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TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE CONSIDERATION OF
THE STATUE LAW (MISCELLANEOUS AMENDMENTS)(NO. 12) BILL, 2018

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBER
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2018

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CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendments)(No.12) Bill, 2018 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party, and it seeks to amend many other laws but the ones relevant to the Committee are:

- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Wildlife Conservation and Management Act (No. 47 of 2013)
- The National Drought Management Authority Act, 2016 (No. 4 of 2016)
- The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

The Committee considered the proposed amendments to the Acts above for submission to the Departmental Committee on Justice and Legal Affairs pursuant to the Communication by the Hon. Speaker issued on 18th April, 2018.

In the Memorandum of Objects and Reasons, the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 seeks to amend the Acts as follows:

The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)

The Bill seeks to provide for the presentation of reports on environmental degradation to the Cabinet Secretary in place of the Council. It also seeks to amend section 129 to expand the categories of persons who may appeal to the National Environment Tribunal.

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

The Bill seeks to amend the Wildlife Conservation and Management Act, 2013 to provide for the protection of wildlife and wildlife trophies and also in relation to the Wildlife Environment Fund.

The National Drought Management Authority Act, 2016 (No. 4 of 2016)

The Bill proposes to amend the National Drought Management Act, 2016, to provide for appointment of the Chairperson by the President and to remove the requirement of approval by Parliament. It also amends section 13 which provides for appointment of staff by the Board on such terms as it may determine, unlike the current situation where it is served by a Secretariat.


The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

The Bill proposes to amend the Forest Conservation and Management Act, 2016, to introduce a new subsection to section 34 which provides that a petition on variation of the boundaries of public forests shall be forwarded to the National Assembly only on

recommendation of the Service. It also amends Section 40 to create an offence for interference with protected tree species.

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

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Environment and Natural Resources, to submit its report on the consideration of the Statute Law (Miscellaneous Amendment) No. 12 Bill, 2018 for consideration Pursuant to Standing Order 127

Signed..........Date.....20/6/2018.....
HON. SOPHIA ABDI NOOR, MP
VICE-CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

EXECUTIVE SUMMARY

On 18th April, 2018, the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 was read a First Time and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. The Departmental Committee on Environment and Natural Resources held one meeting to consider the Bill.

On 7th May, 2018, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from: the Chairpersons of Wildlife Conservation and Compensation Committees from the 47 Counties, Mazido International, Wildlife Protection, Africa Network for Animal Welfare, Nature Kenya, Wildlife Direct, Kenya Wildlife Conservancies Association, Kenya Forests Working Group, Friends of Mt. Kenya Forest Association, Council of Governors and Law Society of Kenya.

The Committee observed that:

1. The proposed amendments to the Wildlife Conservation and Management Act (No. 47 of 2013) are far reaching and substantive that they should have been prepared independently not as miscellaneous amendments.
2. The proposed amendments to the National Drought Management Authority Act (No. 4 of 2016) were committed to the Committee since the functions of the Authority fall within the mandate of the Committee in terms of oversight. However, the Authority is never oversights by the Environment and Natural Resources Committee on other aspects.
3. The Acts that fall under the purview of the Committee that the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 seeks to amend had been in operation for a reasonable period of time hence the implementing MDAs could have experienced implementation challenges. Therefore, the sought amendments were justifiable and in tandem with the need for pragmatism in implementation of legal provisions.
4. Most of the proposed amendments in the acts below were majorly meant to correct typographical errors and to align them with the Constitution and other legal provisions:
 - a) The Environment Management and Coordination Act, 1999 (No. 8 of 1999),
 - b) The National Drought Management Authority Act, 2016 (No. 4 of 2016),
 - c) The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

The Committee having considered the proposed amendments to the various Acts under its purview and the views from all the stakeholders, resolved that the amendments to the Environmental Management and Coordination Act, 1999, The National Drought Management Authority Act, 2016 and the Forest Conservation and Management Act, 2016 be passed by the House as proposed in the Statute Law (Miscellaneous Amendment) No. 12 Bill, 2018. However, it will be proposing some amendments to the Wildlife Conservation and Management Act, 2013 as contained in the recommendation part of this report.

1.0 PREFACE

1.1 Establishment of the Committee

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

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

1.2 Mandate of the Committee

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

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

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

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

1.3 Committee Membership

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

1. **The Hon. Kareke Mbiuki, M.P.** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.** **Vice Chairperson**
3. The Hon. Benjamin Jomo Washiali, M.P., CBS
4. The Hon. David Kangogo Bowen, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Ali Wario Guyo, M.P.
7. The Hon. Beatrice Cheron Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. Peter Kimari Kihara, M.P
11. The Hon. Benjamin Dalu Tayari, MP.
12. The Hon. Charles Ong'ondo Were, M.P.
13. The Hon. Nasri Sahal Ibrahim, M.P.
14. The Hon. Rossa Buyu. M.P.
15. The Hon. Said Hiribae, M.P.
16. The Hon. Hassan Oda Hulofo, M.P.
17. The Hon. Amin Deddy Mohamed Ali, M.P.
18. The Hon. Rehema Hassan, M.P.
19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

1.4 Committee Secretariat

- | | |
|-----------------------------|------------------------------|
| 1. Ms. Esther Nginyo | - Clerk Assistant/Lead Clerk |
| 2. Mr. Dennis Mogare Ogechi | - Third Clerk Assistant |
| 3. Mr. Salem Lorot | - Legal Counsel II |
| 4. Ms. Winnie Kulei | - Researcher |
| 5. Ms. Yunis Amran | - Fiscal Analyst III |

2.0 BACKGROUND

The Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party. It was read a First Time on 18th April, 2018 and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. It seeks to amend the following laws under Environment and Natural Resources sector:

- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Wildlife Conservation and Management Act (No. 47 of 2013)
- The National Drought Management Authority Act, 2016 (No. 4 of 2016)
- The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

The Departmental Committee on Environment and Natural Resources considered the amendments as contained in the Statute Law (Miscellaneous Amendment) No. 12, Bill, 2018 for submission the Departmental Committee on Justice and Legal Affairs pursuant to the Communication by the Hon. Speaker issued on 18th April, 2018.

The Statute Law (Miscellaneous Amendment) No. 12, Bill, 2017 seeks to amend the Wildlife Conservation and Management Act (No. 47 of 2013) so as to provide for the protection of wildlife and wildlife trophies and also in relation to the Wildlife Environment Fund. Under the Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999), it seeks to provide for the presentation of reports on environmental degradation to the Cabinet Secretary in place of the Council. It also seeks to amend section 129 to expand the categories of persons who may appeal to the National Environment Tribunal.

The Bill further seeks to provide for appointment of the Chairperson by the President and to remove the requirement of approval by Parliament. It also amends section 13 which provides for appointment of staff by the Board on such terms as it may determine, unlike the current situation where it is served by a Secretariat under the National Drought Management Authority Act, 2016 (No. 4 of 2016).

The Bill also proposes to amend the Forest Conservation and Management Act, 2016, to introduce a new subsection to Section 34 which provides that a petition on variation of the boundaries of public forests shall be forwarded to the National Assembly only on recommendation of the Service. It also amends Section 40 to provide for an offence for interference with protected tree species.

On 7th May, 2018, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from the following stakeholders:-

- a) Wildlife Direct (Kenya)

- b) County Wildlife Conservation & Compensation Committee Chairpersons
- c) Mazido International
- d) Africa Network for Animal Welfare
- e) Nature Kenya- the East Africa Natural History Society (EANHS)
- f) Kenya Wildlife Conservancies Association (KWCA)
- g) Nahashon K. Murugu
- h) Kenya Forests Working Group
- i) The Council of Governors
- j) Law Society of Kenya.

2.1 Clause by Clause Analysis

The following table shows clause by Clause analysis of the proposed amendments to the following Acts:

- The Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)
- The Wildlife Conservation and Management Act (No. 47 of 2013)
- The National Drought Management Authority Act, 2016 (No. 4 of 2016)
- The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

2.1.1 Environmental Management and Coordination Act, 1999

- i. Section 29 of EMCA is on County Environment Committees. The effect of the amendment is that the members of the County Environment Committee appointed under paragraphs (d) to (f) and not under paragraph (c) to (g) of subsection (2) shall hold office for a period of three years and shall be eligible for re-appointment for one further term. From the composition, the members under paragraph (c) and (g) are not appointed by the Governor and therefore cannot be reappointed under section 29(4) of EMCA.
- ii. Section 32 of EMCA provides for the functions of the National Environmental Department. The provision erroneously provides that the National Environmental Department shall “make a report of its findings together with its recommendations thereon to the *Council*” instead of the Cabinet Secretary. Also, it incorrectly provides that the National Environmental Department shall “prepare and submit to the *Council*, periodic reports of its activities...” instead of Cabinet Secretary.
- iii. Section 36 provides for the remuneration and other expenses of the National Environmental Department.

- iv. The provision above erroneously provides that the Council and not the Cabinet Secretary may determine the remuneration, fees or allowances for expenses paid to the Chairperson and members of the Department.

2.1.2 Wildlife Conservation and Management Act,(No. 47 of 2013).

- i. Section 3 seeks to provide for various definitions as outlined herebelow;

“deal” means—

- (a) to sell, purchase, distribute, barter, give, receive, administer, supply, or otherwise in any manner deal with a trophy or live species;
- (b) to cut, carve, polish, preserve, clean, mount or otherwise prepare a trophy or live species;
- (c) to transport or convey a trophy or live species;
- (d) to be in possession of any trophy or live species with intent to supply to another; or
- (e) to do or offer to do any act preparatory to, in furtherance of, or for the purpose of, an act specified above;

- ii. Section 3 of the Wildlife Conservation and Management Act contains the definition of the term “dealer” as follows—

“dealer” means any person who, in the ordinary course of any business or trade carried on by him, whether on his own behalf or on behalf of any other person—

- (a) sells, purchases, barter or otherwise in any manner deals with any trophy; or
- (b) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any trophy; or
- (c) transports or conveys any trophy;

“trophy” includes any bone, claw, egg, feather, hair, hoof, skin, tooth or tusk of an animal, and for any species of plant, any bark, branch, leaf, log, sap or extract and includes any other durable portion whatsoever of that animal or plant whether processed, added to or changed by the work of man or not, which is recognizable as such.

