

REPUBLIC OF KENYA



DATE	27/9/2018
TABLED BY	Gen. (Retd.)
COMMITTEE	Energy
CLERK AT THE TABLE	Getulie

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STANDING COMMITTEE ON ENERGY

A REPORT ON THE CONSIDERATION OF THE PETROLEUM BILL
(NATIONAL ASSEMBLY BILLS NO 48 OF 2017)

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

Approved
[Signature]
26/09/2018

Rt. Hon. Speaker
You may approve
for tabling.
[Signature]
25/09/18

SEPTEMBER, 2018

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1.1 PREFACE

Mr. Speaker Sir,

On behalf of the Senate Committee on Energy and pursuant to provisions of Standing Order 140 (1) of the Senate Standing Orders, it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Petroleum Bill (National Assembly Bills No. 48 of 2017).

The Bill was committed to the Committee on Tuesday, 10th July, 2018. Following its consideration of the Bill, pursuant to Standing Order 143, the Committee now presents to the Senate this report for consideration.

1.1 Establishment of the Committee

The Senate Standing Committee on Energy is established pursuant to standing order 218 (3) of the Senate Standing Orders. The Committee is mandated *to consider all matters relating to fossil fuels exploration, development, production, maintenance and regulation of energy.*

In the execution of its mandate, the Committee oversees the Ministry of Energy and the Ministry of Mining and Petroleum.

1.2 Membership of the Committee

The Committee is comprised of the following Senators -

- | | |
|-------------------------------|-------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | -Vice Chairperson |
| 3. Sen. Aaron Cheruiyot | -Member |
| 4. Sen. Mithika Linturi | -Member |
| 5. Sen. Susan Kihika | -Member |
| 6. Sen. (Prof.) Imana Malachy | -Member |
| 7. Sen. Ledama Olekina | -Member |
| 8. Sen. Mwaruma Johnes | -Member |
| 9. Sen. Mercy Chebeni | -Member |

1.3 Consideration of the Petroleum Bill, 2018

Mr. Speaker Sir,

The Petroleum Bill (National Assembly Bills No. 48 of 2017) underwent first reading on 10th July, 2018 and thereafter committed to the Standing Committee on Energy as provided for in the Standing Order 140(1).

Pursuant to Article 118(b) and Standing Order 140(5), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 20th August, 2018 informing the public that the Committee was considering the Petroleum Bill, 2017 and inviting them to submit any representations they may have on the Bill (*See Annex 2*).

Mr. Speaker Sir,

The Committee received views from the public and interested stakeholders in a public hearing held on 23rd August, 2017. Moreover, the Committee held consultative meetings with the Ministry of Petroleum and Mining to consider pertinent issues that the Bill was seeking to address. Additionally, the Committee received written memorandum from various stakeholders as is herein outlined.

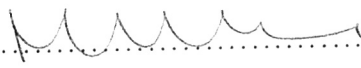
Their views were taken into consideration and have been considered in arriving at the Committee's recommendation.

1.4 Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate, for the support extended to it in the processing of this Bill. Similarly, the Committee extends gratitude to the institutions/organisations that made both oral and written submissions.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to lay on table the Report of the Standing Committee on Energy, on its consideration of the Petroleum Bill (National Assembly Bills No. 48 of 2017).


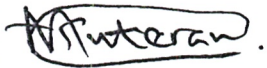
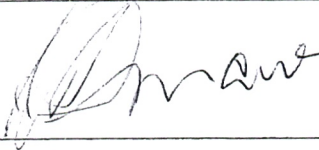


Signed.....

Date.....*19th Sept - 2018*

**SEN. (ENG.) EPHRAIM MAINA, EBS,
CHAIRPERSON
STANDING COMMITTEE ON ENERGY**

1.5 Adoption of the Report

We, the members of the Senate Committee on Energy, have pursuant to Standing Order 213 adopted this Report on the Petroleum Bill (National Assembly Bills No. 48 of 2017) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Wednesday, 19th September, 2018-

No.	NAME	DESIGNATION	SIGNATURE
1.	Sen. Ephraim Maina	Chairperson	
2.	Sen. Mary Seneta	Vice Chairperson	
3.	Sen. Aaron Cheruiyot	Member	
4.	Sen. Mithika Linturi	Member	
5.	Sen. Susan Kihika	Member	
6.	Sen. (Prof.) Imana Malachy	Member	
7.	Sen. Ledama Olekina	Member	
8.	Sen. Mwaruma Johnes	Member	
9.	Sen. Mercy Chebeni	Member	

2.1 INTRODUCTION

2.1 Purpose of the Bill

The Bill seeks to provide a framework to regulate the processes relating to the contracting, exploration, development and production of petroleum operations with a focus on upstream petroleum operations.

2.2 Background of the Bill

The Bill has been prepared by the Ministry of Energy in consultation with the Office of the Attorney-General. During the 11th Parliament, the Petroleum (Exploration, Production and Development) Bill was considered and passed by Parliament. However, the President declined to assent to the Bill and returned the Bill back to Parliament with reservations on the Bill. The Bill lapsed at the end of the 11th Parliament and has been re-introduced for consideration and passage by Parliament.

2.3 Overview of the Bill

Part I sets out the preliminary provisions of the Bill.

Part II of the Bill provides a framework for the development of a National Upstream Petroleum Policy and Plan by the Cabinet Secretary through a consultative process and a national petroleum strategic plan to serve as a guide in implementing the national policy. This Part prohibits the engagement by any person of any upstream petroleum operations unless such person has obtained the approval of the Cabinet Secretary or Authority. Of noting is the fact that the Bill provides that the National Government may conduct upstream petroleum operations on its own through the national oil company, through contractors or as may be prescribed under the Act.

Part III of the Bill sets out the petroleum institutions that are to be involved in the implementation of the Bill. It sets out the role of the Cabinet Secretary who has the overall responsibility in as far as reviewing applications for licenses, entering or revoking agreements and overseeing the undertaking of upstream petroleum operations and matters relating to policy. This Part also provides for the establishment of a National Upstream Petroleum Advisory Committee whose main responsibility is to advise the Cabinet Secretary on matters relating to upstream petroleum operations and matters pertaining to petroleum agreements.

Part IV of the Bill provides for upstream petroleum rights and management of petroleum resources. It vests all petroleum existing in its natural condition in the National Government in trust for the people of Kenya and provides for the division of Kenya into blocks for the purposes of exploration. It imposes an obligation on any person intending to conduct upstream petroleum operations to enter into a petroleum agreement Cabinet Secretary and to obtain an operational permit from the Authority and set out the procedure for these processes. It also provides for the obtaining of a non-exclusive exploration permit from the Authority for the purpose of conducting reconnaissance and general investigations in an area by a person who intends to engage in upstream petroleum operations.

This Part also compels a contractor who discovers the existence of petroleum to notify the Cabinet secretary within forty eight hours of the discovery and makes it an offence for the contractor to notify the public. This Part also requires submission of a Field Development Plan to Parliament for ratification once the commerciality of a block is declared by a contractor. It sets out the process of obtaining a production permit and related processes as well as the circumstances under which a unitization agreement may be entered into in relation to blocks that are adjacent to each other in respect of which petroleum agreements are held by different contractors. It also sets out the process of decommissioning a plant and the submission of a field decommissioning plan to the Authority prior to the issuance of a production permit. In addition, this Part provides for the establishment of a decommissioning fund in respect of each development area for use in the implementation of a decommissioning plan and the disposal of decommissioned facilities which are all to revert to the National Government.

Part V of the Bill provides a framework for the submission of information by a contractor to the Authority and prohibits the disclosure of such information by a third party without the consent of the person from whom the information was obtained except in the case of disclosure to the Cabinet Secretary or person involved in the upstream operations.

Part VI provides a framework for local content and training and compels a contractor and sub-contractor to give priority to services provided and goods manufactured locally where they meet the required specifications and the employment engagement of Kenyans in the operations. It also provides for the establishment of a training fund for the purpose of training Kenyans in upstream petroleum operations and requires any institution intending to provide capacity building in upstream petroleum operations to be accredited in accordance with regulations to be made under the Act. The funds of the Training Fund shall consist of monies raised by contractors as training contribution.

Part VII provides a framework for the financial and fiscal obligations of contractors under the Act with regard to the payment of annual fees and a signature bonus and the sharing of profits derived from upstream petroleum operations between a contractor and the National Government as may be prescribed in the petroleum agreement.

Of importance is the fact that it provides for the apportioning of the national government's share of the profits derived from upstream petroleum operations between the national government, the county government and the local community. In particular, it provides that the county government's share shall be twenty percent of the national government's share and that of the local community shall be five percent of the national government's share and this shall be payable to a trust fund which is to be managed by a board of trustees established by the county government in consultation with the local community.

Part VIII provides a framework for the compliance with environmental, health and safety standards including waste management, the need for proper maintenance of property with respect to a contract area, safety precautions and emergency preparedness as well as disaster management. It also provides for the suspension of upstream petroleum operations in the case of an emergency by a contractor or, where special circumstances exist, by the Cabinet Secretary.

Part IX of the Bill sets out the licensing framework with respect to midstream and downstream petroleum operations. It stipulates the activities that would require licensing and issuance of construction permits and sets out the procedure for application, issuance, revocation and renewal of licences and permits. This Part provides a mechanism for appeal against the decision of the licensing authority. It also confers on the Cabinet Secretary the power to maintain and manage petroleum strategic stocks and compels county governments to designate places for the parking of petroleum tankers. This Part also compels the Cabinet Secretary to establish a Consolidated Petroleum Fund to cater for the strategic petroleum reserve.

Part X of the Bill provides for the process of accessing and entry into land for the purpose of carrying out upstream petroleum operations including investigations and exploration of such land. It also sets out a framework for consent and for compensation once the private land of a person has been entered into for the purpose of preliminary investigations and upstream petroleum operations.

Part XI sets out miscellaneous provisions. It encourages the adoption of alternative forms of dispute resolution by parties to a dispute as well as the indemnity by a contractor under a petroleum agreement of the National Government against any action or liability. It also provides for the development by the Cabinet Secretary, of a framework for reporting, transparency and accountability in the petroleum sector and the publication of information relating to this sector. It also provides for the forfeiture of property in addition to any other penalty that may be imposed by a person who commits an offence under the Act. It also sets out a number of offences including the illegal dealing in land acquired for a project under the Act and the destruction of petroleum infrastructure.

This Part also provides for the protection of community rights to information, participation, compensation, sensitization and capacity building. It further confers on the Cabinet Secretary the power to make regulations to operationalize the Act once it comes into force and sets out a deadline of one year for the making of the regulations.

Part XII provides for the repeal of the existing Petroleum (Exploration and Production) Act (Cap. 308) and for the saving of statutory instruments and subsidiary legislation for as long as they are not inconsistent with the provisions set out in the Bill as well as existing contractual rights and obligations. It also confers on the Energy Regulatory Commission the powers and the functions conferred on the Authority prior to the establishment of such Authority.

The Schedule sets out a model production sharing contract which may be adopted by parties to a petroleum agreement.

2.4 Consequences of the Bill

The Bill is expected to set out a comprehensive framework for the exploration, development and production of petroleum. The current legal framework is outdated and given the recent development in the discovery of oil in Kenya, it has become necessary to put in place a legal framework that will comprehensively regulate and address issues arising out of the petroleum sector.

3.1 PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATIONS

The Senate Committee on Energy conducted extensive stakeholder engagements on the Petroleum Bill, 2017. The Committee retreated from 12th -16th August, 2018 in Mombasa County with the Ministry of Petroleum and Mining and representatives from various petroleum parastatals during which it conducted a clause by clause consideration of the Bill

The Committee held a public hearing on Wednesday, 22nd August, 2018. The Committee received oral and written submission from the following stakeholders-

1. Kenya Oil and Gas Association
2. Kenya Civil Society Platform on Oil and Gas
3. Oil & Gas Contractors Association of Kenya
4. Energy Regulatory Commission
5. Energy & Wildlife Sherna Limited- Mr. Eric Mwangi

The submissions received by the Committee on Energy are summarized as below-

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
1.	Clause 2	Kenya Oil and Gas Association	That the Bill be amended to include the definition of “Authority” as the Upstream Petroleum Regulatory Authority	There is need to have a single entity to regulate the entire Petroleum value chain, Upstream, Midstream and Downstream.	Rejected
		Civil Society Organisations	Define the term local community to include people living in adjacent sub-counties and are affected by the exploitation of the resource.	We submit that the definition should be broadened to ensure that all persons affected by the exploitation of energy resources are adequately compensated based on their nexus to the energy resource in question	Rejected
		Oil and Gas Contractors Association of Kenya	Delete “Energy Regulatory Commission” in the definition of the word “Authority” and replace with “Petroleum Regulatory Authority”	The word “Authority” is used repeatedly in the Bill and may be confused for the regulatory authority envisaged under this Bill.	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				<p>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>	
			<p>Amend the definition of the word “Tribunal” 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 Energy and Petroleum Tribunal.</p> <p>We propose that a Petroleum Tribunal is established under this Bill, separate from the Energy Tribunal we propose is established under the Energy Bill.</p>	<p>Rejected</p>

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
2.	Clause 14	Oil and Gas Contractors Association of Kenya	Either delete this statement “Establishment of the Upstream Petroleum Regulatory Authority” or provide for the establishment of the Authority in a new section.	<p>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 i.e. there is no section 14 in the Bill that establishes the Upstream Petroleum Regulatory Authority.</p> <p>Further, we propose that the Petroleum Bill establishes a unified Regulatory Authority dubbed the “Petroleum Regulatory Authority” which covers the three sectors i.e. upstream, midstream and downstream, rather than having an Authority for each sector.</p>	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
3.	Clause 22	Kenya Civil Society Platform on Oil and Gas	The issuance of a non-exclusive exploration permit should be done “upon the fulfilment of the requirements under the Act and the presentation of an environmental impact assessment licence”.	We propose that the Authority should require an applicant to present an 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.	Noted

