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THE SENATE

STANDING COMMITTEE ON ENERGY

A MINORITY REPORT ON THE ENERGY BILL (NATIONAL
ASSEMBLY BILLS NO 50 OF 2017)

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

SEPTEMBER, 2018

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INTRODUCTION

This Minority Report is prepared pursuant to Standing Order 213 (5) of the Senate Standing Orders and is a dissent from the observations/findings and recommendations of the majority opinion on the Energy Bill (National Assembly Bills No. 50 of 2017) following the committal of the Bill to the Senate Standing Committee on Energy.

The report is anchored on key observations emanating from consideration of the views received from the public and various stakeholders during the public participation process for the bill on 23rd August, 2018 at County Hall Building. The undersigned Senator that presents this report believes these views should be taken into consideration by the Senate in reaching its final decision on the Bill as per the provisions of Article 118 and Standing Order 140 (5) that requires that a Committee shall take into account the view and recommendations of the public when the Committee makes its report to the Senate.

KEY OBSERVATIONS

1. Involvement of County Governments

The Energy Bill as drafted does acknowledge the need for collaboration between the two levels of Government. It however vests power discretionary power with the Cabinet Secretary requiring that he/she consult with the “relevant stakeholder”. This provision relegates the County Government to the category of relevant stakeholder whereas they are in fact partners of the National Government in policy implementation.

2. Petroleum Sector Regulator

The Bill provides for the establishment of an Energy and Petroleum Regulatory Authority to regulate matters relating to energy and petroleum under the respective Bills. However, the Authority falls under the purview of the Cabinet Secretary responsible for matters relating to energy.

During the public hearings, stakeholders submitted on the need to have a separate regulator for the petroleum sector. The Bill as drafted in 2015 had included the Upstream Petroleum Regulatory Authority (UPRA) that was mandated to regulate upstream oil in Kenya especially during this nascent phase of development.



		<p>120. (1) No person may transfer, sell, lease, assign or otherwise dispose of a licence or permit without the written consent of the Cabinet Secretary.</p> <p>(2) The Cabinet Secretary may impose any terms or conditions that the Cabinet Secretary considers appropriate in respect of a transfer, sale, lease, assignment or other disposition of a licence or permit.</p> <p>(3) Where a person requests that the Cabinet Secretary consent to a transfer, sale, lease, assignment or other disposition of a licence or permit, the written consent must be given within 60 days of the receipt of the request unless the Cabinet Secretary notifies the person otherwise, in writing, within 10 days of receipt of the request.</p> <p>121. (1) Subject to subsection (2), on application by the holder of a licence or permit, the Cabinet Secretary may</p> <p>(a) alter the licence area or permit area of the licence or permit, as the case may be; or</p> <p>(b) amend a term or condition of, add a term or condition to, or delete a term or condition from, the licence or permit, if the Cabinet Secretary considers it appropriate to do so.</p> <p>(2) Where an application is made under subsection (1) in respect of a permit for which any activity authorized by the permit may be undertaken within an area of marine renewable-energy priority but outside of a marine renewable-electricity area, the Cabinet Secretary may not</p> <p>(a) alter the permit area of the permit; or</p> <p>(b) amend a term or condition of, add a term or condition to, or delete a term or condition from the permit, without the consent of the Cabinet Secretary for Environment and Natural Resources.</p> <p>122. (1) The holder of a licence or</p>
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			<p>118. (1) Where required to do so by the regulations, a licence holder or permit holder shall, in respect of the activity authorized by the licence or permit, provide financial or other security or carry insurance, or do both .</p> <p>(2) The Cabinet Secretary may determine the manner in which, and the conditions under which, any security that is provided under subsection (1) may be forfeited or returned, in whole or in part.</p> <p>(3) Subsection (1) does not apply to the Government or a government agency.</p> <p>119. (1) A licence holder or permit holder shall, upon the completion of the activity authorized by the licence or permit, undertake any steps prescribed by the regulations or the terms or conditions of the licence or permit to</p> <p>(a) decommission any generator, cable or other equipment or structure that was operated under the authority of the licence or permit; and</p> <p>(b) rehabilitate any sub-aquatic lands that compose the licence area or permit area.</p> <p>(2) Where required to do so by the regulations, a licence holder or permit holder shall, in accordance with the regulations, in respect of the activity authorized by the licence or permit,</p> <p>(a) provide the Cabinet Secretary with a decommissioning, abandonment and rehabilitation plan; and</p> <p>(b) obtain the Cabinet Secretary's approval of the decommissioning, abandonment and rehabilitation plan.</p> <p>(3) The Cabinet Secretary may, with the consent of the Cabinet Secretary for Environment and Natural Resources, approve the decommissioning, abandonment and rehabilitation plan, subject to any terms or conditions that the Cabinet Secretary considers appropriate.</p>
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		<p>monitoring plan; and (b) comply with the requirements prescribed by the environmental monitoring plan.</p> <p>114. Notwithstanding the Fisheries Management and Development Act 2016 and the Petroleum (Exploration, Development and Production) Act 2018, a permit holder is not required to enter into any lease or obtain any licence or other authorization under that Act in respect of any activity authorized by the permit.</p> <p>115. (1) Where a permit area is established for a permit, the Cabinet Secretary shall present it in a Marine Renewable Energy Plan, signed by him/her, showing the permit area and a copy of the permit.</p> <p>(2) Where the permit area of a permit is altered, the Cabinet Secretary shall present it in a revised Marine Renewable Energy Plan, signed by him/her, showing the altered permit area, in substitution for the previous plan deposited under this subsection or subsection (1).</p> <p>116. The Cabinet Secretary shall, in the form and manner prescribed by the regulations, notify the public about the permitting process including, upon the issuance a permit,</p> <p>(a) the identity and address of the permit holder;</p> <p>(b) where applicable, the permit area; and</p> <p>(c) any performance or other requirements that must be satisfied by the permit holder within a specific period.</p> <p>117. (1) The Cabinet Secretary may extend or renew a licence or permit.</p> <p>(2) The process and requirements for extending or renewing a licence or permit may be prescribed by the regulations.</p>
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			<p>(iv) restricting the technology that may be used in relation to the activities to be carried on under the permit, and</p> <p>(v) requiring the development of and adherence to plans relating to the activities to be carried on under the permit, including plans relating to public consultation and engagement, environmental protection, research, monitoring, risk-management, generator decommissioning and site restoration;</p> <p>(vi) requiring strict adherence to the existing local content regulations;</p> <p>(b) prescribed by the Cabinet Secretary upon the issuance of the permit or at any time thereafter</p> <p>(i) requiring the permit holder to collect baseline data or information and environmental effects data and specifying the baseline data or information and environmental effects data to be collected, and</p> <p>(ii) requiring the permit holder to disclose to the Cabinet Secretary the baseline data or information and environmental effects data and reports in relation thereto and specifying the timing, format and content of such disclosures and reports; and</p> <p>(c) prescribed by the regulations.</p> <p>(2) It is a condition of every permit issued under clause 111(1)(a) that the permit holder shall</p> <p>(a) not install any unconnected generator, including any cable or any other equipment or structure owned by the permit holder and used or intended to be used with the generator, before submitting a strategic environmental assessment and an environmental monitoring plan to the National Environment Management Authority (NEMA) and obtaining NEMA's approval of the strategic environmental assessment and the environmental</p>
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			<p>or intended to be used with a generator.</p> <p>(2) The exercise by a permit holder of the authority to undertake any activity referred to in subsection (1) may be restricted to an area specified in the permit.</p> <p>112. (1) The Cabinet Secretary may, without any application being made, issue a permit in respect of any cable or other equipment or structure that is used or intended to be used with a generator and that was constructed or installed before the coming into force of this Act.</p> <p>(2) The exercise by the holder of a permit issued under subsection (1) of the authority to undertake any activity referred to in that subsection may be restricted to an area specified by the permit.</p> <p>(3) In addition to any other term or condition prescribed under Clause 113, the Cabinet Secretary may require a person to neither be in breach of nor let expire any lease or sub-lease, if the licence, easement, approval, permit or authorization was entered into or issued before the coming into force of this Act.</p> <p>113. (1) A permit is subject to any terms and conditions</p> <p>(a) prescribed by the Cabinet Secretary upon the issuance of the permit, including terms and conditions</p> <p>(i) respecting the period during which the permit remains valid,</p> <p>(ii) establishing performance or other requirements that must be satisfied by the permit holder within a specific period,</p> <p>(iii) requiring the permit holder to produce reports and data in relation to the activities to be carried on under the permit and specifying the timing, format and content of such productions,</p>
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		<p>(4) Where the Cabinet Secretary considers an application to be incomplete,</p> <p>(a) the application must not be processed until the applicant provides the information required to complete the application;</p> <p>(b) the Cabinet Secretary shall, within 90 days of receiving the application, advise the applicant in writing that the application is incomplete and that the application requires additional information to be completed; and</p> <p>(c) where the Cabinet Secretary advises the applicant in writing that the application is incomplete, the Cabinet Secretary may, no sooner than 90 days after so advising the applicant, reject the application if it has not been completed.</p> <p>(5) Subject to subsection (6), no later than 90 days after receiving a complete application, the Cabinet Secretary shall approve or deny the application.</p> <p>(6) Where an application is made for a permit for which any activity authorized by the permit would be undertaken within an area of marine renewable-energy priority but outside of a marine renewable-electricity area, the Cabinet Secretary may not approve the application without the consent of the Cabinet Secretary for Environment and Natural Resources.</p> <p>111. (1) The Cabinet Secretary may, upon approving an application, issue to the applicant a permit to</p> <p>(a) construct, install and operate an unconnected generator, including any cable or other equipment or structure owned by the permit holder and used or intended to be used with the generator; or</p> <p>(b) construct, install and operate any cable or other equipment or structure owned by the permit holder and used</p>
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			<p>(2) Where the licence area of a licence is altered, the Cabinet Secretary shall present it in a revised Marine Renewable Energy Plan, signed by him/her, showing the altered licence area, in substitution for the previous plan deposited under this subsection or subsection (1).</p> <p>109. The Cabinet Secretary shall, in the form and manner prescribed by the regulations, notify the public about the licensing process, including</p> <ul style="list-style-type: none"> (a) the issuance of a call for applications; (b) upon the closing of a call for applications, the identity of the applicants who responded to the call for applications; and (c) upon the issuance of a licence, <ul style="list-style-type: none"> (i) the identity and address of the licence holder, (ii) the licence area, and (iii) any performance or other requirements that must be satisfied by the licence holder within a specific period. <p>110. (1) A person may apply to the Cabinet Secretary for a permit to construct, install and operate</p> <ul style="list-style-type: none"> (a) an unconnected generator, including any cable or other equipment or structure owned by the permit holder and used or intended to be used with the generator; or (b) any cable or other equipment or structure owned by the permit holder and used or intended to be used with a generator. <p>(2) An application for a permit must be made in the manner and contain the information prescribed by the regulations.</p> <p>(3) The Cabinet Secretary may require an applicant for a permit to provide any additional information the Cabinet Secretary considers necessary.</p>
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			<p>data and specifying the baseline data and environmental effects data to be collected, and</p> <p>(ii) requiring the licence holder to disclose to the Cabinet Secretary the baseline data or information and environmental effects data and reports in relation thereto and specifying the timing, format and content of such disclosures and reports; and</p> <p>(c) prescribed by the regulations.</p> <p>(2) It is a condition of every licence that the licence holder shall</p> <p>(a) not install any connected generator, including any cable or any other equipment or structure owned by the licence holder and used or intended to be used with the generator, before submitting a strategic environmental assessment and an environmental monitoring plan to the National Environment Management Authority (NEMA) and obtaining NEMA's approval of the strategic environmental assessment and the environmental monitoring plan; and</p> <p>(b) comply with the requirements prescribed by the strategic environmental assessment and the environmental monitoring plan.</p> <p>107. Notwithstanding the Fisheries Management and Development Act 2016 and the Petroleum (Exploration, Development and Production) Act 2018, a licence holder is not required to enter into any lease or obtain any licence or other authorization under that Act in respect of any activity authorized by the licence and undertaken within the licence area.</p> <p>108. (1) When the licence area of a licence is established, the Cabinet Secretary shall present it in a Marine Renewable Energy Plan, signed by him/her, showing the licence area and a copy of the licence .</p>
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			<p>terms and conditions</p> <p>(a) prescribed by the Cabinet Secretary upon the issuance of the licence, including terms and conditions</p> <p>(i) respecting the period during which the licence remains valid,</p> <p>(ii) establishing performance or other requirements including but not limited to local content regulations that must be satisfied by the licence holder within a specific period,</p> <p>(iii) requiring the licence holder to produce reports and data (e.g. environmental monitoring plan) in relation to the activities to be carried on under the licence and specifying the timing, format and content of such productions,</p> <p>(iv) restricting the technology that may be used in relation to the activities to be carried on under the licence,</p> <p>(v) limiting</p> <p>(A) the nameplate capacity of or the amount of electricity to be produced by a generator operating under the licence, or</p> <p>(B) the aggregate nameplate capacity of, or the aggregate amount of electricity to be produced by, all of the generators operating under the licence, and</p> <p>(vi) requiring the development of and adherence to plans relating to the activities to be carried on under the licence, including plans relating to public consultation and engagement, environmental protection, research, monitoring, risk-management, generator decommissioning and site restoration;</p> <p>(b) prescribed by the Cabinet Secretary upon the issuance of the licence or at any time thereafter</p> <p>(i) requiring the licence holder to collect baseline data or information or information and environmental effects</p>
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		<p>103. The Cabinet Secretary shall decide whether to issue any licence and, where the Cabinet Secretary decides to issue one or more licences, to whom each licence is to be issued, no later than six months after the close of a call for applications.</p> <p>104. (1) The Cabinet Secretary may, after the close of a call for applications, issue to an applicant a licence to, within the area specified by the licence, construct, install and operate one or more connected generators.</p> <p>(2) The licence area of a licence issued after a call for applications must be within the area in relation to which the call for applications was issued.</p> <p>105. (1) The Cabinet Secretary may issue to the holder of a feed-in tariff approval issued under Part IV of the Energy Act of 2018 a licence to, within the area specified by the licence, construct, install and operate a connected generator, if the approval was issued</p> <p>(a) before the coming into force of this Act; and</p> <p>(b) in respect of an electricity-generation facility situated or to be situated within a statutory marine renewable-electricity area.</p> <p>(2) In addition to any other term or condition prescribed under Section 106, the Cabinet Secretary may require the holder of a licence issued under subsection (1) to neither be in breach of nor let expire</p> <p>(a) any lease or sub-lease, licence, easement, approval, permit or authorization was entered into or issued before the coming into force of this Act in respect of the seabed upon which the electricity-generation facility is or is to be situated; and</p> <p>(b) the feed-in tariff approval.</p> <p>106. (1) A licence is subject to any</p>
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			<p>response to and in accordance with a call/request for applications/proposals.</p> <p>101. (1) The Cabinet Secretary may issue a call for applications.</p> <p>(2) The area to which a call for applications relates must be within a marine renewable-electricity area.</p> <p>(3) A call for applications must be consistent with</p> <p>(a) the regulations establishing the marine renewable-electricity area to which the call for applications relates;</p> <p>(b) any terms, conditions or requirements specified by the Cabinet Secretary that, in the Cabinet Secretary's opinion,</p> <p>(i) support the achievement of the public-policy goals and objectives of the National Government, and</p> <p>(ii) are consistent with any policies, plans and strategies of the National Government relating to the development of marine renewable-energy resources; and</p> <p>(c) any requirements for a call for applications prescribed by the regulations.</p> <p>102. (1) Where, the Cabinet Secretary delegates the authority to issue a call for applications but not the authority to issue a licence, the person to whom the authority to issue a call for applications is delegated shall</p> <p>(a) report to the Cabinet Secretary on the call for applications process;</p> <p>(b) recommend whether the Cabinet Secretary issue any licences; and</p> <p>(c) where the person recommends that the Cabinet Secretary issue one or more licences, recommend to whom the Cabinet Secretary issue each licence.</p> <p>(2) For greater certainty, the Cabinet Secretary is not bound by a recommendation made under clause (1)(b) or (c).</p>
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			<p>lands situated within a marine renewable-electricity area as defined by the Energy Act 2018.</p> <p>98. (1) Within 20 years of the establishment of a marine renewable-electricity area, the Cabinet Secretary shall review the decision to establish the marine renewable-electricity area to ensure that its establishment continues to meet the objectives of this Act and that any impact of its establishment on the conduct of other activities in the marine renewable-electricity area is, in the Cabinet Secretary's opinion, minimal.</p> <p>(2) In reviewing the decision to establish the marine renewable-electricity area, the Cabinet Secretary</p> <p>(a) shall consult with the Cabinet Secretary for Environment and Natural Resources to determine the impact of the establishment of the marine renewable-electricity area on the conduct of other activities in the marine renewable-electricity area and consider any information provided by the Cabinet Secretary for Environment and Natural Resources when determining whether its establishment continues to meet the objectives of this Act; and</p> <p>(b) may consult with the public and may adapt and apply the requirements of Section 94 for that purpose.</p> <p>99. No person shall interconnect a generator situated in marine waters outside of a marine renewable-electricity area with</p> <p>(a) the electrical grid of a public or if applicable, a private utility in the Republic of Kenya; or</p> <p>(b) an onshore electricity consumer in the Republic of Kenya.</p> <p>Licences and Permits</p> <p>100. A person may only apply for a licence out of his/her own volition or in</p>
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		<p>Development Act 2016;</p> <p>(b) any sub-aquatic lands have been set aside under Fisheries Management and Development Act 2016; or</p> <p>(c) there are in existence</p> <p>(i) any aquaculture leases or other leases entered into,</p> <p>(ii) any aquaculture licences or other licences, permits or authorizations issued, or</p> <p>(iii) any sub-aquatic lands designated as an aquaculture development area, under the Fisheries Management and Development Act 2016.</p> <p>97. (1) Where a marine renewable-electricity area is established, the Cabinet Secretary shall present it in a Marine Renewable Energy Plan, signed by him/her, showing the boundaries of the marine renewable-electricity area.</p> <p>(2) Where the boundaries of a marine renewable-electricity area are altered, the Cabinet Secretary shall present it in a revised Marine Renewable Energy Plan, signed by him/her, showing the altered boundaries of the marine renewable-electricity area, in substitution for the previous plan deposited under this subsection or subsection (1).</p> <p>(3) Notwithstanding anything in the Petroleum (Exploration, Development and Production) Act 2018, no lease may be entered into and no licence, permit or other authorization may be issued under the aforementioned Act in respect of any part of a marine renewable-electricity area as defined by this Act.</p> <p>(4) Notwithstanding anything in the Fisheries Management and Development Act 2016, the Cabinet Secretary for Agriculture, Livestock, Fisheries and the Blue Economy may not designate as an aquaculture development area any sub-aquatic</p>
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		<p>Resources to determine whether, in respect of the proposed marine renewable-electricity area,</p> <p>(i) there are in existence any rights or interests granted or issued to any person under the authority of the <u>Petroleum (Exploration, Development and Production) Act 2018</u>, or</p> <p>(ii) any sub-aquatic lands have been set aside under the authority of the <u>Fisheries Management and Development Act 2016</u>;</p> <p>(c) consult with the Cabinet Secretary for Agriculture, Livestock, Fisheries and the Blue Economy, to determine whether, in respect of the proposed marine renewable-electricity area, there are in existence</p> <p>(i) any aquaculture leases or other leases entered into,</p> <p>(ii) any aquaculture licences or other licences, permits or authorizations issued, or</p> <p>(iii) any sub-aquatic lands designated as aquaculture development areas, under the <u>Fisheries Management and Development Act 2016</u>; and</p> <p>(d) satisfy any other requirement including but not limited to restricted military zones, local heritage or archaeology concerns, communication links [such as radar, telecoms, impact on Ministry of Defense radar and low flying, civil aviation, mobile phone masts, radio communication links etc.] and follow any other procedure or process prescribed by the regulations.</p> <p>96. A marine renewable-electricity area may not comprise any area in respect of which</p> <p>(a) there are in existence any rights or interests granted or issued to any person under the authority of the <u>Petroleum (Exploration, Development and Production) Act 2018</u> or the <u>Fisheries Management and</u></p>
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			<p>activities being undertaken or that may be undertaken in the marine renewable-electricity area; and</p> <p>(e) any other information that the Cabinet Secretary considers necessary or advisable or that is prescribed by the regulations.</p> <p>(5) After releasing a report under subsection (4), the Cabinet Secretary shall provide the public with an opportunity to comment on the report.</p> <p>(6) For greater certainty,</p> <p>(a) a public consultation process established in compliance with this Section may include any requirements identified by the Constitution of Kenya, Environment Management and Co-ordination [Amendment] Act 2015, the Environmental (Strategic Assessment, Integrated Impact Assessment and Audit) Regulations, 2017 or that the Cabinet Secretary considers necessary or advisable in addition to those prescribed by this Section; and</p> <p>(b) different public consultation processes may be established in respect of</p> <p>(i) different areas of marine renewable-energy priority, and</p> <p>(ii) different proposed or existing marine renewable-electricity areas.</p> <p>95. (1) Before a marine renewable-electricity area may be established or the regulations establishing a marine renewable-electricity area may be materially modified, the Cabinet Secretary shall</p> <p>(a) conduct or cause to be conducted a strategic environmental assessment in respect of the proposed marine renewable-electricity area and the activities to be allowed in the proposed marine renewable-electricity area;</p> <p>(b) consult with the Cabinet Secretary for Environment and Natural</p>
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			<p>(3) Before consulting with the public, the Cabinet Secretary shall prepare and release to the public a report that includes a summary of baseline data or information on the resource potential of, and any socio-economic or environmental factors associated with, the proposed or existing marine renewable-electricity area that is the subject of the public consultation process.</p> <p>(4) After consulting with the public, the Cabinet Secretary shall prepare and release to the public a report summarizing the information obtained when consulting with the public and including the following information:</p> <p>(a) the information described by clause (2)(a), (b) or (c), as applicable, modified, to the extent the Cabinet Secretary considers necessary or advisable, as a result of the public consultation;</p> <p>(b) the types of connected generators that it is proposed may be licensed in the proposed or existing marine renewable-electricity area, including whether the generators are to be floating, surface-piercing or completely sub-surface structures;</p> <p>(c) the proposed limit of the aggregate nameplate capacity of the connected generators that may be constructed, installed and operated in the proposed or existing marine renewable-electricity area;</p> <p>(d) any significant impacts that the proposed establishment of a marine renewable-electricity area or amendment of the regulations establishing a marine renewable-electricity area, and the installation, construction and operation of generators within the marine renewable-electricity area, are reasonably expected to have on</p>
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		<p>proposed amendment alters the boundaries of the marine renewable-electricity area, the proposed altered boundaries of the marine renewable-electricity area, including a plan or chart displaying the marine renewable-electricity area as altered;</p> <p>(c) where the public consultation is in respect of a proposal to amend the regulations establishing a marine renewable-electricity area, which proposed amendment does not alter the boundaries of the marine renewable-electricity area, the existing boundaries of the marine renewable-electricity area, including a plan or chart displaying the marine renewable-electricity area as it exists;</p> <p>(d) an explanation of how to obtain information on the proposal to establish a marine renewable-electricity area or to amend the regulations establishing a marine renewable-electricity area;</p> <p>(e) an explanation of how to provide input to the Cabinet Secretary and the Cabinet Secretary for Environment and Natural Resources for the purpose of their decision whether to recommend the establishment of a marine renewable-electricity area or the amendment of the regulations establishing a marine renewable-electricity area;</p> <p>(f) any periods within which information may be accessed or input provided under the public consultation process;</p> <p>(g) any dates established for any specific events that are to take place as part of the public consultation process; and</p> <p>(h) any other information that the Cabinet Secretary considers necessary or advisable or that is prescribed by the regulations.</p>
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			<p>modification,</p> <p>(a) in consultation with the Cabinet Secretary for Environment and Natural Resources and the Cabinet Secretary for Agriculture, Livestock, Fisheries and the Blue Economy, establish a public consultation process that complies with Section 94; and</p> <p>(b) conduct a public consultation in accordance with the process established under clause (a).</p> <p>(2) Before the regulations establishing a marine renewable-electricity area may be amended, other than by being materially modified, the Cabinet Secretary may, in respect of the amendment,</p> <p>(a) in consultation with the Cabinet Secretary for Environment and Natural Resources and the Cabinet Secretary for Agriculture, Livestock, Fisheries and the Blue Economy, establish a public consultation process that complies with Section 94; and</p> <p>(b) conduct a public consultation in accordance with the process established under clause (a).</p> <p>94. (1) The Cabinet Secretary shall, at the time and in the manner prescribed by the regulations, issue a notice to the public containing the details of a public consultation process established under Section 91.</p> <p>(2) A notice issued under subsection (1) must include</p> <p>(a) where the public consultation is in respect of a proposal to establish a marine renewable-electricity area, the proposed boundaries of the marine renewable-electricity area, including a plan or chart displaying the proposed marine renewable-electricity area;</p> <p>(b) where the public consultation is in respect of a proposal to amend the regulations establishing a marine renewable-electricity area, which</p>
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	<p>Agencies”, the fourth new section shall be titled “Collection, Use and Disclosure of Data and Information”, the fifth new section shall be titled “Local Content and Training” the sixth section shall be titled “Ministerial Orders”, the seventh section shall be titled “Offences”, the eighth new section shall be titled “Regulations”, the ninth new section shall be titled “Safety Regulations”, the tenth new section shall be titled “Enforcement”, and the eleventh new section shall be titled “Offshore Operations”. Each new section shall have clauses numbered appropriately.</p>	<p>renewable-energy priority, in substitution for the previous plan deposited under this subsection.</p> <p>92. (1) Except in accordance with a licence or permit, no person shall construct, install or operate within an area of marine renewable-energy priority</p> <p>(a) a generator; or</p> <p>(b) a cable or any other equipment or structure used or intended to be used with a generator.</p> <p>(2) Notwithstanding subsection (1), a contractor or subcontractor of the holder of a licence or permit may, in accordance with the licence or permit, construct, install or operate within an area of marine renewable-energy priority</p> <p>(a) a generator; or</p> <p>(b) a cable or any other equipment or structure used or intended to be used with a generator.</p> <p>(3) Where a contractor or subcontractor of the holder of a licence or permit constructs, installs or operates within an area of marine renewable-energy priority</p> <p>(a) a generator; or</p> <p>(b) a cable or any other equipment or structure used or intended to be used with a generator, the holder of the licence or permit shall ensure that the contractor or subcontractor is advised of and adheres to any terms or conditions in the licence or permit that relate to the work of the contractor or subcontractor.</p> <p>Marine Renewable-Electricity Areas</p> <p>93. (1) Before a marine renewable-electricity area may be established or the regulations establishing a marine renewable-electricity area may be materially modified, the Cabinet Secretary shall, in respect of the establishment or the material</p>
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			Kenya's Exclusive Economic Zone (EEZ) and Kenya's Extended Continental Shelf Area vests in the National Government 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.
5	Part IV, Clause 74 (1)	<u>Modify</u> this clause to include marine renewable energy	The Cabinet Secretary shall promote the development and use of renewable energy technologies, including but not limited to biomass, biodiesel, bioethanol, charcoal, fuelwood, solar, wind, marine renewable energy, hydropower, biogas and municipal waste.
6	Part IV, Clause 74 (2)(b)	<u>Modify</u> this clause to include marine renewable energy	providing an enabling framework for the efficient and sustainable production, distribution and marketing of biomass, solar, wind, marine renewable energy, small hydros, municipal waste, geothermal and charcoal;
7	Part IV	<u>Introduce eleven new sections addressing the marine renewable energy industry</u> immediately after the section on "Geothermal Resources" and before the section on Renewable Energy "Feed-in Tariff System" with appropriately numbered new clauses to facilitate development of offshore renewable energy in Kenya. The first new section shall be titled "Areas of Marine Renewable-energy Priority", the second new section shall be titled "Marine Renewable-Electricity Areas" the third new section shall be titled "Licences and Permits", the fourth new section shall be titled "Consultation With Relevant County Governments, Other National Government Departments and	Areas of Marine Renewable-energy Priority 90. An area of marine renewable-energy priority may be established by the regulations upon the report and recommendation of the Cabinet Secretary for Energy and the Cabinet Secretary for Environment and Natural Resources. 91. (1) Where an area of marine renewable-energy priority is established, the Cabinet Secretary shall present it in a Marine Renewable Energy Plan, signed by him/her, showing the boundaries of the area of marine renewable-energy priority. (2) Where the boundaries of an area of marine renewable-energy priority are altered, the Cabinet Secretary shall present it in a revised Marine Renewable Energy Plan, signed by him/her, showing the altered boundaries of the area of marine

