

**REPORT OF THE BILL REVIEW WORKSHOP HELD AT PANARI SKY  
CENTRE-NAIROBI ON APRIL 1<sup>ST</sup> 2010 FROM 8.30AM-4.30PM**



**Participants during the Panari Climate Change Draft Bill Review, April 1<sup>st</sup> 2010.**

**Introduction**

The workshop was organized ostensibly to enable KCCWG members to make substantive interrogation and input to the proposed Climate Change Bill 2010. A case for stakeholder-drafter engagement was high especially in building understanding as well as generating clarity and goodwill both around the content and the process of the proposed legislation.

**Commencement of Workshop**

The meeting began with prayers from the convenor, KCCWG and was immediately followed with introduction of members present who were allowed to make brief remarks as to their names, organizations they represent as well as their expectations of the workshop.

**Preliminary Issues**

The Programmes Officer, KCCWG made progress overview in so far as the ongoing activities are concerned especially updates of the post February 24<sup>th</sup> 2010 meeting. He proceeded to present the projected KCCWG 2010 Plan.



**Mr Bernard Agwanda of ESEA making a contribution on the Bill during the workshop.**

The meeting noted the forth-coming Climate Change Conference slated for May 19<sup>th</sup> -21<sup>st</sup> 2010 as reported by the representative from the Ecological Society of East Africa.

### **General Comments & Observations on the Proposed Legislation**

During the introductory session, the following comments and general observations were noted;

- i. The need to bring within the purview of the proposed legislation, the plight of the pastoralist communities
- ii. The need to generate clarity and in-depth appreciation of the concept of climate change in so far as definition and related issues/factors are concerned
- iii. The need to identify avenues for wider consultations around the bill and the underlying issues
- iv. The need to conduct an audit of existing legislations germane to the subject of climate change with the view to addressing inherent anomalies, inconsistencies and conflicts if any

- v. The need for the drafter of the bill and by extension, KCCWG members to interact and accordingly make due consideration of the just concluded Government Strategy Paper on Climate Change.
- vi. The need to identify policy gaps in the bill especially taking into account the fact that the bill is being drafted in the absence of a plausible policy on climate change
- vii. The import of keeping alive the background of how the bill came into existent especially remembering the fact that it started as a private members bill by virtue of Hon. Franklin Bett' intervention
- viii. The need to conduct comprehensive research and documentation on the impact of the proposed legislation backed by comparative case studies and financial projections
- ix. The need to ensure participation in decision making by local communities as they are worst affected by vicissitudes of climate change
- x. The need to understand the transcendental factor of climate change especially taking into account the fact that it touches on various facets of societal life
- xi. Understanding climate change beyond the environment entails holistic appreciation of issues by engendering a paradigm shift from current culture of depletion, wastage and death to a new culture of renewal, conservation and life

### **Draftsman' Overview and Presentation**

The drafter of the proposed legislation, Climate Change Bill 2010 made the following remarks;

- ✓ That his encounter with the bill was made possible through Dr.Mutunga who approached him to do the drafting for KCCWG
- ✓ That by virtue of his current position as the Secretary of the Law Reform Commission, he has participated in the drafting of several legislations as well as served in National Task Forces such as the Task Force on Judicial Reforms
- ✓ That the current bill is very raw hence should elicit open, frank and bold assessment and analysis as is practically possible
- ✓ That the Current Bill is one of its own as it is the first of its kind in Sub-Saharan Africa and possibly in Africa
- ✓ That initially the concept of climate change was limited to the reduction of greenhouse gas emissions and the first draft he did was christened Greenhouse Gas Emissions Reduction Bill hence the current draft, the Climate Change Bill 2010 is a refinement of the initial draft
- ✓ That having conducted a comparative appraisal of existing legislations especially the United Nations Framework Convention on Climate Change and the Kyoto Protocol, he is considered opinion that there is no single country with a generic legislation on climate change as there exists varied concepts on the subject of climate change

- ✓ He implored KCCWG members to understand the interpretative nuances and complexities of legislation and the need to employ a progressive culture of interpreting legislations devoid of unnecessary prejudices and sideline considerations

### **Substantive Presentation by the Draftsman**

Dr. Dache provided a lucid summation of the content of the proposed bill beginning with the exposition of technical terms used and did provide the requisite explanation as to such terms as long title, short title and commencement, interpretation, objectives and purpose and connected provisions. Dr.Dache proceeded to highlight the salient features of the proposed legislation with an intermittent interlude for plenary inputs and comments.



