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THE SENATE

TWELFTH PARLIAMENT

SECOND SESSION, 2018

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE PETITION TO THE SENATE FOR ENACTMENT OF A
SINGLE LEGISLATION ON THE PROTECTION AND SUSTAINABLE
MANAGEMENT OF WATER RESOURCES, WATER SOURCES AND
RIPARIAN ZONES IN KENYA



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Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

JUNE, 2018

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PREFACE

Establishment of the Committee

The Senate Standing Committee on Land, Environment and Natural Resources is established under the standing order 212(3) of the Senate Standing Orders. The mandate and the functions of the committee are set out under the Second Schedule to the Senate Standing Orders to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

In executing its mandate, the Committee oversees the Ministries of:

1. Ministry of Lands;
2. Ministry of Environment and Forestry;
3. Ministry of Water and Sanitation;
4. Ministry of Petroleum and Mining; and
5. Ministry of Transport, Infrastructure, Housing and Urban Development.

Petitions

Pursuant to the standing order 226 of the Senate Standing Orders, the Committee is mandated to consider and report on any petition committed to it by the House.

The following report on the Petition by Mr. Taratisio Kawe for enactment of a single legislation on the protection and sustainable management of water resources, water sources and riparian zones in Kenya was committed to the Committee pursuant to standing order 226 of the Senate Standing Orders, which contains the determined prayer of the petitioner and recommendations.

The petitioner submitted his prayer pursuant to Articles 37 and 119 of the Constitution and in line with the provisions of the Petition to Parliament (Procedure) Act, 2012 and the Senate Standing Orders.

The Committee considered the prayer of the petitioner. The Committee in the process reviewed documents that the petitioner presented before the Committee. The information obtained from these meetings informed the determination of the prayer of the petitioner by the Committee.

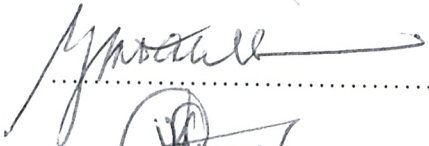
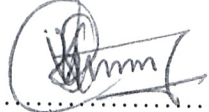
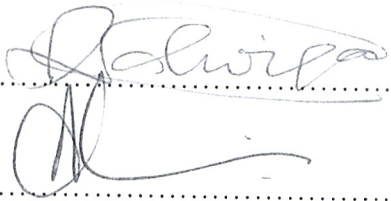



Membership of the Committee

The Committee is comprised of the following members;

- | | | |
|----|--------------------------------------|--------------------|
| 1. | Sen. Mwangi Paul Githiomi, EGH, M.P. | - Chairperson |
| 2. | Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. | Sen. George Khaniri, MGH, M.P. | - Member |
| 4. | Sen. Godana Hargura, M.P. | - Member |
| 5. | Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member |
| 6. | Sen. Halake Abshiro, M.P. | - Member |
| 7. | Sen. Boy Issa Juma, M.P. | - Member |
| 8. | Sen. (Arch.) Sylvia Kasanga, M.P. | - Member |
| 9. | Sen. Mwaruma Johnes, M.P. | - Member |

We, Members of the Standing Committee on Land, Environment and Natural Resources do hereby affix our signatures to this Report to affirm the correctness of the contents and support for the Report –

- | | | |
|----|--------------------------------------|--|
| 1. | Sen. Mwangi Paul Githiomi, EGH, M.P. |  |
| 2. | Sen. Prengei Victor, M.P. |  |
| 3. | Sen. Godana Hargura, M.P. | |
| 4. | Sen. George Khaniri, MGH, M.P. | |
| 5. | Sen. Ndwiga Peter Njeru, EGH, MP. |  |
| 6. | Sen. Halake Abshiro, M.P. | |
| 7. | Sen. Boy Issa Juma, M.P. | |
| 8. | Sen. (Arch.) Sylvia Kasanga, M.P. | |
| 9. | Sen. Mwaruma Johnes, M.P. |  |

Acknowledgement

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information to help determine the prayers of the petitioners. I also wish to express my gratitude to the members of the Committee for their thoughtful and engaged contribution to the matter. Further the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating this activity. I also wish to recognize the commitment and dedication of the staff of the Committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty to table the report of the Standing Committee on Land, Environment and Natural Resources, in relation to the petition pursuant to the Senate Standing Order 226(2).

Signed.......... Date..... 14-04-18

Sen. Mwangi Paul Githiomi, EGH, MP,

Chairperson,

Senate Standing Committee on Land, Environment and Natural Resources.

