1) The Cabinet Secretary shall establish the Consolidated Energy Fund to cater for

(a) strategic petroleum reserve;

(b) energy sector disaster mitigation and response.

(c) hydro risk mitigation;

(d) operations of the Agency.

(e) promotion of renewable energy initiatives

(f) construction of appropriate energy

NATURAL JUSTICE

Insert a new paragraph to read as

“(i) support of a sustainable biodiversity, environmental impact monitoring system and impact and offset mitigation measures.”

Energy sector initiatives may cause serious environmental impacts arising from effects of climate change and natural catastrophes, among others. These impacts are not fully anticipated during the SEA and EIA development process.

	infrastructure; (g) decommissioning of energy infrastructure; and (h) energy efficiency and conservation.				
244		<u>KEPSA</u> Insert a new paragraph to read as- (i) applied research, technology development and innovation allied to energy sector including technology needs assessment, deployment and scaling up.		This amendment seeks to take into account salient areas that have been left out of the Consolidated Energy Fund	
Part X	Deals with Miscellaneous provisions	Insertion of a clause to read as; The Cabinet Secretary in consultation with the Commission and the Commission on Administrative Justice shall cause the following regulations and guidelines to be published: (a) the manner in which information can be accessed from the Commission; (b) the method of public consultations; and (c) a grievance redress process to the Commission.		The amendment seeks to provide directions on public participation, how to access information and which information should be availed to the public. This is vital as it will contribute to the inclusion of the National Value of public participation envisioned in Article 10 and the Right to Access Information (Article 35).	

MIN. NO. 136/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past One O'clock in the evening.

SIGNED.....

(CHAIRPERSON)

DATE 10-04-2018

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 IN MATHIOYA ON FRIDAY 17TH MARCH, 2018 AT 2.30PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Walter Owino, MP
3. The Hon. Amina Gedow Hassan, M.P
4. The Hon. Elsie Muhanda, MP
5. The Hon. Clement Muturi Kigano, M.P.

ABSENT WITH APOLOGY

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Cecily Mbarire, M.P.
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Elisha Odhiambo, MP
6. The Hon. Ekomwa Lomenen James, M.P.
7. The Hon. Mohammed Ali Lokeri, MP
8. The Hon. Tindi Nicholas Mwale, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Lemanken Aramat, M.P.
13. The Hon. Abdikhaim Osman Mohamed, M.P
14. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MEMBERS OF THE PUBLIC IN MATHIOYA CONSTITUENCY.

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Douglas Katho - Clerk Assistant III
2. Mr. Eugene Apaa - Research Officer
3. Mr. Abdulnasir Yusuf Moge - Fiscal Analyst
4. Mr. Onesmas Kiragu - Serjeant-At-Arms

MIN. NO. 131/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 132/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Representatives of the KTDA Zone III Tea Factories presented a memorandum to the Committee that listed various issues which include;

1. Wood fuel Sourcing

The committee was informed that the factories are supporting the current ban on logging in the forest. However, they noted that ban should exempt private owned plantations established to provide fuel for factories. They noted that they have initiatives for afforestation/re-afforestation programs all-inclusive and that the ban is bringing factories to a standstill and may soon close. KTDA has also partnered with various organizations to promote energy saving stoves for household use. They noted that loggers have caused damage to power station canals by using them to transport contraband timber from forests.

Members noted their concerns and promised to follow up with the relevant authorities to see if the ban can exempt private owned forest plantations. The committee also encouraged the factories to adopt energy efficiency measures and try to do away with wood fuel.

2. Power Distribution

The committee was informed that power distribution should be liberalized which will allow them to distribute power to local schools, hospitals, farmers & local community. They noted that currently they are selling the power they are generating to Kenya power at much lower price thus losing a lot on revenues.

The committee informed them that the current energy Bill 2017 has liberalized power distribution in the country and thus when its adopted they can apply for license to distribute power.

3. Tax and Duty Exemption

The representatives noted that the Government should improve incentives through tax and duty exemptions on equipment, construction materials and fuel oil.