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
4.	Clause 24(3), (4) and (5)	Kenya Oil and Gas Association	<p>That, the Bill be amended by reducing the number of permits required under this section to reflect proposal referred under Appendix 1 of this memorandum. i.e. Single Permit for Exploration, Appraisal, Development and Production, Decommissioning and Abandonment.</p> <p>Sub-clause (4) be amended to provide for notification by a contractor to the authority prior to drilling rather than an application for a permit as follows –</p> <p>(4) Unless waived by the Authority, a contractor shall notify the Authority prior to drilling of each well.</p> <p>Sub-clause (5) be amended to delete the requirement for</p>	<p>This will avoid a situation where there is a proliferation of permits thereby hindering the ease with which persons carry out business relating to oil and gas.</p> <p>During the launch of the Kenya International Investment Conference in November 2014; H.E. Uhuru Kenyatta declared that as a step to attracting more investment in the country, the GoK would set up a one-stop centre for investors to get approvals and permits for setting up business;</p> <p>In addition, during the State of the Nation Address on 31st March 2016, H.E. Uhuru</p>	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			<p>application and oblige the contractor to provide information where required instead of requiring a contractor to apply for an operational permit.</p> <p>Consequential amendments may thereafter be made if the proposal is accepted.</p>	<p>Kenyatta underscored the Government's commitment to review regulatory fees which in his view, made the undertaking of new projects or expansion of existing ones a costly and time-consuming affair.</p> <p>The Petroleum Bill requires that the contractor obtains, during the life of the project over 30 Permits/Consents/ Approvals. See Appendix 2 for details.</p> <p>These are in addition to the other Permits/Consents/ Approvals that the Contractor will be required to obtain under other statutes e.g. the</p>	

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				<p>Energy Bill, the Water Act, Occupational Safety & Hazards Act, Environmental Management & Coordination Act, etc</p> <p>The Ministry of Energy and Petroleum's position is that the Government needs to balance the need of efficient operations and the need for information.</p> <p>However, this can still be accessed through furnishing of notices and reports by the Contractors under the mechanisms of the Petroleum Agreements (PSCs) without the need for approvals/permits and licenses as currently envisaged, as is the</p>	

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				<p>practice now.</p> <p>The proliferation has an impact on delay of processes and project timelines and financial burdens.</p> <p>Reduce permit requirements in a manner similar to those of comparable industries. Alternatively, capture timelines and include deemed approval provisions similar to those found in other statutes e.g. Special Economic Zones Act and the Environmental Management and Coordination Act.</p>	

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
5.	Clauses 27(3), 28(3), 35(2), 43(3), 48, 60(5)	Kenya Oil and Gas Association	That the Bill be amended by deleting in the said section, the words “not less than...” and inserting the words “not exceeding”. This would provide for an upper limit as opposed to a lower limit on the penalties that can be imposed.	Proportionality, Equality, Uniformity, and Parity There is need to maintain wording on the proposed sentences to reflect principles of proportionality, equality, uniformity and parity as recommended under the Sentencing Policy Guidelines prepared by the Judiciary Taskforce and reflected in other statutes regulating natural resources i.e. Energy and Mining. See Appendix 3 for details. Furthermore, article 50(1) of the Constitution of Kenya upholds the right to have a fair	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				determination of a matter where fairness demands that the sentence imposed should neither be excessive nor less than merited;	
6.	Clause 31	Kenya Civil Society Platform on Oil and Gas	Provide for the submission of only the production sharing contract (excluding the field development plan) for ratification by Parliament upon negotiation and before award of the contract.	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 the extraction of Crude Oil and Natural Gas shall be subject to ratification.	Noted
		Civil Society Organisations			Noted

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				In order to ensure fulfilment of Article 71, this clause should only speak to Production Sharing Contracts and not Full Filed Development.	
		Oil and Gas Contractors Association of Kenya		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 rubber stamp. In our view, the PSC License should be ratified by parliament at the stage that it is being signed.	Noted

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
7.	Section 36(7)(b)	Oil and Gas Contractors Association of Kenya	Replace “eh” with “the”	To correct a typographical error	Noted
8.	Section 37(2)	Oil and Gas Contractors Association of Kenya	Delete “to” between the words shall and increase. Delete “the” between the words accommodate and third.	To correct a typographical error	Noted
9.	Proviso under Section 50	Oil and Gas Contractors Association of Kenya	Expunge the proviso in its entirety	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	Noted

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				<p>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</p>	

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
				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.	
10.	Clause 58	Kenya Civil Society Platform on Oil and Gas Civil Society Organisations	The share of revenue to be allocated to county governments and local communities should be a percentage of the profits derived from upstream petroleum operations and not the national government's share.	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'.	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
11.	Clause 127(f)	Kenya Civil Society Platform on Oil and Gas Civil Society Organisations	Insert the words “and the contents of the project report submitted under the environmental law” at the end of paragraph (f).	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, the meaning of non-exclusive exploration is taken from 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.	Rejected
12.	Structure of the Authority	Kenya Civil Society Platform on Oil and Gas	The Authority as established under clause 9 of the Energy Bill, 2017 should remain as the Energy Regulatory Commission	EPRA as formed under Clause 9 of the Energy Act shall be under the Cabinet Secretary	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			(ERC). Consequently, the Upstream Petroleum Regulatory Authority (UPRA) is renamed to be the Petroleum Regulatory Authority (PRA) and be housed in the Petroleum Bill, 2017 as the Bill covers upstream, midstream and downstream.	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.	
13.	General submissions	Eric Mwangi Njoroge	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	It will be necessary to facilitate the development of offshore renewable energy industry in Kenya. Annex 1 is a copy of the proposal.	Rejected

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			<p>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.</p>		

4.1 GENERAL OBSERVATIONS AND RECOMMENDATION

4.1 Committee Observations

The Committee observed the following-

1. the legislation is an update to the current outdated legislation regulating the Petroleum sector in Kenya and will serve to elevate the sector to world class standards;
2. this overhaul creates a better regulatory environment, which is expected to boost investor confidence in the sector;
3. the legislation caters to devolution with the equitable sharing revenue from petroleum resources reflecting according to the agreed quotas of 75% to the National Government, 20% for the County Government and 5% for local communities;
4. further it provides for collaboration and cooperation between the various levels of government;
5. the bill makes provision on local content in the sector. In light of the Local Content legislation in the Senate among other initiatives, local communities are expected to have their interests guarded and to benefit from the exploitation of their natural resources.

4.2 Committee Recommendations

This Report was adopted by a majority of the Committee. However, in the spirit of democracy that underpins the Parliament of Kenya, there were dissenting views to the opinion of the majority which pursuant to Standing Order 213 (5) of the Senate Standing Orders are annexed here in a Minority Report (*See Annex 5*). Having analyzed the Bill vis-à-vis the memoranda submitted by the public the Committee recommends the Bill be approved and passed by the House without amendments.

5.1 ANNEXES

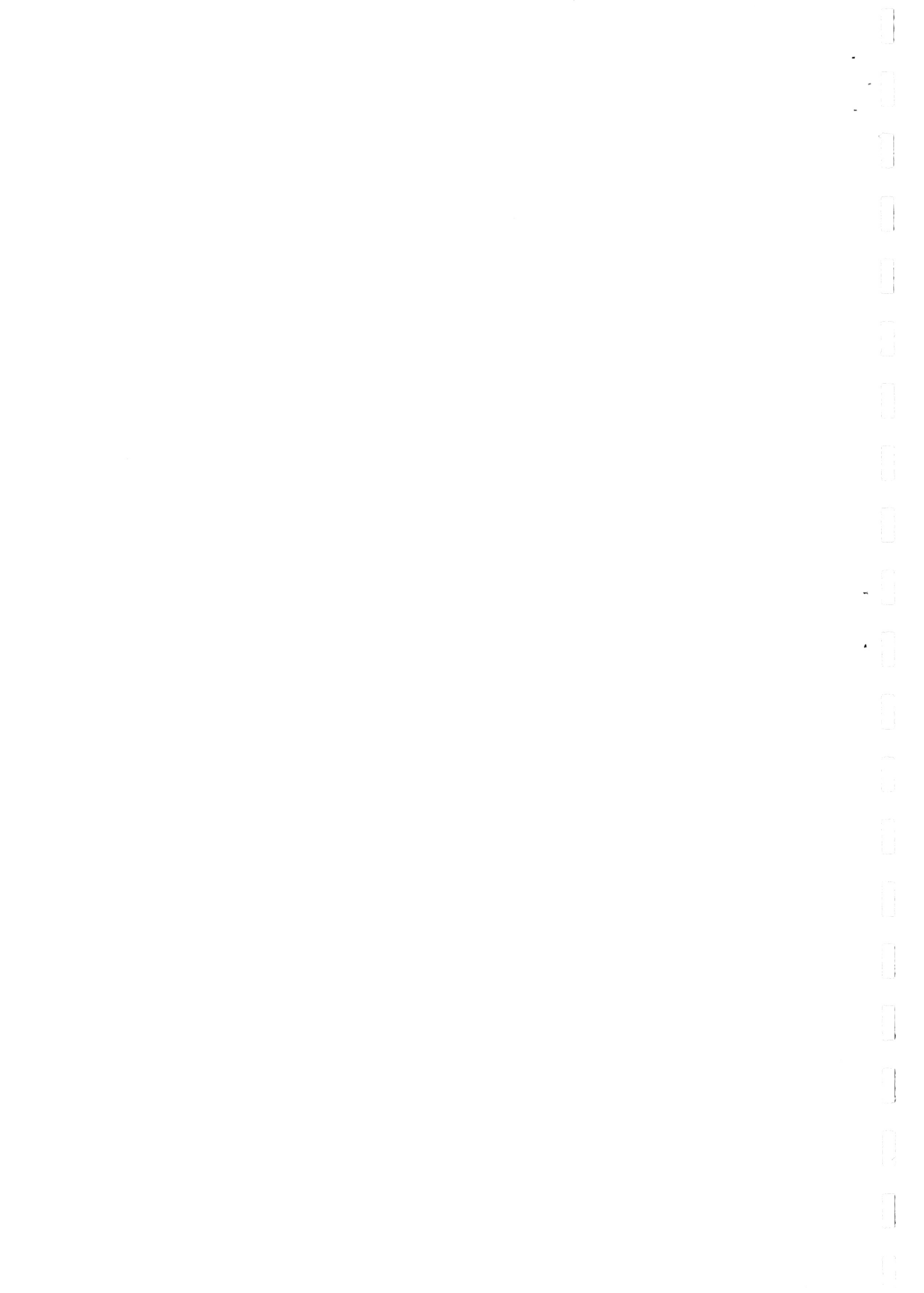
5.1 Annex 1- Minutes

5.2 Annex 2- Advertisement

5.3 Annex 3- Memoranda received

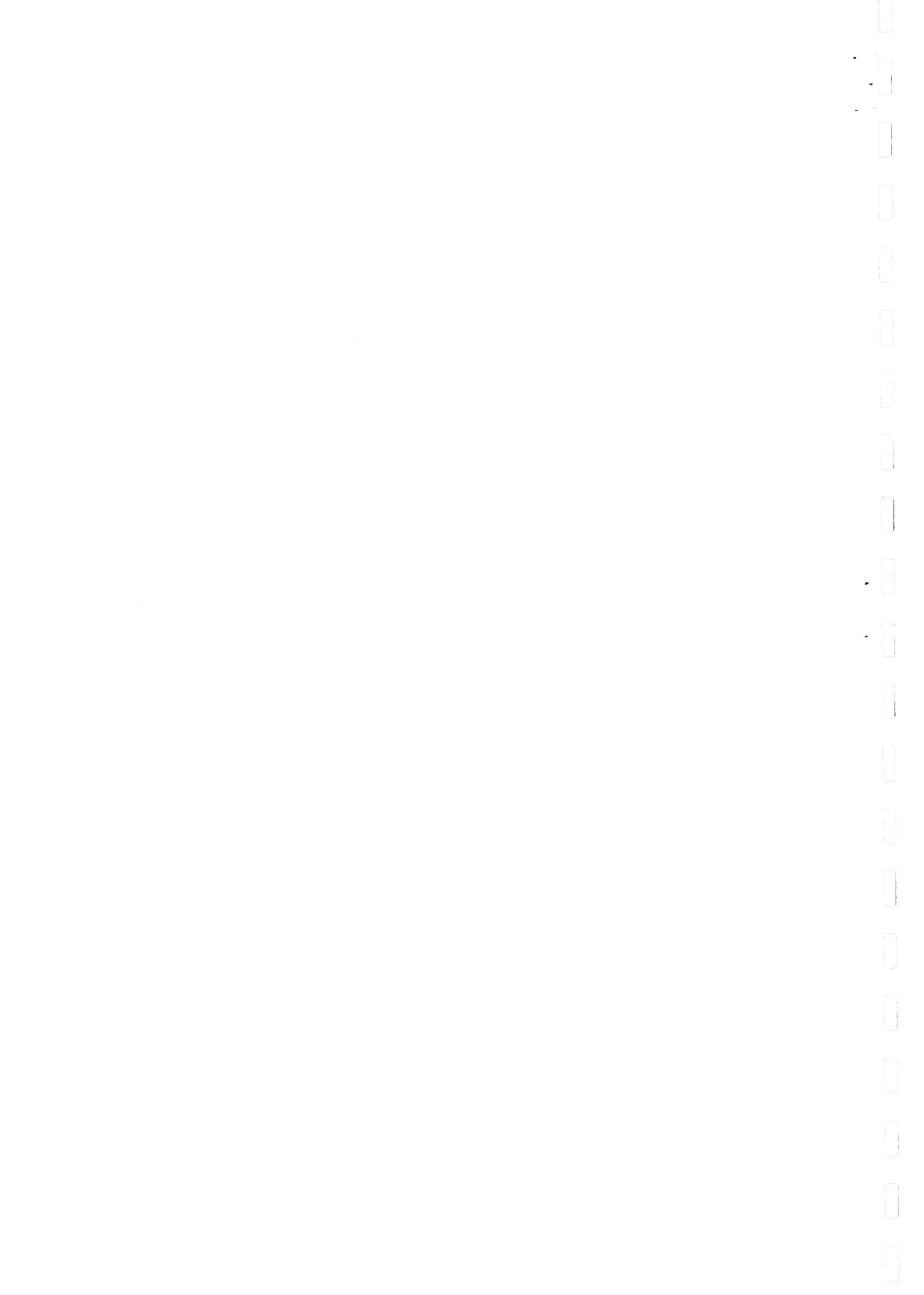
5.4 Annex 4- List of participants at Public hearing

5.5 Annex 5-Minority Report



ANNEX 1 MINUTES

1. Confirmation of Minutes of the 27th sitting of 19th September, 2018
2. Confirmation of Minutes of the 26th sitting of 18th September, 2018
3. Confirmation of Minutes of the 25th sitting of 14th September 2018
4. Confirmation of Minutes of the 20th sitting of 22nd August, 2018
5. Confirmation of Minutes of the 19th sitting of 8th August, 2018
6. Confirmation of Minutes of the 18th sitting of 1st August, 2018
7. Confirmation of Minutes of the 17th sitting of 26th July, 2018
8. Confirmation of Minutes of the 16th sitting of 26th July, 2018
9. Confirmation of Minutes of the 15th sitting of 18th July, 2018



MINUTES OF THE 27TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 19TH SEPTEMBER, 2018 IN COMMITTEE ROOM 5, FIRST FLOOR MAIN PARLIAMENT BUILDINGS, AT 9:00 A.M

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Mwaruma Johnes | - Member |
| 4. Sen. (Prof.) Imana Malachy | -Member |
| 5. Sen. Mercy Chebeni | -Member |
| 6. Sen. Ledama Olekina | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Mithika Linturi | -Member |
| 2. Sen. Susan Kihika | -Member |
| 3. Sen. Aaron Cheruiyot | -Member |

IN ATTENDANCE

Secretariat

- | | |
|-------------------------|--------------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Welington Namenge | -Research Officer |
| 4.Ms. Lucianne Limo | -Media Relations Officer |
| 5.Ms. Sarah Rukwaro | -Serjeant-at-arms |

MIN. NO.179/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 9.25 a.m. and started with a word of prayer.

