PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 24 NOV 2021
DAY: Wed
TABLED BY: Chair, Environment - Hon. Maarufa Mbiuki
CLERK-AT THE-TABLE: R. Tiampath

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON:

THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 22 OF 2021)

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CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2021

Approved as tabled
24/11/21
DSNA

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Sustainable Waste Management Bill *(National Assembly Bill No. 22 of 2021)* which was published on 12th May, 2021 and read a First Time on 1st September, 2021. The Bill was thereafter, committed to the Departmental Committee on Environment and Natural Resources pursuant to National Assembly Standing Order 127.

Following placement of an advert in the print media on 6th September, 2021 requesting for comments on the Bill from members of the public and stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received memorandum from the Kenya PET Recycling Company Limited; Multichoice; Natural Justice; and the Kenya Private Sector Alliance.

The Committee invited the Ministry of Water, Sanitation and Irrigation vide letter REF: NA/DDC/ENR/2021/070 dated 14th October, 2021 for a meeting on the Bill, which was held on Friday, 22nd October, 2021 at Trademark Hotel, Kiambu County. The outcome of deliberations with the Ministry and stakeholders' proposed amendments to the Bill have been taken into account while determining the final proposed amendments and are contained in Part III of the Bill.

The Bill provides for the establishment of legal and institutional framework for the sustainable management of waste; ensuring the realization of the constitutional provision on the right to a clean and healthy environment and for connected purposes.

The principal object of the Bill is to provide for policy, co-ordination and oversight of waste management. The Bill also seeks to provide for measures and actions including the role of the Cabinet Secretary, and county governments regarding policies, regulations and standards, the administration of take-back schemes, the extended producer responsibility of entities engaged in the production, conversion and importation of products and packaging and the establishment and administration of materials recovery facilities.

The Bill further provides for the establishment and management of materials recovery facilities and the duties of private sector entities. Additionally, it provides for the access to the information on waste management, financial provisions including allocation of fees for county management facilities, incentives for the production and importation of sustainable waste management equipment as well as monitoring, compliance and enforcement by the National Environment Management Authority.

On behalf of the Departmental Committee on Environment and Natural Resources and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Sustainable Waste Management Bill *(National Assembly Bill No. 22 of 2021)*. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Sustainable Waste Management Bill (National Assembly Bill No. 22 of 2021) and have the honour to report back to

the National Assembly with the recommendation that the Bill be **approved with amendments** as contained in the report.

Hon. Kareke Mbiuki, CBS, MP

1.0 PREFACE

1.1 Committee Mandate

1. The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

    a) 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) Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
    c) **Study and review all legislation referred to it;**
    d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
    e) 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) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
    g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

2. The subject matters of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Oversight

3. In executing its mandate, the Committee directly oversights the following Government Ministries and Departments: -
    a) The Ministry of Environment and Forestry;
    b) The Ministry of Water & Sanitation and Irrigation;
    c) The State Department for Wildlife; and
    d) The Ministry of Petroleum and Mining.

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson
The Hon. Kareke Mbiuki, CBS, M.P.
Maara Constituency
Jubilee Party

Vice-Chairperson
The Hon. Sophia Abdi Noor, M.P.
Ijaara Constituency
Party of Development and Reforms (PDR)

The Hon. David Kangogo Bowen, M.P.
Marakwet East Constituency
Jubilee Party

The Hon. Francis Chachu Ganya, M.P.
North Horr Constituency
Frontier Alliance Party (FAP)

The Hon. Ali Wario Guyo, M.P.
for Garsen Constituency
Wiper Party

The Hon. Benard Masaka Shinali, M.P.
Ikolomani Constituency
Jubilee Party

The Hon. George Macharia Kariuki, M.P.,
Ndia Constituency
Jubilee Party

The Hon. Charity K. Chepkwony, M.P
Njoro Constituency
Jubilee Party

The Hon. Simon Ng'ang'a King'ara, M.P.
Ruiru Constituency
Jubilee Party

The Hon. Peter Kimari Kihara, M. P.
Mathioya Constituency
Jubilee Party

The Hon. Janet Ongéra, MP.
MP for Kisii County
Orange Democratic Movement (ODM)

The Hon. Charles Ong'ondo Were, M.P.
Kasipul Constituency
Orange Democratic Movement (ODM)

The Hon. Nasri Sahal Ibrahim, M.P.
Nominated
Forum for Restoration of Democracy-K

The Hon. Rozaah Buyu. M.P.
Kisumu County
Orange Democratic Movement (ODM)

The Hon. Said Hiribae, M.P.
Galole Constituency
Forum for Restoration of Democracy– K

The Hon. Hassan Oda Hulufo, M.P.
Isiolo North Constituency
Kenya Patriots' Party (KPP)

The Hon. Amin Deddy Mohamed Ali, M.P.
Laikipia East Constituency
Jubilee Party

The Hon. Rehema Hassan, M.P.
Tana River County
Maendeleo Chap Chap Party (MCC)

The Hon. (Eng.) Paul M. Nzengu, M.P.
Mwingi North Constituency
Wiper Party

1.4 Secretariat

5. The Committee is serviced by the following staff:

Ms. Esther Nginyo
Second Clerk Assistant
Lead Clerk

Mr. Dennis Mogare Ogechi
Second Clerk Assistant

Dr. Benjamin Ngimor
Senior Fiscal Analyst

Ms. Lynette Otieno
Legal Counsel I

Mr. Eugene Apaa
Research Officer

2.0 OVERVIEW OF THE SUSTAINABLE WASTE MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO 12 OF 2021)

2.1 Introduction

6. The Bill provides for the establishment of legal and institutional framework for the sustainable management of waste; ensuring the realization of the constitutional provision on the right to a clean and healthy environment and for connected purposes.
7. The principal object of the Bill is to provide for policy, co-ordination and oversight of waste management. The Bill also seeks to provide for measures and actions including the role of the Cabinet Secretary, and county governments regarding policies, regulations and standards, the administration of take-back schemes, the extended producer responsibility of entities engaged in the production, conversion and importation of products and packaging and the establishment and administration of materials recovery facilities.
8. The Bill also provides for the establishment and management of materials recovery facilities and the duties of private sector entities. Further, it provides for the access to the information on waste management, financial provisions including allocation of fees for county management facilities, incentives for the production and importation of sustainable waste management equipment as well as monitoring, compliance and enforcement by the National Environment Management Authority.

9. The Bill is a money Bill as per the provisions of Article 114 of the Constitution and the National Assembly Standing Order No. 117 (d); the enactment of the Bill shall occasion expenditure of public funds to be provided for through the annual estimates.

10. The Bill concerns county governments as it affects the functions of the County governments as set out in the Fourth Schedule to the Constitution.

11. In accordance with Article 118(1)(a) of the Constitution that provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees, an advertisement was published inviting for public participation and submission of memoranda on 6th September, 2021. Memoranda was received from the following–

    (i) Kenya PET Recycling Company Limited; and
    (ii) Multichoice
    (iii) Natural Justice
    (iv) Kenya Private Sector Alliance

2.2 Analysis of the Bill

12. The highlights of the Bill structure are as follows.

Part I (clauses 1-4) deals with the Preliminary issues.

a) Clause 1 provides for the short title.

b) Clause 2 provides an interpretation of terms as used in the context of the Bill. The key terms include domestic waste, industrial waste, material recovery facility, recovery, re-

use, sustainable waste management, waste, toxic substance, waste management facility and waste management activity.

c) Clause 3 provides for objects and purpose of the Act
d) Clause 4 provides for the general principles of the Act

Part II (Clause 5-9) contains provisions on policy, co-ordination and oversight of waste management.

e) Clause 5 provides for the responsibilities of the Cabinet Secretary
f) Clause 6 provides for the Waste Management Council. The secretariat shall be established by the Cabinet Secretary.
g) Clause 7 provides for the functions of the Council
h) Clauses 8 provides for the functions of the Authority (NEMA) under the Act
i) Clause 9 provides for responsibility of County governments to implement the devolved function of waste management and establish the financial and operational conditions for the effective performance of this function.

Part III (Clauses 10-14) of the Bill contains provisions on measures and actions

j) Clause 10 provides for Policies, regulations and standards to be set by the Cabinet Secretary.

k) Clause 11 provides for Policies, regulations and standards to be set by the County Governments.
l) Clause 12 provides for take back schemes.
m) Clause 13provides for extended producer responsibilities of entities engaged in production.
n) Clause 14 provides for material recovery facilities; county governments are mandated to establish materials recovery facilities that shall be licensed by NEMA.
o) **Part IV** (Clauses 15-19) of the Bill contains provisions on waste management functions
p) **Part V** (Clauses 20-21) of the Bill provides for public participation and access to information.
q) **Part VI** (Clauses 22-23) of the Bill provides for financial provisions under the Act
r) **Part VII** (Clauses 24-27) of the Bill contains miscellaneous provisions.
s) **Part VIII** (Clauses 28-30) of the Bill contains general provisions.
t) **Part IX** (Clause 31) of the Bill contains provisions on delegated legislation
u) **Part X** (Clauses 32-33) of the Bill contains provisions miscellaneous provisions
v) **The Schedule** to the Bill provides for the procedure to be followed in public participation as specified in clause 21.

2.3 Comparative Analysis

2.3.1 South Africa

13. Waste management has become a major environmental issue in South Africa. The South African Constitution (RSA, 1996) assigns the responsibility for refuse removal, refuse dumps and solid waste disposal to municipalities (Section 156(1)(a) read with Schedule 5). Although the large majority of municipalities provide solid waste services themselves, some

metropolitan and district municipalities outsource the function, although this trend seems to be declining (Treasury, 2011).

14. The use of community-based delivery mechanisms is limited despite the potential for job creation (Stats SA, 2016). The National Policy for the Provision of Basic Refuse Removal Services to Indigent Households (DEA, 2010) aims to facilitate the provision of at least basic refuse removal services to poor households at no cost to these households.

15. In South Africa, like many countries in the world, landfill sites are regulated by law, specifically the Waste Act, 2008 and Norms and Standards for Disposal of Waste to Landfill (DEA, 2013). One of the key requirements for the landfill site is the operating license, which is issued by the Competent Authority (CA) once it has met necessary legislative requirements.

16. In the case of municipal solid waste in South Africa, the provincial department responsible for Environment is the CA. However, there are several steps that needs to be followed for a landfill site to obtain a license.

17. Due to different reasons, application for landfill site licenses can be delayed especially during the public consultation processes, and application for a license is not a guarantee that it will be approved.

18. Waste management in South Africa general is governed mainly by The Constitution of the Republic of South Africa Act 106 of 1996, National Environmental Management: Waste Act No 59 of 2008, National Waste management Strategy, 2012 and many by-laws which may differ from municipality to municipality. These pieces of legislations are meant to assist the waste managers to manage waste in the best way possible.

2.3.2 Canada

19. At the federal level, the Canadian Environmental Protection Act, 1999 (CEPA 1999) provides the government with the authority to control the movement of hazardous waste, hazardous recyclable material and non-hazardous waste whereas the Environmental Management Act, 2003 provides the governance framework for the management of all waste including Hazardous waste and the hierarchy of operation including monitoring for action both at the federal level and the municipalities.

20. In 2012 the National Zero waste Council was established to spearhead a multi-stakeholder initiative to engage industry for waste prevention changes upstream, and to change consumer behavior downstream to generate less waste.

21. While adopting sustainable waste management we note that the Canadian government pursued a harmonized framework with the European waste management law where Waste prevention and reduction is critical.

22. The Thematic Strategy on the Prevention and Recycling of Waste establishes waste prevention as a priority in the waste hierarchy. The Thematic Strategy on the Sustainable Use of Natural Resources makes the case for decoupling economic growth from resource use and adopting a life cycle approach to the sustainable management of resources.

3.0 PUBLIC PARTICIPATION/VIEWS FROM STAKEHOLDERS

23. Following the call for memoranda from the public through placement of adverts in the print media of 6th September, 2021, the Committee received views from the following stakeholders:

    (i) Kenya PET Recycling Company Limited

    (ii) Multichoice

    (iii) Natural Justice

    (v) KEPSA

24. Further, the Committee vide its letter Ref: NA/DDC/ENR/2021 (070) dated 14th October, 2021 invited the Ministry of Environment and Forestry for deliberations on the Bill.

25. The Stakeholders submitted as follows:

3.1 Ministry of Environment and Forestry

26. In a meeting with the Committee held on Friday, 22nd September, 2021, Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry submitted as follows on the Bill:

27. The Policy and Bill seek to establish appropriate legal and institutional framework for the efficient and sustainable management of waste in the framework of the green economy, promote the realization of zero waste goal and the realization of Article 42 of the Constitution on the right to a clean and healthy environment for all.

28. Waste is a resource that can be managed to achieve economic, social and environmental benefits. Addressing the waste management challenge effectively in Kenya is critical to delivering on Kenya's constitutional right to a clean and healthy environment for all, advancing the circular economy to create green jobs and wealth from the waste sector, and realization of the nation's sustainable development goals.

29. Sustainable waste management is also fundamental to delivery of each of the government's "Big Four" national priorities the transformational agenda on housing, manufacturing, food and nutritional security and health care and to Kenya's leadership in the blue economy, with its focus on creating economic growth, ensuring healthy waters and building safe communities.

30. Kenya generates an estimated 22,000 tonnes of waste per day for a current population of 45 million both rural and urban translating to 8 million tonnes annually. It is estimated that 40% of the waste could be urban. Given that urbanization is increasing by 10%, by 2030, the Kenya urban population will be generating an estimate of about 5.5 million tonnes of waste every year, which is three times more the amount of waste generated in 2009.

31. According to research, the national average of waste stream has 60%-70% of organic waste, 20% plastic, 10% paper, 1% medical waste, 2% metal and others. Therefore, as population increases and rates of production and consumption increase too, the estimated volumes of waste generated from households, industries, agricultural services, construction, and health care facilities will increase exponentially.

32. The country however, has limited capacity to properly manage and dispose the waste generated. This poses a serious threat to the environment and the health of its citizens and animals.
33. The Sustainable Waste Management Bill, 2021 will advance Kenya towards a more sustainable and circular economy. It will move the country towards the realization of the Zero Waste principle. This will ensure that waste is separated at source, appropriately collected and transported, reused, recycled and the remaining waste stream is destined to a secure sanitary landfill.
34. Effective sustainable waste management will create value from the waste stream through re-use and recycling, formalizing the waste-pickers' sector to improve livelihoods, improving landfill operations and management as well as capturing and utilizing gases like methane emitted from landfills.
35. In addition, decommissioning dumpsites, capping landfills, reducing plastic pollution in the marine environment while creating new jobs in the sector is emphasized.

36. **The proposed Legislation was summarized as follows:**

37. **PART I** (Clause 1-4) contains the preliminary matters.

38. **PART II** (clause 5-9) sets out the roles and responsibilities of the Ministry, NEMA and the counties in waste management. The Ministry is to develop policy and regulations on waste management and provide overall oversight and coordination of the implementation of the Act. The Bill also establishes a waste management council as a high-level coordinating mechanism for waste management.

39. The Authority shall develop standards and guidelines on waste management and disseminate information and be in-charge of compliance and enforcement of waste management. The county governments shall be responsible for implementing the devolved function of waste management in accordance with the relevant national laws and ensuring mainstreaming of waste management into county planning and budgeting and shall designate at least twenty acres of land to be gazetted as waste management sites.

40. **PART III** (clauses 10-14) sets out the measures and activities to be undertaken under the Act including the making of regulations to implement the Act, and establishment of material recovery facilities for final sorting and segregation of waste. The act also provides for extended producer responsibility and take back schemes whereby products or packaging that may cause negative impacts on the environment and may be re-used or processed are returned to the seller.

41. **PART IV (clauses 15-19)** sets out the actual functions of different players relating to waste management and provides the penalties for non-compliance with the provisions of the Act.

42. **Part V** (Clauses 20-21) provides for public participation and access to related information on waste management kept by the Authority.
43. **Part VI** (Clauses 22-23) sets out the financial provisions under the Act and mandates counties to allocate all waste collection and tipping fees or other charges levied on waste received at a waste facility for the improvement of waste management activities and services. It also

provides for the Cabinet Secretary to consult with the National Treasury on setting up of incentives for waste management activities.

44. **Part VII** (clauses 24-27) gives the Authority the mandate of monitoring and evaluating the performance of public and private entities in carrying out their duties under the Act and gives the Authority powers to ensure compliance of the Act and gives the National Environmental Complaints Committee the mandate of setting up a complaints and redress mechanism.
45. **Part VIII** (Clauses 28-30) empowers the Authority to issue Restoration Orders and provides for dispute resolution for any person aggrieved by the decision of the Authority and sets out the general penalty for offences under the Act where no penalty is provided for.
46. **Part IX** (Clauses 31-33) sets out the miscellaneous provision on development of the public engagement strategy, integration of waste management in the school curricula and the power of the Cabinet Secretary to make Regulations for the implementation of the Act.

3.2 Comments from the Kenya PET Recycling Company Limited

47. Kenya PET Recycling Company Limited vide their letter Ref: ADM/EXT_NA/009/21 dated 21st September, 2021 made their submissions on the bill as follows:
48. On Clause 5 on the Roles of the Cabinet Secretary, they proposed that Waste Management being a devolved function, as such to avoid overlaps in regulations that will impact the implementation of waste management, this section should include the County governments (county environment executives) as well. This will allow future alignment between National government and County government.

Justification

49. The Clause should be amended to include the County governments in the development of regulations.

Committee's Comment

Agreed to.

50. In Clause 6 on the Waste Management Council, they noted that Clause 6 does not include any representation from the private sector from either the Kenya Association of Manufacturers or the Kenya Private Sector Alliance, all of whom will provide a market or input for the items listed in PART III, 10 (c).
51. They also noted that the clause did not include any representation from Not-For Profit or Civil Society Organizations. Both groups of stakeholders are critical in the waste management value chain, as they allow for representation of producers (manufacturers or industry players), collectors and/ or recyclers of waste.

Justification

52. The provision should be amended to include the private sector and civil society in the waste council.

Committee's Comment

Agreed to.

53. In Clause 9 on the Functions of the County Government, they noted that:

(i) This section omits the function of county governments to develop, manage and maintain designated dumpsites and / or landfills.
(ii) This section omits the function of the county government to maintain a register of all waste collectors operating within their boundaries (both formal and informal) This is critical in assessing the economic impact of waste management in a county.
(iii) PET proposes that the clause be amended to include-
    (a) the function by county governments to develop, manage and maintain designated dumpsites and / or landfills; and
    (b) the function of the county government to maintain a register of all waste collectors operating within their boundaries (both formal and informal

Justification

54. To include in the functions of the county governments, to develop, manage and maintain designated dumpsites and/or landfills; and to include in the functions of the county government, to maintain a register of all waste collectors operating within their boundaries (both formal and informal).

Committee's Comment

Agreed to.

55. In Clause 10 on Policies, regulations and standards by the Cabinet Secretary, they proposed that Clause 10 (c) should also be included as a role of the Waste Council, who would then work with the Cabinet Secretary to provide input for the development of the regulations. PET proposes that the clause be amended to include this as a role of the Waste Council under PART II section 7.

Justification

56. To include this as a role of the Waste Council under Part II Section 7

Committee's Comment

Agreed to.

57. In Clause 13 on Extended producer responsibility, they noted that:
    (i) in Clause 13 (1) and (2) The draft Extended Producer Regulations, 2021 under the Environmental Management and Co-ordination Act, states that a producer is an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings.
    (ii) This will avoid any conflict between the regulations and the proposed Bill.
    (iii) PET recommends that Clause 13(1) be amended to reflect the definition of "producer" as an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings.
58. They proposed that Clause 13(2) be amended to read "For the purpose of this section, "extended producer responsibility" of an entity engaged in the manufacture, conversion, filling, refilling, repackaging, rebranding, importation or otherwise brings of products and

packaging and includes the design of environmentally friendly and recyclable products and packaging and financial contributions to a collective scheme.

Justification

59. To expand the scope of the Extended Producer Responsibility

Committee's Comment.

Agreed to.

***3.3* Comments from Multichoice**

60. Multichoice Kenya (MCK) is a private company engaged in the business of subscriber management services for DStv and GOtv subscribers in Kenya. As part of the subscriber management services, MCK imports and distributes for sale certain broadcast equipment which includes decoders, antennae, satellite dishes and associated accessories.
61. MCK reviewed the Sustainable Waste Management Bill, 2021 and lauded the objective of the Bill of promoting sustainable waste management with the view of ensuring the realization of the constitutional right to a clean and healthy environment, however they made recommendations through an email to the office of the Clerk dated 21st September, 2021, in respect of the proposed clauses 12 and 19 of the Bill:

62. On Clause 12 on Take Back System, MCK noted that:

(i) The proposed clause 12 of the Bill introduces take back schemes, which requires the end user of a product that may negatively impact the environment, to return it to the seller. This in turn creates a mandatory duty on the seller to accept the returned product as the agent of a manufacturer.

(ii) Whereas take back systems are designed to provide raw materials for manufacturers to make new products, it may not be economically feasible to recycle material for items such as computers or hardware products. MCK therefore submitted that, the take back scheme should only apply to products that are recyclable. MCK recommended that the provision specifies the products that are subject to the take back scheme.

(iii) A comparative review of take back schemes reveals that most countries encourage rather than mandate such schemes. The European Union has, for example advocated for manufacturer-driven take back schemes supported by the government policy intervention. Germany, Austria, South Korea, Wales and Switzerland have supported recycling to encourage take back schemes.

(iv) MCK, therefore recommended that Kenya encourages rather than mandates uptake of the scheme, by introducing (amongst other things) incentive mechanisms like tax waivers, as proposed below.

63. MCK proposed amendments to Clause 12 as follows-

(a) Remove the word **shall** be returned under clause 12 (1) and replace with the word "**may**"
(b) Add clause that would allow the seller to claim a tax incentive for all used products returned to store including a possible claim for tax refunds.

Justification

64. To encourage rather than mandate the users on the take back scheme and to introduce incentives for the scheme.

Committee's Comment

Agreed to.

65. Clause 19 on duties of private sector entities, MCK noted that the proposed clause 19 (1) of the Bill mandates private sector entities to prepare three-year waste management plans and submit annual monitoring reports to the National Environmental Management Authority. This obligation would constitute an onerous obligation on the part of entities which produce small volumes of waste. MCK recommended that the requirement applies only to firms that generate high volumes of waste.
66. MCK also recommended that the penalties under clause 19 (2) be limited to monetary and not custodial penalties, as is common in other jurisdiction.
67. MCK therefore proposed-

    (a) the amendment of Clause 19 as follows:

    a. Clause 19(1) be amended to mandate only private entities engaged in activities that generate high volumes of waste such as in manufacturing, to provide waste management plans. The provision should also specify the threshold of volume of waste to which the requirement applies.

    b. The prison sentence under clause 19(2) or any such custodial sentence throughout the Bill be deleted.

