



CLIMATE CHANGE LEGISLATION IN KENYA: 2008-2016

The Story of the Journey from 2008 – 2016





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ACRONYMS

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| CAFOD | Catholic Agency for Overseas Development |
| COP | Conference of Parties |
| DFID | Department for International Development |
| IPCC | Intergovernmental Panel on Climate Change |
| KCCWG | Kenya Climate Change Working Group |
| KCJWC | Kenya Climate Justice Women Champions |
| KEPSA | Kenya Private Sector Alliance |
| NCA | Norwegian Church Aid |
| PANERECC | Parliamentary Network on Renewable Energy and Climate Change |
| REDD | Reducing Emissions from Deforestation and Forest Degradation |
| UNFCCC | United Nations Framework Convention on Climate Change |

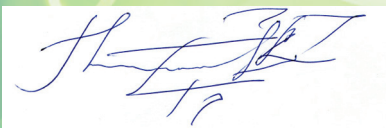
ACKNOWLEDGEMENT

The Climate Change Act 2016 could not have been realized if it had not been for the concerted and consistent efforts of different stakeholders across the country. We are immensely grateful to them for putting Kenya on the climate legislation map. Because of their efforts, Kenya's over 40 million people will directly participate in the mitigation and adaptation to climate change effects at present and in the future.

These stakeholders include: Government of Kenya officials from the current and previous regime, with a special mention to the then Office of the Prime Minister led by the then Prime Minister Rt. Hon Raila Odinga and the Ministry of Environment and Natural Resources, legislators from the tenth and eleventh parliaments, especially Hon. (Dr) Ottichilo, mover of the first Climate Change Bill; the dedicated members of a vibrant climate change movement in Kenya led by the Kenya Climate Change Working Group Board; the hundreds of community members who provided their input into the Bill through climate hearings across the country; Kenya Private Sector Alliance; Kenya Association of Manufacturers; the Faith Community; consultants who helped in technical aspects of the Bill process; and Development Partners.

The development partners who provided financial and technical resources in the course of the process include: CAFOD, Trocaire, Heinrich Böll Foundation, SUNY, Norwegian Church Aid, USAID, DfID and Oxfam. We are grateful to them for facilitating the process at different stages.

Finally, we acknowledge the overall leadership of the former President, His Excellency Hon. Mwai Kibaki and current President, His Excellency Hon. Uhuru Kenyatta. Their goodwill propelled the Bill process forward and this led to its enactment into law.



John Kioli
Chairman, Kenya Climate Change Working Group
August 2016



FOREWORD

The Kenya Climate Change Act 2016 has immense potential of empowering the government and people of Kenya to tackle the effects of climate change as well as leverage on its potentials. The Act will protect Kenyans from the ravages of climate change and ensure low carbon economic growth. Such green economy-centered development is the path of the future. I am pleased that Kenya is already treading on this path, thanks to the National Climate Change Response Strategy and the awareness created during the formulation process of the Act.



***Hon. (Dr) Wilbur Ottichilo, CBS,
MP***

Since the commencement of its formulation in 2007, this Act has been through a long and difficult journey. Despite the challenges we faced, we were determined to ensure the Bill is enacted into law for the benefit of the present and future generations. I am therefore proud to have played a role in bringing this Act to fruition, together with my parliamentary colleagues, the Executive, the civil society, private sector and all Kenyans of goodwill who tirelessly nurtured the Bill along the way.

The Kenya Climate Change Working Group (KCCWG) played a pivotal role in mobilizing the civil society across the country to provide input into the Bill formulation process. They also coordinated most stages of this process by coordinating the technical meetings and public climate change hearings that fed into and fine-tuned the Act.





The Ministry of Environment and Natural Resources, which will coordinate the implementation of the Act played a crucial role in the formulation process. Its leadership and support provided great impetus. My colleagues both in the National Assembly and Senate and particularly members of the Departmental Committees on Environment and Natural Resources played an instrumental role in conducting public hearings and supporting the Bill on the floors of both houses.