MIN. NO.180/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Mercy Chebeni Malachy as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. **Housekeeping;**
 - i. Confirmation of Minutes of the 20th sitting of 22nd August, 2018
 - ii. Confirmation of Minutes of the 21st sitting of 23rd August, 2018
 - iii. Confirmation of Minutes of the 22nd sitting of 5th September, 2018

- iv. Confirmation of Minutes of the 26th sitting of 18th September, 2018
4. Consideration and Adoption of Report of the Committee on the Energy Bill, 2017;
 5. Consideration and Adoption of Report of the Committee on the Petroleum Bill, 2017;
 6. Any Other Business;
 7. Date of the Next meeting; and
 8. Adjournment

MIN. NO.181/2018

: HOUSE KEEPING

Minutes of the 20th sitting held on 22nd August, 2018 at 10.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mercy Chebeni and seconded by Sen. Mary Seneta.

Minutes of the 21st sitting held on 23rd August, 2018 at 10.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ledama Olekina and seconded by Sen. (Eng.) Ephraim Maina.

Minutes of the 22nd sitting held on 5th September, 2018 at 11.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mary Seneta and seconded by Sen. (Eng.) Ephraim Maina.

Minutes of the 26th sitting held on 18th September, 2018 at 10.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Johnes Mwaruma and seconded by Sen. (Prof.) Imana Malachy.

MIN. NO.182/2018

**: CONSIDERATION AND ADOPTION OF THE
REPORT OF THE COMMITTEE ON THE
ENERGY BILL, 2017**

The Committee considered and adopted its report on the Energy Bill, 2017 having proposed by Sen. Mary Seneta and seconded by Sen. (Prof.) Imana Malachy.

MIN. NO.183/2018

**CONSIDERATION AND ADOPTION OF THE
REPORT OF THE COMMITTEE ON THE
PETROLEUM BILL, 2017**

The Committee considered and adopted its report on the Petroleum Bill, 2017 having proposed by Sen. Johnes Mwaruma and seconded by Sen. Mary Seneta.

MIN. NO.184/2018

: ANY OTHER BUSINESS

Sen. Ledama Olekina informed the Committee that he did not agree with the content of the reports and would be presenting a a Minority Report for each Bill. The Secretariat when

requested to advise on the legality of a minority report advised that the Senator pursuant to Standing Order 213 (5) of the Senate Standing Orders was allowed to present a minority or dissenting report.

MIN. NO.185/2018 : **DATE OF THE NEXT MEETING**

The next meeting would be on notice

MIN. NO.186/2018 : **ADJOURNMENT**

There being no other business, the meeting was adjourned the meeting at 10.10 am.

.....
SEN EPHRAIM MAINA
CHAIRPERSON

DATE:

MINUTES OF THE 26TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 18TH SEPTEMBER, 2018 IN COMMITTEE ROOM 5, FIRST FLOOR MAIN PARLIAMENT BUILDING BUILDINGS, AT 10:00 A.M

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Mwaruma Johnes | - Member |
| 4. Sen. Mithika Linturi | -Member |
| 5. Sen. Susan Kihika | -Member |
| 6. Sen. (Prof.) Imana Malachy | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Mercy Chebeni | -Member |
| 2. Sen. Ledama Olekina | -Member |
| 3. Sen. Aaron Cheruiyot | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|--------------------------|
| 1.Ms.Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Research Officer |
| 4.Ms. Lucianne Limo | -Media Relations Officer |
| 5.Ms. Sarah Rukwaro | -Serjeant-at-arms |

County Legislative Attachment Programme (CLAP)

- | | |
|--------------------|---------------------------------|
| 1.Ms. Sheila Obare | -Director Legal, Nyamira County |
|--------------------|---------------------------------|

MIN. NO.171/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 10.15 a.m. and started with a word of prayer.

MIN. NO.172/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mithika Linturi and seconded by Sen. (Prof.) Imana Malachy as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;

3. Housekeeping;

- i. Confirmation of Minutes of the 18th sitting of 1st August, 2018
- ii. Confirmation of Minutes of the 19th sitting of 8th August, 2018
- iii. Confirmation of Minutes of the 20th sitting of 22nd August, 2018
- iv. Confirmation of Minutes of the 21st sitting of 23rd August, 2018
- v. Confirmation of Minutes of the 22nd sitting of 5th September, 2018
- vi. Confirmation of Minutes of the 23rd sitting of 12th September, 2018
- vii. Confirmation of Minutes of the 24th sitting of 13th September, 2018
- viii. Confirmation of Minutes of the 25th sitting of 14th September 2018

4. Consideration of draft Amendments to the Energy Bill, 2017;

5. Consideration of draft Amendment to the Petroleum Bill, 2017;

6. Any Other Business;

7. Date of the Next meeting; and

8. Adjournment.

MIN. NO.173/2018

: HOUSE KEEPING

Minutes of the 18th sitting held on 1st August, 2018 at 11.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Johnes Mwaruma and seconded by Sen. (Prof.) Imana Malachy.

Minutes of the 19th sitting held on 8th August, 2018 at 11.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mithika Linturi and seconded by Sen. (Eng.) Ephraim Maina.

The confirmation of minutes of 20th sitting of 22nd August, 2018 was deferred to the next meeting.

The confirmation of minutes of 21st sitting of 23rd August, 2018 was deferred to the net meeting.

The confirmation of minutes of 22nd sitting of 5th September, 2018 was deferred to the net meeting.

Minutes of the 23rd sitting held on 23rd September, 2018 at 11.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. (Prof.) Imana Malachy and seconded by Sen. Johnes Mwaruma.

Minutes of the 24th sitting held on 13th September, 2018 at 10.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Johnes Mwaruma and seconded by Sen. (Prof.) Imana Malachy.

Minutes of the 25th sitting held on 14th September, 2018 at 10.00 am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Johnes Mwaruma and seconded by Sen. (Eng.) Ephraim Main.

MIN. NO.174/2018 : CONSIDERATION OF DRAFT AMENDMENTS TO THE ENERGY BILL, 2017

The Committee considered the draft amendment to the Energy Bill, 2017 rejected them all and resolved that the bill be passed without amendments.

MIN. NO.175/2018 : CONSIDERATION OF DRAFT AMENDMENTS TO THE PETROLEUM BILL, 2017

The Committee considered the draft amendment to the Petroleum Bill, 2017 rejected them all and resolved that the bill be passed without amendments.

MIN. NO.176/2018 : ANY OTHER BUSINESS


There was no other business.

MIN. NO.177/2018 : DATE OF THE NEXT MEETING

The next meeting would be on Wednesday, 19th September, 2018.

MIN. NO.178/2018 : ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 11.30 am.



SEN EPHRAIM MAINA

CHAIRPERSON

DATE:

19th Sept. 2018

MINUTES OF THE 25TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON FRIDAY, 14TH SEPTEMBER, 2018 IN COMMITTEE ROOM 4, FIRST FLOOR MAIN PARLIAMENT BUILDING BUILDINGS, AT 10:00 A.M

PRESENT

- | | |
|------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Mwaruma Johnes | - Member |
| 4. Sen. Aaron Cheruiyot | -Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------|---------|
| 1. Sen. Mithika Linturi | -Member |
| 2. Sen. Susan Kihika | -Member |
| 3. Sen. Mercy Chebeni | -Member |
| 4. Sen. Ledama Olekina | -Member |
| 5. Sen. (Prof.) Imana Malachy | -Member |

IN ATTENDANCE

Secretariat

- | | |
|-------------------------|-------------------|
| 1.Ms.Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Welington Namenge | -Research Officer |
| 4.Ms. Sarah Rukwaro | -Serjeant-at-arms |

MIN. NO.165/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 10.15 a.m. and started with a word of prayer.

MIN. NO.166/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Aaron Cheruiyot as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Consideration of submission received on the Petroleum Bill, 2017
4. Any Other Business;
5. Date of the Next meeting; and

6. Adjournment.

MIN. NO.167/2018

:CONSIDERATION OF SUBMISIONS
RECEIVED ON THE PETROLEUM BILL, 2017

The Chairman invited the secretariat to take the Committee through the submissions. The Committee considered and deliberated on submissions received from various stakeholders on the bill. Following deliberations the Committee resolved to –

1. revoke the amendment earlier proposed to Clause 9 of the Energy Bill that would result in the establishment of two separate regulatory bodies, the Energy Regulatory Authority and the Petroleum Regulatory Authority;
2. revoke the amendment earlier proposed to Clause 85(3b) of the Energy Bill increasing the local community share in royalty from geothermal resources to 10% from 5% back to 5%.

MIN. NO.168/2018

: ANY OTHER BUSINESS

The Committee directed the Secretariat to expedite the processing of amendment to enable it conclude its consideration of the two Bills the following week.

MIN. NO.169/2018

: DATE OF THE NEXT MEETING

The next meeting would be on Tuesday, 18th September, 2018.

MIN. NO.164/2018

: ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 11.30 am.



SEN EPHRAIM MAINA

CHAIRPERSON

DATE:

18/9/2018

MINUTES OF THE 20TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 22ND AUGUST, 2018 IN THE MINI CHAMBER, COUNTY HALL BUILDINGS FROM 10:00 A.M TO 1.00P.M.

PRESENT

- | | |
|------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Ledama Olekina | -Member |
| 4. Sen. Mercy Chebeni | -Member |
| 5. Sen. Aaron Cheruiyot | -Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------|----------|
| 1. Sen. Mwaruma Johnes | - Member |
| 2. Sen. (Prof.) Imana Malachy | -Member |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|-------------------------|-------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Welington Namenge | -Research Officer |
| 4.Ms. Sarah Rukwaro | -Serjeant-at-arms |
| 5.Mr. James Kiriki | -Audio Officer |

The Public

- | | |
|------------------------|--|
| 1. Ms. Rehema Mohammed | -Kenya Oil and Gas Association |
| 2. Mr. Franklin Juma | - Kenya Oil and Gas Association |
| 3. Mr. Arnold Mahero | - Kenya Oil and Gas Association |
| 4. MS. Evelyn Mwangi | - Kenya Oil and Gas Association |
| 5. Mr. Charles Wanguhu | -Kenya Civil Society Platform on Oil and Gas (KCSPOG) |
| 6. Ms. Angela Mutsotso | - Kenya Civil Society Platform on Oil and Gas (KCSPOG) |

MIN. NO.130/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 10.15 a.m. and started with a word of prayer.

MIN. NO.131/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Ledama Olekina as follows-

1. Preliminaries;

- a) Prayer
- b) Introductions
2. Adoption of the Agenda;
3. Public Hearing- The Petroleum Bill, 2017;
4. Agenda for the sitting of the Senate in Uasin Gishu County 24th -28th September, 2018;
5. Any Other Business;
6. Date of the Next meeting; and
7. Adjournment.

MIN. NO.132/2018 : PUBLIC HEARING ON THE PETROLEUM BILL, 2017

The Committee conducted a public hearing on the Petroleum Bill, (National Assembly Bills No. 48 of 2017) the Committee received oral submissions from the following stakeholders-

1. Kenya Oil and Gas Association
2. Kenya Civil Society Platform on Oil and Gas

MIN. NO.133/2018 : AGENDA FOR THE SITTING OF THE SENATE IN UASIN GISHU COUNTY 24TH -28TH SEPTEMBER, 2018

This agenda item was deferred to the next.

MIN. NO.134/2018 : ANY OTHER BUSINESS

There was no other business.

MIN. NO.135/2018 : DATE OF THE NEXT MEETING

The net meeting would be on Thursday, 23rd August, 2018.

MIN. NO.136/2018 : ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 12.00 noon.

.....
SEN EPHRAIM MAINA

CHAIRPERSON

DATE:

19th Sept. 2018

MINUTES OF THE 19TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 8TH AUGUST, 2018 IN THE CPA ROOM, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS FROM 11:00 A.M.

PRESENT

- | | |
|------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Ledama Olekina | -Member |
| 5. Sen. Mercy Chebeni | -Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------|----------|
| 1. Sen. Aaron Cheruiyot | -Member |
| 2. Sen. Susan Kihika | -Member |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Mwaruma Johnes | - Member |

IN ATTENDANCE

Secretariat

- | | |
|-------------------------|---------------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellinton Namemge | -Research Officer |
| 4.Ms. Lucianne Limo | -Media Relations Officers |

MIN. NO.123/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 11.20 a.m. and started with a word of prayer.

MIN. NO.124/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mercy Chebeni and seconded by Sen. Mithika Linturi as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Meeting with ERC, KPLC, REA and the Ministry of Energy on the escalating cost of electricity and the national school electrification programme;
4. House Keeping-
 - a) Retreat with Ministries on Energy & Petroleum Bill
 - Dates
 - Draft programme

- b) **Sitting of the Senate in Uasin Gishu County- Agenda for the Committee**
5. Any Other Business;
 6. Date of the Next meeting; and
 7. Adjournment.

MIN. NO.125/2018 : **MEETING WITH ERC, KPLC AND THE MINISTRY OF ENERGY ON THE ESCALATING COST OF ELETRICITY**

The invited stakeholders were not in attendance. The committee took exception to their failure to attend and resolved to issue a second invitation to the stakeholders. The Committee also resolved to handle the two agenda items in separate sittings.