MIN. NO. 133/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Six O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 37TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 IN MATHIOYA ON FRIDAY 17TH MARCH, 2018 AT 10.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Walter Owino, MP
3. The Hon. Amina Gedow Hassan, M.P
4. The Hon. Elsie Muhanda, MP
5. The Hon. Clement Muturi Kigano, M.P.

ABSENT WITH APOLOGY

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Cecily Mbarire, M.P.
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Elisha Odhiambo, MP
6. The Hon. Ekomwa Lomenen James, M.P.
7. The Hon. Mohammed Ali Lokiro, MP
8. The Hon. Tindi Nicholas Mwale, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Lemanken Aramat, M.P.
13. The Hon. Abdikhaim Osman Mohamed, M.P
14. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: MEMBERS OF THE PUBLIC IN MATHIOYA CONSTITUENCY.

(Attached herein the signed attendance sheets of the names of the persons present).

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Douglas Katho - Clerk Assistant III
2. Mr. Eugene Apaa - Research Officer
3. Mr. Abdulnasir Yusuf Moge - Fiscal Analyst
4. Mr. Onesmas Kiragu - Serjeant-At-Arms

MIN. NO. 128/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 129/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

- a. Presentation by Kenya Tea Development Agency (KTDA) Holdings Ltd

Members were informed that KTDA Holdings invested in eight subsidiary companies which it fully owns so as to maximize returns to shareholders. The subsidiary companies provide specialized services which are integrated with our core services.

KTDA Power Company (KTPC POWER) one of the subsidiary companies was incorporated in January 2010, it invests in the energy sector and manages small hydro-power projects owned by Factory Companies. The pilot was Imenti Mini-hydro Power Plant. The hydro plant is capable of generating 1MW of electricity, out of which the factory consumes about 0.5 MW.

The Vision of KTPC Power is to be the preferred energy management and Consultancy Company. Its mandate is to set up to spearhead development of renewable energy starting with small hydro power projects across the tea growing regions as a way of addressing the increasing energy costs in the factories

Members were informed that KTPC is ready to commence on alternative forms of energy i.e solar for 40% of the factories that have no access to hydro potential sites. Members were also taken through operational plants, projects under construction and those in the pipeline.

b. Presentation by Metumi Small Hydro Project

The Committee was taken through an overview of the KTDA and small holder Tea sub-sector in Kenya. They were informed the mandate of KTDA which include to promote tea production/cultivation among small holders; Develop and maintain tea husbandry; and Collect, weigh and handle green leaf among other roles. Members were also briefly taken through the tea industry in Kenya and the global tea business.

Some of the challenges the tea industry was experiencing include:

1. Fluctuating foreign exchange rates & tea prices.
2. Climate change.
3. Rising cost of production - farm inputs, taxes/levies, fuel, labour etc.
4. Decreasing smallholder farm sizes/land policy
5. Multiple levies from counties
6. Political instability in some key markets i.e. Yemen & Russia.
7. Changing consumer tastes & preferences
8. Global over-production and competition

Members challenged the KTDA members to adopt energy efficiency measures like using of Boiler pre-heaters which will help to cut down on cost of production.

Later the Committee was taken through a tour of the Metumi Small Hydro project where they were shown various stages involved in power production.

MIN. NO. 130/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past One O'clock.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 ON FRIDAY 16TH MARCH, 2018 AT 2.30PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Walter Owino, MP
3. The Hon. Amina Gedow Hassan, M.P
4. The Hon. Elsie Muhanda, MP
5. The Hon. Clement Muturi Kigano, M.P.

ABSENT WITH APOLOGY

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Cecily Mbarire, M.P.
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Elisha Odhiambo, MP
6. The Hon. Ekomwa Lomenen James, M.P.
7. The Hon. Mohammed Ali Lokiro, MP
8. The Hon. Tindi Nicholas Mwale, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Lemanken Aramat, M.P.
13. The Hon. Abdikhaim Osman Mohamed, M.P
14. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Ms. Brigita Mati - Legal Counsel
4. Mr. Eugene Apaa - Research Officer
5. Mr. Abdulnasir Yusuf Moge - Fiscal Analyst
6. Ms. Sheila Chebotibin - Serjeant-At-Arms

MIN. NO. 125/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 126/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Members of Parliament of Ukambani Region proposed the following amendments to the Energy Bill, 2017:-