Together, we soldiered on even when the first version of the Bill failed to receive Presidential assent in 2013 due to alleged limited public participation in the formulation of the Bill. Instead of giving up, we went back to the drawing board, rolled up our sleeves and painstakingly pushed forward the Bill for two years and ensured that public participation was wide and all inclusive, and the Ministry of Environment and Natural Resources coordinated the entire process.

This Act was enacted on 6th May 2016 and its now law, putting Kenya among the first countries in the world to enact a comprehensive climate change law. As a nation, we should be proud of this feat. But more importantly, we should ensure full implementation of this Law.

Lastly, I wish to most sincerely thank all those who participated in the formulation and enactment of this Act into Law and urge all Kenyans to ensure that the law is implemented fully for the benefit of all Kenyans and mankind.

Thank you.

Hon. (Dr) Wilbur Ottichilo, CBS, MP
Member of Parliament, Emuhaya Constituency and
Mover of the Climate Change Bill 2016

August 2016





EXECUTIVE SUMMARY

Building a house is a multi-layered exercise, not a singular event. Similarly, developing the Climate Change Act 2016 has been a multi-layered exercise that required the concerted and specialized efforts of different players.

They ranged from pastoralists from the dusty plains of Wajir to youth from Nairobi; farmers from lush fields of Kakamega to women from the Lakeside City of Kisumu; climate experts from Nairobi to fisher folk from the coastal city of Mombasa; legal experts from the capital city to villagers from Mwingi; legislators from the tenth and eleventh parliaments to Ministers and Government officials from the same period.

Together with private sector players, donors and Kenyans from all walks of life, these are the people who contributed in various ways to the development of the Bill. They generously gave their time, expertise, ideas, goodwill and resources to ensure that the Bill saw the light of the day despite the headwinds that it faced.

These headwinds were particularly prominent in the legislative corridors of Parliament, where moving a Bill to an Act can be a daunting marathon that is not for the faint hearted. Such legislative hurdles, together with



resource scarcity and lack of political goodwill are key reasons why climate change legislation in Africa remains thin on the ground. Indeed, Kenya is one of the first African countries to reach such an advanced stage in climate change legislation.

This success was borne from the timeless words of a Swahili proverb, '**atakaye hachoki.**' A person in need never gets tired.

KCCWG, KEPSA, the Hon. (Dr) Ottichilo-led legislators and all other players in Team Climate Warriors desperately wanted the climate change legislation to come through for their country despite of the challenges faced. So they soldiered on in united effort.

Indeed, climate legislation can be slippery and elusive. Professor Harald Winkler, Director of the University of Cape Town's Energy Research Centre once captured this elusiveness beautifully when he observed that climate change policy is "an area which is generally too political for scientists and too scientific for politicians." As the civil society representative of climate change initiatives in Kenya, KCCWG has been a reliable bridge between policy and politics. This lent it unique capabilities to champion and steer the process of legislating climate change action in Kenya.

In treading down this path, KCCWG ensured that Kenya took firm steps towards joining the community of nations that had legislated climate change action. As reported by the *2015 Global Climate Legislation Study*, 'in 2014, 46 new laws and policies were issued by 34 countries. Of these laws, 21 were legislative (passed by parliaments) and 25 were executive (enacted by governments).'





One of the Nations that passed climate change legislation was Denmark. The Danish parliament passed the Climate Change Act on 11 June 2014. The Act established an independent Climate Change Council with similarities to the Council proposed in Kenya's Climate Change Bill.

Six years earlier in 2008, the United Kingdom had enacted the Climate Change Act 2008. This particular Act was a harbinger to subsequent climate legislation. In its introduction, the Act laid out a clear roadmap, 'to set a target for the year 2050 for the reduction of targeted greenhouse gas emissions; to provide for a system of carbon budgeting; to establish a Committee on Climate Change; to confer powers to establish trading schemes for the purpose of limiting greenhouse gas emissions.'

But even as Kenya followed in the example of such progressive climate legislation, Australia was walking in the opposite direction. In 2014, it became the first developed Nation to repeal huge chunks of its carbon tax and Clean Energy Package. Such was the conflicting global context of climate legislation within which Kenya was developing its own climate legislation.

