

**THE SENATE STANDING COMMITTEE ON LANDS AND NATURAL RESOURCES
OF KENYA**
ATTENDANCE SCHEDULE
**DURING PUBLIC HEARING ON THE MINING BILL, 2014 HELD AT SHIMBA HILL HALL,
KICC ON 26TH FEBRUARY, 2015**

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REPUBLIC OF KENYA



PARLIAMENT

THE SENATE



Paper laid by the
Chairperson of the
Standing Committee on
Land & Natural
Resources on 18/03/2015

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

ELEVENTH PARLIAMENT-THIRD SESSION

REPORT

ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL, 2014

Hon. Speaker
You may approve
for laying.
OOB
17/03/15

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

MARCH 2015

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ACRONYMS

- ASALs - Arid and Semi-Arid Lands
- CEO - Chief Executive Officer
- EDE - End Drought Emergencies
- KICC - Kenyatta International Convention Centre
- NDMA - National Drought Management Authority
- PS - Principal Secretary

PREFACE

1. The Standing Committee on Land and Natural Resources was constituted on Thursday 27th February 2014 during the Second Session of the Eleventh (11th) Parliament pursuant to the provisions of Senate Standing Order No.208.
2. The Committee is mandated, under the Second Schedule of the Senate Standing Orders, *to consider all matters related to lands and settlement, environment, forestry, water resource management and mining,*
3. In executing its mandate, the Committee oversees the following Ministries;
 - a) Land, Housing and Urban Development,
 - b) Environment, Water and Natural Resources and
 - c) Mining.
4. The Committee comprises of the following Members:

Sen. Lenny Kivuti	- Chairman
Sen. George Khaniri	- Vice-Chairman
Sen. Christopher Obure	- Member
Sen. DawsonMwazo	- Member
Sen. Henry Ndiema	- Member
Sen. Boy Juma Boy	- Member
Sen. Isaac Melly	- Member
Sen. Liza Chelule	- Member
Sen. Martha Wangari	- Member

1.0 INTRODUCTION

Mr. Speaker Sir,

The National Drought Management Authority Bill originated in the National Assembly and was published on 15th November, 2013 by Hon. Francis Chachu Ganya, the Member of Parliament for North Horr Constituency. The Bill was passed in the National Assembly (Bill No. 42 of 2013), with amendments on 12th November, 2014.

The Bill was then referred to the Senate and read for the first time on 3rd December, 2014. According to Standing Order 148 of the Senate Standing Orders, the Senate proceeds with a Bill that originates in the National Assembly in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order 129. Accordingly, Under Standing Order 130 (1), the Bill was committed to the Committee on Land and Natural Resources.

Pursuant to Article 118 of the Constitution and Standing Order No. 130 (4), of the Senate Standing Order, the Standing Committee of the Senate on Land and Natural Resources facilitated a public hearing forum that was held on 12th February, 2015 at Shimba Hills Hall, Kenyatta International Convention Centre to take into account the views and recommendations of the public while preparing this report.

According to its objects and memoranda, the Bill seeks to give the National Drought Management Authority statutory status such that the establishment of the Authority is anchored in the Statute; rather than in an executive order. The Authority is currently established under the National Drought Management Order, Legal Notice 171 of 2011 under the State Corporations Act. This Order establishes a National Drought Management Authority as a state corporation and vests in the Authority various functions and powers that are aimed at putting in place measures for the prevention of drought and mitigating measures against its adverse impacts in Kenya.

The Committee at its meeting held on Tuesday 10th March 2015, considered the submissions from the public hearing and recommended that the National Drought Management Authority Bill 2014 be adopted subject to the amendments contained in *Annex I* to be moved at the Committee Stage.

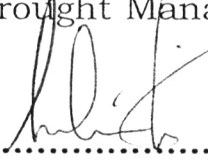
The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

ACKNOWLEDGMENT

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearings. The Committee also thanks members of the public who made submissions, both orally and in writing.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 203, to present a report of the Standing Committee on Land and Natural Resources on the National Drought Management Authority Bill, 2014 for consideration by the House.

SIGNED.....

DATE.....12/03/2015.....

**SEN. LENNY KIVUTI,
CHAIRMAN, LAND & NATURAL RESOURCES COMMITTEE**

2.0 OVERVIEW OF THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL, 2014

Mr. Speaker Sir,

The Bill is divided into five **(V) parts** and one schedule as follows;

Part I of the Bill contains preliminary provisions.

Part II of the Bill establishes the National Drought Management Authority which shall be the successor to the former Authority existing under Legal Notice 171/2011. The functions of the Authority are set out in **Clause 5** of the Bill and they include-

- (a) exercise overall coordination over all matters relating to drought management including implementation of policies and programmes relating to drought management;*
- (b) coordinate drought response initiatives being undertaken by other bodies, institutions and agencies;*
- (c) promote the integration of drought response efforts into development policies, plans, programmes and projects in order to ensure the proper management of drought;*
- (d) develop, in consultation with stakeholders, an efficient drought early warning system and operate the system;*
- (e) facilitate national and county level drought contingency processes and the preparation of national and county level drought contingency plans;*
- (f) establish and review, in consultation with stakeholders and relevant institutions and agencies, drought preparedness strategies;*

Under **Clause 6(1)**, the Authority shall have all powers necessary for the execution of its functions under the Act.

Clause 7 requires the Authority to establish and facilitate institutional co-ordination frameworks at the national and county levels of government by providing appropriate policy guidance.

Clause 8 (1) vests the management of the Authority in a Board which shall comprise—

- (a) a chairperson who shall be competitively appointed by the Cabinet Secretary with the approval of Parliament;*
- (b) the Principal Secretary in the ministry for the time being responsible for matters relating to drought management or a person designated by the Principal Secretary;*
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a person designated by the Principal Secretary;*
- (d) four persons who shall be competitively appointed by the Cabinet Secretary with the approval of Parliament: and*
- (e) the Secretary.*

Under **Clause 8(2)**, a person shall qualify for appointment under subsection (1)(a) or (d) if the person—

- (a) holds a degree from a recognized university;*
- (b) has at least ten years experience in the relevant field;*
- (c) meets the requirements of Chapter Six of the Constitution; and*
- (d) is not a State officer.*

Clause 8(3)-In appointing the members of the Board under subsection (1)(a) and (d), the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.

Clause 8(4) -The members of the Board shall, at the first meeting of the Board and whenever need arises, elect a vice-chairperson from amongst the members appointed under subsection (1)(d).

Clause 8(5)-The chairperson and the members of the Board appointed under subsection (1)(d) shall hold office for a term of four years and shall be eligible for reappointment for a further and final term of four years.

Clause 12(1)-There shall be a Secretary of the Authority who shall be appointed by the Board through an open, transparent and competitive recruitment process.

Clause 12(2)-A person shall be qualified for appointment as the Secretary if the person—

- (a) holds a degree from a recognized university;*
- (b) has at least ten years post-qualification experience;*
- (c) has at least five years experience in the relevant field; and*
- (d) meets the requirements of Chapter Six of the Constitution.*

(3) The Secretary shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Secretary shall, in the performance of the functions and duties of office, be accountable to the Board.