MIN. NO.126/2018 : **HOUSEKEEPING**

- a) **Venue for the retreat with Ministries on Energy on the Energy Bill, 2017 and the Ministry of Petroleum on the Petroleum Bill, 2017**

The Secretariat reported to the Committee, that the management had advised to hold the retreat in Nairobi County in order to manage costs. The Committee resolved their preferred venue was Mombasa County.

- a) **Sitting of the Senate in Uasin Gishu County- Agenda for the Committee**

This agenda item was deferred to the next meeting.

MIN. NO.127/2018 : **ANY OTHER BUSINESS**

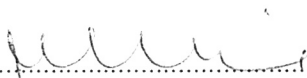
There was no other business.

MIN. NO.128/2018 : **DATE OF THE NEXT MEETING**

The next meeting would be on notice.

MIN. NO.129/2018 : **ADJOURNMENT**

There being no other business, the Chairman adjourned the meeting at 1.00 p.m.

.....


SEN EPHRAIM MAINA

CHAIRPERSON

DATE: *19th Sept. 2018*

MINUTES OF THE 18TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 1ST AUGUST, 2018 IN THE CPA ROOM, FROM 11:00 A.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Ledama Olekina | -Member |
| 5. Sen. Mwaruma Johnes | - Member |
| 6. Sen. Mercy Chebeni | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Aaron Cheruiyot | -Member |
| 2. Sen. Mithika Linturi | -Member |
| 3. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|---------------------|---------------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Lucianne Limo | -Media Relations Officers |

MIN. NO.116/2018 : PRELIMINARIES

The Chairperson called the meeting to order at 11.20 a.m. and started with a word of prayer.

MIN. NO.117/2018 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mercy Chebeni and seconded by Sen. Johnes Mwaruma as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. **House Keeping-**
 - a) **Confirmation of Minutes**
 - i. Confirmation of Minutes of the 17th sitting of 26th July, 2018
 - ii. Confirmation of Minutes of the 16th sitting of 26th July, 2018
 - iii. Confirmation of Minutes of the 15th sitting of 18th July, 2018
 - iv. Confirmation of Minutes of the 14th sitting of 11th July, 2018
 - v. Confirmation of Minutes of the 13th sitting of 4th July, 2018
 - vi. Confirmation of Minutes of the 11th sitting of 21st June, 2018
 - vii. Confirmation of Minutes of the 10th sitting of 20th June, 2018

- viii. Confirmation of Minutes of the 9th sitting of 14th June, 2018
- ix. Confirmation of Minutes of the 8th sitting of 13th June, 2018
- x. Confirmation of Minutes of the 7th sitting of 6th June, 2018
- xi. Confirmation of Minutes of the 6th sitting of 3rd May, 2018
- xii. Confirmation of Minutes of the 4th sitting of 14th March, 2018

b) **Proposed dates for the retreat with Ministries on Energy on the Energy Bill, 2017 and the Ministry of Petroleum on the Petroleum Bill, 2017**

- 4. Matters Arising;
- 5. Any Other Business;
- 6. Date of the Next meeting; and
- 7. Adjournment.

MIN. NO.118/2018

: HOUSE KEEPING

a) **Confirmation of Minutes**

Minutes of the 17th sitting held on 26th July, 2018 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mary Seneta and seconded by Sen. Ephraim Maina.

Minutes of the 16th sitting held on 26th July, 2018 at 11.00am were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ephraim Maina and seconded by Sen. Mary Seneta.

Minutes of the 15th sitting held on 18th July, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mercy Chebeni and seconded by Sen. Mary Seneta

Minutes of the 14th sitting held on 11th July, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ledama Olekina and seconded by Sen. Mercy Chebeni

Minutes of the 13th sitting held on 4th July, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mary Seneta and seconded by Sen. Ephraim Maina.

Minutes of the 11th sitting held on 21st June, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ledama Olekina and seconded by Sen. Mary Seneta.

The confirmation of minutes of the 10th sitting held on 20th June, 2018 was deferred.

Minutes of the 9th sitting held on 14th June, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mercy Chebeni and seconded by Sen. Mary Seneta.

Minutes of the 8th sitting held on 13th June, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ledama Olekina and seconded by Sen. Mary Seneta.

Minutes of the 7th sitting held on 6th June, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ledama Olekina and seconded by Sen. Mercy Chebeni.

Minutes of the 6th sitting held on 3rd May, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Mercy Chebeni and seconded by Sen. Mary Seneta.

Minutes of the 4th sitting held on 14th March, 2018 were confirmed as a true record of the proceedings of the Committee having being proposed by Sen. Ledama Olekina and seconded by Sen. Mercy Chebeni.

b) **Proposed dates for the retreat with Ministries on Energy on the Energy Bill, 2017 and the Ministry of Petroleum on the Petroleum Bill, 2017**

The Committee resolved to hold the retreat to consider Energy Bill, 2017 and the Petroleum Bill, 2017 with the Ministry of Energy and the Ministry of Petroleum from 12th -18th August, 2018.

The Committee resolved to hold public hearings on the Energy Bill, 2017 and the Petroleum Bill, 2017 on 21st and 2nd August, 2018 respectively.

MIN. NO.119/2018 : **MATTERS ARISING**

The Committee resolved to invite KPLC, ERC, REA and the Ministry of Energy to discuss the implementation of the new electricity tariff and the status of the national primary schools electrification programme.

MIN. NO.120/2018 : **ANY OTHER BUSINESS**


There was no other business.

MIN. NO 121/2018 : DATE OF THE NEXT MEETING

The next meeting would be on notice.

MIN. NO 122/2018: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at 1.00 p.m.



SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 18/9/2018



MINUTES OF THE 17TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 26TH JULY, 2018 IN THE SENATORS' LOUNGE, FROM 2:00 P.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Ledama Olekina | -Member |
| 5. Sen. Aaron Cheruiyot | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|----------|
| 1. Sen. Mwaruma Johnes | - Member |
| 2. Sen. Mercy Chebeni | -Member |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|---------------------|------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
|---------------------|------------------|

MIN. NO.110/2018 : **PRELIMINARIES**

The Chairperson called the meeting to order at 2.00 p.m. and started with a word of prayer.

MIN. NO.111/2018 : **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Ledama Olekina as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. **The Local Content Bill, 2018;**
 - Consideration & Adoption of Report
4. Any Other Business;
5. Date of the Next meeting; and
6. Adjournment

MIN. NO.112/2018 : **CONSIDERATION OF THE REPORT ON THE LOCAL CONTENT BILL, 2018**

MINUTES OF THE 16TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 26TH JULY, 2018 IN THE COMMITTEE ROOM 4, FROM 10:00 A.M.

PRESENT

- | | |
|--------------------------------|---------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Ledama Olekina | -Member (Chairing) |
| 5. Sen. Aaron Cheruiyot | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|----------|
| 1. Sen. Mwaruma Johnes | - Member |
| 2. Sen. Mercy Chebeni | -Member |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |

MIN. NO 101/2018

: PRELIMINARIES

Once quorum was constituted, the member's present in accordance with to standing order 196 of the Senate Standing Orders choose Sen. Ledaam Olekina to chair the meeting awaiting the arrival of the Chairperson. The meeting was called to order at 10.20 a.m. and started with a word of prayer.

MIN. NO.102/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Aaron Cheruiyot and seconded by Sen. (Prof.) Imana Malchy as follows-

AGENDA

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Pre-publication scrutiny the Energy (Amendment) Bill, 2018;
4. The Local Content Bill, 2018;
 - Consideration of Draft amendments

5. The Energy Bill (National Assembly Bill No. 50 of 2017)

- Timelines for Committee Stage
- Public hearing & stakeholder meetings

6. The Petroleum (Exploration Development & Production) Bill (National Assembly Bill No. 48 of 2017)

- Timelines for Committee Stage
- Public hearing & stakeholder meetings

7. Any Other Business;

8. Date of the Next meeting; and

9. Adjournment.

MIN. NO.103/2018

: PRE-PUBLICATION SCRUTINY THE ENERGY (AMENDMENT) BILL, 2018

The sponsor of the Bill, Sn. Aaron Cheruiyot explained to the Committee that the object of the Bill was to require counties to use solar electricity for street lighting in a bid to curb escalating cost of electricity borne by counties following the National street lighting initiative.

The members raised concerns about the initial cost of solar installations; they were also concerned that the amendment of the Bill was to the Energy Act, 2006 which would soon be repealed if the Energy Bill, 2017 was passed.

The Committee resolved that the secretariat would advise the sponsor on if the Bill could be included as part of the Energy Bill, 2017 and the Committee would then resolve a way forward on the Bill.

MIN. NO.104/2018

: CONSIDERATION OF DRAFT AMENDMENTS, LOCAL CONTENT BILL, 2018;

The Committee considered the draft amendment and approved the following Amendments-
CLAUSE 3

THAT clause 3 of the Bill be amended by inserting the words “and minerals” immediately after the words “other petroleum resources”.

CLAUSE 4

THAT clause of the Bill be amended –

- (a) by deleting the words “and their retention in the country” appearing at the end of paragraph (a);
- (b) in paragraph (d) by inserting the word “local” immediately after the words “capable and sustainable”; and

(c) in paragraph (f) by deleting the word “content” appearing immediately after the words “through local” and substituting therefore the word “capacity”.

CLAUSE 6

THAT clause 6 of the Bill be amended in sub-clause (2) by deleting the expression “(2)” and substituting therefor the expression “(1)”.

CLAUSE 7

THAT clause 7 of the Bill be amended –

(a) in paragraph (b) by –

(i) deleting sub-paragraph (i) and substituting the following new paragraph –

(i) managing, in collaboration with the relevant State entity, the pace and scheduling of extractive industry programmes in order to enable local persons to take advantage of the opportunities along the extractive value chain;

(ii) inserting the words “identified by the Committee” immediately after the words “in-country programmes” in sub-paragraph (ii)

(iii) deleting the word “capture” appearing immediately after the words “development and wealth” in paragraph (iv) and substituting therefor the word “creation”.

(b) in paragraph (d) by inserting the words “developed by the respective Ministries” immediately after the words “across all policy frameworks”.

CLAUSE 8

THAT clause 8 of the Bill be amended –

(a) by inserting the following new paragraph immediately after paragraph (f) –

(fa) collaborate with the Committee in the identification of goods and services that are available within the respective county and keep a data base of such goods and services;

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (2) by inserting the words “the relevant Ministries and the relevant stakeholders” immediately after the words “the county governments”.

CLAUSE 11

THAT clause 11 of the Bill be amended by –

- (a) renumbering the existing provision as sub clause (1);
 - (b) inserting the following new sub-clause immediately after the new sub-clause (1) –
- (2) The Committee shall avail for inspection by members of the public, the register kept by it under subsection (1).

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (1) by--

- (a) inserting the following new paragraph immediately after paragraph (d) –
- (da) the Principal Secretary responsible for matters relating to education or a representative designated in writing;
- (b) in paragraph (e) by inserting the words “from persons residing in a county in which extractive activities are being undertaken”.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by deleting the words “Ministry responsible for matters relating to the petroleum industry” appearing immediately after the words “unit within the” and substituting therefor the words “respective Ministry”.

CLAUSE 22

THAT clause 22 of the Bill be amended –

- (a) in sub-clause (2) by deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;
- (b) in sub-clause (3) by–
 - (i) deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph –
- (c) workforce development strategies in relation to locals including training plans and projections to address any competency gaps that may

have been identified by the Committee and the operator in relation to the local labour force;

- (c) by deleting the introductory clause in sub-clause (4) and substituting therefor the following new introductory clause –

An applicant shall set out in the applicant's local content plan, the strategies through which the applicant shall –

CLAUSE 26

THAT clause 26 of the Bill be amended –

- (a) in sub-clause (2) by –

- (i) deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;
- (ii) deleting the word “skills” appearing immediately after the words “specification of the” in paragraph (a)(i) and substituting therefor the word “competencies”;

- (b) in sub-clause (3) by deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”.

CLAUSE 27

THAT clause 27 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

- (4a) The Committee shall –

- (a) in consultation with the relevant Ministries, operators and stakeholders, identify existing gaps in competencies and skills in the local workforce;
- (b) develop a common competency system and development plan within the respective sectors and for the various disciplines required in the extractive industry;
- (c) maintain a database of the skills and competencies available locally; and
- (d) collaborate with the relevant Ministries in building the capacity of local training institutions to administer the trainings necessary to develop the skills and competencies identified under paragraph (a).

CLAUSE 38

THAT clause 38 of the Bill be amended by –

- (a) deleting sub-clause (3); and
- (b) deleting sub-clause (5).

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting the words “grant of a licence” appearing immediately after the words “company in the”.

CLAUSE 50

THAT clause 50 of the Bill be amended in sub-clause (2) by deleting the word “a” appearing immediately after the words “the Cabinet Secretary” and substituting therefor the words “an annual”.

CLAUSE 54

THAT clause 54 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “not more than two million shillings or to imprisonment for at term of not more than three years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least three years”;
- (b) in sub-clause (2) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least five million shillings or to imprisonment for a term of at least five years”;
- (c) in sub-clause (3) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least five years”;
- (d) in sub-clause (5) by deleting the words “not exceeding eight hundred thousand shillings or to imprisonment for at term not exceeding twelve months” appearing immediately after the words “liable to a fine” and substituting therefor the words “of at least five million shillings or to imprisonment for a term of at least three years”.

CLAUSE 57

THAT clause 57 of the Bill be amended –

- (a) in sub-clause (3) by deleting the words “neglected children” appearing immediately after the words “in relation to” in paragraph (a) and substituting therefor the words “the extractive industry”;
- (b) in sub-clause (4) by deleting the words “county executive committee member” appearing immediately after the words “authority of the” in paragraph (a) and substituting therefor the words “Cabinet Secretary”.

MIN. NO.105/2018 : THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2017)

The Committee resolved to hold a retreat with the Ministry of Energy to consider the Bill clause by clause from 9th -13th August, 2018 in Mombasa County.

MIN. NO.106/2018 :THE PETROLEUM (EXPLORATION DEVELOPMENT & PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2017)

The Committee resolved to hold a retreat with the Ministry of Mining & Petroleum to consider the Bill clause by clause from 9th -13th August, 2018 in Mombasa County.

MIN. NO.107/2018 : ANY OTHER BUSINESS

There was no other business.