- iii. Insert the following new definition in proper alphabetical sequence-
“Subsistence hunting” means hunting for the purpose of daily consumption by an individual and/or his direct dependents.

- iv. Section 6(1)By Inserting the words “a uniformed and disciplined” immediately after the words “established a” the proposed amendment seeks to make Kenya Wildlife Service uniformed and disciplined. However, when one looks at Part 1 of the Second Schedule,

- there are other categories of officers of the Service, that is, scientific cadre and other officers appointed by the Trustees on specified schemes. The proposed amendment does not take into consideration these other categories and if the intention is to make the service uniformed and disciplined then these categories should then be removed.
- v. Section 7(e) by inserting the words “levies” after the word “revenue”, the amendment proposes to include levies to be collected by KWS apart from revenues and charges due to the national government from wildlife.
 - vi. Section 8(2)(f) provides for the Board of Trustees of KWS. Although the persons appointed by the Cabinet Secretary are retained at four, the major change is that a person to be appointed should have both local and international technical experience in either of listed matters: fundraising, law, wildlife, finance, business or investment matters.
 - vii. Section 11(4) proposes to expand the qualification for appointment of a person as a Director General. The effect of the proposed amendment is to expand the qualification for appointment of a person as a Director-General.
 - viii. Section 18 proposes to change the County Wildlife Conservation and Compensation Committee to Community Wildlife Conservation Committee which will be 8 to replace the current county Wildlife Conservation and Compensation Committees in each county. Their composition has also been changed. It also provides for the frequency of meetings for the Committee.
 - ix. Section 19 has assigned the cabinet secretary the obligation of publishing in the Gazette the functions and guidelines of the Community Wildlife Conservation Committee. The effect of the proposed amendment is to assign the Cabinet Secretary the obligation of publishing in the Gazette the functions and guidelines of the Community Wildlife Conservation Committees. This amendment is closely linked to the earlier amendment to section 18.
 - x. Section 23 proposes to rename the current Wildlife Endowment Fund to Wildlife Conservation Trust Fund with a Public-Private Partnership as a governing body. It has also expanded the source of funds and the Cabinet Secretary has been given powers to make regulations.
 - xi. Section 92 proposes to expand the offences relating to endangered and threatened species. Most of the penalties for the expanded offences do not have an option of fine and terms of imprisonment prescribe minimum penalty and not maximum penalty.
 - xii. Section 95 proposes to expand the offences relating to trophies and trophy dealing in the existing section 95. The penalties have been retained, however the term of imprisonment has been reduced from not less than five years to not less than twelve months.
 - xiii. A new Section 95A is proposing to introduce a new offence of poisoning wildlife.
 - xiv. Section 97 is proposing to expand the offences relating to hunting for bush meat trade.
 - xv. Section 99(1) proposes to introduce a product of a wildlife species from what is prohibited to be traded in, imported, exported, re-exported or introduced.

- xvi. Section 99(3) proposes to prohibit a person from trading in, importing, exporting, re-exporting or introducing any specimen. It also provides for offences and penalties.
- xvii. Section 99(4) is a new provision creating a further offence after subsection (3) of section 99. This amendment proposes to introduce a further offence of aiding or abetting in the commission of an offence of importing or exporting of wildlife species.
- xviii. Section 102(1) proposes to allow all the prohibited activities as listed in the section through a licence or permit of the KWS or authorization from the authority responsible for any other protected areas as the case may be.
- xix. Section 102(1)(a) has been redrafted to take into consideration the previous amendment under section 102(1). There is use of the term 'protected area' in place of 'national park or reserve'.
- xx. Section 102(1)(g) proposes to amend paragraph (g) in section 102(1) of the Act in order to expand the prohibition of undertaking extractive activities from a 'marine protected area' to a 'protected area'.
- xxi. Section 103 provides for offences by body corporates and also provides for penalties for the offences. The fines proposed are not exceeding 10 million shillings or imprisonment for a term not exceeding 5 years or both.
- xxii. A new section has been introduced after section 116 which bars execution or attachment or process issued against the immovable property of the service or any of its vehicles, vessels, aircraft or its operating equipment, machinery, fixtures or fittings. However, Section 44 of the Civil Procedure Act provides that all property belonging to a judgement debtor is liable to attachment and sale in execution of a decree.
- xxiii. Third Schedule Part A provides for the wildlife species in respect of which compensation may be paid. Part A provides the list of the wildlife as follows: elephant, lion, leopard, rhino, hyena, crocodile, cheetah, buffalo, poisonous snakes, hippo, shark, stone fish, whale, sting ray, wild dog and wild pig. The amendment proposes to remove poisonous snake, shark, stone fish, whale, sting ray and wild pig from the wildlife species in respect of which compensation may be paid.
- xxv. Third Schedule Part B provides the list of wildlife that if they cause damage to crop, livestock and property, one may get compensation. The wildlife species are elephant, lion, leopard, rhino, hyena, crocodile, cheetah, buffalo, hippo, zebra, eland, wildebeest, snake and wild dog.
- xxiv. Third Schedule Part B proposes to remove crop and property damaged from compensation to be paid.
- xxvi. The amendment proposes to delete the items "snake, zebra, wildebeest, wild dog and eland". The effect of this amendment would be that if a snake, zebra, wildebeest, wild dog or eland damages ones crop, livestock or property, one would not be entitled to compensation

2.1.3 The National Drought Management Authority Act, 2016 (No. 4 of 2016)

- i. Section 8 of the Act provides for the composition of the Board. The effect of the amendment would be that the Chairperson of the Board would be appointed by the President. The existing provision provides that the Chairperson of the Board is competitively appointed by the Cabinet Secretary with the approval of Parliament.
- ii. Section 8(1) (d) provides for four persons to be appointed by the Cabinet Secretary. The existing paragraph (d) provides for four persons who shall be competitively appointed by the Cabinet Secretary with the approval of Parliament.
- iii. Section 13 proposes to delete the existing section 13 and replace it with a new section. The provision has been redrafted to provide clarity, for instance to provide that the Board may request the Public Service Commission to second to the Authority public officers. The existing provision generally provides that “public officers as may be seconded to the Board”.

2.1.4 The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

- i. Section 9 provides for the composition of the Board of Directors of Kenya Forest Service. Section 9 (3) provides that the members of the Board under subsection (1)(a) and (1)(e) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years. However, it erroneously refers to subsection 1(e) instead of subsection 1(g).
- ii. Section 9(5) corrects an error. Reference had been made to subsection 1(e) instead of subsection 1(g).
- iii. Section 34 provides for the variation of boundaries or revocation of public forests. The intention of the amendment is to exclude the Senate from considering petitions for the variation of boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest. However, this has not been done well for various reasons:
 - Subsection (1) still bears reference of “Senate”
 - Subsection (3) refers to “the Standing Orders of the relevant House” meaning that a Petition may be forwarded to either House
 - Subsections (5) and (6) contain references of “Senate”
- iv. Section 35(2) rectifies an error of reference to the Director-General instead of Chief Conservator of Forests. No office of the Director General has been established in the Act.
- v. Section 40 provides for additional offence.
- vi. Section 50(1) rectifies an error of reference to the Director General instead of the Chief Conservator of Forests.

- vii. Section 57(1) of the Act makes an incorrect cross-reference to section 59 instead of section 56. The intention of the provision was to refer to authorisation for forest activities under section 56 and section 59 which provides that the Cabinet Secretary in consultation with the relevant stakeholders shall prescribe Regulations for the grading and valuation of timber and other forest products.
- viii. New Section 63A empowers the Director of Public Prosecutions to appoint a forest officer to be a public prosecutor for the purposes of the Act.
- ix. Section 64(3) seeks to rectify an error in cross-referencing. The subsection refers to section 61 instead of section 60.
- x. Section 73(2) proposes to delete the words “that other user, as the case may be” to correct a clerical error in the subsection.
- xi. Section 74 rectifies an error of reference to the Director General instead of the Chief Conservator of Forests.