(5) The Secretary shall be—

- (a) the chief executive officer of the Authority and shall be responsible for the day to day management of the Authority;
- (b) the secretary of the Board;
- (c) the head of the secretariat;
- (d) the custodian of all of the Authority's records;
- (e) responsible for-
 - (i) executing decisions of the Board;
 - (ii) facilitating, coordinating and ensuring execution of the Authority's mandate;
 - (iii) preparing and submitting for approval, by the Board, programmes

Clause 15- Remuneration of Members of the Board to be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Part III deals with the financial provisions. **Clause 18 (1)** establishes a fund to be known as the National Drought Emergency Fund which, shall be administered by the Secretary with the overall guidance and supervision of the Board.

(2) There shall be paid into the Fund—

- (a) such monies as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;*
- (b) such monies as may be appropriated by the **National Assembly**;*
- (c) such monies including levies and fees as may be payable to the Authority pursuant to this Act or any other written law;*
- (d) such gifts as may be given to the Authority; and*
- (e) monies from any other source provided, donated*

or lent to the Authority.

(3) The objective of the Fund shall be to—

- (a) facilitate timely response to drought during its different stages;
- (b) provide for a common basket emergency fund in order to minimize the negative effects of drought;
- (c) provide funds for capacity and technical expertise development to improve on drought management;
- (d) finance the establishment, management and co-ordination of projects, activities or programmes to further the foregoing purposes.

Part IV sets out Miscellaneous Provisions including the requirement that the Secretary tables an annual report on the operations of the Authority to the **National Assembly (Clause 24(3))**.

Part V(Clause 31) sets out the Savings, Transitional and Repeal provisions. These include provisions providing that all assets and liabilities of the former Authority shall be transferred to and shall vest in the Authority and that on the commencement of the Act, the Order shall stand repealed (**Clause 32**).

The Schedule sets out provisions regulating the conduct of the Business and Affairs of the Board.

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

Mr. Speaker Sir,

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 130 (4), the Committee held a one day public hearing at **KICC** on 12/2/2015 and received the following representations concerning the bill under consideration;-

3.1 Submissions from the Ministry of Devolution and Planning

The Principal Secretary (PS) of the State Department of Devolution in the Ministry of Devolution and Planning, Ms. Mwanamaka Mabruki conveyed apologies from the Cabinet Secretary, Ms. Ann Waiguru.

The PS read a statement from the Cabinet Secretary which highlighted the following issues:

- 1) More than 80% of Kenya is arid and semi-arid;
- 2) The Government is focused on ensuring sustainable development of the arid and semi-arid lands (ASALs);
- 3) The Government is also focused on ensuring the resilience of communities in ASALs towards the negative effects of drought;
- 4) The National Drought Management Authority is a statutory body established under the State Corporations Act Cap 446 Legal Notice 171 dated 24th November, 2011. Its mandate is to ensure that drought does not become famine and the effects of drought are sufficiently mitigated;
- 5) NDMA supports county governments by providing a secretariat to the county steering groups;
- 6) The Ministry was involved in the process of development of the Bill and it provided necessary inputs that were captured in the Bill; and
- 7) An Act of Parliament would strengthen the foundations of the NDMA in addressing drought related challenges in Kenya.

The Committee raised the following concerns:

- 1) How the Bill will enhance the operations of the NDMA because it already in existence;
- 2) What were the views of the Ministry of Devolution and Planning since the passing of the Bill by the National Assembly?
- 3) What was the main disparity between the Bill and the National Disaster Management Bill?

- 4) Since drought had similar impacts or challenges with those of floods, could the mandate of NDMA be expanded to also address floods?
- 5) Whether there was a new strategy or modern techniques to counter the effects of drought in the country because the problem has existed since 1960s;
- 6) What difference in structure the NDMA would have from its current state and when it is anchored in an Act of Parliament;
- 7) Whether the establishment of the NDMA by an Act of Parliament would have a difference in budgetary allocation from its current establishment through legal notice in light of the Government's effort of amalgamation of Parastatals.

Response by the Ministry of Devolution and Planning

The PS, Ms. Mwanamaka Mabruki informed the Committee that:

- 1) The Ministry of devolution and Planning had reviewed the Bill as passed by the National Assembly and the input given had been captured in the Bill;
- 2) The Bill would strengthen the NDMA and enable it to sufficiently undertake its mandate in light of the new EDE strategy;
- 3) An Act of Parliament establishing the NDMA would give it the necessary foundation to ground the Authority to provide sustainability and institutional strength to perform its roles;
- 4) The mandate of NDMA should be limited to address on the impacts of drought only so that it can effectively focus on the special priority of the ASALs which form 80% of the Country.

The CEO of NDMA, Mr. James Oduor stated that;

- 1) In the past NDMA tended to respond to rather than abate the impacts of drought. However, the focus is now on sustainable development of the ASALs with particular focus on five pillar as follows:
 - a) Peace building and conflict management;
 - b) Infrastructure development such as roads;
 - c) Sustainable livelihoods such as agriculture & livestock;
 - d) Human capital such as education, health& nutrition; and
 - e) Disaster Risk Reduction i.e. early warning, coordination & response.
- 2) All elements of disaster issues should ideally be coordinated from one Ministry. However, the current scenario is that the National Disaster Operation Centre is situated in the Ministry of Interior;

whereas the NDMA and Special Programmes are in the Ministry of Devolution and Planning;

- 3) There is need to have one umbrella institution to coordinate other institutions involved in response of disasters; and restructuring done so that other institutions that respond to disasters become departments within the umbrella institution;
- 4) The innovation or new methods of addressing impacts of drought is through the sustainable development approach of the ASALs.

3.2 Written submission by the Cabinet Secretary, Ministry of Devolution and Planning

In her submission, the Cabinet Secretary in the Ministry of Devolution and Planning, Ms. Ann Waiguru stated as follows:

1. Advantages of anchoring the NDMA in a statute

Droughts represent a serious and permanent threat to Kenya; they will always occur. Consequently, the Government's institutional response to that threat should be equally permanent. Stability will be essential for effective planning and oversight of the long-term investments needed to ensure that vulnerability to drought is substantially reduced. The Ministry believes that legislation would provide that long-term stability to a greater extent than a Legal Notice can do.

Further, the powers of the NDMA to ensure effective coordination of multi-sectoral and multi-agency initiatives (such as the Ending Drought Emergency initiative) are less strong in the Legal Notice than they are in the proposed Bill. Therefore, enactment of the Bill would significantly strengthen the NDMA's capacity to lead the design and delivery of complex programmes across Government.

2. Implications of the proposed Bill on the NDMA's structure and resource needs

The NDMA Bill does not expand the functions of the NDMA; rather it strengthens its powers to deliver those functions. For this reason, no change is anticipated to the Authority's structure or any increase in its resource requirements, as a result of enacting the Bill.

