

Approved for tabling

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17/12/15*

REPUBLIC OF KENYA



THE PARLIAMENT

*Paper laid
By Hon. Francis
Chacha Ganya
on Thursday, 17/12/15
[Signature]*

ELEVENTH PARLIAMENT-THIRD SESSION

**REPORT ON THE MEDIATION OF THE NATIONAL DROUGHT MANAGEMENT
AUTHORITY BILL, 2014 (NATIONAL ASSEMBLY BILL NO. 42 OF 2013)**

JOINT CLERKS' CHAMBERS
PARLIAMENT OF KENYA
NAIROBI

DECEMBER, 2015

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1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of National Assembly and the Speaker of the Senate pursuant to Standing Order 154 (2) of the Senate on 28th October, 2015, and 4th November, 2015, respectively.

The members of the Committee were:-

1. Hon. Joyce Emanikor, MP
2. Hon. (Dr.) Wilbur Ottichilo, MP
3. Hon. Chachu Ganya, MP;
4. Hon. Juma Zuleikha Hassan, MP
5. Hon. Elmi Mohammed Ibrahim, MP
6. Sen. Fatuma Dullo, MP
7. Sen. (Prof.) John Lonyangapuo, MP
8. Sen. Martha Wangari, MP
9. Sen. Abdirahaman Hassan, MP;
10. Sen. Danson Mwazo Mwakulegwa

1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was established to develop a version of the National Drought Management Authority Bill, 2014 (National Assembly Bill No. 42 of 2013) and in particular Clauses 4 (2) of the Bill that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No. 154 (6).

The specific clauses of the Bill that were in contention were Clauses 4 (2).

1.2 Committee Sitzings

The Committee held its first meeting on 2nd December, 2015 and elected Hon. Chachu Ganya, M.P. and Sen. Martha Wangari, M.P. as Chairperson and Vice Chairperson

respectively. The Committee thereafter deliberated on Clauses 4 (2) of the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) which was in contention.

1.3 Committee Resolutions

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the bill is hereby appended to this report.

1.4 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 155 (1), to present a report of the Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) for consideration by the House.

SIGNED.....

SIGNED:

HON. CHACHU GANYA, M.P.

SEN. MARTHA WANGARI, M.P

CHAIR PERSON

VICE-CHAIRPERSON

DATE...3/12/2015.....

DATE...3/12/2015.....

NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL, 2014 (NATIONAL ASSEMBLY BILL NO. 42 OF 2013)

2.0 BACKGROUND

The National Drought Management Authority Bill, 2014 (National Assembly Bill No. 42 of 2013) was published in the Kenya Gazette Supplement No. 160 of 15th November, 2013 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Kenya Constitution, 2010 and National Assembly Standing Orders and was passed on 12th November, 2014.

The Bill was referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142 where it was read for the first time on 3rd December, 2014. . The Bill was passed by the Senate with amendments on Wednesday 8th July, 2015.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly seeking the concurrence of the National Assembly to the amendments made to the National Drought Management Authority Bill, 2014 (National Assembly Bill No. 42 of 2013).

The National Assembly, considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments on Clauses 4 (2) of the Bill.

Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154 the Bill and specifically Clauses 4 (2) of the Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

3.0 CONSIDERATION OF THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL, 2014 (NATIONAL ASSEMBLY BILL NO. 42 OF 2013).

3.1. Senate amendments to the National Drought Management Authority Bill, 2014 (National Assembly Bill No. 42 of 2013)

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clause-

(2) The Authority shall establish offices in each county.

CLAUSE 8

THAT clause 8 of the Bill be amended-

(a) in sub clause (1) by inserting the following new paragraph immediately after paragraph (d)-

(da) one person who shall be nominated by the Council of County Governors.

(b) in sub clause (5) by inserting the words “and (1)(da)” immediately after the words subsection (1)(d).

(1A) The Cabinet Secretary shall, immediately upon receipt of a report under subsection (1) issue to the person an acknowledgement in writing of the receipt of the report.

3.2. The National Assembly Comments on Senate Amendments

The Committee considered the Senate amendments to the National Drought Management Authority Bill, 2014 (National Assembly Bill No. 42 of 2013) and resolved as follows:-

Clause 4

THAT clause 4 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) The Authority shall establish offices in each county.

This proposed Amendment was rejected.

Justification: It is impractical to make it mandatory for the Authority to establish offices in all Counties since not all Counties experience drought. The Authority needs to establish offices only in Counties that are affected by drought or wherever it is necessary.