3.0 SUBMISSION FROM THE STAKEHOLDERS (PUBLIC PARTICIPATION)

The Committee received memoranda from the following:

- i. Wildlife Direct (Kenya)
- ii. County Wildlife Conservation & Compensation Committee Chairpersons
- iii. Mazido International
- iv. Africa Network for Animal Welfare
- v. Nature Kenya- the East Africa Natural History Society (EANHS)
- vi. Kenya Wildlife Conservancies Association (KWCA)
- vii. Nahashon K. Murugu
- viii. Kenya Forests Working Group
- ix. Council of Governors
- x. Law Society of Kenya

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

3.1 AMENDMENTS TO THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999

CLAUSE	GROUP/ PERSON	PROPOSAL/ AMENDMENT	COMMITTEE'S RECOMMENDATION
s. 29(4) Delete the expression “(c) to (g)” and substitute therefor the expression “(d) to (f)”.	Wildlife Direct	Agrees to the amendment. Reason: The aligning of the functions of the National Environmental Department with the Cabinet Secretary allows for the adoption of a national outlook in decision making	The Committee concurs with Wildlife Direct.
	Council of Governors	Supports the amendment	The Committee concurs with the Council of Governors.
s. 32	Law Society of Kenya	It is imperative that an impartial agency do this work, kindly consider the Non-Governmental Organizations Council or the National Federation of Public Benefit	The interpretation section of the Environmental Management and

		<p>Organizations, from the Public Benefit Organizations Act, No. 18 of 2013, to take over this role</p> <p>Justification: This amendment serves to increase the powers of the Cabinet Secretary, which is not a good thing. The Council here, serve as an impartial and independent agency, outside the purview of the ministry and the Cabinet Secretary have been found wanting, how can one then report to the same institutions or personage? This is improper</p>	<p>Coordination Act retains the definition of the Council as follows</p> <p><i>“National Council of Public benefit organizations” means the Council established by section 23 of the Public benefit organizations Co-ordination Act, 1990 (No. 19 of 1990);</i></p> <p>However, this Council is non-existent after the repeal of the Public Benefit Organizations Coordination Act, 1990. Instead, the Public Benefits Organization Act (No. 18 of 2013) establishes the Public Benefit Organizations Regulatory Authority. In any case, what is proposed does not constitute one of the functions of the Authority.</p>
<p>s. 36(1) Delete the word “Council” and substitute</p>	<p>Wildlife Direct</p>	<p>Agrees to the amendment. Reason: The determination of remuneration by one person discourages corruption.</p>	<p>The provision erroneously provides that the Council and not the Cabinet Secretary may determine the</p>

therefor the expression "Cabinet Secretary"			remuneration, fees or allowances for expenses paid to the Chairperson and members of the Department. This is the purpose of the amendment.
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3.2 The Wildlife Conservation and Management Act, 2013

CLAUSE	GROUP/ PERSON	PROPOSAL/ AMENDMENT	COMMITTEE'S RECOMMENDATIONS
General Comments	Africa Network for Animal Welfare	They indicate that the amendments to the Wildlife Conservation and Management Act are different from the Wildlife Conservation and Management (Amendment) Bill, 2016. They further indicate that the 2016 Bill had incorporated the views of the stakeholders and had been presented to the previous Chairperson of the Environment and Natural Resources Committee, Hon. Amina Abdalla. They therefore request that the current Bill should comply with the negotiated Wildlife Conservation and Management (Amendment) Bill, 2016 including the schedules and that they be given an opportunity to formally present and justify the amendments prior to the Bill being tabled for discussion by the National Assembly.	<p>The Committee noted the concerns of the various stakeholders and confirms that it is true that the Wildlife Conservation and Management (Amendment) Bill 2016 had been presented to the Committee in the previous Parliament.</p> <p>The amendments in the Statute Law (Miscellaneous Amendments) Bill, 2018 are not comprehensive and serve to address a few of the glaring areas that needed quick intervention. The remaining amendments will be addressed through a separate Bill.</p>
General	Mazido	<ul style="list-style-type: none"> The law is relatively new and a 	The Committee

<p>comments</p>	<p>International</p>	<p>great part of it has not been implemented to test its efficacy hence the amendment is unwarranted</p> <ul style="list-style-type: none"> • Introduce a section on benefit sharing in which 25% of the gross annual income of National Parks shall go to park-adjacent communities especially human-wildlife conflicts hotspots • Determine and fix a percentage of KWS earnings that should go towards CSR in wildlife-rich counties 	<p>welcomes the views from organizations but recommends that general proposals would be better addressed in a different separate Bill.</p>
<p>s. 3 (interpretation section)</p>	<p>Wildlife Direct</p>	<p>The amendments are good but need some review</p> <p>(i) The Community Wildlife Compensation Conservation Committee has replaced the County Wildlife Conservation and Compensation Committees but has not been expressly defined in the definitions section of the Act. Operative provisions of the CWCC will not work without this definition.</p> <p>(ii) Replace County Wildlife Conservation and Compensation Committee with Community Wildlife Conservation Committee wherever mentioned in the Wildlife Conservation and Management Act</p> <p>Subsistence hunting is now defined thus there is less chance of an offender using its provisions to procure a lesser sentence</p>	<p>The Committee notes that there is need to define the term "Community Wildlife Compensation Committee" in section 3 of the Act.</p>
<p>s. 7(e) Insert the word "levies" immediately</p>	<p>Wildlife Direct</p>	<p>The amendment is good. The sources of income of the Service have been expanded.</p>	<p>The Committee concurs.</p>

after the word “revenue”.			
s. 8(2) (f) Delete and substitute therefor the following new paragraph - “(f) four other persons with both local and international technical experience in either fundraising, law, wildlife, finance, business or investment matters appointed by the Cabinet Secretary.”	Nature Kenya- the East Africa Natural History Society (EANHS)	The amendment should be rejected. Reasons: The amendment denies key stakeholders- national wildlife conservation non-governmental organizations, communities from wildlife rich areas and privately-managed wildlife areas- an opportunity to engage and contribute on wildlife conservation issues at the national level	The Committee considered all the comments from stakeholders on the proposed amendment to section 8(2) (f) of the Wildlife Conservation and Management Act. It therefore proposes an amendment so as to provide that one of the four other persons appointed by the Cabinet Secretary shall be from local community wildlife areas. The amendment seeks to expand the pool from which the Cabinet Secretary can appoint members to the Board of Trustees of the Kenya Wildlife Service. This will help to introduce experts to the Board of Trustees while at the same time ensuring that one of the persons appointed shall be from local community wildlife areas.
	Kenya Wildlife Conservancies Association (KWCA)	The proposed amendments to the Wildlife Act should be entirely rejected and presented through the Wildlife Conservation and Management (Amendment) Bill, No. 20 of 2017, already presented to Parliament	
		Delete and substitute thereof the	

		<p>following new section—</p> <p>(f) four other persons appointed by the Cabinet Secretary as follows—</p> <p>(i) two representatives from community and privately managed wildlife areas, with technical experience in wildlife conservation and management of above areas, nominated by the umbrella wildlife conservancy body;</p> <p>(ii) two persons with both local and international technical experience in either wildlife conservation, fundraising or business investments;</p> <p>Reason for the amendment</p> <p>Amending this section removes communities from representation of the board where two (2) members represent community wildlife managed areas nominated by an umbrella wildlife conservancy body and one (1) from privately managed wildlife areas;</p> <p>This amendment contravenes one of the principles of devolving wildlife governance to communities and landowners, provided under the Wildlife Act (section 4).</p> <p>With communities and landowners conserving and managing over 65% of Kenya's wildlife on 11% of Kenya's non-state protected land area, affords them the right to participate in national decision making processes through KWS board. Presence of conservancy representation in the KWS board adds value to enable make well-informed decisions that affect wildlife conservation outside state protected areas.</p>	
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	Wildlife Direct	The amendment is good. The powers of the Cabinet Secretary have been expanded to appoint people beyond wildlife conservation	
	Council of Governors	Maintain the provision in the principal Act and introduce the following provision immediately after paragraph (iii) as follows— (iv) one other person with both local and international technical experience in either fundraising, law, wildlife, finance, business or investment matters appointed by the Cabinet Secretary Justification: The representation of the Board should be inclusive of key members as espoused in the principal Act which includes representation from community managed wildlife areas, national wildlife conservation NGO and privately managed wildlife areas. The Board should be representative in order to ensure effective discharge of duties and responsibilities.	
s. 18 (on deletion of County Wildlife Conservation and Compensation Committee and substitution with Community Wildlife Conservation Committee	Nature Kenya-the East Africa Natural History Society(EANH S)	(i) The amendment should be rejected. Reasons: It works against the spirit of devolution in wildlife conservation. The CWCCC plays an important role as a stakeholder's forum promoting sustainable wildlife conservation at county level. (ii) The functions, terms of service and funding mechanisms for the committees should be reviewed to ensure they operate effectively The Ministry of Tourism and Wildlife should set up a taskforce to	The Committee considered the comments from stakeholders and has proposed an amendment to provide for establishment of Wildlife Conservation and Compensation Committee in each county and to provide for four persons not being public officers knowledgeable in wildlife matters and nominated by the

		collect stakeholder views, and whose recommendation would best inform the amendment of the sections.	community wildlife associations within the area through an elective process.
	Kenya Wildlife Conservancies Association (KWCA)	<p>(i) Delete the word “community” immediately before the words “Wildlife Conservation Committees” so that the paragraph reads as follows-</p> <p>18. The Service shall establish eight Wildlife Conservation Committees whose jurisdiction shall be defined by the eight administration areas by the Service consisting of-</p> <p>Justification</p> <p>The name “community wildlife conservation committee” is misleading as the structure and composition of the committee is made of government officers, thus not depicting a community committee. Therefore, the term needs to be deleted from the name of the Committee.</p> <p>(ii) Delete the words “County Wildlife Conservation Committees” and substitute with “Wildlife Conservation Committees” wherever they appear in the Wildlife Conservation and Management Act</p> <p>Justification</p> <p>(i) The purpose of the committee goes beyond community conservation issues to include matters of national parks and national reserves</p> <p>(ii) Implementation of this proposed structure will limit the public from accessing services provided by the committee, considering that wildlife conservation is devolved to</p>	

		landowners and communities	
	Wildlife Direct	<p>The amendment is problematic</p> <ul style="list-style-type: none"> • Devolved structure of compensation changed from 47 CWCCs to 8 CWCC • Elimination of the word “compensation” • Replacing County Wildlife Conservation and Compensation Committee with Community Wildlife Conservation Committee wherever mentioned in the WCMA • Elimination of county representatives in the administration of CWCCs • The amendments seek to devolve KWS to the administrative regions as opposed to devolving the function of conservation to counties 	
	Mazido International	<ul style="list-style-type: none"> • The scrapping of CWCCs defeats the letter and spirit of the Constitution which promotes devolution. The creation of the so-called Regional Community Wildlife Conservation Committees will perpetuate the historic marginalization of Taita Taveta County in as far as wildlife conservation and management is concerned • The County Wildlife Conservation and Compensation Committees should be retained in their present form and composition • However, should the proposed amendment to have the 8 regional committees be passed, then: <ul style="list-style-type: none"> a. The Chairperson shall be 	