3. Advice on the institutional management of floods

The Ministry recognizes that flood management represents a similar challenge to drought management and that it requires a similarly robust response. However, it is important to note that there are many differences between the two: for example, the indicators monitored in a flood early warning system, the types of response, the actors involved and the areas affected would all differ.

Kenya needs a more effective flood management system, but the fear is that integrating this within the mandate of the NDMA at this time would have a negative impact on the Authority's work – particularly at this critical moment when the EDE initiative is on the verge of full roll-out.

The advice of the Ministry would therefore be to explore the possibility of constituting a small specialist team, perhaps within the Ministry of Environment, Water and Natural Resources, which could be tasked with developing the necessary early warning and response mechanisms that sound flood management will require. The NDMA would be ready to offer advice to that team based on its experience of developing and managing comparable systems for drought. Once the flood management system has taken clearer shape, it would then be possible to decide where it would best be located in the long term. For example, there may be good arguments for retaining it within the line ministry, given the close links between sound environmental practices and the incidence of flooding. But the final decision on its institutional home should logically follow decisions on the nature of its functions.

3.3 Submissions from Mr. George Okonji – Senior Citizenry of the Civil Society

Mr. Okonji concurred with the submission presented by the Permanent Secretary and said that flood and drought are correlated.

3.4 Submissions from the Cabinet Secretary, Ministry of Environment, Water and Natural Resources

Clause	Section of NDMA Bill 2013	Existing Text	Proposed Amendment/ Justification
2		Definition of various terms	Need to define its meaning under this bill “Drought”, “Secretariat”
5	a	Exercise overall coordination over all matters relating to drought management including implementation of policies and programmes relating to drought management.	Rewrite to read: “Exercise overall coordination over all matters relating to drought management including implementation of policies, plans: projects and programmes”.
	c	Promote the integration of drought response efforts into development policies, plans, programmes and projects in order to ensure the proper management of drought:	Delete repeated wordings to read: “promote the integration of drought response efforts into development policies, plans, programmes and projects”
	d	Develop in consultation with stakeholders, an efficient drought early warning system and operate the system:	Rewrite to read: “develop and operationalize an efficient drought early warning system in consultation with stakeholders”
	f and g	“establish and review, in consultation with stakeholders and relevant institutions and agencies, drought preparedness strategies”; “identify projects and programs to be undertaken within the	These sections should be merged to avoid overlap

		drought preparedness strategies”;	
	hand i	<p>“publish and disseminate manuals, codes or guidelines relating to drought management and prevention or abatement of the extreme effects of drought on human, omit and animal life”;</p> <p>“conduct research on drought management and generate, consolidate and disseminate drought management information”;</p>	These sections should be merged to avoid overlap
	j	“render advice and technical support to persons, bodies or institutions engaged in drought response management so as to enable them to carry out their responsibilities effectively”:	Rewrite to read: “render advise and technical support to persons, bodies or institutions engaged in drought response management”
	k	“coordinate with the national government where a drought situation requires the declaration of a national or an international disaster”;	Rewrite to read: “advise the national government when to declare a drought situation as a national disaster.”
8	1	Membership to board of the Authority	Should include Principal Secretaries for the time being responsible for: <ul style="list-style-type: none"> • Agriculture • Water • Environment
12	5	The Secretary shall be- (a)The chief executive officer of the Authority and shall	Re-designate the title of chief executive officer from “Secretary” to “Director General”

		be responsible for the day to day management of the Authority:	
		c) the head of the secretariat;	Be deleted as it is a repetition of (a) above
	7	Secretary's removal from office	Add two more ground:- e. "is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine; f. "is removed in accordance with the provisions of the Constitution
12	1	There shall be a secretariat of the Authority	Should differentiate between the "Authority" and "Secretariat"
18	1	There is established a fund to be known as the National drought management Authority Fund which, shall be administered by the Secretary with the overall guidance and supervision of the board.	Should be consistence with "The Constitution of Kenya, 2010" in relation to creation and management of a fund.
30	2(a)	"the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act"	Rewrite to read: "the power of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfilment of the objectives of this Act"

4.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee at its 32nd meeting held on Tuesday 10th February, 2015 considered the proposed National Drought Management Authority Bill, 2014 and made the following recommendations;-

- i. Clause 2: there was no need to define the meaning of the words 'Drought' and 'Secretariat';
- ii. Clause 4 (2): Rewrite to read as follows 'The Authority shall establish offices in the counties;
- iii. Clause 5 (a): Rewrite to read as follows ' Exercise overall coordination over all matters relating to drought management including implementation of policies, plans, projects and programmes';
- iv. Clause 5 (c): Retain the text as is in the Bill;
- v. Clause 5 (d): Rewrite to read as follows 'develop and operationalize an efficient drought early warning system in consultation with stakeholders';
- vi. Clause 5 (f and g): Retain the existing text as is in the Bill;
- vii. Clause 5 (h and i): Retain the existing text as is in the Bill;
- viii. Clause 5 (j): Retain the existing text as is in the Bill;
- ix. Clause 5 (k): Retain the existing text as is in the Bill;
- x. Clause 8 (1, d): Rewrite to read as follows' four persons, one who will be nominated by the Council of Governors, appointed by the Cabinet secretary with the approval of Parliament; and';
- xi. Section 12 (5, a): Retain the existing text as is' in the Bill;
- xii. Section 12 (5, c): Retain the existing text as is in the Bill;
- xiii. Section 12 (7):-Add paragraph (e and f) to read as follows:
(e) 'is convicted of an offense and sentenced to imprisonment for a term of more than six months without the option of a fine.'
(f) 'is removed in accordance with the provisions of the Constitution.'
- ix. Section 13 (1): Retain the existing text as is in the Bill;
- x. Section 18 (1): Rewrite to read as follows 'There is established a fund known as the National Drought Management Fund which be administered by the Secretary of the Board with the appointment of the Cabinet Secretary of the National Treasury with the overall guidance of the Board.'
- xi. Section 30 (2, a): Retain the existing text as is in the Bill;

Annex I: Proposed Committee Stage Amendments

10th March, 2015

Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE NATIONAL DROUGHT
MANAGEMENT AUTHORITY BILL, 2013**

NOTICE is given that I intend to move the following amendments to the National Drought Management Authority Bill, 2013

CLAUSE 4

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

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

CLAUSE 8

THAT clause 8 of the Bill be amended-

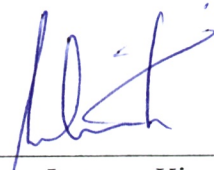
(a) in subclause (1) by inserting the following new paragraph immediately after paragraph (d)-

(da) one person to be nominated by the council of governors and appointed by the Cabinet Secretary.

(b) In subclause (5) by inserting the words "and (1) (da)" immediately after the words subsection (1)(d).

CLAUSE 18

THAT clause 18 of Bill be amended in subclause (1) by inserting the words "upon the approval of the Cabinet Secretary for the time being responsible for matters relating to Finance" immediately after the words "Funds which shall".