Justification

68. To obligate only the entities generating high volumes of waste to provide waste management plans under clause 19(1) and limit the penalties under Clause 19(2) to monetary penalty.

Committee's Comment

Agreed to.

3.4 Comments from the Nature Justice

69. Natural Justice vide their letter Ref: NJ/NA/Sustainable Waste Management Bill /2021/1 dated 12th October, 2021 made their submissions on the bill as follows:

70. They proposed amendment to clause 2 on the definition of *"waste management activity" means any administrative or operation activity for the—*

    (a)importation or exportation of waste

71. The noted that reference should be made with the Bill with regards to importation or exportation of waste. This reference can either be to a subsequent subsidiary regulation or policy/ strategy that will address this issue.

Justification

72. The Bill defines waste management activity to include importation and exportation of waste but no reference is made in the bill with regards those two terms. Reference should be made

to a subsequent subsidiary regulation or policy that addresses the issue of importation of waste. This is because of the emerging trend of exportation of waste to African Countries, Kenya included.

73. They noted that often countries tend to import waste in various forms either as waste to be recycled or as cheap materials that otherwise are of low economic value in their country of origin but could otherwise be exported to another country. In most cases, the country importing such already used products/ waste have no policy or strategy on the quality of goods or waste to be imported, hence the need for a clear law on this issue.

Committee's Comment

Agreed to.

74. In Clause 8 on the functions of the Authority, Natural Justice proposed that there should be a chapter on National Waste Management Strategy and what the strategy should include and cover. These chapter may spell out:

    1. Practical measures for achieving co-operative governance in waste management matters between the county government and national government and inter county.

    2. Approaches for securing compliance with the requirements of this Act, including the monitoring of compliance; and

    3. The extent of its applicability

    4. The Span of the Strategy

Justification

75. National Waste Management Strategy is a key guiding document that provides the blue print and harmonise applicability of laws and set standards for waste management. However, since it is to be developed within a year after the Bill, the Bill ought to give an overview of what the plan will address for certainty.
76. Different legislations including the National Environmental Management: Waste Act 59 Of 2008 of South Africa from which the Bill has borrowed heavily have that chapter separately because of its importance as highlighted above.

Committee's Comment

Rejected as enumerating the strategy was considered to be over-legislating.

77. On Clause 16 on the Functions of the Accounting Officers of Public Entity, they propose that that subsection 16(5) should be amended to read as follows:

    'An officer of an entity who discharges waste contrary to the provisions of this section commits and offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or imprisonment not exceeding six months or both.'

Justification

78. It is necessary to make the penalties hefty so that they are punitive and prohibitive.

Committee's Comment

Agreed to.

79. On Clause 19 on Duties of private sector entities, **they** propose that subsection 19(2) should be amended to read as follows:

> *"A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than one million shillings and the person responsible for the private sector entity shall, in addition to the fine imposed on the entity, be liable to imprisonment for a term not exceeding three months."*

Justification

80. Waste management strategy is a key document that shall inform both the authorities and the public of the channels that are in place for waste management and disposal hence every entity should have one.

81. Private entities are some of the notorious polluters of environment and most often than not, they get away with it. The profit margins of these companies are high hence they can always pollute and pay since the measures are not punitive enough.

Committee's Comment

Agreed to.

82. In Clause 20 on Access to Justice, they proposed the inclusion of another subsection requiring the proactive disclosure of information of public importance or which is required for the protection of any rights or fundamental freedoms, as follows:

> *"S. 20A* The Authority, lead agencies or any other person shall publish and publicize any important information affecting the nation and which is required for the exercise or protection of any right or fundamental freedom including the right to a clean and healthy *environment."*

Justification

83. The reason for this is that the right to information as outlined in Article 35 of the Constitution provides for both pro-active and passive disclosure of information especially where the public interest is at stake. Article 35 (3) provides that the State shall publish and publicize any important information affecting the nation.

Committee's Comment

Rejected as NEMA undertakes this role.

84. They propose the amendment of clause 20 (4) by deleting the sub clause: "The Authority may, with the approval of the Cabinet Secretary and by notice on the Gazette, prescribe reasonable fees to be levied for processing applications for access to information under this section."

Justification

85. The imposition of a fee makes the process or obtaining information unnecessarily costly. Information should be made readily and easily accessible particularly where the nature of information requested is public information and is necessary for the exercise, enforcement or protection of a fundamental right or freedom under the Bills of Rights.

Committee's Comment

Agreed to.

3.5 Comments from The Kenya Private Sector Alliance

The Kenya Private Sector Alliance (KEPSA) is the apex body of private sector in Kenya. They noted that the Sustainable Waste Management Bill is a progressive bill that places Kenya ahead of many African countries in providing measures to address the systemic failures of the current linear economy. Following the call for input by the National Assembly to the Sustainable Waste Management Bill 2021, KEPSA makes the following submission:

86. Introductory Statement: An act of parliament to establish the legal and institutional framework for the sustainable management of waste; ensure the realization of the constitutional provision on the right to clean a health environment.
87. To read: An act of parliament to establish the legal and institutional framework for the sustainable management of waste; ensure the realization of the constitutional provision on the right to clean a healthy environment.

Justification

88. Typo, add y to health for it to read healthy

Committee's Comments

Agreed to.

89. Preliminary 2 definitions: they proposed amendments to the following definitions:
90. Extended producer responsibility measures that extend the obligation of a person or a firms financial or physical responsibility over a product up-to to the post-consumer stage of product lifecycle including....

Justification

91. EPR should be mandatory and legally binding for all. Consumer stage covers production and consumption post-consumer covers waste generation and activities undertaken thereafter. Globally EPR is obligation covers the full product lifecycle including the post-consumer stage so as to cover take backs and recycling.

Committee's Comment

Agreed to.

92. Recycle means the process by which materials are reclaimed from waste for further use as product, raw materials or input in production process.

Justification

93. To remove ambiguity in the definition and focus on extraction of valuable materials from waste. Once material is reclaimed it should be classified as secondary material and not regarded as waste hence no processing of waste as waste.

Committee's Comment

Agreed to.

94. Take Back Scheme means a system for collection, transportation and returning of products and packaging from end users and consumers.

Justification

95. Replace, scheme with system Change, "to end users," with, "from end users" and add consumers for clarity. For material loops closure, products and packaging are retuned from end users and consumers back to producers.

Committee's Comment

Agreed to.

Part III on Policy Coordination and oversight of waste management

96. 6(1) There shall be established a council known as Waste Management Council within one year of coming into operation of this Act. - Sustain the Waste Management Council

Justification

97. The council provides an opportunity to provide a holistic view of waste management practices in the country. With Kenya hosting one of the largest 50 largest dumpsites in the world, it is important that a deliberate strategic leadership body is created. Being the country hosting UNEP, the current frameworks have not assisted position the country as exemplary in handling its waste. With open dumpsites in most neighborhoods and littering by the road sides, it is important that the business-as-usual scenario is not propagated anymore. The council will also serve as intergovernmental platform between national government and county government with private sector entities in addressing the waste management challenge and setting national targets in line with global best practice. This also provides an opportunity to formalize the waste management sector as a key sector of the economy not just as a consuming sector but also upgrade the sector to be a revenue contributing to the GDP in line with global best practice.

Committee's Comment

Agreed to.

98. Clause 6(2) g: Three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management. They specified the 3 non state actors as follows:

    - One representative of producers
    - One representative of waste service providers

• One representative of private sector appointed by the cabinet secretary for their competency in sustainable waste management.

Justification

99. The Constitution of Kenya is premised on participatory approaches of stakeholders impacted by a decision to be part of the decision-making process. Circular economy entails a value chain approach in management of waste hence representation of key value chain players including the producers, waste service providers including collectors should form part of this council in order to provide realistic insights and decision on the true state of waste management in the country.

Committee's Comments

Rejected as there was no clear criteria to arrive at the representatives of the producers and waste service providers.

100. 7(i) a, b and 8(3): Amend (7) 1 (a) and delete (b) Amend (a) to read, Provide National State of Sustainable Waste Management including Extended Producer Responsibility Measures Report.

Justification

101. This is captured as the role of the authority under clause 8(3) and is very operational function to be supported by the waste management information system. The council could be responsible for providing the Bi-annual State of Sustainable Waste Management Report for the council.

Committee's Comment

Agreed to.

102. 7(i): they proposed additional function as follows:

- The council shall be the intergovernmental mechanism between national and county government in addressing and planning for sustainable waste management in the country
- The council shall be the coordinating platform of extended producer responsibility measures in the country.
- The council shall set national targets for recycling and recovery.

Justification

103. There lacks an intergovernmental platform between national and county governments in addressing the waste management function leading to duplication and double regulation of private sector.

Committee's Comment

Agreed to.

104. 7(i) f : Delete (f)

Justification

105. Technical expertise is vested within the Authority. The expertise required may be operational which is outside the scope of the council.

Committee's Comment

Agreed to.

106. Part III on Measures and Actions: They proposed a mandatory segregation at source and color codes have not been provided in the Bill. These new measures should be 10(2) and the current 10(2) to be 10(3). Add new measures' as follows:

(10(2) Waste Classification and Segregation at Source

i. All households, public and private entities shall segregate their waste into Organic, Dry Waste, and Special waste:
ii. (The National colour coding of waste containers shall be Green for Organic; Blue for Dry Waste and Yellow for Special Waste.
iii. All Waste Collectors shall provide separate containers, bags and bins with proper labels for segregation of waste at source in line with national color codes.
iv. All Waste Collectors and transporters shall collect and transport segregated waste streams as per schedule issued by the respective county.
v. County Governments shall issue a schedule for collection and transportation of segregated waste within their jurisdiction.
vi. Compartmentalized trucks shall be allowed to transport segregated waste fractions in respective well marked compartments where a separate collection schedule is not viable.
vii. All collection vehicles shall bear a readable and visible body number, the name of contractor or agency collecting the solid waste and the type of waste being transported.
viii. Collection and transportation of special waste shall be governed by applicable laws and regulations of the respective waste fraction.
ix. The Cabinet Secretary in consultation with the Authority shall set standards and minimum requirements for implementation of national waste segregation at source and segregated collection and transportation measures.
x. Each County shall provide additional measures to facilitate further segregation of waste at source relative to their local conditions.

107. With adoption of the above delete clause 19(g)

108. Amend 19(3)k to read, a private sector entity shall provide waste segregation receptacles at its premises as per regulation (10)2

Justification

109. The key to successful waste management begins with mandatory segregation at source for all and proper color coding of segregation bins, bags and containers. This section should include these measures and not just dumpsites. The Measures and Actions should prioritize proper classification of waste from household level and make segregation at source mandatory across the nation by providing minimum streams to be segregated at source. Mandatory segregation of waste at source will help producers execute their postconsumer extended producer's responsibility obligation. It is important that this requirement is

enforced throughout the collection and transportation of the respective waste fractions. This is aligned to the sustainable waste management policy that address measures to be implemented in the country for an effective circular approach to waste management.

Committee's Comment

Agreed to.

4.0 COMMITTEE'S OBSERVATIONS

110. In considering the Bill, the Committee observed as follows:

111. The Sustainable Waste Management Bill, 2021 is a progressive legislation, which once enacted will enable the country to have paradigm shift in solid waste management. It will ensure circular economy, where waste will become raw material and hence enhance job creation.

112. The Bill proposes major responsibilities with veto powers for the Cabinet Secretary. There is need to check the powers of the Cabinet Secretary through consultation with the county governments, as waste is a devolved function. For instance, the Cabinet Secretary has sweeping powers to designate substance, materials or objects as waste.

113. The Bill proposes to create a waste management council whose chairperson is proposed to be the Cabinet Secretary in charge of waste management. The proposed chairperson is also providing policy direction. There is however, need to separate the council chair from the policy making role for oversight purposes.

114. With the establishment of the Waste Management Council, some of its functions are in the purview of the Authority (NEMA). There is need to ensure that the council is the platform between national and county governments in addressing the waste management function whereas the Authority provide the technical expertise on waste management matters.

115. The definition of extended producer responsibility is limited as it does not cover the product life cycle. EPR should be mandatory and legally binding for all. Consumer stage covers production and consumption, while post-consumer covers waste generation and activities undertaken thereafter. Globally EPR obligation covers the full product lifecycle including the post-consumer stage so as to cover take backs and recycling.

116. The penalties proposed in the Bill are lenient. There is need to ensure that they are enhanced for sustainable waste management.

117. The Bill has not provided for E-waste management which is major source of waste with the current technological advancement. There is therefore need to provide for the regulation of E-waste management.

5.0 COMMITTEE'S RECOMMENDATION

118. The Committee having considered the Sustainable Waste Management Bill (National Assembly Bill No. 22 of 2021) recommends that the House approves the Bill with amendments as proposed in the schedule below.

LONG TITLE

THAT, the Long title to the Bill be amended by deleting the word "health" and substituting therefor the word "healthy".

CLAUSE 2

THAT, clause 2 of the Bill be amended—

(a) by deleting the definition of the word "extended producer responsibility" and substituting therefor the following new definition—

"extended producer responsibility refers to an environmental management approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product life cycle;"

(b) in the definition of the word "public entity" by deleting the word "grated" appearing in paragraph (c) and substituting therefor the word "granted";

(c) by deleting the definition of the word "recycle" and substituting therefor the following new definition—

"recycle" means the process by which materials are reclaimed from waste for further use as product, raw materials or input in production process;"

(d) by deleting the definition of the word "sustainable waste management" and substituting therefor the following new definition—

"sustainable waste management" means using material resources efficiently as prioritized by waste hierarchy, circular economy and clean production in order to reduce the amount of waste that is generated, deposited, or discarded in the environment; including management of materials that would otherwise have been dumped or wasted, in a way that contributes to environmental, social and economic goals of sustainable development;"

(e) in the definition of the word "take-back scheme" by deleting the words "to end users" and substituting therefor the words "from end users and consumers";

(f) by deleting the definition of the word "waste" and substituting therefor the following new definition—

"waste" means—

(a) any substance, material or object that is intended or required to be discarded or disposed of, by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, construction waste, commercial waste, waste from horticulture, aquaculture and forestry, medical waste, chemical

waste, hazardous waste, toxic waste, industrial waste, pesticides, e-waste and toxic substances but does not include radioactive waste;

(b) a substance, material or object that may be designated as waste by the Cabinet Secretary in consultation with the Authority by notice in the *Gazette*,

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

(i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;

(ii) where approval for reuse, recycling or recovering is not required, it has been reused, recycled or recovered; or

(iii) where the Cabinet Secretary in consultation with the Authority has, by notice in the Gazette and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

(g) in the definition of "waste management activity" by inserting the words "as prescribed by regulations" immediately after the word "waste" appearing in paragraph (a); and

(h) by inserting the following new definitions in their proper alphabetical sequence—

"e-waste" also referred to as waste electrical and electronic equipment means waste resulting from electrical and electronic equipment including components and subassemblies thereof;

"non organic waste" means dry recyclable and non-recyclable materials;

"organic waste" means compostable materials derived from plants and animals;

"producer" means an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings;

"waste hierarchy" means the order of priority for efficient use of resources and minimization of pollution by avoidance, reduction, reuse, repair, refurbishment, recycling, recovery and finally treatment for safe disposal;

"waste service providers" includes collectors, transporters, waste processors, material recovery operators, recyclers, landfill operators."

CLAUSE *3*

THAT, clause *3* of the Bill be amended by deleting paragraph (g) and substituting therefor the following new paragraph—

" (g) to promote circular economy practices for green growth;"

CLAUSE 4

THAT, clause 4 of the Bill be amended in paragraph (f) by deleting the words "development goals" and substituting therefor the words "waste management".

CLAUSE 5

THAT, clause 5 of the Bill be amended in paragraph (b) by inserting the words "and county governments" immediately after the word "Authority".

CLAUSE 6

THAT, clause 6 of the Bill be amended—

(a) by deleting subclause (2) and substituting therefor the following new subclause—

(2) The Council shall comprise of—

(a) a chairperson appointed by the President;
(b) one person nominated by the Council of County Governors who shall be the vice-chairperson;
(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to waste management or a designated representative;
(d) the Principal Secretary in the Ministry for the time being responsible for National Treasury or a designated representative;
(e) the Director-General of the Authority;
(f) four other persons appointed by the Cabinet Secretary being—

(i) one person nominated by the registered association representing the largest number of entities in the private sector;
(ii) one person nominated by the registered association representing the largest number of entities in the manufacturing sector; and
(iii) two persons with professional qualifications in waste management, one of whom shall represent civil society organizations.

(b) in subclause (3) by deleting the word "members" and substituting therefor the words "not more than three members at any given time".

(c) by inserting the following new subclauses immediately after subclause (3) —

(3A) Except for members appointed under subsection (2) (c), (d) and (e), a person shall be qualified for appointment as chairperson or member of the Council if such person—

(i) is a citizen of Kenya;
(ii) holds relevant academic and professional qualification including a university degree in waste management, environmental engineering; environmental management environmental studies, biology, chemistry or civil engineering;
(iii) has at least ten years' experience in the relevant field; and
(iv) fulfils the requirements of Chapter 6 of the Constitution

(3B) In making appointments of the members to the Council, the Cabinet Secretary shall observe regional, gender, age, disability and ethnic balance.

(3C) The conduct of business of the Council shall be in accordance with the First Schedule.

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

(1) The Council shall—

(a) enhance inclusive inter-governmental coordination for sustainable waste management;
(b) review progress in implementation of the national sustainable waste management strategy;
(c) recommend to the Cabinet Secretary the national waste management recycling and recovery targets;
(d) synchronize the development of waste management infrastructure;
(e) mobilize resources for financing of the waste management sector;
(f) promote inter county waste management partnerships in consultation with county governments;
(g) recommend to the Cabinet Secretary incentives to promote sustainable waste management; and
(h) perform such other functions as may be assigned by the Cabinet Secretary.

CLAUSE 8

THAT, clause 8 of the Bill be amended by deleting subclause (2).

CLAUSE 9

THAT, clause 9 of the Bill be amended by inserting the following new subclauses immediately after subclause (7)—

(8) County governments shall develop, manage and maintain designated disposal sites and landfills.

(9) County governments shall maintain a register of all waste service providers operating within their boundaries.

CLAUSE 10

THAT, clause 10 of the Bill be amended —

(a) in subclause (1) inserting the word "and county governments" immediately after the word "Authority"; and
(b) in subclause (2) inserting the word "and county governments" immediately after the word "Authority".

CLAUSE 12

THAT, Bill be amended by deleting clause 12 and substituting therefor with the following new clause—

Waste classification and segregation.

12(1) All citizens, public and private sector entities shall segregate non-hazardous waste into organic and non-organic fractions.

(2) The segregated waste shall be placed in properly labeled and colour coded receptacles, bins, containers and bags.

(3) All waste service providers shall collect, handle and transport segregated waste as provided under this Act.

(4) Hazardous waste will be handled and managed as prescribed by the Environmental Management and Co-ordination Act, 1999 and any other relevant written law.

No.8 of 1999.

(5) Any person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment not exceeding six months or both.

(6) The Cabinet Secretary shall, in consultation with the Authority and county governments, *Gazette* the National Color-Coding System for waste.

CLAUSE 13

THAT, Bill be amended by deleting clause 13 and substituting therefor with the following new clause—

Extended Producer Responsibility.

13. (1) Every producer shall bear extended producer responsibility obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom.

(2) Every producer shall fulfill their extended producer responsibility obligation individually or collectively in a compliance scheme.

(3) The Cabinet Secretary shall, within two years of the coming into operation of this Act make regulations on extended producer responsibility.

CLAUSE 15

THAT, clause 15 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

(3) The Cabinet Secretary shall develop a national waste management strategy and action plan within two years of the coming into force of this Act, which shall be reviewed every five years.

CLAUSE 16

THAT, clause 16 of the Bill be amended —

(a) in subclause (2) —
  (i) in opening statement by inserting the words "or private sector" immediately after the word "public";
  (ii) by deleting paragraph (d);
  (iii) in paragraph (g) by deleting the word "segregation" and substituting therefor the word "receptacles";

(b) by deleting subclause (4) and substituting therefor the following new subclause—
  (4) A person in charge of a public or private sector entity that discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or a term of imprisonment not exceeding one year or both.

(c) by deleting subclause (5) and substituting therefor the following new subclause—

  (5) An officer of an entity who discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or imprisonment not exceeding six months or both.

CLAUSE 17

THAT, clause 17 of the Bill be amended in paragraph (a) by deleting the word "one" and substituting therefor the word "two".

CLAUSE 18

THAT, clause 18 of the Bill be amended—

(a) in subclause (1) by inserting the word "county" immediately before the word "waste"; and
(b) in subclause (2) by inserting the word "county" immediately before the word "waste";

CLAUSE 19

THAT, clause 19 of the Bill be amended by inserting the following new subclause immediately after subclause (1) —

(1A) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, within six months of the coming into operation of this Act, shall *Gazette* the category of private sector entities that shall be required to prepare waste management plans which shall based on volume of production of waste.=

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 19—

Duties of citizens.

19A.(1)All citizens and residents in Kenya shall—

(a) segregate waste at source in accordance with the provisions of this Act.
(b) dispose waste to only licensed waste service providers or at collection points designated in accordance with the provisions of this Act; and
(c) minimize the amount of waste generated at the source.

(2) Any person who does not manage waste in accordance with the subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand shillings or imprisonment not exceeding six months or both.

Duties of waste service providers.

19B. (1) A waste service provider shall handle segregated waste in accordance with the provisions of this Act.

(2)A waste service provider shall deliver segregated waste collected to facilities licensed and designated in accordance with the provisions of this Act.

(3) A waste service provider who fail to handle or manage waste in accordance with this Act commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shilling or imprisonment of six months or both.

CLAUSE 21

THAT, clause 21of the Bill be amended by deleting the words "the Act and" and substituting therefor the words "the Second Schedule and".

CLAUSE 31

THAT, clause 31(2) of the Bill be amended by—

(a) in paragraph (b) by inserting the words "and deposit refund systems" immediately after the word "schemes";
(b) inserting the following new paragraph immediately after paragraph (g)

(ga) importation and exportation of waste;

(gb) management of e-waste; and

(gc)national colour coding system for waste.