But despite such mixed signals from the international community, Kenya has forged ahead until its climate change Bill is now Law.





The Climate Change Act 2016 is a result of a finely crafted Bill whose articles clearly lay out the pathways that Kenya needs to follow in the monumental fight against climate change.

The Act duly elaborates its legislative quest in its introduction, 'AN ACT of Parliament to provide for the legal and institutional framework for the mitigation and adaptation to the effects of climate change; to facilitate and enhance response to climate change; to provide for the guidance and measures to achieve low carbon climate resilient development and for connected purposes.'

In pursuance of these goals, the Act establishes a National Climate Change Council that will be a climate change policy powerhouse that will play an advisory role to both national and county governments. In addition, this Council will 'provide coordination between and amongst various governmental and non-governmental stakeholders dealing with matters related to climate change.'

Beyond Kenya's borders, the Council will report back to the international community and coordinate climate change-related negotiations. Within the country's borders, the Council will ensure that climate change information and participation will be gender-responsive.

The Council has numerous other tasks that will ensure leadership and specificity of climate change action in the country. It will be housed in the Office of the President, which will grant it ultimate political goodwill and enable speedy resolution of cross-cutting issues. Its Secretariat will be a Directorate that will be led by a publicly appointed Director and will be domiciled in the Ministry of Environment and Natural Resources.

The Act further spells out the climate change response measures and action that the country should take. It states, 'The Council shall coordinate the formulation of national and county climate change action plans, strategies and policies and shall make the action plans, strategies and policies available to the public in the prescribed form.' In walking down this path, the Council is nodding firmly to the truism that 'whoever fails to plan plans to fail.'

The Act further stipulates the measures that should be contained in the action plans. Consequently, national and county level action plans will have standard format and content as well as actionable plans.





The Act further spells out the direction of climate change-related duties of public and private entities. It states that the Council may, 'impose different climate change duties on different public and private entities or specific categories of public or private entities.' This will ensure that in executing the Act, the buck will always stop somewhere through clarity of responsibility. To ensure accountability of action from the public sector, the Act calls for annual progress reports from all government entities responsible for climate change action. It also creates room for periodic preparation of climate change reports and reviews by independent bodies.

In acknowledgement that very little can be accomplished without funding, the Act sets up a Climate Change Fund that shall receive Government funds; donations; endowments; grants and gifts specifically designated for the Fund. This Fund will consequently ensure that the government will annually budget for climate change activities and programs.

The Act also provides miscellaneous provisions in several areas, including: preparation of annual financial reports; preparation of overall reports to the President, Parliament and the county assemblies; regular publication and publicity of climate change information affecting Kenya; right of any Kenyan to apply for and receive climate change information subject to certain conditions; annual public engagement strategy.

The Act further specifies delegated legislation that will enable the Council to, amongst other functions, 'make regulations and give directions for the orderly conduct of business of the Council.' This lays further emphasis on the specificity of responsibility to ensure both timely execution and accountability.

Finally, the historic Climate Change Act 2016 provides a schedule that lays out the procedure for public participation. This will ensure that being an Act of Parliament and the law of the land, it will have strong public ownership and participation.





1. INTRODUCTION

Climate change is probably the most complex and challenging environmental problem facing the world today. According to the United Nations Framework Convention on Climate Change (UNFCCC), climate change is “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods”. Currently, the intriguing questions include weather uncertainties, persistent climatic abnormalities, rampant environmental degradation and eminent food insecurity. While the Earth’s climate has changed throughout history, the current warming trend has been of particular concern because most of it is human-induced and proceeding at a rate that is unprecedented. Climate Change is therefore emerging as perhaps the most important international development challenge of the 21st century. The economic and social welfare of societies and their long term sustainability is increasingly becoming vulnerable to climate change risks.

As a result of global warming, the type, frequency and intensity of extreme events, such as tropical cyclones (including hurricanes and typhoons), floods, droughts and heavy precipitation events, are expected to rise even with relatively small average temperature increases. Changes in some types of extreme events have already been observed; for example, increases in the frequency and intensity of heat waves and heavy precipitation events (Meehl et al. 2007).