MIN. NO 108/2018: DATE OF THE NEXT MEETING

The next meeting would be on notice.

MIN. NO 109/2018: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at 12.00 p.m.

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SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st August 2018

MINUTES OF THE 15TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 18TH JULY, 2018 IN THE CPA ROOM, FROM 11:00 A.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. (Prof.) Imana Malachy | -Member |
| 5. Sen. Mwaruma Johnes | - Member |
| 6. Sen. Mercy Chebeni | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Ledama Olekina | -Member |
| 2. Sen. Aaron Cheruiyot | -Member |
| 3. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|--------------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |
| 4.Ms. Sarah Rukwaro | -SAA |
| 5.Mr. Collins Mahamba | -Audio Recording Officer |

MIN. NO.093/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 11.15 a.m. and started with a word of prayer.

MIN. NO.094/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Mercy Chebeni as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. **The Local Content Bill, 2018;**
 - Consideration of submissions from the public
 - Consideration of Draft amendments
4. **Pre-publication scrutiny the Energy (Amendment) Bill, 2018;**
5. **The Energy Bill (National Assembly Bill No. 50 of 2017)**
 - First reading & committal to Energy Committee

- Public hearing & stakeholder meetings
6. **The Petroleum Bill (National Assembly Bill No. 48 of 2017)**
 - First reading & committal to Energy Committee
 - Public hearing & stakeholder meetings
 7. Any Other Business;
 8. Date of the Next meeting; and
 9. Adjournment

MIN. NO.095/2018 : CONSIDERATION OF SUBMISSIONS ON THE LOCAL CONTENT BILL, 2018

The Committee concluded its consideration of submissions on the Local Content Bill, 2018.

It resolved to consider the amendments at the net meeting.

MIN. NO.096/2018 : PRE-PUBLICATION SCRUTINY THE ENERGY (AMENDMENT) BILL, 2018

The Committee was taken through the draft Energy (Amendment) Bill, 2018. The objective of the Bill is to require that County Government use renewable energy in the form of solar for street lighting.

The Committee resolved to conclude consideration of the legislative proposal at the next Committee meeting after hearing from the sponsor of the Bill, Sen. Aaron Cheruiyot.

MIN. NO.097/2018 : THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2017)

The Committee was notified that the Energy Bill (National Assembly Bills No. 50 of 2017) was read a first time on the floor of the senate on 4th July, 2018 and that the committee had 30 days to report to the senate.

The Committee deferred the setting of dates for public hearing and retreats on the Bill to the next meeting.

MIN. NO.098/2018 : THE PETROLEUM BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2017)

The Committee was notified that the Petroleum (Exploration, Development and Production) Bill (National Assembly Bills No. 48 of 2017) was read a first time on the floor of the senate on 10th July, 2018 and that the committee had 30 days to report to the senate.

The Committee deferred the setting of dates for public hearing and retreats on the Bill to the next meeting.

The Committee deferred the setting of dates for public hearing and retreats on the Bill to the next meeting.

MIN. NO 099/2018 : DATE OF THE NEXT MEETING

The next meeting would be on Wednesday, 25th July, 2018.

MIN. NO 100/2018: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at twenty minutes after one o'clock.

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SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st August 2018

ANNEX 2 ADVERTISEMENT



REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The Energy Bill (National Assembly Bills No. 50 of 2017)

The Energy Bill (National Assembly Bills No. 50 of 2017) was read a First Time in the Senate on Wednesday, 4th July, 2018 and was thereafter committed to the Senate Standing Committee on Energy for consideration.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 134 of the Senate Standing Orders, the Senate Standing Committee on Energy now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bill shall be held on **Thursday, 23rd August, 2018 from 10:00 a.m. to 1:00 p.m. at the County Hall Mini Chamber, First Floor, County Hall Building, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **csenate@parliament.go.ke**, to be received **on or before Wednesday, 22nd August, 2018 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**



ANNEX 3 MEMORANDA RECEIVED

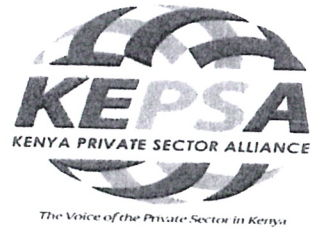
1. Kenya Oil and Gas Association
2. Kenya Civil Society Platform on Oil and Gas
3. Energy Regulatory Commission
4. Energy & Wildlife Sherna Limited- Mr. Eric Mwangi
5. Nature Kenya

Cleek Energy

August 21, 2018

**MEMORANDUM ON THE PETROLEUM BILL 2017
SUBMITTED TO THE SENATE STANDING COMMITTEE ON ENERGY**

SUBMITTED BY KENYA PRIVATE SECTOR ALLIANCE (KEPSA) AND KENYA OIL AND GAS ASSOCIATION (KOGA)



ITEM	REFERENCE	CURRENT SECTION OF THE BILL	PROPOSED AMENDMENT	ISSUE	RATIONALE AND JUSTIFICATION
1.	Page 1605 Section 31 (1) Ratification by Parliament	<i>(1) The Cabinet Secretary shall, within thirty days of the approval of a field development plan submitted in accordance with the terms of a production sharing contract entered into under this Act, submit the production sharing contract together with the field development plan to Parliament for ratification in accordance with Article 71 of the Constitution.</i>	That the Bill be amended to reflect the wording used in the Petroleum (Exploration, Development and Production) Bill, 2015 as passed by 11th Parliament before submission for Presidential Assent i.e. that Ratification be with regard to Petroleum Agreements as defined in the Petroleum Bill <u>Pursuant to Article 71 of the Constitution, the Cabinet Secretary shall, within thirty days of receipt of production sharing contract submit to Parliament for ratification all production sharing contracts entered into pursuant to this Act and regulations made under this Act.</u>	Risk to project sanction and delivery on schedule	The constitutional intent under Article 71 of the Constitution is for concessions for the exploitation of any natural resource to be the subject of ratification by Parliament; Under the Petroleum Bill, 2017, the concessions/transaction that grants the right to exploit natural resources is the Petroleum Agreement (which includes Production Sharing Contract ("PSCs")); In ratifying the PSCs, Parliament will indeed have had an opportunity to review, interrogate the proposed terms and conditions before the Government/Investor makes the commitment since it is the PSC that determines how revenue/benefits will be shared between the State and an Investor. (Ref: section 45(1) & (2) of the Petroleum Bill, 2017 and clause 37-38 of the Model Production Sharing Contract); Cognizant of the good intentions, it must be mentioned that the Field Development Plan (FDP) is a heavy technical document best scrutinized at the

ITEM	REFERENCE	CURRENT SECTION OF THE BILL	PROPOSED AMENDMENT	ISSUE	RATIONALE AND JUSTIFICATION
					<p>technocrat level with the Authority and the Cabinet Secretary who is still accountable to Parliament.</p> <p>Due regard should also be given to potential impact under section 4(1), 4(2)(e) of the Natural Resources (Classes of Transactions for Ratification) Act</p>
2.	<p>Page 1598</p> <p>Section 24 (3)</p> <p>Operational Permits</p>	<p><i>(3) Despite the generality of sub-section (1), a contractor shall apply to the Authority for an operational permit to—</i></p> <p><i>(a) drill a well;</i></p> <p><i>(b) develop and produce petroleum;</i></p> <p><i>(c) construct petroleum gathering systems in the field;</i></p> <p><i>(d) build a crude oil storage facility;</i></p>	<p>That, the Bill be amended by reducing the number of permits required under this section to reflect proposal referred under appendix 1 of this memorandum. i.e. Single Permit for Exploration, Appraisal, Development and Production, Decommissioning and Abandonment.</p>	<p>Proliferation of permits/ Ease of doing business</p>	<ul style="list-style-type: none"> • During the launch of the Kenya International Investment Conference in November 2014; H.E. Uhuru Kenyatta declared that as a step to attracting more investment in the country, the GoK would set up a one-stop centre for investors to get approvals and permits for setting up business; • Also, during the State of the Nation Address on 31st March 2016, H.E. Uhuru Kenyatta underscored the Government's commitment to review regulatory fees which in his view, made the

ITEM	REFERENCE	CURRENT SECTION OF THE BILL	PROPOSED AMENDMENT	ISSUE	RATIONALE AND JUSTIFICATION
		<p>(e) plug or abandon an individual well;</p> <p>(f) operate an underground injection control well;</p> <p>(g) convert an individual well to an underground injection control well;</p> <p>(h) decommission or abandon an upstream petroleum facility;</p> <p>(i) develop, build, construct or operate a gas processing facility; or</p> <p>(j) remediate and reclaim upon the abandonment of a well or facility.</p>			<p>undertaking of new projects or expansion of existing ones a costly and time-consuming affair;</p> <ul style="list-style-type: none"> • The Petroleum Bill requires that the contractor obtains, during the life of the project over 30 Permits/Consents/ Approvals. See <u>Appendix 2</u> for details. • These are <i>in addition</i> to the other Permits/Consents/ Approvals that the Contractor will be required to obtain under other statutes e.g. the Energy Bill, the Water Act, Occupational Safety & Hazards Act, Environmental Management & Coordination Act, etc • The Ministry of Energy and Petroleum's position is that the Government needs to balance the need of <i>efficient operations</i> and the <i>need for information</i>. <p>However, this can still be accessed through furnishing of notices and reports by the Contractors under the mechanisms of the Petroleum Agreements (PSCs) without the need for approvals/permits and licenses as currently envisaged, as is the practice now.</p> <p>The proliferation has an impact on delay of processes and project timelines and financial burdens.</p>

ITEM	REFERENCE	CURRENT SECTION OF THE BILL	PROPOSED AMENDMENT	ISSUE	RATIONALE AND JUSTIFICATION
					Reduce permit requirements in a manner similar to those of comparable industries. Alternatively, capture timelines and include <i>deemed approval</i> provisions similar to those found in other statutes e.g. Special Economic Zones Act and the Environmental Management and Coordination Act.
3.	Page 1599 Section 24(4) Operational Permits	<i>(4) A contractor shall apply to the Authority for an operational permit for each well</i>	<i>(4) Unless waived by the Authority, a contractor shall apply to notify the Authority prior to drilling for an operational permit for each well.</i>	Proliferation of permits/ Ease of doing business	See rationale and justification under item 2.
4.	Page 1599 Section 24(5) Operational Permits	<i>(5) An application for an operational permit shall include-</i> <i>(a) drilling permit for exploration, appraisal, development and production wells;</i>	Delete requirement for application. Oblige Contractor to provide information where required. <i>(1) An application for an operational permit shall include Contractor shall provide the following prior to commencement of drilling operations: -</i>	Proliferation of permits/ Ease of doing business	See rationale and justification under item 2. If proposal to do away with permits for drilling wells is accepted, it follows that this section will also have to be amended as the permits will no longer be required

ITEM	REFERENCE	CURRENT SECTION OF THE BILL	PROPOSED AMENDMENT	ISSUE	RATIONALE AND JUSTIFICATION
		<p>(b) the global positioning system (GPS) location of each well;</p> <p>(c) a commitment by the contractor of the contractor's ability to construct a well site, access road to the well site, facilitate mobility of equipment, supplies, and materials to the well site during drilling, monitoring, appraisal and evaluation activities;</p> <p>(d) ...</p>	<p>(a) drilling permit for exploration, appraisal, development and production wells;</p> <p>(a) the global positioning system (GPS) location of each well;</p> <p>(b) a commitment by the contractor of the contractor's ability to construct a well site, access road to the well site, facilitate mobility of equipment, supplies, and materials to the well site during drilling, monitoring, appraisal and evaluation activities;...</p>		
5.	N/A	N/A	That the Bill be amended to include the definition of "Authority" as the Upstream Petroleum Regulatory Authority		There is need to have a single entity to regulate the entire Petroleum value chain, Upstream, Midstream and Downstream.
6.	Section 27(3) Report on discovery of petroleum	"...not less than twenty million..."	That the Bill be amended by deleting in the said section, the words "not less	Proportionality, Equality,	There is need to maintain wording on the proposed sentences to reflect principles of proportionality, equality, uniformity and parity as recommended under

ITEM	REFERENCE	CURRENT SECTION OF THE BILL	PROPOSED AMENDMENT	ISSUE	RATIONALE AND JUSTIFICATION
	Section 28(3) Notification prior to abandonment	"...not less than twenty million..."	than..." and inserting the words "not exceeding".	Uniformity, and Parity	the Sentencing Policy Guidelines prepared by the Judiciary Taskforce and reflected in other statutes regulating natural resources i.e. Energy and Mining.
	Section 35(2) Restriction from removal of petroleum and samples	"...not less than twenty million..."			
	Section 43(3) Removal of property by contractor	"...not less than ten million..."			
	Section 48 False information	"...not less than twenty million..."			
	Section 60(5) Waste Management	"...not less than twenty million..."			

APPENDIX 1- REDUCED NUMBER OF PERMITS PROPOSED

CURRENT NUMBER	Permits Proposed Under Petroleum Bill, 2017	NUMBER OF PERMITS PROPOSED UNDER THE BILL	Reduced Number of Permits Proposed
1.	Drill an Exploration Well (Permit required for each well)	1.	Single Exploration Permit -To apply for drilling of multiple appraisal wells so as to allow rapid exploration during appraisal phase.
2.	Drill an Appraisal Well (Permit required for each well)	2	Single Appraisal Permit- To apply for drilling of multiple appraisal wells so as to allow rapid appraisal during appraisal phase.
3.	Drilling a Development Well (Permit required for each well)	3	Single Development and Production Permit - To apply for drilling of multiple development and production wells so as to allow rapid development during this phase and the subsequent production that the FDP would have envisaged.
4.	Drilling a Production Well (Permit required for each well)		
5.	Develop and Produce petroleum	N/A	No permit proposed as the Single Development Permit referred to above will apply.
6.	Construct petroleum gathering systems in the field	N/A	No permit proposed as the Single Development or Production Permit referred to above will apply.
7.	Build crude oil storage facility	N/A	No permit proposed as the Single Development or Production Permit referred to above will apply. Notably, the Energy Act/Bill already provides for a permit for building such a facility.
8.	Develop, build, construct or operate a gas processing facility	4	Remain "as is": i.e. Single Permit for Development Building and Construction and Operational of Gas Processing Facility
9.	Plug or abandon an individual well	N/A	No permit proposed as there is already an adequate notification mechanism provided for under clause 11 of the Production Sharing Contract between GoK and the investor).

