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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE CONSIDERATION OF
THE STATUE LAW (MISCELLANEOUS AMENDMENT)(NO. 21) BILL, 2019

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBER
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2019

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CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendment)(No.21) Bill, 2019 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party, and it seeks to amend many other laws but the ones relevant to the Committee is:

- The Wildlife Conservation and Management Act (No. 47 of 2013)

The Committee considered the proposed amendments to the Act above for submission to the Departmental Committee on Justice and Legal Affairs pursuant to the Communication by the Hon. Speaker issued on 3rd April, 2019.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 21) Bill, 2019 seeks to amend the **Wildlife Conservation and Management Act, 2013 (No. 47 of 2013)**

s to remove ambiguities currently existing in the Act.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sitting. Further, I wish to express my appreciation to the Committee Members for the immense contributions towards the preparation and production of the report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Environment and Natural Resources, to submit its report on the consideration of the Statute Law (Miscellaneous Amendment) No. 21 Bill, 2019 for consideration Pursuant to Standing Order 127

Signed..........Date.....7/5/2019.....

HON. KAREKE MBIUKI, MP
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

EXECUTIVE SUMMARY

On 3rd April, 2019, the Statute Law (Miscellaneous Amendments) (No. 21) Bill, 2019 was read a First Time and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. The Departmental Committee on Environment and Natural Resources held one meeting to consider the Bill.

On 10th April, 2019, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from: Nature Kenya, Bowmans and Taita Taveta County Civil Society Network. The Committee also sought for views from the Ministry of Tourism and Wildlife and from the Kenya Law Reform Commission.

The Committee observed that:

1. The proposed amendments to the Wildlife Conservation and Management Act (No. 47 of 2013) were mainly meant to correct typographical errors.

The Committee having considered the proposed amendments to the Wildlife Conservation and Management Act, 2013 and the views from all the stakeholders, resolved that to move the amendments to the Wildlife Conservation and Management Act, 2013 as contained in the recommendation part of this report.

1.0 PREFACE

1.1 Establishment of the Committee

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandate, pursuant to the *Standing Order 216 (5)*, is as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) **To study and review all the legislation referred to it;**
- d) To study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to:

- i) Climate Change
- ii) Environment Management and Conservation
- iii) Forestry
- iv) Water Resource Management
- v) Wildlife
- vi) Mining and Natural Resources
- vii) Pollution and Waste Management

In executing its mandate, the Committee oversees the following State Departments, namely:

- Ministry of Water and Sanitation;

- Ministry of Environment and Forestry;
- The State Department for Wildlife; and
- The State Department for Mining.

1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

No.	Name	Constituency	Party
1.	The Hon. Kareke Mbiuki, M.P., Chairperson	Maara	Jubilee Party
2.	The Hon. Sophia Abdi Noor, M.P. Vice Chairperson	Ijaara	PDR
3.	The Hon. Benjamin Jomo Washiali, M.P., CBS	Mumias East	Jubilee Party
4.	The Hon. David Kangogo Bowen, M.P.	Marakwet East	Jubilee Party
5.	The Hon. Francis Chachu Ganya, M.P.	North Horr	FAP
6.	The Hon. Ali Wario Guyo, M.P.	Garsen	Wiper Party
7.	The Hon. Beatrice Cheron Kones, M.P.	Bomet East	Jubilee Party
8.	The Hon. Charity Kathambi Chepkwony, M.P	Njoro	Jubilee Party
9.	The Hon. Hilary Kiplang'at Kosgei, M.P.	Kipkelion West	Jubilee Party
10.	The Hon. Peter Kimari Kihara, M.P	Mathioya	Jubilee Party
11.	The Hon. Benjamin Dalu Tayari, MP.	Kinango	ODM
12.	The Hon. Charles Ong'ondo Were, M.P.	Kasipul	ODM
13.	The Hon. Nasri Sahal Ibrahim, M.P.	Nominated	FORD K
14.	The Hon. Rozaah Buyu. M.P.	Kisumu County	ODM
15.	The Hon. Said Hiribae, M.P.	Galole	FORD K
16.	The Hon. Hassan Oda Hulufu, M.P.	Isiolo North	KPP
17.	The Hon. Amin Deddy Mohamed Ali, M.P.	Laikipia East	Jubilee Party
18.	The Hon. Rehema Hassan, M.P.	Tana River County	MCC
19.	The Hon. (Eng.) Paul Musyimi Nzengu, M.P.	Mwingi North	Wiper Party