		<p>appointed by the Cabinet Secretary through a competitive process that shall be restricted to persons from human-wildlife hotspots within the region</p> <p>b. That the Secretary be a Senior Warden in charge of Community Wildlife Service in the Region and not the AD</p> <p>c. The four community representatives shall not be honorary wardens and shall not be appointed by the Cabinet Secretary. They shall be nominated by Community Wildlife Associations as per the current Act</p> <p>d. The representation of Government officers to be restricted on a need basis so as to give the committee a community outlook or else have the government officers as ex officio members</p>	
	<p>County Wildlife Conservation and Compensation Committee Chairpersons</p>	<p>They reject the amendment.</p> <p>Justifications</p> <ul style="list-style-type: none"> • The proposed regional structure is completely against the constitutionally proposed structures of the government of Kenya, and such amendments are designed to obstruct the public from auditing the wildlife conservation managers employed and paid with public taxes • The proponents of the amendment on the Wildlife Conservation and Management Act (No. 47 of 2013 failed to involve all stakeholders in wildlife conservation which is a 	

		<p>cardinal requirement for any amendment of any Act</p> <ul style="list-style-type: none"> • The district, provincial and regional offices were abolished by the Kenya Constitution 2010 • The amendments are unconstitutional and attempt to disrespect devolution spirit that is currently embraced by every citizen in Kenya • The amendments are denying ordinary Kenyans the right to participate in wildlife matters • Honorary wardens are wardens in all aspects. They have powers to arrest and shoot problematic animals. They are in extension an arm of the central government and cannot represent the local population in any way <p>Recommendations</p> <ul style="list-style-type: none"> • Allow the current Act adequate time for its full implementation • Build requisite capacities at the national, county and community levels • Encourage NGOs to align their programs in line with devolution through requisite county and community structures as provided for in the Act • Fast track the completion of on-going processes i.e. Wildlife Conservation and Management Policy/ Strategy, Wildlife Conservation and Management Regulations and Wildlife Status Review • Fast track the establishment of a Wildlife Compensation Insurance Scheme as provided for in the Act • Initiate engagement with county governments on matters of land 	
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		<p>use planning in recognition of the fact that wildlife is a land use of great national importance</p> <ul style="list-style-type: none"> • Immediately mobilise, activate and support CWCCCs as provided for in the Act • Allow grass root communities and Kenyans in general to participate fully in providing the much-needed oversight on wildlife conservation and management in Kenya 	
	Council of Governors	<p>Maintain the provision in the principal Act</p> <p>Justification:</p> <p>Counties have a role in wildlife conservation as provided for under part 2 of the Fourth Schedule of the Constitution. In addition, the principal Act establishes County Wildlife Conservation and Compensation Committees with representation from key sectors which includes an agricultural officer, livestock officer, land use planning officer and a representative from the County Government. In addition, section 41 of the principal Act provides for functions of the committees. It is prudent for them to remain as such in order to effectively achieve their mandate.</p>	
<p>s. 19</p> <p>Delete and substitute therefor the following new section-</p> <p>Functions on Community</p>	Kenya Wildlife Conservancies Association (KWCA)	<p>Delete and substitute therefor the following new section—</p> <p>19(1) The functions of the Wildlife Conservation Committees shall be to-</p> <p>(a) review and recommend claims resulting from loss or damage caused by wildlife for payment of compensation;</p> <p>(b) develop and implement, in</p>	<p>The Committee considered comments from stakeholders on the proposed amendment to section 19 and it proposes amendments to provide for the functions of the Community Wildlife</p>

<p>Wildlife Committees.</p> <p>19. The Cabinet Secretary shall publish in the Gazette the functions and guidelines of the Community Wildlife Conservation Committees.</p>		<p>collaboration with the Service and Community Wildlife Associations, mechanisms for mitigation of human wildlife conflict; and (c) bring together relevant stakeholders to harness participation in conservation and management programmes of wildlife (2) The Cabinet Secretary shall gazette additional functions if necessary, and the guidelines on the code of conduct of the committees</p> <p>Justification The absence of functions of the wildlife conservation committees which acquire legal recognition under the Act is contrary to the principles and good practice of legislative drafting. The Bill needs to provide for the general functions which have been recommended here, and additional functions can be gazette if need arises.</p>	<p>Conservation Committees.</p>
	Wildlife Direct	This amendment is problematic because of elimination of functions of the CWCC from the Act to gazetted regulations	
	Mazido International	The amendment is rejected. Section 19 of the Act should be retained.	
<p>s. 23 (On the Wildlife Endowment Fund)</p>	<p>Kenya Wildlife Conservancies Association (KWCA)</p>	<p>Insert the following new subsections 23(2) (g) and (h), as follows-</p> <p>(2) (g) one representative of the wildlife conservancies nominated through the national umbrella body of wildlife conservancies (h) one representative of the wildlife conservation non-governmental organisations</p> <p>Justification (i) The governing body of the</p>	

		<p>proposed 'Wildlife Conservation Trust Fund' entirely excludes representation of the communities and landowners conserving and managing wildlife. This exclusion defeats the purpose for which the Trust Fund is established, being to promote public-private partnerships in supporting among other conservation efforts.</p> <p>(ii) Inclusion of the representatives of wildlife conservancies and NGOs will ensure that the Fund attracts private sector investment and enable the governing body invest the funds strategically within and outside state protected areas</p>	
	Wildlife Direct	<p>The amendment is good.</p> <p>(i) The body under the Bill is better constituted and assigning the governance of the body to a public-private partnership body allows for more transparency and accountability</p> <p>(ii) The Bill increases the sources of revenue of the Fund</p>	
	Mazido International	<p>There are inconsistencies regarding the Chairmanship of the proposed Wildlife Conservation Trust Fund</p>	
	Council of Governors	<p>Further amend the proposed amendment to include county representation as follows:</p> <p>(g) a representative from the County Government nominated by the Council of Governors</p> <p>Justification:</p> <p>For purposes of transparency, accountability and better management of the Fund, there should be representation from both</p>	

		the National Government and the County Government.	
s. 92 (Offences relating to endangered and threatened species.)	Wildlife Direct	The amendment is good because it clarifies the ambiguity of section 92 of the Wildlife Act that was held unconstitutional by Justice Mbogholi in <i>Zhang Chunsheng v Republic</i>	
	Mazido International	The organization indicates, “The fact that certain penalties seem to have been reduced; for instance, the killing of wild animals in the CITES list where only a jail term of 3 years and no fine has been recommended spells doom for endangered species”	
s. 95	Wildlife Direct	The amendment is good. The provision widens the scope of offences relating to trophies and trophy dealing. Further, it specifically caters for other species aside from critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix 1 therefore sealing a loophole through which convicts got lesser penalties under the Act	
New Clause 95A	Wildlife Direct	The amendment is good. The amendment introduces provisions and penalties against the poisoning of wildlife.	
s. 97 Insert the expression “of a species other than a critically endangered or endangered species listed under Schedule 6 or CITES Appendix I” immediately after the word	Wildlife Direct	The amendment is good. It separates and provides clarity the legal distinction between subsistence and bushmeat offences.	

“hunting”.			
s. 98 (Offences relating to hunting for bushmeat trade)	Wildlife Direct	Clause 98(3) of the Bill contradicts Clause 98(1) by providing two different penalties for the same offence. This needs clarity and review	
s. 99 (1) Insert the words “or product” immediately after the word “specimen”.	Wildlife Direct	The amendment is good. The inclusion of the words “or product” widens the scope of protection against international wildlife trade.	
s. 99(3)	Wildlife Direct	The amendment is good. The amendment introduces a general clause penalty to seal any loopholes in the penalties under the Wildlife Act,	
s. 102(1) Insert the words “without a licence or permit of the Service in respect of any national park, national reserve, wildlife sanctuary or marine reserve, or, without authorization from the authority responsible for any other protected area as the case may be” immediately after the word “who”.	Wildlife Direct	The amendment increases the scope of protected areas to include “wildlife sanctuary”. A wildlife sanctuary means an area of land, or of land and water set aside and maintained by the government, community, individuals or private entity for the conservation and protection of one or more species of wildlife	
s.102(1)(a).	Mazido International	<ul style="list-style-type: none"> This is a mischievous attempt to allow grazing inside parks/ 	