1. The local community share in terms of royalties should be increased from five percent to ten percent of the National Government share payable to a trust fund managed by a board of trustees consisting of the elected leaders representing the sub-counties.
2. There is need to make provision that prior to the production of coal, land adjudication should be undertaken in terms of determining and authenticating ownership of land through issuance of title deeds to the members of the local communities.
3. There is also need to amend the Bill to make provision for compensation of land acquired for purposes of producing coal. The process of compensating the owners of land should however be undertaken once negotiations with the local communities have been done and concluded. There is also need to take into account the cultural values of the local communities in determining the amount of compensation to be given to the owners of land proposed to be displaced.
4. The Bill should also be amended to require the Government and licensees/investors to undertake corporate social responsibilities projects including supply of water in areas where the coal is being produced.
5. The Bill should also be amended to include that prior to a license of production of coal being granted to a person, the Environmental Impact Assessment must be undertaken.
6. The Bill should also be amended to provide that the Coal production plant should be located in the Coal Basin.
7. There is also need to amend the Bill on the provisions for local content requirements so as to provide that the local content requirements should not be less than seventy percent. Further the amendment should provide that employment at all levels in a company or institution involved in the production of coal shall be given first to the local people where the coal resource is being produced.

MIN. NO. 127/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Four O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD DURING THE PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017 ON FRIDAY 16TH MARCH, 2018 AT 10.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Walter Owino, MP
3. The Hon. Amina Gedow Hassan, M.P
4. The Hon. Elsie Muhanda, MP
5. The Hon. Clement Muturi Kigano, M.P.

ABSENT WITH APOLOGY

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Cecily Mbarire, M.P.
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Elisha Odhiambo, MP
6. The Hon. Ekomwa Lomenen James, M.P.
7. The Hon. Mohammed Ali Lokiro, MP
8. The Hon. Tindi Nicholas Mwale, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Lemanken Aramat, M.P.
13. The Hon. Abdikhaim Osman Mohamed, M.P
14. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

- | | | |
|------------------------------|---|---------------------|
| 1. Mr. Benjamin Magut | - | Lead Clerk |
| 2. Mr. Douglas Katho | - | Clerk Assistant III |
| 3. Ms. Brigita Mati | - | Legal Counsel |
| 4. Mr. Eugene Apaa | - | Research Officer |
| 5. Mr. Abdulnasir Yusuf Moge | - | Fiscal Analyst |
| 6. Ms. Sheila Chebotibin | - | Serjeant-At-Arms |

MIN. NO. 122/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. 123/2018: PUBLIC HEARING ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Committee was unable to conduct public hearings on the Energy bill and the Petroleum (exploration, development and Production) Bill, 2017 in Kitui County due to heavy rains that made the roads to Mui area impassable for the delegation.

The Committee therefore resolved to receive submissions from the members of Parliament from Kitui County for the purposes of consideration during the compilation of the reports on the two bills before the committee.

MIN. NO. 124/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Eleven O'clock in the morning.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD IN COUNTY HALL, PARLIAMENT BUILDINGS ON THURSDAY 15TH
MARCH, 2018 AT 3.00PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Walter Owino, MP
3. The Hon. Ekomwa Lomenen James, M.P.
4. The Hon. Mohammed Ali Lokiro, MP
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Amina Gedow Hassan, M.P
7. The Hon. Abdikhaim Osman Mohamed, M.P
8. The Hon. Elsie Muhanda, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Clement Muturi Kigano, M.P.
13. The Hon. Lemanken Aramat, M.P.