CURRENT NUMBER	Permits Proposed Under Petroleum Bill, 2017		NUMBER OF PERMITS PROPOSED UNDER THE BILL	Reduced Number of Permits Proposed
10.	Operate an underground injection control well		N/A	No permit proposed as Appraisal/ Development/ Production Permit referred to above will apply. In addition, adequate mechanisms of notification and reporting already exist under the Production Sharing Contract between GoK and the investor.
11.	Convert an individual well to an underground injection control well		N/A	No permit proposed as Appraisal/ Development/ Production Permit referred to above will apply. In addition, adequate mechanisms of notification and reporting already exist under the Production Sharing Contract between GoK and the investor.
12.	Decommission or abandon an upstream petroleum facility		5	Decommissioning & Abandonment Permit. In addition, adequate mechanisms of notification and reporting already exist under the Production Sharing Contract between GoK and the investor.
13.	Remediate and reclaim upon the abandonment of a well or facility			

APPENDIX 2

LIST OF NEW PERMITS, CONSENTS AND APPROVALS REQUIRED UNDER THE PETROLEUM BILL

LIST OF PERMITS

	Permit required under the Petroleum Bill, 2017	Reference under Bill	Requirements under current PSC and current Petroleum Act	Reference	Status Impact of Petroleum Bill provision
1.	Operational permit to drilling an exploration well	Sect.51(3) & (4)	N/A Save Consent for a well being drilled 500 meters from Block boundary.	PSC, Clause 10 (1)	New requirement
2.	Operational permit to drilling an appraisal well	Sect.51(3) & (4)	N/A		New requirement
3.	Operational permit to drilling an development well	Sect.51(3) & (4)	N/A		New requirement
4.	Operational permit to drilling a production well	Sect.51(3) & (4)	N/A		New requirement
5.	Plugging & Abandoning a well	Sect.51(3) (e)	N/A Save for 48 Hour notification to the Minister to be issued;	PSC, clause 10	New requirement
6.	Development & Production of Petroleum	Sect.51(3) (b)	Development Plan prepared in consultation with the Minister.	PSC, clause 20,	Existing requirement
7.	Construction of petroleum gathering system	Sect.51(3) (c)	N/A – it is part of approved Development Plan	PSC, (c.20) Energy Sect.90	New requirement
8.	Building a crude oil storage facility	Sect.51(3) (d)	N/A – it is part of approved Development Plan Also Permit under the Energy Act.	PSC, (c.20) Energy Sect.90	New requirement
9.	Operating underground injection control wells	Sect.51(3) (f)	N/A		New requirement
10.	Convert a well into underground injection control wells.	Sect.51(3) (g)	N/A		New requirement
11.	Decommissioning	Sect.51(3) (h)	N/A as Decommission Plan is approved alongside the Development Plan	PSC, Clause 42	New requirement
12.	Abandonment of any petroleum or facility;	Sect.51(3) (h)	N/A as Abandonment is construed as part of Decommissioning Plan hence approved alongside Development Plan.	PSC, Clause 42	New requirement

13.	Develop, build or operate gas processing facility;	Sect.51(3) (i)	Approved under relevant Development Plan Licenses also required under current -Energy Act, s.90	PSC, clause 23,20 PSC	Existing requirement
14.	Remediation and reclamation upon abandonment;	Sect.51(3) (j)	N/A Save that under Environmental Act, it is a condition precedent to the E.I.A license	EMCA	New requirement
15.	License for transportation of petroleum crude	Energy Bill, Sect.93(1)(a)	Licenses also required under current -Energy Act, s.80. However , PSC provides rights to transport petroleum up to the point of export;	PSC	Existing requirement
16.	License for undertaking export of petroleum crude	Energy Bill, Sect.93(1)(a)	Licenses also required under current -Energy Act, s.80. However , PSC provides rights to export own share of petroleum up;	PSC	Existing requirement

APPENDIX 2- CONTINUED

LIST OF CONSENTS

	Consent required under Petroleum Bill, 2017	Reference under Bill	Consents required under the PSC/Petroleum Act	Section	Status/Impact
17.	CS consent required to transfer or trade an interest in a Petroleum Agreement;	Sect.53(1)	Under PSC, Consent required from the Minister with caveat that Consent to be given or reasonably denied within 30 days	PSC, 35	Existing requirement
18.	CS consent required where shares in a non-listed company are being transferred	Sect.53(10)	N/A	N/A	New requirement
19.	Authority's consent required for closing or plugging a well;	Sect.55	N/A- save for 48 Hour notification to the Minister to be issued;	PSS clause 10,	New requirement
20.	Authority's consent required for removal of any petroleum or specimen of petrological specimen or samples of petrol or fresh water or brine;	Sect.62	N/A- save for notification to the Minister with a representative part delivered to the Minister	PSC, clause 14	New requirement
21.	Contractor's consent required prior to disclosure of any information given to Authority or Ministry etc	Sect.73	Contractor's consent required prior to disclosure of any information	PSC, Clause 37	Existing requirement
22.	Authority's consent required for flaring in the course of the conduct of upstream petroleum operations;	Sect.89	N/A- PSC provides Contractor right to flare at any time if necessary for well or production tests or emergencies.	PSC, Clause 23(3)	New requirement
23.	Land owner's consent required for accessing land for Petroleum operations or surveys. Consent shall be in the form prescribed by the CS.	Sect.100	-Land owner's requires to be given 48 hours notice subject to compensation; -Consent required prior to entry into public authority or commonly owned land.	Petroleum Act, s.10 & Petroleum Regulations s. s.6	Existing requirement
24.	Land owner's consent required for development of upstream operations;	Sect.102	As above		Existing requirement

APPENDIX 2- CONTINUED

LIST OF APPROVALS

Approvals required under Petroleum Bill, 2017		Reference under Bill	Approvals required under the PSC/Petroleum Act	Section	Status Impact
25.	Authority's approval for the proposed methodology for plugging and abandonment.	Sect.51(5)(e)	N/A	clause 10, PSC	New requirement
26.	CS approval required for transfer or charging of any fixed petroleum facility;	Sect.53(7)	N/A		New requirement
27.	CS's approval for Field Development Plan(FDP) subsequent to recommendation from Authority;	Sect.57(3&4)	Minister's consent required to approve FDP	PSC, Clause 20	Existing requirement
28.	Authority's approval for alterations and variations to an FDP;	Sect.60.(1)	Mode of alteration expected to be captured in the FDP	N/A	Existing requirement
29.	Authority's approval for a Unitisation Agreement;	Sect. 63	Minister's approval needed for Joint Unitisation Proposal	Clause 21	Existing requirement
30.	Authority's approval for third party access to an owner's infrastructure;	Sect.64	Minister's consent needed before infrastructure is constructed. Such consent may be dependent on Contractor granting other Producers excess capacity	PSC, Clause 12	Existing requirement
31.	Authority's approval for annual local content plan.	Sect.77(2)	N/A- Minister to be consulted	PSC, Clause 13	New requirement
32.	Kenya Bureau of Standard's(KBS) approval for material made or apparatus used in upstream petroleum operations – in the absence of KBS, international standards to apply;	Sect.77(1)	N/A- save that international standards expected to be used.	PSC, Clause 25	New requirement
33.					

ENERGY BILL					
	Approvals required under Energy Bill, 2017	Reference under Bill	Approvals required under the PSC/Petroleum Act	Section	Status/Impact
34.	Kenya Bureau of Standards (KEBS) approval required for any petroleum offered for sale, transported or stored;	Sect.112	KBS approval required for locally produced petroleum	s.95	Existing requirement
35.	Authority's approval required for the format and content of the contract to be used by 3 rd parties seeking to access a common user facility	Sect.115	N/A	N/A	New requirement
36.	Authority's approval required for annual and long term local content plans for work done under the Act	Sect.234(2)	N/A	N/A	New requirement
37.	Kenya Bureau of Standard's(KBS) approval for energy or material or modes or apparatuses used in transportation, storage, import, export, refining or selling any form of energy (including petroleum in the midstream and downstream activity) – in the absence of KBS, international standards approved by KBS to apply;	Sect.240	KBS approval required for materials or modes or apparatuses.	s.115	Existing requirement

APPENDIX 3

COMPARATIVE ANALYSIS OF CUSTODIAL SENTENCES AND FINES FOR SIMILAR OFFENCES

	Contravention	Section	Petroleum Bill		Mining Act		Energy Bill (Geothermal & Renewable Energy Operations)		Construction	
			Penalties (KSH)	Custodial Sentences	Penalties (KSH)	Custodial Sentences	Penalties (KSH)	Custodial Sentences	Penalties (KSH)	Custodial Sentences
1.	Carrying out petroleum operations without a license	87(5)	Not less than 20M	Not less than 5 years	Not exceeding 10M	Not exceeding 2 years	Not exceeding 10M	Not exceeding 3 years	Not exceeding 100K Physical Planning Bill,	Not exceeding 2 months Physical Planning Bill
2.	Carrying out non-exclusive survey without a permit	49(3)	Not less than 10M	Not less than 2 years	Not exceeding 10M	Not exceeding 2 years	Not exceeding 100K	N/A	N/A	N/A
3.	Operating without the requisite operational permits	61(7)	Not less than 10M	Not less than 2 years	N/A	N/A	Applicable to Coal operation Not less than 200K or Not less than 1M	Applicable to Coal operation Not less than 1 year	Not exceeding 500K P. Planning Bill,	Not exceeding 2 months P. Planning Bill
4.	Not naming wells as provided under the Act	51(6&10)	Not less than 10M	2 years	N/A	N/A	N/A	N/A	N/A	N/A
5.	Failure to report discovery	54(2)	Not less than 10M	N/A	Not less than 1M	Not exceeding 3 years	Not exceeding 2 years	Not exceeding 100K	N/A	N/A
6.	Failure to furnish reasonable notice of abandonment	55(3)	Not less than 20M	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7.	Unauthorised removal of samples	62(2)	Not less than 20M	5 years	N/A	N/A	N/A	N/A	N/A	N/A

	Contravention	Section	Petroleum Bill		Mining Act		Energy Bill (Geothermal & Renewable Energy Operations)		Construction	
			Penalties (KSH)	Custodial Sentences	Penalties (KSH)	Custodial Sentences	Penalties (KSH)	Custodial Sentences	Penalties (KSH)	Custodial Sentences
8.	Producing false information or failing to comply with notice furnish information to CS/Authority	74 & 75	Not less than 20M	Not less than 5 years	Not less than 1M	Not exceeding 2 years	Not exceeding 10M	Not exceeding 5 years	20K (Planning Act)	Not exceeding 2 years P. Planning Act
9.	Failure to be licensed to carry out activities related to management of, production, transportation, storage, treatment, disposal of waste etc; Or not complying with conditions under license for waste management	87(5)	Not less than 20M	Not less than 5 years	Not less than 10M	Not exceeding 2 years	N/A	N/A	Not exceeding 1M EMCA.	Not exceeding 2 years EMCA.
10.	Failure to maintain facilities	88(3)	Not less than 1M	Not less than ½ year	N/A	N/A	N/A	N/A	Not exceeding 300K OSHA	Not exceeding ¼ year OSHA
11.	Failure to warn persons within area of impact of the presence of the facilities/ structures	88(3)	Not less than 1M	Not less than ½ year	N/A	N/A	N/A	N/A	Not exceeding 300K OSHA	Not exceeding 3 months OSHA
12.	Failure to comply to venting/flaring requirements	89(7)	Not less than 100M	Not less than 10 years	N/A	N/A	N/A	N/A	Not exceeding 550K EMCA	N/A
13.	Economic crimes (i.e. destruction of properties, malicious informing of public, economic sabotage, stealing of equipment, encroaches on land or deals with land set aside for infrastructure projects, vandals etc)	113(1)	Not less than 100M	Not less than 15 years	Not less than 50K	Not exceeding 12 months	Not less than 5M	Not less than 10 years	Not exceeding 15 M Capital Markets Act	Not exceeding 5 years Capital Markets Act

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



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 of negotiating a <u>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

Clause	Proposal	Justification
	<p><i>with the field development plan to Parliament for ratification in accordance with Article 71 of the Constitution.</i></p> <p><i>(2) Parliament shall, within sixty days after receipt of the production sharing contract and the field development plan under sub-section</i></p> <p><i>(1)—</i> <i>(a) ratify the production sharing contract and the field development plan; or</i> <i>(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.</i></p> <p><i>(3) Parliament shall, in carrying out its obligation under sub-section (2), undertake public participation.</i></p> <p><i>(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.</i></p> <p><i>(5) If Parliament does not make a decision under sub-section (2) within ninety days, the</i></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>

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 ' <i>profits derived from upstream petroleum operations</i> ' as opposed to a percentage of the ' <i>national government's share</i> '.
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><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>



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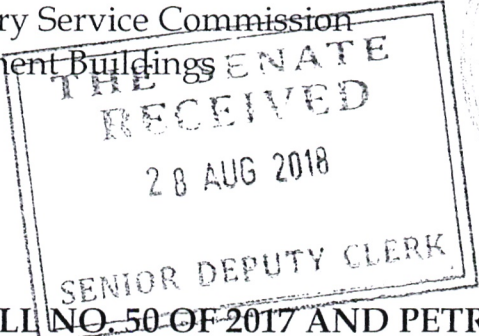
Energy Regulatory Commission

Eagle Africa Centre, Longonot Road, Upperhill. P.O. Box 42681-00100 GPO, Nairobi - Kenya Tel: +254-20-2847000/200/2717627/31/75 Cell: +254 - 0722-200947/ 0734-414333 Fax: +254-20-2717603 Email: info@erc.go.ke Website: www.erc.go.ke

Our Ref. ERC/ADM 26/RM/pm

24th August 2018

Clerk of the Senate/ Secretary Parliamentary Service Commission 1st Floor Main Parliament Buildings P.O Box 41842-00100 NAIROBI



DD Com DKF kindly deal E 29/08/18

Dear Sir,

RE: THE ENERGY BILL NO. 50 OF 2017 AND PETROLEUM BILL NO. 48 OF 2017 MEMORANDA

The above subject and your advert which appeared in the Standard Newspaper of 13th August 2018 refers.