1.4 Committee Secretariat

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|----------------------|--------|---------------------------------|
| 1. Ms. Esther Nginyo | | - Clerk Assistant II/Lead Clerk |
| 2. Mr. Dennis Mogare | Ogechi | - Clerk Assistant III |
| 3. Mr. Sidney Lugaga | | - Legal Counsel I |
| 4. Ms. Winnie Kulei | | - Research Officer III |
| 5. Ms. Yunis Amran | | - Fiscal Analyst III |

2.0 BACKGROUND

The Statute Law (Miscellaneous Amendments) (No. 21) Bill, 2019 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party. It was read a First Time on 3rd April, 2019 and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. It seeks to amend the following laws under the Environment and Natural Resources sector, the Wildlife Conservation and Management Act (No. 47 of 2013).

The Departmental Committee on Environment and Natural Resources considered the amendments as contained in the Statute Law (Miscellaneous Amendment) No. 21, Bill, 2019 for submission to the Departmental Committee on Justice and Legal Affairs pursuant to the Communication by the Hon. Speaker issued on 3rd April, 2019.

The Statute Law (Miscellaneous Amendment) No. 21, Bill, 2019 seeks to amend the Wildlife Conservation and Management Act (No. 47 of 2013) so as to remove the ambiguities that are in the Act.

On 10th April, 2019, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from the following stakeholders:-

- a) Nature Kenya;
- b) Taita Taveta County Civil Society Network; and
- c) Bowmans.

The Committee also sought for views from the Ministry of Tourism and Wildlife and from the Kenya Law Reform Commission through a Letter dated 24th April, 2019.

2.1 Clause by Clause Analysis

The following is clause by Clause analysis of the proposed amendments to the Wildlife Conservation and Management Act (No. 47 of 2013):

1. CLAUSE: s. 23(2)
PROPOSAL: "Delete the word "being" appearing in paragraph (a)."

SECTION: 23 (1). There is established a Wildlife Conservation Trust Fund that shall be vested in a governing body established in accordance with subsection (2).
(2) The governing body referred to in subsection (1) shall serve as a public-private partnership and comprise -
(a) a Chairperson being appointed the Cabinet Secretary;

EFFECT/ OBSERVATION: The amendment proposes to delete the word “being”. The amendment appears to address a syntax error where the word is not placed in the right order in the sentence structure.

OBSERVATION

Upon deletion of the word “being” appearing in section 23(2)(a), the section if amended shall read:

“A chairperson appointed the Cabinet Secretary”

The resulting amendment shall be ambiguous and ungrammatical.

RECOMMENDATION

The Committee should introduce an amendment during the Committee stage to correct the ambiguity by inserting the word “by” immediately after the word “appointed” so that the paragraph will read:

“(a) A chairperson appointed by the Cabinet Secretary

2. CLAUSE: Delete the words "who shall be the Chairperson "appearing in paragraph (b).”

SECTION: (b) the Principal Secretary in the State Department for the time being responsible for matters relating to wildlife *who shall be the Chairperson*;

EFFECT/ OBSERVATION: The amendment proposes to delete the words "who shall be the Chairperson" appearing in paragraph (b).

Paragraph (a) already provides for the appointment of a Chairperson and thus the need for this amendment.

3.0 SUBMISSION FROM THE STAKEHOLDERS (PUBLIC PARTICIPATION)

The Committee received memoranda from the following:

- i. Nature Kenya
- ii. Taita Taveta County Civil Society Network; and
- iii. Bowmans

The following matrix indicates the proposals from the various stakeholders and our analysis.

3.1 The Wildlife Conservation and Management Act, 2013

CLAUSE	GROUP/ PERSON	PROPOSAL/ AMENDMENT	COMMITTEE'S RECOMMENDATIONS
23(2)	Nature Kenya	<p>The Sponsor proposes that Committee inserts a new amendment under section 23(2)(e) to include at least one representative from local communities and civil society organizations in the governing body.</p> <p><u>RATIONALE</u> The objectives of the fund are designed to ensure that beneficiaries and contributors are drawn from a wide spectrum of stakeholders.</p>	The Committee agreed to the proposal, however, it proposed to include one community conservancy representative under 23(2)(e).
23(2)(a)	Bowmans	<p>The Sponsor proposes that Committee inserts a new amendment under section 23(2)(a) to read "The Cabinet Secretary who will be the Chairperson"</p> <p><u>RATIONALE</u> Upon deletion of the word "being" appearing in section 23(2)(a) if amended shall read: "23(2)(a) A chairperson appointed the Cabinet Secretary" Therefore if the intention is to appoint the Cabinet Secretary as the Chairperson then the wording should be clear and communicate the latter intention.</p>	The Committee noted that it had proposed to insert the word "by" immediately before the words "the Cabinet Secretary" to address the ambiguity in this paragraph.