ABSENT WITH APOLOGY

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Cecily Mbarire, M.P.
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Elisha Odhiambo, MP
6. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

MEMBERS OF THE PUBLIC

1. Mr. James Njoroge Mwangi - Chairman, KEPSA Energy & Extractives Board
2. Mr. Benard Osawa - Vice Chair KEPSA Energy & Extractives Board
3. Mr. George Aluru - SOWITEC KENYA MD - KEPSA
4. Mr. Chris Wilson - Biogas, KEPSA
5. Mr. Mwenda Nyaga - OGCA
6. James Mbote - OGCA – K
7. Dr. Mbaari Kinya - Biogas /Woodfuel KEPSA
8. Mr. Joseph Momanyi - Manager CEEC, KAM
9. Mr. Jackson Ongubo - Stakeholder Relationship – Total Kenya
10. Mr. Kevin Adundo - PIEA
11. Mr. Geneso Mugo - KEPSA
12. Ms. Brenda Nyambura - KEPSA
13. Ms. Rehema Mohamed - KOGA Secretariat
14. Ms. Evelyne Mwangi - KOGA
15. Ms. Soiyanet Naisho - KOGA
16. Ms. Pauline Githugu - KEPSA / KEREKA
17. Mr. Franklin Juma - KOGA /KEPSA
18. Mr. Arnold Mahero - KOGA /KEPSA
19. Mr. Brian Muriuki - KOGA /KEPSA
20. Mr. Charles Wanguhu - KOGA /KEPSA

21. Mr. Muturi Kamau	KOCWC,
22. Ms. Angela Mutsotso	Natural Justice
23. Mr. Paul Matiku	Nature Kenya
24. Ms. Sarah Munguti	Nature Kenya
25. Mr. Steve Hela	ANAW (Conservation Alliance of Kenya)
26. Mr. James Njemendi	KEPSA
27. Ms. Ann Kingiri	ACIS

IN ATTENDANCE:

NATIONAL ASSEMBLY

1. Mr. Benjamin Magut	Lead Clerk
2. Mr. Douglas Katho	Clerk Assistant III
3. Ms. Brigita Mati	Legal Counsel
4. Mr. Eugene Apaa	Research Officer
5. Mr. Abdulnasir Yusuf Moge	Fiscal Analyst
6. Ms. Sheila Chebotibin	Serjeant-At-Arms

MIN. NO. 119/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present

MIN. NO. 120/2018: PRESENTATION BY THE COUNCIL OF GOVERNORS ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Council of Governors led by the Governor Francis Kimemia who chairs the Energy and Infrastructure Committee made their Submissions which majorly focused on the concept of consultation between the two levels of government.

The Committee was informed of proposed specific amendments to the two Bills which included: -

- a) Petroleum (Exploration, Development and Production) Bill, 2017
 - enhancing the functions of the upstream Petroleum Regulatory Authority by inserting sub-clause (c) to clause 15 to read “ *collect, maintain upstream data, asses field development plans, verify the recovery cost of oil and gas due to the parties, audit contractors for cost recovery, monitor compliance and their trade practice to ensure completion and fair practice*”
 - Adding a sub-clause to clause 77 on the local content to state that 20% of the local content to be set aside for local communities to cater for training. However the committee was concerned with the viability with such provision in the long run if all the trainable individuals were trained in that specific local community.
 - The council of governors also proposed amendments to clause 85 (3) on the local community share to be equivalent to 10% of the government's share and shall be payable to a trust fund managed by a board of trustees by the County Government in consultation with local community and further proposed deletion of the provision capping the revenue allocated to the

affected community to not exceed $\frac{1}{4}$ of the amount allocated to the county in the Financial Year under Consideration.

b) The Energy Bill, 2017

- On clause 75(2) on the composition of the Renewable Energy Resource Advisory Committee to include sub-clause (h) to read "2 representative nominated by the Council of Governors"
- On Clause 84 (3) (b) on the share of royalties to local community to be equivalent to 10% and proposed for the deletion of provision capping it to $\frac{1}{4}$ of the amount allocated to the county in the Financial Year under Consideration.

MIN. NO. 121/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past Seven O'clock in the evening.

SIGNED.....
(CHAIRPERSON)

DATE..... 10-04-2018

MINUTES OF THE 33RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENERGY HELD IN THE SMALL DINNING, NEW WING ON THURSDAY 15TH
MARCH, 2018 AT 12.30PM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Walter Owino, MP
3. The Hon. Ekomwa Lomenen James, M.P.
4. The Hon. Mohammed Ali Lokiro, MP
5. The Hon. Tindi Nicholas Mwale, MP
6. The Hon. Amina Gedow Hassan, M.P
7. The Hon. Abdikhaim Osman Mohamed, M.P
8. The Hon. Elsie Muhanda, MP
9. The Hon. Vincent Musyoka Musau, M.P.
10. The Hon. Ken Chonga, MP
11. The Hon. Joseph Wathigo Manje, M.P.
12. The Hon. Clement Muturi Kigano, M.P.
13. The Hon. Lemanken Aramat, M.P.