			<p>manufacturer of the generator;</p> <p>"Outer Continental Shelf" means the outer continental shelf as defined in the United Nations Convention on the Law of the Sea or all submerged lands seaward and outside the area of lands beneath navigable waters;</p> <p>"renewable energy" means non-fossil energy generated from natural non-depleting resources including but not limited to solar energy, wind energy, biomass energy, biological waste energy, hydro energy, geothermal energy and marine renewable energy;</p> <p>"upstream petroleum operations" means all or any of the operations related to the exploration, development, production, separation and treatment, storage and transportation of petroleum up to the agreed delivery point;</p>
2	Part II, Clause 8 concerning promotion of energy investments	Add <u>new</u> duties and powers of the Cabinet Secretary to promote investments in offshore renewable energy in Kenya	<p>The Cabinet Secretary shall promote and support research and development respecting marine renewable-energy resources, including the development of resources for the voluntary public sharing of information relating to research activities;</p> <p>The Cabinet Secretary shall measure and analyze the socio-economic and environmental effects of marine renewable-energy activities and develop programs to enhance any benefits and mitigate any concerns associated with these activities.</p>
3	Part III, Clause 43(1)(j)	<u>Modify</u> this clause to include marine renewable energy	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, marine renewable energy, small hydropower, biogas, cogeneration and municipal waste, but excluding geothermal;
4	Part IV Clause 72	<u>Modify</u> this clause to include marine renewable energy	All unexploited renewable energy resources under or in any land, in

		<p>“marine environment” means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, saltmarshes, and wetlands within the coastal zone and on the outer Continental Shelf;</p> <p>“marine renewable energy operations” means site characterization and resource assessment, construction, operation and maintenance, decommissioning and site rehabilitation phases for the various types of marine renewable energy projects and related substations and transmission lines;</p> <p>"marine renewable-energy resources" means</p> <ul style="list-style-type: none"> (i) ocean waves, tides and currents, floating solar, and winds blowing over marine waters, and (ii) any other source prescribed by the regulations; <p>"marine renewable electricity" means electricity produced from marine renewable energy but, in respect of electricity produced from winds blowing over marine waters, includes only electricity produced from a marine wind turbine;</p> <p>"marine renewable-electricity area" means an area established by this Act or the regulations as a marine renewable-electricity area;</p> <p>"marine wind turbine" means a wind turbine affixed to the sea bed or situated on a platform that is completely surrounded by marine waters;</p> <p>"nameplate capacity" means the maximum rated output of a generator under the conditions specified by the</p>
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			<p>Kenya pursuant to such lease, or (ii) if there were no such sales, or if the Cabinet Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such electricity was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (iii) if there were no sales of such electricity from such region during such period, or if the Cabinet Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Cabinet Secretary;</p> <p>"generator" means any device or technology</p> <p>(i) used to produce marine renewable electricity for use or consumption onshore, or</p> <p>(ii) being tested for the purpose of assessing its potential or capability for producing marine renewable electricity, and includes any structure or anchor used to maintain the device or technology in place, but excludes any device or technology prescribed by the regulations as not being a generator;</p> <p>"environmental monitoring plan" means an environmental monitoring plan required to be submitted to the National Environment Management Authority (NEMA) for approval of a licence under clause 149(1)(k);</p> <p>"human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;</p>
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			<p>waters, and the inward boundaries of which may be identified by the Kenyan coastal Counties, pursuant to the authority of the <u>Maritime Zones Act 1989</u>.</p> <p>"connected generator" means a generator</p> <p>(i) used to produce marine renewable electricity for use or consumption onshore, or</p> <p>(ii) prescribed by the regulations as being a connected generator, but excludes any generator prescribed by the regulations as not being a connected generator;</p> <p>"environmental effects monitoring data" means data, collected in relation to a generator, respecting the effect of the generator on, and the interaction of the generator with, the marine environment;</p> <p>"facility" includes</p> <p>(a) any structure, device, roads, or other associated installations or infrastructure including cables, rail stations, pump stations, compressor stations and equipment constructed, placed or used in order to carry out marine renewable energy operations;</p> <p>(b) vessel, aircraft, rig, platform, vehicle or craft when stationary and used for drilling or support of on-going marine renewable energy operations; and</p> <p>(c) vessel, aircraft, rig, platform, vehicle or craft for transportation during marine renewable energy operations;</p> <p>"fair market value" means the value of any marine renewable energy electricity (i) computed at a unit price equivalent to the average unit price at which such electricity was sold pursuant to a lease during the period for which any net profit share is accrued or reserved to the Republic of</p>
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No.	Bill Part and Clause	My Comment	Recommendation
1	Part I, Clause 2	Add <u>new</u> interpretations to include offshore renewable energy and <u>modify</u> the interpretation of "renewable energy"	<p>"aquaculture" means the cultivation, propagation or farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants whether from eggs, spawn, spat, seed or other means or by rearing fish lawfully taken from the wild or lawfully imported into Kenya, or by other similar process;</p> <p>"area of marine renewable-energy priority" means an area established by or under Part IV as an area of marine renewable-energy priority;</p> <p>"baseline data or information" means data, collected in relation to the licence area of a licence or the permit area of a permit, respecting the conditions within the area before the installation within the area of a generator authorized to be installed under the licence or permit;</p> <p>"coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;</p> <p>"coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shore lands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the Kenyan coastal Counties, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the Republic of Kenya territorial sea and extends inland from the shorelines to the extent necessary to control shore lands, the uses of which have a direct and significant impact on the coastal</p>

Eric Mwangi Njoroge

P. O. Box 13387 City Square Nairobi, 00200 Kenya.

Email: Ericnjoroge@hotmail.com

20th August 2018

Twelfth Parliament,

Clerk of the Senate/Secretary, Parliamentary Service Commission,

1st Floor, Main Parliament Building Nairobi,

P. O. Box 41842 Nairobi, 00100 Kenya.

Tel.: +254 2 2221291 or +254 2 2848000, Fax: +254 2 2243694.

Dear Sir,

Re: Written Memoranda: The Energy Bill (National Assembly Bills No. 50 of 2017)

Pursuant to the notice by the Clerk of Senate appearing in the newspapers seeking the input of members of the public on the Energy Bill, (National Assembly Bills No. 50 of 2017), I therefore make the following recommendations to facilitate development of the offshore renewable energy industry in Kenya. ~~Alternatively, the Senate could consider introducing a new Marine Renewable Energy Bill 2018, as some of the changes proposed are of significant scope.~~

As you may be aware, last year in 2017, VR Holding AB, a Sweden-based company submitted an expression of interest to build a 600-megawatt wind project in the Indian Ocean offshore waters bordering Malindi and Kwale. Although VR Holding AB was denied the go ahead by the Ministry of Energy to build a large wind farm of 600 MW in size, they accepted the Kenyan government's request to initially build a 50 MW demonstration farm with an option to scale up in the coming years.

The development of the offshore renewables industry is an economic growth opportunity that can bring benefits to many areas of Kenya. If policy and regulatory mechanisms are not available, there is the danger that offshore wind developers and wave and tidal manufacturers could source the manufactured equipment for projects which secure the Kenyan government leases from outside the country.

If this happens, the economic benefit to Kenya will be minimal, despite the country's unmatched offshore renewable energy generation potential. If Kenya is successful in developing a strong supply chain in offshore renewables, many of our ports and harbours will be involved in related economic activity. The benefits of the proposed changes are the potential to accelerate reviews and approvals, reduce costs, and minimize the environmental impacts associated with offshore renewable energy industry development in Kenya.

Background information about Nature Kenya

Nature Kenya—the East Africa Natural History Society (EANHS)—is Africa’s oldest environmental Society, established in 1909 to promote the study and conservation of nature in eastern Africa. We remain a non-political and not for profit membership Society. Our mission is connecting nature and people. Our work is firmly based on partnership, science and action. We use the best available science to inspire positive action for biodiversity by and for partners—Government, local communities and private sector.

Nature Kenya takes practical action. We work with and for people – to improve their quality of life alongside, and as a result of, nature conservation. We collaborate with others wherever possible, at local, national, regional or global levels, linking with community groups, governments, businesses, universities and civil society groups to increase the impacts of our efforts.

Some of our achievements include:

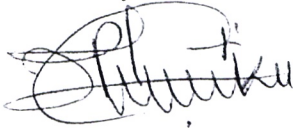
- Founded the National Museums of Kenya, now a world-renowned institution for research and education.
- Published, since 1910, the *Journal of East African Natural History*, a respected scientific journal now jointly produced with the National Museums.
- Established and maintained, with the National Museums of Kenya, a comprehensive natural history library.
- Engaged its members in the study, enjoyment and conservation of nature in Eastern Africa, through field trips, lectures, publications, and opportunities to take part in research activities since 1909.
- Identified and designated Important Bird Areas (IBAs) for Kenya, in collaboration with the National Museums; and documented the plants, animals and other biodiversity of Eastern Africa as a contribution to expanding the taxonomic scope of priority setting from IBAs to Key Biodiversity Areas (KBAs). Since IBAs are KBAs based on birds, they are today referred to as Important Bird and Biodiversity Areas.
- Encouraged and supported community-based organizations to become Site Support Groups (SSGs) promoting conservation and alternative livelihoods at Important Bird Areas, especially those without official protection status.
- Developed partnerships among Government and non-government organizations for sustainable conservation action at IBAs through the Important Bird Areas National Liaison Committee (IBA-NLC). We work with others in the development of policies, legislation and institutional frameworks that safeguard the ecological sustainability of IBAs in Kenya
- Mobilized resources to connect nature and people to take action for biodiversity conservation through development and implementation of donor funded projects at priority IBAs in Kenya.
- Work globally through the BirdLife International Partnership and its network of like-minded organizations in Eastern Africa and beyond in 117 countries and territories.

For more information visit our website at www.naturekenya.org.

during the SEA and EIA development process. The Consolidated Energy Fund as proposed in section 216 should include supporting a sustainable biodiversity and environmental impact monitoring system, and impact offset and mitigation measures

Nature Kenya would be happy to answer questions you may have or appear before the Senate Standing Committee on Energy to explain our position. A short history of Nature Kenya is attached.

Sincerely

A handwritten signature in black ink, appearing to read 'Dr Paul Matiku', written in a cursive style.

Dr Paul Matiku

Executive Director, Nature Kenya



The Clerk of the Senate/Secretary
Parliamentary Service Commission
P.O. Box 41842-00100, Nairobi

05 SEP 2018

Dear Mr. Jeremiah Nyegenye,

**RE: Submission of Memorandum - The Energy Bill 2017
(National Assembly Bills No 50 of 2017)**

17th August 2018
THE SENATE
RECEIVED
06 SEP 2018
SENIOR DEPUTY CLERK

Nature Kenya – the East Africa Natural History Society – has studied the Energy Bill 2017 and submits the following memorandum, based on the notice in the Daily Nation on 13th August 2018.

DHS
DCom

Nature Kenya appeals to the Senate, through the Senate Standing Committee on Energy, to defend Kenya's priceless natural resources!

Please deal.

Section 178 of the Energy Bill says:

178 (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.

eg
08/09/18

This clause appears to place energy infrastructure above any other national considerations, including the Constitution that entitles us to a clean and healthy environment.

They seem to allow energy companies to build anything on any Government property, from State House to archaeological sites to protected areas such as national parks and forests. Is this in Kenya's national interest?

Such Government properties are our most valuable assets. They include our national parks – the nucleus of our tourism industry, an important provider of jobs and income; our forest reserves that protect our climate, water and genetic resources; and our heritage sites that honour our cultural history.

② Clean Access - Energy
Please bring to the attention of the Committee
07/09/18

Allowing unfettered access by petroleum companies to these critical sites is a dangerous move. Nature Kenya – a membership Society – urges the Senate to amend the wording as follows:

Section 178 (1) can be amended after "in the manner and on the conditions as provided in this Act" by adding "subject to the provisions of the Constitution and the Environmental Management and Coordination Act."

Consolidated Energy Fund proposed in Section 216:

Energy sector initiatives may cause serious environmental impacts arising from the effects of climate change and natural catastrophes, among others. These were not fully anticipated

THE SENATE
RECEIVED
06 SEP 2018



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Table A1
Overview over conducted interviews and focus group discussions, Kitui and Homa Bay.

Type of interview	Number of interviews	Women	Men	Kitui	Homa Bay
Key people	19	7	12	9	10
Staff, electricity supply	9	3	6	4	5
Public services	12	2	10	6	6
Shops and businesses	8	6	2	6	2
Householder with electricity access	13	8	5	4	9
Householder without electricity access	9	7	2	4	5
Life story	11	6	5	4	7
Total number of interviews	81	39	42	37	44
Focus group ^a	7	4	3	3	4
Number of interviews and focus group discussions	88	43	45	40	48

Bold values express summaries of the numbers above.

^a When denoting some focus groups as “women” and others as “men”, it reflects the gender of the majority of participants.

Appendix B

See Table B1.

For example, Kit-E-HE1_W implies that the person was living in Kitui County, Endau village, a householder (H) with access to electricity (E), woman respondent (W).

Other explanations: “HNo” implies that the household does not have access to electricity (beyond individual plug and go-systems in some cases).

“LS” stands for Life Story, and key people and shops/businesses have the simplest form of numbering, e.g. Hom-GB-1_M (Homa Bay, God-Bura village, key person, man).

Table B1
Key for numbering interviewees and list of respondents.

County code	Village code
Homa Bay: Hom	God-Bura: GB Kiwa: K God Liech: GL Ligongo: L
Kitui: Kit	Endau: E Ikisaya: I Kalungu: K

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likely to produce a particular set of ideas about end users: men doing productive work and women occupying households, apparently benefiting from electricity by default. Parts of what is missed in this imaginary of the user side are women's specific needs for light and appliances, their potential productive uses of electricity (see also [36]), and a need for supporting investments to improve the quality of public services to reduce rural women's immense work load. Such policies and projects fail to tap their potentials for reducing inequality through what we in the present study observed to be "double transformations" (cf. also [8,9]). We have pointed to the importance of the way implementers envisage who the future user might be, who becomes involved and the wider social implications of such involvement, and the way users actually gain – or do not gain – influence over access and usage and how they experience the adhering benefits from using electricity's services.

The structures of inequality in the socio-cultural context probably appear as the most challenging problem to tackle through energy interventions. It has been suggested that a solution may lie in cross-sectoral initiatives where the energy sector works together with other departments, for example by addressing women's rights to land ownership and social security when forming energy and electricity policies, subsidy schemes and programmes. What policy makers and implementers in the public, voluntary and commercial sectors can address directly is the gendered planning, management and organisation of supply. This study has contributed to understanding how the organisation of the provision side may come into play in shaping the gender of electricity access. It also provides empirical evidence from rural Kenya on how "gender-neutral" policies and strategies, together with local norms and practices, hindered women's empowerment in that access became a realm largely dominated and controlled by men. In turn, male dominated access had implications in terms of who decided on electricity's applications and uses. These findings strengthen our previous recommendation based on a literature review [5] that women should be ensured full participation in the planning, managing and operating of energy programmes and projects. We hope to have shown the impact a revision of policy and practice could have on the ground. When women are given privileges, it is bound to trigger initial reactions from men, but because the need for electricity, connectivity and charging capacity is huge, it is likely, as in the studied cases where double transformations occurred, that such barriers will soon be overcome.

In order to realise "the last mile" in Kenya, in terms of access to electricity's services for all, solar-based solutions will play an increasingly important role. In the current debate about various types of access, the GTF acknowledges that lanterns and solar home systems may fall below tier 1 [37, p. 177–9].³⁰ In the present work several of the solar systems observed were smaller in size and provide fewer hours of light than tier 1 describes, for example when people rent a 3 W lantern and distributes the power over two days. Because a couple of days with light can be important, we support

Appendix A. List of interviews.

See Table A1.

initiatives for further refinement of the work with defining tiers and monitoring progress.

With continued support and facilitation from the government and/or external partners, the set-up and organisation of supply matters, as this study confirms. By meeting realities on the user side in rural areas, many of the products offered in the market seem attuned towards meeting many people's ability to pay, and mobile payment systems enhance the supplier-customer relationship. What private systems cannot address is the situation of the poorest, those living at a distance from central places and the need to provide electricity access to enhance the quality of public and communal services. This is where the government, together with private and public partners, should strengthen their current efforts to provide gender equitable, decentralised systems of supply.

In rural areas, electricity investments, whether grid or off-grid, should primarily be regarded as steps to *empower communities*. In that way, electricity could serve a key function in many villages supplying solutions that fit the particular context and that benefit all. Such an endeavor could learn from the studied community projects: local staff, women's inclusion, face-to-face customer service, pay per service, products and services reachable also by people living at a distance from cities and village centres. Also the studied private sector initiatives provide examples of best practice: functioning micro-grids and other village scale systems, mobile money transfer and payment in instalments. The material presented suggests that the likelihood of success of programmes aiming for electricity access for all would increase if they from their initiation were centred on women's needs, leadership and participation. Electricity access is gendered, and thinking in terms of community projects organised at the village scale with supply managed and operated by women (and men) would be well suited to creating viable systems and meeting women's needs as well.

Acknowledgements

This independent research derives from the project "Exploring Factors that Enhance and restrict Women's Empowerment through Electrification" (EFEWEE) funded by the Department for International Development (DFID), UK, coordinated by the International Network on Gender and Sustainable Energy (ENERGIA) through the Energy and Gender Research Programme (2015–2018). We thank the women and men we met in Homa Bay and Kitui for their time and willingness to share viewpoints and experiences with us and assistant Kristen Wanyama for her dedicated efforts and important contributions to the work with this article. We thank Mumbi Machera, Youba Sokona, Joy Clancy and two anonymous reviewers for their valuable comments, and we are grateful to our EFEWEE team colleagues, Debajit Palit, Margaret Matinga, Mini Govindan, Bigsna Gill and Henry Gichungi, for stimulation discussions. Connie Stultz proofed the English language.

³⁰ In the standard definition of tier 1 (page 175) this includes supply/capacity of 3 W, 20 Wh or 1000 lm h per day, and duration of supply during daytime should be minimum 4 h, while duration in the evening should be minimum 1 h.

literature [33,11,4,5]. What we are exploring in this paper is the gendered set-up and organisation of various types of electricity access in rural Kenya – and the implications for women’s empowerment. We draw on selected parts of a comprehensive framework for analysing empowerment [5], but focus primarily on agency in terms of decision-making processes surrounding access and subscriptions and potential signs of changes in gender norms and women’s social position as a result of various types of electricity interventions.

Inspired by socio-technical system and social practice theory [2], we presented material on how access is shaped, partly through the set-up of systems of provision and partly through the end-users and the existing socio-material organisation. Jointly, these two forces contribute to forming electricity access as an ongoing social and gendered practice. By this we have also shown that the issue of access is not only, or even mainly, a question of technology, but about ideas about users, processes of implementation and organisation of supply, and end-users needs, social positions and aspirations.

Despite the qualitative approach in this study, it is clear that solar-based solutions reach a far higher share of the population than the grid in the selected rural contexts even in areas where the grid is present. The main explanations for this are that the grid is too costly for most households and it does not reach where they live. Affordability is a major obstacle to grid access, both in terms of the high cost of connection and also monthly charges. Non-working transformers close to public schools and dispensaries and poles falling down give testimony of the practical challenges to accomplish the “Last Mile” rural electrification through the intention to provide the general rural population with needed services through the grid. As a result, the grid is highly unreliable and also in this sense does not currently provide access (SEforAll 2015). Several of our respondents with the ability to pay (Homa Bay) had thus felt a need to obtain solar systems in addition to the grid connection.

In terms of women’s ability to influence decisions on appliances and the use of light, our qualitative material indicate that they have less power to decide in the case of fixed connections, whether grid, mini-grids or SHS, the reasons being that men tend to own the houses, become the customer, and have a higher income and be perceived as entitled to decide on big issues. The reported views on domestic violence confirm that women are in a subordinated position, which, together with their financial dependency on men come into play when negotiating electricity’s applications. The lack of lights in some women’s kitchens may partly reflect their reduced decision-making power and partly that education (light for reading) is given priority by all, including women. In systems with fixed connections and installations, a wife’s access to electricity goes through her husband, who has a larger say in key decisions before she can start to use appliances, charge her phone, administer switches and use light in daily life.

That said, we noted that some people forwarded the idea that using electric light and mobiles may reduce conflicts over missing kerosene, and thereby reduce violence. A study from Afghanistan [11] found that women felt that electric light helped to reduce domestic violence. When a baby was crying at night, the women could quickly turn on the light and thus avoid waking up and annoying the husband. Issues surrounding decision-making and conflict are important but not easily grasped through relatively short interviews with outsiders. To better understand the relationship between electricity access and violence, ethnography would seem to be a more beneficial method for forthcoming studies.

When the socio-technical design of the electricity provision allows for flexible services, this appears to enhance women’s agency in relation to electricity (if also possibly suffering drudgery in having to receive and return lanterns). In several ways, women who rent portable lanterns for a few shillings per day through the Energy Centre have more direct access and autonomy to decide to get a lamp and where to use it, resembling their traditional power to decide on the use of kerosene

lamps. The drawback in this particular case is that the lanterns cannot be used for charging the important mobile phones or powering radios and television, which are services obtained at the Centre. Nonetheless, because basic electricity services are needed and flexible systems enhance women’s agency, it is promising that both agents for commercial solar products as well as the Kenya Power lantern renting project provide similar, flexible solutions both in terms of technologies and payment models.

A common trait of the two selected sites with community projects (SHS in God Liech and the Energy Centre in Ikisaya, both also influenced by external actors) was their continued presence and services in the village, which enhanced users’ enduring access.²⁹ In light of the failing grid, including staff’s lack of maintenance and challenges in communicating with customers, we emphasise that ensuring enduring, predictable services, including maintenance and communication, should also form part of the discussion of people’s access to electricity. On this point, the two locally anchored community systems appeared to perform well in that their services were enduring.

Finally, there are clear signs that the gender sensitive approaches during implementation and set-up of supply had wider impacts. In God Liech, the significance of the women-targeted approach was reflected when a male participant said he could not believe it when he first heard that women were going to India and then again when he was told that women assembled the equipment that arrived in parts to the village. His view on what women can do had changed in the process, challenging existing gender norms (c.f. [11]). In addition, the preference of female candidates for vacant positions at the Centre in Ikisaya indicates that the women pursuing these positions and their social surroundings find it appropriate for women to do this kind of work, in contrast to what was the case when the Centre was established. We argue that women’s “hands-on” involvement in the provision of these new services had a particularly strong symbolic effect because nobody/few people in these places had previously related to electricity (c.f. [5]). The services are desirable and associated with social esteem, as expressed in Ikisaya when the local administration referred to the Centre and its “digital” image when explaining why the village stands out compared to neighbouring villages. The effect of introducing systems based on women’s leadership and participation were more profound and led directly to empowerment, and not only for the women involved. To some degree it affected all because village discourses and new norms are collectively shared by nature. Hence, a “double transformation” occurred through two transformations that were contingent upon each other; a socio-technological shift and women’s increased status. In comparison, in the other sites and systems the paths to empowerment were more restricted and more related to implications on the user-side because women were only rarely involved in supply and, in the case of grid connections, their access to electricity tended to go through men.

8. Concluding remarks and recommendations: powering communities & women’s inclusion

This work has demonstrated that electricity access matters to women and men, and that any kind of system of provision becomes gendered, whether they become dominated by men (as seen for grid and several private initiatives), practice gender balanced recruiting (Ikisaya) or are being run solely by women (God Liech). Policies, programmes and projects that adopt a “gender neutral” approach, are likely to produce systems dominated by men. Linked to this, they are

²⁹ In God Liech we were told that the initiator, Green Forest, had withdrawn and that the solar project was using remaining funds in the bank for survival when we met them. It may seem that the project viability is at risk.

A similar grading of the importance of various rooms occurred when talking about the different qualities of various systems. Bernard is a solar agent and keeps two types of light at home provided by private suppliers ('Type A' and 'Type B'). He highlighted the stronger and better light provided by Type A. We asked where he keeps the various lights (Hom-GB-5_M):

Bernard: In the sitting room, I have put the [Type A]. And in the bedroom and the store, I have put the [Type A].

Interviewer: Why?

Bernard: Because those areas do not need a bright light.

Interviewer: Which light is used in the kitchen?

Bernard: The [Type B].

Another family in God Liech followed a corresponding pattern using a dimmer kind of light in the kitchen and stronger lights from another system outdoors as security light to protect sheep, goats and cows against hyenas (Hom-GL-HE2_M).

Hence the kitchen was often downplayed as a social space in need of the new, strong light, while people emphasised the importance of keeping good quality light in the living room where they receive guests, read, do homework and handicraft and so on.

When we asked people about decision-making with regard to traditional fuels such as kerosene for lighting, people said that women often depend on their husbands to pay for the fuel, which young girls are often required to fetch (and facing the risk of assaults). In two detailed accounts we received on this issue, the women highlighted that they tend to decide on the use of the kerosene lamp. One of them, Lucy, a married woman, said she uses two kerosene lamps, one in the kitchen and one in the bedroom (Kit-K-HNo1_W):

Interviewer: Who decides when and where the lamps should be used? Is it you or your husband?

Lucy: I am the one who decides.

Another married woman, relatively old, also said she decides on the use of kerosene when she can afford it. She gives priority to regularly charging two mobiles but sometimes avoid buying kerosene for light or batteries for torch.

In discussions about decentralised electricity services, women were sometimes described as being polite as customers and more eager to get access to electricity than men. Men agents of private systems (possibly encouraged by the topic we introduced, women's empowerment) said they preferred women customers. For example, Bernard contended: "Men are very rude if there is a problem, even if the problem is on their side. They complain as if it you were the cause of the problem. With women, they come honourably and explain what the problem is." (Hom-GB-5_M).

An electrician described the way women sometimes try to persuade their husbands to get a solar system (Hom-GB-2_M):

Electrician (man): The reality is, most people who really need the lighting system are women because around this area, most men are fisher folk. ... Sometimes, a woman comes, I give the advice, she goes and talks with the husband...