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately before the schedule—

FIRST SCHEDULE (s.5(3C))

Conduct of the Business and Affairs of the Council

Meetings of the Council

1. The Council shall meet Quarterly.

Special meetings

2. The chairperson may, at any time, convene a special meeting of the Council and shall do so within fifteen days of a written notice for the meeting signed by at least three of the members.

Chairperson to preside

3. (1) The chairperson shall preside at all meetings of the Council in which the chairperson is present and in the case of his or her absence, the vice- chairperson shall preside.

(2) At a meeting of the Council at which neither the chairperson nor the vice-chairperson is present, the members of the Council present shall elect one of their members to preside, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereof.

Quorum

4. The quorum for the conduct of the business of the Council shall be two thirds of the members.

Voting

5. The decisions of the Council shall be by a majority of votes, and the chairperson of the meeting shall have an original and a casting vote.

Validity of proceedings

6. The validity of any proceedings of the council shall not be affected by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

Minutes of the meeting

7. Minutes of the proceedings at meetings of the Council shall be kept in such a manner as the Council directs and will be made available to the Cabinet Secretary

Committees of the Council

8. The Council may establish such Committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

Power of the Council to regulate own procedure

9. Subject to the provisions of this Schedule, the Council shall regulate its own procedure.

Disclosure of interest

10. If a member of the Council is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Tenure

11. (1) The chairperson shall serve for a term of three years renewable once based on performance.
(2) The non-public members shall serve for a term of three years and renewable once.

Disqualification

12. A person shall not be qualified for appointment as the chairperson or a member of the Council if such person—
(a) is a member of Parliament or a county assembly;
(b) is a member of a local authority;
(c) is an undischarged bankrupt; or
(d) has been removed from office for contravening the provisions of the Constitution or any other written law.

Vacancy

13. (1) The office of the chairperson or a member of the Council shall become vacant if the holder—
(a) dies;

(b) resigns from office in writing addressed to the Cabinet Secretary;
(c) is absent from three consecutive meetings of the Council without good cause; or
(d) is removed from office in accordance with sub-paragraph (2).

(2) The chairperson or a member of the Council may be removed from office for—
(a) contravening Chapter Six of the Constitution;
(b) serious violation of this Act or any other law;
(c) gross misconduct;
(d) physical or mental incapacity to perform the functions of office;
(e) incompetence; or
(f) if adjudged bankrupt.

Secondment

14. The Cabinet Secretary may, in consultation with the Council, and upon such terms and conditions as may be prescribed, second such officers, agents and other staff as may be necessary for the efficient discharge of the functions of the Council under this Schedule.

Experts and Consultants

15. The Council may engage consultants and experts, as it considers appropriate, to assist in the discharge of its functions under this Schedule.

Remuneration

16. The chairperson and members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary.

Reporting

17. (1) The Council shall submit an annual report to the Cabinet Secretary.
(2) Notwithstanding sub-paragraph (1), the Cabinet Secretary may, at any time, require a report from the National Waste Management Council on a particular matter.

Secretary

18. (1) The Cabinet Secretary shall second a senior officer from the Ministry to serve as Secretary to the Council.
(2) The Secretary shall—
(a) be appointed by the Cabinet Secretary;
(b) be an ex officio member of the Council with no right to vote;
(c) be secretary to the Council;
(d) subject to the directions of the Council, be responsible for the day-to-day management of the affairs of the Council; and
(e) perform such other functions as the Council may, from time to

time, determine
(3) The Secretary shall serve on such terms and conditions as the Cabinet Secretary may determine.

SCHEDULE

THAT, the Bill be amended by inserting the word "Second" immediately before the word "Schedule" appearing in the title to the Schedule.

Signed: .....

HON. KAREKE MBIUKI, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Date: 24/11/2021

LIST OF ANNEXTURES

1. ADOPTION LIST
2. COMMITTEE MINUTES
3. ADVERTISEMENT
4. COMMENTS FROM THE STAKEHOLDERS
5. COPY OF THE BILL

ADOPTION LIST

DC-ENR: DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ADOPTION LIST

THE SUSTAINABLE ~~WATER~~ WASTE MANAGEMENT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 22 OF 2021).

We, the Members of the Departmental Committee on Environment and Natural Resources, have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Tuesday 23rd November, 2021.**

	NAME	SIGNATURE
1.	**The Hon. Kareke Mbiuki, M.P. - Chairperson**	
2.	**The Hon. Sophia Abdi Noor, M.P. – Vice Chairperson**	
3.	The Hon. David Kangogo Bowen, M.P.	
4.	The Hon. Francis Chachu Ganya, M.P.	
5.	The Hon. Bernard Shinali, M.P.	
6.	The Hon. Simon King'ara, M.P.	
7.	The Hon. Janet Ongera, MP.	
8.	The Hon. Amin Deddy Mohamed Ali, M.P.	
9.	The Hon. Charity Kathambi Chepkwony, M.P	
10.	The Hon. Charles Ong'ondo Were, M.P.	
11.	The Hon. Hassan Oda Hulufo, M.P.	
12.	The Hon. George Kariuki, M.P.	
13.	The Hon. Ali Wario Guyo, M.P.	
14.	The Hon. Nasri Sahal Ibrahim, M.P.	
15.	The Hon. Peter Kimari Kihara, M.P	
16.	The Hon. (Eng.) Paul Musyimi Nzengu, M.P.	
17.	The Hon. Rehema Hassan, M.P.	
18.	The Hon. Rozaah Buyu. M.P.	
19.	The Hon. Said Hiribae, M.P.	

COMMITTEE MINUTES

MINUTES OF THE 66TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD VIRTUALLY ON THURSDAY 21ST OCTOBER, 2021 AT 10.00 AM.

PRESENT

1. **The Hon. Sophia Abdi Noor, M.P.,** **Vice Chairperson**
2. The Hon. Simon King'ara, M.P.
3. The Hon. Eng. Paul Musyimi Nzengu, M.P.
4. The Hon. Charles Ong'ondo Were, M.P
5. The Hon. Peter Kimari Kihara, M. P
6. The Hon. Said Hiribae, M.P.
7. The Hon. Hassan Oda Hulufo, M.P

APOLOGIES

1. **The Hon. Japhet Kareke Mbiuki, CBS, M.P.,** **Chairperson**
2. The Hon. Francis Chachu Ganya, MP
3. The Hon. Bernard Shinali, M.P.
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. Rehema Hassan, M.P.
6. The Hon. Rozaah Buyu. M.P.
7. The Hon. Ali Wario Guyo, M.P.
8. The Hon. Amin Deddy Mohamed Ali, M.P.
9. The Hon. Janet Ong'era, MP
10. The Hon. David Kangogo Bowen, M.P.
11. The Hon. Charity Kathambi Chepkwony, M.P.
12. The Hon. George Kariuki, M.P.

THE NATIONAL ASSEMBLY

1.	Ms. Esther Nginyo	-	Clerk Assistant II
2.	Mr. Dennis Mogare Ogechi	-	Clerk Assistant II
3.	Dr. Benjamin Ngimor	-	Senior Fiscal Analyst
4.	Ms. Lynette Otieno	-	Legal Counsel I
5.	Mr. Eugene Apaa	-	Research Officer
6.	Mr. Mark Mbuthia	-	Audio Recording Officer

AGENDA

i) Prayers
ii) Confirmation of Minutes

iii) Matters Arising
iv) **Brief on the Sustainable Waste Management Bill, 2021**
v) Date of the next Sitting

MIN.NO. DC/ENR/300/2021: - **PRELIMINARIES**

The Meeting was called to order at 10.29 am after which prayers were said. The Chairperson stated that the main agenda of the day was briefing on the Sustainable Waste Management Bill, 2021.

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/301/2021: - **CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/302/2021: - **BRIEF ON THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021**

The legal counsel briefed members as follows:

1. The brief was prepared guided by the Constitution which empowers Parliament to make provisions having the force of law in Kenya and the Interpretation and General Provisions Act, Cap 2 of the Laws of Kenya which provides for construction, application and interpretation of statutes.
2. The Sustainable Waste Management Act, 2021, National Assembly Bill No.22 of 2021 was a Bill sponsored by Hon Amos Kimunya, M.P was published on12th May, 2021.
3. The Bill having been read a First Time, was committed for consideration to the Departmental Committee on Environment and Natural Resources pursuant to Standing Order 127(1).
4. In accordance with Article 118(1)(a) of the Constitution that provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees, an advertisement was published inviting for public participation and submission of memoranda. Memoranda was received from the following–

   (i) Kenya PET Recycling Company Limited; and
   (ii) Multichoice; and
   (iii)Natural Justice.

5. In summary, the Bill seeks to establish a legal and institutional framework for the sustainable management of waste and ensure the realization of the constitutional provision on the right to a clean and health environment.

She then provided a summary of clauses contained in the Bill and a Matrix on Stakeholders' comment on specific clauses of the Bill (both attached to these Minutes).

OBSERVATIONS

Members observed that:

1. Clause 20 which provides for access to information should be amended in order to be aligned to Section 12 of Access to Information Act, 2016. At the moment it provides that:

   "NEMA shall keep the records on waste management submitted to it and maintain their confidentiality where the circumstances so require. A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records. The Authority may, with the approval of the Cabinet Secretary and by notice on the *Gazette*, prescribe reasonable fees to be levied for processing applications for access to information under this section."

2. Clause 31 which provides for the regulation making power by the CS should be amended in order to prescribe a timeline for making the regulations. At the moment it provides that:

   "The Cabinet Secretary may, in consultation with the Authority, make regulations for various matter enumerated in the Bill."

MIN.NO. DC/ENR/303/2021: - ADJOURNMENT

There being no other business the meeting was adjourned at 11.01 am.

SIGNED: .....
THE HON. KAREKE MBIUKI, CBS, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 24/11/2021

THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021

SUMMARY OF CLAUSES

Part I (clauses 1-4) deals with the Preliminary issues.

1) Clause 1 provides for the short title.

2) Clause 2 provides an interpretation of terms as used in the context of the Bill. The key terms includes domestic waste,industrial waste, material recovery facility, recovery, re-use, sustainable waste management, waste, toxic substance , waste management facility and waste management activity.

3) Clause 3 provides for objects and purpose of the Act which is to-

   (a) promote sustainable waste management;

   (b) improve the health of all Kenyans by ensuring a clean and healthy environment;

   (c) reduce air, land, fresh water and marine pollution;

   (d) promote and ensure the effective delivery of waste services;

   (e) create an enabling environment for employment in the green economy in waste management, recycling and recovery;

   (f) establish an environmentally sound infrastructure and system for sustainable waste management;

   (g) promote sustainable procurement practices;

   (h) mainstream resource efficiency principles in sustainable consumption and production practices; and

   (i) inculcate responsible public behaviour on waste and environment.

4) Clause 4 provides for the general principles of the Act which are-

(a) promoting the right to a clean and healthy environment;

(b) the precautionary principle where the lack of scientific certainty shall not be used to postpone measures to prevent environmental degradation where there are threats of damage to the environment;

(c) the polluter pays principle in which the cost of cleaning up any element of the environment that has been damaged by pollution, the cost of the beneficial uses of the environment that have been lost as a result of the pollution, and any other costs associated with or incidental to the pollution shall be paid by the polluter;

(d) payment for ecosystem services or payment for ecological services in which payments are made to farmers or landowners who have agreed to take certain actions to manage land or watersheds in order to provide ecological services as an incentive to conserve natural resources;

(e) zero waste principle in which products and processes are designed and managed to reduce the volume and toxicity of waste and materials, and to conserve and recover all resources, and to prevent the burning or burying of resources, in order to treat waste as a resource that can be harnessed for wealth creation, employment and the reduction of pollution; and

(f) achieving sustainable development goals.

Part II (Clause 5-9) contains provisions on policy, co-ordination and oversight of waste management.

5) Clause 5 provides for the responsibilities of the Cabinet Secretary as follows-

(a) policy on sustainable waste management in consultation with county governments;

(b) the development of regulations in consultation with the Authority;

(c) co-ordinating adherence to international obligations with regards to waste management, nationally determined contribution of waste and chemicals conventions; and

(d) oversight and co-ordination of the administration of this Act.

6) Clause 6 provides for the Waste Management Council. The secretariat shall be established by the Cabinet Secretary.The Council shall consist of-

(a) the Cabinet Secretary who shall be the chairperson;

(b) the chairperson of the Environment Committee of the Council of County Governors who shall be the co-chairperson;

(c) a representative from the ministry responsible for matters relating to waste management;

(d) a representative from the National Treasury;

(e) a representative from the Authority;

(f) the chairperson of the caucus of county executive committee members in charge of environment; and

(g) three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management.

7) Clause 7 provides for the functions of the Council as follows-

(a) provide analytical support on sustainable waste management to ministries, agencies and county governments;

(b) serve as the national knowledge and information management centre for disseminating knowledge and information on sustainable waste management;

(c) in collaboration with other agencies at the international, national and county governments level—

(i) identify sustainable waste prevention, reduction, reuse, recycling and disposal strategies;

(ii) optimise opportunities to mobilise financing for sustainable waste management; and

(iii) ensure co-ordination across national and county government entities in sustainable waste management;

(d) co-ordinate activities relating to Kenya's international obligations relating to waste and chemicals conventions;

(e) develop a national strategy for the reduction of land-based pollution to the marine environment;

(f) provide technical assistance to county governments as may be needed from time to time; and

(g) perform such other functions as may be assigned by the Cabinet Secretary.

8) Clauses 8 provides for the functions of the Authority (NEMA) under the Act, that include-

(a) develop standards and guidelines on sustainable waste management;

(b) generate and disseminate waste information for the public in consultation with county governments;

(c) enforce waste management legislation in consultation with county governments;

(d) save for where county governments have jurisdiction, issue licenses for waste management activities;

(e) conduct research, awareness creation and training on sustainable waste management; and

(f) establish a national waste information system for recording, collecting, management and analysis of data and information including—

(i) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, reused, recycled, recovered or disposed of;

(ii) a register of licensed waste management, recycling and other related activities;

(iii) the status of the generation, collection, reduction, reuse, recycling, recovery, transportation, treatment and disposal of waste;

(iv) the impact of waste on health and the environment;

(v) the levels and extent of waste management services provided by counties;

(vi) information on compliance with this Act; and

(vii) any other information that is necessary for the purposes of the effective administration of this Act.

The Authority is also required to develop an action plan for the implementation of the National Waste Management Strategy within one year of the coming into operation of the Act and provide analytical reports and support on waste management to ministries, agencies and counties and serve as the national knowledge and information management centre for disseminating information on sustainable waste management.

9) Clause 9 provides for responsibility of County governments to implement the devolved function of waste management and establish the financial and operational conditions for the effective performance of this function.

Part III (Clauses 10-14) of the Bill contains provisions on measures and actions

10) Clause 10 provides for Policies, regulations and standards to be set by the Cabinet Secretary.

11) Clause 11 provides for Policies, regulations and standards to be set by the County Governments. These include policies on the use of land within the jurisdiction of the county government for waste management; and investment in sustainable waste management including waste collection, separation, treatment, processing, recovery and sanitary final disposal of waste.

12) Clause 12 provides for take back schemes. Products and packaging that may cause negative impacts on the environment are to be returned to the seller after their use. The Cabinet Secretary is required to prescribe regulations on the products and packaging that may be returned, the manner and form of marking the product and packaging, the processes and procedures for the collection, processing, treatment and return of products and packaging, and the manner of public information..

13) Clause 13provides for extended producer responsibilities of entities engaged in production. An entity engaged in the production, conversion or importation of products and packaging shall bear extended producer responsibility over the products or packaging for the purpose of reducing the environmental impact of the products or packaging.

14) Clause 14 provides for material recovery facilities, county governments are mandated to establish materials recovery facilities that shall be licensed by NEMA. A materials recovery facility shall be used for final sorting, segregation, composting and recycling of waste generated or transported to the county and transport the residual waste to a long-term storage or disposal facility or landfill.

Part IV (Clauses 15-19) of the Bill contains provisions on waste management functions

15) Clause 15 provides for functions of the CS with regards to waste management. The Cabinet Secretary shall prescribe measures for the reduction of waste, and the environmentally sound reuse, recycling and recovery of waste. The CS is also required to develop a National Waste Management Strategy and regulations on waste management.

16) Clause 16 provides for functions of accounting officers of public entities, who shall be responsible for the management of waste generated the entity in accordance with the Act. It further provides for penalties for a person or officer of a public entity in charge of a public entity that discharges waste contrary to the provisions of the section.

17) Clause 17 provides for function of County Governments with regards to waste management. Including enactment of county sustainable waste management legislation within one year of the coming into operation of the Act.

18) Clause 18 provides for waste management plans. Each county government shall prepare and submit to the county assembly for approval an integrated waste management plan once every five years.

19) Clause 19 provides for duties of private entities with regards to waste management. A private sector entity shall prepare a three-year waste management plan and submit an annual monitoring report to the Authority which shall specify the actual quantities of waste generated by the entity and the waste management methods applied by the entity.

Part V (Clauses 20-21) of the Bill provides for public participation and access to information.

20) Clause 20 provides for access to information. NEMA shall keep the records on waste management submitted to it and maintain their confidentiality where the circumstances so require. A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records. The Authority may, with the approval of the Cabinet Secretary and by notice on the *Gazette*, prescribe reasonable fees to be levied for processing applications for access to information under this section.

The provisions should be aligned to Section 12 of Access to Information Act, 2016 that provides for fees as follows-

> **12**. *Fees*
>
> *(1) No fee may be levied in relation to the submission of an application.*
>
> *(2) A public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.*
>
> *(3) Subject to subsection (2), the Cabinet Secretary shall make regulations prescribing the fees payable for expenses incurred in providing information to an applicant.*

21) Clause 21 provides for public participation and consultation as a mandatory requirement for procedures under the Act.

Part VI (Clauses 22-23) of the Bill provides for financial provisions under the Act

22) Clause 22 provides for Fees to be allocated to county waste management facilities. Each county government shall allocate all waste collection and tipping fees or other charges levied on waste received at a county government waste management facility for the improvement of waste management activities and services.

23) Clause 23 provides for incentives for the production and importation of sustainable waste management equipment and for encouraging investment in materials recovery and recycling activities.

Part VII (Clauses 24-27) of the Bill contains miscellaneous provisions.

24) Clause 24 provides for power of NEMA to monitor and review the performance of private entities and county governments in carrying out their functions under the Act. NEMA shall develop regulations prescribing the procedure for reporting on compliance with this Act by private entities. NEMA may require a private entity that has waste management obligations to prepare reports on the status of the entity's performance of the entity's waste management obligations and prescribe the period for reporting; and require a private entity that fails to comply with its waste management obligations to prepare a report within a specified time on the actions it has taken, is taking or intends to take to secure the entity's future performance of the entity's obligations.

25) Clause 25 provides for compliance and enforcement by NEMA of requirements under the Act.

26) Clause 26 provides for establishment of establishment of a complaints and redress mechanism by the National Environment Complaints Committee.

27) Clause 27 provides for the Authority shall, in consultation with county governments, to establish a partnership programme with waste generating industries and sectors for continuous education on waste to encourage compliance.

Part VIII (Clauses 28-30) of the Bill contains general provisions.

28) Clause 28 provides for restoration. A person who fails to manage waste in accordance with the Act shall be required to clean up and restore the site where the waste was being managed to its natural state. The Authority shall issue the person with a site restoration order in accordance with EMCA if the person fails to clean up and restore the site.

29) Clause 29 provides for dispute resolution mechanism under the Act. An appeal shall be to the National Environment Tribunal.

30) Clause 30 provides for the general penalty clause .A person who contravenes a provision of the Act for which a penalty has not been prescribed shall, on conviction, be liable to a fine of not less than two million shillings and not more than four million shillings or to imprisonment for a term not exceeding four years or to both.

Part IX (Clause 31) of the Bill contains provisions on delegated legislation

31) Clause 31 provides for the regulation making power by the CS. The Cabinet Secretary may, in consultation with the Authority, make regulations for various matter enumerated in the Bill.

The Committee may consider prescribing a timeline for making the regulations.

Part X (Clauses 32-33) of the Bill contains provisions miscellaneous provisions

32) Clause 32 provides for integrating waste management into school curricula. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to education and the Authority, develop a curriculum on sustainable waste management within one year of the coming into operation of the Act.

33) Clause 33 provides for transitional provisions. The Cabinet Secretary shall, in consultation with county governments, develop a timetable for county governments to adopt the Act and regulations made thereunder. The Authority shall publish a model county waste management legislation and related subsidiary legislation on such date as the Cabinet Secretary may appoint. (The Committee may consider prescribing a timeline for making the regulations.)

Regulations relating to waste management under the Environmental Management and Co-ordination Act, 1999, shall remain in operation until corresponding regulations under this Act have been published in the Gazette

The Schedule to the Bill provides for the procedure to be followed in public participation as specified in clause 21.

MATRIX ON STAKEHOLDERS' COMMENT ON SPECIFIC CLAUSES OF THE BILL–

CLAUSE	MARGINAL NOTE	PROVISION IN THE BILL	STAKEHOLDERS' COMMENTS	ANALYSIS AND COMMITTEE'S COMMENTS
Clause 1	Short title	Provides name of the Act		
Clause 5	Role of the Cabinet Secretary	**5.** The Cabinet Secretary shall be responsible for— (a) policy on sustainable waste management in consultation with county governments; (b) the development of regulations in consultation with the Authority; (c) co-ordinating adherence to international obligations with regards to waste management, nationally determined contribution of waste and chemicals conventions; and (d) oversight and co-ordination of the administration of this Act.	**Kenya PET Recycling Company Limited** Waste Management is a devolved function, as such to avoid overlaps in regulations that will impact the implementation of waste management, this section should include the County governments (county environment executives) as well. This will allow future alignment between National government and County government. **The Clause should be amended to include the County governments in the development of regulations.**	
Clause 6	Waste Management Council.	6(1)There shall be a council to be known as the Waste Management Council which shall be established by the Cabinet Secretary within one year of the coming into operation of this Act. (2)The Council shall comprise of—	**Kenya PET Recycling Company Limited.** Clause 6 does not include any representation from the private sector from either the Kenya Association of Manufacturers or the Kenya Private Sector Alliance, all of whom will provide	Person connotes an individual or a legal entity.