Sen. Lenny Kivuti,
Chairperson,

Committee on Land and Natural Resources.

Annex II: Minutes of the Committee dated 10th March 2015

MINUTES OF THIRTY SECOND MEETING OF THE STANDING COMMITTEE OF THE SENATE ON LAND AND NATURAL RESOURCES HELD ON TUESDAY 10TH MARCH 2015 AT THE KICC 4TH FLOOR, SMALL BOARD ROOM FROM 10:00 A.M.

Present

Sen. Lenny Kivuti, M.P.	- Chairman
Sen. Boy Juma Boy, M.P.	- Member
Sen. Christopher Obure, M.P.	- Member
Sen. Martha Wangari, M.P.	- Member
Sen. Isaac Melly, M.P.	- Member
Sen. Henry Ndiema, M.P.	- Member

Absent

Sen. George Khaniri, M.P.	- Vice Chairman
Sen. Dawson Mwazo, M.P.	- Member
Sen. Liza Chelule, M.P.	- Member

Secretariat

Mr. Charles Ngatia	- Clerk Assistant
Ms. Lucy Radoli	- Legal Officer
Ms. Beatrice Kapei	- Legal Officer
Ms. Lucy Mwaniki	- Serjeant At Arms

Minute SEN/SCLNR/175/2015: Preliminaries

The meeting was called to order at 10:28 a.m. and there followed a word of prayer.

Members of the secretariat introduced themselves.

Minute SEN/SCLNR/176/2015: Adoption of Agenda

The agenda of the meeting was adopted with amendments as follow;

- i. Prayer;
- ii. Consideration of report on the public hearing of the national Drought Management Authority Bill, 2014;
- iii. Consideration of report on the public hearing of the Environmental Management and Coordination Amendment Bill, 2014;
- iv. Consideration of response to Statement on KWS Community Enterprise Development and implementation of the Wildlife Conservation and Management Act;
- v. Consideration of request for Statement on the Pollution of Athi River in Machakos and Makeni counties;
- vi. Any Other Business;
- vii. Adjournment and Date of Next Meeting.

Minute SEN/SCLNR/177/2015: Consideration of report on the Public Hearing on the National Drought Management Authority Bill, 2014.

Members were briefed on the National Drought Management Authority Bill, 2014 by Ms, Lucy Radoli, legal Counsel. The brief encompassed the submissions received during the public hearing on the bill that was held on 12th February, 2015.

The Committee made the following recommendations;

- xiv. Clause 2: there was no need to define the meaning of the words 'Drought' and 'Secretariat';
- xv. Clause 4 (2): Rewrite to read as follows 'The Authority shall establish offices in the counties;
- xvi. Clause 5 (a): Rewrite to read as follows ' Exercise overall coordination over all matters relating to drought management including implementation of policies, plans, projects and programmes' ;
- xvii. Clause 5 (c): Retain the text as is in the Bill;
- xviii. Clause 5 (d): Rewrite to read as follows 'develop and operationalize an efficient drought early warning system in consultation with stakeholders';
- xix. Clause 5 (f and g): Retain the existing text as is in the Bill;
- xx. Clause 5 (h and i): Retain the existing text as is in the Bill;
- xxi. Clause 5 (j): Retain the existing text as is in the Bill;
- xxii. Clause 5 (k): Retain the existing text as is in the Bill;
- xxiii. Clause 8 (1, d): Rewrite to read as follows' four persons, one who will be nominated by the Council of Governors, appointed by the Cabinet secretary with the approval of Parliament; and';
- xxiv. Section 12 (5, a): Retain the existing text as is in the Bill;
- xxv. Section 12 (5, c): Retain the existing text as is in the Bill;
- xxvi. Section 12 (7):-Add paragraph (e and f) to read as follows:
 - (e) 'is convicted of an offense and sentenced to imprisonment for a term of more than six months without the option of a fine.'
 - (f) 'is removed in accordance with the provisions of the Constitution.'
- ix. Section 13 (1): Retain the existing text as is in the Bill;
- x. Section 18 (1): Rewrite to read as follows "There is established a fund known as the National Drought Management Fund which be administered by the Secretary of the Board with the appointment of the Cabinet Secretary of the National Treasury with the overall guidance of the Board.'
- xi. Section 30 (2, a): Retain the existing text as is in the Bill;

Minute SEN/SCLNR/178/2015: Consideration of report on the Environmental Management and Coordination Bill, 2014.

The Committee was briefed on the on the EMCA Bill, 2014. The brief on the Bill was as follows;

1. Title

The Environmental Management and Coordination (Amendment) Bill, National Assembly Bill No.31 of 2014.

2. Sponsor

The Bill was passed by the National Assembly on 4th December, 2014 and referred to the Senate on 5th December, 2014. The Bill was sponsored by Hon. Aden Duale, the Leader of Majority in the National Assembly.

3. Why the Bill is before the Committee

The Bill was read a First Time on 11th February, 2015 and committed to the Committee pursuant to standing order 130(1). The Bill is now before the Committee to facilitate public participation as envisaged under Standing Order 130(4) of the Senate Standing Orders. After the First Reading, the Committee has thirty calendar days to report to the Senate (S.O 134(1)).

4. Timelines

The Bill was read a First Time on 11th February, 2015. The days within which the Committee is required to consider facilitate public participation and report to the Senate lapses on 13th March, 2015. It is proposed that the Committee table its report on or before 12th March, 2015.

The Bill is one of the Bills which had a Constitutional deadline under the Fifth Schedule to the Constitution. The Bill therefore had an initial deadline of 27th August, 2014. The National Assembly extended this deadline to 26th May, 2014 for passages of the Bill by both Houses of Parliament.

5. The Main Purpose/Objective of the Bill

The main purpose of the Bill is to amend the Environmental Management and Coordination Act in order to bring it into conformity with the Constitution. Article 1(4) of the Constitution provides for the establishment of two levels of government: the national level and the county level. Chapter twelve of the Constitution further establishes the structures for the devolved level of government: the county executive and the county assemblies.

The Bill therefore proposes to restructure certain bodies in the principal Act in recognition devolution.

Article 42 of the Constitution further provides for the right of every person to a healthy environment and for the protection of the environment for the benefit of future generations. Article 69(1) of the Constitution further provides for the obligations of the State with regards to the environment. These obligations include-

- (a) conservation and protection of the environment;
- (b) public participation;
- (c) monitoring and impact assessment; and
- (d) purposeful utilization of the environment.