List of Abbreviations/ Synonyms

1. Environment Management and Coordination Act (EMCA)
2. National Environment Management Authority (NEMA)
3. Water Quality Regulations (WQR)
4. Water Resources Management Authority (WARMA)
5. Water Resources Management Rules (WRMR)

INTRODUCTION

1. Background of the petition

1. The Standing Committee on Land, Environment and Natural Resources is mandated under the standing order 226 of the Senate Standing Orders to consider and report on any petition committed to it by the House.
2. On 14th March, 2018, pursuant to standing order 224 (2) (b) of the Senate Standing Orders, the Speaker of the Senate reported to the Senate a Petition presented through the Clerk of the Senate by Mr. Taratisio Kawe.

1.1 The Petition

3. The petitioners drew the attention of the Senate to the following-

1. **That**, this petition is of national importance and it touches on livelihood and survival of all the citizens of this country, their animals and flora and fauna and any other living things within its territory.
2. **That**, wetlands are sensitive ecosystems that provide numerous direct and indirect values to Kenyans. Those wetlands have been receding at an alarming rate from about 6.8 % of Kenya's total land mass at independence to about 2.6 % in 2010.
3. **That**, it is of great concern the Kenyan society and the Government having been watching the continued degradation and drainage of wetlands in Kenya has not done anything tangible to protect the continued degradation and destruction of the environment and water sources.
4. **That**, Wetlands and riparian areas are at risk as a result of man's uncontrolled encroachment and exploitation of wetland resources and this interference with the biophysical environment has resulted in problems such as pollution, loss of biodiversity, degradation of life support systems and global climate change.
5. **That**, degradation of wetlands and other water sources is triggered by physical modification of the landscape, depletion of wetland biological resources through overexploitation, encroachment and settlement, wetland reclamation and conversion for change of use, pollution, poor methods of farming and promotion of alien species particularly eucalyptus.
6. **That**, special attention is drawn to the instructions given by the Director General of the National Environment Management Authority (NEMA) under the powers

conferred him, by Section 12 of the Environmental Management and Coordination Act (EMCA), Act No. 8, 1999, to Permanent Secretary Ministry of Lands to within three (3) months revoke all land allocations in riparian areas and also directing the Water Resources Management Authority (WARMA) to clearly peg and mark all riparian areas within a three month period effective from 2nd March 2011, a directive which has not been enforced.

7. **That**, the enforcement of the provisions of the Water Act (2002) to ensure that wetlands and riparian land is protected has never been effected.
8. **That**, the country cannot have food security under the current situation unless immediate action is taken and water sources are conserved, secured and protected and the same case with the environment.
9. **That**, the Government's Vision 2030 will be a mirage and will not be realistic if the current trend on massive destruction of environment and water source is not stopped.
10. **That**, the petitioner personally witnessed massive destruction of the environment and water sources and his efforts and that of his team to stop it has been unsuccessful given there is no body or department which wants to take responsibility.
11. **That**, if the current activities relating to environmental degradation and water sources invasion are not curtailed, most of the Kenya territory will in the next 10 years be Semi-arid and eventually be a desert.
12. **That**, the issues of environment are of national importance and neither NEMA nor the county governments have been able to protect the environment, water and water sources.
13. **That**, the laws governing the protection and conservation of the environment, water and water sources are scattered in too many Acts of Parliament (e.g. Water Act 2016, Forest Act, Environmental Act (sic), Agriculture Act) which makes it everybody's business and consequently nobody's business.
14. **That**, there is inadequacy of the legislative framework governing the protection and sustainable management of water resources, water sources and riparian zones in Kenya.

15. **That**, riparian areas are a critical component that hold several benefits to the environment as they are essential for high water streams, rivers, lakes and along shorelines.
16. **That**, riparian areas have remained unprotected from poor agricultural practices, residential and commercial construction, landscaping and logging.
17. **That**, the law on conservation and protection of water and its sources and riparian zones is not in a single piece of legislation. The law is fragmented in numerous pieces of legislations like Environment Management and Coordination Act (EMCA) 1999, the Water Quality Regulations (WQR) (2006), Water Resources Management Rules (WRMR) (2007), the Agricultural Act (Cap 318), Forest Act, 2005, the Land Act 2012, the Water Act, 2002 and the Wildlife Conservation and Management Act 2013 presenting a problem of overlapping mandates and lack of coordination in enforcement.
18. **That**, there is lack of clear approval and enforcement agencies for the protection of the riparian area and further lack of Geographical Information System of data for the effective and sustainable management of riparian areas. This has presented a big problem for the preservation, protection and management of riparian areas which are endowed with a number of natural resources that need to be protected through a better and effective system of management.
19. **That**, a strong single all-inclusive legislation on water resources, water sources and riparian zones needs to be enacted with a view of having enforceable regulations.
20. **That**, a strong national enforcement agency vested with prosecution powers needs to be urgently formed with a purpose of enforcing the law which will be enacted.
21. **That**, the petitioner has made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response, thus his petition to Parliament which by law is mandated to review and enact legislation as proposed in the petition.
22. **That**, none of the issues raised in the Petition is pending in any court of law, constitutional or any other legal body.