25/ Third Schedule	Taita Taveta County Civil Society Network	The sponsor appears to have submitted a memoranda/petition with proposals against proposals submitted under Statute law (Miscellaneous Amendments) Act, No. 18 of 2018. The submissions in the memorandum are not addressed to SLMAB Bill. No. 21/2019	The proposals were addressing the Statute law (Miscellaneous Amendment) Act, No. 18 of 2018. The Committee therefore did not address the section addressed as it had been overtaken by event.
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3.2 Submission by the Ministry of Tourism and Wildlife

The Cabinet Secretary, Ministry of Tourism and Wildlife appeared before the Committee on Thursday, 2nd May, 2019 and submitted on the Statute Law (Miscellaneous Amendment) Bill, 2019 as follows, that:

- i. The Ministry had written to the Attorney General requesting for amendments of Section 23(1) and 23(2) of the Wildlife Conservation and Management Act No. 47 of 2013 as was amended by the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018 which came into force on the 18th January, 2019;
- ii. The Ministry had observed that the new section 23(2) paragraph (a) and (b) provided for two chairpersons of the Wildlife Conservation Trust Fund and this would make the establishment of the Endowment Fund untenable;
- iii. The Ministry therefore proposed that the appointment of the Chairperson be made by the Cabinet Secretary and remove the Principal Secretary for Wildlife as a Chairperson too;
- iv. With the amendments in place, it would be possible to establish the Wildlife Conservation Trust Fund and put a Board of Directors in place.

3.3 Submission by the Kenya Law Reform Commission

The Kenya Law Reform Commission submitted on the Statute Law (Miscellaneous Amendment) Bill, 2019 as follows, that:

1. That deletion of the word “being” appearing in paragraph(a) of section 23 (2),
Under Section 23 (2) (a), the deletion of the word “being” will amount to an ambiguity because the sequence of words and phrases may give rise to an improper legislative

sentence. Accordingly, we propose textual amendment by inserting the word “by” between “appointed” and “the Cabinet Secretary” to have a clear legislative sentence.

2. The deletion of the phrase “who shall be the chairperson...” appearing in paragraph (b) of Section 23 (2).

By deleting the phrase “who shall be the chairperson” under Section 23 (2) (b) is appropriate. Retaining it alters the original meaning as per the principal Act because the section states the distinct members who shall comprise the body established under subsection (2). Including the phrase will create an ambiguity on who really is the chairperson.

3. Effectively, the amendments under discussion seem to rebut previous amendments that had been enacted under Statute Law (Miscellaneous Amendment) Act, 2018.

4.0 COMMITTEE'S OBSERVATIONS

The Committee made the following observations, that;

- i. The Marginal note 'The Wildlife Endowment Fund' needed to be amended to read 'The Wildlife Conservation Trust Fund' as the Endowment Fund is limiting.
- ii. There was need to effect the amendments as proposed in the Statute Law (Miscellaneous Amendment) Bill, 2019 so as to cure the ambiguities that were existing in the Wildlife Conservation and Management Act, 2013.
- iii. There was need to include a representative of community conservancy in the body governing the Trust Fund for it to be more inclusive. However, there was need to ensure that the numbers are within the mwongozo principles on leadership.

5.0 COMMITTEE'S RECOMMENDATION

The Committee having considered the Bill and the submissions from the stakeholders makes the following recommendations;

SCHEDULE

THAT the Schedule to the Bill be amended in the proposed amendments to the **Wildlife Conservation and Management Act, 2013** -

(a) by inserting the following new amendment in its proper numerical sequence –

23(1) Delete the word “Endowment” in the marginal note and substitute therefor the words “Conservation Trust”;

Justification

The Endowment Fund is limiting and therefore the need to make a conservation trust fund.

(b) by deleting the proposed amendments to section 23 (2) (a) and substituting therefor the following new amendments –

23(2) Delete paragraph (a) and substitute therefor the following new paragraph –
–
“(a) a Chairperson appointed by the Cabinet Secretary;”

Justification

This is to correct ambiguities and syntax error.

Insert the words “and one of whom shall be a representative nominated by an umbrella wildlife conservancy body” immediately after the word “matters” appearing in paragraph (e);

Justification

This will make the conservancy fund to be more inclusive.