A look at the users at Ikisaya Energy Centre further underlines women's drive for the light. Among the 33 members who were regularly renting lanterns, there were 25 women and eight men (Ikisaya Energy Centre, October 2016). The customers carry the lamps back and forth to the Centre.²⁷ In people's homes, because lanterns can be moved, they are often used for several purposes, but children's

homework is given priority. In contrast, the children rarely did homework before the arrival of the Centre, when kerosene and torch were the only and costly options. During home visits in the evening (October 2016), the team observed children reading inside while the mother was preparing food in the dark kitchens outside. In light of the tremendous emphasis people in the study areas put on children's education and the drive for mobile phones, cooking appears as a practice less "in need" of change.²⁸

We wish to highlight a final aspect from the material that relates to domestic violence. We discussed this issue with many respondents, asking about their general attitudes and possible links to electric light. A woman (without electricity at home) referred to the occurrence of violence in this way (Hom-L-HNo2_W):

Interviewer: When a woman burns food while cooking, do you think the husband has a right to punish her?

Woman: When you do it for the first time, he can leave [the house], but when you repeat the mistake then you will be canned or insulted.

From a female focus group discussion, men's assaults on women may even seem to be rising in God-Bura (GB-FG1_W):

Interviewer: Ok. To the older women who are here in this gathering, when we compare the last 10 years and now, do you see women assault as more rampant now than before?

Woman: It is more rampant now especially towards the younger women.

These reports of violence (and acceptance of violence) reflect women's inferior social position. Moreover, when we asked who in the household will most likely go to bed on an empty stomach in times of food scarcity; five women said they would not eat, one man said he would not eat, and one relatively young woman said "the aged" (old) would not get food.

A fisherman on Kiwa Island suggested that electricity may reduce the level of conflict, saying it is very common for men to beat their wives (Hom-K-HE3_M):

Man: It could cause quarrels in the house as the woman is waiting for the husband to buy kerosene. If they don't have money it is a problem. With electricity, they have a phone and can call any time to know or ask something.

Interviewer: Can electricity reduce the beating of couples?

Man: Yes, because if there is no unit [left in the micro-grid pre-payment], the wife can call and inform the husband.

In this account, a source of conflict had occurred when women were waiting for the husband to bring kerosene or money to buy it, and when they delayed or failed to do so, the wife would start complaining and risk being beaten. Two changes in technology have reduced the level of conflict: her access to a phone, making it possible to ask for supplies in advance, and the notification in advance about lack of units. The householders are better equipped to plan for lighting, and can communicate at a distance to solve potential problems.

7. Discussion: the gendered set-up and implications of various types of electricity access

The increased access to electricity's services in the two Kenyan cases has been useful to many women and men, as also confirmed in the

²⁷ In the beginning women often took the trip to the Centre themselves, together with other errands such as fetching water, but gradually, those with children in primary school let the children pick up and return the lanterns.

²⁸ A teacher at Endau Primary School showed us documentation on girls' and boys' performance (marks) in a Class 8 cohort over one year. The marks improved considerably when they introduced a boarding programme. Energy costs and availability were described as the key parameter for a school to be able to offer boarding facilities, from which girls gained in particular, according to the results.

Nicholas: Yes, we can say we are more digital because we access more services like photocopy, typing and other things. Many people are coming from Makuka, Malalani, Twambui for photocopying because they can only get effective services in Ikisaya, so we have more improvements than other villages.

Both in God Liech and Ikisaya there were no alternative sources of supply when the community projects were first introduced, and it is likely that this increased the symbolic importance of those who became involved (compared to villages where some kind of supply already existed). In terms of the overall purpose of this paper, to examine the driving forces and gendered implications of various types of electricity access, it is clear that international actors – in cooperation with local Kenyan actors – played a key role in the two community initiatives that employed a gender sensitive approach. We noted that in these cases where women were included in community energy projects, these women demonstrate to co-villagers their capacity to take a central role in providing a desired service. In contrast, conventional grid extension did not result in women's inclusion in the socio-technical system of supply on the village level. For other decentralised solutions, the picture was more mixed.

6. Obtaining access to electricity's services – and gendered impacts thereof

Whereas the previous section illuminated how gender comes into play through the provision of electricity access, we now look at this issue from the user perspective. We shall see that the socio-cultural context plays an important role in shaping household decisions regarding access and appliances, but also, and importantly, that details in the socio-technological design matter to the gendered access to electricity's services.

As indicated, grid connections are few (see Table 3) and mainly used by businesses, shops, restaurants and workshops (welding, ice production, carpenters, small mills) and not even by all basic public institutions located in grid areas. Among the few respondents with a connection, the subscription fee had commonly been paid by the husband, who owns the house and who was registered as the customer. In one case a widow was registered as the customer. In three instances in Homa Bay (God-Bura)²³ we learned that an adult child had initiated the idea of connection and contributed with payment. For example, one daughter had paid for connection and “when she comes visiting, she brings out laptops and mobiles” (Hom-GB-3_W/M). This drive for connections and appliances initiated from the younger generation resembles inter-generational dynamics for increased demand observed in Kerala, India (cf. [35]).

Also among village residents, the drive for using phones is spurring their demand for basic electricity access. “Everybody has a mobile”, male focus group participants confirmed in Ikisaya (Kit-I-FG2_M), and mobile money transfer is widespread. In Homa Bay, 12 householders were asked if they keep a phone and use mobile money transfer (M-PESA is a common type), all confirmed. Two of them were widows and the rest couples. Only in three cases, including a home with two co-wives (Hom-GB-HNo2_M), it was only the husband that had a phone and used M-PESA and not the wife/wives. Otherwise, women and men kept their own. Even in Kalungu with only two SHSs present in the village, the headman said that the majority of households keep a phone. They either have them charged in the two homes with SHS, in some cases for a fee, or at the market in Endau.

In response to our question regarding who in the household tends to decide whether to obtain electricity access or appliances, most people responded that a wife and her husband “decide jointly” and that assets have shared ownership. As we show below, it was sometimes indicated

that some women will try to convince the husband to obtain electricity access. However, when probing further on the issue of decision making, a male biased pattern occurred. Men would sometimes be described as the head of the family, and we got various accounts of situations when a woman needs permission from her husband, such as when visiting her natal home or spending larger amount of income. The following passage with Nancy describes what appears as a common pattern of decision-making regarding expenditures. Nancy has a small business (3000 Ksh/month), her husband is a carpenter (10 000 Ksh/month) and they both do farming (Kit-K-HNo1_W):

Interviewer: Do you consider that income to be your own money or do you give it to the husband to plan what to do?

Nancy: I use the money to buy things for the house or pay the school fees, but I have to tell my husband how much money I made from the work. ...

Interviewer: Do you know exactly how much your husband is earning or is it a secret?

Nancy: I just agree with whatever he brings or tells me.

Interviewer: So you report to him what you made and he brings things to the house?

Nancy: Yes.

A lack of symmetry in the genders' rights also appeared when we probed on the issue of land and houses and what would happen in the case of divorce (not common) or death. We learned that the house belongs to the man and that sons tend to inherit property because the girls will be married and move (e.g. Kit-I0_M). In theory (because we did not observe concrete cases involving divorce), this implies that women investing in electrical appliances risk losing them in the case of divorce.²⁴

To some extent, the male control over households appear to affect which rooms are given priority for fixed light points. One household affiliated with the Seventh Day Adventist Church (common in God-Bura) had grid connection and also SHS. They kept lights in the sitting room, the bedroom, the visitors' room and in a separate house where girls sleep, not in the separate kitchen, the house where boys sleep or the separate cow-shed. The woman said her husband had decided on this distribution of light (Hom-GB-HE1_W). Among other cases where we specifically asked about the physical location of lights, two more had avoided the kitchen. One of these families (connected to the grid) kept four lights, which were placed in the living room, bedroom, bathroom and an adjacent shop, but not in the kitchen (Kit-E-HE2_M). The other family had light in the sitting room and bedroom and used a torch in the kitchen (Hom-K-HE1_W).²⁵ Of course we cannot exclude the possibility that the involved women had had a wish to enlighten other rooms than the kitchen. However, we note that the women's daily routine in these areas involves cooking supper, which is normally eaten around 8 p.m. (it becomes dark around 6.30 p.m.), that they are living in houses with fixed light points and that they, nonetheless, either cook with the help of a solar lantern, torch, moonlight and/or light from the fire.²⁶

²⁴ Whether a woman has the right to bring her children after divorce, and assets she had purchased, was an ambiguous issue. Some claimed that because the man owns the land, anything produced on this (e.g. farming) would be his property.

²⁵ They were probably using the Mkopa system.

²⁶ In eight interviews, we asked whether a male member of household ever cooks a meal, and three confirmed. In one case a son (aged between 7 and 17) sometimes cook with firewood (Kit-I_HNo1_W). In two cases, men were said to cook once in a while, and they are also exceptions in that they also use charcoal cooking. In one case, the husband was a retired teacher (Hom-GB-HE1_W) and in the other, the wife runs a catering service for schools (Hom-I_HNo1_W). In addition to these two families using additional fuels to firewood for cooking, one household was using a gas cooker (Hom-GB-HE4_W). They keep a Posho mill, making 3000 Ksh/month. All the others solely use firewood for cooking, which women fetch (sometimes with the help of children).

²³ Hom-GB-HE1_W, Hom-GB-HE4_W (a widow), Hom-GB-HE5_M.

micro-grid was operating, making the lack of personal contact less pronounced.

5.2. The gendered processes of implementation and set-up of supply

According to Peter (Homa Bay) and a man in Kitui (Kit-I-7_M), both of whom had been involved in Kenya Power's implementation process, only male staff had been involved in doing installations. There are women employed in the organisation but reportedly, for reasons of security, most of them work in the offices, not in the field doing installation and maintenance. Among the private systems offered, more men than women tended to be involved. Some female agents were selling solar systems, and Peter pointed to these women's good sales figures. But the agents whom we met were men. At a REAP solar charging stations in Rasira (not included in Table 4), which constitutes a male dominated fish landing site on the shore of Lake Victoria, Edward, a male member of staff, said that "they selected three young men per beach" when implementing the project and recruiting agents (Hom-RA-2_M). When our male interviewer followed up on this information, asking if women have benefitted in particular ways from the charging stations at the beach, Edward was in doubt:

Interviewer: It is hard to understand, but is there a way that this project has uniquely helped women specifically?

Edward: No, women have not benefitted a lot because some wanted to start saloons but due to the slow pace of the project, they have not benefitted.

This statement differs from the general perception in all the case study areas; women, who tend to stay at home more than men, have particularly benefitted from the new access to electricity's services. Here Edward is referring to women's lack of electricity for productive activities, and it is interesting that he ties this to the issue of women's lack of inclusion in the project, as if the two were related.²² As shown in the literature [32,33], ideas about end-users' needs do tend to come into play in an early phase in the planning of a project. In God-Bura, there were several shops using electricity to produce income, and "all are owned by men" (Hom-GB-1_M). In Endau the gendered distribution of benefits for business was different because the buildings were rented (probably from a man, we do not know), and the majority of shopkeepers were women. These different outcomes illustrate that gender-neutral interventions tend to benefit groups who are already in a materially privileged position. They also show that it is men rather than women who tend to get recruited in the system of supply, hence gender neutral interventions result in male dominated systems, with adhering benefits for the male staff involved.

In contrast, the solar projects in God Liech and Olando (SHS) and Ikisaya Energy Centre were set up with an explicit purpose to include women in the supply. The systems also differ from the grids and mini-grids in that they engaged local people as staff and continue to be present in the villages. In God Liech and Olando, the project was set up by Green Forest, an NGO based in Magunga, following the Barefoot College model where only women from a village are recruited and trained for six months as solar engineers at the Barefoot College in India. Elizabeth and three other women had been selected (two from each village) to go for training in India. Three of them went., Reportedly, the fourth woman withdrew at the last minute because she was afraid to go (level of literacy; lost courage) and/or because her husband refused to let her go.

According to Elizabeth, the wider effect of this project was that perceptions of a woman's capabilities have changed in the village (Hom-GL2_W):

Elizabeth: [Women's] contributions in [village] forums have been very rare. Even in politics people tend to concentrate on men rather than women. But after we initiated our project here, many now believe that women can do it. The women climb the roof, they put the solars, they do the connections, and they do the repairs within the system.

In a similar way, Paul, who had been involved in establishing the solar project, told us about his own changed view on women caused by the intervention (Hom-GL1_M):

Interviewer: As a board member of this village project and your own involvement in the planning, can you tell us more about the planning even before it started?

Paul: I did not believe in this project. I could not even believe that the women would go to India and become engineers. Further, I could not even believe it when the materials were brought in parts and the woman who went to India were to assemble the parts, but later I realised that even women can do this, and the work has been going on up to now.

The Ikisaya Energy Centre has been in operation from 2012 [34]. To avoid excluding potential women applicants who did not have an engineering background or other higher education, the requirements for previous experience were minimalised, but nonetheless only one woman applied. As a result, one woman and four men were recruited. For the last four years, the Centre has been managed by a woman. There are also one man and two other women engaged as office and technical staff and one male night guard who manages the television viewings in the evenings. During fieldwork many respondents said that the women perform the job as service providers particularly well because they are good at listening to customers. In the first phase of operation, with male managers, there had been two incidents with money being stolen, and some respondents described today's women staff as trustworthy. When we asked Sheila, a woman running a restaurant, whether she thinks it matters whether the Energy Centre is led by a woman or a man, she said (Kit-I8_W):

Sheila: With this lady we feel she is good and we don't know if a man can manage to lead like that. We think women listen to people's needs in a good manner.

Related to the manager's communication skills, many people pointed out that she is good at dealing with customers who are not behaving well (i.e. not paying for services) and that the women are patient. Victor, an elderly man, was asked about the lantern service, and brought up the issue of women's involvement, also being aware that the researchers had been part of the implementation process (Kit-I-LS2_M):

Interviewer: Can you tell us why you are excited about the lantern?

Victor: Because of the lanterns which benefited us so much, and also when you opened the Energy Centre people got jobs because our girls are employed there, and they are good role models like [the woman manager]. Because girls used to think that they could not do certain jobs, but what are they doing now?

Recruiting women to the Energy Centre had become much easier after a couple of years in operation. In the time following the initial set-up, the Centre specifically targeted female candidates when filling vacant positions, and hired only female staff.

It is difficult to assess whether women's inclusion in supply has affected women's general participation in village leadership and groups, because women were also involved before the energy initiative. However, the women's association with the Energy Centre, with its photocopying and computer service, is important because the Centre forms an important marker of Ikisaya's identity and hence the social esteem of the people involved, as expressed by Nicholas in the village administration (Kit-I1_M):

Interviewer: Do you think the identity of Ikisaya village has changed after the Energy Centre came?

²² We do not know to what extent electricity in Rasira helped men in their productive activities.

somebody who had the electricity installed. In rural Kitui at large, it was a shared perception that the grid will never reach “the interior”, hence where the majority of the population live. The distances to people’s houses are too long, which would further drive up the cost beyond the high standard fee of connection.

Both in Kitui and Homa Bay counties, people perceived the grid to be highly unreliable. Peter, who had been involved in installations of both grid connections and solar systems in God-Bura, Homa Bay, (Hom-GB-2_M) described the grid as an “on and off system” (frequent blackouts). When explaining the reasons for the unreliability, he said:

Peter: Kenya Power has not given us the answer to that question because when you call them, they will tell you we are working on it. It will be back in the next 30 min, but it takes 3 days.

Interviewer: Is the maintenance also lagging behind?

Peter: Yes, the maintenance part of it is also a big issue. If you go along the power lines, you will find some poles almost falling down. It is now 3 months since they were informed. But this is also because of the monopoly on the power supply. I think if there were other power suppliers, they would be very active.

At the dispensary in God-Bura, the poor quality of grid supply had triggered a need for additional supply through an SHS, as reported by a male member of staff (Hom-GB-8_M):

Interviewer: So Kenya Power was installed before the solar was bought. What made the management purchase the solar when there was already a source of power?

Dispensary staff: Kenya Power was unreliable and we had vaccines that needed refrigeration.

In the studied locations in Kitui, the grid arrived later than in Homa Bay, but also here (Endau and Ikisaya), the quality of supply was poor. Already after the first months in operation, the grid in Ikisaya stopped working due to a transformer failure and had not been repaired eight months later. Staff at the primary school in Endau had been thrilled when they first were connected to the grid in May 2016, seeing increased results in children’s performance (see below). However, proper supply only lasted for two months, according to a male teacher: “We have electricity but lately it has developed some problems. Despite the fact it is on, it cannot light these bulbs as the voltage is too low.” (Kit-E-6_M)

As indicated above, the perceived problem is not only the blackouts and brownouts, but the lack of maintenance and communication with Kenya Power, as the teacher explained:

Currently we don’t have anybody around, it was only a colleague of mine who called them and they said they don’t know what the problem is. They have been coming but that one has taken a long time, so there seems to be no response from the Kenya Power.

In Endau and Ikisaya, another problem was that the hand-over from the implementer (Rural Electrification Authority, REA) and the operator, Kenya Power, had apparently not taken place, so people were both unsure of whom to contact and also, in some cases, uncertain about what they were expected to pay for consumption. A man who had been living in Endau for many years explained (Kit-E-3_M):

You pay, but it goes to the pocket of people in Kenya Power. They [REA] just connected and went away. Now, the power is often off and nobody is paying, myself included.

The lack of service and perceptions of corruption among utility staff affect people’s willingness to comply with the regulations, as also noted elsewhere (e.g. [31]).

5.1.2. Community projects and private systems

Turning to the community projects (2a and 2b, Table 4), they are

based on solar power, in line with the studied private systems. The growth in sales of solar home systems and solar lanterns testifies to people’s perceptions of solar systems as being purposeful, affordable and reliable. As indicated in the opening quote, Mary, a woman in Homa Bay with both grid connection and SHS, described the grid as “unreliable even if there is sunshine”, as if using the sun as a reference for power production in general (Hom-GB-HE4_W). She also said that “solar only has a problem when there is rain, but it is generally good”. Nonetheless, reliability is sometimes an issue here too, depending on the quality of the equipment and the state of the batteries. In Kitui, some customers at the Energy Centre said that the quality could have been better. For example, Joyce experienced that the light from the lantern lasted for a shorter duration than the prescribed two days, and said she got bored when walking (i.e. the drudgery involved) to get it charged (Kit-E-HE5_W). Another woman customer told us that the capacity of the phone charging station at the Energy Centre in Ikisaya was sometimes full, so there would be a queue to get phones charged (Kit-I-3_W). Nonetheless, these customers continue to use the services, and they stay in face-to-face contact with the supplier who is located in their own or a neighbouring village. The same kind of close interface between supplier and customer was observed in God Liech, Homa Bay, with the community project for distribution and maintenance of SHSs. We asked Michael, a customer of the SHS scheme, who was also partly a stakeholder collecting revenues, about the services provided by the “Solar Project” (Hom-GL-HE1_M):

Interviewer: What sort of services beyond just lighting?

Michael: The fuse can be broken, acid in the battery can spill over, those are the services we need from them plus other technical services.

Interviewer: And are the services efficient?

Michael: Yes, the person who was trained in India also trained three other people and they are now jointly working together and they are all females.²⁰

In some cases, people with privately purchased systems expressed a high degree of confidence about their own capacity to maintain the systems individually, for example Susan, a widow who has both a connection to the grid and an SHS. When we asked if she had changed the battery for the SHS, Susan confirmed: “Yes, I have done it three times, even replacing the acid” (Hom-GB-HE4_W). Other people relied on the supplier for support. A rather unusual stance was expressed by an elderly man, David, who said he hesitated going for the private suppliers because he would be uncertain about their long-term commitment (Hom-GB-1_M).

At present, a rapidly increasing share of the rural population purchase private, solar-based services and several of the private suppliers have agents present in the villages, and also offer services by phone (24–7). Such enduring support appears to be a key to people’s trust and satisfaction with the systems, which was also the case in the two mentioned village scale systems. However, in addition to the experiences with disruption in supply, many grid customers (of Kenya Power) have prepayment and automatic registration of consumption and are never/rarely able to meet their supplier who is difficult to reach by phone.²¹ The situation might seem somewhat similar for the private micro-grid system on Kiwa Island (Private, village scale 3a, Table 4), where we did not observe local representatives when we visited. But the

²⁰ As we account for below, the number of women going for training in India turned out to be more than one. The importance here is not the accuracy of the number of women going to India, but the interviewee’s statement about their involvement in supply as a response to the systems’ degree of efficiency.

²¹ As noted, this difficulty is due to lack of service from Kenya Power not caused by poor coverage. We observed that mobile coverage is good in Homa Bay and relatively good in Kitui, whereas Internet is good only in Homa Bay, but not available in the studied villages in Kitui.

Table 4

Illustration of the three main types of provision systems selected for the study.

Systems of supply	1 Grid	2a Community project SHS Green Forest/Solar Mamas God Liech and Olando villages	2b Community project Solar Energy Centre CBO/UiO ^a Ikisaya Village	3a Private, village scale Solar, Micro-grid (Power Gen) Kiwa Island Private charging centres ^b OSRAM Energy Hub ^c	3b Private, other ^d Standalone solar lantern and SHS ^e (incl. BBOX ^f and Mkopa ^g)
Official Cost of subscription	35 000 Ksh + wiring ^h	3.300 Ksh	50 Ksh	1000 Ksh	Varies
Cost of usage	Standing charges 450,- per month	300,- per month	Per service, see below	Depends, e.g. 250,- per month for 2 lights, phone, music system	Wide range of costs, from 10,- upwards
Prescribed duration of supply	0–24 h		Light 1–4 h per day Opening hours other services 8 a.m. to 6 p.m.	Depends on amount paid, can be used any time of the day	Varies with user practice, the condition of the battery and size of system
Types of uses	Light, charging mobile phones, TV, radio, fridge, welding, and saloon	Light, charge mobile, radio (not TV)	Lantern 7/5,- Photocopy 10,- Typing/computer service TV watching 5/10,- Charge mobile 20,- Haircut 20,- Sale of solar lanterns	Light, charge mobile, TV, music system	Light, charge mobile (some can power radio, TV) ⁱ
Process of implementation	Gender neutral (only men involved as field technicians)	Women targeted (mainly women involved)	Gender balanced (both women and men involved)	Gender neutral (mainly men involved)	Gender neutral (more men than women involved)

^a University of Oslo.^b Charging of small batteries (by solar panels) that people lease or buy at 1500 Ksh, and connect light bulbs with wires. (Homabay-K-LS1_M and observation).^c Offering renting and charging of batteries and lights for fishing, renting of lanterns for households and sale of solar systems including appliances for use with solar power such as energy efficient irons (Hom-K-2-M).^d There are also many other suppliers of private SHS, such as Mobisol; Suntransfer; Solar Now; Azuri; Heya etc. All sell on pay as you go basis and several of these systems are offered with or without payments in instalments.^e In our material, one person had purchased small SHS with two lights at the cost of 9000 (Hom-L3_W), another pays 190 in weekly instalments up to 15 000 (Hom-I-HNo_2_W), and one paid 3000 for one lamp only (Hom-I-HNo3_M).^f The BBOX has two sets of Kits, the lowest is 590/- per month (for three years, that is approximately 20/- per day, and the other one is 1170/- System paid down in 3 years). (Hom-GB-2_M).^g In the cheapest option of Mkopa (for the smallest SHS) they have to pay 50/- everyday, the system is controlled, if they don't pay, they will not get the light, it will be automatically off. Light and phone charging, cannot be used for TV (only 6 V) (Hom-GB-5_M). Mkopa has larger systems also.^h Despite the regulated charge of connections, there were considerable variations in the cost reported both in Kitui and Homa Bay. Also, the uncertainty regarding what the cost would be appeared as a barrier for people to get connected.

The population in Gwasssi is denser than in east Kitui, but less dense than in other parts of Homa Bay County. Settlements are dispersed and people must walk long distances to get to markets. On the mainland, women spend 1–3 h each day walking either to the lake or to a village water point to collect water, using donkeys to help carry the load. Of the villages visited, God-Bura has both a primary and secondary school as well as a public dispensary. Kiwa Island has a primary school and dispensary whereas Ligongo has only a primary school and not even a market place: it is a much smaller and poorer village than the others visited.

5. Providing access

5.1. The systems of supply: affordability, reliability and supplier-customer relationship

As a simplification, our material includes three main types of systems for providing electricity access though there are variations in the conditions of subscription, duration of use and reliability: 1) grid connections, 2) community projects (SHS or Energy Centre) and 3) private systems (either village scale mini-/micro-grids or private companies offering solar products for sale). Table 4 indicates the systems' main characteristics and indicates the gendered nature of the process of implementation, to be discussed below. We underline that the data given are based on individual accounts and have not always been cross-checked with the actual suppliers.

Many people in the visited villages do not have any kind of electricity access. The uptake of private solar systems appears to be higher in larger, more central villages with more economic activity than in the smaller villages in the periphery. Moreover, during grid extension, the larger and relatively wealthier villages are prioritised. For these reasons, and because the grid is often unreliable, the number of solar systems tended to be higher in the villages with grid (God-Bura and Endau). Kalungu (Kitui) has not been included in the central grid and there were only two individual SHSs (including a bar recently opened and run by a woman whose husband is a former military officer, Kit-K-HE1_W). In Ligongo, the grid had arrived 1.5 years ahead of our fieldwork, but only to the primary school and the supply was not yet operationalised (transformer in place, but lack of distribution lines). These two villages generally have poor public services and do not have community energy projects. In the other selected villages with better provision, some householders and shops sometimes use a mix of systems.

5.1.1. The central grid

Having a connection to the grid is only for the few. Gilbert, an elderly man in Endau, said with a sigh: "You see, this place is rural and people are very poor, so they can't afford it. It was just recently that this rural electrification was introduced to this area." (Kit-E-LS2_M). Most of the 30–40 existing connections in Endau are businesses in the market area: either shops (mostly run by women) or workshops for carpentry and the like (used by men) who tend to rent the premises from

purpose of these events was to raise some key issues for discussion and get a sense of local discourses on electricity and gendered challenges, experiences and expectations in an efficient way. They were often held under a tree in the market area, attracting other people as listeners.¹⁶

We had developed an interview tool for each type of interview. They all covered questions about the (gendered) organisation of electricity and distribution of benefits, and also brought up issues specifically related to the person's function and type of experiences. The interviews were semi-structured and allowed for follow-up questions and people's own elaborations. To grasp people's experiences and opinions on the household level, we followed a similar strategy in that we started by posing the same introductory questions to all (except when collecting life stories, see below), including household composition, income, types and use of energy sources, decision-making and division of responsibilities, gendered subscription to electricity services and gendered distribution of benefits. Then we employed either one out of three different sub-sets of questions: one focusing on details about energy and fuel use and costs as well as time use; a second asking relatively openly about people's daily practices, including the daily rhythm of various household members and the technology and tools they use for handling various tasks (following social practice theory). A third sub-set of questions concerned gender norms in particular and people's perceptions of the distribution of electricity's impacts between various social groups in the village. This division into sub-questions turned out to be useful for obtaining a broad picture of the general situation on energy and gender as well as more individual and experience-near accounts.¹⁷ In addition, we collected life stories, and here we selected older women and men to understand the current situation in a historical perspective.

To systematise the data, we summarised the findings and coded the material in NVivo according to central topics.

Overall, we consider the collected material in these case studies suited for examining the gender dimension of electricity access in the two rural Kenyan contexts. Other forthcoming studies might employ larger quantitative data sets to examine selected dimensions/indicators embedded in the framework. Ethnography and participant observation conducted over time would allow for a richer or "thicker" description and thereby a deeper understanding of the electricity-gender nexus in a given context.