		(a) the Cabinet Secretary who shall be the chairperson; (b) the chairperson of the Environment Committee of the Council of County Governors who shall be the co-chairperson; (c) a representative from the ministry responsible for matters relating to waste management; (d) a representative from the National Treasury; (e) a representative from the Authority; (f) the chairperson of the caucus of county executive committee members in charge of environment; and (g) three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management. (3) The Council may co-opt members with relevant expertise when needed who shall advise the Council on specific matters relating to sustainable waste management. (4) The Cabinet Secretary shall establish a waste management secretariat for the waste management council.	a market or input for the items listed in PART III, 10 (c). It also does not include any representation from Not-For Profit or Civil Society Organizations. Both groups of stakeholders are critical in the waste management value chain, as they allow for representation of producers (manufacturers or industry players), collectors and/ or recyclers of waste. **The provision should be amended to include the private sector and civil society in the waste council.**	

Clause 9	Functions of county governments	**9.** (1) County governments shall be responsible for implementing the devolved function of waste management and establishing the financial and operational conditions for the effective performance of this function. (2) County governments shall ensure that county waste management legislation is in conformity with this Act within a period of one year of the coming into operation of this Act. (3) County governments shall ensure that the disposal of waste generated within the county is done within the county's boundaries except where there is an agreed framework for inter-county transportation and disposal of waste. (4) County governments shall provide central collection centres for materials that can be recycled. (5) County governments shall establish waste management infrastructure to promote source segregation, collection, reuse, and set up for materials recovery. (6) County governments shall maintain data on waste management activities and share the information with the Authority.	**Kenya PET Recycling Company Limited.** (i) This section omits the function of county governments to develop, manage and maintain designated dumpsites and / or landfills. (ii) This section omits the function of the county government to maintain a register of all waste collectors operating within their boundaries (both formal and informal) This is critical in assessing the economic impact of waste management in a county. (iii)PET proposes that the clause be amended to include- (a) the function by county governments to develop, manage and maintain designated dumpsites and / or landfills; and (b) the function of the county government to maintain a register of all waste collectors operating within their boundaries (both formal and informal)	

		(7) County governments shall mainstream waste management into county planning and budgeting.		
Clause 10	Policies, regulations and standards by the Cabinet Secretary.	10.(1) The Cabinet Secretary shall, within two years of the coming into operation of this Act and in consultation with the Authority, make policies and regulations for the proper administration of this Act. (2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, in consultation with the Authority, make regulations prescribing— (a) the closure of open dumpsites; (b) procedures for sustainable waste management; (c) the expansion of the market for recycled products and incentives to expand the market for pre-consumer and post-consumer recycled products through incentives, government procurement preferences and other policies; and (d) the promotion of health, safety and environmental standards including— (i) labour and health standards for waste handlers;	**Kenya PET Recycling Company Limited.** Clause 10 (c) should also be included as a role of the Waste Council, who would then work with the Cabinet Secretary to provide input for the development of the regulations. PET proposes that the clause be amended to include this as a role of the Waste Council under PART II section 7.	

		(ii) quality and certification standards for organic waste; (iii) operational standards for dumpsites; (iv) the classification of engineered sanitary landfills; (v) the formation of waste collection, materials recovery and recycling savings and credit co-operative organisations; (vi) the facilitation of waste-to-energy and waste-to-manure projects; and (vii) the facilitation of the collection of different types of wastes including medical waste, chemical waste and construction waste.		
Clause 12	Take back schemes	**12.** (1) Products and packaging that may cause negative impacts on the environment shall be returned to the seller after their use.	**Multi Choice Kenya Limited (MCK)** (i) The proposed clause 12 of the Bill introduces take back schemes, which requires the end user of a product that	

		(2) Products and packaging referred to in subsection (1) shall be marked with a special label. (3) The seller of products referred to in subsection (1) shall take back the used products and packaging. (4) The Cabinet Secretary shall prescribe regulations on the products and packaging referred to in subsection (1), the manner and form of marking the product and packaging, the processes and procedures for the collection, processing, treatment and return of products and packaging, and the manner of public information thereon.	may negatively impact the environment, to return it to the seller. This in turn creates a mandatory duty on the seller to accept the returned product as the agent of a manufacturer. (ii) Whereas take back systems are designed to provide raw materials for manufacturers to make new products, it may not be economically feasible to recycle material for items such as computers or hardware products. It is therefore, MCK's submission that, the take back scheme should only apply to products that are recyclable. MCK recommends that the provision specifies the products that are subject to the take back scheme. (iii) A comparative review of take back schemes reveals that most countries encourage rather than mandate such schemes. The European Union has, for example advocated for manufacturer-driven take back schemes supported by the government policy intervention. Germany, Austria, South Korea, Wales and Switzerland have supported recycling to encourage take back schemes. (iv) MCK, therefore recommends that Kenya encourages rather than mandates uptake of the scheme, by introducing (amongst other things)	

			incentive mechanisms like tax waivers, as proposed below. (v) MCK propose amendments to Clause 12 as follows- (a) Remove the word **shall** be returned under clause 12 (1) and replace with the word "**may**" (b) Add clause that would allow the seller to claim a tax incentive for all used products returned to0 store including a possible claim for tax refunds.	
Clause 13	Extended producer responsibility.	13(1) An entity engaged in the production, conversion or importation of products and packaging shall bear extended producer responsibility over the products or packaging for the purpose of reducing the environmental impact of the products or packaging. (2) For the purpose of this section, "extended producer responsibility" of an entity engaged in the production, conversion or importation of products and packaging includes the design of	**Kenya PET Recycling Company Limited.** (i) Clause 13 (1)and (2).The draft Extended Producer Regulations, 2021 under the Environmental Management and Co-ordination Act, states that a producer is an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling,	

		environmentally friendly and recyclable products and packaging, physical collection and management of waste, and financial contributions to a collective scheme. (3) Recoverable and recyclable products, materials and packaging that may cause pollution shall be marked with a special label and returned to the seller, producer, importer, brand owner or agent after the post-consumer use of the products, materials and packaging. (4) A manufacturer, importer, supplier, distributor or retailer of products or packaging referred to in subsection (2) shall join an extended producer responsibility scheme within one year of the coming into operation of this Act. (5) A producer, importer, converter, brand owner or distributor may, with the permission of the Authority, establish a collective producer responsibility organisation. (6) There shall be one collective producer responsibility organisation for a specific waste stream. (7) A consumer shall return to a seller, distributor, producer, importer, brand owner or agent the used product or packaging referred to in subsection (2).	refilling, repackaging, rebranding or otherwise brings. (ii) This will avoid any conflict between the regulations and the proposed Bill. (iii) PET recommends that Clause 13(1) be amended to reflect the definition of "producer" as an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings. (iv) Clause 13(2) be amended to read "For the purpose of this section, "extended producer responsibility" of an entity engaged in the manufacture, conversion, filling, refilling, repackaging, rebranding, importation or otherwise brings of products and packaging and includes the design of environmentally friendly and recyclable products and packaging and financial contributions to a collective scheme.	

		(8) The Cabinet Secretary, in consultation with the standards body and the Authority, may prescribe design standards for the products or packaging referred in subsection (2). (9) Extended producer responsibility schemes and collective producer responsibility organisations shall submit annual reports to the authority specifying the type and amount of waste generated by the participants in the schemes, the manner in which the waste was collected, managed and disposed of, and any other information that the Authority may prescribe from time to time. (10) The Cabinet Secretary shall make regulations on extended producer responsibility and special return marks and labels for products and packaging referred to in subsection (2).		
Clause 19	Duties of private sector entities.	19.(1) A private sector entity shall prepare a three-year waste management plan and submit an annual monitoring report to the Authority which shall specify— (a) the actual quantities of waste generated by the entity; (b) the waste management methods applied by the entity; and	**MultiChoice Kenya Limited** (i) The proposed clause 19 (1) of the Bill mandates private sector entities to prepare three-year waste management plans and submit annual monitoring reports to the National Environmental Management Authority.	

		(c) any other information that the Authority may require. (2) A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than two hundred thousand shillings and the person responsible for the private sector entity shall, in addition to the fine imposed on the entity, be liable to imprisonment for a term not exceeding three months. (3) A private sector entity shall— (a) adopt the following cleaner production principles including— (i) improvement of production processes through conserving raw materials and energy; (ii) limiting the use of toxic raw materials to safe laws within such time as may be prescribed by the Authority; (iii) reducing toxic emissions and wastes; and (iv) monitoring the product cycle from beginning to end by; (b) identify and eliminate potential negative impacts of the product; (c) enable the recovery and reuse of the product where possible; (d) reclaim and recycle;	(ii) This obligation would constitute an onerous obligation on the part of entities which produce small volumes of waste. MCK recommends that the requirement applies only to firms that generate high volumes of waste. (iii) MCK also recommends that the penalties under clause 19 (2) be limited to monetary and not custodial penalties, as is common in other jurisdiction. (iv) MCK proposes- (a) the amendment of Clause 19 as follows: *a. Clause 19(1) be amended to mandate only private entities engaged in activities that generate high volumes of waste such as in manufacturing ,to provide waste management plans. The provision should also specify the threshold of volume of waste to which the requirement applies.* *b. The prison sentence under clause 19(2) or any such custodial sentence throughout the Bill be deleted.*	

management services for DStv and GOtv subscribers in Kenya. As part of the subscriber management services, MCK imports and distributes for sale certain broadcast equipment which includes decoders, antennae, satellite dishes and associated accessories.

(ii) MCK reviewed the Sustainable Waste Management Bill, 2021 (hereafter referred to as the Bill) and lauds the objective of the Bill of promoting sustainable waste management with the view of ensuring the realization of the constitutional right to a clean and healthy environment, however made recommendations in respect of the proposed clauses 12 and 19 of the Bill.

MINUTES OF THE 67TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD AT THE TRADEMARK HOTEL, KIAMBU COUNTY ON FRIDAY 22ND OCTOBER, 2021 AT 10.00 AM.

PRESENT

1. **The Hon. Japhet Kareke Mbiuki, CBS, M.P.,** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.,** **Vice Chairperson**
3. The Hon. Janet Ong'era, MP
4. The Hon. Simon King'ara, M.P.
5. The Hon. Eng. Paul Musyimi Nzengu, M.P.
6. The Hon. Charles Ong'ondo Were, M.P
7. The Hon. Said Hiribae, M.P.
8. The Hon. Hassan Oda Hulufo, M.P
9. The Hon. Nasri Sahal Ibrahim, M.P.
10. The Hon. Rehema Hassan, M.P.
11. The Hon. Rozaah Buyu. M.P.
12. The Hon. Amin Deddy Mohamed Ali, M.P.
13. The Hon. Charity Kathambi Chepkwony, M.P.

APOLOGIES

1. The Hon. Francis Chachu Ganya, MP
2. The Hon. David Kangogo Bowen, M.P.
3. The Hon. Bernard Shinali, M.P.
4. The Hon. Ali Wario Guyo, M.P.
5. The Hon. Peter Kimari Kihara, M. P
6. The Hon. George Kariuki, M.P.

MINISTRY OF ENVIRONMENT AND FORESTRY

1. Hon. Mohamed Elmi - Chief Administrative Secretary
2. Mr. Joel Kitili, CBS - Secretary Administration
3. Rodeny Omari - Senior Assistant Secretary
4. Isaiah Maina
5. Faith Ngige
6. Dr. John Chumo
7. Cyrus Mageria
8. Joseph Mutuma
9. Augustine Kenduiwo
10. Caren Sande

11. Cythia Sakami
12. Cheptoo Louise

THE NATIONAL ASSEMBLY

1.	Ms. Esther Nginyo	-	Clerk Assistant II
2.	Mr. Dennis Mogare Ogechi	-	Clerk Assistant II
3.	Dr. Benjamin Ngimor	-	Senior Fiscal Analyst
4.	Ms. Lynette Otieno	-	Legal Counsel I
5.	Mr. Stanley Lagat	-	Serjeant-at-Arms
6.	Mr. Eugene Apaa	-	Research Officer
7.	Mr. Mark Mbuthia	-	Audio Recording Officer
8.	Ms. Christine Sabdio	-	Office Assistant

AGENDA

i) Prayers
ii) Confirmation of Minutes
iii) Matters Arising
iv) **Meeting with the Cabinet Secretary for Environment and Forestry regarding the Sustainable Waste Management Bill, 2021**
v) Date of the next Sitting

MIN.NO. DC/ENR/304/2021: - PRELIMINARIES

The Meeting was called to order at 10.19 am after which prayers were said. The Chairperson stated that the main agenda of the day was meeting with the Cabinet Secretary for Environment and Forestry regarding the Sustainable Waste Management Bill, 2021

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/305/2021: - CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/306/2021: - MEETING WITH THE CABINET SECRETARY FOR ENVIRONMENT AND FORESTRY REGARDING THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021.

Hon. Mohamed Elmi, Chief Administrative Secretary, appeared before the committee on behalf of the Cabinet Secretary and briefed the Committee as follows:

1. The Bill seeks to establish appropriate legal and institutional framework for the efficient and sustainable management of waste in the framework of the green economy, promote the realization of zero waste goal and the realization of Article 42 of the Constitution on the right to a clean and healthy environment for all.
2. Waste is a resource that can be managed to achieve economic, social and environmental benefits. Addressing the waste management challenge effectively in Kenya is critical to delivering on Kenya's constitutional right to a clean and healthy environment for all, advancing the circular economy to create green jobs and wealth from the waste sector, and realization of the nation's sustainable development goals.
3. Sustainable waste management is also fundamental to delivery of each of the government's "Big Four" national priorities the transformational agenda on housing, manufacturing, food and nutritional security and health care and to Kenya's leadership in the blue economy, with its focus on creating economic growth, ensuring healthy waters and building safe communities.
4. Kenya generates an estimated 22,000 tonnes of waste per day for a current population of 45 million both rural and urban translating to 8 million tonnes annually. It is estimated that 40% of the waste could be urban. Given that urbanization is increasing by 10%, by 2030, the Kenya urban population will be generating an estimate of about 5.5 million tonnes of waste every year, which is three times more the amount of waste generated in 2009.
5. According to research, the national average of waste stream has 60%-70% of organic waste, 20% plastic, 10% paper, 1% medical waste, 2% metal and others. Therefore, as population increases and rates of production and consumption increase too, the estimated volumes of waste generated from households, industries, agricultural services, construction, and health care facilities will increase exponentially.
6. The country however, has limited capacity to properly manage and dispose the waste generated. This poses a serious threat to the environment and the health of its citizens and animals.
7. The Sustainable Waste Management Bill, 2021 will advance Kenya towards a more sustainable and circular economy. It will move the country towards the realization of the Zero Waste principle. This will ensure that waste is separated at source, appropriately collected and transported, reused, recycled and the remaining waste stream is destined to a secure sanitary landfill.
8. Effective sustainable waste management will create value from the waste stream through re-use and recycling, formalizing the waste-pickers' sector to improve livelihoods, improving landfill operations and management as well as capturing and utilizing gases like methane emitted from landfills.
9. In addition, decommissioning dumpsites, capping landfills, reducing plastic pollution in the marine environment while creating new jobs in the sector is emphasized.

10. The proposed Legislation was summarized as follows:
    a) **PART I** (Clause 1-4) contains the preliminary matters.

b) **PART II** (clause 5-9) sets out the roles and responsibilities of the Ministry, NEMA and the counties in waste management. The Ministry is to develop policy and regulations on waste management and provide overall oversight and coordination of the implementation of the Act. The Bill also establishes a waste management council as a high-level coordinating mechanism for waste management.

c) The Authority shall develop standards and guidelines on waste management and disseminate information and be in-charge of compliance and enforcement of waste management. The county governments shall be responsible for implementing the devolved function of waste management in accordance with the relevant national laws and ensuring mainstreaming of waste management into county planning and budgeting and shall designate at least twenty acres of land to be gazetted as waste management sites.

d) **PART III** (clauses 10-14) sets out the measures and activities to be undertaken under the Act including the making of regulations to implement the Act, and establishment of material recovery facilities for final sorting and segregation of waste. The act also provides for extended producer responsibility and take back schemes whereby products or packaging that may cause negative impacts on the environment and may be re-used or processed are returned to the seller.

e) **PART IV (clauses 15-19)** sets out the actual functions of different players relating to waste management and provides the penalties for non-compliance with the provisions of the Act.

f) **Part V** (Clauses 20-21) provides for public participation and access to related information on waste management kept by the Authority.

g) **Part VI** (Clauses 22-23) sets out the financial provisions under the Act and mandates counties to allocate all waste collection and tipping fees or other charges levied on waste received at a waste facility for the improvement of waste management activities and services. It also provides for the Cabinet Secretary to consult with the National Treasury on setting up of incentives for waste management activities.

h) **Part VII** (clauses 24-27) gives the Authority the mandate of monitoring and evaluating the performance of public and private entities in carrying out their duties under the Act and gives the Authority powers to ensure compliance of the Act and gives the National Environmental Complaints Committee the mandate of setting up a complaints and redress mechanism.

i) **Part VIII** (Clauses 28-30) empowers the Authority to issue Restoration Orders and provides for dispute resolution for any person aggrieved by the decision of the Authority and sets out the general penalty for offences under the Act where no penalty is provided for.

j) **Part IX** (Clauses 31-33) sets out the miscellaneous provision on development of the public engagement strategy, integration of waste management in the school curricula and the power of the Cabinet Secretary to make Regulations for the implementation of the Act.

MIN.NO. DC/ENR/307/2021: - **OBSERVATIONS**

Members made the following observations:

1. The Sustainable Waste Management Bill, 2021 is a progressive legislation, which once enacted will enable the country to have paradigm shift in solid waste management. It will ensure circular economy, where waste will become raw material and hence enhance job creation.
2. The Bill proposes major responsibilities with veto powers for the Cabinet Secretary. There is need to check the powers of the Cabinet Secretary through consultation with the county governments, as waste is a devolved function. For instance, the Cabinet Secretary has sweeping powers to designate substance, materials or objects as waste.
3. The Bill proposes to create a waste management council whose chairperson is proposed to be the Cabinet Secretary in charge of waste management. The proposed chairperson is also providing policy direction. There is however, need to separate the council chair from the policy making role for oversight purposes.
4. With the establishment of the Waste Management Council, some of its functions are in the purview of the Authority (NEMA). There is need to ensure that the council is the platform between national and county governments in addressing the waste management function whereas the Authority provide the technical expertise on waste management matters.
5. The definition of extended producer responsibility is limited as it does not cover the product life cycle. EPR should be mandatory and legally binding for all. Consumer stage covers production and consumption, while post-consumer covers waste generation and activities undertaken thereafter. Globally EPR obligation covers the full product lifecycle including the post-consumer stage so as to cover take backs and recycling.
6. The penalties proposed in the Bill are lenient. There is need to ensure that they are enhanced for sustainable waste management.
7. The Bill has not provided for E-waste which is major source of waste with the current technological advancement. There is therefore need to provide for the same.

RESOLUTION

The secretariat was given one week to harmonize the views of the Ministry, the Committee's views and those of the other stakeholders.

MIN.NO. DC/ENR/308/2021: - **ADJOURNMENT**

There being no other business the meeting was adjourned at 2.30 pm.

SIGNED: .....

THE HON. KAREKE MBIUKI, CBS, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 24/11/2021

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD VIRTUALLY ON TUESDAY 16TH NOVEMBER, 2021 AT 10.00 AM.

PRESENT

1. **The Hon. Eng. Paul Musyimi Nzengu, M.P.** **Chairing**
2. The Hon. Charles Ong'ondo Were, M.P
3. The Hon. Hassan Oda Hulufo, M.P
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. Rozaah Buyu. M.P.
6. The Hon. Charity Kathambi Chepkwony, M.P.
7. The Hon. Ali Wario Guyo, M.P.

APOLOGIES

1. **The Hon. Japhet Kareke Mbiuki, CBS, M.P.,** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.,** **Vice Chairperson**
3. The Hon. Janet Ong'era, MP
4. The Hon. Francis Chachu Ganya, MP
5. The Hon. David Kangogo Bowen, M.P.
6. The Hon. Bernard Shinali, M.P.
7. The Hon. Simon King'ara, M.P.
8. The Hon. Said Hiribae, M.P.
9. The Hon. Rehema Hassan, M.P.
10. The Hon. Amin Deddy Mohamed Ali, M.P.
11. The Hon. Peter Kimari Kihara, M. P
12. The Hon. George Kariuki, M.P.

THE NATIONAL ASSEMBLY

1.	Ms. Esther Nginyo	-	Clerk Assistant II
2.	Mr. Dennis Mogare Ogechi	-	Clerk Assistant II
3.	Dr. Benjamin Ngimor	-	Senior Fiscal Analyst
4.	Ms. Lynette Otieno	-	Legal Counsel I
5.	Mr. Mark Mbuthia	-	Audio Recording Officer

AGENDA

i) Prayers
ii) Confirmation of Minutes
iii) Matters Arising

iv) **Consideration of Committee amendments to the Sustainable Waste Management Bill, 2021**
v) Date of the next Sitting

MIN.NO. DC/ENR/309/2021: - **PRELIMINARIES**

The Meeting was called to order at 11.23 am after which prayers were said. The Chairperson stated that the main agenda of the day was consideration of Committee amendments to the Sustainable Waste Management Bill, 2021

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/310/2021: - **CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/311/2021: - **CONSIDERATION OF COMMITTEE AMENDMENTS TO THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021.**

The legal counsel guided deliberations by members on the proposed Committee amendments to the Sustainable Waste Management Bill, 2021. The members endorsed the following amendments to the Bill:

LONG TITLE

THAT, the Long title to the Bill be amended by deleting the word "health" and substituting therefor the word "healthy".

CLAUSE 2

THAT, clause 2 of the Bill be amended—

(a) by deleting the definition of the word "extended producer responsibility" and substituting therefor the following new definition—

"extended producer responsibility refers to an environmental management approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product life cycle;"

(b) in the definition of the word "public entity" by deleting the word "grated" appearing in paragraph (c) and substituting therefor the word "granted";

(c) by deleting the definition of the word "recycle" and substituting therefor the following new definition—

"recycle" means the process by which materials are reclaimed from waste for further use as product, raw materials or input in production process;"

(d) by deleting the definition of the word "sustainable waste management" and substituting therefor the following new definition—

"sustainable waste management" means using material resources efficiently as prioritized by waste hierarchy, circular economy and clean production in order to reduce the amount of waste that is generated, deposited, or discarded in the environment; including management of materials that would otherwise have been dumped or wasted, in a way that contributes to environmental, social and economic goals of sustainable development;"

(e) in the definition of the word "take-back scheme" by deleting the words "to end users" and substituting therefor the words "from end users and consumers";

(f) by deleting the definition of the word "waste" and substituting therefor the following new definition—

"waste" means—

(a) any substance, material or object that is intended or required to be discarded or disposed of, by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, construction waste, commercial waste, waste from horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides, e-waste and toxic substances but does not include radioactive waste;

(b) a substance, material or object that may be designated as waste by the Cabinet Secretary in consultation with the Authority by notice in the *Gazette*,

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

(i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;

(ii) where approval for reuse, recycling or recovering is not required, it has been reused, recycled or recovered; or

(iii) where the Cabinet Secretary has, by notice in the Gazette and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

(g) in the definition of "waste management activity" by inserting the words "as prescribed by regulations" immediately after the word "waste" appearing in paragraph (a); and

(h) by inserting the following new definitions in their proper alphabetical sequence—

"e-waste" also referred to as waste electrical and electronic equipment means waste resulting from electrical and electronic equipment including components and subassemblies thereof;

"non organic waste" means dry recyclable and non-recyclable materials;

"organic waste" means compostable materials derived from plants and animals;

"producer" means an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings;

"waste hierarchy" means the order of priority for efficient use of resources and minimization of pollution by avoidance, reduction, reuse, repair, refurbishment, recycling, recovery and finally treatment for safe disposal;
"waste service providers" includes collectors, transporters, waste processors, material recovery operators, recyclers, landfill operators."