4. In his Petition, the petitioner prays that the Senate enacts a single legislation consolidating the various laws on the protection and sustainable management of water resources, water sources and riparian zones in Kenya, including putting in place a strong centralized agency with sufficient powers to enforce compliance with the said law.

1.2 The right to petition

5. The right of Kenyan citizens to petition public authorities and Parliament is a right guaranteed under Articles 37 and 119 of Constitution. This right is governed by the Petition to Parliament (Procedure) Act 2012 as well as the Standing Orders of the Senate. The right to petition is an essential citizen participatory tool, as it provides an avenue for Members of Parliament and citizens to interact on the issues that concern citizens and also demonstrates that Parliament is prepared to directly intervene on issues of concern in order to promote and protect the rights of citizens.

1.3 The basis of the petition

6. The petitioner in this case is a resident of Embu County and the Chairperson of the Itimbogo Water Users Committee.
7. The Committee was able to meet with the Petitioner and listened to him.

Chapter 2

Committee Approach

2.1 The approach

9. The Committee analyzed the Petition committed to it by the House and purposed to respond to the prayers of the petitioner. The sole objective of the Committee was to respond to the prayers of the petitioner conclusively.

2.2 Meeting with the Petitioner

The Committee heard from the Petitioner as follows:-

- a) **That**, despite the existing laws in place, wetlands in Kenya have been receding at an alarming rate, primarily as a result of uncontrolled human encroachment and exploitation over the years;
- b) **That**, if the current activities relating to environmental degradation and water sources invasion are not curtailed, most of the Kenya territory will in the next 10 years be semi-arid and eventually be a desert;
- c) **That**, presently, the law on the conservation and protection of water resources, water sources and riparian zones is scattered in many different pieces of legislation, which has presented a challenge in terms of overlapping and conflicting mandates, and lack of coordination in enforcement; and
- d) **That**, there is need to have a unified reporting structure with regards to water sources, water resources and riparian zoned conservation and protection with a single ministry having the exclusive jurisdiction.

Consequently, the Petitioner prays that the Senate initiates enactment of a single legislation consolidating the various laws on the protection and sustainable management of water resources, water sources and riparian zones in Kenya, including putting in place a strong centralized agency with sufficient powers to enforce compliance with the said law.

2. Issues for determination from the prayers of the petitioners

10. To respond to the petitioner's prayers the Committee analysed the petition and found out that the Petitioner sought to petition the Committee to consolidate all laws touching on protection and sustainable management of water resources, water sources and riparian zones in Kenya. The current laws intended for consolidation by the

petitioner include:

1. **Water Act (No. 43 of 2016):** This is an Act of Parliament to provide for the regulation, management and development of water resources, water and sewerage services; and for other connected purposes. Section 3 of the Act states that “*the purpose of this Act is to provide for the regulation, management and development of water resources and water and sewerage services in line with the Constitution.*”
2. **The Forest Conservation and Management Act (No. 34 of 2016):** This is an Act of Parliament to give effect to Article 69 of the Constitution with regard to forest resources; to provide for the development and sustainable management, including conservation and rational utilization of all forest resources for the socio-economic development of the country and for connected purposes.
3. **Environmental Management and Co-ordination Act, 1999 (Cap 387):** which is an Act of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected therewith and incidental thereto.
4. **Agriculture and Food Authority Act (No. 13 of 2013):** which is an Act of Parliament to provide for the consolidation of the laws on the regulation and promotion of agriculture generally, to provide for the establishment of the Agriculture and Food Authority, to make provision for the respective roles of the national and county governments in agriculture excluding livestock and related matters in furtherance of the relevant provisions of the Fourth Schedule to the Constitution and for connected purposes.
5. **Land Act (No. 6 of 2012):** which is an Act of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes.
6. **Wildlife Conservation and Management Act (No. 47 of 2013):** This is an Act of Parliament to provide for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes. Section 2 of the Act states that “*This Act shall apply to all wildlife resources on public, community and private land, and Kenya territorial waters.*”