4. Two rural case study areas

Two Kenyan counties were selected for this study: Kitui County is located in Eastern Kenya (bordering Tana River County), and has an extremely dry climate and high levels of poverty, particularly in Kitui East. Homa Bay County is in the Western part of Kenya. Due to its location by Lake Victoria (fishing industry brings possibilities for income beyond farming) the level of affluence in Homa Bay is generally better than in Kitui. This is reflected in a relatively high uptake of new technology, e.g., we heard stakeholders in the renewable sector in Kenya refer to the areas by the shores of Lake Victoria as "solar hot spots". However, people in the studied (including interior) area in Homa Bay (Gwassi, see below), also suffer from high levels of poverty. In both case study areas, poor water supply and lack of other infrastructures force people to spend considerable time on drudgery (e.g. collecting water and fuelwood) and these tasks primarily fall on women. The national grid has reached parts of the two areas¹⁸ which have also seen the arrival of various types of off-grid solutions for electricity supply. We

selected the two areas to be able to study different types of access and processes of implementation, which is important in the present discussion. For the purpose of analysing the gendered impacts of electricity use (to be treated elsewhere), we also found it important to look at areas with different levels of affluence. Because the gendered, social organisation is fairly similar in the two study areas, our comparative aim in the present discussion primarily concerns the implications of different systems of provision rather than observing differences between geographical contexts. Nonetheless, a quick look at these contexts helps position the population under study.

In Kitui County, we selected Ikisaya, Kalungu and Endau villages. The majority of the population belongs to the *Kamba* ethnic group and there is a variety of clans. The land type is arid and semi-arid (ASAL), and as a result the population density is sparse and settlements are highly distributed. This area is highly vulnerable to climate change, and the ASAL areas have among the highest incidences of poverty and lowest level of access to basic services in Kenya. Subsistence farming, charcoal production and livestock keeping are the main livelihoods in the three study villages. There are frequent crop losses due to drought which necessitates periodic government food relief programmes, and persistent food scarcity and the economic losses both strongly and negatively affect people's lives. Tensions and conflicts also arise when *Oroma* and *Somali* pastoralists (two Kenyan tribal groups) approach the area to feed and water their camels and goats.

Endau is considered to be the most developed of the three villages. It has approximately 20–30 shops and workshops (permanent structures), a primary and secondary school, private health clinic, and a market in its centre. It is located between the two other villages.¹⁹ Both Ikisaya and Kalungu each have a primary school but no secondary school and no health dispensaries. Water scarcity means that water is often rationed and must be paid for by users. Women may spend many hours every day (2–3 h, 4–8 km) collecting water, using donkeys to help carry the load, whether from a central village tap or from a watercourse such as shallow wells dug in the riverbeds, rivers or a well. Transportation is constrained by the poor infrastructure and disperse population which means that public motorised transport is limited: two buses (one in each direction) pass through Ikisaya every 24 h and no bus goes to Kalungu. People must spend significant amounts of time commuting, and predominantly this is by foot.

In Homa Bay County, despite the relative proximity of Lake Victoria, water scarcity is prevalent (though not as pronounced as in east Kitui), and lack of clean water is felt in the selected villages: Ligongo; God-Bura; God Liech, Olando, and Kiwa, a small island in the lake itself. All these villages are located in Gwassi, a constituency of Homa Bay. The majority of the population are of the *Luo* ethnic group although some are *Suba*. There is a strong clan structure, which plays an important role in the settlement of conflicts and for raising funds within the community, for example for schooling.

Livelihoods include subsistence farming, livestock and charcoal production, but the lake and its fishing industry dominate the main economy. Because of this, it was important to also visit beach landing sites associated with the villages, such as those at Nyandiwa and Rasira. Men fish for Nile perch during the day and Omena at night using boats that in some cases are owned by women. Nile perch is sold either to commercial agents or to women, who also buy and dry the Omena and sell it on to traders, or trade in it themselves. Because of the migrant nature of fishing, men (and it is only men who fish) move between areas and take temporary accommodation at beach landings. According to several of our respondents, there is a high level of trade in sex as well as assault associated with the fishing industry, and a high prevalence of HIV in the region.

¹⁶ When we arrived at such gatherings, chairs had been set up for the researchers. In mixed group settings, the men also tended to sit on chairs while the women sat on the ground. Due to the public nature of these meetings, people did not share private matters on such occasions.

¹⁷ Our comprehensive framework covers a whole range of issues which are difficult to include in one single interview, and we knew from experience that people tend to become tired after about one hour and normally have many other things to attend to. This paper treats selected parts of the collected material, while other aspects (e.g. details on energy and time use) will be published elsewhere.

¹⁸ The national grid reached parts of the study area in central parts of Kitui County in 2015 and parts of the study area in Homa Bay County in 2009.

¹⁹ Coming from Kitui Town (the centre of the County, ca 90 km from Endau), one has to travel through Endau to reach Ikisaya in the direction to the north (9 km) and Kalungu eastwards (7 km).

Table 2
Selected villages for study, Homa Bay County (Gwasssi Location).^a

	House-holds in village	Grid	No ^b of grid conn.	Community projects	Private systems, village scale	Private, other systems
God-Bura Village	634	Yes 2009	Ca 20	No	Rental and sale of solar lanterns ^c (ca 30 customers)	SHS, solar lanterns (ca 150 customers)
Kiwa Island	397	No	N/A	No	3 Micro-grids ^d (ca 100 customers)	SHS, solar lanterns (ca 60 SHS customers)
God Liech Village	451	Yes	Ca 30	SHS Solar Mamas	No	SHS, solar lanterns (ca 120 customers incl. Solar Mamas)
Ligongo Village	303	Yes	0	No	No	SHS

^a In the text to follow, we number the interviewees according to their location and gender, see Appendix B.

^b Number of grid connections. In Ligongo there is a grid, but no connections.

^c OSRAM Energy Hub.

^d Two installed by Powergen and one by Renewable World/Renewable Energy Auxiliary Project (REAP).

Table 3
Selected villages for study, Kitui County (Malalani and Endau Locations).

	House-holds in village	Grid	No of grid conn.	Community projects	Private systems, village scale	Private, other systems
Endau Village	693 ^a	Yes 2015	30–40	Solar lantern renting	No	SHS, solar lanterns
Ikisaya Village	384	Yes 2016	5	Energy Centre (33 lantern renting members)	No	SHS, solar lanterns
Kalungu Village	98	No	N/A	No	No	SHS

^a The number represents the whole Endau sub-location (larger than Endau village). (Kit-E-1M).

3. Methods

The material was collected in Kitui and Homa Bay counties, where different types of supply have been implemented and where we could compare both the organisation and effects of the different types of supply. In Kitui our team had previously been involved in setting up an Energy Centre (Ikisaya village) as part of an action-research project, where both women and men were included in management and operation [4]. In Homa Bay County we knew that there was a micro-grid project (Kiwa Island) as well as a community project targeting women (God Liech and Olando Villages).

We came across a number of different technologies and delivery models during the field research, both in areas where the grid is present and where it is not. These ranged from solar home systems and solar lanterns sold either through retail sales or different forms of consumer financing (including mobile enabled pay-as-you-go), small solar charging stations offering lantern rentals, and solar mini-grids offering household and commercial connections. Tables 2 and 3 list the selected villages and the types of supply that are available in the areas. We cluster these systems according to their ownership models: Grid (nationally owned), Community projects (owned by villages/communities) and Private systems.¹¹ By community project we refer to organised supply of electricity services on the village level, and not technology purchased in the open market or private sector operated mini-grids which are denoted as Private systems. In addition, it is notable that the private systems often have distributors present in the region as well.

The fieldwork was conducted from 3 to 15 October 2016.¹² In total, we conducted 81 in-depth interviews and seven focus group discussions. We sometimes managed to retrieve written documentation (e.g. lists of electricity customers and schoolchildren's enrolment and exam

results).¹³ In addition, we visited some households in the evening to observe the use of electricity.

The research team consisted of five researchers including the authors (three women and two men, three of whom reside in Kenya and two in Norway). *Kikamba* is spoken in Kitui and *Dholuo* is spoken in Homa Bay, and we were assisted by five translators (three women and two men). In addition, a woman assistant helped plan the meetings. Most of the interviews were audio recorded and transcribed by assistants, and we also took field notes. Standard ethical procedures were followed (research permit, informed consent, anonymity¹⁴).

In each village, the selection of respondents was partly based on the type of functions we wanted to include: i) key people: village leaders, women's group leaders and/or village elders; ii) electricity suppliers and agents, iii) staff at clinics and schools, iv) businesses and v) householders (see below). In Kitui County, the staff at the Ikisaya Energy Centre helped plan these meetings. We were less familiar with Homa Bay, and to help plan the fieldwork and obtain local contacts we conducted a scoping visit in advance. When selecting householders, we used the following criteria: obtain a spread of people with and without access to electricity, people at different wealth levels including the very poor, include businesses, and obtain spread in geography and clan belonging. Most interviews were scheduled in advance, except in Kalungu, where we recruited participants directly during a day visit.

Most householders were interviewed in their homes, preferably alone, which was often but not always the case. People running small shops and restaurants were interviewed in this kind of location.¹⁵ Due to the topic of research (women's empowerment) we included slightly more women than men. We initially intended the focus group discussions to be same-sex gatherings, but this was not always the case as groups were mixed, but with a majority of either women or men. The

¹¹ Due to the rapid diffusion of solar technology, the distinction between "electrified" and non-electrified villages makes limited sense when presenting the material. This distinction has otherwise been the main principle for classification in statistical studies that measure electricity's social impact [5]. With the spread of decentralised solutions and the shift towards a multi-tier framework for defining access, such studies will have to apply a more nuanced classification.

¹² The sites in Homa Bay are located about 250 km west of Nairobi. The team travelled by airplane from Nairobi to Kisumu, and by car from Kisumu to Gwasssi (approximately 2 h). The sites in Kitui County are located ca 270 km east of Nairobi (ca 6 h by car), passing through the county centre, Kitui Town, located ca 90 km from the field sites.

¹³ One group of respondents we did not manage to cover as well as expected are management and staff involved in grid systems. This is mainly because they do not tend to be present in the villages where we spent most of our time. Also, as we discuss below, in Eastern Kenya (Kitui) the whole grid initiative seemed to be in limbo. The Rural Electricity Authority (REA) has supplied the main grid in many places, but people are still awaiting Kenya Power to appear in the area and start charging them for electricity.

¹⁴ To hide the identities of interviewees quoted in the text, we have changed their names.

¹⁵ People often combine economic endeavours (informal sector) with doing household chores hence in practice the separation between households and shop keepers is not strict.

Table 1

A framework for analysing women's empowerment through electricity access (retrieved from Winther et al. [5, p. 395], highlighting fields to be treated in the present discussion).

Dimension	Sub-dimensions	Conditional factors
Overarching issues Empowerment 1	Women's and men's rights	1 The material and socio-cultural context 2 The socio-technical design of the system of supply 3 The gendered organisation of supply and process of implementation 4 The role of policies, regulations and international actors
	Gender ideologies and norms	
	Social positions	
Resources Empowerment 2	Material short-term opportunities	
	Material long-term endowments	
	Social resources	
	Human resources	
Agency Empowerment 3	Influence over life decisions	
	Influence over everyday decisions	
Negative events	Negative effects of intervention	
Agency in the realm of the intervention (electricity)	Influence over decisions regarding household electricity access	
	Involvement in and influence over system of supply	

two-thirds of elective or appointive bodies may be comprised of members of the same gender [22]. As to energy governance, the Constitution establishes two tiers of government at the national and county levels. The national level is mandated with energy policy, whereas county governments are responsible for county level energy planning, development, reticulation and regulation [23]. The Constitution does not specifically mention energy access as a right, but as lawyer and university lecturer Muigua argues, this is implicit in the spirit of the Constitution by linking energy access to both sustainable development and human rights.

With new draft energy policy and legislation awaiting parliamentary assent, the country still operates under the policy framework provided by the Sessional Paper No. 4 of 2004 and the Energy Act of 2006. The Energy Act of 2006 is the key legislation for amending and consolidating any law relating to energy. It provides the regulatory framework for both renewable and non-renewable energy sources. It also establishes the institutional arrangements for the electricity sub-sector, including the establishment of the Rural Electrification Authority (REA), which became operational in 2007, and whose mandate is to accelerate the pace of rural electrification in the country [24].

In practice, the REA is responsible for expanding access and implementing rural electrification projects through both grid extension and off-grid supply (e.g. installation of solar PV systems in public institutions). Completed projects are handed over to Kenya Power⁹ to operate and maintain under a service level agreement with the REA: whilst the assets remain the property of REA, Kenya Power covers operation and maintenance through the collection of electricity retail tariffs [25].

The private sector is acknowledged within the policy, regulatory and institutional set-up, but this primarily emphasises independent power producers (IPPs), supplying electricity to the national grid, including renewable energy, for which there is a feed-in-tariff framework. Further, whilst there are provisions in the current policy and regulatory framework that support private sector mini-grids, there are still important barriers, for instance around the prioritisation of grid

extensions over off-grid solutions. Another barrier is the uniform tariff and single utility model that discourages private investment in mini-grids due to the high capital costs of the infrastructure and the inability to charge tariffs for power that enable cost recovery over a reasonable period [26]. The sale and distribution of Solar PV systems at a consumer level are supported through favourable value added tax (VAT), customs and excise duty incentives, which are intended to reduce the cost of such systems for the consumer.

Much of the push towards rural electrification has been driven by Kenya's Vision 2030, Kenya's long-term development plan, and two key political projects, the Last Mile Connectivity Project (LMCP) and Digital Literacy Project (DLP), formerly known as the Laptops for Schools Project. The objective of the LMCP is to provide 70% of households in Kenya with electricity by 2017 and universal access by 2020, which translates into more than one million new connections required every year. The DLP started off as the Laptops for Schools Project but has since extended its mandate to include the integration of ICT into teaching and learning in primary schools. In relation to the adopted approach in this paper, it is interesting to note that one of these two governmental projects is electricity supply driven while the other is for activities intended to spur rural demand for electricity consumption.

Kenyan electricity policies are mainly attuned towards providing electricity access, making services affordable to the poor and enhancing the availability and reliability of electricity supply [27]. Gender issues are not systematically addressed.¹⁰ However, though their implementation might be slow [28] Kenya Power has developed a gender mainstreaming plan (2010–15) and other gender strategies [29: 27–8]. In 2012 an independent NGO called ENERGIA-Kenya Network was established with Practical Action as the secretariat with the purpose of influencing gender mainstreaming in energy planning and delivery [30: 18]. The present, independent study acknowledges these attempts to address gender in electricity and seeks to contribute to further understanding how gender may come into play – and be addressed – when different types of electricity access are provided in rural areas.

⁹ Kenya Power owns and operates most of the electricity transmission and distribution system in the country and sells electricity to over 6.2 million customers. The Kenyan Government controls 50.1% of the shares and private investors have 49.9% [16].

¹⁰ See for example the current strategic plan (2016/17–2020/21) of Kenya Power [43], which gives no mention of gender issues in terms of women's and men's inclusion in provision or different needs.

The aim of this paper is to examine the gendered set-up, organisation and effects of solar-powered electricity access as compared with the grid. We are particularly concerned with understanding how various types of access may contribute to women's empowerment (see below). In a context such as rural Kenya where various solutions are being promoted, it is important to examine the gendered aspects of various types of electricity access and how and to what extent electricity reaches and benefits various groups. We draw on qualitative material collected in rural areas in Homa Bay and Kitui counties in 2016. The systems of provision span from the national grid to solar-based decentralised systems (community projects/village scale supply) to private solar home systems (SHS) and solar lanterns offered in the market.

We assume that two types of "forces" contribute to shaping social practices and thereby people's actual access to electricity. First, there are systems of provision that are developed and promoted, making electricity available. Second, there are various types of end-users, situated in a particular socio-cultural context, who may or may not desire to obtain access for a range of reasons. Both end-users and systems of provision are socially constituted [2–4]. A large part of the literature on gender and electrification centres on end-use in terms of electricity's impact on women, men and children's welfare (for a review, see [5]). However, as pointed out [6,7,5], relatively few studies have looked at the gendered organisation and set-up of supply and the implications thereof. Among the exceptions, Ahlborg [8] conceptualises (power) relations of class and gender suffusing small-scale electricity systems. Standal et al. [9] address the gender dimensions in energy politics and Jenkins et al. [10], addressing energy transitions more broadly, call for a need to focus on energy justice so as to avoid entrenching gender bias and other forms of inequality. There are empirical examples showing that women's involvement in supply has had wider, positive impacts on gender norms in local communities [11], [12]. In comparison, gender-neutral processes have resulted in men rather than women becoming involved in systems of provision [13,14]. In the present discussion, we scrutinise how various types of electricity access are being constructed and gendered, and the implications of this for women's empowerment.

We regard women's empowerment as the process towards gender equality. Elsewhere [5] we developed a framework for analysing women's empowerment in the realm of electricity, in which we build on Naila Kabeer's work on empowerment (1999, 2001) and more general social theory.⁴ In this paper, we draw on this framework (Table 1), which identifies three generic empowerment dimensions: *i) rights, norms and social position, ii) access to resources and iii) influence over decisions (agency)*. In the rural Kenyan contexts in question, women and men tend to have unequal access to such privileges, and we seek to understand whether electricity access in any way influenced the situation by providing empowerment for women. The framework also invites attention to negative events as a result of the intervention, conditional factors and women and men's degree of involvement and agency in the realm of the intervention, both on the supply side and in their role as subscribers and end-users. Of note in the present discussion is that women's inclusion in supply is regarded both as a possible conditional factor for women's general empowerment (measured through the three generic dimensions) and as a separate criterion for measuring empowerment through an intervention. The latter follows from the presumption that women, too, have a right to participate.

As indicated in Table 1 (highlighted fields), the present discussion primarily focuses on agency in terms of decision-making processes surrounding access and subscriptions; the purposefulness, affordability and challenges associated with various types of access; and signs of changes in gender norms and women's general agency and social position as a result of various types of electricity interventions. Potential long-term impacts on women's empowerment from using electricity's

services, e.g. through improved public services or exposure to alternative gender discourses through television, are not treated in the present discussion. Rather, we specifically explore the relationship between gender and electricity access including decision-making regarding electricity's uses. In the following, Section 2 presents the position of solar power in Kenya and the policy and regulatory framework. In Section 3 we account for the methods used and provide an overview of the systems of provision available in the two study areas. Section 4 provides a contextual description of the two selected case study areas, Homa Bay and Kitui counties. In Section 5 we present findings on the gendered set-up of supply including the supplier-customer relationship and the gendered processes of implementation. In Section 6 we focus on decision-making and access to electricity in people's homes. In Section 7 we discuss the results, and Section 8 provides some concluding remarks and recommendations.

2. The position of solar power in Kenya

Kenya has a current population estimated at 46 million people, of which approximately 70% are rural [15]. Power generation is dominated (87%) by hydro and geothermal power [16]. Utility scale solar power generation plays only a niche role, although there are several pipeline projects under development [17]. Household connection rates average 32% across the country, but only 5% of rural households are connected to the grid.⁵ This varies in different counties, with less than 3.3% household access in Tana River County in Kenya's Eastern Province [18], a county adjacent to Kitui County, included in the present study. Research carried out by in Western Kenya found that even in "seemingly ideal" conditions for rural electrification, that is, where there is high rural population density *with* grid coverage, electrification rates still remained dismally low, averaging 5% for rural households and 22% for rural businesses [19]. In addition, recent media reports have claimed that connection numbers are inflated because a large number of the meters (counted as connections) are non-vending.⁶

Kenya has long been known for its private sector-driven off-grid solar PV market [20] which has developed with the support of donors [21]. In recent years, diffusion of solar home systems (SHS) in rural areas has escalated dramatically primarily due to the ability of innovative companies to offer them on an incremental finance basis, with daily payments to match a typical rural household's expenditures on kerosene and phone charging. These companies have packaged together global technology innovations (LED lighting and Li-ion battery technology) and cost reductions in global solar PV prices; together with remote, automatized control systems and mobile money platforms such as M-PESA to develop plug-and-play systems ranging from 5 W to > 100 W, available off-the-shelf on credit from a nearby retail outlet. Recently (2017), Kenya Power, with financial assistance from the Nordic Development Fund, has installed 300–400 small PV charging systems in villages (distributed in eight different counties), including approximately 12,000 solar lanterns (expecting to reach 24,000 as the project evolves).⁷ There has also been technological, economic and organisational innovation⁸ in solar mini- and micro-grids; however, both the number of such supply systems and the uptake of connections remains limited. This is partly linked to regulatory barriers that hinder private sector investment (see below).

Policy and regulatory context

Gender equality is enshrined within the Constitution of Kenya. This supreme law directs the state to take measures that include legislation, affirmative action programmes and policies, representation in Parliament, and implementation of the principle that not more than

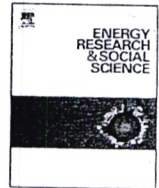
⁵ HH electricity access at 32% across the country; with 51% urban and 5% of rural households connected to the grid [39]

⁶ See for example Wafila [40], Okoth [41], Omondi [42].

⁷ Communicated by Mr. Henry Gichungi, an engineer participating in the programme.

⁸ Metering; remote control systems; mobile money payments.

⁴ Socio-technical system theory and social practice theory.



Original research article

Solar powered electricity access: Implications for women's empowerment in rural Kenya

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ARTICLE INFO

Keywords:

Gender relations
Agency
Electricity access
Women's empowerment

ABSTRACT

This paper examines the gendered implications of various types of electricity access in rural Kenya spanning from the central grid to solar-based systems such as community projects, village scale supply and private solar home systems (SHS).

Drawing on material collected in Homa Bay and Kitui counties in 2016, the paper examines the gendered set-up, organisation and effects of solar-powered electricity access as compared with the central grid. The paper employs a framework for analysing women's empowerment through electrification, which draws on Kabeer, Friedman as well as anthropology, socio-technical system theory and practice theory.

The results show that people tend to cherish solar-based solutions whereas the grid is perceived to be costly, unreliable and unavailable. As to the gendered organisation of supply, men dominate within the grid, mini-grids and private suppliers, leaving an important potential for women's empowerment untapped. Two community projects included women's 'hands-on' participation and spurred local discourses about women's capabilities.

Access is also gendered on the user side. Because men tend to own the houses, have a higher income and a moral right to make major decisions, fixed connections and high subscription fees provide women with less agency than what is the case in decentralised systems of supply.

"Electricity [from the grid] is unreliable even when there is sunshine."

Woman with a connection to the national grid as well as a solar home system.

God-Bura village, Homa Bay, Kenya, October 2016

1. Introduction

Promoted by the private sector in particular, solar powered electricity services are rapidly growing in rural Kenya. At the same time, driven by the Kenya Vision 2030 and two key political projects (see below), the government is expanding the national grid, and has recently started to look into providing off-grid solutions. Internationally, the

emphasis on universal access to electricity has never been more pronounced, as reflected in the Sustainable Development Goals (SDG). One of the targets for Goal 7 on energy¹ is the "proportion of population with access to electricity" [1, p. 23]. Following the "Global Tracking Framework" (GTF) as identified by the Sustainable Energy for All initiative (SEforAll), electricity access is not a binary entity. Rather, a multi-tier framework is used, acknowledging various levels of access, spanning from tier 0 (no access) to tier 1 (provision of some light for some hours)² up to tier 5 which implies continuous supply and the use of power-demanding appliances and machines. The framework also aims to take affordability and reliability into account; hence, it is not evident that grid connections provide a level of access corresponding to tier 5. However, we diverge from the GTF in that we consider electricity access to be people's *actual* subscription to and use of electricity's services rather than their (hypothetical) possibility to do so.³

* Corresponding author.

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¹ SDG Seven: "Ensure access to affordable, reliable, sustainable and modern energy for all." [1].

² More specifically, tier 1 includes supply/capacity of 3 W, 20 Wh or 1000 lm h per day. Also, duration of supply should be minimum 4 h during daytime and minimum 1 h in the evening [37, p. 175].

³ In the GTF, access to energy is defined not as actual subscriptions but as the "ability of an end-user to utilise an energy supply that can be used for desired energy services" when issues such as affordability and geographical location are accounted for [38, p. vii]. Because "ability" to utilise electricity is difficult to establish in practice, this definition remains theoretical and is therefore not purposeful in the present work.

The real story (despite high % figures reported on rural electrification and electricity access) is that many of our rural people are still too poor to connect; or if they do connect, many cannot afford the monthly rates and therefore do not draw electricity. The more remote rural grid-connected areas suffer from erratic and unreliable supply – see the Kenya Power reports on actual paying customers. The promise that once electricity arrives, new industries and businesses will bubble up is simply not happening – electricity provides some additional hours of work-time in the evening; and makes some production more efficient, but without guiding policy or a package of economic development incentives, how will these things “just happen” out of the blue?

Worst affected are women and girls. They earn far less than their men; have less agency in decision making; and still bear the heavy burden of daily drudgery, especially in collecting water, which rural electrification has simply failed to address at all. A gendered approach to the provision of electricity, guided by policy and The Energy Bill, would require that consideration of women’s needs are made in a more strategic way during planning. This is not only to reduce the burden of the Kenyan rural woman, but covers the full range of energy provision, from policy through to planning; investment; training; design; implementation and use. For example, by making conditions safe and conducive for women field engineers you make a safe environment for men - it is perhaps a surprising finding that many men also fear violence, including sexual violence – and these are the few brave men who were even willing to report such things.

My submission is that by acknowledging and building in a focus on gender in all energy activities and provision in the country, public investments will deliver better and more sustainable energy delivery projects; will have a focus on community empowerment especially in rural areas; and will bring better value for money to the heavy burden the tax payer must make.

It is unfortunate that the Energy Bill does not acknowledge or mention any of these aspects in any practical and meaningful way that supports the national development agenda; Vision 2030; and progress to the sustainable development goals.

In support of my submission, I am pleased to attach a recently published paper resulting from the research work that elaborates on these but also on modes of electricity supply, and contexts around women empowerment and electrification.

Yours sincerely

Anjali Saini

Anjali Saini (Ms)
P O Box 2570 – 00621
Nairobi

The Clerk of the Senate / Secretary, Parliamentary Service Commission
P. O. Box 41842 – 00100
Nairobi

Re: Receipt of Memoranda on The Energy Bill (National Assembly Bills No. 50 of 2017)

Thank you very much for the opportunity to submit views on The Energy Bill. I do so in my individual capacity.