The basis of a climate change governance framework stems from the provisions of the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC and corresponding Kyoto Protocol put the onus for early action on industrialized countries, citing common but differentiated responsibilities for their participation (Ashton et al., 2003).

The United Nations Framework Convention on Climate Change (UNFCCC) is an international environmental treaty negotiated at the Earth Summit in Rio de Janeiro from 3 to 14 June 1992, then entered into force on 21 March 1994. The UNFCCC objective is to “stabilize greenhouse gas





concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". The framework set no binding limits on greenhouse gas emissions for individual countries and contains no enforcement mechanisms. Instead, the framework outlines how specific international treaties (called "protocols" or "Agreements") may be negotiated to set binding limits on greenhouse gases.

Initially, an Intergovernmental Negotiating Committee produced the text of the Framework Convention during its meeting in New York from 30 April to 9 May 1992. The UNFCCC was adopted on 9 May 1992, and opened for signature on 4 June 1992. UNFCCC has 197 parties as of December 2015. The convention enjoys broad legitimacy, largely due to its nearly universal membership.

The parties to the convention have met annually from 1995 in Conferences of the Parties (COP) to assess progress in dealing with climate change. In 1997, the Kyoto Protocol was concluded and established legally binding obligations for developed countries to reduce their greenhouse gas emissions in the period 2008-2012. The 2010 Cancún agreements state that future global warming should be limited to below 2.0 °C (3.6 °F) relative to the pre-industrial level. The Protocol was amended in 2012 to encompass the period 2013-2020 in the Doha Amendment, which - as of December 2015 - not entered into force. In 2015, the Paris Agreement was adopted, governing emission reductions from 2020 on through commitments of countries in ambitious Nationally Determined Contributions.

Although Africa is the continent least responsible for climate change, it is particularly vulnerable to the effects, including reduced agricultural production, worsening food security, the increased incidence of both flooding and drought, spreading disease and an increased risk of conflict over scarce land and water resources. Africa is particularly vulnerable to climate change due to its poverty levels, high dependence on natural resources, rain fed agriculture and weak governance structures.

1.1 Impacts of Climate Change in Kenya

In Kenya, this phenomenon is already unmistakable and intensifying at an alarming rate as is evident from countrywide temperature increases and rainfall irregularity and intensification. Over the last decade, climate shocks in Kenya such as droughts and floods have increased in frequency and





the two rainy seasons, which used to start within the same weeks every year, are now unpredictable. These extreme events have had negative socio-economic impacts on almost all sectors such as health, agriculture, livestock, environment, hydropower generation and tourism.

Climate hazards have caused Kenya considerable losses over the years, with the effects felt across all sectors. The main climate hazards include drought, flooding and sea level rise which cause economic losses impacting the country's Gross Domestic Product (GDP). Drought is the prime recurrent natural disaster in Kenya. The costs of the drought over 2008-2011 have been estimated at Ksh 968.6 billion (US\$ 12.1 billion, which includes Ksh 64.4 billion (US\$ 805.6 million) for the destruction of physical and durable assets, and Ksh 904.1 billion (US\$ 11.3 billion) for financial losses across all sectors.

Additional economic losses result from flooding events estimated to be 5.5% of (GDP) every seven years. Frost attacks have also caused losses in tea industry, with the 2011-2012 event costing the industry more than Ksh1.3 billion (US\$ 15 million). Hence, the country needs to focus on adaptation to increase the resilience of communities and economic sectors against current and future climate hazards.



2. CLIMATE CHANGE LEGISLATION IN KENYA

In response to the challenges posed by Climate Change, Kenya has developed the National Climate Change Response Strategy (NCCRS 2010), which is focused on developing comprehensive and robust adaptation and mitigation interventions to address the adverse impacts of climate change in the country; and National Climate Change Action Plan (NCCAP 2013) which provides a vision for low carbon and climate resilient development pathway. A National Adaptation Plan (NAP) has also been finalized. The key NCCAP recommendations include: a stand-alone coherent Climate Change Policy, Climate Change law, Miscellaneous Amendments and Institutional reforms. Hence, there was need for a long-term and over-arching legislative and institutional framework that can facilitate the necessary direction, guidance, coordination and high-level political buy-in to mainstream climate change across government and enable the effective implementation of actions to address climate change. The civil society has played a very significant role in these processes through active participation and lobbying for the establishment of a policy and legal framework on climate change in Kenya.