Article 70 of the Constitution further provides for the right of any person, whether aggrieved or not, to make an application for remedies to the court where such a person alleges that a right to the environment has been or is likely to be infringed. The Article further

6. The National Environmental and Coordination Act

The National Environmental Management and Coordination Act Cap 387 is an Act of Parliament whose primary purpose is to provide for the establishment of an appropriate legal and institutional framework for the management of the

environment. In terms of an institutional framework the Act in its present form establishes the following bodies. The-

- (a) National Environmental Management Authority (NEMA) mandated to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment;
- (b) National Environment Council responsible for policy formulation directions for the purposes of the Act. The Council also sets national goals and objectives, and determines policies and priorities for the protection of the environment;
- (c) Provincial and District Environment Committees of the Authority: responsible for the proper management of the environment within the province or district in which they are located and further to develop provincial and district environmental action plans respectively; and
- (d) Public Complaints Committee mandated to investigate any alleged or suspected harm done to the environment and report to the Council; and
- (e) National Environment Action Plan Committee mandated to prepare a national, environment action plan after every five years for consideration and adoption by the National Assembly.

The Act also establishes the National Environment Trust Fund and the National Environment Restoration Fund to facilitate research and to mitigate environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation respectively. Both these funds are managed by the Authority.

7. Salient Provisions of each Part of the Bill

The Bill proposes to-

- (a) provide for the right to access to information on any matter related to the implementation of the principal Act and to ensure greater accessibility to the Authority;
- (b) enhance some of the functions of the authority. The authority is proposed to carry out an audit of natural resources, encourage voluntary environmental conservation practices and to establish mechanisms to ensure 10% tree cover and to monitor compliance with the national and county environmental plans, issue guidelines for the co-management of critical habitats within a lake basin, river basin or wetland, issue guidelines on climate change;
- (c) reconstitute the composition of the Board of the Authority by designating the Director-General as Secretary to the Board and expunging certain officers from

the Board. The Attorney General has also been proposed to serve on the Board;

- (d) reduce the time within which the Authority reports on its financial status from four to two months and further to require that the accounts of the Authority shall be audited in accordance with the Constitution and the Public Finance Management Act;
- (e) divest the National Environment trust Fund from the auspices of the Authority and instead put it under the control of a Board of Trustees which shall be a body corporate. The Fund is proposed to be administered according to the rules and regulations that would constitute a Trust Deed;
- (f) reduce the amount of time within which a deposit bond is returned to an entity that observes sound environmental standards as it carries out a project from 24 months to 6 months;
- (g) transfer the responsibility to conserve biological diversity from the Authority to the Cabinet Secretary. This would require the CS to, *inter alia*, maintain an inventory of, carry out risk assessment to and provide measures for the protection of biological diversity and biological resources *in situ* and *ex situ* and genetic resources. The Bill further promotes the recognition and protection of indigenous knowledge;
- (h) charge the CS with the responsibility of preparing and reviewing after every four year the national coastal zone management plan. Currently this is the responsibility of the Authority. The Bill further proposes to make culpable any person responsible for any actual or imminent hazardous substance released into a coastal zone. Such a person would be responsible for damages caused and any attendant costs incurred in preventing, minimizing or reversing the damage caused;
- (i) enhance penalties for the willful pollution of the environment by various entities or persons;
- (j) amend the principal Act by transferring the functions of the National Environmental Council to the Cabinet Secretary;
- (k) establish the County Environmental Committees to replace the Provincial and District Environmental Committees which shall ensure the proper management of the environment for the respective counties. The Committees would further be mandated to prepare a county environment action plan and submit it for approval by the county assembly. The approved plan would be forwarded to the Cabinet Secretary for possible inclusion in the National Plan;

- (l) the member of the **county executive committee in charge of environmental matters** who shall be the chairperson; **an officer of the Authority** whose area of jurisdiction falls wholly or partly within the county shall be the Secretary to the County Environmental Committee; one representative for each of the Ministries responsible for the matters specified in the First Schedule at the county level; two **representatives of farmers or pastoralists** within the county to be appointed by the Governor; two **representatives of the business community** operating within the concerned county appointed by the Governor; **two representatives of the public benefits organizations** engaged in environmental management programmes within the county appointed by the Governor in consultation with the National Federation of Public Benefit Organizations; and **a representative of every regional development authority** whose area of jurisdiction falls wholly or partially within the county.
- (m) transfer the functions of the Public Complaints Committee to the National Environmental Complaints Committee and providing for an additional function of undertaking public interest litigation on matters relating to the environment;
- (n) disband the National Environmental Action Plan Committee and confer its functions on the Authority. The Authority would therefore prepare and review every six years the National Environment Action Plan and submit it to the Cabinet Secretary for approval. The CS would submit the plan to the Ministry of Lands and the National Land Commission;
- (o) transfer the power of the Authority to enter into agreements with the owners of private land to be declared forest land to the Cabinet Secretary. The Bill further proposes for the CS to ascertain the interest in land declared to be forest land and ensure community conservation;
- (p) provide for Strategic Impact Assessments in the preparation and implementation of policies, plans and programmes.
- (q) enable the Authority to exempt the proponents of projects under the second schedule from preparing an environmental impact assessment report prior to the issue of a license. It is proposed to require the Authority to publish a summary of the report on its website. The Bill further proposes the establishment of integrated environmental assessments and audits and empowers the CS to make regulations on the accreditation of environment impact assessors;
- (r) compel every lead agency to establish an environmental unit to implement the provisions of the Act;

8. How the Bill Concerns County Governments

The Bill proposes the establishment of County Environmental Committees to

be appointed by the Governor and the preparation of County Environmental action Plans affects county Governments.

9. Money Bill Status

The Bill proposes to disband certain existing bodies under the principal Act and transfer their functions to other bodies. It is anticipated that the bodies to which the functions are transferred to shall make use of existing infrastructure of the bodies that are being disbanded. It is therefore anticipated that this shall not occasion any additional expenditure of public funds.

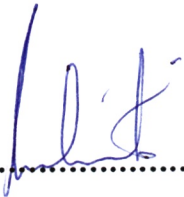
10. The Next Course that the Proposal or Bill will take

Once the Committee tables its Report, the Bill will pursuant to standing order 134(2), the Bill shall be ordered to be committed to the Committee of the Whole on such day as the Rules and Business Committee shall, in consultation with the Senator who introduced the Bill, appoint.

Minute SEN/SCLNR/179/2015: Adjournment and Date of Next meeting

The meeting was adjourned at 1:01 p.m. to Thursday 12th March 2015 when deliberation of the EMCA Bill, 2014 would continue.

SIGNATURE.....



(CHAIRMAN; SEN. LENNY KIVUTI)

DATE.....