**Dr Mutunga contributing on the process and content of the desired Bill**

### **General comments and reactions from KCCWG members**

- ❖ Ensure the bill addresses historical perspectives and effects of climate change on livelihoods as well as traditional practices of local communities and how the bill can benefit local communities

- ❖ Explore the merits and demerits of limiting the scope to Kenya' situation or whether broadening the scope of the bill will help generate value for the climate change discourse
- ❖ Provide for an authoritative latitude/platform for KCCWG in the proposed legislation
- ❖ The need to modify the language so as to communicate effectively to the locals. There is need for a simplified version to communicate effectively to local communities
- ❖ Embolden Human Resource Development & Education as a thematic programmatic areas
- ❖ There is need to engage NEMA and EMKA on the proposed bill
- ❖ There is need to build a strategy that will bridge the gap between paper policy and policy implementation
- ❖ Ensure sensitivity in application of terms. For instance replace the term 'slums' with 'peoples settlements'
- ❖ Place a higher degree of responsibility on the government by replacing 'will' with 'shall'
- ❖ Ensure popular public participation through community dialogue forums on the proposed legislation for coordinated and systematic public partnership, input and ownership. Define the roll-out plan to reach provinces and ensure systematic public engagement

#### **Substantive/Specific Comments from KCCWG members**

- i. **Long Title:-**Re-organize and broaden the long title so as to include adaptation, climate sensitive development, Human development, regeneration of flora and fauna, responsibility for past actions, stakeholder participation and consultation
- ii. **Objects & Purpose:-**Build within the body of objects and purpose, paradigm shift from depletion, wastage and death to renewal, conservation and life
- iii. **Public Engagement:-**Under public engagement ensure the following; On the commencement of this Act, Government *in partnership with stakeholders shall facilitate* the development of a public engagement strategy setting out the steps it intends to take
- iv. Revise article three to read- The Government *in partnership and/or consultation with stakeholders* may from time to time, and shall, before the end of the fifth (5<sup>th</sup>) year after the strategy was first published; or last reviewed, review the strategy
- v. Revise article 5 by inserting the words *climate sensitive* so as to read sustainable and climate sensitive development
- vi. Revise article 6 so as to include, the government shall conduct an annual audit of the budget to establish whether the proposed activities are responsive to the national climate agenda

- vii. **Climate Change Programmes:-**Revise article 8 so as to read the Government in partnership with stakeholders, shall prepare and implement climate programmes
- viii. Broaden activities under article 8(2) to include case and comparative studies, model (homegrown) case development
- ix. Revise article 8 (6) to ensure the Government takes progressive measures or interventions with reference to climate change
- x. **Modifying Climate Change Programmes:-**Revise article 9 to ensure progressive modification of both the programmes and the criteria set-out under section 8
- xi. **Mitigation & Adaptation:-**Provide for an independent body to conduct annual programme audits as well develop periodic status reports
- xii. **Duty to Produce a Land Use Strategy:-**Mainstream stakeholder participation and engagement in the development of land use strategy
- xiii. **Duty to Promote Energy Efficiency:-**Provide for stakeholder participation in the development of the plan for promoting energy efficiency
- xiv. Provide for stakeholder participation in the progressive review of the Energy efficiency Plan
- xv. **Waste Prevention and Management Plans:-**Provide for public education and engagement on waste prevention and management plans
- xvi. Underscore the need for paradigm shift from wastage to renewal and conservation by stating that waste is otherwise value that can be mobilized constructively for development
- xvii. Broaden targets for reduction of packaging to include reduction of pollution. Factor in polluter pays principle as well as corporate social responsibility
- xviii. **Designation of Scheme Administrator for Deposit and Return Schemes:-**Provide for stakeholder consultation in the establishment of the body. In the alternative provide for set criteria to guide the establishment of such a body
- xix. **Green-house Gases and Carbon Units:-**Demystify the concept of green-house gases and carbon units by ensuring progressive modification of the definition so as to make sense to the local communities
- xx. Mainstream responsibility for past actions and emissions
- xxi. Stake Kenya' unequivocal commitments to international climate agenda especially in the ongoing efforts at building a responsive climate regime globally, regionally and locally
- xxii. Provide for independent assessment, monitoring and audit of government commitment, energy programmes, activities and reports

- xxiii. Provide for an advisory think-tank or expert agency on green-house management and technical assessment
- xxiv. Reduce the powers of the minister by ensuring due consultation with stakeholders before making any regulatory interventions -See Article 30 (4&5)
- xxv. **Advisory Functions:-**Provide for stakeholder consultation in the establishment of such bodies. In the alternative, provide for clear guidelines and set criteria for the establishment of such bodies
- xxvi. Provide for merit and pursuit of excellence as core values and key considerations in the composition of such bodies
- xxvii. Transform Kenya Working Group on Climate Change into an Advisory Council or Authority
- xxviii. **Climate Change:-**Mainstream the principle of fidelity to the common good of society and inter-generational responsibility
- xxix. Ensure stakeholder participation and consultations
- xxx. **Monitoring Compliance:-**Establish an independent agency to conduct continuous monitoring and periodic evaluations
- xxxi. Scale down direct government/executive participation in monitoring