CLAUSE 3

THAT, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) —

(j) to promote circular economy practices for green growth.

CLAUSE 5

THAT, clause 5 of the Bill be amended in paragraph (b) by inserting the words "and county governments" immediately after the word "Authority".

CLAUSE 6

THAT, clause 6 of the Bill be amended—

(a) by deleting subclause (2) and substituting therefor the following new subclause—

(2) The Council shall comprise of—

(a) a chairperson appointed by the President;

(b) one person nominated by the Council of County Governors who shall be the vice-chairperson;

(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to waste management or a designated representative;

(d) the Principal Secretary in the Ministry for the time being responsible for National Treasury or a designated representative;

(e) the Director-General of the Authority;

(f) four other persons appointed by the Cabinet Secretary being—

(i) one person nominated by the registered association representing the largest number of entities in the private sector;

(ii) one person nominated by the registered association representing the largest number of entities in the manufacturing sector; and

(iii) two persons with professional qualifications in waste management, one of whom shall represent civil society organizations.

(b) in subclause (3) by deleting the word "members" and substituting therefor the words "not more than three members at any given time".

(c) by inserting the following new subclauses immediately after subclause (3) —

(3A) Except for members appointed under subsection (2) (c), (d) and (e), a person shall be qualified for appointment as chairperson or member of the Council if such person—

(i) is a citizen of Kenya;

(ii) holds relevant academic and professional qualification including a university degree in waste management, environmental engineering; environmental management environmental studies, biology, chemistry or civil engineering;

(iii) has at least ten years' experience in the relevant field; and

(iv) fulfils the requirements of Chapter 6 of the Constitution

(3B) In making appointments of the members to the Council, the Cabinet Secretary shall observe regional, gender, age, disability and ethnic balance.

(3C)The conduct of business of the Council shall be in accordance with the First Schedule.

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

(1)The Council shall—

(a) enhance inclusive inter-governmental coordination for sustainable waste management;
(b) review progress in implementation of the national sustainable waste management strategy;
(c) recommend to the Cabinet Secretary the national waste management recycling and recovery targets;
(d) synchronize the development of waste management infrastructure;
(e) mobilize resources for financing of the waste management sector;
(f) promote inter county waste management partnerships in consultation with county governments;
(g) recommend to the Cabinet Secretary incentives to promote sustainable waste management; and
(h) perform such other functions as may be assigned by the Cabinet Secretary.

CLAUSE 8

THAT, clause 8 of the Bill be amended by deleting subclause (2).

CLAUSE 9

THAT, clause 9 of the Bill be amended by inserting the following new subclauses immediately after subclause (7)—

(8) County governments shall develop, manage and maintain designated disposal sites and landfills.

(9) County governments shall maintain a register of all waste service providers operating within their boundaries.

CLAUSE 10

THAT, clause 10(1) of the Bill be amended by inserting the word "and county governments" immediately after the word "Authority".

CLAUSE 12

THAT, Bill be amended by deleting clause 12 and substituting therefor with the following new clause—

Waste classification and segregation.

12(1) All citizens, public and private sector entities shall segregate non-hazardous waste into organic and non-organic fractions.

(2) The segregated waste shall be placed in properly labeled and colour coded receptacles, bins, containers and bags.

(3) All waste service providers shall collect, handle and transport segregated waste as provided under this Act.

(4) Hazardous waste will be handled and managed as prescribed by the Environmental Management and Co-ordination Act, 1999 and other relevant written law.

No.8 of 1999.

(5) Any person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment not exceeding six months or both.

(6) The Cabinet Secretary in consultation with the Authority and county governments shall *Gazette* the National Color Coding System for waste.

CLAUSE 13

THAT, Bill be amended by deleting clause 13 and substituting therefor with the following new clause—

Extended Producer Responsibility.

13. (1) Every producer shall bear extended producer responsibility obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom.

(2)Every producer shall fulfill their extended producer responsibility obligation individually or collectively in a compliance scheme.

(3) The Cabinet Secretary shall, within two years of the coming into operation of this Act make regulations on extended producer responsibility.

CLAUSE 15

THAT, clause 15 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

(3)The Cabinet Secretary shall develop a national waste management strategy and action plan within two years of the coming into force of this Act, which shall be reviewed every five years.

CLAUSE 16

THAT, clause 16 of the Bill be amended —

(a) in subclause (2) —

(i) in opening statement by inserting the words " or private sector" immediately after the word "public";

(ii)by deleting paragraph (d);

(iii)in paragraph (g) by deleting the word "segregation" and substituting therefor the word "receptacles";

(b) by deleting subclause (4) and substituting therefor the following new subclause—

(4) A person in charge of a public or private sector entity that discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or a term of imprisonment not exceeding one year or both.

(c) by deleting subclause (5) and substituting therefor the following new subclause—

(5) An officer of an entity who discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or imprisonment not exceeding six months or both.

CLAUSE 17

THAT, clause 17 of the Bill be amended in paragraph (a) by deleting the word "one" and substituting therefor the word "two".

CLAUSE 18

THAT, clause 18 of the Bill be amended—

(a) in subclause (1) by inserting the word "county" immediately before the word "waste"; and
(b) in subclause (2) by inserting the word "county" immediately before the word "waste";

CLAUSE 19

THAT, clause 19 of the Bill be amended by inserting the following new subclause immediately after subclause (1) —

(1A) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, within six months of the coming into operation of this Act, shall *Gazette* the category of private sector entities that shall be required to prepare waste management plans which shall based on volume of production of waste.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 19—

Duties of citizens.

19A.(1)All citizens and residents in Kenya shall—

(a) segregate waste at source in accordance with the provisions of this Act.
(b) dispose waste to only licensed waste service providers or at collection points designated in accordance with the provisions of this Act; and
(c) minimize the amount of waste generated at the source.

(2)Any person who does not manage waste in accordance with the subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand shillings or imprisonment not exceeding six months or both.

Duties of waste service providers.

19B. (1) A waste service provider shall handle segregated waste in accordance with the provisions of this Act.

(2)A waste service provider shall deliver segregated waste collected to facilities licensed and designated in accordance with the provisions of this Act.

(3) A waste service providers who fail to handle or manage waste in accordance with this Act commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shilling or imprisonment of six months or both.

CLAUSE 21

THAT, clause 21of the Bill be amended by deleting the words "the Act and" and substituting therefor the words "the Second Schedule and".

CLAUSE 31

THAT, clause 31(2) of the Bill be amended by—

(a) in paragraph (b) by inserting the words "and deposit refund systems" immediately after the word "schemes";
(b) inserting the following new paragraph immediately after paragraph (g)

(ga) importation and exportation of waste; and

(gb)national colour coding system for waste.

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately before the schedule—

FIRST SCHEDULE (s.5(3C))

Conduct of the Business and Affairs of the Council

Meetings of the Council

1. The Council shall meet Quarterly.

Special meetings

2. The chairperson may, at any time, convene a special meeting of the Council and shall do so within fifteen days of a written notice for the meeting signed by at least three of the members.

Chairperson to preside

3. (1) The chairperson shall preside at all meetings of the Council in which the chairperson is present and in the case of his or her absence, the vice- chairperson shall preside.

(2) At a meeting of the Council at which neither the chairperson nor the vice-chairperson is present, the members of the Council present shall elect one of their members to preside, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereof.

Quorum

4. The quorum for the conduct of the business of the Council shall be two thirds of the members.

Voting

5. The decisions of the Council shall be by a majority of votes, and the chairperson of the meeting shall have an original and a casting vote.

Validity of proceedings

6. The validity of any proceedings of the council shall not be affected

by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

Minutes of the meeting

7. Minutes of the proceedings at meetings of the Council shall be kept in such a manner as the Council directs and will be made available to the Cabinet Secretary

Committees of the Council

8. The Council may establish such Committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

Power of the Council to regulate own procedure

9. Subject to the provisions of this Schedule, the Council shall regulate its own procedure.

Disclosure of interest

10. If a member of the Council is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Tenure

11. (1) The chairperson shall serve for a term of three years renewable once based on performance.
    (2) The non-public members shall serve for a term of three years and renewable once.

Disqualification

12. A person shall not be qualified for appointment as the chairperson or a member of the Council if such person—

(a) is a member of Parliament or a county assembly;
(b) is a member of a local authority;
(c) is an undischarged bankrupt; or

(d) has been removed from office for contravening the provisions of the Constitution or any other written law.

Vacancy

13. (1) The office of the chairperson or a member of the Council shall become vacant if the holder—
(a) dies;
(b) resigns from office in writing addressed to the Cabinet Secretary;
(c) is absent from three consecutive meetings of the Council without good cause; or
(d) is removed from office in accordance with sub-paragraph (2).

(2) The chairperson or a member of the Council may be removed from office for—
(a) contravening Chapter Six of the Constitution;
(b) serious violation of this Act or any other law;
(c) gross misconduct;
(d) physical or mental incapacity to perform the functions of office;
(e) incompetence; or
(f) if adjudged bankrupt.

Secondment

14. The Cabinet Secretary may, in consultation with the Council, and upon such terms and conditions as may be prescribed, second such officers, agents and other staff as may be necessary for the efficient discharge of the functions of the Council under this Schedule.

Experts and Consultants

15. The Council may engage consultants and experts, as it considers appropriate, to assist in the discharge of its functions under this Schedule.

Remuneration

16. The chairperson and members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as

may be approved by the Cabinet Secretary.

Reporting

17. (1) The Council shall submit an annual report to the Cabinet Secretary.
(2) Notwithstanding sub-paragraph (1), the Cabinet Secretary may, at any time, require a report from the National Waste Management Council on a particular matter.

Secretary

18. (1) The Cabinet Secretary shall second a senior officer from the Ministry to serve as Secretary to the Council.

(2)The Secretary shall—

(a) be appointed by the Cabinet Secretary;
(b) be an ex officio member of the Council with no right to vote;
(c) be secretary to the Council;
(d) subject to the directions of the Council, be responsible for the day to day management of the affairs of the Council; and
(e) perform such other functions as the Council may, from time to time, determine
(3) The Secretary shall serve on such terms and conditions as the Cabinet Secretary may determine.

SCHEDULE

THAT, the Bill be amended by inserting the word "Second" immediately before the word "Schedule" appearing in the title to the Schedule.

MIN.NO. DC/ENR/312/2021: - **ADJOURNMENT**

There being no other business the meeting was adjourned at 12.43 pm.

SIGNED: .....

THE HON. KAREKE MBIUKI, CBS, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 24/11/2021

MINUTES OF THE 71ST SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD IN THE COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE AND VIRTUALLY ON TUESDAY 23RD NOVEMBER, 2021 AT 12.00 NOON.

PRESENT

1. **The Hon. Japhet Kareke Mbiuki, CBS, M.P.,** **Chairperson**
2. The Hon. Janet Ong'era, MP
3. The Hon. Francis Chachu Ganya, MP
4. The Hon. Bernard Shinali, M.P.
5. The Hon. Eng. Paul Musyimi Nzengu, M.P.
6. The Hon. Charles Ong'ondo Were, M.P
7. The Hon. Nasri Sahal Ibrahim, M.P.
8. The Hon. Rozaah Buyu. M.P.
9. The Hon. Ali Wario Guyo, M.P.
10. The Hon. Simon King'ara, M.P.
11. The Hon. Said Hiribae, M.P.
12. The Hon. Peter Kimari Kihara, M. P

APOLOGIES

1. **The Hon. Sophia Abdi Noor, M.P.,** **Vice Chairperson**
2. The Hon. David Kangogo Bowen, M.P.
3. The Hon. Rehema Hassan, M.P.
4. The Hon. Amin Deddy Mohamed Ali, M.P.
5. The Hon. Hassan Oda Hulufo, M.P
6. The Hon. Charity Kathambi Chepkwony, M.P.
7. The Hon. George Kariuki, M.P.

THE NATIONAL ASSEMBLY

1.	Ms. Esther Nginyo	-	Clerk Assistant II
2.	Mr. Dennis Mogare Ogechi	-	Clerk Assistant II
3.	Ms. Lynette Otieno	-	Legal Counsel I
4.	Ms. Lynette Otieno	-	Legal Counsel I -
5.	Mr. Mark Mbuthia	-	Audio Recording Officer

AGENDA

i) Prayers
ii) Confirmation of Minutes
iii) Matters Arising

iv) **Consideration and Adoption of a report on the Sustainable Waste Management Bill, 2021**
v) Date of the next Sitting

MIN.NO. DC/ENR/318/2021: - PRELIMINARIES

The Meeting was called to order at 12.20 pm after which prayers were said. The Chairperson stated that the main agenda of the day was consideration and adoption of a report on the Sustainable Waste Management Bill, 2021.

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/319/2021: - CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/320/2021: - CONSIDERATION AND ADOPTION OF A REPORT ON THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021.

The Report on the Sustainable Waste Management Bill, 2021 was considered and adopted after being proposed by Hon. Rozaah Buyu, MP and Hon. Francis Chachu Ganya, MP.

It was adopted with the following observations and recommendation:

OBSERVATIONS

1. The Sustainable Waste Management Bill, 2021 is a progressive legislation, which once enacted will enable the country to have paradigm shift in solid waste management. It will ensure circular economy, where waste will become raw material and hence enhance job creation.
2. The Bill proposes major responsibilities with veto powers for the Cabinet Secretary. There is need to check the powers of the Cabinet Secretary through consultation with the county governments, as waste is a devolved function. For instance, the Cabinet Secretary has sweeping powers to designate substance, materials or objects as waste.
3. The Bill proposes to create a waste management council whose chairperson is proposed to be the Cabinet Secretary in charge of waste management. The proposed chairperson is also providing policy direction. There is however, need to separate the council chair from the policy making role for oversight purposes.

4. With the establishment of the Waste Management Council, some of its functions are in the purview of the Authority (NEMA). There is need to ensure that the council is the platform between national and county governments in addressing the waste management function whereas the Authority provide the technical expertise on waste management matters.
5. The definition of extended producer responsibility is limited as it does not cover the product life cycle. EPR should be mandatory and legally binding for all. Consumer stage covers production and consumption, while post-consumer covers waste generation and activities undertaken thereafter. Globally EPR obligation covers the full product lifecycle including the post-consumer stage so as to cover take backs and recycling.
6. The penalties proposed in the Bill are lenient. There is need to ensure that they are enhanced for sustainable waste management.
7. The Bill has not provided for E-waste which is major source of waste with the current technological advancement. There is therefore need to provide for the same.

RECOMMENDATION

The Committee recommended that the House approves the Bill with amendments as proposed below:

LONG TITLE

THAT, the Long title to the Bill be amended by deleting the word "health" and substituting therefor the word "healthy".

CLAUSE 2

THAT, clause 2 of the Bill be amended—

(a) by deleting the definition of the word "extended producer responsibility" and substituting therefor the following new definition—

"extended producer responsibility refers to an environmental management approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product life cycle;"

(b) in the definition of the word "public entity" by deleting the word "grated" appearing in paragraph (c) and substituting therefor the word "granted";

(c) by deleting the definition of the word "recycle" and substituting therefor the following new definition—

"recycle" means the process by which materials are reclaimed from waste for further use as product, raw materials or input in production process;"

(d) by deleting the definition of the word "sustainable waste management" and substituting therefor the following new definition—

"sustainable waste management" means using material resources efficiently as prioritized by waste hierarchy, circular economy and clean production in order to reduce the amount of waste that is generated, deposited, or discarded in the environment; including management of materials that would otherwise have been dumped or wasted, in a way that contributes to environmental, social and economic goals of sustainable development;"

(e) in the definition of the word "take-back scheme" by deleting the words "to end users" and substituting therefor the words "from end users and consumers";

(f) by deleting the definition of the word "waste" and substituting therefor the following new definition—

"waste" means—

(a) any substance, material or object that is intended or required to be discarded or disposed of, by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, construction waste, commercial waste, waste from horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides, e-waste and toxic substances but does not include radioactive waste;

(b) a substance, material or object that may be designated as waste by the Cabinet Secretary in consultation with the Authority by notice in the *Gazette*,

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

(i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;

(ii) where approval for reuse, recycling or recovering is not required, it has been reused, recycled or recovered; or

(iii) where the Cabinet Secretary has, by notice in the Gazette and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

(g) in the definition of "waste management activity" by inserting the words "as prescribed by regulations" immediately after the word "waste" appearing in paragraph (a); and
(h) by inserting the following new definitions in their proper alphabetical sequence—

"e-waste" also referred to as waste electrical and electronic equipment means waste resulting from electrical and electronic equipment including components and subassemblies thereof;

"non organic waste" means dry recyclable and non-recyclable materials;

"organic waste" means compostable materials derived from plants and animals;

"producer" means an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings;

"waste hierarchy" means the order of priority for efficient use of resources and minimization of pollution by avoidance, reduction, reuse, repair, refurbishment, recycling, recovery and finally treatment for safe disposal;
"waste service providers" includes collectors, transporters, waste processors, material recovery operators, recyclers, landfill operators."

CLAUSE 3

THAT, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) —

(j) to promote circular economy practices for green growth.

CLAUSE 5

THAT, clause 5 of the Bill be amended in paragraph (b) by inserting the words "and county governments" immediately after the word "Authority".

CLAUSE 6

THAT, clause 6 of the Bill be amended—

(a) by deleting subclause (2) and substituting therefor the following new subclause—
(2) The Council shall comprise of—

(a) a chairperson appointed by the President;

(b) one person nominated by the Council of County Governors who shall be the vice-chairperson;
(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to waste management or a designated representative;
(d) the Principal Secretary in the Ministry for the time being responsible for National Treasury or a designated representative;
(e) the Director-General of the Authority;
(f) four other persons appointed by the Cabinet Secretary being—
    (i) one person nominated by the registered association representing the largest number of entities in the private sector;
    (ii) one person nominated by the registered association representing the largest number of entities in the manufacturing sector; and
    (iii)two persons with professional qualifications in waste management, one of whom shall represent civil society organizations.

(b) in subclause (3) by deleting the word "members" and substituting therefor the words "not more than three members at any given time".

(c) by inserting the following new subclauses immediately after subclause (3) —

(3A) Except for members appointed under subsection (2) (c), (d) and (e), a person shall be qualified for appointment as chairperson or member of the Council if such person—
(i) is a citizen of Kenya;
(ii) holds relevant academic and professional qualification including a university degree in waste management, environmental engineering; environmental management environmental studies, biology, chemistry or civil engineering;
(iii)has at least ten years' experience in the relevant field; and
(iv)fulfils the requirements of Chapter 6 of the Constitution

(3B) In making appointments of the members to the Council, the Cabinet Secretary shall observe regional, gender, age, disability and ethnic balance.

(3C)The conduct of business of the Council shall be in accordance with the First Schedule.

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

(1)The Council shall—

(a) enhance inclusive inter-governmental coordination for sustainable waste management;
(b) review progress in implementation of the national sustainable waste management strategy;
(c) recommend to the Cabinet Secretary the national waste management recycling and recovery targets;
(d) synchronize the development of waste management infrastructure;
(e) mobilize resources for financing of the waste management sector;
(f) promote inter county waste management partnerships in consultation with county governments;
(g) recommend to the Cabinet Secretary incentives to promote sustainable waste management; and
(h) perform such other functions as may be assigned by the Cabinet Secretary.

CLAUSE 8

THAT, clause 8 of the Bill be amended by deleting subclause (2).

CLAUSE 9

THAT, clause 9 of the Bill be amended by inserting the following new subclauses immediately after subclause (7)—

(8) County governments shall develop, manage and maintain designated disposal sites and landfills.

(9) County governments shall maintain a register of all waste service providers operating within their boundaries.

CLAUSE 10

THAT, clause 10(1) of the Bill be amended by inserting the word "and county governments" immediately after the word "Authority".

CLAUSE 12

THAT, Bill be amended by deleting clause 12 and substituting therefor with the following new clause—

Waste classification and segregation.

12(1) All citizens, public and private sector entities shall segregate non-hazardous waste into organic and non-organic fractions.

(2) The segregated waste shall be placed in

properly labeled and colour coded receptacles, bins, containers and bags.

(3) All waste service providers shall collect, handle and transport segregated waste as provided under this Act.

(4) Hazardous waste will be handled and managed as prescribed by the Environmental Management and Co-ordination Act, 1999 and other relevant written law.

No.8 of 1999.

(5) Any person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment not exceeding six months or both.

(6) The Cabinet Secretary in consultation with the Authority and county governments shall *Gazette* the National Color Coding System for waste.

CLAUSE 13

THAT, Bill be amended by deleting clause 13 and substituting therefor with the following new clause—

Extended Responsibility.

Producer

13. (1) Every producer shall bear extended producer responsibility obligations to reduce pollution and environmental impacts of the products they introduce into the Kenyan market and waste arising therefrom.

(2)Every producer shall fulfill their extended producer responsibility obligation individually or collectively in a compliance scheme.

(3) The Cabinet Secretary shall, within two years of the coming into operation of this Act make regulations on extended producer responsibility.

CLAUSE 15

THAT, clause 15 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

(3)The Cabinet Secretary shall develop a national waste management strategy and action plan within two years of the coming into force of this Act, which shall be reviewed every five years.

CLAUSE 16

THAT, clause 16 of the Bill be amended —

(a) in subclause (2) —

(i) in opening statement by inserting the words " or private sector" immediately after the word "public";

(ii)by deleting paragraph (d);

(iii)in paragraph (g) by deleting the word "segregation" and substituting therefor the word "receptacles";

(b) by deleting subclause (4) and substituting therefor the following new subclause—

(4) A person in charge of a public or private sector entity that discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or a term of imprisonment not exceeding one year or both.

(c) by deleting subclause (5) and substituting therefor the following new subclause—

(5) An officer of an entity who discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or imprisonment not exceeding six months or both.