<p>Insert the following new subsection immediately after subsection (2) -</p> <p>“(2A) A person shall not enter any protected area with livestock without a permit or written permission from the authority responsible as the case may be.”</p>		<p>protected areas under a very ambiguous clause.</p> <ul style="list-style-type: none"> • The amendment is rejected for the following reasons: <ul style="list-style-type: none"> (i) Limiting infrastructure/ resources does not merit permission to graze inside parks (ii) Livestock inside parks disturb wildlife thereby increasing human- wildlife conflict (iii) When an only when drought is declared a national disaster, shall the Cabinet Secretary allow, albeit temporarily, grazing inside parks upon the advice of the Service and consent by the respective county government 		
<p>s.102(1)(g).</p> <p>Delete and substitute therefor the following new paragraph-</p> <p>“(g) undertakes any extractive activity in a protected area.”</p>	<p>Mazido International</p>	<p>No permission whatsoever shall be granted to anyone to undertake any extractive activity inside parks.</p>		
<p>s. 103</p> <p>Delete and substitute therefor the following new paragraph -</p> <p>“(a) enters or resides in a protected area otherwise than in the course of his</p>	<p>Wildlife Direct</p>	<p>The amendment is good. The amendment introduces a general clause penalty to seal any loopholes in the penalties under the Wildlife Act.</p>		

duty as an authorized officer or a person lawfully employed in the protected area, as the case may be.”			
New s. 116A	Wildlife Direct	<p>The amendment is problematic. Clause 116A (b) is grossly unconstitutional as it limits the ambit of execution. Requiring the permission of the Director-General when executing a court order is a violation of basic legal requirements.</p> <p>KWS as a body corporate can sue and be sued. It cannot limit itself when being sued.</p> <p>Reference is borrowed from Judge Odunga in <i>Republic v Permanent Secretary Office of the President & Ministry of Internal Security and Another ex parte Nassir Mwandishi (Misc. Civil App. 132 of 2010)</i></p>	The Committee has recommended that the proposed amendment be deleted.
Third Schedule Part A	Wildlife Direct	The amendment is problematic because of removal of snakes from the compensation scheme	
	Mazido International	Amend the Third Schedule to include poisonous snakes, dangerous snakes, baboons and monkeys	
	County Wildlife Conservation & Compensation Committee Chairpersons	<p>The amendments are discriminating because they are proposing to scrap compensation on human death and injuries resulting from snakes, sharks, stone fish, whale, sting ray, wild pig, which are topping the list from semi-arid, arid and coastal counties of Kenya</p> <p>General recommendation Called for urgent release of funds to compensate victims of human-wildlife conflict as buy-in for</p>	

		continued community support towards conservation	
Third Schedule Part B	Kenya Wildlife Conservancies Association (KWCA)	<p>Insert the word “crop” before the words “and property damage”</p> <p>Justification: The deletion of the word “crop” from among the damages that require compensation for damage by wildlife discriminates against landowners who neighbor wildlife areas. In this regard, the deletion is likely to reduce tolerance to wildlife by the communities as well as increase human wildlife conflicts.</p>	The Committee has recommended that the proposed amendment be deleted.
	Wildlife Direct	<p>The amendment is problematic.</p> <ul style="list-style-type: none"> • The exclusion of crop and property damage from Part B of the Third Schedule in the Bill is a big omission as the wildlife species therein contribute heavily to such damages • The Third Schedule amendment in the Bill should be reflected in section 25 of the WCMA. 	
	Mazido International	<ul style="list-style-type: none"> • The amendment is pro-pastoralism and anti-agrarian considering the brazen attempt to compensate livestock predation while recommending the removal of compensation for crops and property. • All conditions for crop compensation should be removed 	
	County Wildlife Conservation & Compensation Committee Chairpersons	The amendments are proposing to scrap compensation for crops, livestock and properties which is also against the four pillars of Jubilee government being food security, as many people lost their shamba with bank loans after destruction by wildlife in the entire country.	

3.3 The National Drought Management Authority Act, 2016

CLAUSE	GROUP/ PERSON	PROPOSAL/ AMENDMENT	COMMITTEE'S RECOMMENDATI ONS
s. 13	Council of Governors	Maintain the section as is provided in the principal Act Justification: The appointment of the Board should ensure fair representation in conformity with the two-thirds gender principle enshrined in the Constitution	The Committee proposes an amendment to insert a requirement for the Board to ensure that in the appointment of its staff not more than two-thirds of the staff shall be of the same gender, the regional and other diversity of the people of Kenya is taken into account, and persons with disabilities are afforded adequate and equal opportunities.

3.4 The Forest Conservation and Management Act, 2016

CLAUSE	GROUP/ PERSON	PROPOSAL/ AMENDMENT	COMMITTEE'S RECOMMENDATI ONS
General comments	Kenya Forests Working Group	They agree to all the proposed amendments.	
General comments	Nahashon K Murugu	These are general proposals: (i) that section 48 of the Forest Conservation and Management Act be amended in subsection (1) so that it can read as follows— A member of a forest community living in the proximity of 5-10 kilometers from the forest of interest may, together with other members or persons residents	

		<p>to the same area register a Community Forest Association in accordance with the provisions of the Societies Act (Cap. 108)</p> <p>(ii) A multi-agency forest conservation committee be formed comprising of stakeholders ranging from national and county governments, local community elders, youth, women and people living with disabilities, water users, Kenya Water Towers Agency, Kenya Forest Service and Kenya Wildlife Service</p> <p>(iii) The community should be enlightened regarding growth and protection of the forest by way of regular civic education. Members of Community Forest Association should therefore be trained and officials of such CFA be vetted by the multi-agency committee before they are permitted to participate in the conservation and management of the public forest</p>	
<p>s. 34 Insert the following new subsection immediately after subsection (2) - (2A) A petition under</p>	<p>Nature Kenya- the East Africa Natural History Society (EANHS)</p>	<p>(i) They reject the proposed amendment (ii) Alternatively, they propose other stakeholders to be involved</p> <p><i>Thus, Their proposed amendment is:</i></p>	<p>The Committee considered the comments by Nature Kenya-East Africa Natural History Society (EANHS) and observed that it would be contrary to Article 119 of the Constitution to</p>

<p>subsection (1) shall only be forwarded to the National Assembly on the recommendation of the Service.</p>		<p>s. 34(2) A petition under subsection (1) shall only be forwarded to the National Assembly on the recommendation of the Service upon consultation with other relevant key agencies and stakeholders, including the National Environment Management Authority, Kenya Forest Research Institute, National Museums of Kenya and Kenya Water Towers Agency</p>	<p>provide that other bodies give recommendations before a petition is submitted to the National Assembly.</p> <p>Generally, the Committee has proposed amendments to rectify a number of inconsistencies in the proposed amendment.</p>
	Wildlife Direct	The Bill introduces safeguards in form of more scrutiny from the Service.	
s. 35(2)	Wildlife Direct	<p>They agree to the amendment.</p> <p>Justification: The Chief Conservator of Forests is better placed to determine whether to issue notice.</p>	
s. 40	Wildlife Direct	The Bill introduces an offence enhancing the protection of tree species.	
s. 50(1)	Wildlife Direct	<p>They agree to the amendment.</p> <p>Justification: The Chief Conservator of Forests is better placed to decide whether to assign any or all rights.</p>	
s. 57(1)	Wildlife Direct	<p>They agree to the amendment.</p> <p>Justification: The Bill remedies an error in the Act by giving criteria for applying for authorization by the private sector.</p>	
New s. 63A	Wildlife Direct	This is key for the prosecution of forest crimes as the Service has specialized	

		personnel. Moreover, the capacity of the prosecutors will increase leading to efficacy in case determination.	
s. 64(3)	Wildlife Direct	They agree to the amendment. Justification: The Bill rectifies a penalty for the offence under section 60 and rectifies the error mentioning section 61.	
s. 73(2)	Wildlife Direct	They agree to the amendment. Justification: The Bill rectifies the error in the Act.	
s. 74	Wildlife Direct	They agree to the amendment. Justification: The Chief Conservator of Forests is better placed to make such decisions.	

4.0 COMMITTEE'S OBSERVATIONS

The Committee made the following observations, that;

1. The proposed amendments to the Wildlife Conservation and Management Act (No. 47 of 2013) are far reaching and substantive that they should have been prepared independently not as miscellaneous amendments.
2. The proposed amendments to the National Drought Management Authority Act (No. 4 of 2016) were committed to the Committee since the functions of the Authority fall within the mandate of the Committee in terms of oversight. However, the Authority is never oversights by the Environment and Natural Resources Committee on other aspects.
3. The Acts that fall under the purview of the Committee that the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 seeks to amend had been in operation for a reasonable period of time hence the implementing MDAs could have experienced implementation challenges. Therefore, the sought amendments were justifiable and in tandem with the need for pragmatism in implementation of legal provisions.
4. Most of the proposed amendments in the acts below were majorly meant to correct typographical errors and to align them with the Constitution and other legal provisions:
 - d) The Environment Management and Coordination Act, 1999 (No. 8 of 1999),
 - e) The National Drought Management Authority Act, 2016 (No. 4 of 2016),
 - f) The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

5.0 COMMITTEE'S RECOMMENDATION

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

5.1 Environmental Management and Coordination Act

S. 29(4)

Delete the expression “(c) to (g)” and substitute therefor the expression “(d) to (f)”.

Agreed to

Justification

The Committee agrees to the amendment because it corrects an error.

S. 32

Delete the word “Council” wherever it appears in paragraphs (a), (b) and (c) and substitute therefor the expression “Cabinet Secretary”.

Agreed to

Justification

The existing provision erroneously provides that the National Environmental Department shall “make a report of its findings together with its recommendations thereon to the Council” instead of the Cabinet Secretary. It also incorrectly provides that the National Environmental Department shall “prepare and submit to the Council, periodic reports of its activities...” instead of Cabinet Secretary. The amendment rectifies these errors.

S. 36(1)

Delete the word “Council” and substitute therefor the expression “Cabinet Secretary”.

Agreed to

Justification

The existing provision erroneously provides that the Council and not the Cabinet Secretary may determine the remuneration, fees or allowances for expenses paid to the Chairperson and members of the Department. Thus, the proposed amendment corrects this.

5.2 The Wildlife Conservation and Management Act, 2013

S. 3

Delete the definition of the words “dealer” and “trophy” and substitute therefor the following new definitions-

“deal” means—

- (f) to sell, purchase, distribute, barter, give, receive, administer, supply, or otherwise in any manner deal with a trophy or live species;
- (g) to cut, carve, polish, preserve, clean, mount or otherwise prepare a trophy or live species;
- (h) to transport or convey a trophy or live species;
- (i) to be in possession of any trophy or live species with intent to supply to another; or
- (j) to do or offer to do any act preparatory to, in furtherance of, or for the purpose of, an act specified above; and

“trophy” includes any bone, claw, egg, feather, hair, hoof, skin, tooth or tusk of an animal, and for any species of plant, any bark, branch, leaf, log, sip or extract and includes any other durable portion whatsoever of that animal or plant whether processed, added to or changed by the work of man or not, which is recognizable as such.