7. Environmental Management and Coordination, (Water Quality) Regulations

2006: These regulations were made pursuant to section 147 of the Environmental Management and Coordination Act. They make provisions for, among others, —

- (i) the prevention of water pollution;
- (ii) the Protection of Lakes, Rivers, Streams, Springs, Wells and other water sources;
- (iii) the discharge of pollutants and effluent;
- (iv) the procedure for application of a discharge licence and form of the licence;
- (v) the fees payable for licences;
- (vi) the use of waste water;
- (vii) quality standards for domestic water and their monitoring guides; and
- (viii) standards for effluent discharge and their monitoring guides.

8. Water Resources Management Rules, 2007: These rules were made pursuant to section 110 of the Water Act, 2002. They make provisions for, among others, —

- (i) measurement units;
- (ii) forms of documents;
- (iii) the maintenance of water resource data;
- (iv) the registration of water bodies;
- (v) the issuance of permits and the application process; and
- (vi) the application and other provisions on dams.

3. Committee Proceedings

The committee held two deliberative sessions and reviewed documents at the centre of the prayers of the petitioners to determine the issues raised therein.

4. Deliberative sessions

In the exercise of its mandate the Committee held deliberative sessions to closely examine and hear presentations from petitioner on 6th June, 2018 and the first introduction of the Petition to the Committee on 10th May, 2018. The Minutes of these sessions as well as the documents and evidence presented to the committee are annexed to the report.

5. Documents review

The Committee reviewed documents presented to it by the Petitioner. The documents tabled by the Petitioner are also annexed to this report.

Chapter 3

Committee Observations

The Committee observed as follows:

1. The Petitioner, in his Petition, prayed for the consolidation of, among others, the Forest Act (2005), the Water Act (2002) and the Agriculture Act (Cap 318). These laws have however since been repealed. They were repealed by the Forest Conservation and Management Act (No. 34 of 2016), the Water Act (No. 43 of 2016) and the Agriculture and Food Authority Act (No. 13 of 2013). The Committee however considered the current legislation in determining the Petition.
2. The Petitioner also prayed for the consolidation of the Environmental Management and Coordination, (Water Quality) Regulations 2006 and the Water Resources Management Rules, 2007 into the proposed single statutory legislation. It is standard practice that technical matters and matters providing details necessary for the implementation of legislation are best placed in subsidiary legislation. This enables statutory legislation focus on substantive and significant provisions while subsidiary legislation provides for their implementation e.g. application procedures, forms and fees payable. This also ensures that statutory legislation is not a bulky and unending document in need of constant amendment. The provisions of the Environmental Management and Coordination, (Water Quality) Regulations 2006 and the Water Resources Management Rules, 2007 are therefore better situated in subsidiary legislation.
3. The laws proposed to be consolidated are very diverse and have provisions cutting across various distinct sectors. It would be impractical to consolidate all these laws into a single piece of legislation.
4. The entities implementing the laws proposed to be consolidated also have very wide and diverse functions and it would be impractical for them to be merged into a single entity. For instance it would be very confusing to merge the Kenya Forest Service

with the National Environment Management Authority, the Kenya Wildlife Service and the Water Resources Authority.

5. The Petitioner neither stated the specific provisions in the stated laws in need of consolidation nor the specific implementation entities in need of a merger. The Committee however studied the various laws and observed that there are no areas of significant duplication that would warrant the consolidation of the laws, noting that they vary from wildlife to agriculture, from water to land and from forestry to the environment.

Chapter 4

Committee Recommendations

The Committee recommends that the petition be dismissed owing to the impracticability of consolidating all laws with provisions on water sources, water resources and riparian areas and specifically the consolidation of the following pieces of legislation —

- 1) Water Act (No. 43 of 2016);
- 2) Forest Conservation and Management Act (No. 34 of 2016);
- 3) Environmental Management and Co-ordination Act, 1999 (Cap 387) ;
- 4) Agriculture and Food Authority Act (No. 13 of 2013);
- 5) Land Act (No. 6 of 2012);
- 6) Wildlife Conservation and Management Act (No. 47 of 2013);
- 7) Environmental Management and Coordination, (Water Quality) Regulations 2006;
and
- 8) Water Resources Management Rules, 2007.