The following is a chronology of the climate change legislation process in Kenya.

2008: First ever tabling of a climate change motion

In November 2008, after discussions with the civil society, Hon. Bett tables the Private Member's Motion on Climate Change and Greenhouse Reductions motion. The motion aimed at providing a framework for implementation of key activities that will enable Kenya to meet its obligations under the global climate change frameworks.



2009: Climate Change Authority Bill

The KCCWG in collaboration with Hon. Dr. Wilbur Ottichilo formulated the Climate Change Authority Bill through a consultative process.

2010: Pre-Zero Draft Bill goes to Parliament

Just before COP 16 in Cancun, Mexico, the pre-zero draft was handed to Hon. (Dr) Ottichilo for presentation to the parliamentary legal team for further development with assistance from representatives from the State Law Office.

2011: Climate Change Bill Validation Workshop

In September, the Climate Change Bill Task Force held a validation workshop to receive and validate the draft Bill as presented by the lawyers.

2013: Presidential rejection

After going through all the three readings, the Bill was forwarded to President Hon. Mwai Kibaki but he rejected it, citing lack of sufficient public participation as his reason for rejecting the Bill.

2013: Establishment of a tripartite stakeholders committee

After the Bill's rejection, a steering committee was set up and gazetted by the Ministry of Environment and Natural Resources. It had representation from Government line ministries, civil society and private sector and was tasked to determine a way forward for the Bill formulation and public participation process.

2014: Bill meetings

The Ministry of Environment and Natural Resources together with KCCWG and other stakeholders held Bill meetings for several stakeholders. Participants painstakingly contribute to technical and substantive revisions of the Bill.

2014: Senate forum

The Senators sensitization forum on the draft climate change bill and policy forum was held in August 2014.



2014: The Climate Change Bill is tabled in the National Assembly

In September 2014, the Bill was tabled by Hon. Dr. Ottichilo. The second and third reading was completed in early March 2015 and forwarded to the Senate for further debate.

2015: Senate deliberations

The third reading of the Bill was completely finalized by the senate in early December 2015 and forwarded to National Assembly with Amendments in February 2016.

2016: National Assembly considerations of Senate proposed amendments

The National Assembly considered the Senate amended proposals and accepted all except three. This necessitated the formation of a mediation committee between the Senate and National Assembly to negotiate and agree on the way forward for the contentious amendments. The committee met on 22/3/2016 and agreed on the way forward. Its report was forwarded to the National Assembly for approval and the Speaker's office finalized the amendments and forwarded to the President for assent.

2016: Presidential assent

The Climate Change Bill 2014 was assented to law by H.E. Uhuru Kenyatta on 6th May 2016, thus the Climate Change Act 2016.

3. FORMULATION OF THE CLIMATE CHANGE BILL

All five inter-governmental Panel on Climate Change (IPCC) Reports since the first one in 1990 have steadfastly warned about the catastrophic consequences of climate change. The latest one produced in 2014 reiterated its warning that 'human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history.' As humans continue to impact the climate system, climate change continues to impact vulnerable Kenyans adversely.

When the rains failed in 2008, Babusa Hirbae, a visually impaired farmer from Garsen in Tana River County was left wondering what to do. He had five children and younger siblings who depended on the food harvested from his three-acre farm. Apart from sugar and oil, the rest of the food consumed on their table came from this farm.

At about the same time, nearly eight hundred kilometres away from Garsen in Nairobi, Hon. Franklin Bett, Member of Parliament for Bureti Constituency in the Great Rift Valley, had similar worries to Babusa's. Erratic rainfall, regular floods, extended droughts were some of the climate change-induced realities that his constituents and fellow citizens were experiencing with alarming frequency.