**Susy Wandera contributing on the way forward for the draft Bill**

### **Discussions on the Way Forward**

A brief presentation by Dr.Mutungu highlighted the projected actions mainly aimed at enlisting public participation and soliciting further input around the bill. The following are noteworthy;

- ✓ The Draftsman to produce another draft which will be presented to KCCWG members in a general meeting
- ✓ The draft will be used for the projected regional meetings and other strategic consultations
- ✓ A preliminary draft will suffice for structured and formal engagements with the ministry and other key stakeholders
- ✓ An environmental lawyer will be engaged to conduct an expert analysis of the draft as well to provide the requisite comments and legal counsel
- ✓ A formal presentation will be done to the designated member of parliament (Hon.Otichilo) for onward official presentation and tabling in parliament
- ✓ Other critical organs for consultation will include the Parliamentary Committee, PANAREC, Office of the Attorney General, Parliament, etc, to facilitate informed engagement and focused parliamentary debate, smooth publication of the bill and finally ensure that the bill is accented to by the president

### **Other important recommendations and observations include the following namely;**

- i. The need to engage the mother ministry alongside other relevant ministries
- ii. The need to draw clear timelines that factors the engagement period around the bill upto its enactment into law
- iii. Need to develop a simplified version of the Bill for public engagement especially for enlisting participation of local communities
- iv. KCCWG will impress upon the parliamentarians the need to measure up to their legislative mandate seriously by ensuring popular parliamentary support for the bill
- v. That the National Steering Council will ensure that KCCWG provides the requisite counsel and leadership in so far as the proposed legislation is concerned
- vi. KCCWG to ensure that the stakeholders are brought on board and are supportive of the bill especially the ministry, NEMA, EMKA, etc.
- vii. KCCWG to organize regional and strategic workshops to create awareness and provide opportunity for dialogue and input into the bill
- viii. KCCWG to put in place a team of three persons who would help simplify the proposed language into a palatable language

### **Highlights of the Report on Thematic Committee on Education**

The convenor of the Committee on Education made brief introductory remarks on the constitutive efforts and the progress the committee has registered so far. She informed KCCWG members present of the plan to launch an awareness and sensitization programme in primary schools specifically targeted at enlisting the participation of head teachers and other teachers. Other critical actors to be consulted and possibly brought on board include Kenya Institute of Education. The programme will eventually entail establishment of environmental clubs.

Reaction from members elicited the following observations;

- ✓ The need for the Committee to finalize its constitutive processes by finalizing its recruitment of members as well as clear schedules of committee meetings and projected activities (tentative plan for the year)
- ✓ The need to conduct thematic research as was the case with other thematic groups. This will no doubt aid the committee in the development of a comprehensive concept as to the content and scope of operation as well as an engagement strategy paper.

### **Important Annexes**

The following are necessary accompaniments to this report:

- A. Workshop Programme/Time Table- Annex 1.
- B. Projected Plan of Action Around the Proposed Legislation, Climate Change Bill 2010-Dr.Mutunga' Presentation, Chart- Annex 3 (see attached separately).
- C. List of Participants- Annex 2.

ANNEX 1

**PROGRAMME FOR THE BILL WORKSHOP**  
**VENUE: PANARI HOTEL, MOMBASA ROAD**  
**1<sup>st</sup> APRIL, 2010**

<b>Time</b>	<b>Activity</b>	<b>Facilitator</b>
8.00- 8.30 am	Arrival and registration	All
8.30- 9.00 am	Welcome and Workshop Objectives	Convener
9.00-9.30 am	Presentation of the Engagement Document for the Proposed donor meeting	Program Officer
9.30- 10.00 am	<b>Tea Break</b>	
10.00- 10.30 am	The Process and Outcomes of the Draft Bill	Dr Mutunga
10:30 – 1:00 pm	Systematic Review and Articulation of the Bill	Joash Ndache
1.00- 2.00 pm	<b>LUNCH BREAK.</b>	
2.00-3.00 pm	Plenary discussions of the Bill	All
3.00-3.30 pm	-The rollout Plan: <ul style="list-style-type: none"> <li>• Provincial Sensitization</li> <li>• The MPs' Workshop</li> </ul>	Dr Mutunga
3.30- 4.00 pm	The Framework of the education thematic group	Convener
4.00- 5.00 pm	Way Forward	All
5.00-5.30pm	<b>TEA, LOGISTICS AND DEPARTURE</b>	

**ANNEX 2.****LIST OF PARTICIPANTS 1<sup>ST</sup> APRIL, 2010.**

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