CLAUSE 17

THAT, clause 17 of the Bill be amended in paragraph (a) by deleting the word "one" and substituting therefor the word "two".

CLAUSE 18

THAT, clause 18 of the Bill be amended—

(a) in subclause (1) by inserting the word "county" immediately before the word "waste"; and
(b) in subclause (2) by inserting the word "county" immediately before the word "waste";

CLAUSE 19

THAT, clause 19 of the Bill be amended by inserting the following new subclause immediately after subclause (1) —

(1A) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, within six months of the coming into operation of this Act, shall *Gazette* the category of private sector entities that shall be required to prepare waste management plans which shall based on volume of production of waste.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 19—

Duties of citizens.

19A.(1)All citizens and residents in Kenya shall—

(a) segregate waste at source in accordance with the provisions of this Act.
(b) dispose waste to only licensed waste service providers or at collection points designated in accordance with the provisions of this Act; and
(c) minimize the amount of waste generated at the source.

(2)Any person who does not manage waste in accordance with the subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand shillings or imprisonment not exceeding six months or both.

Duties of waste service providers.

19B. (1) A waste service provider shall handle segregated waste in accordance with the provisions of this Act.

(2) A waste service provider shall deliver segregated waste collected to facilities licensed and designated in accordance with the provisions of this Act.

(3) A waste service provider who fail to handle or manage waste in accordance with this Act commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shilling or imprisonment of six months or both.

CLAUSE 21

THAT, clause 21of the Bill be amended by deleting the words "the Act and" and substituting therefor the words "the Second Schedule and".

CLAUSE 31

THAT, clause 31(2) of the Bill be amended by—

(a) in paragraph (b) by inserting the words "and deposit refund systems" immediately after the word "schemes";

(b) inserting the following new paragraph immediately after paragraph (g)

(ga) importation and exportation of waste; and

(gb) national colour coding system for waste.

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately before the schedule—

FIRST SCHEDULE (s.5(3C))

Conduct of the Business and Affairs of the Council

Meetings of the Council

1. The Council shall meet Quarterly.

Special meetings

2. The chairperson may, at any time, convene a special meeting of the Council and shall do so within fifteen days of a written notice for the meeting signed by at least three of the members.

Chairperson to preside

3. (1) The chairperson shall preside at all meetings of the Council in which the chairperson is present and in the case of his or her absence, the vice- chairperson shall preside.

(2) At a meeting of the Council at which neither the chairperson nor the vice-chairperson is present, the members of the Council present shall elect one of their members to preside, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereof.

Quorum

4. The quorum for the conduct of the business of the Council shall be two thirds of the members.

Voting

5. The decisions of the Council shall be by a majority of votes, and the chairperson of the meeting shall have an original and a casting vote.

Validity of proceedings

6. The validity of any proceedings of the council shall not be affected by any vacancy among the membership thereof, or by reason of a defect in the appointment of a member.

Minutes of the meeting

7. Minutes of the proceedings at meetings of the Council shall be kept in such a manner as the Council directs and will be made available to the Cabinet Secretary

Committees of the Council

8. The Council may establish such Committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

Power of the Council to regulate own procedure

9. Subject to the provisions of this Schedule, the Council shall regulate its own procedure.

Disclosure of interest

10. If a member of the Council is directly or indirectly interested in any

contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Tenure

11. (1) The chairperson shall serve for a term of three years renewable once based on performance.
(2) The non-public members shall serve for a term of three years and renewable once.

Disqualification

12. A person shall not be qualified for appointment as the chairperson or a member of the Council if such person—

(a) is a member of Parliament or a county assembly;
(b) is a member of a local authority;
(c) is an undischarged bankrupt; or
(d) has been removed from office for contravening the provisions of the Constitution or any other written law.

Vacancy

13. (1) The office of the chairperson or a member of the Council shall become vacant if the holder—
(a) dies;
(b) resigns from office in writing addressed to the Cabinet Secretary;
(c) is absent from three consecutive meetings of the Council without good cause; or
(d) is removed from office in accordance with sub-paragraph (2).

(2) The chairperson or a member of the Council may be removed from office for—

(a) contravening Chapter Six of the Constitution;
(b) serious violation of this Act or any other law;
(c) gross misconduct;
(d) physical or mental incapacity to perform the functions of office;
(e) incompetence; or
(f) if adjudged bankrupt.

Secondment

14. The Cabinet Secretary may, in consultation with the Council, and upon such terms and conditions as may be prescribed, second such officers, agents and other staff as may be necessary for the efficient discharge of the functions of the Council under this Schedule.

Experts and Consultants

15. The Council may engage consultants and experts, as it considers appropriate, to assist in the discharge of its functions under this Schedule.

Remuneration

16. The chairperson and members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary.

Reporting

17. (1) The Council shall submit an annual report to the Cabinet Secretary.
(2) Notwithstanding sub-paragraph (1), the Cabinet Secretary may, at any time, require a report from the National Waste Management Council on a particular matter.

Secretary

18. (1) The Cabinet Secretary shall second a senior officer from the Ministry to serve as Secretary to the Council.

(2)The Secretary shall—

(a) be appointed by the Cabinet Secretary;
(b) be an ex officio member of the Council with no right to vote;

(c) be secretary to the Council;
(d) subject to the directions of the Council, be responsible for the day to day management of the affairs of the Council; and
(e) perform such other functions as the Council may, from time to time, determine
(3) The Secretary shall serve on such terms and conditions as the Cabinet Secretary may determine.

SCHEDULE

THAT, the Bill be amended by inserting the word "Second" immediately before the word "Schedule" appearing in the title to the Schedule.

MIN.NO. DC/ENR/321/2021: - ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm.

SIGNED: .....
THE HON. KAREKE MBIUKI, CBS, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 24/11/2021

PUBLIC PARTICIPATION

The STANDARD SACCO SOCIETY LIMITED
Umoja ni Nguvu

EXPRESSION OF INTEREST

SUPPLY, DELIVERY, TRAINING, IMPLEMENTATION AND COMMISSIONING OF SACCO MANAGEMENT SYSTEM

The Standard Sacco Society Limited, a duly registered Sacco, with its head office at The Standard Group Centre along Mombasa Road with over 700 members intends to invite expression of interest for the Supply, Delivery, Training, Implementation and Commissioning of a SACCO Financial Management System from suitably qualified interested bidders.

1. **Objective**
To have a reliable SACCO Management System that will maintain the members register, monitor and keep records of members' savings, loans, withdrawals, deposits and reporting.

2. **Scope of Work**
The successful bidder will be expected to provide technical and system support of the system, but not limited to:

- Effective access and security controls over records with an unalterable history/audit trail.
- Working closely with the sacco secretariat in the development, testing and deployment of the application software and subsequent maintenance of the system.
- Deployment of qualified and experienced personnel for the above tasks.
- Deployment of qualified staff to train office SACCO personnel.
- Compliance with SASRA regulations on NDT Saccos

3. **Mandatory Requirement**

- Company profile, registration, regulatory and compliance certificates.
- Evidence of capability to successful implementation of sacco financial management system by providing CVs of key personnel.
- Provide a technical approach and work plan to support the implementation of the system.
- EOIs will be assessed against the Vendor's capability of meeting the above outlined objectives and the information documents set out under Clauses 1 and 2 above.
- Evidence of implementation of a sacco financial system of similar scope in the past three years(certified references will be an added advantage)
- Copies of certified audited accounts for the last three years

Application process

Physical applications can be hand delivered to the Sacco offices at The Standard Group Centre, along Mombasa Road or emailed to **ssacco@standardmedia.co.ke**.

The applications to be addressed as '**The Standard Sacco Financial Management System 2021**' to
The Sacco Accountant
The Standard Sacco Society Limited
P.O. Box 30080-00100
NAIROBI

The Sacco reserves the right to accept or reject the expression of interest without reasons.

Deadline for submission is **5.00 pm on Tuesday, 21st September 2021.**



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
and
In the Matter of Consideration by National Assembly of:-

1. **The Sustainable Waste Management Bill, 2021 (National Assembly Bill No. 22 of 2021)**
2. **The National Disaster Risk Management Bill, 2021 (National Assembly Bill No.28 of 2021)**
3. **The Public Procurement and Asset Disposal (Amendment) Bill 2021 (National Assembly Bill No. 32 of 2021)**
4. **The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021)**
5. **The Public Procurement and Asset Disposal (Amendment) Bill, 2021 (National Assembly Bill No.36 of 2021)**

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bills.

The Sustainable Waste Management Bill, (National Assembly Bill No. 22 of 2021) Sponsored by the Hon. (Dr)Amos Kimunya, E.G.H, M.P. Leader of the Majority Party *seeks to establish the legal and institutional framework for the sustainable management of waste; ensure the realization of the constitutional provision on the right to a clean and health environment and for connected purposes.*

The National Disaster Risk Management Bill (National Assembly Bill No. 28 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party *seeks to establish the National Disaster Risk Management Authority and County Disaster Management Committees, to provide a legal framework for the coordination of disaster risk management activities and for connected purposes.*

The **Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021)** Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party *seeks to amend the Public Procurement and Asset Disposal Act to address the challenges faced by procuring entities in implementing the Act including the multiple awards of contracts in the wake of sections 82 and 86 of the Act.*

The Universities (Amendment) Bill (National Assembly Bill No. 35 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party *seeks to amend the Universities Act in the provisions relating to the appointment of the members of University Councils, and the governance of universities and also to make new provisions with respect to the Universities Fund.*

The **Public Procurement and Asset Disposal (Amendment), Bill (No.2)(National Assembly Bill No. 36 of 2021)** sponsored by **Hon. Gladys Wanga, CBS , M.P, Chairperson, Departmental Committee on Finance & National Planning** *seeks to amend the Public Procurement and Asset Disposal Act, 2015 to subject the open tender method of procurement to a two-envelope bid process.*

The Bill further seeks to amend the maximum prescribed period for evaluation of open tender from the current thirty (30) days to thirty business days, and to waive requirements on bidders to provide evidence of compliance with tender criteria to reduce the current reliance on technicalities to disqualify bidders during tender evaluation.

The Bills were Read a First Time on **1st September 2021** and Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE

No.	Bill	Committee
1.	The Sustainable Waste Management Bill, 2021 (National Assembly Bill No.22 of 2021)	Environment and Natural Resources
2.	The National Disaster Risk Management Bill, 2021 (National Assembly Bill No, 28 of 2021)	Administration and National Security
3.	The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 Of 2021)	Finance and National Planning
4.	The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021)	Education and Research
5.	The Public Procurement and Disposal (Amendment) Bill No.2 (National Assembly Bill No.36 of 2021)	Finance and National Planning

Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **clerk@parliament.go.ke;** to be received **on or before Tuesday 21st September, 2021 at 5.00 p.m.**

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
6th September 2021

KEPSA SUBMISSION TO THE SUSTAINABLE WASTE MANAGEMENT BILL (2021)

SEPTEMBER 2021

Introduction

The Kenya Private Sector Alliance (KEPSA) is the apex body of private sector in Kenya. KEPSA brings together business associations, trade associat corporates, multinational companies, SMEs and start-ups from all sectors of the economy under one umbrella to enable them to speak with one voice v engaging Government and other stakeholders on cross-cutting policy issues affecting private sector development, supporting businesses on trai opportunities to network for business, financial linkages, mentoring, access to markets, value chains and access to investment opportunities. The ease of d business and competitiveness index is key in ensuring business make their contribution to sustainable economic development of the country. KEPSA has very instrumental in institutionalizing public private dialogue between government and private sector and through these dialogues realized the improved D Business Index for the country from position from position 129 in 2015 to 56 in 2020.

CIRCULAR ECONOMY FOR SUSTAINABLE WASTE MANAGEMENT

The circular economy is rapidly gaining global and national traction in addressing pollution and waste management through reuse of materials in the econ for maximum utility. In contrast to the largely linear economy of take- make – use- dispose, the circular economy aims to promote efficient use of na capital by stimulating product designs for durability and circularity, management of resources by preserving value, investment in waste manage infrastructure, creation of green jobs and limiting materials that are dumped, incinerated or taken to landfills

KEPSA is a champion of green and circular economy and working through the multiagency team was part of the proposing the need for holistic approa address the waste management challenge in the country. Private Sector has also demonstrated commitment to circular approach to waste management in c to ensure the production design reduce waste, take back schemes are affected and that materials are maintained at their highest utility value.

Kenya hosts one of the 50 largest dumpsites of the world due to our linear approach to waste management and generating and dumping waste. The cou lacks clearly structures and systems for reducing waste generation, collection, transportation and disposal of waste. The Waste Service Providers inclu collectors is largely informal, lacks traceability mechanism and often waste is currently dumped by the road side and every open space within the neighborhc In Nairobi, it is estimated that 68% of the waste is collected from the households, but only about 20% is properly disposed. Often, we resort to "ban' p approach which is not sustainable as it is not possible to eliminate all materials in the society so as not to pollute. The country also lacks credible dat volumes of waste generated. In other parts of the world, this sector is a leading contributor to Gross Domestic Product (GPD) due to supportive end to systems. We must find a workable system that balances responsibility, accountability, environmental consciousness and appropriate actions by all actors i waste management value chain. To help the country chocking of waste at any given opportunity, we must address the waste management challenge be collection, transportation and disposal.

KEPSA applauds the National Assembly for prioritizing sustainable management of waste by providing frameworks including a National Sustainable W Management Council in order to ensure that national targets are set and adhered to. It is also important to unbundle the waste management functic currently private sector bears the brunt of double taxation, levying and charges at both National Government level through the authority and the Co Government levels. There is need to properly align the sector in order to ensure environmental sustainability is prioritized and properly provided throug the product lifecycle and that duties are clearly delineated between the two levels of government.

CALL FOR INPUT

Following the call for input by the National Assembly to the Sustainable Waste Management Bill 2021, KEPSA makes the following submission:

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
Introductory Statement		An act of parliament.....to ensure realization of right to clean a health environment....	An Act of Parliament .....to ensure realization of right to a clean and healthy environment	Typo, add y to health for it to read healthy
Part 1	Preliminary 2 definitions	Extended Producer Responsibility measures means that extend a persons or firms financial or physical responsibility_over a product upto the consumer stage.....	Extended producer responsibility measures that extend the **obligation** of a person or a firms financial or physical responsibility over a product up-to to the **post-consumer** stage of **product lifecycle** including....	EPR should be mandatory and legally binding for all. Consumer stage covers production and consumption post-consumer covers waste generation and activities undertaken thereafter. Globally EPR is obligation covers the full product lifecycle including the post-consumer stage so as to cover take backs and recycling.
		Recycle means process by which waste is reclaimed further use involving separation of waste from waste stream and processing of that waste as a product or raw material	Process by which **materials** are reclaimed from waste for further use as product, raw materials or input in production process.	To remove ambiguity in the definition and focus on extraction of valuable materials from waste. Once material is reclaimed it should be classified as secondary material and not regarded as waste hence no processing of waste as waste.

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
		Take back scheme- means scheme for collection..... to end users.	Tack Back Scheme means a system for collection, transportation and returning of products and packaging from end users and consumers.	Replace, scheme with system Change, "to end users," with, "from end users" and add consumers for clarity. For material loops closure, products and packaging are retuned from end users and consumers back to producers.
Part III	Policy Coordination and oversight of waste management	6(1) There shall be established a council known as Waste Management Council within one year of coming into operation of this Act.	Sustain the Waste Management Council	The council provides an opportunity to provide a holistic view of waste management practices in the country. With Kenya hosting one of the largest 50 largest dumpsites in the world, its important that a deliberate strategic leadership body is created. Being the country hosting UNEP, the current frameworks have not assisted position the country as exemplary in handling its waste. With open dumpsites in most neighborhoods and littering by the road sides, it is important that the business-as-usual scenario is not propagated anymore. The council will also serve as intergovernmental platform between national government and county government with private sector entities in addressing the waste management challenge

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
				and setting national targets in line with global best practice. This also provides an opportunity to formalize the waste management sector as a key sector of the economy not just as an consuming sector but also upgrade the sector to be a revenue contributing to the GDP in line with global best practice.
	Clause 6(2) g	Three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management	Specify the 3 non state actors as follows: • One representative of producers • One representative of waste service providers • One representative of private sector appointed by the cabinet secretary for their competency in sustainable waste management.	The constitution of Kenya is premised on participatory approaches of stakeholders impacted by a decision to be part of the decision-making process. Circular economy entails a value chain approach in management of waste hence representation of key value chain players including the producers, waste service providers including collectors should form part of this council in order to provide realistic insights and decision on the true state of waste management in the country.
	7(i) a, b and 8(3)	The council shall……..	Amend (7) 1 (a) and delete (b) Amend (a) to read, Provide National State of Sustainable Waste Management	This is captured a role of the authority under clause 8(3) and is very operational function to be

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
			including Extended Producer Responsibility Measures Report.	supported by the waste management information system. The council could be responsible for providing the Bi-annual State of Sustainable Waste Management Report for the council.
	7(i)		Add additional function • The council shall be the intergovernmental mechanism between national and county government in addressing and planning for sustainable waste management in the country • The council shall be the coordinating platform of extended producer responsibility measures in the country. • The council shall set national targets for recycling and recovery.	There lacks an intergovernmental platform between national and county governments in addressing the waste management function leading to duplication and double regulation of private sector.
	7(i) f	Provide technical assistance to county governments as may be needed from time to time	Delete (f)	Technical expertise is vested within the Authority. The expertise required may be

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
				operational which is outside the scope of the council.
PART III	Measures and Actions	Mandatory segregation at source and color codes have not been provided in the Bill. These new measures should be 10(2) and the current 10(2) to be 10(3)	Add new measures' as follows: (10(2) Waste Classification and Segregation at Source (i) All households, public and private entities shall segregate their waste into Organic, Dry Waste, and Special waste: (ii) The National color coding of waste containers shall be Green for Organic; Blue for Dry Waste and Yellow for Special Waste. (iii) All Waste Collectors shall provide separate containers, bags and bins with proper labels for segregation of waste at source in line with national color codes. (iv) All Waste Collectors and transporters shall collect and transport segregated waste	The key to successful waste management begins with mandatory segregation at source for all and proper color coding of segregation bins, bags and containers. This section should include these measures and not just dumpsites. The Measures and Actions should prioritize proper classification of waste from household level and make segregation at source mandatory across the nation by providing minimum streams to be segregated at source. Mandatory segregation of waste at source will help producers execute their postconsumer extended producer's responsibility obligation. It is important that this requirement is enforced throughout the collection and transportation of the respective waste fractions. This is aligned to the sustainable waste management policy that address measures to be

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
			streams as per schedule issued by the respective county. (v) County Governments shall issue a schedule for collection and transportation of segregated waste within their jurisdiction. (vi) Compartmentalized trucks shall be allowed to transport segregated waste fractions in respective well marked compartments where a separate collection schedule is not viable. (vii) All collection vehicles shall bear a readable and visible body number, the name of contractor or agency collecting the solid waste and the type of waste being transported. (viii) Collection and transportation of special waste shall be governed by applicable laws and regulations of the respective waste fraction.	implemented in the country for an effective circular approach to waste management.

Part	Title and Clause	Act Provisions	Proposed Recommendations / Areas of Concerns	Justification and Rationale
			(ix) The Cabinet Secretary in consultation with the Authority shall set standards and minimum requirements for implementation of national waste segregation at source and segregated collection and transportation measures. (x) Each County shall provide additional measures to facilitate further segregation of waste at source relative to their local conditions. With adoption of the above delete clause 19(g) Amend 19(3)k to read, a private sector entity shall provide waste segregation receptacles at its premises as per regulation (10)2	

General comment

The Sustainable Waste Management Bill is a progressive bill that places Kenya ahead of many African countries in providing measures to address the syst failures of the current linear economy. We applaud the government for mainstreaming the regulation and providing standard practices for sustainable v management through this Bill. We also note that necessary amendments will be required to the Environmental Management and Coordination Act anc current Waste Management Regulations in order to harmonize practice, avoid conflicting regulations and enforce best standards in management of was the country.

NATURAL JUSTICE

OUR REF: NJ/NA/Sustainable Waste Management Bill/2021/1
YOUR REF: TBC

Date: 12 October 2021

The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI
E-mail: **clerk@parliament.go.ke**

Dear Sir/Madam,

RE: COMMENTS ON THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 28 OF 2021)

We write in response to your call for public comments on the Sustainable Waste Management Bill, 2021.

Attached to this letter are our detailed comments on the abovementioned Bill which we hope will provide valuable insights to your deliberations.