12/03/2015

Annex III: The National Drought Management Authority Bill



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 42 of 2013)

THE NATIONAL DROUGHT
MANAGEMENT AUTHORITY BILL, 2014

(A Bill published in the Kenya Gazette Supplement No. 160 of 15th
November, 2013 and passed by the National Assembly, with
amendments, on 12th November, 2014)
N.A./B/No.42-2013

1



I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 12th November, 2014.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Speaker of the National Assembly

**THE NATIONAL DROUGHT MANAGEMENT
AUTHORITY BILL, 2014**

ARRANGEMENT OF CLAUSES

PART I – PRELIMINARY

Clause

- 1- Short title
- 2- Interpretation

**PART II – THE NATIONAL DROUGHT MANAGEMENT
AUTHORITY**

- 3- Establishment of the Authority
- 4- Headquarters
- 5- Functions of the Authority
- 6- Powers of the Authority
- 7- Drought co-ordination institutional framework
- 8- Board of the Authority
- 9 – Vacancy in the Board
- 10- Functions of the Board
- 11- Conduct of business and affairs of the Board
- 12- Secretary of the Authority
- 13- Secretariat
- 14- Delegation of powers of the Board
- 15- Remuneration of members of the Board
- 16 – Code of conduct
- 17- Seal of the Authority

PART III – FINANCIAL PROVISIONS

- 18- Establishment of the Fund
- 19- Financial year of the Authority

- 20- Annual estimates.
- 21- Accounts and audit
- 22- Investment of funds
- 23- Exemptions from charges

PART IV – MISCELLANEOUS

- 24- Annual report
- 25- Publication of information
- 26- Conflict of interest
- 27- Protection from personal liability
- 28- Legal proceedings against the Authority
- 29- Offences and penalties
- 30- Regulations

PART V – SAVINGS, TRANSITION AND REPEAL

- 31- Savings and transition
- 32- Repeal

**SCHEDULE— PROVISIONS AS TO THE CONDUCT OF
THE BUSINESS AND AFFAIRS OF THE BOARD**

MEMORANDUM OF OBJECTS AND REASONS

On 22nd July, 2009 the National Assembly passed a Motion urging the Government to establish a National Drought Management Authority which would be responsible for drought preparedness, mitigation of the effects of drought and response to drought.

Thereafter, His Excellency, the President, by Legal Notice No. 171 made the National Drought Management Order, 2011. This Order established a National Drought Management Authority as a state corporation and vested in the Authority various functions and powers.

Drought continues to be a major issue affecting our country. Certain sections of our country continue to face perennial drought which results in severe negative economic, social and environmental effects. It is against this background, and in light of the critical importance of drought management and mitigation of the effects of drought, that this Bill seeks to give the National Drought Management Authority statutory status such that the establishment of the Authority would be founded in statute rather than in an executive Order.

The Bill therefore seeks to transit the Authority established under the Order to a statutory body and as such the enactment of this Bill will not result in additional expenditure of public funds. The Bill delegates the power to make regulations to the Cabinet Secretary and the Board of the Authority

This Bill is a Bill concerning county governments.

- transaction of the business of the Board by giving not less than seven days notice to the members.
- Presiding at meetings. 3. (1) The chairperson shall preside at all meetings of the Board.
(2) In the absence of the chairperson at a meeting, the vice-chairperson shall preside at that meeting of the Board.
(3) In the absence of the chairperson and the vice-chairperson at a meeting, the members present shall elect one of their number to preside at that meeting of the Board.
- Quorum at meetings 4. The quorum for the conduct of business at a meeting of the Board shall be half of the members of the Board.
- Voting 5. (1) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by the concurrence of a majority of votes of the members present.
(2) In the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- Vacancies and defects in appointment. 6. Proceedings of the Board shall not be invalid by reason only of a vacancy in the membership of the Board or by reason of a defect in the appointment of a member.
- Records. 7. The Secretary shall keep a record of all proceedings and meetings of the Board.

**THE NATIONAL DROUGHT MANAGEMENT
AUTHORITY BILL, 2013**

**A Bill for
AN ACT of Parliament to establish the National
Drought Management Authority, to
provide for the membership, powers and
functions of the Authority and for
connected purposes.**
ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the National Drought Management Authority Act, 2013.
- Interpretation. 2. In this Act, unless the context otherwise requires—
“Authority” means the National Drought Management Authority established under section 3;
“Board” means the Board of the Authority established under section 8;
“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to drought management;
“chairperson” means the chairperson of the Board established under section 8;
“former Authority” means the Authority established under paragraph 3 of the National Drought Management Authority Order, 2011 made by Legal Notice Number 171 of 2011;
“former Board” means the Board

established under paragraph 6 of the National Drought Management Authority Order, 2011 made by Legal Notice Number 171 of 2011;

“Fund” means the National Drought Emergency Fund established under section 18;

“Order” means the National Drought Management Authority Order, 2011 made by Legal Notice Number 171 of 2011; and

“Secretary” means the Secretary to the Authority appointed under section 12.

PART II—THE NATIONAL DROUGHT MANAGEMENT AUTHORITY

Establishment of the Authority.

3. (1) There is established a body to be known as the National Drought Management Authority.

(2) The Authority shall be the successor to the former Authority existing immediately before the commencement of this Act.

(3) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing, acquiring, holding or disposing of property;
- (c) entering into contracts; and
- (d) doing or performing all such other acts as may be necessary for the proper performance of its functions under this Act.

Headquarters.

4. (1) The headquarters of the Authority shall be in Nairobi.

to the provisions of this Act, serve as the Secretary of the Authority under section 11; and

(g) a person who served as a staff member of the former Authority shall, subject to the provisions of this Act, continue in office as a staff member of the Authority under section 12.

Repeal

32. On the commencement of this Act, the Order shall stand repealed.

SCHEDULE

(s. 11)

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

Meetings of the Board.

1. (1) The Board shall hold such number of meetings at such places and at such times as the Board shall consider necessary for the proper discharge of its functions.

(2) Notwithstanding paragraph 1, the Board shall meet not less than four times in each financial year.

(3) A meeting of the Board shall be held on such date and at such time as the chairperson shall decide.

(4) Unless the majority of the total membership of the Board otherwise agree, at least fourteen days notice shall be given prior to a meeting of the Board.

Special meetings.

2. Notwithstanding the provisions of paragraph 1, the chairperson or any three members may call a special meeting whenever it is expedient for the

- commencement of this Act shall have effect as if the Authority were a party to it or affected by it insofar as the former Authority was a party to it or was affected by it;
- (c) any proceedings pending immediately before the commencement of this Act to which the former Authority was a party may be continued as if the Authority was a party to those proceedings;
 - (d) the person who immediately before the commencement of the Act held the office of chairperson of the former Board, appointed under paragraph 6 of the Order, shall, subject to the provisions of this Act, serve as the chairperson of the Board of the Authority under section 7(1)(a);
 - (e) a person who immediately before the commencement of the Act held the office of member of the former Board, appointed under paragraph 6(d) of the Order, shall, subject to the provisions of this Act, serve as a member of the Board under section 7(1)(d);
 - (f) the person who immediately before the commencement of the Act held the office of Chief Executive Officer of the former Authority, appointed under paragraph 8 of the Order, shall, subject

Functions
Of the
Authority.