Agreed to

Justification

The proposed amendment would have the effect of supporting the offence of dealing within the Act.

The amendment adds paragraphs (d) and (e) in the proposed new definition of “deal”. The additional paragraphs particularly (e) seal gaps that an offender might use as a defence.

Generally, the proposed amendment tie up well to the offences provided in the Act: section 84 (dealing in trophies), section 95 (offences relating to trophies and trophy dealing) and section 98 (A person who engages in hunting for bush-meat trade, or is in possession of or is dealing in any meat of any wildlife species, commits an offence...)

The proposed amendment to the term “trophy” is so as to incorporate both flora and fauna in order to protect plant species that were not previously protected under the Act and CITES.

Insert the following new definition in proper alphabetical sequence -

“subsistence hunting” means hunting for the purposes of daily consumption by an individual and/ or his direct dependents.

Agreed to.

Justification

The proposed amendment introduces a new definition of the term “subsistence hunting”, a term that has been used in section 97 of the Act in relation to offences relating to subsistence hunting.

The Committee proposes an insertion of a new definition of “Community Wildlife Conservation Committee” that is proposed under the proposed amendment to section 18 of the Wildlife Conservation and Management Act.

Insert the following new definition in proper alphabetical sequence-

“Community Wildlife Compensation Committee” means the committee established under section 18 of this Act;

Justification

The proposed amendment to section 18 of the Wildlife Conservation and Management Act proposes to change the name of the *County Wildlife Conservation and Compensation Committee* to *Community Wildlife Compensation Committee*. Therefore, the new definition should be provided for in the interpretation section.

S. 6(1)

Insert the words “a uniformed and disciplined” immediately after the words “established a”.

Agreed to

Justification

The proposed amendment will reflect the proper nature of the Service in ensuring provision of security for wildlife and visitors in all parts of the country.

S. 7(e)

Insert the word “levies” immediately after the word “revenue”

Agreed to

Justification

The amendment proposes to include levies to be collected by KWS apart from revenues and charges due to the national government from wildlife. This will enable increased collection of revenue.

S. 8(2) (f)

Delete and substitute therefor the following new paragraph -

“(f) four other persons with both local and international technical experience in either fundraising, law, wildlife, finance, business or investment matters appointed by the Cabinet Secretary.”

The Committee rejects the amendment and proposes that the Schedule to the Bill be amended in the proposed amendment so section 8(2) (f) of the Wildlife Conservation and Management Act by—

- (i) deleting the word “four” and substituting therefor the word “five”;
- (ii) inserting the words “one of whom shall be from local community wildlife areas” at the end of the paragraph.

Justification

The amendment seeks to expand the pool from which the Cabinet Secretary can appoint members to the Board of Trustees of the Kenya Wildlife Service. This will help to introduce experts to the Board of Trustees while at the same time ensuring that one of the persons appointed shall be from local community wildlife areas. This was to address the concerns raised by various stakeholders that the proposed amendment would lock out participation of local communities in wildlife matters.

S. 11(4)

Delete and substitute therefor the following new subsection-

(4) A person shall qualify for appointment of the Director General if the person-

- (a) is a citizen of Kenya;
- (b) satisfies the requirements of Chapter Six of the Constitution;
- (c) possess a degree in natural resources management, finance, business, or strategic management from a university recognized in Kenya; and

has at least fifteen years’ professional experience in related field at management level.

The Committee agrees to the proposed amendment but has an amendment to name the last qualification as paragraph (d)

Justification

The existing qualification requirement for appointment of a Director-General is of a person who “holds a minimum qualification of a post-graduate degree in a relevant field”. The proposed amendment specifies the kind of a degree that one must possess. A Director-General should ideally have a background training on either natural resource management, finance or strategic management because of the nature of the office. The position also requires a manager with management skills and has a general understanding of natural resource

S. 18

Delete and substitute therefor the following new section-

Community Wildlife Conservation Committees.

18. (1) There shall be eight Community Wildlife Conservation Committees whose jurisdiction shall be defined by the eight administrative Conservation Areas currently established by the Service consisting of -

- (a) a chairperson appointed by the Cabinet Secretary being a regional Commissioner from the Conservation Area;
- (b) the Assistant Director appointed by the Service in charge of the respective Administrative Conservation Area who shall be the Secretary;
- (c) an agricultural officer based in the respective Administrative Conservation Area;
- (d) a medical officer based in the respective Administrative conservation Area;
- (e) a livestock officer based in the respective Conservation Area nominated by Conservation Area Director of the service; and
- (f) four persons being gazetted honorary wardens and members of the communities located within the respective administrative conservation area.

(2) The Community Wildlife Conservation Committees may hold a maximum of four meetings every financial year; and any additional meetings shall only be held with the prior consent of the Cabinet Secretary.

The Committee proposes that the Schedule of the Bill be amended in the proposed amendment to section 18 of the Wildlife Conservation and Management Act by deleting and substituting therefor the following new section—

Community Wildlife Conservation Committees.

18. (1) Each county shall have a Community Wildlife Conservation Committee consisting of—

- (a) a chairperson appointed by the Cabinet Secretary being a County Commissioner;
- (b) an officer of the Service for the county who shall be the Secretary;
- (c) an agricultural officer based in the respective administrative Conservation Area established by the Service;
- d) a medical officer based in the respective administrative Conservation Area established by the Service ;
- e) a livestock officer based in the respective administrative Conservation Area established by the Service; and
- f) four persons not being public officers knowledgeable in wildlife matters and nominated by the community wildlife associations within the area through an elective process.

(2) The Community Wildlife Conservation Committees may hold a maximum of four meetings every financial year.

(3) Despite subsection (2), any additional meetings shall only be held with the prior consent of the Cabinet Secretary.

Justification

The Committee deliberated on the concerns raised by the public and proposes an amendment in order to have the Community Wildlife Conservation Committees in each county but with changed composition of members. In addition, the proposed amendment by the Committee addresses representation of the various communities in the respective administrative Conservation Areas currently established by the Service.

S. 19

Delete and substitute therefor the following new section-

Functions on Community Wildlife Committees.

19. The Cabinet Secretary shall publish in the Gazette the functions and guidelines of the Community Wildlife Conservation Committees.

The Committee proposes that the Schedule of the Bill be amended in the proposed amendment to section 19 of the Wildlife Conservation and Management Act by deleting and substituting therefor the following new section-

Functions of Community Wildlife Conservation Committees.

19. (1) The functions of the Community Wildlife Conservation Committees shall be to--

- (a) review and recommend claims resulting from loss or damage caused by wildlife for payment of compensation;
- (b) develop and implement, in collaboration with the Service and Community Wildlife Associations, mechanisms for mitigation of human wildlife conflict;
- (c) bring together relevant stakeholders to harness participation in conservation and management programmes of wildlife; and
- (d) perform such other functions as the Service may require or delegate to it.

Justification

The proposed amendment to the Bill offends Article 94(5) and (6) of the Constitution since the amendment does not specify the purpose and objectives for which the authority is conferred upon the Cabinet Secretary to publish in the Gazette the functions and guidelines of the Community Wildlife Conservation Committees, the limits of the Cabinet Secretary's authority, the nature and scope of the law that may be made as contemplated under the proposed amendment.

The amendment proposed by the Committee clearly provides for the functions of the Committee after consideration of the views from the public and the stakeholders.

S. 23

Delete and substitute therefor the following new section-

The Wildlife Endowment Fund.

23. (1) There is established a Wildlife Conservation Trust Fund that shall be vested in a governing body established in accordance with subsection (2)-

2) The governing body referred to in subsection (1) shall serve as a public-private partnership and comprise-

- (a) a Chairperson being appointed the Cabinet Secretary;
- (b) the Principal Secretary in the State Department for the time being responsible for matters relating to wildlife who shall be the Chairperson;

- (c) the Principal Secretary in the State Department for the time being responsible for matters relating to finance;
 - (d) the Director General of the Service who shall be the Secretary;
 - (e) four representatives from the private sector, who shall have technical experience in either philanthropy, law, natural resources, finance, business and investment matters; and
- (3) There shall be paid into the Wildlife Conservation Trust Fund –
- (a) moneys appropriated by Parliament;
 - (f) a representative from the office of the Attorney General
 - (b) a proportion of such moneys as may be levied for payment of environmental services by beneficiaries in productive and service sectors, and for biodiversity offset schemes that compensate for conservation impacts as a contribution towards the Wildlife Conservation Trust Fund as the Cabinet Secretary may, upon the recommendation of the governing board, determine;
 - (c) moneys for payment of environmental services and biodiversity offset schemes in which entities make payments directly to the Wildlife Conservation Trust Fund;
 - (d) moneys from debt-for-nature transactions;
 - (e) income from investments made by the governing board;
 - (f) such grants, donations, bequests or other gifts as may be made to the Fund.
- (4) The purpose shall be to provide funds in order to-
- (a) develop wildlife conservation initiatives;
 - (b) manage and restore protected areas and conservancies;
 - (c) protect endangered species, habitats and ecosystems;
 - (d) support wildlife security operations;
 - (e) facilitate community based wildlife initiatives;
 - (f) award wildlife conservation grants based on criteria to be established by the governing board; and
 - (g) such other purposes as may be provided by the governing board.