The Energy Regulatory Commission is a statutory body established under the Energy Act 2006. The mandate of the Commission as set out under Section 5 of the Act include inter alia ;

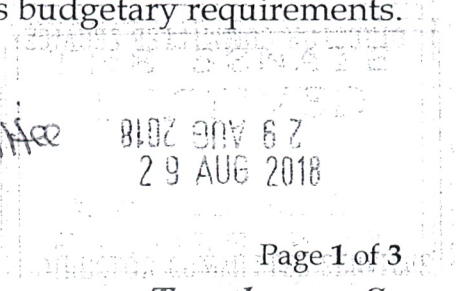
- 1. To regulate :- a. Importation, exportation, generation, transmission, distribution, supply and use of electrical energy; b. Importation, exportation, transportation, refining, storage, and sale of petroleum products; c. Production, distribution, supply and use of renewable and other forms of energy; 2. Protect the interest of consumers, investors and other stakeholders; 3. Maintain a list of accredited energy auditors as may be prescribed; 4. Monitor, ensure implementation of, and the observance of principles of fair competition in the energy sector in coordination with other statutory authorities.

The regulation of the petroleum sub sector both down and midstream comprises around 50% of the workload of the Commission. The levies from Petroleum contributed over 70% of the Commission's budgetary requirements.

2 Clerk Assist - Georgy

Please bring to the attention of the Commission

29/08/18



This revenue is critical in the implementation of all the Commission regulatory mandate. Towards effective and efficient undertaking of its role the Commission has formulated a Five Year Strategic Plan 2017/18 to 2021/22 that sums up the Commission's priorities and sets of strategies that are geared towards achievement of our mandate. Our goal is to deliver value to our stakeholder by fruitfully executing four themes identified: Stakeholder Focus, Service Delivery, Enabling Environment and Institutional Capability. The plan has been largely informed by the need to position the Commission to be at the forefront in catalyzing reforms in the energy sector for the purpose of ensuring sustainable, reliable and affordable energy and energy services for all in Kenya.

ERC was established pursuant to the requirements of the National Energy Policy, Sessional Paper no. 4 of 2004. Prior 2006, the regulatory functions in the Petroleum sector shared amongst various players including the Ministry of Energy, Provincial Administration and Local Authorities. The Government's objective in the formation of ERC was to transform the Electricity Regulatory Board (ERB) into the Energy Regulatory Commission (ERC) with an elaborate regulatory mandate for the entire energy sector which included petroleum sub sector.

The subject Energy Bill No. 50 of 2017 provides for a single regulator (Energy and Petroleum Regulatory Authority) in the energy sector. The proposed Authority is provided to regulate the electricity subsector and the Petroleum subsector which include upstream, midstream and downstream segments.

ERC is in support of the proposed Energy and Petroleum Regulatory Authority. There are proposals to create another regulator to regulate the upstream petroleum segment and with suggestion that the downstream and midstream regulatory role currently being performed by ERC be hived off from ERC. Such separation would result into the situation which prevailed prior to the year 2006 where ERB used to regulate only the electricity subsector.

In several jurisdictions, most regulators have combined not only the energy but other services under one regulator for instance the Energy and Water Utilities Regulatory Authority (EWURA) of Tanzania regulates electricity, petroleum, natural gas and water & sanitation sectors; Rwanda Utilities Regulatory Authority (RURA) regulates Electricity, Petroleum, Gas, Renewable Energy, water & sanitation, ICT and transport sectors.



Energy Regulatory Commission

Presently ERC has existing structures necessary in undertaking regulatory role in both petroleum and electricity. Establishment of another regulator to undertake petroleum regulation would have negative impacts particularly in the funding of ERC since the only option would be revenue from the electricity levies which will not be adequate. Increasing the electricity levy to generate enough funds to meet its budgetary requirement would increase the electricity tariffs thus impacting negatively on the citizens.

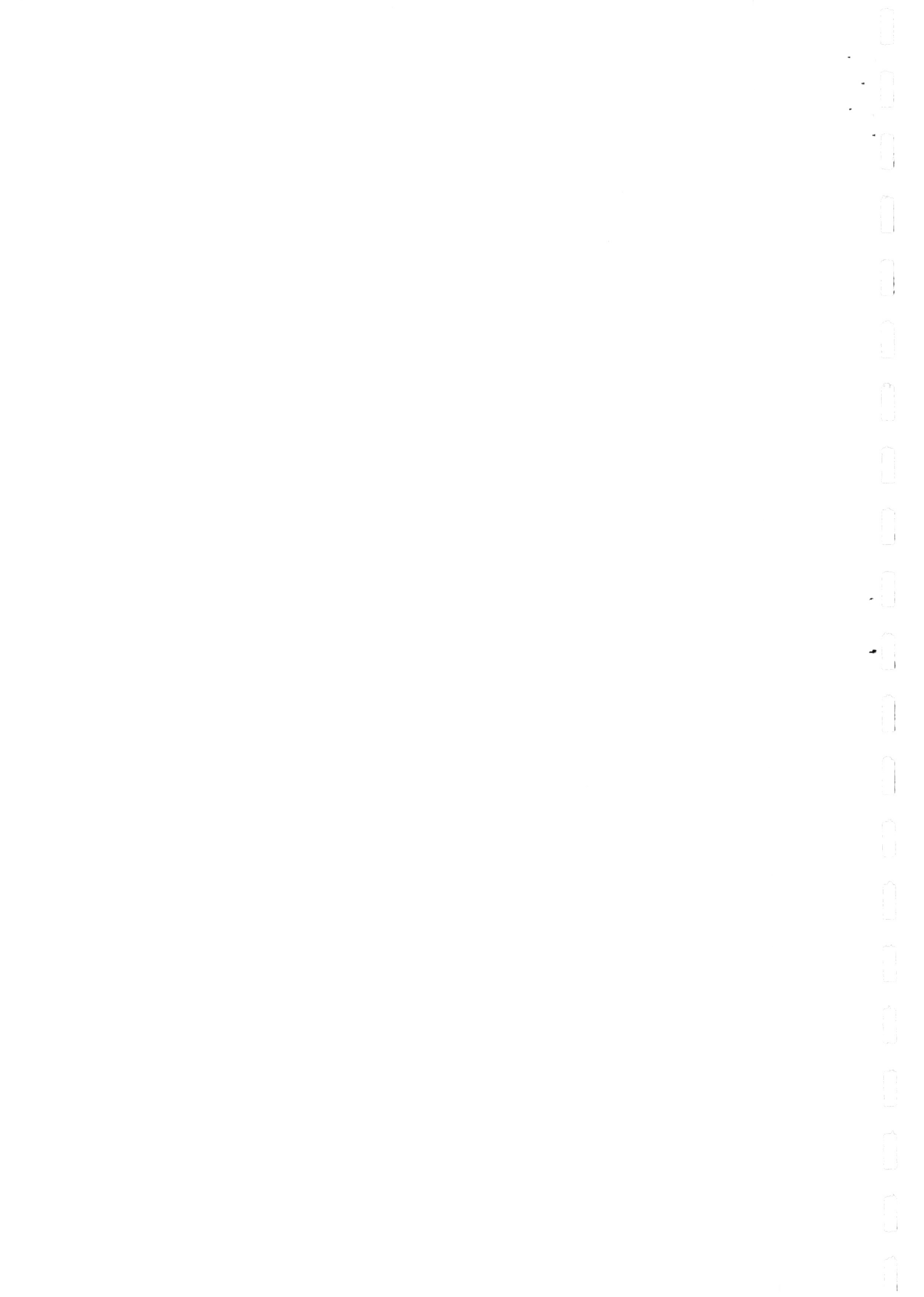
The combination of the two petroleum and electricity subsectors under a single regulator as provided by Parliament in the subject Bills is financially and economically beneficial for all the stakeholders.

We are available to offer any clarification to the Standing Senate Committee on Energy.

Yours *Sincerely*

Pavel Robert Oimeke
DIRECTOR GENERAL





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.

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>

			<p>waters, and the inward boundaries of which may be identified by the Kenyan coastal Counties, pursuant to the authority of the Maritime Zones Act 1989.</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;</p> <p>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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		<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>“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>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

			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>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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			<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>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>(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>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 <u>Constitution of Kenya, Environment Management and Co-ordination [Amendment] Act 2015, the Environmental (Strategic Assessment, Integrated Impact Assessment and Audit) Regulations, 2017</u> 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>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>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>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>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>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 <u>Energy Act of 2018</u> 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>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>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 <u>Fisheries Management and Development Act 2016</u> and the <u>Petroleum (Exploration, Development and Production) Act 2018</u>, 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>(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>(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>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>(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>monitoring plan; and</p> <p>(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>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>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, 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 unpractical 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> <p>(a) amend a term or condition of, add a term or condition to, or delete a term or condition from, an order;</p> <p>(b) revoke an order; or</p> <p>(c) amend a typographical error in an order.</p> <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> <p>(a) this Act or the regulations;</p> <p>(b) a term or condition of a licence or permit; or</p> <p>(c) an order,</p> <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> <p>(a) establishing the boundaries of the marine renewable-electricity area;</p> <p>(b) specifying the types of connected generators that may be licensed to operate within the marine renewable-electricity area;</p> <p>(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;</p> <p>(d) restricting the application or operation of an enactment within the marine renewable-electricity area;</p> <p>(e) requiring the approval of the Cabinet Secretary before a licence, permit, approval, authorization or</p>
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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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			<p>of such lease shall be extended by adding thereto any such suspension period, and the Republic of Kenya shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the Republic of Kenya.</p> <p>4. Any person who proposes to make use of sand, gravel and shell resources found in the outer Continental Shelf shall enter into a Memorandum of Agreement with the Cabinet Secretary concerning the potential use of those resources. The Cabinet Secretary shall notify the <u>Committee on Environment and Natural Resources, Committee on Energy, Communication and Information Committee of the National Assembly and Committee on Energy, Roads and Transportation, Committee on Agriculture, Land and Natural Resources of the Senate</u> on any proposed project for the use of those resources prior to the use of those resources.</p> <p>5. Timing and location of marine renewable-electricity areas in the outer Continental Shelf shall be based on a consideration of</p> <ul style="list-style-type: none"> (a). existing information concerning the geographical, geological, and ecological characteristics of such areas; (b). an equitable sharing of developmental benefits and environmental risks among the various areas; (c). the location of such areas with respect to, and the relative needs of, regional and national energy markets; (d). the location of such areas with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sea lanes, potential sites of deep water ports, and other anticipated uses of the resources and space of the outer
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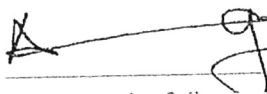
			<p>Continental Shelf;</p> <p>(e). the interest of potential oil and gas as well as marine renewable energy electricity producers in the development of oil and gas resources as well as marine renewable energy electricity as indicated by exploration or nomination;</p> <p>(f). laws, goals, and policies of affected Counties which have been specifically identified by the Governors of such Counties as relevant matters for the Cabinet Secretary's consideration;</p> <p>(g). the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and</p> <p>(h). relevant environmental and predictive information for different areas of the outer Continental Shelf.</p> <p>6. Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the National Government.</p> <p>7. Prior to any construction pursuant to a marine renewable-electricity area lease issued after the date of enactment of this Act in any area of the outer Continental Shelf, or issued or maintained prior to such date of enactment in any area of the outer Continental Shelf, with respect to which no marine renewable energy resource has been determined in exploitable quantities prior to such date of enactment, the lessee shall submit a development and generation plan a statement describing all facilities and operations, other than those on the lease area, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and</p>
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			<p>operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented, how much safeguards are to be implemented and how such standards are to be met.</p> <p>8. Except for any privileged or proprietary information (as such term is defined in regulations issued by the Cabinet Secretary), the Cabinet Secretary, within ten days after receipt of a plan and statement, shall (i) submit such plan and statement to the County Governor of any affected County and, upon request and (ii) make such plan and statement available to the public.</p>

Please reply to this email (and avail a copy of the final bill signed into law by the President) as a confirmation of receiving my written memoranda.

Respectfully yours,

Eric



Digitally signed by Eric
Mwangi Njoroge
DN: cn=Eric Mwangi
Njoroge, o=Shernas Limited,
ou=Energy and Wildlife,
email=Ericnjoroge@hotmail.
com, c=KE
Date: 2018.08.20 08:02:52
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20 AUG 2018

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

20th August 2018

Dear Mr. Jeremiah Nyegenye

RE: Submission of Memorandum – The Petroleum Bill
(National Assembly Bills No 48 of 2017)

D/COM
Kindly deal
22/08/18
SDCB

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

It appears from the Petroleum Bill 2017 that the Petroleum companies wish to have control over all National Government properties. Kenya should not allow this.

Nature Kenya – the East Africa Natural History Society, founded in 1909 – wishes to bring to your attention Clause 107 of the current Petroleum Bill. It reads:

107. (1) For, the purpose of the production and transportation of upstream petroleum, a contractor may erect, fix, install or lay any oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or National Government property in the manner and on the conditions as provided in this Act.

This third and current version of the Bill allows oil and gas pipelines to go across any National Government property. National Government property of course includes national parks, forest reserves, heritage sites, and other sites such as State House and Parliament buildings!

It is however against our national interests to give petroleum companies full access to all National Government properties in a single paragraph. It may indeed be necessary for some oil and gas pipelines to go through some protected areas. This can be processed in the normal manner, with respect for the value of natural resources, heritage and energy.

We therefore urge the National Assembly and the Senate to amend the Petroleum Bill 2017 as follows:

DELETE "National Government property" from Clause 107 (1) and (2)

And Add a new sub-section stating:

"No oil or gas pipelines, other infrastructure or apparatus may be erected, fixed, installed or laid in, through, upon, under, over or across, national parks, forest reserves, national monuments, sites of cultural or national importance, key biodiversity areas, Indigenous forests and wetlands, unless approved by Parliament after an independent Strategic Environmental Assessment with full public participation."

Nature Kenya would be happy to answer questions you may have or appear before a Senate committee to explain our position. A short history of Nature Kenya is attached.

Sincerely,

Dr. Paul Matiku
Executive Director, Nature Kenya

(2)

Class Assist - ~~Nature Kenya~~ Energy

Please bring to the attention of the Committee
22 AUG 2018

Committee
22/08/18



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.