Hon. Franklin Bett decided to do something about it. He knew that agriculture was the mainstay of Kenya's economy and that it contributes 25 percent to the national GDP directly and 27 percent indirectly. Sub-optimal agricultural performance would therefore spell doom for millions of Kenyans.

In 2008, he started working on a Global Warming Bill that would protect vulnerable Kenyans from the effects of climate change. His efforts were however handicapped by lack of background information on climate change. Fortunately,

During COP 12, Kenya's Youth Environment Network also hosted young people from across the world in a global Conference on Youth Initiative on Climate Change. The African Youth Initiative on Climate Change (AYICC) was launched at this conference. The Kenya Chapter of this initiative later played a pivotal role in ensuring Kenyan youth participation in the Climate Change Bill process



during an engagement with the Norwegian Church Aid at a Forum in Kisumu, he found common ground with the civil society organizations that were also concerned about the need for a regulatory environment for climate change action. So a convergence of concerns between the parliamentarian and the civil society bodies resulted in joint efforts towards realization of climate change regulatory framework.

The civil societies were to bring on board climate research data, technical expertise and financial support, while the parliamentarian was to lobby the political fraternity towards developing a zero draft of the Bill.

This partnership bore fruit in November 2008 when Hon. Bett first tabled the Private Member's Motion on Climate Change and Greenhouse Reductions motion. The Bill aimed at providing a framework for implementation of key activities that would enable Kenya meet its obligations under the global climate change frameworks.

When he was appointed as the Minister for Roads later on, Hon. Bett transferred parliamentary responsibilities for the motion to Hon. Shebesh, then a nominated Member of Parliament and later to Hon. Otichillo the Member of Parliament for Emuhaya Constituency in western Kenya.

3.1 The Birth of the Kenya Climate Change Working Group

In 2009, a team of dedicated Kenyans who were part of the Kenya Climate Change Working Group (KCCWG) made a firm decision to do whatever it



took to steer the climate change Bill all the way to the President's signing desk.

Although 2009 was the year that concerted efforts towards a Climate Change Act commenced, Kenya's journey in the climate change legislation arena had commenced twenty years earlier in 1994.

On 12th June 1992, Kenya was among the first nations to sign onto the United Nations Framework Convention on Climate Change (UNFCCC), subsequently ratifying it two years later on 30th August. In signing above the dotted line of this historic convention, Kenya had made it clear that it was ready to join the international community in taking decisive action to address climate change.

Twelve years later in 2006, Kenya was thrust into the very heart of global climate action when the United Nations Framework Convention on Climate Change twelfth Conference of Parties (COP 12) was held in Nairobi, Kenya.



In the run-up to this event and in its aftermath, Kenya's vibrant civil society stepped up their climate change awareness and action. Their efforts found traction through the leadership of the Climate Network for Africa and later coalesced into two coalitions: the Kenya Climate Forum (KCF) headed by Forest Action Network (FAN) and the National Climate Change Consortium of Kenya (NCCCCK), headed by the then Kenya National Federation of Agricultural Producers (KENFAP). This consortium was made up of community farmer groups and several civil society organizations interested in agricultural activities.

In 2008, these two coalitions merged into one entity – the Kenya Climate Change Working Group (KCCWG), and thus was born the Kenya Climate Change Bill's mid-wife.

KCCWG met formally for the first time in February 2009 at the All African Council of Churches of Kenya in Westlands, Nairobi. It was a historic meeting that unified climate focused minds in a common quest to combat the destructive effects of climate change in Kenya.

At the meeting, 10 thematic groups were developed in line with Vision 2030, Global Frameworks and the climate change science. Their immediate goal was to guide development of the climate change Bill but with a long term vision of providing consistent evidence-based information for climate change action.

The thematic groups included Agriculture; Livestock and Fisheries; Forestry, Pastoralism and Conservation; Urbanization and Infrastructure; Energy; Health; Education; Tourism and Road to COP. The latter was an advocacy group focused on preparations for the annual UNFCCC COPs. The thematic groups leveraged the resources and expertise of the respective member organizations to immediately embark on a guided research framework on climate change science concerning Kenya.