Clause 8

THAT clause of the Bill be amended –

- a) In sub-clause (1) by inserting the following new paragraph immediately after paragraph (d)
(da) one person who shall be nominated by the Council of Governors.

- (b) In sub-clause (5) by inserting the words “and (1)(d)” immediately after the words sub-section (1)(d).

This proposed amendment was agreed to.

Justification: Disaster management is a function assigned to the national government under the Fourth Schedule to the Constitution. Whereas the Fourth Schedule to the Constitution provides that implementation of specific National Government policies on natural resources and environmental conservation as one of the functions of the County Government.

4.0 RESOLUTIONS OF THE MEDIATION COMMITTEE

The Committee met on the 2nd December, 2015 and unanimously resolved the contention on Clause 4 (2) as follows:-

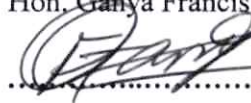
Clause 4 (2): The Authority may establish offices in other counties.

Justification: This gives the Authority the discretion to establish offices in counties that they deem necessary.

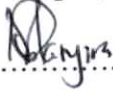
4.1 Adoption of the Report by Members of the Committee

At its 2nd sitting held on Thursday, 3rd December, 2015, the following members of the Committee appended their signatures against their names as an indication of their concurrence with the Report and the mediated Version of the Bill for consideration by the two Houses of Parliament in accordance with Article 113(2) of the Constitution.

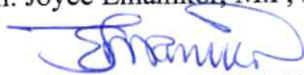
Hon. Ganya Francis Chachu, M.P, **Chair person**


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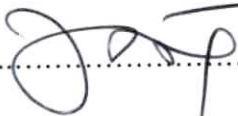
Sen. Martha Wangari, M.P, Vice **Chair person**



Hon. Joyce Emanikor, M.P, Member



Sen. Abdirahaman Hassan, MP, Member



Hon. Zulekha Hassan Juma, M.P, Member



Sen. Fatuma Dullo, MP, Member



Hon. (Dr.) Wilbur Ottichilo, MP, Member

Sen. (Prof.) John Lonyangapuo, MP, Member

Hon. Elmi Mohammed Ibrahim, MP, Member

Sen. Danson Mwazo Mwakulegwa, M.P, Member

**MINUTES OF THE 1st SITTING OF THE SENATE MEDIATION COMMITTEE
ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL, 2014
HELD ON WEDNESDAY, 2nd DECEMBER, 2015 AT THE SENATE LOUNGE
AT 11:00 AM**

PRESENT

- | | |
|--------------------------------|------------------|
| 1. Hon. Chachu Ganya, MP | Chairperson |
| 2. Sen. Martha Wangari, MP | Vice Chairperson |
| 3. Hon. Joyce Emanikor, MP | |
| 4. Sen. Abdirahaman Hassan, MP | |

ABSENT WITH APOLOGY

1. Sen. Fatuma Dullo, MP
2. Sen. (Prof) John Lonyangapuo, MP
3. Sen. Danson Mwazo Mwakulegwa, MP
4. Hon. (Dr) Wilbur Ottichilo, MP
5. Hon. Juma Zuleikha Hassan, MP
6. Hon. Elmi Mohammed Ibrahim, MP

SECRETARIAT

- | | |
|-----------------------|--------------------------------------|
| 1. Ms. Tracy Chebet | -Clerk Assistant (National Assembly) |
| 2. Mr. Yussuf Hussein | - Clerk Assistant (Senate) |
| 3. Ms. Lucy Radoli | - Legal Counsel |
| 4. Mr. Caleb Yupe | - Intern |

MIN.NO. 01/2015

PRELIMINARIES

The meeting was called to order at 11:30 a.m followed with a word of prayer.

MIN.NO. 02/2015

ADOPTION OF AGENDA

The agenda of the meeting was adopted after having been proposed by Hon. Joyce Emanikor, MP and seconded by Sen. Martha Wangari, MP as follows;

- 1) Prayer.
- 2) Election of the Chairperson and Vice-Chairperson.

- 3) Consideration of **Clause 4 (2)** of the **National Drought Management Authority Bill**.
- 4) Adoption of the resolution of the Committee.
- 5) Any other business.
- 6) Adjournment.

MIN.NO. 03/2015 **ELECTION OF CHAIRPERSON AND**
VICE-CHAIRPERSON

The Clerk briefed Members on the conduct of the elections.

Nomination

The Clerk received Hon. Chachu Ganya's name as the sole nominee for the position of the Chairperson of the Mediation Committee after he was proposed by Sen. Martha Wangari and seconded by Hon. Joyce Emanikor.