(5) The Cabinet Secretary may, on recommendation of the Service, by notice in the Gazette, issue regulations and guidelines necessary and appropriate for the carrying out of the purposes of this section.

Agreed to

Justification

The Committee agrees to the proposed amendment.

The amendment expands the sources of the Fund, for instance, moneys for payment of environmental services and biodiversity offset schemes in which entities make payments directly to the Wildlife Conservation Trust Fund; and moneys from debt-for-nature transactions.

The amendment also makes changes to the governing body of the Fund from the Board of Trustees to public-private partnership.

S. 92

Delete and substitute therefor the following new section-

Offences relating to endangered and threatened species.

92. (1) A person who kills or injures, tortures or molests, or attempts to kill or injure, a critically endangered, or endangered species as specified in the Sixth Schedule or listed under CITES Appendix 1 commits an offence and shall be liable upon conviction to a term of imprisonment of not less than three years.

(2) A person who, without permit or exemption issued under this Act, deals in a wildlife trophy, of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall be liable upon conviction to a term of imprisonment of not less than five years.

(3) Any person who, without permit or exemption issued under this Act, deals in a live wildlife species of any of critically endangered or endangered species as specified in the Sixth Schedule or listed in the Sixth Schedule or listed under CITES Appendix 1, commits an offence and shall be liable upon conviction to a term of imprisonment of not less than three years.

(4) Any person without permit or exemption issued under this Act is in possession of any live wildlife species or trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix 1, commits an offence and shall be liable upon conviction to a fine of not less than three million shillings or a term of imprisonment of not less than three years or both such fine and imprisonment.

(5) Any person who without permit or exemption issued under this Act, manufactures an item from a trophy of a critically endangered or endangered species specified under the Sixth Schedule or listed under CITES Appendix I without a permit or exemption issued under this Act, commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings or up to life imprisonment or both such fine and imprisonment.

The Committee agrees to the amendment but proposes an amendment to correct a typographical error.

The amendment specifies for offences in the Act that are not specifically provided for in the Act and further reflects the proposed maximum penalties approach as opposed to the mandatory penalties provided in the Act.

Committee's proposed amendments to this section:

Schedule to the Bill be amended in the proposed amendment to section 92—

- (a) in subsection (1), by deleting the words “three” appearing immediately after the words “not less than” and substituting therefor the word “five”;
- (b) in subsection (2), by deleting the word “five” appearing immediately after the words “not less than” and substituting therefor word “seven”;
- (c) in subsection (3) by—
 - (i) deleting the word “sin” appearing immediately after the words “endangered species as specified” and substituting therefor the word “in”;
 - (ii) deleting the word “three” appearing immediately after the words “not less than” and substituting therefor the words “five”
- (d) in subsection (4) by deleting the word “three” appearing immediately after the words “a term of imprisonment of not less than” and substituting therefor the words “five”.

Justification

- i. In order to correct a clerical error in subsection (3) where the word “sin” has been used instead of “in”.
- ii. To enhance the penalties from the proposed terms of imprisonment in order to protect endangered and threatened species.

S. 95

Delete and substitute therefor the following new section.

Offences relating to trophies and trophy dealing.

95. Any person who, without a permit or exemption granted under this Act in relation to a species not specified under section 92-

- (a) kills or injures, tortures or molests, or attempts to kill or injure, any wildlife species;

- (b) deals in a wildlife trophy;
- (c) deals in a live wildlife species;
- (d) is in possession of a wildlife trophy or live wildlife species; or
- (e) manufactures an item from a wildlife trophy, commits an offence and shall be liable on conviction to a fine of not less than one million shillings or a term of imprisonment of not less than twelve months or to both such fine and imprisonment.

Agreed to.

Justification

The amendment reflects the maximum penalties approach as opposed to the mandatory penalties provided in the Act which is more desirable as it gives discretion to the courts in sentencing and also has the impact of reducing the number of trials. The amendment has further broken down the offences into paragraphs for ease of reference.

New s. 95A

Insert the following new section immediately after Section 95-

Poisoning of wildlife

95A. Any person who knowingly or recklessly uses any substance whose effect is to poison any wildlife species commits an offence and shall be liable to a fine of not less than five million shillings or a term of imprisonment of not less than five years or both.

Agreed to

Justification

The amendment proposes to introduce a new offence of poisoning wildlife. Section 112(7) of the Act is not adequate as it provides for the offence of being in possession of a poison in a wildlife conservation area.

S. 97

Insert the expression “of a species other than a critically endangered or endangered species listed under Schedule 6 or CITES Appendix I” immediately after the word “hunting”.

Agreed to

Justification

The amendment proposes to exclude hunting for purposes of subsistence of a critically endangered or endangered species listed under Schedule 6 or CITES Appendix I. Therefore, a person shall not hunt a critically endangered or endangered species for daily consumption.

S. 98

Delete and substitute therefor the following new section-

Offences relating to hunting for bush-meat trade.

98. (1) Any person who, without permit or exemption issued under this Act, deals in the carcass or meat of any wildlife species commits an offence and shall be liable on conviction, to imprisonment for a term of not less than three years.

(2) No person shall purchase from another person any meat or eggs of any wildlife species.

(3) Any person who contravenes the subsection (1) commits an offence and is liable on conviction to a fine of up to one million shillings or a term of imprisonment of twelve months or to both such fine and imprisonment.

The Committee agrees to the proposed amendment but proposes an amendment to subsection (3)

Justification

The proposed amendment expands the offences relating to hunting for bush-meat trade.

Proposed Amendment

The Committee proposes that the Schedule of the Bill be amended in the proposed amendment to section 98 in subsection (3) of the Wildlife Conservation and Management Act by deleting the words “subsection (1)” appearing immediately after the words “contravenes the” and substituting therefor the words “subsection (2)”.

Justification

Subsection (1) has spelt out the punishment and the proposed Committee’s amendment rectifies the error by referring to the right subsection (2) for which subsection (3) logically applies to.

S. 99(1)

Insert the words “or product” immediately after the word “specimen”.

Agreed to.

Justification

The amendment proposes to introduce a product of a wildlife species from what is prohibited to be traded in, imported, exported, re-exported or introduced.

S. 99(3)

Delete and substitute therefor the following new subsection-

(3) A person who contravenes the provisions of this section commits an offence and shall be

(a) in relation to a critically endangered or endangered species, as specified in the Sixth Schedule or listed under CITES Appendix I, to a fine of not less than one hundred million shillings or to imprisonment of not less than twenty years or both such fine and imprisonment; or liable, upon conviction,-

(b) in relation to any other wildlife species or wildlife trophy, to a fine not less than twenty million shillings or a term of imprisonment not less than ten years, or to both such fine and imprisonment.

Agreed to.

Justification

The proposed amendment-

- (a) distinguishes the punishment in relation to a critically endangered species or endangered species and any other wildlife species or wildlife trophy so as to offer more safeguards to critically endangered species or endangered species;
- (b) gives maximum penalties approach as opposed to the mandatory penalties provided in the Act which is more desirable as it gives discretion to the courts in sentencing and also has the impact of reducing the number of trials.

S. 99(4)

Insert the following new Sub-Section immediately after subsection (3)-

(4) A person, agent or corporate entity that, knowingly or recklessly, aids or abets, in the commission of an offence under this section shall be liable to the penalties specified in subsection (3).

Agreed to.

Justification

This is a new provision. It creates a further offence after subsection (3) of section 99. This proposed amendment introduces a further offence of aiding or abetting in the commission of an offence of importing or exporting of wildlife species.

S. 102(1)

Insert the words “without a licence or permit of the Service in respect of any national park, national reserve, wildlife sanctuary or marine reserve, or, without authorization from the authority responsible for any other protected area as the case may be” immediately after the word “who”.

Agreed to.

Justification

Under the proposed amendment, all the prohibited activities listed under section 102(1) of the Act may be allowed through a licence or permit of the KWS or authorization from the authority responsible for any other protected area as the case may be. The exception created is reasonable for cases that may arise that may necessitate issuance of a licence or permit by the Service.

The amendment includes other protected areas i.e. national reserves and marine protected areas which had been omitted.

The amendment in subsection (2) to allow for access to grazing and watering of livestock in national parks and reserves in times of emergency. The introduction of subsection 102(2A) is to provide for vicarious liability for cattle owners whose cattle and employees are illegally grazing within protected areas.

S. 102(1)(a)

Delete and substitute therefor the following new paragraph-

“(a) enters or resides in a protected area otherwise than in the course of his duty as an authorized officer or a person lawfully employed in the protected area, as the case may be”.

Agreed to.

Justification

The proposed amendment is a redrafted provision to take into consideration the previous amendment under section 102(1) that is in relation to permits and licences which now appears in the introductory words.

S. 102(1)(g)

Delete and substitute therefor the following new paragraph-

“(g) undertakes any extractive activity in a protected area.”

Agreed to.

Justification

The effect of the amendment is that extractive activity will be prohibited not just in marine protected areas but all protected area. This expands the scope of the prohibition.

S. 102(1)(g)

Insert the following new subsection immediately after subsection (2)-

“(2A) A person shall not enter any protected area with livestock without a permit or written permission from the authority responsible as the case may be.”

The Committee agrees to the substance of the proposed amendment but proposes that the provision be amended to correct a number of errors.

Proposed amendments

The Committee proposes that the Schedule to the Bill be amended—

- (a) in the provision row immediately after the proposed amendment to section 102(1) (g) to the Wildlife Conservation and Management Act by inserting the words “102(2)”;
- (b) in the proposed amendment to section 102(1) (g) in the new subsection (2A) by deleting the existing subsection (2) and substituting therefor the following new subsection—

“(2) A person shall not burn charcoal in any protected area nor enter any protected area with livestock without a permit or written permission from the authority responsible as the case may be.”