Yours Sincerely,

Eva Maria Anyango Okoth
eva@naturaljustice.org
[This letter has been sent electronically and is therefore not signed]

NATURAL JUSTICE

REVIEW OF THE SUSTAINABLE WASTE MANAGEMENT BILL 2021

NO.	CURRENT CLAUSE TO BE REVIEWED	PROPOSAL	JUSTIFICATION
ACCESS TO INFORMATION			
1	Clause 20- Access to information	We propose the inclusion of another subsection requiring the proactive disclosure of information of public importance or which is required for the protection of any rights or fundamental freedoms, as follows: *"S. 20*A The Authority, lead agencies or any other person shall publish and publicise any important information affecting the nation and which is required for the exercise or protection of any right or fundamental freedom including the right to a clean and healthy *environment."*	The reason for this is that the right t information as outlined in Article 3 of the Constitution provides for bot pro-active and passive disclosure c information especially where th public interest is at stake. Article 3 (3) provides that the State sha publish and publicise any importar information affecting the nation. This argument has also bee supported by court decisions which hav affirmed the importance of proactiv disclosure of information where the right to a clea and healthy environment i threatened. In the case of Guerra v Italy and Oneryildz v. Turkey, th court stated that the government ha an obligation to publicly disclose a information about the risks involve where people live close to ai environmentally hazardous site particularly where the right to life is threatened.
2	Clause 20(4) Access to information and payment of a prescribed fee.	We propose the amendment of clause 20 (4) by deleting this sub clause: " The Authority may, with the approval of the Cabinet Secretary and by notice on the Gazette, prescribe reasonable fees to be levied for processing applications for access to information under this section.."	The imposition of a fee makes the process or obtaining informatio unnecessarily costly. Informatio should be made readily and easil accessible particularly where the nature of information requested i public information and is necessar for the exercise, enforcement o protection of a fundamental right or freedom unde the

			Bill of rights.
NATIONAL WASTE MANAGEMENT STRATEGY			
3	Clause 8(2) -The Authority shall develop an action plan for the implementation of the National Waste Management Strategy within one year of the coming into operation of this Act.	We propose that there should be a chapter on National Waste Management Strategy and what the strategy should include and cover. These chapter may spell out: 1. Practical measures for achieving co-operative governance in waste management matters between the county government and national government and inter county. 2. Approaches for securing compliance with the requirements of this Act, including the monitoring of compliance; and 3. The extent of its applicability 4. The span of the strategy	National Waste Management Strategy is a key guiding document that provides the blue print and harmonise applicability of laws and set standards for waste management. However, since it is to be developed within a year after the Bill, the bill ought to give an overview of what the plan will address for certainty. Different legislations including the National Environmental Management: Waste Act 59 Of 2008 of South Africa from which the Bill has borrowed heavily have that chapter separately because of its importance as highlighted above.
IMPORTATION AND EXPORTATION OF WASTE			
4	Clause 2- Definition "waste management activity" means any administrative or operation activity for the— (a) importation or exportation of waste;	We propose that reference should be made with the Bill with regards to importation or exportation of waste. This reference can either be to a subsequent subsidiary regulation or policy/ strategy that will address this issue.	The Bill defines waste management activity to include importation and exportation of waste but no reference is made in the bill with regards those two terms… Reference should be made to a subsequent subsidiary regulation or policy that addresses the issue of importation of waste. This is because

			of the emerging trend of exportatio of waste to African Countries, Keny included. Often countries tend to import wast in various forms either as waste to b recycled or as cheap materials tha otherwise are of low economic valu in their country of origin but coul otherwise be exported to anothe country. In most cases, the countr importing such already use products/ waste have no policy c strategy on the quality of goods c waste to be imported, hence th need for a clear law on this issue.
OFFENCES AND MEASURES			
5	Clause 16 (5) of the Bill – An officer of an entity who discharges waste contrary to the provisions of this section commits and offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment not exceeding six months or both.	We propose that this subsection should be amended to read as follows: An officer of an entity who discharges waste contrary to the provisions of this section commits and offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or imprisonment not exceeding six months or both.	It is necessary to make the penaltie hefty so that they are punitive an prohibitive.
6	Clause 19 (2) "A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than two hundred thousand shillings and the person responsible for the private sector entity shall, in addition to the fine imposed on the entity, be	We propose that this subsection should be amended to read as follows: "A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than one million shillings and the person responsible for the private sector entity shall, in addition to	Waste management strategy is a ke document that shall inform both the authorities and the public of the channels that are in place for waste management and disposal hence every entity should have one. Private entities are some of the notorious polluters of environmen and most often than not, they ge away with it. The profit margins o these companies are high hence they can always pollute and pay

	liable to imprisonment for a term not exceeding three months."	the fine imposed on the entity, be liable to imprisonment for a term not exceeding three months."	since the measures are not punitive enough.

REPUBLIC OF KENYA

IN THE NATIONAL ASSEMLY

IN THE MATTER OF NATIONAL ASSEMBLY BILLS, 2021

IN THE MATTER OF THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021

SUBMISSIONS FROM MULTICHOICE KENYA LIMITED

MultiChoice Kenya Limited (*hereafter referred to as MCK*) is a private company duly incorporated and operating in accordance with the laws of the Republic of Kenya. MCK is engaged in the business of subscriber management services for DStv and GOtv subscribers in Kenya. As part of the subscriber management services, MCK imports and distributes for sale certain broadcast equipment which includes decoders, antennae, satellite dishes and associated accessories.

MCK has reviewed the Sustainable Waste Management Bill, 2021 (*hereafter referred to as the Bill*) and wishes to submit as follows:

1. MCK lauds the objective of the Bill of promoting sustainable waste management with the view of ensuring the realization of the constitutional right to a clean and healthy environment.
2. MCK, however makes recommendations in respect of the proposed clauses 12 and 19 of the Bill.

Clause 12

3. The proposed clause 12 of the Bill introduces take back schemes, which require the end user of a product that may negatively impact the environment, to return it to the seller. This in turn creates a mandatory duty on the seller to accept the returned product as the agent of a manufacturer.
4. Whereas take back systems are designed to provide raw materials for manufacturers to make new products, it may not be economically feasible to recycle material for items such as computers or hardware products. It is therefore, MCK's submission that, the take back scheme should only apply

to products that are recyclable. MCK recommends that the provision specifies the products that are subject to the take back scheme.

5. A comparative review of take back schemes reveals that most countries encourage rather than mandate such schemes. The European Union has, for example advocated for manufacturer-driven take back schemes supported by the government policy intervention. Germany, Austria, South Korea, Wales and Switzerland have supported recycling to encourage take back schemes. MCK, therefore recommends that Kenya encourages rather than mandates uptake of the scheme, by introducing (amongst other things) incentive mechanisms like tax waivers, as proposed below.

6. In light of the above recommendations, MCK's proposal is to amend clause 12 of the Bill as follows:

   a) *Remove the word **shall** be returned under clause 12(1) and replace with the word '**may**'*

   b) *Add a clause that would allow the seller to claim a tax incentive for all used products returned to store including a possible claim for tax refunds.*

Clause 19

7. The proposed clause 19 (1) of the Bill mandates private sector entities to prepare three-year waste management plans and submit annual monitoring reports to the National Environmental Management Authority.

8. It is MCK's submission that this obligation would constitute an onerous obligation on the part of entities which produce small volumes of waste. MCK recommends that the requirement applies only to firms that generate high volumes of waste.

9. MCK also recommends that the penalties under clause 19 (2) be limited to monetary and not custodial penalties, as is common in other jurisdictions.

10. In light of the foregoing, MCK calls upon the National Assembly to consider the amendment of Clause 19 as follows:

    a. *Clause 19(1) be amended to mandate only private entities engaged in activities that generate high volumes of waste such as in manufacturing, to provide waste management plans. The provision should also specify the threshold of volume of waste to which the requirement applies.*

    b. *The prison sentence under clause 19(2) or any such custodial sentence throughout the Bill be deleted.*

We appreciate your consideration of our submissions and look forward to a positive outcome.

Kenya PET Recycling Company Limited

General Contact
8th Floor, Pine Tree Plaza, Kamburu Drive, Off Ngong Road
P.O. Box 40111 – 00110,
Nairobi, Kenya
info@petco.co.ke

Our Ref: ADM/EXT_NA/009/21

To: The Clerk,
National Assembly of Kenya,
Parliament Building,
Nairobi, Kenya

Friday, 21st September 2021

Dear Sir,

RE: SUBMISSION OF COMMENTS ON THE PROPOSED SUSTAINABLE WASTE MANAGEMENT BILL, 2021

We hereby submit comments on the above captioned regulations for your review and consideration. As an operational voluntary producer responsibility organization managing the collection and recycling of Polyethylene Terephalate (PET) packaging on behalf of membership, who include Coca-Cola, Kevian Kenya, BIDCO Africa, Unilever, LinePlast Limited, House of Peptang, Bio Foods Limited, NAIVAS Supermarkets, Highlands Water, Coca-Cola Beverages Limited, Coastal Bottlers Limited, Almasi Beverages limited etc. Since November 2018 to December 2020, we have financially subsidized the collection and recycling of 16,500 Metric tonnes, approximately 658 million PET bottles, produced within Kenya.

The success of our efforts to scale up our operations is anchored in this legislative framework, as such, we are appreciative of the consultative approach taken by the Ministry of Environment and Forestry and the current step to gather comments from the public on the same.

We look forward to providing any additional clarifications to our comments as may be requested.

Yours Sincerely,

Joyce Gachugi – Waweru
Country Manager

Brand Owners: David Olang - Coca-Cola CEWA, Joseph Sunday - Unilever Kenya, **Bottlers:** Susan Maingi - Coca-Cola Beverages Africa, Amos Chege Bottlers, Joachim Westerveld - Bio Foods Limited, Richard Rugendo - Kevian Kenya Limited Sharon Kisire - Highlands Mineral Water, Ibrahim Khou Cola Coastal Bottlers **Retail:** Gilbert Mbuthia - Naivas. **Industry Expert:** David Drew

Plastic bottles are not trash.

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petco
PET plastic recycling kenya

COMMENTS FROM PET BOTTLERS, CONVERTORS AND RETAILERS WITHIN PETCO KENYA'S MEMBERSHIP

Kenya PET Recycling Company Limited

General Contact
8th Floor, Pine Tree Plaza, Kamburu Drive, Off Ngong Road
P.O. Box 40111 – 00110,
Nairobi, Kenya
info@petco.co.ke

CURRENT SECTION OF BILL	ISSUE/CONCERN	PROPOSED RECOMMENDATION
PART II 5 (b)	The Cabinet Secretary shall be responsible for (b) the development of regulations in consultation with the Authority Waste Management is a devolved function, as such to avoid overlaps in regulations that will impact the implementation of waste management, this section should include the County governments (county environment executives) as well. This will allow future alignment between National government and County government.	To INCLUDE the County governments in the development of regulations.

CURRENT SECTION OF BILL	ISSUE/CONCERN	PROPOSED RECOMMENDATION
Part II 6 (2)	The Council shall comprise of— (a) the Cabinet Secretary who shall be the chairperson; (b) the chairperson of the Environment Committee of the Council of County Governors who shall be the co-chairperson; (c) a representative from the ministry responsible for matters relating to waste management; (d) a representative from the National Treasury; (e) a representative from the Authority; (f) the chairperson of the caucus of county executive committee members in charge of environment; and (g) three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management. It does not include any representation from the private sector from either the Kenya Association of Manufacturers or the Kenya Private Sector Alliance, all of whom will provide a market or input for the items listed in PART III, 10 (c)	To INCLUDE the private sector and civil society in the waste council.

1
Plastic bottles
are not trash.

CURRENT SECTION OF BILL	ISSUE/CONCERN	PROPOSED RECOMMENDATION
	It does not include any representation from Not-For Profit or Civil Society Organizations. Both groups of stakeholders are critical in the waste management value chain, as they allow for representation of producers (manufacturers or industry players), collectors and/ or recyclers of waste.	
PART II 9	Functions of County Governments This section omits the function of county governments to develop, manage and maintain designated dumpsites and / or landfills.	To INCLUDE the function by county governments to develop, manage and maintain designated dumpsites and / or landfills
PART II 9	Functions of County Governments This section omits the function of the county government to maintain a register of all waste collectors operating within their boundaries (both formal and informal) This is critical in assessing the economic impact of waste management in a county.	To INCLUDE the function of the county government to maintain a register of all waste collectors operating within their boundaries (both formal and informal)

1
Plastic bottles
are not trash.

CURRENT SECTION OF BILL	ISSUE/CONCERN	PROPOSED RECOMMENDATION
PART III 10 (c)	(c) the expansion of the market for recycled products and incentives to expand the market for pre-consumer and post-consumer recycled products through incentives, government procurement preferences and other policies; This should also be included as a role of the Waste Council, who would then work with the Cabinet Secretary to provide input for the development of the regulations.	To INCLUDE this as a role of the Waste Council under PART II section 7
PART III 13 (1)	**13.** (1) An entity engaged in the production, conversion or importation of products and packaging shall bear extended producer responsibility over the products or packaging for the purpose of reducing the environmental impact of the products or packaging. The draft Extended Producer Regulations, 2021 under the Environmental Management and Co-ordination Act, states that a producer is an entity that introduces goods, products and packaging into the	To AMEND this section to reflect the definition of "producer" as an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings.



CURRENT SECTION OF BILL	ISSUE/CONCERN	PROPOSED RECOMMENDATION
	country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings. This will avoid any conflict between the regulations and the proposed bill.	
PART III 13 (2)	For the purpose of this section, "extended producer responsibility" of an entity engaged in the production, conversion or importation of products and packaging includes the design of environmentally friendly and recyclable products and packaging, physical collection and management of waste, and financial contributions to a collective scheme. The draft Extended Producer Regulations, 2021 under the Environmental Management and Co-ordination Act, states that a producer is an entity that introduces goods, products and packaging into the country using authorized means by manufacturing, importing, converting, filling, refilling, repackaging, rebranding or otherwise brings.	To AMEND to read "For the purpose of this section, "extended producer responsibility" of an entity engaged in the manufacture, conversion, filling, refilling, repackaging, rebranding, importation or otherwise brings of products and packaging and includes the design of environmentally friendly and recyclable products and packaging and financial contributions to a collective scheme.



Kenya PET Recycling Company Limited

General Contact
8th Floor, Pine Tree Plaza, Kamburu Drive, Off Ngong Road
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Brand Owners: David Olang - Coca Cola CEWA, Joseph Sunday - Unilever Kenya, Bottlers: Susan Maingi - Coca-Cola Beverages Africa, Amos Chege - Almasi Bottlers, Joachim Westerveld - Bio Foods Limited, Richard Rugendo - Keyian Kenya Limited Sharon Kisire - Highlands Mineral Water, Jackson Kinuthy - Coca-Cola Coastal Bottlers Retail: Gilbert Mbotela - Nawas, Industry Expert: David Drew

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COPY OF THE BILL

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 12th May, 2021

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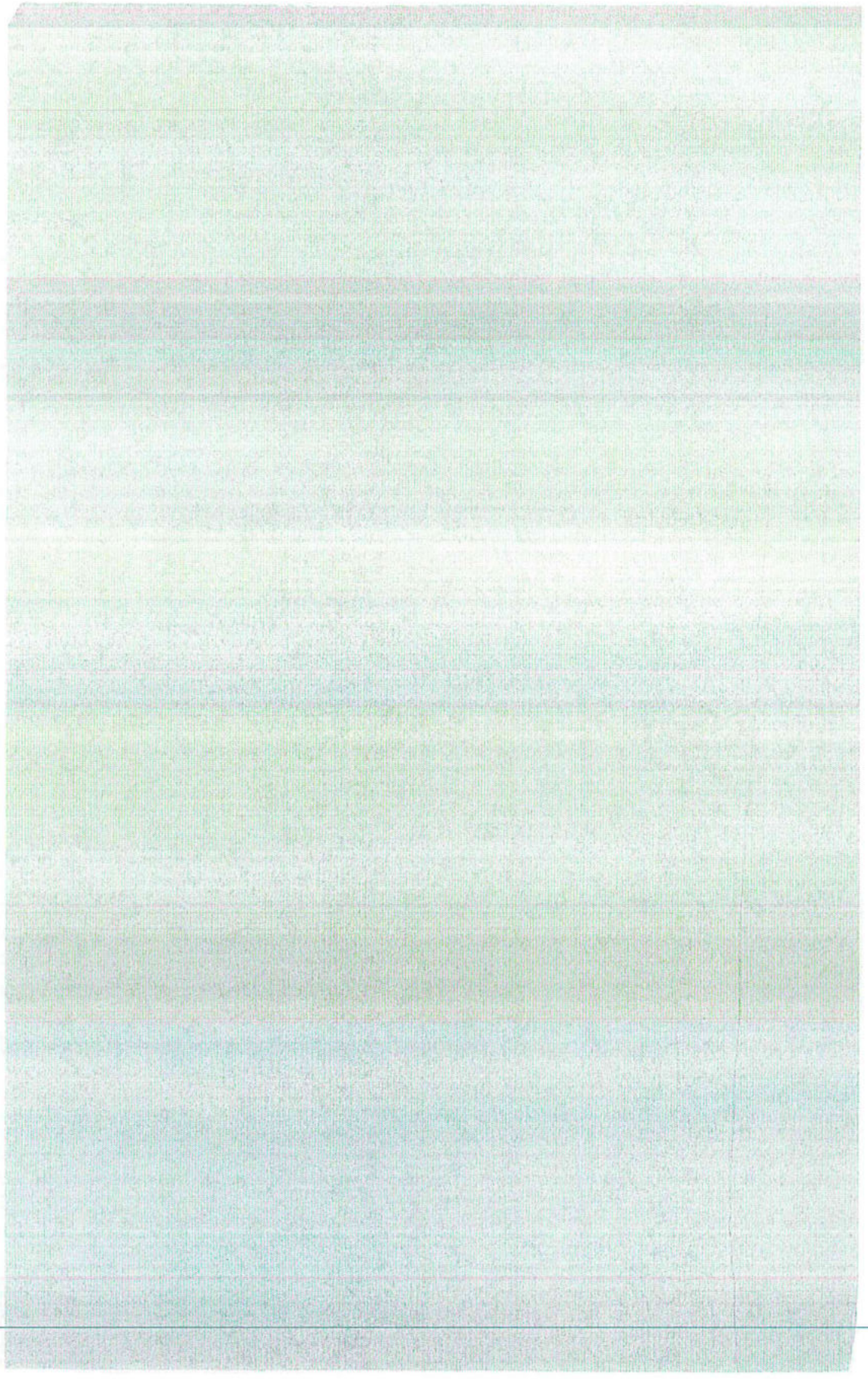
Bill for Introduction into the National Assembly—

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The Sustainable Waste Management Bill, 2021 689

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THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

3—Objects of the Act.

4—General Principles.

PART II—POLICY, CO-ORDINATION AND OVERSIGHT OF WASTE MANAGEMENT

5—Role of the Cabinet Secretary.

6—Waste Management Council.

7—Functions of the Council.

8—Functions of the Authority.

9—Functions of county governments.

PART III—MEASURES AND ACTIONS

10—Policies, regulations and standards by the Cabinet Secretary.

11— Policies, regulations and standards by county governments.

12—Take back measures.

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PART IV—WASTE MANAGEMENT FUNCTIONS

15—Functions of the Cabinet Secretary.

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18—Waste Management plans.

19—Duties of private sector entities

PART V—PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

20—Access to information.

21—Public Participation.

PART VI—FINANCIAL PROVISIONS

22—Fees to be allocated to county waste management facilities.

23—Incentives for waste management.

PART VII—MONITORING AND COMPLIANCE

24—Monitoring and evaluation by the Authority.

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28—Restoration.

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PART IX—PROVISIONS ON DELEGATED POWERS

31—Regulations.

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32—Integrating waste management into school curricula.

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SCHEDULE—PROVISIONS ON PUBLIC PARTICIPATION

THE SUSTAINABLE WASTE MANAGEMENT BILL, 2021

A Bill for

AN ACT of Parliament to establish the legal and institutional framework for the sustainable management of waste; ensure the realisation of the constitutional provision on the right to a clean and health environment and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Sustainable Waste Management Act, 2021.

Interpretation.

2. In this Act, unless the context otherwise requires—

"Authority" means the National environment Management Authority established under section 7 (1) of the Environmental Management and Co-ordination Act, 1999; No. 8 of 1999.

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to waste management;

"National Environment Complaints Committee" means the National Environment Complaints Committee established under section 31 (1) of the Environmental Management and Co-ordination Act, 1999;

"Council" means the Waste Management Council established under section 6 (2);

"domestic waste" means waste, other than hazardous waste, generated from a domestic residence;

"extended producer responsibility measures" means measures that extend a person's or a firm's financial or physical responsibility over a product up to the consumer stage of the product including—

(a) waste minimisation programmes;

(b) deposit-refund and take-back schemes;

(c) financial arrangements for any fund established for the promotion of reduction, reuse, recycling or recovery of waste;

(d) awareness programmes to inform the public on the impacts of waste emanating from the product on health and the environment; and

(e) any other measures to undertaken for the reduction of the potential impact of the product on health and the environment;

"industrial waste" means waste arising from processing or manufacturing or any trade undertaking in the form of liquid, non-liquid, solid or gaseous substances;

"materials recovery facility" means a specialised facility that receives, separates and prepares recyclable material for marketing to end user manufacturers;

"National Environment Tribunal" means the National Environment Tribunal established under section 125 (1) of the Environmental Management and Co-ordination Act, 1999;

"payment for environmental services" and "payment for ecosystem services" mean payments to farmers or land users to encourage the conservation of natural resources;

"pollution" has the meaning assigned to it under section 2 of the Environmental Management and Co-ordination Act, 1999;

"private sector entity" a person, firm or corporate entity with functions of a private nature including entities registered under the Public Benefits Organisations Act, 2013;

No. 18 of 2013.

"public entity" means—

(a) the government including the national and county governments, or any State organ, department, agency, service or undertaking of a national or county government;

(b) Parliament or a county assembly;

(c) any corporation, council, board, committee or other body which has power to act under or for the purposes of any written law relating to undertakings of public utility or otherwise to administer funds belonging to or grated by the government or monies raised by rates, taxes or charges in accordance with such law; or

(d) a public body established under any written law;

"recovery" means the controlled extraction of a material or retrieval of energy from waste for the production of another product;

"recycle" means the process whereby waste is reclaimed for further use involving the separation of waste from a waste stream and the processing of that waste as a product or raw material;

"re-use" means the action or practice of using something again whether for its original purpose or to fulfil a different function;

"sustainable waste management" means using material resources in order to reduce the amount of waste that is generated and managing the waste in a way that contributes to the environmental, social and economic goals of sustainable development;

"take-back scheme" means a scheme for the collection, transportation and return of products or packaging to end users;

"toxic substance" means any substance which, on entry into an organism through ingestion, inhalation or dermal contact, is injurious, causes physiological or biochemical disturbance, or otherwise causes deterioration of the functions of the organism in any way;

"waste" means—

(a) any substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides and toxic substances but does not include radioactive waste;

(b) a substance, material or object that may be designated as waste by the Cabinet Secretary by notice in the *Gazette*,

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

(i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;

(ii) where approval for reuse, recycling or recovering is not required, it has been reused, recycled or recovered; or

(iii) where the Cabinet Secretary has, by notice in the Gazette and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

"waste management facility" means a site or premises licensed in accordance with this Act for the purposes of receiving, accumulation, depositing, recovery, recycling, treatment, storage and disposal of waste and includes waste processing areas, transfer stations, reusing areas, materials recovery facilities, recycling plants, food waste treatment facilities, composting plants, waste disposal areas, waste-to-energy facilities and sanitary landfills;

"waste management activity" means any administrative or operation activity for the—

(a) importation or exportation of waste;

(b) segregation of waste including any activity or process that is likely to result in generation of waste;

(c) accumulation and storage of waste;

(d) collection and handling of waste;

(e) reduction, reusing, recycling and recovery of waste;

(f) trading in waste;

(g) transportation of waste

(h) transfer of waste;

(i) treatment of waste; and

(j) disposal of waste;

"waste minimisation programme" or "waste reduction programme" means a programme that is intended to promote reduction in generation and disposal of waste; and

"waste valorisation" means any activity aimed at converting waste, including materials, chemicals and sources of energy, into useful products by reusing, recycling or composting the waste.

Objects of the Act.

3. The objects of this Act shall be to—

(a) promote sustainable waste management;

(b) improve the health of all Kenyans by ensuring a clean and healthy environment;

(c) reduce air, land, fresh water and marine pollution;

(d) promote and ensure the effective delivery of waste services;

(e) create an enabling environment for employment in the green economy in waste management, recycling and recovery;

(f) establish an environmentally sound infrastructure and system for sustainable waste management;

(g) promote sustainable procurement practices;

(h) mainstream resource efficiency principles in sustainable consumption and production practices; and

(i) inculcate responsible public behaviour on waste and environment.