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

5. The functions of the Authority shall be to—

- (a) exercise overall coordination over all matters relating to drought management including implementation of policies and programmes relating to drought management;
- (b) coordinate drought response initiatives being undertaken by other bodies, institutions and agencies;
- (c) promote the integration of drought response efforts into development policies, plans, programmes and projects in order to ensure the proper management of drought;
- (d) develop, in consultation with stakeholders, an efficient drought early warning system and operate the system;
- (e) facilitate national and county level drought contingency processes and the preparation of national and county level drought contingency plans;
- (f) establish and review, in consultation with stakeholders and relevant institutions and agencies, drought preparedness strategies;
- (g) identify, design and implement

- projects and programmes that shall strengthen resilience to drought and climate change;
- (h) publish and disseminate manuals, codes or guidelines relating to drought management and prevention or abatement of the extreme effects of drought on human, plant and animal life;
- (i) conduct research on drought management and generate, consolidate and disseminate drought management information;
- (j) render advice and technical support to persons, bodies or institutions engaged in drought management so as to enable them to carry out their responsibilities effectively;
- (k) coordinate with the national government where a drought situation requires the declaration of a national or international disaster;
- (l) coordinate the design and implementation of the country's regional and international commitments pertaining to drought management;
- (m) prepare and issue an annual report on the state of drought management in Kenya; and
- (n) perform such other functions as are

- years or to both.
- Regulations. 30. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.
- (2) For the purposes of Article 94(6) of the Constitution—
- (a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;
 - (b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.
- Cap. 2
- No. 23 of 2013

PART V—SAVINGS, TRANSITION AND REPEAL

- Savings and transition. 31. On the commencement of this Act—
- (a) all assets and liabilities of the former Authority shall be transferred to and shall vest in the Authority;
 - (b) an agreement, whether in writing or not, a deed, bond or other instrument to which the former Authority was a party to or which affected the rights or obligations of the former Authority immediately before the

or functions conferred by this Act or any other written law.

Legal proceedings against the Authority. Cap. 40

28. (1) Proceedings against the Authority shall be deemed to be proceedings against the Government and shall be subject to the Government Proceedings Act.

(2) Any notice or other processes in respect of legal proceedings under subsection (1) shall be served upon the Secretary of the Authority.

Offences and penalties.

29. A person who—

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Authority in exercise of the powers or the performance of the functions of the Authority under this Act;
- (b) willfully obstructs a member of the Board or an employee or agent of the Authority in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Authority in exercise of the powers or the performance of the functions of the Authority under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five

incidental or conducive to the exercise, by the Authority, of any or all of the functions provided for under this Act.

Powers of the Authority

6. (1) The Authority shall have all powers necessary for the execution of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority shall have power to—

- (a) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (b) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements from such monies in accordance with the provisions of this Act;
- (c) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate so as to aid the furtherance of the purposes for which the Authority is established;
- (d) open and maintain a bank account or accounts for the funds of the Authority;
- (e) offer its services to any person upon such terms as the Authority may from

Drought co-ordination institutional framework.

- (f) take appropriate actions that aim at minimizing drought induced risks and building drought and climate change resilience among communities; and
 - (g) obtain, collate and publish information from any public or non-governmental organization whose aim is to build drought and climate change resilience and respond to drought and climate change risks.
7. (1) The Authority shall, in the performance of its functions—
- (a) establish and facilitate co-ordination frameworks at national and county levels of government by providing appropriate policy guidance; and
 - (b) ensure that action taken by all stakeholders in response to drought and climate change risks is timely, harmonized and effective.
- (2) The drought co-ordination institutional framework established pursuant to subsection (1) shall consist of—
- (a) a national forum that shall provide policy guidance on drought and climate change;
 - (b) a county forum that shall co-ordinate and oversee drought related interventions in all drought prone counties; and

one in which that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as practicable after commencement of the meeting, declare such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

(4) A member of the Board and the staff of the Authority shall not transact any business or trade with the Authority.

Protection from personal liability.

27. (1) No matter or thing done by a member of the Board or a member of staff or agent of the Authority shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of sub-section (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury caused by the exercise of any of the powers

Publication of information.

(3) The Cabinet Secretary shall, within thirty days of receipt of the annual report, cause the report to be laid before the National Assembly.

25. (1) The Board shall publish and publicize all important information within the mandate of the Authority that affects the nation.

(2) A request for information in the public interest by a citizen—

(a) shall be addressed to the Secretary or such other person as the Board may for that purpose designate and may be subject to the payment of a reasonable fee in instances where the Authority incurs an expense in providing the information; and

(b) may be subject to confidentiality requirements of the Board.

(3) Subject to Article 35 of the Constitution, the Board may decline to give information to an applicant where—

(a) the request is unreasonable in the circumstances;

(b) the information requested is at a deliberative stage by the Board;

(c) the prescribed fee is not paid; or

(d) the applicant fails to satisfy any confidentiality requirements by the Board.

Conflict of interest.

26. (1) If a person is present at a meeting of the Board or a committee of the Board at which the matter that is the subject of consideration and is

Board of the Authority.

(c) a sub-committee of the national and county forums that shall provide technical support to both the national and the county forums.

8. (1) The management of the Authority shall vest in a Board which shall comprise—

(a) a chairperson who shall be competitively appointed by the Cabinet Secretary with the approval of Parliament;

(b) the Principal Secretary in the ministry for the time being responsible for matters relating to drought management or a person designated by the Principal Secretary;

(c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a person designated by the Principal Secretary;

(d) four persons who shall be competitively appointed by the Cabinet Secretary with the approval of Parliament; and

(e) the Secretary.

(2) A person shall qualify for appointment under subsection (1)(a) or (d) if the person—

- (a) holds a degree from a recognized university;
- (b) has at least ten years experience in the relevant field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is not a State officer.

(3) In appointing the members of the Board under subsection (1)(a) and (d), the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.

(4) The members of the Board shall, at the first meeting of the Board and whenever need arises, elect a vice-chairperson from amongst the members appointed under subsection (1)(d).

(5) The chairperson and the members of the Board appointed under subsection (1)(d) shall hold office for a term of four years and shall be eligible for re-appointment for a further and final term of four years.

Vacancy in the Board.

9. (1) The office of the chairperson or of a member of the Board appointed under section 8(1)(d) shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the Cabinet Secretary resigns from office;
- (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the

that year; and

- (b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003.

No.12 of 2003.
Investment of funds.

22. (1) The Board may invest any of the funds of the Authority in such manner as the Board may from time to time approve.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Authority.

Exemption from charges.

23. The Cabinet Secretary may exempt the Authority from such taxes, duties, fees or other charges as the Cabinet Secretary may, by notice in the *Gazette*, specify.

PART IV—MISCELLANEOUS PROVISIONS

Annual report.

24. (1) The Board shall, within three months of the end of a financial year, prepare and submit to the Cabinet Secretary an annual report on the operations of the Authority for the preceding year.

(2) The annual report submitted under subsection (1) shall include—

- (a) the financial statements of the Authority; and
- (b) a detailed report of the activities of the Authority.

- (d) maintenance, repair and replacement of the equipment and other property of the Authority; and
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Cabinet Secretary.

Accounts and audit.

21. (1) The Board shall cause to be kept proper books and other records of account of the income, expenditure, assets and liabilities of the Authority.

(2) Within three months of the end of each financial year the Board shall submit to the Auditor-General the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during

option of a fine;

- (d) is absent from three consecutive meetings of the Board without good cause; or
- (e) is removed in accordance with the provisions of the Constitution.