ABSENT WITH APOLOGY

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Cecily Mbarire, M.P.
3. The Hon. Gitau Faith Wairimu, M.P.
4. The Hon. Julius Musili Mawathe, MP
5. The Hon. Elisha Odhiambo, MP
6. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE: COUNCIL OF GOVERNORS

1. Mr. Francis Kimemia, EGH, CBS - Governor Nyandarua County and
Chairperson, Energy and Infrastructure,
2. Ms. Fatuma Nyambura - Consultant, Adam Smith International
3. Mr. David Wanjohi - SPO, Infrastructure and Energy
4. Ms. Kulamo Dullo Ikimire - CEC, Lands, Energy, Marsabit County
5. Mr. Sebastian Kyoni - CEC- Energy and Infrastructure, Makueni
6. Mr. Patrick Klmeu - Energy and Water Machakos County
7. Mr. Jacob M. Ndunda - Engineer, Machakos County
8. Mr. Jesse Masai - Director, Communications
9. Mr. Edmond Lwusa - Director, Machakos County
10. Mr. James Kariithi Gititi - Director, GPS NGG
11. Ms. Emma Nyabicha - Lawyer, Infrastructure and Energy, COG
12. Ms. Mary Njogu - Director Liaison, Nyandarua
13. Mr. Peter Kamau - Information Officer, Nyandarua County
14. Mr. Ronald Odanga - Communication officer, COG

IN ATTENDANCE: NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Lead Clerk
2. Mr. Douglas Katho - Clerk Assistant III
3. Ms. Brigita Mati - Legal Counsel

- | | |
|------------------------------|------------------|
| 4. Mr. Eugene Apaa | Research Officer |
| 5. Mr. Abdulnasir Yusuf Moge | Fiscal Analyst |
| 6. Ms. Sheila Cheboubin | Serjeant At Arms |

MIN. NO. 116/2018: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present

MIN. NO. 117/2018: PRESENTATION BY THE COUNCIL OF GOVERNORS ON ENERGY BILL, 2017 AND PETROLEUM (EXPLORATION, DEVELOPMENT, PRODUCTION) BILL, 2017

The Council of Governors led by the Governor Francis Kamemia who chairs the Energy and Infrastructure Committee made their Submissions which majorly focused on the concept of consultation between the two levels of government

The Committee was informed of proposed specific amendments to the two Bills which included: -

a) **Petroleum (Exploration, Development and Production) Bill, 2017**

- enhancing the functions of the upstream Petroleum Regulatory Authority by inserting sub-clause (e) to clause 15 to read “ *collect, maintain upstream data, asses field development plans, verify the recovery cost of oil and gas due to the parties, audit contractors for cost recovery, monitor compliance and their trade practice to ensure completion and fair practice* ”
- Adding a sub-clause to clause 77 on the local content to state that 20% of the local content to be set aside for local communities to cater for training. However the committee was concerned with the viability with such provision in the long run if all the trainable individuals were trained in that specific local community
- The council of governors also proposed amendments to clause 85 (3) on the local community share to be equivalent to 10% of the government's share and shall be payable to a trust fund managed by a board of trustees by the County Government in consultation with local community and further proposed deletion of the provision capping the revenue allocated to the affected community to not exceed 1/4 of the amount allocated to the county in the Financial Year under Consideration

b) **The Energy Bill, 2017**

- On clause 75(2) on the composition of the Renewable Energy Resource Advisory Committee to include sub-clause (h) to read “2 representative nominated by the Council of Governors”
- On Clause 84 (3) (b) on the share of royalties to local community to be equivalent to 10% and proposed for the deletion of provision capping it to 1/4

of the amount allocated to the county in the Financial Year under Consideration.

MIN. NO. 118/2018: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins to two O'clock.

SIGNED.....

(CHAIRPERSON)

DATE.....

10-04-2018