General principles.

4. The general principles of this Act are—

(a) promoting the right to a clean and healthy environment;

(b) the precautionary principle where the lack of scientific certainty shall not be used to postpone measures to prevent environmental degradation where there are threats of damage to the environment;

(c) the polluter pays principle in which the cost of cleaning up any element of the environment that

has been damaged by pollution, the cost of the beneficial uses of the environment that have been lost as a result of the pollution, and any other costs associated with or incidental to the pollution shall be paid by the polluter;

(d) payment for ecosystem services or payment for ecological services in which payments are made to farmers or landowners who have agreed to take certain actions to manage land or watersheds in order to provide ecological services as an incentive to conserve natural resources;

(e) zero waste principle in which products and processes are designed and managed to reduce the volume and toxicity of waste and materials, and to conserve and recover all resources, and to prevent the burning or burying of resources, in order to treat waste as a resource that can be harnessed for wealth creation, employment and the reduction of pollution; and

(f) achieving sustainable development goals.

PART II—POLICY, CO-ORDINATION AND OVERSIGHT OF WASTE MANAGEMENT

Role of the Cabinet Secretary.

5. The Cabinet Secretary shall be responsible for—

(a) policy on sustainable waste management in consultation with county governments;

(b) the development of regulations in consultation with the Authority;

(c) co-ordinating adherence to international obligations with regards to waste management, nationally determined contribution of waste and chemicals conventions; and

(d) oversight and co-ordination of the administration of this Act.

Waste Management Council.

6. (1) There shall be a council to be known as the Waste Management Council which shall be established by the Cabinet Secretary within one year of the coming into operation of this Act.

(2) The Council shall comprise of—

(a) the Cabinet Secretary who shall be the chairperson;

(b) the chairperson of the Environment Committee of the Council of County Governors who shall be the co-chairperson;

(c) a representative from the ministry responsible for matters relating to waste management;

(d) a representative from the National Treasury;

(e) a representative from the Authority;

(f) the chairperson of the caucus of county executive committee members in charge of environment; and

(g) three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management.

(3) The Council may co-opt members with relevant expertise when needed who shall advise the Council on specific matters relating to sustainable waste management.

(4) The Cabinet Secretary shall establish a waste management secretariat for the waste management council.

Functions of the Council.

7. (1) The Council shall—

(a) provide analytical support on sustainable waste management to ministries, agencies and county governments;

(b) serve as the national knowledge and information management centre for disseminating knowledge and information on sustainable waste management;

(c) in collaboration with other agencies at the international, national and county governments level—

(i) identify sustainable waste prevention, reduction, reuse, recycling and disposal strategies;

(ii) optimise opportunities to mobilise financing) for sustainable waste management; and

(iv) ensure co-ordination across national and

(6) County governments shall maintain data on waste management activities and share the information with the Authority.

(7) County governments shall mainstream waste management into county planning and budgeting.

PART III—MEASURES AND ACTIONS

Policies, regulations and standards by the Cabinet Secretary.

10. (1) The Cabinet Secretary shall, within two years of the coming into operation of this Act and in consultation with the Authority, make policies and regulations for the proper administration of this Act.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, in consultation with the Authority, make regulations prescribing—

(a) the closure of open dumpsites;

(b) procedures for sustainable waste management;

(c) the expansion of the market for recycled products and incentives to expand the market for pre-consumer and post-consumer recycled products through incentives, government procurement preferences and other policies; and

(d) the promotion of health, safety and environmental standards including—

(i) labour and health standards for waste handlers;

(ii) quality and certification standards for organic waste;

(iii) operational standards for dumpsites;

(iv) the classification of engineered sanitary landfills;

(v) the formation of waste collection, materials recovery and recycling savings and credit co-operative organisations;

(vi) the facilitation of waste-to-energy and waste-to-manure projects; and

(vii) the facilitation of the collection of different types of wastes including medical waste, chemical waste and construction waste.

Policies, regulations and standards by county governments.

11. (1) County governments shall, in consultation with relevant national government agencies, the public and other stakeholders, develop county legislation within two years of the coming into operation of this Act.

(2) Notwithstanding the generality of subsection (1), county governments may make regulations prescribing—

(a) the use of land within the jurisdiction of the county government for waste management; and

(b) investment in sustainable waste management including waste collection, separation, treatment, processing, recovery and sanitary final disposal of waste.

Take back schemes.

12. (1) Products and packaging that may cause negative impacts on the environment shall be returned to the seller after their use.

(2) Products and packaging referred to in subsection (1) shall be marked with a special label.

(3) The seller of products referred to in subsection (1) shall take back the used products and packaging.

(4) The Cabinet Secretary shall prescribe regulations on the products and packaging referred to in subsection (1), the manner and form of marking the product and packaging, the processes and procedures for the collection, processing, treatment and return of products and packaging, and the manner of public information thereon.

Extended producer responsibility.

13. (1) An entity engaged in the production, conversion or importation of products and packaging shall bear extended producer responsibility over the products or packaging for the purpose of reducing the environmental impact of the products or packaging.

(2) For the purpose of this section, "extended producer responsibility" of an entity engaged in the production, conversion or importation of products and packaging includes the design of environmentally friendly and recyclable products and packaging, physical collection and management of waste, and financial contributions to a collective scheme.

(3) Recoverable and recyclable products, materials and packaging that may cause pollution shall be marked

with a special label and returned to the seller, producer, importer, brand owner or agent after the post-consumer use of the products, materials and packaging.

(4) A manufacturer, importer, supplier, distributor or retailer of products or packaging referred to in subsection (2) shall join an extended producer responsibility scheme within one year of the coming into operation of this Act.

(5) A producer, importer, converter, brand owner or distributor may, with the permission of the Authority, establish a collective producer responsibility organisation.

(6) There shall be one collective producer responsibility organisation for a specific waste stream.

(7) A consumer shall return to a seller, distributor, producer, importer, brand owner or agent the used product or packaging referred to in subsection (2).

(8) The Cabinet Secretary, in consultation with the standards body and the Authority, may prescribe design standards for the products or packaging referred in subsection (2).

(9) Extended producer responsibility schemes and collective producer responsibility organisations shall submit annual reports to the authority specifying the type and amount of waste generated by the participants in the schemes, the manner in which the waste was collected, managed and disposed of, and any other information that the Authority may prescribe from time to time.

(10) The Cabinet Secretary shall make regulations on extended producer responsibility and special return marks and labels for products and packaging referred to in subsection (2).

Materials recovery facilities.

14. (1) Each county government shall establish a materials recovery facility.

(2) A materials recovery facility shall be used for final sorting, segregation, composting and recycling of waste generated or transported to the county and transport the residual waste to a long-term storage or disposal facility or landfill.

(3) A materials recovery facility shall be licensed by the Authority.

(4) The Cabinet Secretary shall, in consultation with the Authority and county governments, make regulations for the establishment and proper management of materials recovery facilities.

PART IV—WASTE MANAGEMENT FUNCTIONS

Functions of the Cabinet Secretary.

15. (1) The Cabinet Secretary shall prescribe measures for the reduction of waste, and the environmentally sound reuse, recycling and recovery of waste.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall—

(a) develop regulations on waste management;

(b) in consultation with county governments, publish model county waste management laws and regulations; and

(c) develop a National Waste Management Strategy.

Functions of accounting officers of public entities.

16. (1) The accounting officer of a public entity shall be responsible for the management of waste generated the entity in accordance with this Act.

(2) Notwithstanding the generality of subsection (1), an accounting officer of a public entity shall ensure that—

(a) any person who is in charge of or controls a facility or premises which is under the jurisdiction of the accounting officer and which generates waste shall minimise the waste generated by adopting the following cleaner production principles including—

(i) improvement of production processes through conservation of raw materials and energy;

(ii) eliminating the use of toxic raw materials;

(iii) reducing toxic emissions and waste;

(iv) monitoring the product cycle by—

(A) identifying and eliminating potential negative impacts of the product;

(B) enabling the recovery and reuse of the product;

(C) reclamation and recycling; and

(D) incorporating environmental concerns in the design process and disposal of a product;

(b) any person whose activities generate waste shall collect, segregate and dispose of or cause to be disposed of the waste in accordance with this Act;

(c) any person whose activities generate waste ensures that the waste is transferred to a person who is licensed to transport and dispose of the waste in accordance with this Act;

(d) any person whose activities generate waste shall segregate the waste by separating the hazardous waste and dispose of the waste in a facility that has been established by the county government or Authority for that purpose;

(e) the entity cleans up and restores the site to its natural state or near its natural state;

(f) the entity prepares a waste management plan and integrates the plan in its corporate strategy and plan; and

(g) the entity has provided waste segregation receptacles at its premises for organic, plastic and general dry waste and the waste generated is recycled through a licensed service provider.

(3) Notwithstanding the provisions of this section, a person in charge of an entity who, in the discharge of his or her duties, is involved in waste generation or disposal processes shall be responsible for his or her actions and omissions.

(4) A person in charge of a public entity that discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or a term of imprisonment not exceeding one year or both.

(5) An officer of an entity who discharges waste contrary to the provisions of this section commits and offence and shall, on conviction, be liable to a fine not

exceeding fifty thousand shillings or imprisonment not exceeding six months or both.

Functions of county governments.

17. Each county government shall—

(a) enact a county sustainable waste management legislation within one year of the coming into operation of this Act;

(b) establish waste recovery and recycling facilities and sanitary landfills for the disposal of non-recoverable waste;

(c) incentivise the collection and separation of waste at source in neighbourhoods and informal settlements;

(d) ensure that cities plan for waste management facilities as part of city expansion;

(e) prepare a county waste management plan and quarterly monitoring reports for cities, urban areas, municipalities and administrative units; and

(f) submit annual reports to the Authority and county assembly on the implementation of the county waste management plan; and

(g) maintain data on waste management service provision by waste management service providers and share the information at least once in each year through the national waste information system developed under section 8 (1) (f).

Waste management plans.

18. (1) Each county government shall prepare and submit to the county assembly for approval an integrated waste management plan once every five years.

(2) Each county government shall include the approved integrated waste management plan in the integrated county development plan.

Duties of private sector entities.

19. (1) A private sector entity shall prepare a three-year waste management plan and submit an annual monitoring report to the Authority which shall specify—

(a) the actual quantities of waste generated by the entity;

(b) the waste management methods applied by the entity; and

(c) any other information that the Authority may require.

(2) A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than two hundred thousand shillings and the person responsible for the private sector entity shall, in addition to the fine imposed on the entity, be liable to imprisonment for a term not exceeding three months.

(3) A private sector entity shall—

(a) adopt the following cleaner production principles including—

(i) improvement of production processes through conserving raw materials and energy;

(ii) limiting the use of toxic raw materials to safe laws within such time as may be prescribed by the Authority;

(iii) reducing toxic emissions and wastes; and

(iv) monitoring the product cycle from beginning to end by;

(b) identify and eliminate potential negative impacts of the product;

(c) enable the recovery and reuse of the product where possible;

(d) reclaim and recycle;

(e) incorporate environmental concerns in the design, process and disposal of the product;

(f) collect, segregate and dispose of or cause to be disposed of the waste in accordance with this Act;

(g) shall segregate waste by separating hazardous waste from non-hazardous waste and dispose of the waste in a facility provided by the county government or the Authority;

(h) transfer the waste to a person who is licensed to transport and dispose of the waste in accordance with this Act;

(i) clean up and restore the site it was using to its natural state;

(j) prepare a waste management plan and integrate it in its corporate strategies and plans; and

(k) provide waste segregation receptacles at its premises for organic, plastic and general dry waste.

(4) A private entity that generates waste shall segregate the waste by separating hazardous waste and dispose of the hazardous waste in a facility provided by the county government or the Authority.

(5) A private entity or any its officers that fails to manage waste in accordance with this Act commits and offence and on conviction, shall be liable to a fine—

(a) of at least five per cent of the entity's net income registered in the previous tax year or five million shillings whichever is the higher; and

(b) of at least two hundred thousand shillings for the entity's officers.

(6) Where a private entity or any of its officers has been convicted of an offence under subsection (2), and the entity continues to fail to comply with the provisions of this Act, the entity or the officer commits a further offence and for each day the failure continues on conviction, shall be liable to a fine—

(a) not exceeding zero-point-five per cent of the entity's net income registered in the previous tax year, for the private entity; and

(b) not exceeding twenty thousand shillings for the entity's officers.

PART V—PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

Access to information.

20. (1) The Authority shall keep the records on waste management submitted to it and maintain their confidentiality where the circumstances so require.

(2) A person may have access to the records submitted to the Authority under this Act.

(3) A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records.

(4) The Authority may, with the approval of the Cabinet Secretary and by notice on the *Gazette*, prescribe reasonable fees to be levied for processing applications for access to information under this section.

Public participation.

21. Public consultation and participation under this Act shall be conducted in accordance with the procedures set out under the Constitution, this Act and any other relevant written law.

PART VI—FINANCIAL PROVISIONS

Fees to be allocated to county waste management facilities.

22. Each county government shall allocate all waste collection and tipping fees or other charges levied on waste received at a county government waste management facility for the improvement of waste management activities and services.

Incentives for waste management.

23. (1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, introduce incentives—

(a) for locally produced and imported sustainable waste management equipment and materials including collection machines, equipment for recycling, composting, transporting and waste compacting; and

(b) to expand private investment in materials recovery and recycling activities.

(2) The incentives contemplated under subsection (1) shall apply to—

(a) importers of sustainable waste management equipment, air pollution control equipment, recycling and composting equipment;

(b) private investors to expand investment in waste recycling and enhance circular economy; and

(c) private operators of certain classes of waste management equipment including equipment for recycling and composting.

(3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, prescribe incentives and make regulations for the preferential use of recovered or recycled materials over newly manufactured materials with no recycled content.

PART VII—MONITORING AND COMPLIANCE

Monitoring and evaluation by the Authority.

24. (1) The Authority shall monitor and review the performance of private entities and county governments in carrying out their functions under this Act.

(2) The Authority shall develop regulations prescribing the procedure for reporting on compliance with this Act by private entities.

(3) Notwithstanding any other provision in this Act, the Authority may, by notice in the *Gazette*—

(a) require a private entity that has waste management obligations to prepare reports on the status of the entity's performance of the entity's waste management obligations and prescribe the period for reporting; and

(b) require a private entity that fails to comply with its waste management obligations to prepare a report within a specified time on the actions it has taken, is taking or intends to take to secure the entity's future performance of the entity's obligations.

Compliance and enforcement.

25. (1) The Authority shall—

(a) monitor, investigate and report on whether public and private entities are in compliance with the provisions of this Act; and

(b) monitor and enforce compliance with the provisions of this Act.

(2) In the performance of its functions under this Act, the Authority shall have all the powers necessary for the purpose of monitoring and investigation including the power to enter premises of any private entity and make an enquiry relating to compliance with this Act.

(3) A person commits an offence if that person—

(a) hinders the Authority in the performance of its functions under this Act;

(b) fails or refuses to give information that the person may lawfully be required to give to the Authority; or

(c) gives false or misleading information to the Authority.

(4) A person who is convicted of an offence under subsection (3) shall be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years or to both.

Role of the National Environment Complaints Committee.

26. (1) The National Environment Complaints Committee shall establish a complaints and redress mechanism for the purposes of this Act.

(2) A person making a complaint on waste management to the National Environment Complaints Committee may submit evidence.

Partnership programmes.

27. (1) The Authority shall, in consultation with county governments, establish a partnership programme with waste generating industries and sectors for continuous education on waste to encourage compliance.

(2) The county executive committee member responsible for environmental management in each county shall develop a framework for inter-county co-operation on waste management including the sharing of waste treatment facilities, materials recovery facilities and waste disposal facilities for approval by the county assembly.

(3) The Cabinet Secretary shall develop regulations for the framework for inter-county co-operation on waste management.

PART VIII—GENERAL PROVISIONS

Restoration.

28. (1) A person who fails to manage waste in accordance with this Act shall be required to clean up and restore the site where the waste was being managed to its natural state.

(2) The Authority shall issue the person with a site restoration order if the person fails to clean up and restore the site in accordance with subsection (1).

(3) A restoration order issued under this section shall be effected in accordance with the Environmental Management and Co-ordination Act, 1999. No. 8 of 1999.

Dispute resolution.

29. Any person or an entity aggrieved by—

(a) a refusal to grant a license under this Act;

(b) the imposition of any condition, limitation or restriction on a license granted under this Act;

(c) any fee payable under this Act; or

(d) the imposition of a restoration order in accordance with section 27,

may, within sixty days of the occurrence of the event with which the person or entity is aggrieved, appeal to the National Environment Tribunal.

General penalty.

30. A person who contravenes a provision of this Act for which a penalty has not been prescribed shall, on conviction, be liable to a fine of not less than two million shillings and not more than four million shillings or to imprisonment for a term not exceeding four years or to both.

PART IX—PROVISIONS ON DELEGATED POWERS

Regulations.

31. (1) The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may provide for—

(a) anything required to be prescribed under this Act;

(b) take back schemes;

(c) the conversion of dumpsites into landfills;

(d) categories of waste segregation;

(e) design and identification of waste transportation vehicles;

(f) materials recovery facilities;

(g) collection schedules for sorted waste types; and

(h) any other matter required under this Act.

(3) For the purpose of Article 96 (4) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for the orderly conduct of the business and affairs of county governments, the Authority and the National Environment Complaints Committee;

(b) the regulations made under this section shall be of such a nature and scope, and within the limits specified in this section; and

(c) the principles and standards applicable to the regulations made under this section shall be those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013. Cap. 2. No. 23 of 2013.

PART X—MISCELLANEOUS MATTERS

Integrating waste management into school curricula.

32. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to education and the Authority, develop a curriculum on sustainable waste management within one year of the coming into operation of this Act.

Transitional provisions.

33. (1) The Cabinet Secretary shall, in consultation with county governments, develop a timetable for county governments to adopt the Act and regulations made thereunder.

(2) The Authority shall publish a model county waste management legislation and related subsidiary legislation on such date as the Cabinet Secretary may appoint.

(3) Regulations relating to waste management under the Environmental Management and Co-ordination Act, 1999, shall remain in operation until corresponding regulations under this Act have been published in the *Gazette*. No. 9 of 1999.

SCHEDULE (s. 21)

Provisions on Public Consultation

1. (1) Where this Act imposes a requirement for public consultation in matters relating to sustainable waste management policies, regulations, plans or actions, the respective national or county government entity or public entity shall publish a notice—

(a) in the *Gazette*;

(b) in at least two newspapers with a nationwide circulation;

(c) in at least one newspaper with a circulation in the locality in which the policies, regulations, plans or actions relate;

(d) in at least one radio station broadcasting in the locality in which the policies, regulations, plans or actions relate; and

(e) via the county executive committee member responsible for environmental matters in the county.

(2) The notice specified in subparagraph (1) shall—

(a) set out a summary of the policy, regulation, plan or action;

(b) state the place where the details of the policy, regulation, plan or action may be inspected; and

(c) invite written comments on, or objections to, the policy, regulation, plan or action from any interested person and specify to whom and the date by which the comments are to be submitted.

2. The respective national and county government entity or private entity shall make arrangements for the public to obtain copies, at a reasonable fee, of documents relating to the policy, regulation, plan or action which are in the possession of the entity.

3. The respective national or county government entity or private entity shall consider the—

(a) comments or objections received under paragraph (2); and

(b) comments or objectives received at a public meeting held in relation to the policy, regulation, plan or action, or received form any other source and in any other form.

4. The respective national or county government entity or private entity shall, by notice in the Gazette, inform any interested person of the decision relating to the policy, regulation, plan or action and the reasons thereof and the place where the decision may be accessed.

5. Where regulations under the Act so require, the respective national or county government entity or private entity shall convene a public meeting relating to the policy, regulation, plan or action before a decision is rendered on the policy, regulation, plan or action.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of the Bill is to establish the legal and institutional framework for the sustainable management of waste and to ensure the realisation of the constitutional provision on the right to a clean and health environment. The Bill is divided into ten Parts and one Schedule.

Part I of the Bill (clauses 1 – 4) provides for preliminary matters including the short title of the Bill, the definitions of key terms used in the Bill and the objects and general principles of the Bill.

Part II of the Bill (clauses 5 – 9) provides for policy, co-ordination and oversight of waste management, defines the role of the Cabinet Secretary, provides for the establishment of the Waste Management Council and its functions, spells out the functions of the National Environment Management Authority in terms of waste management and provides for the functions of county governments.

Part III of the Bill (clauses 10 – 14) provides for measures and actions including the role of the Cabinet Secretary and county governments regarding policies, regulations and standards, the administration of take-back schemes, the extended producer responsibility of entities engaged in the production, conversion and importation of products and packaging and the establishment and administration of materials recovery facilities.

Part IV of the Bill (clauses 15 – 19) provides for the waste management functions of the Cabinet Secretary, accounting officers of public entities and county governments. It also provides for the establishment and management of materials recovery facilities and the duties of private sector entities.

Part V of the Bill (clauses 20–21) provides for access to the information on waste management submitted and maintained by National Environment Management Authority and for public consultation and participation for the purposes of the Act.

Part VI of the Bill (clauses 22–23) provides for financial provisions including the allocation of fees for county waste management facilities, incentives for the production and importation of sustainable waste management equipment and for encouraging investment in materials recovery and recycling activities.

Part VII of the Bill (clauses 24 – 27) provides for monitoring, compliance and enforcement by National Environment Management

Authority, the role of the National Environment Complaints Committee in establishing a complaints and redress mechanism for the purposes of the Act and the establishment of partnership programmes by the Authority.

Part VIII of the Bill (clauses 28 – 30) provides for general provisions including the obligation for environmental restoration where waste management activities have taken place, dispute resolution mechanisms relating disputes under the Act and a general penalty for offences for which no specific penalty is provided for under the Act.

Part IX of the Bill (clause 31) provides for the power of the Cabinet Secretary to make regulations for the better carrying out of the provisions of the Act.

Part X of the Bill (clauses 32 – 33) provides for miscellaneous matters including the integration of waste management into school curricula and for transitional matters.

The Schedule to the Bill provides for the procedure to be followed in public participation as specified in clause 21.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom. Clause 31 of the Bill provides for the power of the Cabinet Secretary to make regulations for the better carrying out of the provisions of the Act.

Statement on how the Bill concerns county governments

The Bill affects the functions of County Governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 15th April, 2021.

AMOS KIMUNYA,
Leader of Majority Party.