Justification:

- (i) the provision to be amended should have been s. 102(2) and not s. 102(1) (g) as indicated
- (ii) an additional subsection (2A) should not have been provided for the following reasons:
 - the subject matter is the same as the existing subsection (2); therefore, subsection (2) should have been amended instead.

- Subsection (3) refers to the punishment for the offence in subsection (2), which the proposed amendment did not address hence the committee's proposed amendment

(iii) The committee has inserted an additional prohibition barring a person from burning charcoal in any protected area.

S. 103

Insert the following new subsection immediately after subsection (4)-

“(5) A person convicted of an offence under this section shall, in the absence of any penalty prescribed under any other provision of this Act, be liable on conviction, to a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both.”

Agreed to.

Justification

Section 103 of the Act provides for offences by bodies corporate. The amendment proposes to provide for penalty for offences committed by bodies corporate. The existing section does not prescribe any punishment. The amendment proposes a fine not exceeding 10 million shillings or imprisonment for a term not exceeding 5 years or to both.

New S. 116A

Insert the following new section immediately after section 116 -

Protection of assets of the assets of the Service from execution, attachment, etc.

116A. Notwithstanding anything to the contrary in any law-

(a) where any judgment or order has been obtained against the Service, no execution or attachment, or process in the nature thereof, shall be issued against the immovable property of the Service or any of its vehicles, vessels; aircraft or its other operating equipment, machinery, fixtures or fittings:

provided that the Director General shall cause to be paid out of the revenue of the Service such amount as may, by the judgment or order, be awarded against the Service to the person entitled thereto; and

(b) no immovable property of the Service or any of its vehicles, vessels, aircrafts or its other operating equipment, machinery, fixtures or fittings, shall be seized or taken by any person having by law, power to attach or distrain property without the previous written permission of the Director General.

Deleted.

Justification

The proposed amendment introduces a new section in order to bar execution or attachment or process issued against the immovable property of the Service or any of its vehicles, vessels, aircraft or its operating equipment, machinery, fixtures or fittings.

Section 44 of the Civil Procedure Act provides that all property belonging to a judgment debtor is liable to attachment and sale in execution of a decree. It provides a list of properties which are not liable for execution which do not include what the proposed amendment seeks to provide for. Section 44(2) provides an exception to the “provisions of the Armed Forces Act or of any similar law for the time being in force”

Third Schedule Part A

Delete the words “poisonous snake, shark, stone fish, whale, sting ray, wild pig.”

Agreed to.

Justification

The enumerated list of excluded wildlife from which compensation may be paid is reasonable for the following reasons:

- (i) It has retained elephant, lion, rhino, hyena, crocodile, cheetah and buffalo and these wildlife are ones which would have been the most controversial if they were excluded the list from which one may be compensated.
- (ii) Compensation will not be sustainable to more deserving cases if the list of wildlife includes the other wildlife for instance whale, shark, etc.

Third Schedule Part B

Delete the words “Crop” and “property damage” under the heading of part B.

Deleted.

Justification

This proposed amendment should be deleted for the following reasons:

- (i) it severely restricts compensation, particularly to farmers
- (ii) it has been challenged in courts
- (iii) from the memoranda received, the proposed amendment was rejected and plausible reasons were given.

Third Schedule Part B

Delete the items “snake, zebra, wildebeest, wild dog and eland.

Agreed to.

Justification

The enumerated list of excluded wildlife from which compensation may be paid is reasonable for the following reasons:

- (i) It has retained elephant, lion, leopard, rhino, hyena, crocodile, cheetah, buffalo, hippo and these wildlife are ones which would have been the most controversial if they were excluded from the list from which one may be compensated.
- (ii) Compensation will not be sustainable to more deserving cases if the list of wildlife includes the other wildlife for instance wild dog and eland, etc.

5.3 The National Drought Management Authority Act, 2016(No. 4 of 2016)

S. 8(1)(a)

Delete and substitute therefor the following new paragraph -

- (a) a Chairperson appointed by the President.

Agreed to.

Justification

This is in line with other statutes which provide that the Chairperson of a State Corporation be appointed by the President.

S. 8(1)(d)

Delete and substitute therefor the following new paragraph-

- (d) four persons appointed by the Cabinet Secretary.

Agreed to.

Justification

This is in line with other statutes and the appointment of persons to the National Drought Management Authority does not require the approval of Parliament.

S. 13

Delete and substitute therefor the following new section-

Appointment of Staff

13. (1) The Authority may appoint such professional technical and administrative officers and support staff as may be necessary for the proper discharge of its functions under this Act on such terms and conditions as the Board may determine.

(2) The Board may whenever it deems it necessary for the better performance of the functions of the Authority, request the Public Service Commission to second to the Authority such number of public officers as it may consider adequate for its purpose.

The Committee proposes an amendment to insert a requirement for the Board to ensure that in the appointment of its staff not more than two-thirds of the staff shall be of the same gender, the regional and other diversity of the people of Kenya is taken into account, and persons with disabilities are afforded adequate and equal opportunities.

5.4 The Forest Conservation and Management Act, 2016 (No. 34 of 2016)

S 9(3)

Delete the expression “(1) (e)” and substitute therefor the expression” (1) (g)”.

Agreed to.

Justification

The proposed amendment corrects an error in cross-referencing.

S.9(5)

Delete the expression “(1) (e)” and substitute therefor the expression “(1) (g)”.

Agreed to.

Justification

The proposed amendment corrects an error in cross-referencing.

S. 34

Insert the following new subsection immediately after subsection (2)-

(2A) A petition under subsection (1) shall only be forwarded to the National Assembly on the recommendation of the Service.

The Committee proposes the following amendment:

THAT the Schedule to the Bill be amended in the proposed amendment to section 34 of the Forest Conservation and Management Act—

- (a) by deleting the proposed subsection 2A
- (b) in subsection (1) by deleting the word “or the Senate,” appearing immediately after the words “National Assembly”;
- (c) in subsection (3) by deleting the words “relevant House” appearing immediately after the words “Standing Orders of” and substituting therefor the words “National Assembly”;
- (d) in subsection (5) in paragraph (b) by deleting the words “or the Senate” appearing immediately after the words “National Assembly”;
- (e) in subsection (6) by deleting the words “or the Senate” appearing immediately after the words “National Assembly”.

Justification

Section 30 (2) of the Forest Conservation and Management Act defines public forests to include public forests classified under Article 62 (1)(g) of the Constitution; and forests on land between the high and low water marks classified under Article 62 (1)(1) of the Constitution. Public forests therefore exclude community forest which would fall within the ambit of county governments and therefore the Senate.

The proposed amendment in the Bill is meant to correct an error where petitions for variation of boundaries or revocation of forests are sent either to the National Assembly or the Senate. However, there are still references to the “Senate” or the “relevant House” in subsections (1), (3), (5) and (6). The amendments correct this.

The proposed amendment in the Bill would have been contrary to Article 119 because the amendment purports to limit a person’s right to petition Parliament by providing that a person forwards a petition to the National Assembly “on the recommendation of the Service.

S. 35(2)

Delete the expression “Director-General” and substitute therefor the expression “Chief Conservator of Forests”.

Agreed to.

Justification

The amendment rectifies an error of reference to the Director-General instead of Chief Conservator of Forests. No office of the Director-General has been established in the Act.

S. 40

Insert the following new subsection immediately after subsection 4-

(5) Any person who fells, cuts, damages or removes, trades in or exports or attempts to export any protected tree, species or family of trees or regeneration thereof, or abets the commission of such act, commits an offence.

Agreed to.

Justification

The amendment creates an additional offence in relation to protected tree, species or family of trees.

S. 50(1)

Delete the expression "Director-General" and substitute therefor the expression "Chief Conservator of Forests".

Agreed to.

Justification

The amendment rectifies an error of reference to the Director-General instead of Chief Conservator of Forests. No office of the Director-General has been established in the Act.

S. 57(1)

Delete the expression "section 59" and substitute therefor the expression "section 56".

Agreed to.

Justification

Section 57(1) of the Act makes an incorrect cross-reference to section 59 instead of section 56. The intention of the provision was to refer to authorisation for forest activities under section 56 and section 59 which provides that the Cabinet Secretary in consultation with the relevant stakeholders shall prescribe Regulations for the grading and valuation of timber and other forest products.

New S. 63A

Insert the following new section immediately after section 63-

Applicant of public of prosecutors.

63A. The Director of Public Prosecutions may, pursuant to the Criminal Procedure Code, by notice in the Gazette, appoint a forest officer to be a public prosecutor for the purposes of this Act.

Agreed to.

Justification

The amendment empowers the Director of Public Prosecutions to appoint a forest officer to be a public prosecutor for the purposes of the Act.

There is a clerical error in the marginal note. The correct marginal note should be “appointment of a public prosecutor”. This may not be rectified through Committee Stage Amendments but during preparation of the Vellum.

S. 64(3)

Delete the expression “Section 61” and substitute therefor the expression “section 60”

Agreed to.

Justification

The amendment seeks to rectify an error in cross-referencing. The subsection refers to section 61(which provides that the Cabinet Secretary may declare by Gazette Notice any forest produce that may not be exported or imported) instead of section 60 (which prohibits a person from importing, exporting, re-exporting or introducing any forest products into or from Kenya without a permit issued by the Service).

S. 73(2)

Delete the words “that other user, as the case may be”.

Agreed to.

Justification

This corrects a clerical error in the subsection.

S. 74

Delete the expression “Director-General” and substitute therefor the expression “Chief Conservator of Forests”.

Agreed to.

Justification

The amendment rectifies an error of reference to the Director-General instead of Chief Conservator of Forests. No office of the Director-General has been established in the Act.

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ALBANY, N.Y.

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