(2) The Cabinet Secretary shall as soon as practicable notify every resignation, vacancy or termination in the *Gazette*.

(3) Where a vacancy occurs in the membership of the Board, the appointment procedure provided for in this Act shall, with necessary modifications, apply.

Functions of Board

10. The Board shall—

- (a) formulate policies to achieve its mandate;
- (b) provide strategic direction, leadership and oversight to the secretariat; and
- (c) undertake such activities as may be necessary for the discharge of its functions and the exercise of its powers.

Conduct of business and affairs of the Board.

11. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Secretary of the Authority.

12. (1) There shall be a Secretary of the Authority who shall be appointed by the Board through an open, transparent and competitive recruitment

process.

(2) A person shall be qualified for appointment as the Secretary if the person—

- (a) holds a degree from a recognized university;
- (b) has at least ten years post-qualification experience;
- (c) has at least five years experience in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Secretary shall, in the performance of the functions and duties of office, be accountable to the Board.

(5) The Secretary shall be—

- (a) the chief executive officer of the Authority and shall be responsible for the day to day management of the Authority;
- (b) the secretary of the Board;
- (c) the head of the secretariat;
- (d) the custodian of all of the Authority's records;
- (e) responsible for—
 - (i) executing decisions of the Board;

(c) provide funds for capacity and technical expertise development to improve on drought management; and

(d) finance the establishment, management and co-ordination of projects, activities or programmes to further the foregoing purposes.

Financial year of the Authority. 19. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual estimates. 20. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for the—

- (a) payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Authority;
- (b) payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Authority;
- (c) proper maintenance of the buildings and grounds of the Authority;

document executed in accordance with subsection (2) shall bind the Board.

PART III—FINANCIAL PROVISIONS

Establishment of the Fund.

18. (1) There is established a fund to be known as the National Drought Emergency Fund which shall be administered by the Secretary with the overall guidance and supervision of the Board.

(2) There shall be paid into the Fund—

- (a) such monies as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
 - (b) such monies as may be appropriated by the National Assembly;
 - (c) such monies including levies and fees as may be payable to the Authority pursuant to this Act or any other written law;
 - (d) such gifts as may be given to the Authority; and
 - (e) monies from any other source provided, donated or lent to the Authority.
- (3) The objective of the Fund shall be to—
- (a) facilitate timely response to drought during its different stages;
 - (b) provide for a common basket emergency fund in order to minimize the negative effects of drought;

- (ii) facilitating, coordinating and ensuring execution of the Authority's mandate;
- (iii) preparing and submitting for approval, by the Board, programmes of work for the achievement of the Authority's mandate;
- (iv) ensuring staff compliance with public ethics and values; and
- (v) the performance of such other duties as may be assigned by the Board or by any other written law.

(6) The Secretary shall hold office for a period of five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of five years.

(7) The Secretary may be removed from office by the Board only on grounds of—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct
- (c) bankruptcy; or
- (d) incompetence.

(8) Prior to removal under subsection (7), the Secretary shall be—

- (a) informed, in writing, of the reasons for the intended removal; and

(b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

(9) Where the Board does not intend to re-appoint the Secretary after the first term, the Board shall notify the Secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

Secretariat. 13. (1) There shall be a secretariat of the Authority.

(2) The secretariat shall comprise—

(a) such professional, technical and administrative officers and support staff as may be appointed by the Board; and

(b) such public officers as may be seconded to the Board upon its request.

(3) The staff of the Authority shall be appointed by the Board subject to the Authority's approved establishment.

(4) The Board shall ensure that in the appointment of its staff—

(a) not more than two-thirds of the staff shall be of the same gender;

(b) the regional and other diversity of the people of Kenya is taken into account; and

(c) persons with disabilities are afforded adequate and equal opportunities.

Delegation of powers of the Board.

14. Subject to this Act, the Board may, either generally or in a particular case, delegate to a member of the Board or to an employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.

Remuneration of members of the Board.

15. The remuneration payable to members of the Board shall be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Code of conduct.

16. Members of the Board and the secretariat of the Authority shall subscribe to the code of conduct as the Board may, by regulations, prescribe.

Seal of the Authority.

17. (1) The seal of the Authority shall be kept in the custody of the Secretary.

(2) The affixing of the seal shall be authenticated by the chairperson of the Board and the Secretary.

(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

(4) Notwithstanding subsection (2), the Board shall, in the absence of the chairperson or the Secretary, nominate one member of the Board to authenticate the seal on behalf of either the chairperson or the Secretary.

(4) A deed, instrument, contract or other

***Annex IV: Advertisement on Public Hearing on the
National Drought Management Bill***

REPUBLIC OF KENYA



**ELEVENTH PARLIAMENT
THE SENATE**

**STANDING COMMITTEE ON LAND AND NATURAL RESOURCES
IN THE MATTER OF CONSIDERATION OF
THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL,
2014**

**Article 118 of the Constitution and Standing Order 130 of the
Senate Standing Orders.**

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

Following the publication of the National Drought Management Authority Bill 2014 on 15th November, 2013 as a Bill originating in the National Assembly, the Bill was referred to the Senate and committed to the Standing Committee on Land and Natural Resources for consideration pursuant to Standing Order 130 of the Senate.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4), the Standing Committee on Land and Natural Resources now invites interested members of the public and organizations to submit any representations that they may have on the National Drought Management Authority Bill, 2014.

The representations may be made orally or by submission of written memoranda in the following manner:-

1. Public Hearings shall be held on **Thursday 12th February, 2015 from 10:00 a.m. to 1:00 p.m. at Shimba Hills Hall, KICC, Nairobi**; or
2. Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Building, Nairobi** or emailed to cSenate@parliament.go.ke, to be received **on or before 5.00 p.m., 12th February, 2015.**

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

Annex V: Public Hearing Attendance Schedule

**THE SENATE
STANDING COMMITTEE ON LANDS AND NATURAL RESOURCES
ATTENDANCE SCHEDULE**

**DURING PUBLIC HEARING ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY
BILL, 2014 HELD AT SHIMBA HILL HALL, KICC ON 12TH FEBRUARY, 2015**

DATE: 12th FEBRUARY 2015

NO.	NAME	INSTITUTION	EMAIL	TELEPHONE
1	Amb. Felistas V. Khayumbi	Sec. ASAL-Ministry of Devolution and Planning	vunun679@yahoo.com	0700180560
2	Mwanamaka Mabruki	P.S-Ministry of Devolution and Planning	-	-
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9	Charles Kariuki	WTV		
10	Damaris Safari	WTV		
11	Caroline Mugure	WTV		
12	Victor Wafula	West FM		
13	Woto Huka Elema	KNA		
14	Pius Fundi	Njata TV		
15	Stephen Okoth	Radio Waumini		
16	Milka Chepkoech	BHB		
17	Abednego Musau	Truth FM		
18	Albert Mwangeka	Baraka FM		
19	Kenna Claude	People		