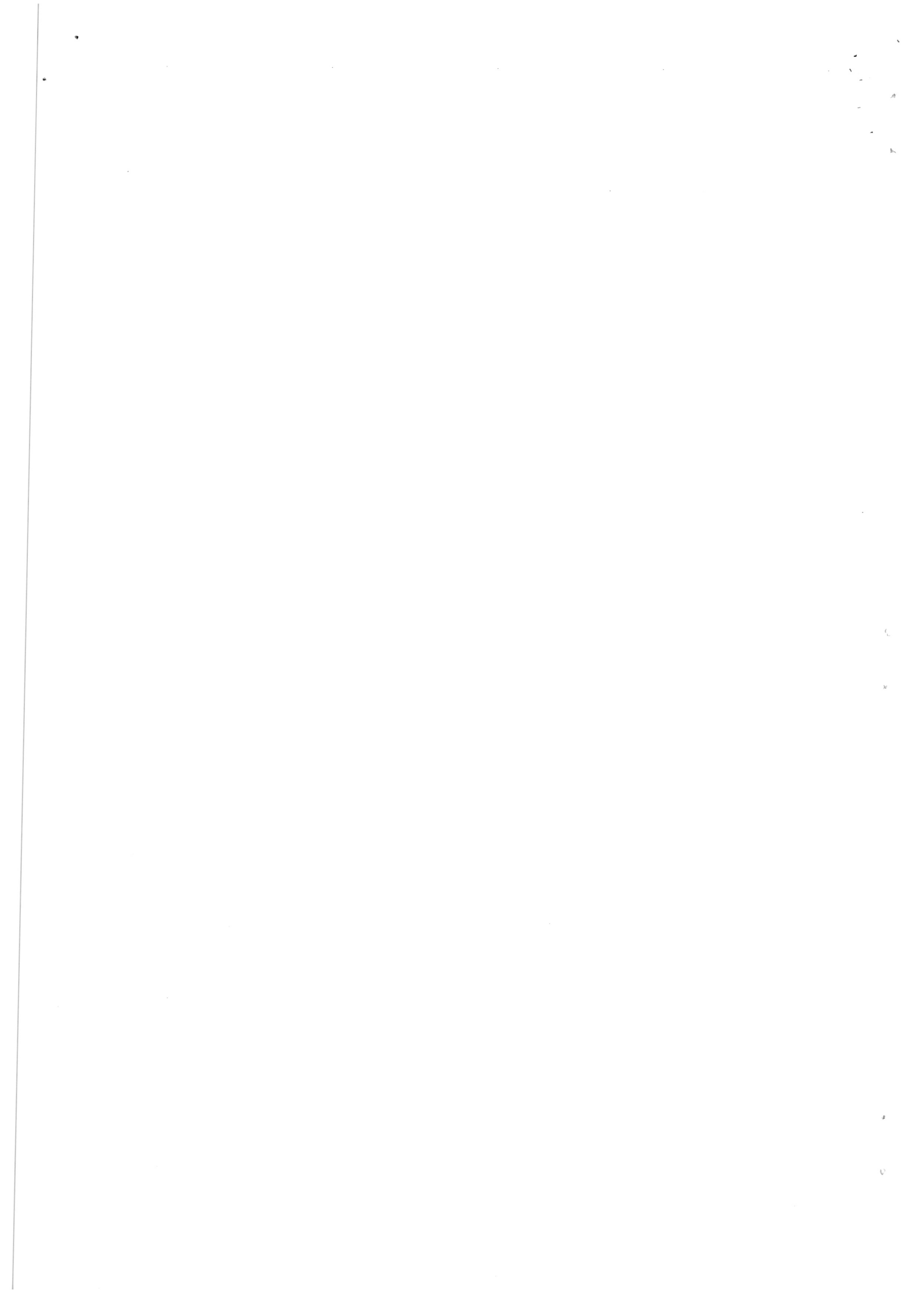
The submission I would like to make is about strengthening aspects of gender (nb: the term is taken to be inclusive of both women and men; boys and girls and recognising that energy impacts upon each of these groups in different ways).

This submission is specifically about Electricity Access, especially in rural areas that have been subject to, or will be subject to rural electrification. I have had the opportunity to be involved in a three-country research project (Kenya; India; Nepal) that looked at how electricity access has the potential to empower rural people, in particular women.

A key finding is that, despite massive public investments into rural electrification infrastructure, this potential remains untapped. It was more common than not to find:

- that such infrastructure was poorly functioning and that supply of electricity was unreliable;
- that most people cannot and have not connected to the grid – less than 6% of over 200 people surveyed in our case study site in Homa Bay had connections to the grid;
- that there were cases (e.g. in Homa Bay and East Kitui) where the final connection between a transformer and a school had not been made – hence no electricity supply possible – despite the rural grid infrastructure, including transformers, already in place for several years.

I acknowledge the great strides made in rural electrification in Kenya. However, it is now the time to step back and look at its accomplishments versus where it is failing to deliver upon its promises and expectations. In all our survey areas we found that unreliable supply is as bad, if not worse, than no supply. This is especially so in health clinics and schools that then have to improvise for night time maternal deliveries; are unable to store vaccines; and despite the promises and potential of the national Digital Literacy Project remain without any means at all of teaching and learning digital literacy! Such institutions have to bear the heavy burden of back-up generators (if they can afford them). Local small industry also has to do the same because unreliable supply spoils their equipment; ruins any batches of processing that they may be carrying out.



Clause	Proposal	Justification
	<p><i><u>fulfilment of the requirements under this Act and the presentation of an Environmental Impact Assessment License, the Authority may impose such conditions as it may deem fit on the permit</u></i></p>	<p>Environmental Impact Assessment (EIA) License when applying for a non-exclusive exploration permit. This will ensure that the proponent, National Environmental Management Agency (NEMA) and other lead agencies including County Governments have the opportunity to assess possible negative impacts of non-exclusive exploration on different counties taking cognisance of the potential environmental, social and economic changes a project any cause.</p>
127 (f)	<p><i><u>Terms and conditions for the application and approval of non-exclusive exploration permits and the contents of the project report submitted under the environmental law</u></i></p>	<p>We propose that the Authority in charge of issuing licenses should, in collaboration with National Environmental Management Agency develop regulations on the additional information needed in project reports that concern non-exclusive exploration. In this case, we take the meaning of non-exclusive exploration in Clause 2 of the Petroleum Bill, 2017. In line with Clause 126, these regulations shall be forwarded to the Cabinet Secretary in for the time being responsible for petroleum.</p>



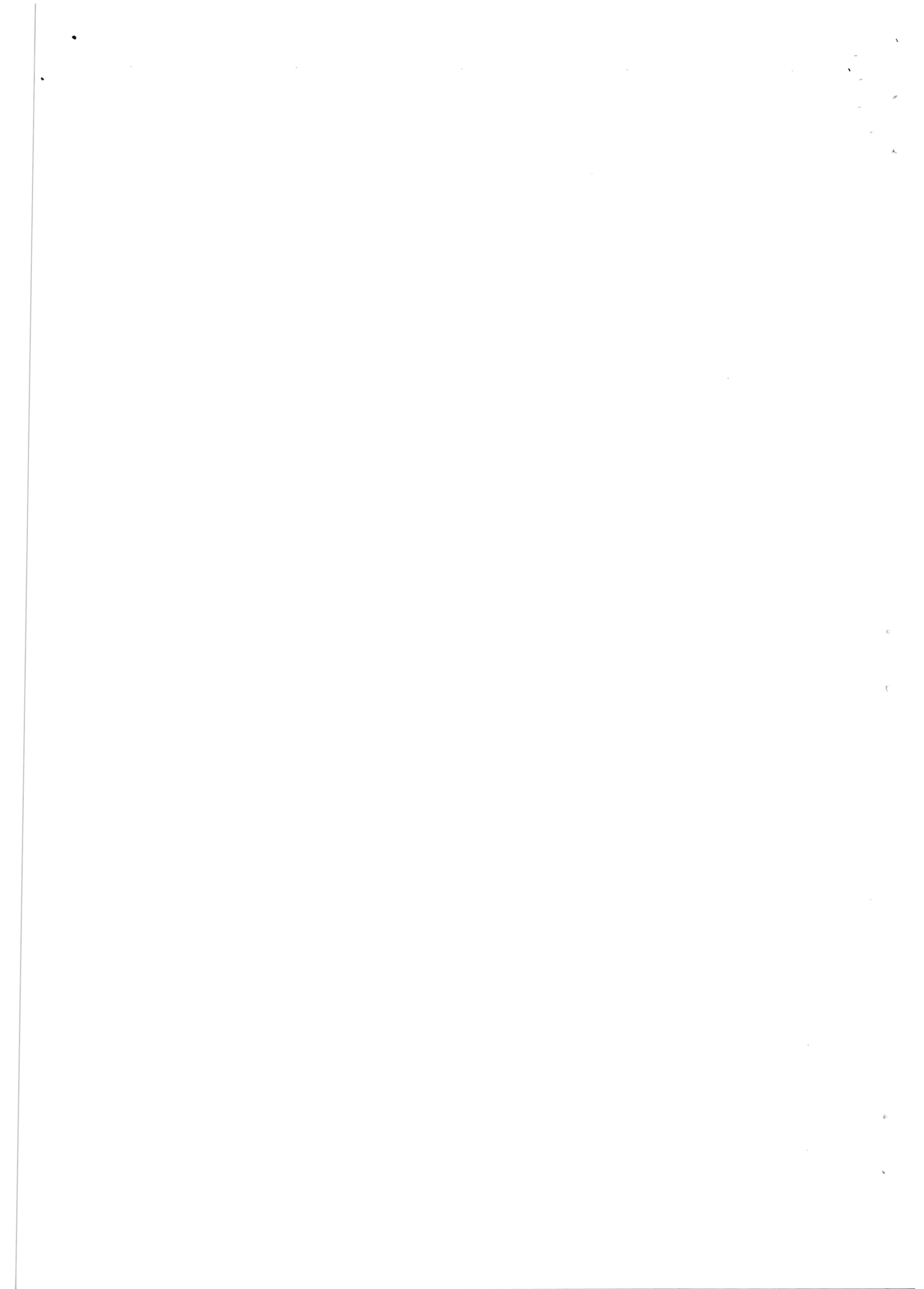
Clause	Proposal	Justification
	<i>production sharing contract and the field development plan shall be deemed to have been ratified.</i>	
Revenue		
58 Sharing of Petroleum Resource	<p>58. (1) <i>The national government's share of the profits derived from upstream petroleum operations shall be apportioned between the national government, the county government and the local community.</i></p> <p>(2) <i>The county government's share shall be equivalent to twenty percent of the national government's share <u>profits derived from upstream petroleum operations</u>;</i></p> <p>(3) <i>The local community's share shall be equivalent to five percent of the national government share <u>profits derived from upstream petroleum operations</u> 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;</i></p>	In order to avoid misinterpretation of this Act with regards to revenue sharing. We propose that the county government and local community share should be a percentage of the 'profits derived from upstream petroleum operations' as opposed to a percentage of the 'national government's share'.
Environment		
22 Application for non-exclusive exploration permit.	<i>The Authority may- issue an applicant with a non-exclusive exploration permit <u>upon</u></i>	We propose that the Authority should require an applicant to present an

Clause	Proposal	Justification
	<p>with the field development plan to Parliament for ratification in accordance with Article 71 of the Constitution.</p> <p>(2) Parliament shall, within sixty days after receipt of the production sharing contract and the field development plan under sub-section</p> <p>(1)— (a) ratify the production sharing contract and the field development plan; or (b) refuse to ratify the production sharing contract and the field development plan and refer the documents back to the Cabinet Secretary for reconsideration stating the reasons for the refusal.</p> <p>(3) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.</p> <p>(4) The Cabinet Secretary shall, upon accordance refusal under sub-section (2)(b), consider the reasons and reservations on their merits and resubmit the same to Parliament for approval.</p> <p>(5) If Parliament does not make a decision under sub-section (2) within ninety days, the</p>	<p>the extraction of Crude Oil and Natural Gas shall be subject to ratification.</p> <p>In order to ensure fulfilment of Article 71, this clause should only speak to Production Sharing Contracts and not Full Filed Development</p>

Petroleum Bill, 2017

Kindly note that the words in italics and underlined in the Proposal column are the proposed additions while the struckthrough italicised words are the proposed deletions

Clause	Proposal	Justification
The Energy and Petroleum Regulatory Authority		
The Energy and Petroleum Regulatory Authority (Clause 9- 24 in the Energy Bill)	We propose that the Authority in clause 9 of the Energy Bill, 2017 remains as the Energy Regulatory Commission (ERC). Consequently, the Upstream Petroleum Regulatory Authority (UPRA) is renamed to be the <u>Petroleum Regulatory Authority (PRA)</u> and be housed in the Petroleum Bill, 2017 as the Bill covers upstream, midstream and downstream.	We note with concern that EPRA formed under Clause 9 of the Energy Act shall be under the Cabinet Secretary responsible for Energy, yet the Authority shall exercise powers that affect both the Cabinet Secretaries in charge of Energy and Petroleum. This will potentially bring legal and political issues relating to issuing of licenses and monitoring the activities of licensees or contractors.
Ratification of Production Sharing Contracts (PSCs)		
31 Ratification by Parliament	(1) <i>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 <u>of negotiating a Petroleum Sharing Contract under this Act and before awarding the Production Sharing Contract,</u> submit the production sharing contract together</i>	Article 71 of the Constitution envisages that all agreements relating to natural resources involving the grant of a right or concession must be ratified by Parliament. Further, the Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016 envisions that agreements that authorize



Chenk Energy



21st August 2018

The Clerk of the Senate/ Secretary Parliamentary Service Commission
P.O. Box 41842- 00100
NAIROBI

Attn: Mr Jeremiah Nyegenye
Dear Sir,

RE: SUBMISSION OF MEMORANDUM ON THE PETROLEUM BILL, 2017

We refer to the above matter and the call for public participation recently placed in the Daily Nation Newspaper on 13th August 2018.

Pursuant to Article 10(2) and Article 118 of the Constitution of Kenya 2010, we hereby tender our submission on the above-mentioned Bill.

Sincerely.

Kenya Civil Society Platform on Oil and Gas

For any queries please contact
Charles Wanguhu
Kenya Civil Society Platform on Oil and Gas
+254 716 159 499
wanguhu@kcspog.org

	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.		rubber stamp. In our view, the PSC License should be ratified by parliament at the stage that it is being signed.
5	Section 36(7)(b): "the Cabinet Secretary may enter into a petroleum agreement with another contractor in accordance with this Act for the development and production of eh petroleum deposits."	Replace "eh" with "the"	Typographical error
6	Section 37(2): "Where the available capacity of infrastructure used for upstream and midstream petroleum operations is not sufficient to accommodate third parties, the owners of the infrastructure shall to increase the capacity of such infrastructure to accommodate the third party requirements if –"	Delete "to" between the words shall and increase. Delete "the" between the words accommodate and third	Grammatical errors

<p>Proviso under Section 50: "Provided that the cost of local content shall be at the prevailing market rate."</p>	<p>The proposal is to expunge the proviso in its entirety</p>	<p>The statement is ambiguous as it is not clear from a literal interpretation whether prevailing market rate refers to the local or international market rate. The proposal to expunge this clause is premised on the need to avoid any conflicting interpretations particularly where they favour the latter view, as local entities would not be able to compete with international ones, which, for instance, may enjoy economies of scale, tax exemptions, and so forth. There has also been a trend of abuse where mostly the inclination is to international companies at the expense of the local entities. This includes cases of employment where international companies have preferred to employ persons from their mother countries even in areas and cadres where qualified and even more competent persons are available locally. In most cases, the argument has been that their employees are cheaper or that they have been working for them for some time, not considering that the expatriates are always paid higher than locals, require work permits, flights, hotel accommodations, etc. This proviso, from our experience will definitely get abused and there are cases to prove the same.</p>
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	Tribunal established under the Energy Act, 2006;		Energy and Petroleum Tribunal. We propose that a Petroleum Tribunal is established under this Bill, separate from the Energy Tribunal we propose is established under the Energy Bill.
3	Page 1571, Section 14 "Establishment of the Upstream Petroleum Regulatory Authority."	Either delete this statement or provide for the establishment of the Authority in a new section.	There is reference to two section 14s on page 1571. The first one ought to be deleted as it does not exist in the body of the Bill ie. there is no section 14 in the Bill that establishes the Upstream Petroleum Regulatory Authority. Further, we propose that the Petroleum Bill establishes a unified Regulatory Authority dubbed the "Petroleum Regulatory Authority" which covers the three sectors ie upstream, midstream and downstream, rather than having an Authority for each sector.
	Section 13(2)	Delete or add content to the sub-clauses thereunder	There appears to be sub-clauses missing under section 13(2).
4	Section 31: The Cabinet Secretary shall, within thirty days of the approval of a field development plan submitted in accordance with the terms		Under this clause, ratification of PSC by Parliament is to occur at the same time that Parliament is ratifying the Field Development Plan. Essentially, at this stage it will be too late for Parliament to do anything other than

	<p>Section 25: Establishment of the Energy and Petroleum Tribunal.</p>	<p>Delete "and Petroleum Tribunal."</p>	<p>The Energy Bill does not govern the petroleum industry anymore, given that the Petroleum Bill now caters to upstream, midstream and downstream petroleum. The Tribunal established under this Bill ought to be the Energy Tribunal. Any references therefore to "Petroleum Tribunal", we propose, should be expunged.</p>
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2. THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL, 2017

No.	Current Clause in the Bill	Proposed Amendment	Rationale and Justification
1	<p>Interpretation section: "Authority" means the Energy Regulatory Commission established under section 4 of the Energy Act, 2006.</p>	<p>Proposal to delete "Energy Regulatory Commission" and replace with "Petroleum Regulatory Authority"</p>	<p>The word "Authority" is used repeatedly in the Bill and may be confused for the regulatory authority envisaged under this Bill. Moreover, the Energy Regulatory Commission is popularly referred to as the ERC. Any reference to this Commission, we propose, should be referred to as such.</p>
2	<p>Interpretation section: "Tribunal" means the Energy and Petroleum</p>	<p>Proposal to read, "...means the Petroleum Tribunal established under section..."</p>	<p>The current clause makes reference to the Energy Act, 2006. It is noteworthy that the Energy Bill, 2017 also seeks to establish the</p>

1. THE ENERGY BILL, 2017

No.	Current Clause in the Bill	Proposed Amendment	Rationale and Justification
1	<p>Preamble:</p> <p>AN ACT of Parliament to consolidate the laws relating to energy, to provide for National and County Government functions in relation to energy, to provide for the establishment, powers and functions of the energy sector entities; promotion of renewable energy; exploration, recovery and commercial utilization of geothermal energy; regulation of midstream and downstream petroleum and coal activities; regulation, production, supply and use of electricity and other energy forms; and for connected purposes.</p>	<p>Delete "regulation of midstream and downstream petroleum"</p>	<p>These aspects are covered by the Petroleum Bill, 2017.</p>
2	<p>Section 9:</p> <p>Establishment of the Energy and Petroleum Regulatory Authority.</p>	<p>Delete "and Petroleum Regulatory Authority."</p>	<p>The Energy Bill does not govern the petroleum industry anymore, given that the Petroleum Bill now caters to upstream, midstream and downstream petroleum. The Authority established under this Bill ought to be the Energy Regulatory Authority. Any references therefore to "Petroleum Regulatory Authority", we propose, should be expunged.</p>



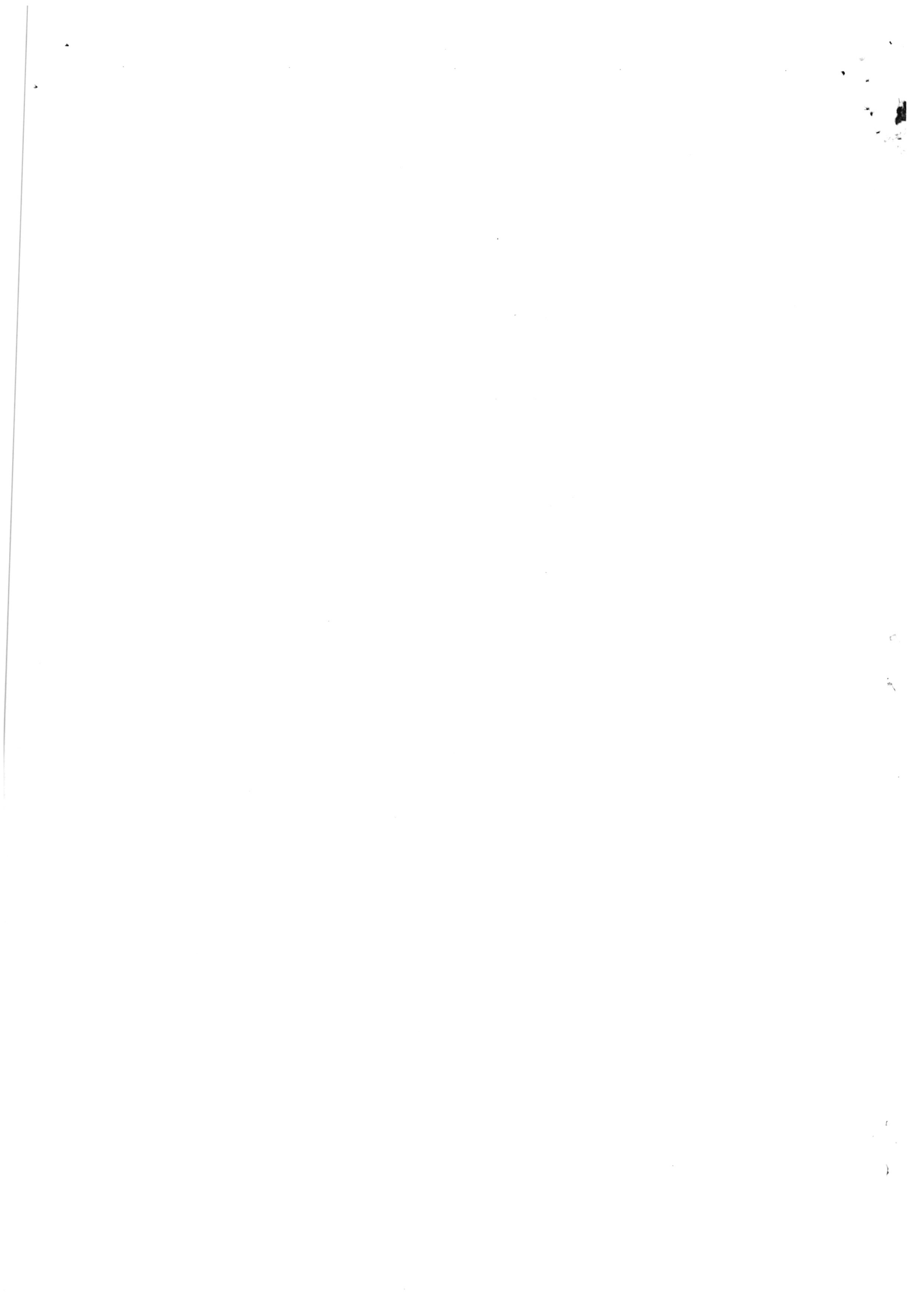
MEMORANDUM BY OGCA KENYA (OGCA) ON BOTH THE ENERGY BILL, 2017

AND

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

OGCA – an association of service providers in the oil and gas industry – seeks to facilitate the regulation of industry standards, promote local content development, enhance private sector participation in policy making amongst several other objectives.

The Energy and Petroleum Bills warrant interventions from a wide range of stakeholders who can ensure they are unambiguous and robust. OGCA lauds the efforts made to accommodate private sector views. Hereinafter are our humble submissions on the proposed Bills.



- c) include provision for public participation ; and
- d) provide for the specific regulations/specific areas that are to be made or covered by the Cabinet Secretary in the granting of consent under the provision.

8. Review provisions for compensation mechanism

In order to avoid abuse of the compensation funds where an owner of land cannot be traced, amend the provisions to provide that-

- a) the money payable to the compensation fund where the landowner is not found should be paid directly to the persons affected by the development and entitled to compensation; or

9. Review provisions for declaration of energy resource areas

The provision should be amended to provide for extensive public participation prior to the declaration of an area and compensation for landowners where land is declared an energy resource area.

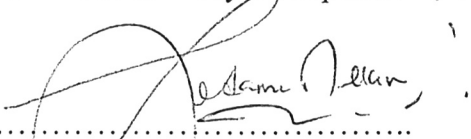
10. Implementation of energy efficiency

Clause 188 of the Bill does not provide for upcoming buildings to be classified by energy efficiency or provided that new buildings are build energy efficient. The provision should be amended to provide that all building or factories coming up after the coming into effect of the Bill should be energy efficient.

11. Conflict of laws on local content provisions

Given that both Bills are presently before the Senate, they can be aligned and based on the one that is enacted first, subsequent amendments can be made to the succeeding Bill in line with existing legislation.

Dated this 19th day of September, 2018



.....
SEN. LEDAMA OLEKINA
MEMBER
STANDING COMMITTEE ON ENERGY

of any development where the landowner cannot be traced. These funds are required to be held by the relevant state agency. However, this proviso does not require payment to be made to persons resident on the lands in question.

9. Procedures for declaration of energy resource areas

Clause 181 provides that before a Cabinet Secretary declares an area to be an energy resources area s/he shall consult with the relevant agencies and local communities. The provision is not elaborate enough to ensure all views are taken into consideration. Moreover, an area that is declared an energy resource area can no longer be transferred or sold which would affect the property rights of the landowner.

10. Implementation of energy efficiency

Whereas Clause 188 empowers the authority to classify factories and buildings by types and quantities of energy use for purposes of energy efficiency and conservation. It does not require energy classifications for upcoming buildings.

11. Conflict of laws on local content provisions

There is a need to ensure that what is provided for under the Bill does not conflict with the proposed Local Content Bill, 2018 that is currently before the Senate.

RECOMMENDATIONS

1. Provide for the requirement for collaboration and coordination with County Governments

County Governments are partners of National Government in the implementation of Energy policy. The Senate should amend that Bill to explicitly provide for consultation with County Governments as follows-

- a) Clause 4 to require consultation with County Governments during the development of the National Energy Policy;
- b) Clause 5 to require consultation with County Governments during the development, publishing and review of energy plans;

2. Establish a Petroleum Sector Regulator

Informed by the sensitivity of the nascent industry and the current organization of Government where the Ministry of Energy and the Ministry of Petroleum are separate state departments. The Bill should be amended to establish the Petroleum



Regulator Authority for the purposes of regulating upstream, midstream and downstream petroleum.

3. Review the Membership of National Energy Entities

In order to ensure the effective representation of the interest of Counties, the Senate should review the membership of the entities to ensure that have representatives nominated to represent County interests as follows-

- a) Clause 9 in the Energy and Petroleum Regulatory Authority;
- b) Clause 12 by increasing the representation of County Governments on the Board of the Energy and Petroleum Regulatory Authority;
- c) Clause 26 in the Energy and Petroleum Tribunal;
- d) Clause 45 in the Board of Rural Electrification and Renewable Energy Corporation;
- e) Clause 58 on the Board of the Nuclear Power and Energy Agency; and
- f) Clause 76 on the Renewable Energy Resource Advisory Committee.

4. Review provisions for the granting of licenses to exploit coal for energy

Part V of the Bill should be reviewed to provide more stringent requirements for environmental accountability in the granting of licenses for the development of energy from coal.

5. Review provision to avoid exploitation

The provision that the *Parliament shall* appropriate resources for the payment of electricity bills where Government or its agencies have defaulted on the payment of electricity bills is open to abuse. The clause should be amended to provide for punitive measures instead where Government or its agencies default in the payment of electricity Bill prior to National Treasury intervention.

6. Sensitization of the public on penalties and compensation for failure and defects in electricity supply

Clause 166 should be review so a s to require utility companies to sensitive the public as to penalties and compensation mechanisms.

7. Review provisions for seeking permission to survey land for energy infrastructure

To protect sanctity of title to land and prevent the exploitation of the provision the clause should be amended to provide for-

- a) an enhance the notice period to thirty days;
- b) include a provision for the gazettement of the notice;

Subsequent versions of the bill resulted in a singular regulator for the Energy sector.

Having a single petroleum regulator falling under a Cabinet Secretary responsible for energy would not only be inappropriate but would result in conflict in management of the sector

3. Representation of Counties in National Energy Entities

Part I of the Fourth Schedule to the Constitution confers on the National Government the functions and powers relating to the “protection of the environment and natural resources with a view to establishing a durable and sustainable system of development including, in particular...energy policy”. On the other hand, Part II of the Schedule confers on County Governments functions and powers relating to “county planning, including...electricity and gas reticulation and energy regulation”.