Declaration of duly elected Chairperson

There being no other nominee for the position of the Chairperson, Hon. Chachu Ganya was elected unopposed and declared the duly elected Chairperson of the Committee.

The Clerk also received Sen. Martha Wangari as the sole nominee for the position of the vice chairperson of the Mediation Committee after being proposed by Sen. Abdirahman Hassan and seconded by Hon. Joyce Emanikor and was therefore declared as the duly elected vice chairperson of the Committee.

MIN.NO. 04/2015 **CONSIDERATION OF CLAUSE 4 (2) OF THE**
NATIONAL DROUGHT MANAGEMENT AUTHORITY
BILL

The Chairpserson Welcomed Members to the meeting. He further briefed the meeting that:-

1. that **Clause 4 (2)** of the National drought management Authority Bill, that read ,“ The Authority may establish offices in other Counties“ purpose was to ensure offices of the Authority are set up in Counties that

are prone to drought rather than in all 47 Counties as not all Counties face such a crisis.

2. That the Bill gives the Authority the description to decide Counties to set up offices.

Deliberations ensued

Members observed that Offices may be setup in all Counties as climate changes have become unpredictable and drought patterns vary in each of the affected Counties.

That there were some areas within various Counties affected by drought even though they were not classified as drought affected regions.

The Committee after thorough deliberations resolved not to make amendments to **Clause 4(2)** to read as ,“ **The Authority may establish offices in other Counties.**“


MIN.NO. 05/2015
COMMITTEE

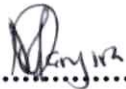
ADOPTION OF THE RESOLUTION OF THE

The Committee after thorough deliberations resolved to retain **Clause 4(2)** as it was in the Bill: That is ,“ **The Authority may establish offices in other Counties.**

MIN.NO. 05/2015 **ADJOURNMENT**

There being no any other business, the Chair adjourned the meeting at 12:15 pm. The next meeting was to be held on 3rd December, 2015

SIGNED 
(Chairperson)
Hon. Chachu Ganya, M.P.

SIGNED..... 
(Vice Chairperson)
Sen. Martha Wangari, M.P.

DATE 03/12/2015

DATE..... 03.12.2015



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (THIRD SESSION)

THE SENATE

MESSAGE FROM THE NATIONAL ASSEMBLY
ON THE REJECTION OF SOME OF THE SENATE
AMENDMENTS TO THE NATIONAL DROUGHT MANAGEMENT
AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 42 OF
2013)

Honourable Senators,

I wish to report to the Senate that, on 29th October, 2015 and pursuant to Standing Order 40 (3) and (4), I received the following message from the Speaker of the National Assembly regarding the rejection by the Assembly of the Senate amendments to clause 4 of the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013)-

"**PURSUANT** to the provisions of Standing Order 41 and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly-

WHEREAS, the National Assembly, on Thursday, October 22, 2015, **concurred** with the Senate on its amendments to Clause 8 of the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013), and **rejected** the amendment to **Clause 4** of the Bill;

NOW THEREFORE, in accordance with Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby **convey** the said decision of the National Assembly to the Senate, and seek the appointment of a Mediation Committee in respect of the said Bill".

Honourable Senators,

Article 112(1) (b) of the Constitution provides that *if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration*. Further, Article 112(2) (b) of the Constitution provides that *if after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113*.

Honourable Senators,

In the circumstances, I concur with the Speaker of the National Assembly to form a mediation committee in accordance with Articles 112(2) (b) and 113 of the Constitution.

In this regard, Hon. Senators, I have received communication from the National Assembly that the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the Mediation Committee that will attempt to develop a version of the Bill that both Houses will pass-

- 1) The Hon. Joyce Emanikor, MP;
- 2) The Hon. (Dr.) Wilbur Ottichilo, MP;
- 3) The Hon. Chachu Ganya, MP;
- 4) The Hon. Juma Zuleikha Hassan, MP; and,
- 5) The Hon. Elmi Mohammed Ibrahim, MP.

In this regard, Hon. Senators, I also hereby appoint the following Senators to represent the Senate in the Mediation Committee-

- 1) Sen. Fatuma Dullo, MP;
- 2) Sen. (Prof.) John Lonyangapuo, MP;
- 3) Sen. Martha Wangari, MP;
- 4) Sen. Abdirahaman Hassan, MP; and
- 5) Sen. Danson Mwazo Mwakulegwa.

I thank you.

SEN. KEMBI-GITURA, MGH, MP
DEPUTY SPEAKER OF THE SENATE

4th November, 2015.