ANNEX 4 LIST OF PARTICIPANTS AT PUBLIC HEARING

PARLIAMENT OF KENYA



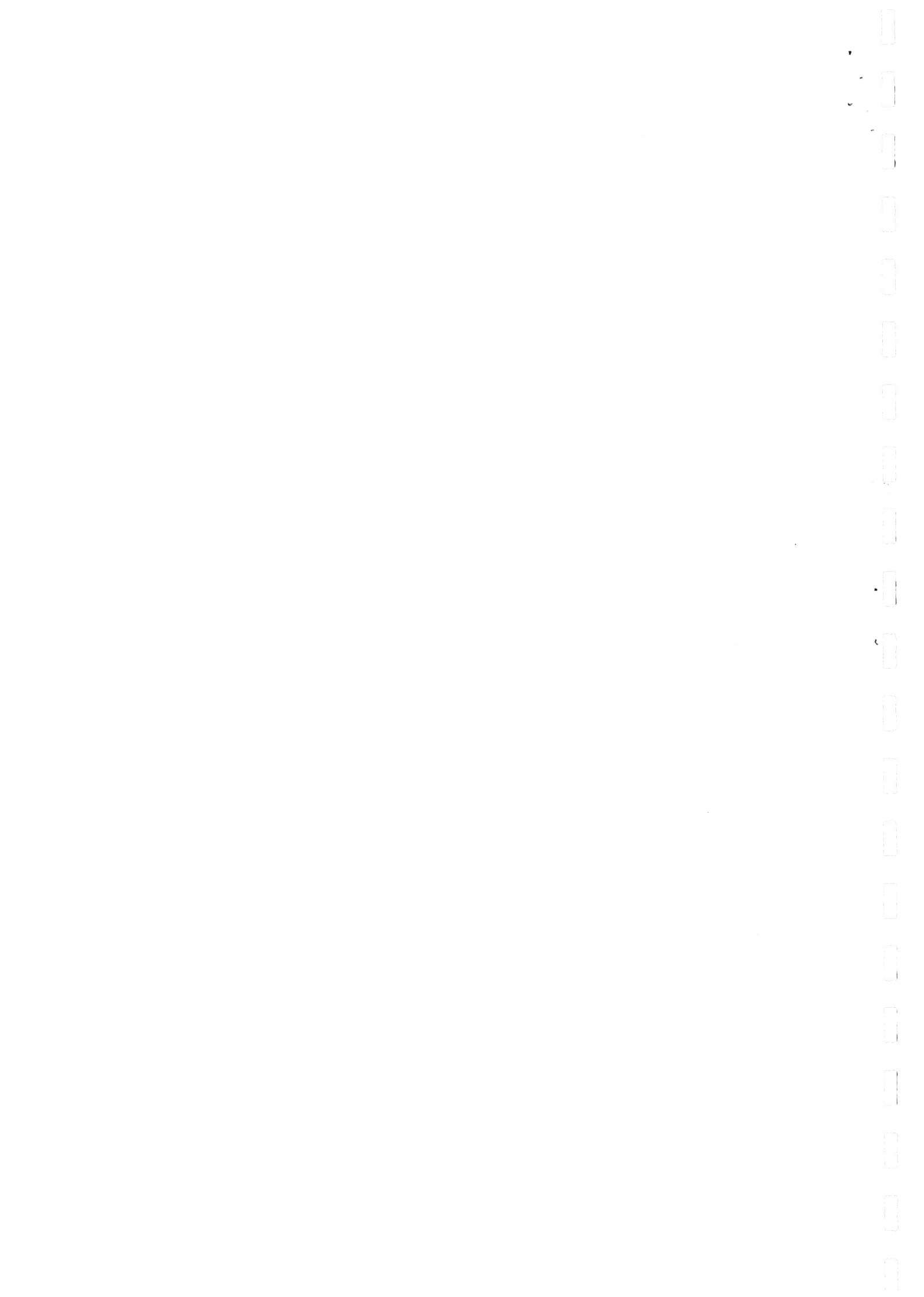
THE SENATE

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

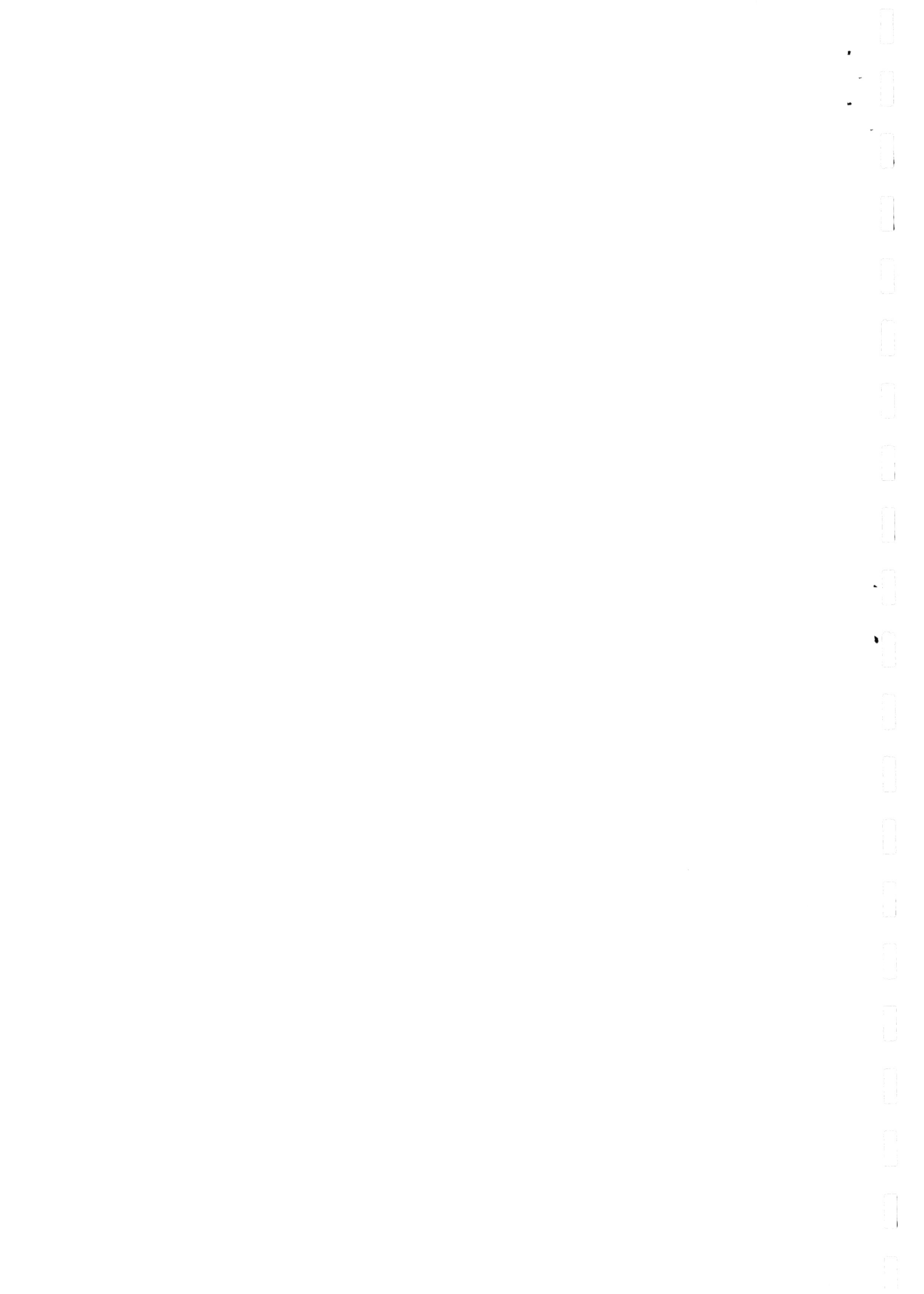
DATE: 22ND AUGUST, 2018 VENUE: Mini Chamber, County Hall.

REGISTRATION FORM

NO.	NAME	INTITUTION	CONTACT	SIGN
1.	Rehema Mohamed	KOGA	rehema@kogake.com 0725229339	
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3.	Arnold Mahero	KOGA	arnold.mahero@kogake.com 0703484805	
4.	Evelyn Mwangi	KOGA	evelyn.mwangi@lullowoil.com 0724131530	
5.	CHARLES WANGUITU	PLATFORM ON OIL & GAS	wanguitu@kaspog.org	
6.	ANGELA MUTSOTSO	PLATFORM ON OIL & GAS	mutsotso@kaspog.org	



ANNEX 5 MINORITY REPORT



REPUBLIC OF KENYA



TWELVETH PARLIAMENT

THE SENATE

STANDING COMMITTEE ON ENERGY

A MINORITY REPORT ON THE CONSIDERATION OF THE
PETROLEUM BILL (NATIONAL ASSEMBLY BILLS NO 48 OF
2017)

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

SEPTEMBER, 2018

A handwritten signature or mark is located at the bottom center of the page. It appears to be a stylized, cursive signature.

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 Petroleum Bill (National Assembly Bills No. 48 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 22nd 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. 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. Subsequent versions of the bill resulted in a singular regulator for the Energy sector for upstream, midstream and downstream oil as well as the energy sector in general hence the need to establish a regulator for the petroleum sector.

2. Parliamentary Ratification of Production Sharing Contracts

Article 71 of the Constitution of Kenya provides for the ratification by Parliament of agreements relating to natural resources. The laying of these agreements before Parliament would make them public documents enabling Kenyans to know their contents and complying with the constitutional provisions on access to



information. It was submitted that the Bill as drafted at Clause 31 requires the submission of the Production Sharing Contract and the Field Development Plan together.

The Production Sharing Contracts (PSC) outlines the agreement between the government and the investor, the terms for the development of the resources and the mechanisms for revenue generation, revenue sharing and dispute resolution. Investors cannot develop a Field Development Plan (FDP) without certainty and conclusion of the PSC. The submission of these documents together would reduce the power of Parliament to simply that of acceding (*'rubber stamping'*) without the opportunity to amend in any way the already agreed contracts.

3. Direct involvement of County Governments

Submissions from the Council of Governors sought to ensure the involvement of County Government at every stage of decision-making. In many instances, the Cabinet Secretary is empowered to consult with relevant stakeholders. The requirement to consult or coordinate with County Government in reaching and implementing decisions will ensure cooperation and coordination between the two levels of Government.

4. Management of county petroleum revenue share

The County Governments are required to establish a board of trustees for the prudent utilization of petroleum revenues to counties and local communities. The provisions do not provide the requirements for appointment to the board of trustees or the management of the funds in accordance with the Public Finance Managements Act.

5. Exemption from permits

The Bill provides for instances where construction of petroleum infrastructure may be exempt from permits. It specifically provides for emergency construction works. This exemption may be open to abuse where construction work are arbitrarily undertaken and justified as emergency works.

6. Standards for petroleum products

The Bill provides for a penalty on conviction for the sale of adulterated petroleum products, a fine not less than five million shillings or imprisonment for a term of not less than 2 years. These penalties are not punitive enough.



7. Designated parking for petroleum tankers

There is a need to align the provisions with other legislation that deal with roads and infrastructure planning and more importantly to take into account how infrastructure should be put up to accommodate tankers and have in place designated parking in order to accommodate tankers for public safety.

8. Consolidated Energy Fund

This should be a Petroleum Fund. It is not appropriate to have an Energy Fund into which funds from the Petroleum sector are deposited.

9. Community Rights

Clause 125 provides for right of the community where upstream petroleum operations are to be undertaken. The provisions are however not clear on the medium of communication to be used to communicate to the communities, the timeline for the payment of compensation in cases of compulsory acquisition of lands or the penalties payable by a contactor of compensation due to a community where environmental damage or pollution occurs in accordance with the polluter pays principles.

10. Petroleum Revenue Shares

The Bill provided for the sharing of revenues from petroleum as per the agreed quotas of 75% to the National Government, 20% to County Governments and 5% to local communities. This ratio does not adequately compensated communities in resources rich areas for the exploitation of their resources.

RECOMMENDATIONS

1. Review petroleum sector regulation provisions

The Bill as drafted as provides the framework for upstream, midstream and downstream petroleum. Moreover, 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. It is prudent to provide for a regulator for petroleum. The Bill should be amended to –



- a) establish the Petroleum Regulator Authority for the purposes of regulating upstream, midstream and downstream petroleum (*Clause 14*);
- b) provide for direct representation of counties on the National Upstream Petroleum Advisory Committee (*Clause 12*);
- c) review to provide a balance so as to ensure that the CS does not reject without reason or continuously rejects the advice form the upstream petroleum advisory Committee (*Clause 13 (2)*); and
- d) Provide for the establishment of a petroleum tribunal.

2. Presentation of Production Sharing Contract prior to Field Development Plan

For Parliament to play its role of oversight effectively on behalf of Kenyans; the Production Sharing Contract should be submitted to Parliament prior to the development of the Field Development Plan following which ratification a field development plan should then be submitted to Parliament for ratification.

3. Ensure consultation and coordination with County Governments

In order to ensure coordination with County Governments that the Bill be amend to require consultation and coordination with County Governments.

4. Management of county petroleum revenue share

Clause 58 (4) should be amended to outline the requirements for appointment to the boards of trustees, the standard to be adhered to for the management of funds and provide for audit of the funds in accordance with public finance management legislation.

5. Exemption from permits

To avoid abuse of the exemption availed to emergency works. Clause 88 should be amend to provide that the exemption is availed for “repair, replacement and rehabilitation’ and not for construction.

6. Standards for petroleum products

The penalty for the sale of adulterated petroleum should be the revocation of the permit to trade in order for it to be deterrent enough.

7. Designated parking for petroleum tankers



There is a need to rephrase the provision to ensure that tankers are only parked in the designated spaces. Clause 98 needs to be reviewed to take into account the provisions of the relevant laws and regulations.

8. Consolidated Energy Fund

Amend the Bill to establish a Consolidated Petroleum Fund

9. Community Rights

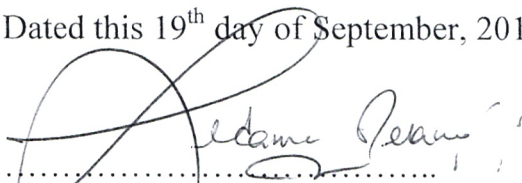
The provisions on community right should be amended to elaborate to provide for-

- a) Communication through local radio station for local communities
- b) require that compensation be paid before commencement of works in cases of compulsory acquisition of land;
- c) provide for specific penalties to be paid by contractors in cases where environment pollution occurs; and
- d) make regulations to provide for ground for compensation in cases of environmental damage and level of compensation payable to communities.

11. Petroleum Revenue Shares

The Bill should be amend to provide for the sharing of revenues in the following quotas, 70% to the National Government, 20% for County Governments and 10% for local communities.

Dated this 19th day of September, 2018



SEN. LEDAMA OLEKINA
MEMBER
STANDING COMMITTEE ON ENERGY