The county governments therefore have a critical role to play with respect to the implementation of policies relating to energy and more importantly on matters relating to energy and energy regulation. Their input in the decision making and regulation processes is crucial in light of the functions conferred on them.

The Representation of interests of counties in the entities is imperative. It is therefore necessary to ensure that the entities have representation of County Governments in their membership as this would enhance the collaboration between the two levels of government and ease the process of implementation and regulation of the energy sector.

4. Conditions for the grant of licenses and permits to develop coal resources

The mining and use of coal as a source of energy is likely to have a negative impact on the environment as well as the health of persons living within the vicinity of the mining and coal processing facilities.

It is therefore important to ensure that there is a strong legal framework in place that provides adequate safety requirements for the protection of the environment and that provides for the mitigation of any negative impact that might arise from the mining and processing of coal.



The framework provided under the Bill is inadequate and would need to be reviewed in order to ensure that the framework that is eventually in place is adequately caters for this concern. In addition, the licensing requirements will also need to be reviewed in order to ensure that there are in place strict conditions for issuance of a licence, that licences are only granted to those who meet the conditions for issuance of the licence and that there is strict compliance.

5. Government or its agencies defaulting in paying electricity bills

Clause 161 as currently worded, may result in entities avoiding to pay their bills and diverting the funds set aside to meet the electricity bills for other immediate purposes with the intention that at the stage of appropriating funds at the end of the budget cycle for the succeeding year, monies would be appropriated to pay for the electricity bills from what would be due to the respective entity.

It would therefore be important to review this clause to avert the said situation and where possible, provide an alternative mechanism to ensure that county governments meet their financial obligations with respect to electricity bills.

6. Compensation for failure and defects in electricity supply

Whereas there is in place a mechanism for compensation as envisaged under clause 166 of the Bill, it would be necessary to have a mechanism to create awareness so that members of the public are aware of the existence of the compensation mechanism. A provision should therefore be included to provide for sensitization of members of the public.

7. Permission to survey land for energy infrastructure

Clause 171 provides for the issuance of a fifteen days' notice to a land owner for the purpose of carrying out exploratory activities on private land where such owner cannot be found.

The fifteen-day notice period would be too short particularly where the landowner cannot be traced. In addition, it would be important to ensure that all efforts are made to identify the land owner including conducting a search at the Ministry of Lands prior to entry including the placing of an advert in a vernacular radio station.

8. Consent to proposals for compensation

Clause 173 (3) makes provision for the deposit of compensation payable into a special compensation fund held by the respective agency prior to the carrying out



			<p>permit may apply to the Cabinet Secretary for a certificate of variance to vary a term or condition of the licence or permit or a requirement of the regulations.</p> <p>(2) Subject to subsection (3), the Cabinet Secretary may issue a certificate of variance and may</p> <p>(a) impose any term or condition that the Cabinet Secretary considers appropriate in respect of the certificate; or</p> <p>(b) amend a term or condition of, add a term or condition to, or delete a term or condition from, a certificate.</p> <p>(3) Where an application is made for a certificate of variance in respect of a permit for which any activity authorized by the permit would be undertaken within an area of marine renewable-energy priority but outside of a marine renewable-electricity area, the Cabinet Secretary may not issue the certificate of variance without the consent of the Cabinet Secretary for Environment and Natural Resources.</p> <p>(4) A certificate of variance is in effect only during the period specified by the Cabinet Secretary and, notwithstanding anything in this Act or the regulations, during that period the terms and conditions of the licence or permit or the requirements of the regulations that are not varied by the certificate continue to apply.</p> <p>(5) While a certificate of variation is in effect in respect of a term or condition of a licence or permit or a requirement of the regulations,</p> <p>(a) the term or condition; or</p> <p>(b) the requirement, as it applies to an activity authorized to be carried on under the licence or permit, is deemed to be varied in accordance with the certificate.</p> <p>122. (1) The Cabinet Secretary may</p>
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			<p>suspend or revoke a licence or permit</p> <p>(a) for contravention of</p> <p>(i) this Act or the regulations,</p> <p>(ii) the licence or permit, or</p> <p>(iii) an order;</p> <p>(b) if, in the course of applying for the licence or permit, the applicant</p> <p>(i) supplied information to the Cabinet Secretary that was false or misleading, or</p> <p>(ii) failed to supply information that the applicant might reasonably have been expected to supply,</p> <p>and the Cabinet Secretary determines that, had the correct information been supplied, the licence or permit would have either been refused or issued on different terms and conditions; or</p> <p>(c) if the licence or permit is no longer required under this Act or the regulations.</p> <p>(2) Where the Cabinet Secretary suspends or revokes a licence or permit under subsection (1), the Cabinet Secretary shall forthwith give notice in writing, together with reasons, of the suspension or revocation to the holder of the licence or permit.</p> <p>123. Where a licence or permit is revoked because, in the course of applying for the licence or permit, the applicant failed to supply information that the applicant might reasonably have been expected to supply, the Cabinet Secretary may issue a new licence or permit on different terms and conditions.</p> <p>Consultation With Relevant County Governments, Other National Government Departments and Agencies</p> <p>124. (1) When establishing or reviewing a marine renewable-electricity area, the Cabinet Secretary may consult with any department or government agency of the public</p>
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			<p>service of the National Government of Kenya or department or agency of the County Governments of Kenya, that exercises regulatory authority over any aspect of the activities to be carried on in the marine renewable-electricity area.</p> <p>(2) When considering an application for a licence or permit, the Cabinet Secretary may consult with any department or government agency of the public service of the National Government of Kenya or department or agency of the County Governments of Kenya, that exercises regulatory authority over any aspect of the activities to be carried on under the licence or permit.</p> <p>125. (1) The Cabinet Secretary may, in accordance with the regulations, disclose any information, including personal information,</p> <p>(a) contained in an application for a licence or permit;</p> <p>(b) disclosed to the Cabinet Secretary as required by a term or condition of a licence or permit; or</p> <p>(c) disclosed to the Cabinet Secretary as required by an order, to any department or government agency of the public service of the National Government of Kenya or department or agency of the County Governments of Kenya, that exercises regulatory authority over any aspect of the activities to be carried on under the licence or permit.</p> <p>(2) The Cabinet Secretary may, in accordance with the regulations, disclose any environmental effects monitoring data or baseline data</p> <p>(a) disclosed to the Cabinet Secretary as required by a term or condition of a licence or permit; or</p> <p>(b) disclosed to the Cabinet Secretary as required by an order,</p>
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			<p>to the State Department for Environment, the State Department for Natural Resources, State Department for Fisheries and the Blue Economy or the Kenya Wildlife Service.</p> <p>(4) A department of the public service of the County Government or a local government agency to which information, including personal information, or data is disclosed under subsection (1) or (2) may, in accordance with any requirements prescribed by the regulations, collect, use and disclose the information or data.</p> <p>126. (1) The Cabinet Secretary shall, in respect of an application for a licence or permit, take into account any concerns expressed about the application by a department of the public service of the County Government, a government agency or an agency of the Government of Kenya, when deciding whether to approve or deny the application and when prescribing any terms or conditions of the licence or permit.</p> <p>(2) Before taking into account any concerns expressed about an application by a department of the public service of the County Government, a government agency or an agency of the Government of Kenya, the Cabinet Secretary shall</p> <p>(a) inform the applicant of the concerns expressed; and</p> <p>(b) provide the applicant with an opportunity to respond to the concerns expressed.</p> <p>Collection, Use and Disclosure of Data and Information</p> <p>127. (1) The holder of a licence or permit shall, in accordance with the regulations, collect data about the activities that the holder of the licence or permit is authorized to carry on</p>
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			<p>under the licence or permit.</p> <p>(2) The holder and any former holder of a licence or permit shall, in accordance with the regulations, maintain a record of any data about the activities that the holder or former holder of the licence or permit is or was, as the case may be, authorized to carry on under the licence or permit.</p> <p>128. (1) Subject to subsection 129(3), the holder or any former holder of a licence or permit shall, upon and in accordance with a direction by the Cabinet Secretary to do so, disclose to a person, for research purposes, any data or information about the activities that the holder or former holder is or was, as the case may be, authorized to carry on under the licence or permit.</p> <p>(2) Subject to subsection 129(3), where the licence area of the licence once held by a former licence holder coincides partially or entirely with the licence area of a licence held by a current licence holder, the former licence holder shall, upon and in accordance with a direction by the Cabinet Secretary to do so, disclose to the current licence holder any data or information about the activities that the former licence holder was authorized to carry on under the licence of the former licence holder.</p> <p>129. (1) Within 10 days of receiving a direction from the Cabinet Secretary under Section 128, or within such further time as the Cabinet Secretary allows, the holder or former holder of the licence or permit may request that the person to whom data or information is to be disclosed under Section 128 execute a confidentiality or non-disclosure agreement and provide to the Cabinet Secretary a copy of the agreement for the Cabinet Secretary's approval.</p>
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		<p>(2) The Cabinet Secretary may approve a confidentiality or non-disclosure agreement provided to the Cabinet Secretary under subsection (1) and, before doing so, may make any amendments to the agreement that the Cabinet Secretary considers necessary or advisable.</p> <p>(3) Where the Cabinet Secretary has approved a confidentiality or non-disclosure agreement under subsection (2), the person to whom data or information is to be disclosed under Section 130 is not entitled to the disclosure until the person executes the agreement.</p> <p>130. (1) Where the holder or former holder of a licence or permit fails to disclose data or information in accordance with Section 128,</p> <p>(a) the Cabinet Secretary may disclose to the person to whom data or information is to be disclosed; and</p> <p>(b) the person to whom data or information is to be disclosed may collect and use, any data or information in the Cabinet Secretary's possession about the activities that the holder or former holder is or was, as the case may be, authorized to carry on under the licence or permit.</p> <p>(2) No action lies against the President in right of the Republic of Kenya, the Cabinet Secretary, the person to whom any data or information is disclosed under subsection (1) or any agent, servant or employee of the President in right of the Republic of Kenya or the person to whom data or information is disclosed under subsection (1) in respect of the collection, use and disclosure of the data or information.</p> <p>131. Notwithstanding anything in this Act, the Cabinet Secretary may not disclose, in respect of a generator,</p> <p>(a) any data relating to when and how</p>
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			<p>much electricity is produced by the generator; or</p> <p>(b) any other data or information prescribed by the regulations, without the written consent of the holder of the licence or permit under which the generator is operated.</p> <p>Local Content and Training</p> <p>A contractor or sub-contractor seeking to build a marine renewable energy project in Kenyan waters shall in the first instance, only consider Kenyan citizens and Kenyan owned facility or facilities in conducting marine renewable energy operations including but not limited to supplying, installing inspecting and maintaining offshore wind turbines and components, manufacturing offshore wind turbine blades and wave and tidal devices, supplying and laying underwater power cables, providing helicopters for use in transporting crew to installation sites, providing Kenyan crew and Kenyan-owned vessels, developing wave and tidal energy projects and providing components for the marine energy industry, as well as designing software, conducting offshore surveys, monitoring wildlife, and providing financial and legal services.</p> <p>Alternative facilities, contractors and sub-contractors must only be sourced from outside Kenya if there are not a sufficient number of those suitable facilities, citizens of the Republic of Kenya, or aliens lawfully admitted to the Republic of Kenya for permanent residence, are not qualified and available for such work. For clarity, permanent residents must have been lawfully living in Kenya for the last five years immediately prior to commencement of use of the facility.</p> <p>A contractor or sub-contractor seeking to build a marine renewable energy</p>
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			<p>project in Kenyan waters shall in the first instance, only consider and use ports and harbours partly or fully owned and operated by Kenyan citizens or permanent residents for the purpose of meeting his/her planning, manufacturing, storage, staging, deployment and maintenance requirements.</p> <p>Alternative ports and harbours outside Kenya must only be used if there are not a sufficient number or the lack of designated, purpose-built ports and harbours and/or citizens of the Republic of Kenya, or aliens lawfully admitted to the Republic of Kenya for permanent residence, are not qualified and available for such work. For clarity, permanent residents must have been lawfully living in Kenya for the last five years immediately prior to commencement of use of the ports and harbours.</p> <p>Ministerial Orders</p> <p>132. (1) The Cabinet Secretary may, regardless of whether a person has contravened this Act or the regulations or has been charged or convicted in respect of any contravention of this Act or the regulations, issue an order requiring a person, at the person's own expense, to</p> <p>(a) where the Cabinet Secretary believes on reasonable and probable grounds that the person has contravened or will contravene this Act or the regulations, cease or take any action in respect of the person's contravention or anticipated contravention of this Act and the regulations;</p> <p>(b) where the Cabinet Secretary believes on reasonable and probable grounds that the person has contravened or will contravene a term or condition of a licence or permit,</p>
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			<p>cease or take any action in respect of the person's contravention or anticipated contravention of the term or condition; or</p> <p>(c) where the Cabinet Secretary believes that an emergency exists or is imminent in respect of a matter authorized or governed by this Act or the regulations, cease or take any action necessary to abate or prevent the emergency.</p> <p>(2) An order issued under subsection (1) may</p> <p>(a) require a person, at the person's own expense, to</p> <p>(i) maintain records on any relevant matter and report periodically to the Cabinet Secretary or a person specified by the Cabinet Secretary,</p> <p>(ii) hire an expert to prepare a report for submission to the Cabinet Secretary or a person specified by the Cabinet Secretary,</p> <p>(iii) submit to the Cabinet Secretary or a person specified by the Cabinet Secretary, in accordance with the order, any information, proposal or plan setting out any action to be taken by the person with respect to the subject-matter of the order,</p> <p>(iv) prepare and submit a contingency plan,</p> <p>(v) undertake any test, investigation, survey or other action specified by the Cabinet Secretary and report the results to the Cabinet Secretary, or</p> <p>(vi) take any other measure that the Cabinet Secretary considers necessary to facilitate compliance with the order;</p> <p>(b) fix the manner or method of, or the procedures to be used in, carrying out any measure required by the order; and</p> <p>(c) fix the time within which any measure required by the order is to be commenced and the time within which the order or any portion of the order is</p>
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		<p>to be complied with.</p> <p>(3) Where the Cabinet Secretary believes on reasonable and probable grounds that a person has contravened or will contravene this Act, the regulations or a term or condition of a licence or permit, the Cabinet Secretary may issue an order</p> <p>(a) prohibiting a public and/or private utility from interconnecting a generator, line, plant, equipment or work owned or operated by the person to any line, plant, equipment or work of the public utility; or</p> <p>(b) directing a public and/or private utility to disconnect a generator, line, plant, equipment or work owned or operated by the person from any line, plant, equipment or work of the public and/or private utility.</p> <p>(4) The reasonable costs incurred by a public and/or private utility when complying with an order issued under subsection (3) are a debt due to the public utility and/or private by the person who owns or operates the generator, line, plant, equipment or work that is the subject of the order.</p> <p>(5) An order issued under subsection (1) or (3) is not a regulation within the meaning of this Act.</p> <p>133. (1) Any reasonable costs, expenses or charges incurred by the Cabinet Secretary when investigating and responding to</p> <p>(a) any matter to which an order issued under subsection 132 (1) or (3) relates; or</p> <p>(b) the failure to comply with an order issued under subsection 132 (1) or (3), are recoverable by order of the Cabinet Secretary against the person to whom the order issued under subsection 132 (1) or (3) was directed.</p> <p>(2) Where an order to pay is issued by the Cabinet Secretary under subsection</p>
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		<p>(1), the order may be filed with a Registrar of the High Court of Kenya and, when so filed and recorded,</p> <p>(a) the order is of the same force and effect as if it were a judgment against real property that the person named in the order may then or thereafter own;</p> <p>(b) subject to subsection (3), a lien is established on the property referred to in clause (a) for the amount stated; and</p> <p>(c) the order is enforceable in the same manner as a judgment of the High Court of Kenya.</p> <p>(3) No lien is created under clause (2)(b) against property registered under the <u>Land Laws (Amendment) Act 2016</u> until the order is recorded in the parcel register.</p> <p>(4) An order issued under subsection (1) is not a regulation within the meaning of this Act.</p> <p>134. (1) An order issued by the Cabinet Secretary under subsection 132 (1) or (3) or 133 (1) must be served in accordance with subsection (2).</p> <p>(2) An order is served</p> <p>(a) upon a copy being personally served on the person to whom it is directed;</p> <p>(b) upon a copy being sent, by electronic mail, facsimile or other electronic means, to the person to whom it is directed and an acknowledgement of receipt being received; or</p> <p>(c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last address for that person known to the Cabinet Secretary, if any.</p> <p>(3) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (2), or service in accordance with the <u>Companies (Amendment) Act</u></p>
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		<p>2017, is deemed to be service on the corporation for the purpose of subsection (1).</p> <p>(4) Where it is impractical for any reason to serve a document in the manner prescribed by subsection (2) or (3), an ex parte application may be made to a judge of the High Court of Kenya, who may make an order for substituted service providing for the steps to be taken to bring the matter to the attention of the person to be served.</p> <p>135. (1) Where an order is served on a person to whom it is directed, the person shall comply with the order forthwith or, where a period for compliance is specified in the order, within the period specified.</p> <p>(2) Where the person to whom an order is directed does not comply with the order or any part thereof, the Cabinet Secretary may take whatever action the Cabinet Secretary considers necessary to carry out the terms of the order.</p> <p>136. (1) The Cabinet Secretary may</p> <ul style="list-style-type: none"> (a) amend a term or condition of, add a term or condition to, or delete a term or condition from, an order; (b) revoke an order; or (c) amend a typographical error in an order. <p>(2) A copy of an order amended or revoked pursuant to subsection (1) must be served in accordance with Section 134 (2) on the person to whom the original order was directed.</p> <p>Offences</p> <p>137. (1) A person who contravenes</p> <ul style="list-style-type: none"> (a) this Act or the regulations; (b) a term or condition of a licence or permit; or (c) an order, <p>is guilty of an offence and liable on summary conviction, in the case of a first offence, to a fine of not more than ten million shillings, and, in the case of</p>
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		<p>a second or subsequent offence, to a fine of not more than fifty million shillings.</p> <p>(2) In a prosecution of an offence, it is sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.</p> <p>(3) Where a corporation commits an offence, a director, officer or agent of the corporation who authorized, permitted or acquiesced in the offence is also guilty of the offence and liable on summary conviction to the penalties set out in subsection (1), whether or not the corporation has been prosecuted or convicted.</p> <p>(4) Where an offence is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.</p> <p>(5) No person may be convicted of an offence if the person establishes that the person</p> <p>(a) exercised all due diligence to prevent the commission of the offence; or</p> <p>(b) reasonably and honestly believed in the existence of facts that, if true, would have rendered the conduct of that person innocent.</p> <p>(6) At the request of the Cabinet Secretary, the Cabinet Secretary for the Ministry in which the Kenya Maritime Authority is operating, the Attorney General or a Republic of Kenya practicing lawyer shall institute a civil action in a High Court of the Republic of Kenya for the jurisdiction in which</p>
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			<p>the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.</p> <p>(a). Except as provided in paragraph (b), if any person fails to comply with any provision of this Act, or any term of a lease, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than two million shillings for each day of the continuance of such failure. The Cabinet Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing. The Cabinet Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, The Republic of Kenya city average) as prepared by the Kenya National Bureau of Statistics.</p> <p>(b). If a failure described in paragraph (a) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to including but not limited to life of fish and other aquatic life, to property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.</p> <p>7. Any person who knowingly and willfully (i) violates any provision of this Act, any term of a lease, license, or</p>
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			<p>permit issued pursuant to this Act, or any regulations or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural or heritage resources, (ii) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (iii) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (iv) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than ten million shillings, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (i) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (iii) of this subsection, shall constitute a separate violation.</p> <p>8. Whenever a corporation or other entity is subject to prosecution under subsection (7) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (7) of this section.</p> <p>9. The remedies and penalties prescribed in this Act shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Act shall be in addition to any other remedies and penalties afforded</p>
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		<p>by any other law or regulation.</p> <p>138. (1) Where a person is convicted of an offence, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order requiring the offender to comply with such conditions as the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.</p> <p>(2) An order made under subsection (1) comes into force on the day on which it is made or on such other day as the court may order and may not continue in force for more than three years after that day.</p> <p>(3) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, of the lease, or of the regulations issued under this Act, such lease may be forfeited and canceled by an appropriate proceeding in any High Court of the republic of Kenya having jurisdiction under the provisions of this Act.</p> <p>139. A prosecution of an offence pursuant to this Act may not be commenced more than two years after the later of</p> <p>(a) the date on which the offence was committed; and</p> <p>(b) the date on which evidence of the offence first came to the attention of the Cabinet Secretary.</p> <p>Regulations</p> <p>140. (1) On the report and recommendation of the Cabinet Secretary and the Cabinet Secretary for Environment and Natural Resources, the Energy Regulatory Commission</p>
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			<p>may make regulations respecting a statutory marine renewable-electricity area, including regulations</p> <ul style="list-style-type: none"> (a) altering the boundaries of, or prescribing different boundaries for, a statutory marine renewable-electricity area ; (b) specifying the types of connected generators that may be licensed to operate within a statutory marine renewable-electricity area; (c) varying the limit on the aggregate nameplate capacity of the licensed generators that may be constructed, installed and operated within a statutory marine renewable-electricity area; (d) restricting the application or operation of an enactment within a statutory marine renewable-electricity area ; (e) requiring the approval of the Cabinet Secretary before a licence, permit, approval, authorization or permission may, in respect of a statutory marine renewable-electricity area or an activity to be conducted within a statutory marine renewable-electricity area, be issued under an enactment and respecting any such requirement; (f) subject to subsection (3), imposing conditions or restrictions on, or prohibiting the conduct of, an activity that is occurring or is to occur within a statutory marine renewable-electricity area ; (g) respecting the disestablishment of a statutory marine renewable-electricity area ; (h) respecting any matter or thing the Energy Regulatory Commission considers necessary or advisable for the effective administration of a statutory marine renewable-electricity area.
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		<p>(2) Where there is a conflict between a regulation made under clause (1)(d) or (e) and any other enactment, the regulation made under clause (1)(d) or (e) prevails.</p> <p>(3) A regulation made under subsection (1) may be of general application or may apply to such class or classes of statutory marine renewable-electricity areas or classes of matters or things as the Energy Regulatory Commission determines and there may be different regulations with respect to different classes of statutory marine renewable-electricity areas and different classes of matters or things.</p> <p>(4) The exercise by the Energy Regulatory Commission of the authority contained in subsection (1) is a regulation within the meaning of this Act.</p> <p>141. (1) On the report and recommendation of the Cabinet Secretary and the Cabinet Secretary for Environment and Natural Resources, the The Energy Regulatory Commission may make regulations establishing a marine renewable-electricity area, including regulations</p> <ul style="list-style-type: none"> (a) establishing the boundaries of the marine renewable-electricity area; (b) specifying the types of connected generators that may be licensed to operate within the marine renewable-electricity area; (c) establishing a limit on the aggregate nameplate capacity of the licensed generators that may be constructed, installed and operated within the marine renewable-electricity area; (d) restricting the application or operation of an enactment within the marine renewable-electricity area; (e) requiring the approval of the Cabinet Secretary before a licence, permit, approval, authorization or
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			<p>permission may, in respect of the marine renewable-electricity area or an activity to be conducted within the marine renewable-electricity area, be issued under an enactment and respecting any such requirement;</p> <p>(f) subject to subsection (4), imposing conditions or restrictions on, or prohibiting the conduct of, an activity that is occurring or is to occur within the marine renewable-electricity area;</p> <p>(g) respecting any matter or thing the Energy Regulatory Commission considers necessary or advisable for the effective establishment and administration of the marine renewable-electricity area.</p> <p>(2) A regulation establishing a marine renewable-electricity area must</p> <p>(a) establish the boundaries of the marine renewable-electricity area;</p> <p>(b) specify the types of connected generators that may be licensed to operate within the marine renewable-electricity area; and</p> <p>(c) establish a limit on the aggregate nameplate capacity of the licensed generators that may be constructed, installed and operated within the marine renewable-electricity area.</p> <p>(3) Where there is a conflict between a regulation made under clause (1)(d) or (e) and any other enactment, the regulation made under clause (1)(d) or (e) prevails.</p> <p>(4) The Energy Regulatory Commission may only exercise the authority contained in clause (1)(f) in respect of a marine renewable-electricity area</p> <p>(a) when the marine renewable-electricity area is being established or materially modified; or</p> <p>(b) if the Kenya Maritime Authority considers it necessary for the safety of persons or property.</p>
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		<p>(5) The exercise by the Energy Regulatory Commission of the authority contained in subsection (1) is a regulation within the meaning of this Act.</p> <p>142. (1) The Energy Regulatory Commission may make regulations</p> <ul style="list-style-type: none"> (a) prescribing generators <ul style="list-style-type: none"> (i) as being connected generators, or (ii) as not being connected generators; (b) prescribing devices or technologies <ul style="list-style-type: none"> (i) as being generators, or (ii) as not being generators; (c) prescribing sources for the purpose of the definition of "marine renewable-energy resources"; (d) respecting the timing and manner by which a notice to the public containing the details of a public consultation process must be issued by the Cabinet Secretary; (e) prescribing information that is to be included in a notice to the public containing the details of a public consultation process; (f) prescribing information that is to be included in a report summarizing the information obtained when consulting with the public in accordance with a public consultation process; (g) prescribing the period before the establishment of a marine renewable-electricity area within which a strategic environmental assessment of the proposed marine renewable-electricity area must be completed; (h) respecting requests/calls for applications/proposals; (i) respecting applications for a licence; (j) establishing different types of licences and different requirements applicable to each type of licence; (k) prescribing terms and conditions of licences; (l) respecting the collection of baseline data or information and environmental
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			<p>effects data and the production of such data and reports in relation thereto in accordance with the terms and conditions of a licence;</p> <p>(m) prescribing the form and manner by which the Cabinet Secretary is to notify the public of the licensing process, including the matters referred to in Section 109;</p> <p>(n) respecting the extension or renewal of licences;</p> <p>(o) prescribing the circumstances in which a licence holder is to provide financial or other security or carry insurance, or do both;</p> <p>(p) respecting the disclosure by the Cabinet Secretary to a department of the public service of the County Government, a government agency or an agency of the Government of Kenya of information, including personal information;</p> <p>(q) respecting the disclosure by the Cabinet Secretary to the State Department for Environment, the State Department for Natural Resources, State Department for Fisheries and the Blue Economy or the Kenya Wildlife Service of environmental effects monitoring data or baseline data or information under subsection 125(2);</p> <p>(r) respecting the collection, use and disclosure by a department of the public service of the County Government or a government agency of information, including personal information, or data under subsection 125(3);</p> <p>(s) respecting the collection of data by the holder of a licence about the activities that the holder is authorized to carry on under the licence, including the types of data that are to be collected;</p> <p>(t) respecting the maintenance of records of data by the holder or former</p>
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		<p>holder of a licence or permit about the activities that the holder is, or former holder was, authorized to carry on under the licence or permit, including the length of time during which the records must be maintained;</p> <p>(u) prescribing data or information about a generator that the Cabinet Secretary is not allowed to disclose without the written consent of the holder of the licence or permit under which the generator is operated;</p> <p>(v) respecting sales in respect of the electricity produced under a licence, including</p> <p>(i) prescribing sales that are payable,</p> <p>(ii) prescribing the rates at which such sales are payable,</p> <p>(iii) respecting returns and other information to be provided to the Cabinet Secretary by the holder of a licence, including the contents of such returns and when such returns and other information are to be provided,</p> <p>(iv) respecting the records to be maintained by a licence holder in respect of sales,</p> <p>(v) authorizing the Cabinet Secretary to perform an audit of a licence holder's records and prescribing the time and manner in which an audit is to be performed,</p> <p>(vi) respecting the time and manner in which assessments of the amounts of any sales by a licence holder may be made by the Cabinet Secretary,</p> <p>(vii) respecting objections or appeals of assessments, and</p> <p>(viii) respecting the enforcement of assessments;</p> <p>(w) respecting any matter or thing the Energy Regulatory Commission considers necessary or advisable to effectively carry out the intent and purpose of this Act.</p> <p>(2) On the report and recommendation</p>
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			<p>of the Cabinet Secretary and the Cabinet Secretary for Environment and Natural Resources, the Energy Regulatory Commission may make regulations</p> <ul style="list-style-type: none"> (a) respecting existing areas of marine renewable-energy priority; (b) prescribing requirements to be satisfied and procedures and processes to be followed by the Cabinet Secretary before a marine renewable-electricity area may be established; (c) identifying strategic environmental assessment documents respecting proposed marine renewable-electricity areas; (d) respecting the conduct of strategic environmental assessments; (e) prescribing the manner in which an application for a permit is to be made and the information that an application for a permit is to contain; (f) establishing different types of permits and different requirements applicable to each type of permit; (i) prescribing terms and conditions of permits; (g) respecting the collection of baseline data or information and environmental effects data and the production of such data and reports in relation thereto in accordance with the terms and conditions of a permit; (h) prescribing the form and manner by which the Cabinet Secretary is to notify the public of the permitting process, including the matters referred to in Section 116; (i) respecting the extension or renewal of permits; (j) prescribing the circumstances in which a permit holder is to provide financial or other security or carry insurance, or do both; (k) respecting the steps to be undertaken by a licence holder
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		<p>(i) to decommission a generator that was operated under the authority of the licence, and</p> <p>(ii) to reclaim, restore or rehabilitate any sub-aquatic lands that compose the licence area;</p> <p>(l) respecting when a licence holder is required to provide the Cabinet Secretary with a decommissioning, abandonment and reclamation plan and obtain the Cabinet Secretary's approval of such a plan;</p> <p>(m) respecting decommissioning, abandonment and reclamation plans to be provided by licence holders;</p> <p>(n) respecting the steps to be undertaken by a permit holder</p> <p>(i) to decommission a generator, cable or other equipment or structure that was operated under the authority of the permit, and</p> <p>(ii) to reclaim, restore or rehabilitate any sub-aquatic lands that compose the permit area;</p> <p>(o) respecting when a permit holder is required to provide the Cabinet Secretary with a decommissioning, abandonment and reclamation plan and obtain the Cabinet Secretary's approval of such a plan;</p> <p>(p) respecting decommissioning, abandonment and reclamation plans to be provided by permit holders;</p> <p>(q) respecting rents and fees payable in respect of a licence, including</p> <p>(i) prescribing rents and fees that are payable,</p> <p>(ii) prescribing the rates at which such rents and fees are payable,</p> <p>(iii) respecting returns and other information to be provided to the Cabinet Secretary by the holder of a licence, including the contents of such returns and when such returns and other information are to be provided,</p> <p>(iv) respecting the records to be</p>
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		<p>maintained by a licence holder in respect of rents or fees payable,</p> <p>(v) authorizing the Cabinet Secretary to perform an audit of a licence holder's records and prescribing the time and manner in which an audit is to be performed,</p> <p>(vi) respecting the time and manner in which assessments of the amounts of any rents or fees payable by a licence holder may be made by the Cabinet Secretary,</p> <p>(vii) respecting objections or appeals of assessments, and</p> <p>(viii) respecting the enforcement of assessments;</p> <p>(r) defining any word or expression used but not defined in this Act;</p> <p>(3) A regulation made under subsection (1) or (2) may be of general application or may apply to such class or classes of licences or permits, such class or classes of licence holders or permit holders or to such class or classes of matters or things as the Energy Regulatory Commission determines and there may be different regulations with respect to different classes of licences or permits, different classes of licence holders or permit holders and different classes of matters or things.</p> <p>(4) The exercise by the Energy Regulatory Commission of the authority contained in subsection (1) or (2) is a regulation within the meaning of this Act.</p> <p>143. (1) The Cabinet Secretary may make regulations prescribing fees in relation to anything done or required to be done under this Act or the regulations, and the manner of payment of such fees.</p> <p>(2) The exercise by the Cabinet Secretary of the authority contained in subsection (1) is a regulation within the meaning of this Act.</p>
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			<p>Safety Regulations</p> <p>144. Upon the date of enactment of this Act, the Cabinet Secretary and the Cabinet Secretary for the Department in which the Kenya Maritime Authority is operating shall, in consultation with each other and, as appropriate, with the heads of other National Government agencies promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for marine renewable energy operations in the outer continental shelf. The results of such study shall be submitted to the President with proposals to promote safety and health in marine renewable energy operations in the outer continental shelf.</p> <p>145. In exercising their respective responsibilities for the facility referred to in Part I, of this Act, the Cabinet Secretary, and the Cabinet Secretary for the Ministry in which the Kenya Maritime Authority is operating, shall require, on all new marine renewable energy operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Cabinet Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Cabinet Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.</p> <p>146. The Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to for marine</p>
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		<p>renewable energy operations on the Outer Continental Shelf when he determines such regulations or standards are necessary. The Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the Outer Continental Shelf.</p> <p>147. The Cabinet Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any government department or agency and applicable to activities on the Outer Continental Shelf. Such compilation shall be revised and updated annually.</p> <p>Enforcement</p> <p>148. The Cabinet Secretary, the Cabinet Secretary for the Ministry in which the Kenya Maritime Authority is operating, and the Cabinet Secretary for Environment and Natural Resources shall enforce safety and environmental regulations promulgated pursuant to this Act. Each such national government department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other national government departments and agencies for the enforcement of their respective regulations.</p> <p>149. It shall be the duty of any holder of a lease or permit under this Act to (1). maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the</p>
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			<p>area covered by such permit on the outer Continental Shelf;</p> <p>(2). maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and</p> <p>(3). allow prompt access to assess the human environment, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.</p> <p>150. The Cabinet Secretary and the Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating shall individually, or jointly if they so agree, promulgate regulations to provide for</p> <p>(1). scheduled onsite inspection, at least six times a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and</p> <p>(2). periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.</p> <p>151. (1) The Cabinet Secretary or the Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil</p>
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			<p>spillage is any spillage in one instance of more than two hundred litres of oil during a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Cabinet Secretary in the course of any such investigation.</p> <p>(2). The Cabinet Secretary or the Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Cabinet Secretary in the course of any such investigation.</p> <p>152. The Cabinet Secretary, or, in the case of occupational safety and health, the Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this Act. In any investigation conducted pursuant to this section, the Cabinet Secretary or the Cabinet Secretary of the Ministry in which the Kenya Maritime Authority is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process, as in the relevant committee of Parliament</p>
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			<p>of Kenya. Such Cabinet Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.</p> <p>Offshore Operations</p> <p>153. The Cabinet Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for</p> <ul style="list-style-type: none"> (a) safety to the coastal, marine, or human environment; (b) protection of the environment including but not limited to aquatic life in the area; (c) prevention of waste discharge and pollution; (d) conservation and preservation of the natural, heritage and archaeological resources of the outer Continental Shelf; (e) coordination with relevant government agencies; (f) protection of national security interests of the Republic of Kenya; (g) protection of correlative rights in the outer Continental Shelf; (h) a fair return to the Republic of Kenya for any lease, easement, or right-of-way under this subsection; (i) prevention of interference with reasonable uses of the exclusive economic zone, the high seas, and the territorial seas; (j) consideration of <ul style="list-style-type: none"> (i) the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and (ii) any other use of the sea or seabed, including use for a fishery, a seaplane, a potential site of a deep water port, upstream petroleum operations, or navigation; (k) public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this
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		<p>subsection; and</p> <p>(l) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.</p> <p>2. All offshore leases issued under this Act, and offshore leases, the maintenance and operation of which are authorized under this Act, shall contain or be construed to contain a provision whereby authority is vested in the Cabinet Secretary, upon a recommendation of the Cabinet Secretary for Defense, during a state of war or national emergency declared by the Parliament or the President of the Republic of Kenya after the effective date of this Act, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.</p> <p>3. The Republic of Kenya reserves and retains the right to designate by and through the Cabinet Secretary for Defense, with the approval of the President, as areas restricted from marine renewable energy operations that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no marine renewable energy operations may be conducted on any part of the surface of such area except with the concurrence of the Cabinet Secretary for Defense; and if marine renewable energy operations under any lease theretofore issued on submerged lands within any such restricted area shall be suspended, any payment of rentals, minimum electricity sales prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term</p>
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ENERGY BILL OF THE NATIONAL ASSEMBLY 2017 20th August 2018

Brief comments on energy bill in tabulated form.

SECTION		CLAUSE	Reasoning	Proposed amendments shown in red.
ESTABLISHMENT OF ERC	Director General who is also CEO	13.4.	CEOs refuse to vacate office after their two terms expire because of the wording of this clause which is exactly as it was in previous Act.	Proposal: for reappointment of not more than one further term of three years .
Establishment of energy and Petroleum Tribunal				Allocate executive powers
Term of Office of Tribunal members		26(17)	Same as 13.4 above	Proposal: re-appointment for not more than one further term of three years.
Establishment of Rural Electrification & Renewable Energy Corporation	CEO also Secretary to the Board.	44(d)	CEOs refuse to vacate office after their two terms expire because of the wording of this clause which is exactly as it was in previous Act.	...for reappointment of not more than one further term of three years
Establishment of The Nuclear Power & Energy Agency	CEO	60 (4)	CEOs refuse to vacate office after their two terms expire because of the wording of this clause which is exactly as it was in previous Act.	for reappointment of not more than one further term of three years NB: Parts of Schedule 2 repeated elsewhere in the Act.
Establishment of Renewable Energy Resource Advisory Committee	CEO also secretary	75		Method of appointment of CEO needs to be inserted.
Second Schedule	Chairperson, Vice Chairperson & members	1.(2)	Same as 44(d) & 60(4)	...reappointment for not more than one further term.

Appointment & Remuneration of Erc Staff	Board paid in consultation with SRC. Staff salaries to be determined by Commision.	16,17	. Reasoning: The Commission does not have the competence to determine staff salaries. Either the same staff crafts their own salaries or an external expertise is hired. SRC is the best consultant on staff salaries.	Proposal: Both Board members and staff salaries should be in consultation with SRC.
Appointment & Remuneration of Rural Electrification & Renewable Energy Corporation Staff	Appointment in consultation with PSC, Remuneration. to be determined by the Board.	48 49	Similar to 16 & 17 above.	Suggestion: Remuneration both Board members and staff salaries should be in consultation with SRC.
Appointment & Remuneration of The Nuclear Power & Energy Agency		65 66	Appointment in consultation with PSC. Remuneration on recommendation of SRC.	This is the way it should be
2 nd Schedule	Removal from Office.	No.5	The appointment, responsibilities and term limit of the CEO/Director General is defined in the act. However appointment, responsibilities and term limits of members of staff bearing the titles Director, Corporation Secretary, Commission Secretary who are hired and work under the CEO is not defined in the act. Their mention in this schedule is to elevate members of staff who are already represented by CEO/Director General to his level only when firing while the same act does not assign them any responsibilities or term limits will form a difficult clique in the institutions to manage. The term Director, Corporation Secretary, Commission Secretary are also	Proposal: Delete Executive Director, Managing Director, Corporation Secretary, Commission Secretary. Proposal: CEO of Renewable Energy Resource Advisory Committee- terms & Conditions, remuneration and duration should be inserted.

			not defined in the act. They are also likely to change from time to time.	
Schedule 2 Con'td	Reappointment	No.1 (2)	Similar to 13.4 above	for reappointment of not more than one further term of four years.
Funds of ERC	0.5% of all electricity sales and all petroleum products.	20(a)	Section 19 of Present Energy Act 2006 empowers the Cabinet Secretary to impose levies on the sales of electricity and petroleum and other energy sources to generate Commission funds. The Minister enacted the petroleum regulation levy order 2008 levied by KRA for the Commission. There is also the 3cts ERC levy on all electricity units sold. These funds increase with increase in consumption. It is better for increased revenue to be based on increased consumption than to be based on increased prices which are set by the same Commission. The 0.5% levy imposed on all electricity and petroleum sales will result in a huge revenue which the Commission will find difficult to absorb given their scope of work. The Cabinet Secretary should retain the discretion to raise the levy on evaluation of expanded scope of work.	Proposal: Section 19 of energy act is left intact. Decision on increased revenue beyond the automatic annual increases from increased consumption be determined by Cabinet Secretary.

Funds of Tribunal		39	FYI - Tariff free	
Funds of The Nuclear Power & energy Agency	CAUTION:	69(b)	The CAVEAT under 244(2) is to prevent this agency from being TARIFF DEPENDENT THRO the Consolidated Energy Fund.	
System Operator		160(3) © 164(b)	System operations is defined.	Proposal: System Operator should also be distinctly defined.
Transmission		166	The Off taker Utility has been playing the role of system operator. This makes them judge, jury & prosecutor in what comprises tariff. E.g Thermal generation is one of the cheapest source of electricity for the off taker. The high cost is occasioned by expensive fuel cost which is a pass through & therefore does not affect their bottom line. It should not be left to the Off taker to determine the extent of thermal generation which has a direct impact on the tariff. This role should be executed by another independent body—the System Operator	Proposal: The COMMISSION SHALL IMMEDIATELY THIS BILL COMES INTO FORCE BEGIN THE PROCESS OF APPOINTING A SYSTEM OPERATOR.
Transmission		166(4)		Proposal : CAVEAT; to protect tariff – “ provided”.as in 244(2) below.
Distribution		168(d) (i)		Proposal : CAVEAT; to protect tariff – “ provided”.as in244(2) below.

Metering of electrical energy		193(3)		Proposal: Substitute the word "increase" with "review"
Consolidated Energy Fund	To Cater for Demands Stated	244(2)	The tariff is only imposed by all the counties. It is not clear how the tariff is to be imposed on all counties. The tariff continues to face threats from many other sources, some of which are now to be funded by a consolidated fund.	Proposal:: Put a CAVEAT to protect the tariff. Add "provided that no levy shall be imposed on the tariff to boost this fund" or whatever more suitable wording may be found appropriate.
Charcoal			Regulation & Licensing left to Counties. Charcoal requires very urgent redress.	There should have been a clause or clauses from which Counties can draw their regulations.

ANNEX 4 LIST OF PARTICIPANTS AT PUBLIC HEARING

PARLIAMENT OF KENYA



THE SENATE

**SENATE COMMITTEE ON ENERGY
PUBLIC HEARING ON THE ENERGY BILL, 2017**

DATE: 23RD AUGUST, 2018 VENUE:.....COUNTY HALL.....MINI CHAMBER.....

REGISTRATION FORM

NO.	NAME	INTITUTION	CONTACT	SIGN
	Davis Osoo	Oxfam Kenya	dosoo@gmail.com 0721131525	
	Angela Mutsotso	Kenya civil society Platform on Oil & Gas	mutsotso@kaspog.org 0716608956	
	Stephen Waeme	KIPKE Africa Billing	stephen@kipe-africa-billing-solutions.com	
	Emma Kilu	Nemel Kenya	emma.kilu2012@gmail.com	
	Mike Kamija	Geothermal Association of Kenya	executiveofficer@gak.co.ke	

ANNEX 5 MINORITY REPORT

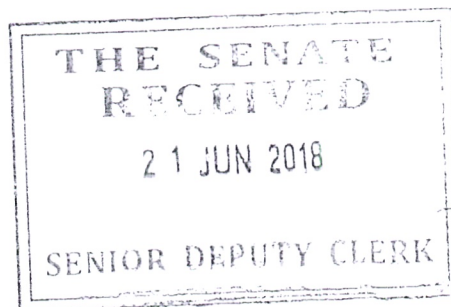
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TURKANA COUNTY GOVERNMENT

① D Com
DLS
Kindly deal.
Eg 21/06/18

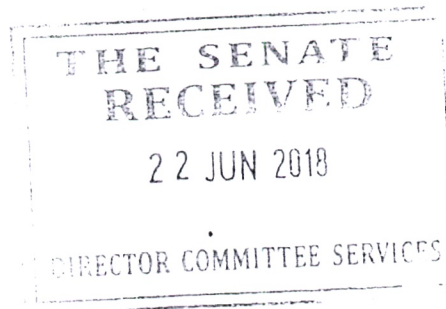
LEGISLATIVE MEMORANDUM ON THE LOCAL CONTENT BILL, 2018



② Clerk Assist -
Energy
Please bring to the
attention of the
Committee
22/06/18

SUBMITTED TO: THE SENATE

FROM: TURKANA COUNTY GOVERNMENT



THE TURKANA COUNTY GOVERNMENT is established by the Constitution of the Republic of Kenya, 2010, in particular under Article 176(1) as read together with the first schedule thereof.

The Turkana County Government is aware that a Bill known as Local Content Bill 2018 is currently pending before the Senate, in particular, before the Senate Standing Committee on Energy.

In responding to the call for representations from the public over the Bill aforesaid, the Turkana County Government via this memorandum, recommends as follows:

	CURRENT PROVISION	PROPOSED AMENDMENTS	RATIONALE/ JUSTIFICATION
Clause 2 Interpretation	There are several definitions under this clause. However, two critical definitions are missing; definition of “host community” and “host county”	We propose the inclusion of the definition of the said terms as follows: “host community” means the community or communities living in the subcounty which is, or sub-counties which are the source of the extractive resource or resources being the subject of the extractive activities of an operator. “host county” means the county which is, or counties which are the source of the extractive resource or resources being the subject of the extractive activities of an operator	It is essential to include the definitions of these terms because their use is proposed hereinafter for purpose of giving priority to persons from host counties and host communities to benefit from the local content plans and local content development strategies.
Clause 3 Application of the Act	This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources in the extractive industry in Kenya	This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources, and all other resources in the extractive industry in Kenya	It is a constitutional imperative that all resources should be utilized for the benefit of the people of Kenya, pursuant to Article 69(1)(h). Therefore, the Local Content Bill, once passed, should secure the rights of citizens to benefit not only in oil, gas and other petroleum resources, but across all extractive industries in Kenya.
Clause 6(2) Obligations of the National and County Government	(2) The National Government shall, in performing its functions under subsection (2), collaborate with County Governments	(2) The National Government shall, in performing its functions under subsection (1), collaborate with County Governments	There seem to be a typographical error. The provision is meant to refer to a different subsection, and not to itself.



<p>Clause 8 Duties of the County Government</p>	<p>8. (1) Each county government shall, for the performance of its functions under section 6 of this Act—</p> <p>(a) assist local contractors and companies within the respective counties to develop their capabilities and capacities to further the attainment of the goal of developing local content in the extractive industry within the respective county;</p> <p>(b) implement the cross-cutting policies formulated by the National Government with respect to the implementation of local content;</p> <p>(c) implement strategies that enable local participation in the various activities along the extractive value chain in the respective county;</p> <p>(d) monitor and put in place measures to facilitate the implementation of local content performance by all operators in the respective county in accordance with the provisions of this Act;</p> <p>(e) conduct regular audits for the purposes of monitoring the compliance with the provisions of this Act in the respective county;</p> <p>(f) set targets, in collaboration with the Committee, for the achievement of local content and participation in relation to specific projects, operations and operators and support these targets with appropriate contract terms; and</p> <p>(g) perform such other function necessary for the implementation of the</p>	<p>This clause does not have sub-clauses. Therefore, it should be cited as clause 8, not clause 8(1).</p> <p>Secondly, one more function for the county government should be introduced between paragraph (f) and (g). the current paragraph g should change to paragraph (h). the new arrangement of paragraph (f), (g) and (h) should thus reads as follows:</p> <p>(f) set targets, in collaboration with the Committee, for the achievement of local content and participation in relation to specific projects, operations and operators and support these targets with appropriate contract terms;</p> <p>(g) in cooperation with the Secretariat of the Committee, identify, register and keep a database of, and share with the Committee, the database of the locally available goods and services in the County for local content consideration; and</p> <p>(h)perform such other function necessary for the implementation of the objectives of this Act.</p>	<p>The county government is well placed to identify goods and services obtaining within its jurisdiction. It is essential to give this role to county governments to ensure that qualified and merited individuals and entities are considered.</p>
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	objectives of this Act.		
Clause 9 and 10 Establishment and Function of the Local Content Development Committee	Clause 9 establishes the Local Content Development Committee. Clause 10 lists the functions of this Committee	It is noteworthy that there are plans to create another entity for the management of local content in the petroleum industry, namely, the Upstream Petroleum Regulatory Authority (herein "Authority") created under clause 14 of the Petroleum (Exploration, Development and Production) Bill, 2017 (herein "Petroleum Bill") which is currently pending before the National Assembly. One of the functions of the Authority under Clause 78(1) Petroleum Bill is to "...supervise, co-ordinate, and manage the development of local content." This local content is specific to the petroleum industry. We thus have two Bills that seek to establish two separate entities to manage local content. The difference is that the one under the Local Content Bill will manage the local content in the entire extractive industry, while the entity under the Petroleum Bill will have authority over the local content in petroleum industry only. We propose that the Committee be retained. At an appropriate time, the local content power of the Authority under the Petroleum Bill should be withdrawn.	It makes sense to have a one-stop shop for management of local content across the entire extractive industry, instead of have specialized local content authorities for each subsector of the extractive industry. Have one entity for all promotes the ideal of the prudent use of public finance espoused in Article 201(d) and principle of good governance under Article 10(2)(c) of the Constitution.
Clause 12 (1) Membership of the Committee	Some of the members of the Committee Council of Governors representatives, captured under clause 12(1)(e) as follows: 12. (1) The Committee shall consist of— (a)... (b)...	We propose the following amendment to paragraph (e): (e) seven persons nominated by the Council of Governors, four of whom must be representatives of host counties;	The Council of Governors comprises all the forty-seven counties. Being an umbrella body representing the interests of forty-seven counties, it amounts to inadequate representation for the Council to have only two representatives in the



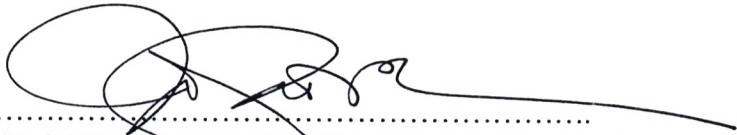
	(c)... (d)... (e) two persons nominated by the Council of Governors;		Committee. Extractive industries operate in counties. Therefore, county governments need influential presence in critical decision-making organs such as this Committee
Clause 19 Secretariat of the Committee	19.(1) The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the petroleum industry to serve as the Secretariat of the Committee.	The word “petroleum” should be replaced by “extractive” 19.(1) The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the extractive industry to serve as the Secretariat of the Committee.	The Committee’s mandate is not limited to petroleum industry. It covers the entire extractive industry. Therefore, it’s secretariat should not be placed under a unit confined to petroleum matters only.
Clause 21 Minimum Local Content	21.(1) The Cabinet Secretary shall, in consultation with the Committee and by notice in the Gazette, set the minimum local content to be applied by an operator engaging in any extractive activity undertaken under this Act.	21.(1) The Committee shall, by notice in the Gazette, set the minimum local content to be applied by an operator engaging in any extractive activity undertaken under this Act.	The Committee is well represented, taking care of various constituencies of interests, and therefore it is expected that their product in the minimum local content will be inclusive.
Clause 26(2)(b) Employment and Skills Development	(2) An employment and skill development plan submitted under subsection (1) shall include— (a)... (b) a time frame within which the operator, or other connected entity shall provide employment opportunities for the local workforce for each phase of the extractive activity to enable members of the local community prepare for such opportunities;	We propose the replacement of the term “local community” with the term “ host community ”. This term should replace the term “local community” where used in other parts and provisions of the Bill. Thus, the provision should read as follows: (2) An employment and skill development plan submitted under subsection (1) shall include— (a)... (b) a time frame within which the operator, or other connected entity shall provide employment opportunities for the local workforce for each phase of the extractive activity to enable members of the local community prepare for such	Though the provision uses the term local community, the Bill does not provide definition of this term. We propose the change so that it comes under our proposed definition of host community. This will also help to avoid the temptation to try to give the term “local community” a definition that is closer to the definition of the term “local person” in terms of geographical scope. It is noteworthy that in the Bill, local person is a person or entity whose principal place of business is Kenya.

		opportunities;	
Clause 41(3) (c) Procurement	(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry,— (a)... (b)... (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity.	(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry, — (a)... (b)... (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity: Provided that first preference among the local persons shall be accorded to persons from the host county or host communities where the operator carries out its extractive activities	It is necessary to empower the surrounding community.
Clause 47 Establishment of Local Content Training and Development Fund	47.(1) There is established a fund to be known as the Local Content Training and Development Fund. (2) An operator shall annually remit a non-tax deductible training levy consisting of such percentage of its net revenues as the Cabinet Secretary may, in consultation with the Committee, prescribe to the Fund in support of the objectives of this Act. (3) The Cabinet Secretary shall prescribe in regulations under the Act the manner in which the Fund shall be operated and applied.	The original provision establishing the Fund leaves a broad discretion to the Cabinet Secretary to define the areas and scope of application of the Fund. The Bill should outline the general guiding principles on the areas and scope of the application of the Fund. From these principles, the Cabinet Secretary can then create regulations to implement them.	There is risk that the discretion left to the Cabinet Secretary may be improperly used. Therefore, clear boundaries must be set by general body of principles on the utilization of the Fund.
Clause 54(1) Offences and Penalties	54.(1) A person who submits a plan, returns, report or other document and knowingly makes a false statement, commits an offence and shall be liable, upon conviction, to a fine of not more than two million shillings or to imprisonment for a term of not more than three years, or to	54.(1) A person who submits a plan, returns, report or other document and knowingly makes a false statement, commits an offence and shall be liable, upon conviction, to a fine of not more than ten million shillings or to imprisonment for a term of not more than three years, or to both.	A maximum fine of two million Kenya shillings is not deterrent enough, especially operators whose worth may be too enormous to feel a penalty of up to two million shillings. A maximum fine of ten million Kenya shillings is likely to have a deterrent effect. Secondly, it is not fair



	both.		to subject a local to a higher fine of three million for acting as a front for foreign entities [see clause 54(2)] while subjecting operators, which are mainly foreign entities, to a significantly lower penalty.
Clause 54(3) Offences and Penalties	54(3) A person who connives with a Kenyan citizen or an indigenous Kenyan company to deceive the Committee as representing an indigenous Kenyan company to achieve the local content requirement under this Act commits an offence and shall be liable, on conviction, to a fine of not more than three million shillings or to imprisonment for a term of not more than five years, or to both.	54(3) A person who connives with a Kenyan citizen or an indigenous Kenyan company to deceive the Committee as representing an indigenous Kenyan company to achieve the local content requirement under this Act commits an offence and shall be liable, on conviction, to a fine of not more than ten million shillings or to imprisonment for a term of not more than five years, or to both.	Considering the economic scale of operators, a fine of up to a maximum of three million Kenya shillings may not be felt by, or serve as a deterrent to them. Fine of up to ten million Kenya shillings is likely to serve as a deterrent.
Clause 58 Transitional Provisions	58. Upon the commencement of this Act, all oil and gas arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the extractive industry in Kenya— (a)existing before the commencement of this Act shall continue shall continue in force as if entered into pursuant to this Act; and (b) entered into after the commencement of this Act shall be in conformity with the provisions of this Act.	58. Upon the commencement of this Act, all oil, gas and all other extractive industry arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the extractive industry in Kenya— (a)existing before the commencement of this Act shall continue in force as if entered into pursuant to this Act; and (b) entered into after the commencement of this Act shall be in conformity with the provisions of this Ac	This is in line with our proposal that the Bill should cover local content across the entire extractive industry.

SIGNED BY:


**THE COUNTY EXECUTIVE COMMITTEE MEMBER
WATER, ENVIRONMENT AND MINERAL RESOURCES
TURKANA COUNTY GOVERNMENT**

635

Acacia Exploration Kenya Limited
P O Box 1461-40100, Kisumu
Off Awuor Otiende Road
Milimani, Kisumu, Kenya

T: +254 (0) 718274193



4

Clerk Assist - Energy

Please bring to the attention of the
Committee

20/06/18



19TH June 2018

Clerk of the Senate
Secretary Parliamentary Service Commission,
P.O. Box 41842-00100,
Nairobi

BY EMAIL TO cSenate@parliament.go.ke

Dear Sirs

ACACIA : SUBMISSION ON SENATE LOCAL CONTENT BILL 2018

Further to the invitation to interested members of the public and organizations to submit any representations that they may have on the Senate Local Content Bill 2018, we forward herewith our submission.

By way of background, we are a mineral exploration company conducting gold exploration in Western Kenya, and our work is primarily regulated by the Ministry of Mining and Petroleum. We forwarded a submission on the then Local Content Bill 2016 in May 2016, seeking that Local Content for the Mining sector should be governed only by the Mining Regulations that cover local content in the Mining Sector. These regulations have since passed into law, and provide a comprehensive and workable set of local content obligations that are tailored to mineral activities. The regulations are as follows:

- Mining - Use of Local Goods and Services Regulations 2017
- Mining - Employment and Training Regulations 2017

We note with appreciation that indeed, the 2016 Bill has been adjusted so that the Local Content Bill 2018 does appear to apply primarily to the Oil, Gas and Petroleum sectors. However we believe that there remains some ambiguity in whether or not the Bill, if passed into law, could be interpreted to apply to mining activities as well. Should this be the case, there would be duplicated and, in places, conflicting obligations imposed on operators in the mineral sector.

We consider the ambiguity is introduced through the clauses below: 3, which clearly states that the application of the Bill is for oil, gas and other petroleum resources, versus 4 (as an example), which cites 'the extractive industry' which itself is defined in the Bill as 'Oil, gas and mining sectors'.

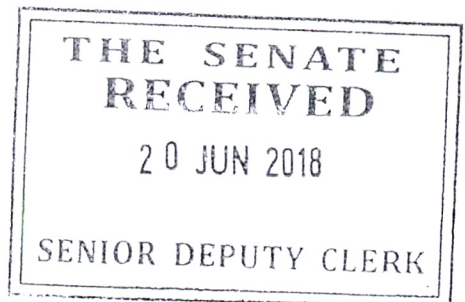
<p>3. This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources in the extractive industry in Kenya.</p>	Application.
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① Dcom
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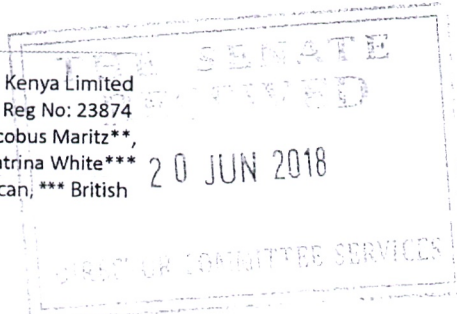
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20/06/18



Acacia Exploration Kenya Limited
Reg No: 23874
Directors: Bradley Gordon*, Jacobus Maritz**,
Katrina White***

* Australian, ** South African, *** British



www.acaciaming.com

4. The objects and purposes of this Act are to—

Objects and purposes.

- (a) promote the maximization of value-addition and the creation of employment opportunities in the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;

We ask that this ambiguity be addressed so that the Local Content Bill 2018 is clearly and unambiguously only applicable to the Oil, Gas and Petroleum sectors.

We therefore propose that either:

- A clause be inserted into the Senate Local Content Bill 2018 similar to that which is included in the Senate's draft Natural Resource Revenue Sharing Bill (Clause 5 (3)) as follows:

Where a Statute or Statutes prescribes the details of local content in a particular natural resource sector, the provisions of that Statute or Statutes shall apply in respect to that Sector.

OR

- Wherever 'extractive industry' is mentioned without specific mention of restriction to oil, gas and petroleum within the extractive industry, that such restriction is added.

We urge your consideration of providing clarity in the Bill so that it unambiguously only applies to the Oil, Gas and Petroleum sectors, since local content for mining industry players is already covered in the relevant Mining regulations passed in 2017.

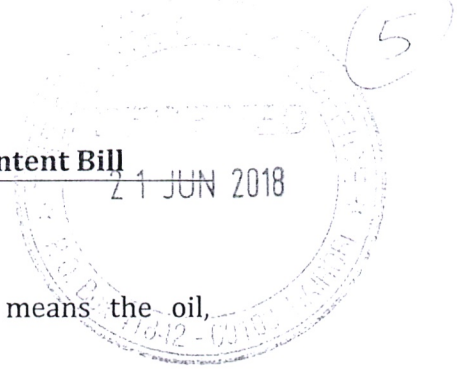
Thank you,

Yours faithfully



PHILIPPA HUTCHINSON
MANAGER GEOLOGY SUPPORT

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Kenya Chamber of Mines Proposal in regards to the Local Content Bill

PROPOSAL SETTING

Section 2 of the Bill defines the "*extractive industry*" to mean the oil, gas (hydrocarbon gases) and mining sectors in Kenya;

This is correct since the extractive industry refers to **mineral resources and petroleum resources**;

Section 3 of the Local Content Bill states that "This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of **oil, gas and other petroleum resources in the extractive industry** in Kenya.

This is very clearly guided and excludes the mineral resources.

Then, if the mineral resources are excluded, which Act provides for their administration? It the Mining Act 2016

Section 2 of the Mining Act 2016 states "This Act shall apply to the minerals specified in the First Schedule".

The First Schedule in the Mining Act 2016 provides comprehensive listings of the mineral resources on which the Act applies. It should be noted that the listings deliberately exclude oil, gas and other petroleum resources as was stipulated under Section 3 of the Mining Act when it states that 'Save to the extent provided for in this Act, this Act shall not apply to matters relating to **petroleum and hydrocarbon gases**.

It would then be right to state that the Mining Act does not envisage a situation where it deal with oil, hydrocarbon gases (gas) and other petroleum resources.

AMBIGUITY

However Section 4(a) of the Local Content Bill states:

The objects and purposes of this Act are to—

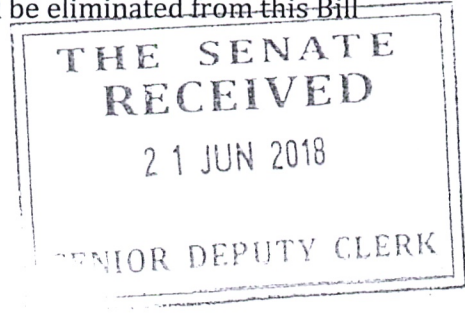
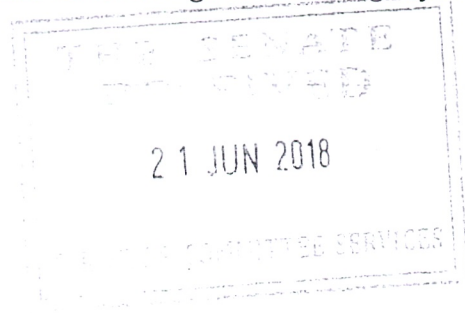
(a) promote the maximization of value-addition and the creation of employment opportunities in the **extractive industry** value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;

The Section fails to qualify the resources within the extractive industry impacted by Section 4(a) since the extractive industry is interpreted to include mineral resources listed in the First Schedule in the Mining Act 2018.

This hence brings about ambiguity, which should be eliminated from this Bill

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21/06/18

2) Clerk Assist - Energy
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21/06/18



Kenya Chamber of Mines Proposal

As KCM, we propose the following words to be inserted before the extractive to eliminate the possible ambiguous situation; “**oil, gas and other petroleum resources of**” to read as follows:

Section 4(a) The objects and purposes of this Act are to—

promote the maximization of value-addition and the creation of employment opportunities in the **oil, gas and other petroleum resources of the *extractive industry*** value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;

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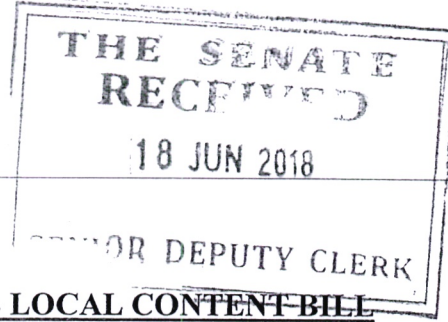
REF: GMM-1-2018

FROM: GEORGE MATI MUCEE (BA, MA, LLB-ON GOING)

TO: CLERK OF THE SENATE/SECRETARY TO PSC

SUBJECT: MEMORANDA ON LOCAL CONTENT BILL (SENATE BILL NO. 10 OF 2018)

DATE: JUNE 17, 2018



(1) DGM
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19/06/18

THERE IS NEED TO EXPAND THE LOCAL CONTENT BILL

In the matter of article 118(1) b of the constitution of Kenya 2010 and standing order number 134 of the Senate Standing orders and having read the Local Content Bill now before the senate, I would like to give my thoughts and views on the bill.

My name is George Mati Mucee, a Kenyan citizen and a professional Immigration consultant, communication consultant and a law student. I have over 15 years' experience working in Government, United Nations and the private sector where I am currently the Practice Leader at Fragomen Kenya Limited in charge of Kenya and EAC operations. I advise clients on Immigration matters and I have studied Local Content bills of several countries around Africa and mainly oil producing countries and would thus like to share my insights with the Senate.

Introduction:

The Local Content Bill 2018 sponsored by the Baringo County Senator, Hon Gideon Moi is currently before the Senate. This bill is designed to provide a legal framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources in Kenya. Expectations are that it will provide a framework of increasing uptake of jobs, contracts for supply of goods and services by locals in the exploration sector and cushion locals from exploitation.

(2) Clerk Assist - Energy
Please bring to the attention of the Committee
19/06/18

This comes in the wake of high rates of unemployment in Kenya and limited local skills in the oil, gas and extraction sector. Consequently, this bill seeks to protect jobs that can be taken by locals and to encourage foreign companies to support local businesses by awarding them contracts or sub contracts for goods and services and further to address situations where local communities have been protesting exclusion by Foreign companies in allocation of contracts or sub contracts by requiring all multinationals to provide a plan on skills and technology transfer to locals.

I will focus on the segments that address issues of skills transfer and employment of expatriates within the oil and gas sector and also ventilate on; who is local and what does it mean? Are there existing policies on localisation? Is this bill the panacea to all matters ado expatriates in Kenya? If passed, how successful will we be in enforcing this law and who are the critical stakeholders in this among other issues of concern.

My thoughts

Many countries in Africa and elsewhere in the world, have in place localisation policies that mostly take the names of the countries such as Kenyanization, Gabonisation, Saudianization...to mention a few. Such policies were initially intended to facilitate the transfer of mainly the public service jobs from remnants of colonial masters to indigenous people. At independence, many white collar jobs were held by foreigners mostly from the colonizing empires such as Britain, France and Germany and as such an affirmative action was required to ensure that those jobs were gradually handed over to locals. Over time and space this has been transformed to cover the transfer of skills and jobs from expatriates to locals.

In Kenya, there is a Kenyanization policy at the Department of Immigration which is meant to ensure that only jobs that require skills not readily available in Kenya are held by expatriates or foreigners and that there are Kenyan nationals understudying the expatriates with a view to localizing the jobs over time. There used to be a section called Kenyanization section at the Department of Immigration Services (DIS) that was tasked with enforcing this policy by looking at all applications for employees work permits to ensure that evidence is availed by the employing company to prove that no Kenyan was qualified for it and that a Kenyan understudy

had been identified to get training from the expatriate. Although the section has now been merged with the Permits section, the Kenyanization function still exists and is considered for all permit applications in line with the localisation policy.

Who is local and what does local really mean?

An important question to ask ourselves, is who is local and what does local really mean? Looking at the bill casually one may think that local means Kenyan. While this is true, it goes further down to the exact location of the project. A lot of the viable oil and gas rigs are now in Northern Kenya like Turkana where Ngamia 1 is located. Using this example local has two meanings: Kenyan and the community around the oil wells, in this case Turkanas. Whereas the company may be 100% employing Kenyans it would be fundamental for the community around the project to be a big percentage of the employees. In my view, the bill should have laboured to define the local person to the specific man or woman historically residing in the areas where such a project is taking place. Part IV addresses the local content plans where local content means “maximizing the level of usage of local goods and services, people, business and financing”. I must say it is quite elaborate because it sets out the modalities and framework for ensuring that companies applying for various permits to operate in the industry must meet a set criterion for local content.

What is the role of Government in building capacity for the extractive industries?

However, in terms of human capital, the bill seems to focus exclusively on the role the companies seeking to operate in this sector will play without addressing the role to be played by government ministries in charge of education and energies. As we speak, the government is well aware that Kenya is on its path to being an oil producer and that there are no properly trained professionals in this field. I would have expected to see the bill tasking the relevant ministries to work with our technical schools, universities and companies setting up in the sector to develop curriculum to train our people to make them ready for the market when things start rolling. To require that only companies that will be involved in the sector should train and avail skills required is tantamount to government absconding its duties. Granted, the operators in the industry will be required to offer tailored skills to their employees to enable them perform, but

the overall responsibility of training citizens in readiness for the industry should be undertaken by the relevant universities following a curriculum jointly developed by key stakeholders. Why are we sitting pretty and waiting for extraction to start then start demanding that the companies involved in the process look around for qualified Kenyans to employ and if they are not available, train them? Can we not be proactive and develop a curriculum for our universities and technical colleges to start training such people way before extraction proper starts?

Why a local content bill for only extractive Industries?

Local content law for extraction industries is a good idea but in my view not enough. As it is, this bill only addresses itself to this sector and not any other. I think it would have been more useful to develop a local content law that cuts across all sectors of our economy that in effect guides specific sectors as the case may be. I would, for instance, like to see this bill address itself to the huge infrastructural projects undertaken by the national government where we have seen foreign contractors bringing in foreigners to do simple jobs like operating a grader! The very specific nature of the bill may bring about a situation where each sector seeks to come up with its own law on local content which would be a duplication of laws and would confuse people. Why can't we have one local content law that sets the framework to guide all sectors with one board and secretariat that is comprised of stakeholders from key industries? The sectors may be diverse, but the approach is basically the same...empowering Kenyans to compete fairly with others regardless of the sector. That said, I believe that a good law may not achieve the expected results if not well implemented.

How will we ensure compliance?

In Kenya today, good laws are in place but implementing them is the real deal. The institutions tasked with implementation are either incapable or unwilling to implement. Giving the example of the Kenyanization policy at Kenya Immigration, the problem has been that the Department of Immigration is not adequately empowered to implement the policy. In cases where they have attempted to implement with zeal, political interference and corruption have defeated their efforts. This eventually demoralizes the implementers and defeats the whole idea. I am therefore hoping this law will be passed with amendments to broaden it to cover other sectors of the

economy and those tasked with it given enough support to implement it. We also need to ask ourselves if key stakeholders have been consulted in the drafting of this law because although this bill is for the extraction industry there are critical government agencies like Immigration, KRA, Police, Labour that will be critical in ensuring it succeeds. The composition of the board and the local content development committee limits itself mainly to extraction industry and does not even incorporate such departments as labour which in my view should be a permanent member of the committee and the board. This seems to be relegated to sub committees that may be constituted under section 15 & 16.

In conclusion, I must applaud the Hon. Gideon Moi for thinking about this bill because indeed it will be necessary to have a legal framework to ensure that locals benefit from resources found within their areas. I hope this marks the beginning of a discourse on how best we can capture the issue of skills and knowledge transfer not only for the extractive industry but also for other sectors of the economy.

Kind regards.

George Mati Mucee,

Practice Leader,

Fragomen Kenya Limited.

1st Floor 9 West Building, Westlands.

Nairobi.

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THE SENATE RECEIVED
21 JUN 2018
SENIOR CLERK



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21 JUN 2018

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21/06/18

MEMORANDUM SUBMITTED TO SENATE BILL ON LOCAL CONTENTS 2018

Turkana Natural Resource Governance Hub (referred in short as Hub) is a consortium of 15 civil society organizations. The organization has been in operation in Turkana County for the last 7 year working in the area of conservation and protection of natural resource, with main focus on oil and gas extractives. Hub is currently concentrating on issues on land, environment and governance related to oil and gas extraction.

Hub aims to ensure that the community maximizes benefits accruing from oil and gas extraction.

Hub, therefore, submits the following views for consideration to be included in the Bill:

1. Definition

- Local Content should be defined as the sum of the inputs of local goods and services, including employment, provided in oil and gas operations.
- Local should be classified into three categories: national locals, county locals and community locals. National locals should be defined as the citizens or residents of the country. County locals should be defined as the residents or citizens of the county and community locals should be defined as the residents of the area around the extractive.

2. Local Content Policy Objectives

Local content Bill should have the following objectives:

- i. To Maximize the benefits of oil and gas wealth generation on a comprehensive local content platform by:

② Clerk Assist - Energy
Please bring to the attention of the Committee
21/06/18

THE SENATE RECEIVED
21 JUN 2018
ATTENTION: SENATE CLERK

a. *Maximizing the use of local expertise, goods and services, job creation for people, businesses and financing in the oil and gas industry value chain and*

b. *Retention of the benefit within country*

- a. To develop local capability in the oil and gas value chain through education, skills and expertise development, transfer of technology and know-how and an active research and development.
- b. To target some agreed level of local content and local participation in all aspects of oil and gas industry value chain
- c. To Increase capabilities and international competitiveness of domestic business and industrial sectors
- d. To create/enhance supportive capabilities and/or industries that can sustain economic development
- e. The county and community should be given opportunity to invest in mid-stream or down-stream activities, including providing transport trucks, buying shares into the pipeline, providing oil tankers, etc.

3. There should be knowledge and technology transfer, from

- a. foreign to local county and local community participants to ensure that county locals and community locals are given the opportunity to participate fully at all levels, in all roles and disciplines required for the conduct of the sector's business and operations, so as to build and enhance capacity in people, companies, government or other services, utilities, institutions, infrastructure or facilities to support the oil and gas sector,
- b. oil sector to other sectors by using revenue from oil to increase productivity of other sectors, to produce goods and services that meet international standards, to reduce imports, and to generate export opportunities.

4. To ensure that benefits are shared equitably 70% of all levels of employments and business opportunities (including more lucrative and longer-term contracts) should go to county local and community local while 30% should go to national local.

5. Achievement of local contents should be measured by considering income received by locals, revenues accrued by owners of land and resources, income streams to local shareholders and creditors, and number of county locals and community locals employed into senior and other positions in the company.

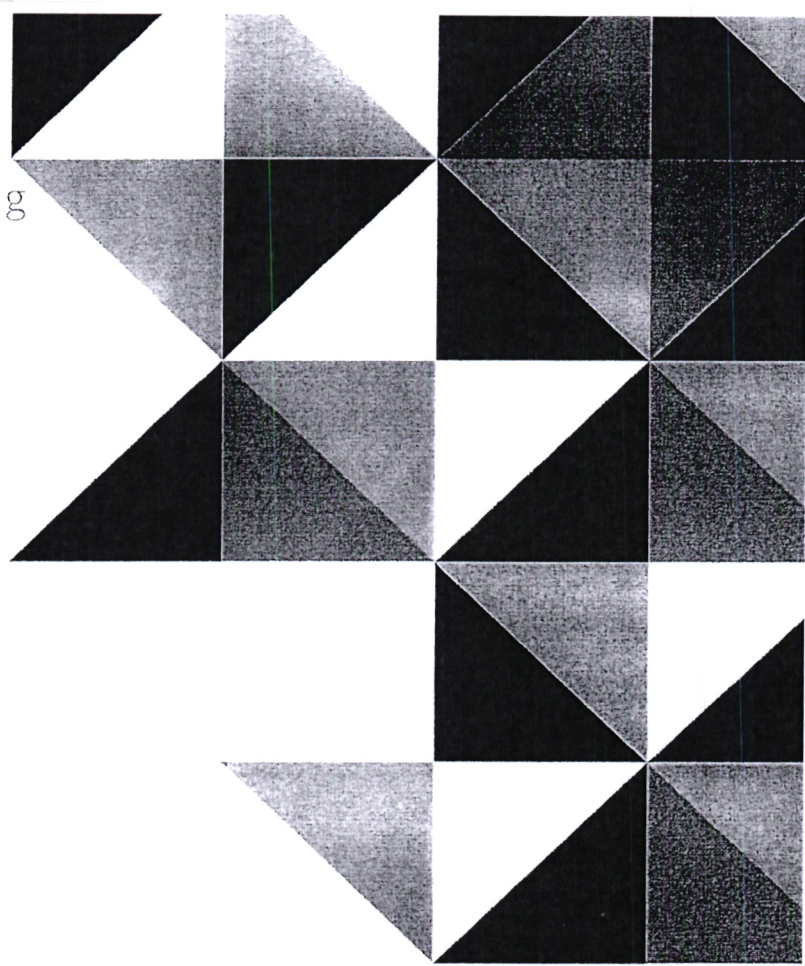
6. Local Capacity Building shall be measured in a variety of ways, including number of people trained, number of people certified, number of firms certified, level and value of technology introduced, infrastructure built, capital introduced into local economy
7. The county government, national government and investor shall improve skills development by identifying demand, current capability and gaps; developing and implementing strategies for growth, and involving various stakeholders in improving or expanding training, including
 - a. The industry skills
 - b. Business skills and
 - c. Experience base, via:
 - i. Education
 - ii. On-the-job training
 - iii. Mentoring, coaching and
 - iv. research
8. The county government, national government and investor shall improve supplier development by:
 - a. Enhancing existing capacities by improving existing supplier capabilities through LC&CD best practices
 - i. Supplier selection
 - ii. Longer-term contracts
 - iii. Contract/KPI management
 - iv. Supplier skill
 - b. Investing in new assets/capabilities
 - c. Creating regional/global centre of excellence
9. Government and investor priorities should be investment in
 - a. People by developing
 - i. High value-added skills, including
 - ii. Technical
 - iii. General management
 - iv. Design engineering
 - v. Project management
 - vi. Seismic processing
 - vii. Human resource development
 - b. Technology, Business know-how, Diversification by developing skills in
 - i. Fabrication;
 - ii. Seismic processing & data
 - iii. Management
 - iv. Operations & Maintenance
 - v. Maritime Services

vi. Business support services:

- Accounting,
- HR Services,
- IT support
- Consulting
- Financing
- Logistics

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MEMORANDUM ON THE LOCAL CONTENT BILL

(Senate Bills No. 10 of 2018) SUBMITTED TO THE
SENATE STANDING COMMITTEE ON ENERGY



ESAL AFRICA

Energy Solutions Africa Limited
Victoria Towers, First Floor, Kilimanjaro Avenue, Upperhill
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Tel: 0202 710 880 / 0722 793 700

SENATE STANDING COMMITTEE ON ENERGY

ESAL AFRICA LIMITED MEMORANDUM ON THE LOCAL CONTENT BILL

(Senate Bills No. 10 of 2018)

Energy Solutions Africa Limited is an Africa focused solutions provider that prides itself in offering cutting edge tools to equip key players in the energy, oil and gas sectors, both within the public and private sector, with quality, relevant, timely knowledge and information to guide decision making as well as investments.

Energy Solutions Africa Limited (ESAL) has been contracted by the Ministry of industry, Trade and Cooperatives (MoITC) and Ministry of Energy and Petroleum (MoEP) to develop local content policy and Kenya oil and gas local content regulations under the Kenya Petroleum Technical Assistance Project (KEPTAP) funded by the World Bank.

This project is critical as it will culminate with a policy and regulations that will shape the country's nascent industry and facilitate the participation of Kenyans in the industry. This is why we have taken an interest in the Local Content Bill as the policy we are currently developing will inform this bill greatly.

It is our proposal that the bill preceding the policy might miss out important issues that can be added to the bill from the policy currently being developed. We suggest that the considerations of the Policy be included in the bill once the development of the policy is complete so that the bill does not lack the elements of the policy.

PART I- Preliminary

"Company". There is need to clearly and explicitly define a local company. We propose that it should redefine this and deem a local company to be effectively owned and controlled by Kenyans if it has not less than 51% equity shares by Kenyans.

Part III- Establishment of the local content development committee

Section 9 provides for the establishment of the Local Content Development Committee. The policy will have a Local content Committee which will act as a regulator. The executive seeks to create a local content policy that is overarching. The policy will create an institutional

framework that will have a local content committee similar to the one provided under the policy. This is a challenge that has been created by having a bill coming before the policy. Furthermore, the Petroleum Bill requires plans to be submitted to the Upstream Petroleum Regulatory Authority and the bill requires the plan to be submitted to Local Content Committee and the Mining Act, the plan is submitted to the Cabinet Secretary. The Senate should look ensure that all these laws are in sync.

Section 11 provides for assessment of local capabilities and this will lead to creation of a comprehensive register of service categories, available capacity.

We propose that the section should indicate the local content committee will establish a database where it will list the available opportunities and qualified and certified local suppliers. This information should also be accessible to the public so that Kenyans are able to easily access the information and industries can be informed on local industries that have capacity. This will be in line with the Constitution under article 35.

GENERAL PROPOSALS

We propose that the bill should put more provisions specifically on strategies to address local ownership. This includes joint ventures and local equity participation. This is in order to make Kenyans not only supplier to the industry but also owners. Local ownership has just been identified but the Bill has not provided the strategies to realize it as it has done for other measures such as training, research and development, local sourcing of goods and local employment.

The bill has devolved the local content bill by bringing in active participation of county governments but it is not clear how county government will implement the bill for locals within the county. It needs to be clear if it intends that locals within the county will get more preference.

We foresee that the local content bill will have conflicts with the Mining Act 2016 and the Petroleum bill. Senate should consider these to ensure that there is no conflict. This is due to the fact that the Act's focus keeps referring to the extractive industry to include mining.

There should be consideration given as to what exactly is meant by transfer of technology. It should be clear which technology is to be transferred so as to avoid over burdening of the investors and intellectual property right claims arising in the future.

The country should be clear what area of skills development should be properly developed. This will lead to establishment of centers of excellence that will guide in development of capacity required for the identified skills. Therefore we propose that the bill includes the establishment of centers of excellence. This can also call for regional integration through collaboration in these centers for excellence.

The level of employment to be developed is very important. The country should not only aim at achieving employment but there should be levels indicated. This is to ensure there are locals participating right from managerial level. This will ensure that the country not only gets to understand the operations of the industry but also the business.

Finally it is our submission that not only should there be transfer of technology but there should also be provision that encourages innovation. This will enhance creativity in the industry and encourage development.

LIST OF PARTICIPANTS

PARLIAMENT OF KENYA



THE SENATE

**SENATE COMMITTEE ON ENERGY
PUBLIC HEARING ON THE LOCAL CONTENT BILL, 2018**

DATE: 21ST JUNE, 2018 VENUE: Nhu Chamber.....

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