Such was the grassroots organization that had been sorely lacking, without which previous efforts had been disorganized and scattered. But now, a new civil society climate regime had emerged.

KCCWG used both desktop research and climate hearings to unearth the climate change-related issues that Kenyan communities were grappling with. It sought to be a voice of the vulnerable people across the country, and not just an elitist Nairobi-based organization.





4. FOUNDATION - WHEN THE BILL BECAME ROOTED

Kenians have learnt the hard way in recent years that a bad foundation and subsequent faulty construction will eventually bring a house down. Several buildings mostly in Nairobi have crumbled after the passage of time left them unable to withstand their wanting constructions.

KCCWG understood from the get-go that it needed to build the climate change Bill development process on a scientifically credible and socially inclusive foundation that would fully anchor the resultant Bill and Law.

In this regard, later that year in 2009, KCCWG contracted a legal team from the Kenya Law Review Commission (KLRC) to prepare a pre-draft document based on the findings and reports of KCCWG's thematic groups. This was a crucial step forward as it ensured that a plethora of the civil society's climate views and input could finally start to coalesce into a legal document that could act as a bulwark of the envisioned climate change Bill.

The period between 2009 and 2010 marked a lot of work on the pre-zero draft of the Bill, whose name was then changed from the Global Warming Bill to the Climate Change Authority Bill. In the course of this work, there were quite a number of backs and forth between the contracted lawyer and the KCCWG thematic groups.

Towards the end of 2010, the final version of the pre-zero draft was handed to Hon. (Dr) Ottichilo for presentation to the parliamentary legal team for further development, with assistance from the Attorney General's Office. Even as this legal and parliamentary team breathed further life into the nascent Bill, the UNFCCC COP 16 in Cancún, Mexico reached several agreements that inched forward global climate action.

Although no specific amount was committed in Mexico, an agreement was reached on a new climate green fund that would transfer money from the developed to developing world to tackle the impacts of climate change. Another climate financing tool known as REDD (Reducing Emissions from





Deforestation and Degradation) also received a shot in the arm. Though modest, such gains were steps in the right direction and they further reminded Kenyan climate activists who were present in Cancún that charity must indeed begin at home through enactment of a climate change Bill.

The year 2011, however, proved to be a daunting year for the KCCWG-led climate change Bill process.

As this year progressed, reservations from the Executive arm of government became more pronounced. The Executive felt that it should be the driver of such a crucial Bill and looked unfavourably at the Legislature's lead role in the Bill.

These turf wars manifested themselves through overall inertia and disturbing symptoms like failure to honour pre-agreed meetings. It was difficult to move forward definitively through such a push and pull quagmire.

But apart from the leadership and procedural differences weighing down the climate change Bill process, a substantial bone of contention was the control of the Climate Change Authority. Should it be housed in a ministry or Office of the President? This question solicited some strong

arguments on either side. Despite such heated debates, proponents of the Bill understood that developing such a critical Bill was no child's play, so they soldiered on.

Their onward march, however, suffered a huge emotional blow when a bright green light was suddenly switched off.

When Nobel Laureate Wangari Maathai passed away on 25 September 2011, she left behind a shocked and grieving nation. Her Nobel Prize and the exemplary life that led to it had provided immense pride and inspiration to Kenyans.



5. WALLING - WHEN THE BILL TOOK SHAPE

Walls give a house shape. Once complete, they vindicate the owner's construction vision.

In seeking to flesh up the draft Bill, KCCWG held dozens of consultative sessions in communities, dubbed climate hearings; bill meetings and breakfast meetings to glean and milk input from different stakeholders and individual sessions with key people. One of the people they met was Wangari Maathai, whose wisdom and experience proved invaluable.

On September 28, three days after the Noble Laureate's sad demise, many of those she had met gathered at the Lake Naivasha Resort for the Climate Change Bill Task Force meeting.

This Task Force had been constituted in a previous broader stakeholders meeting in Mombasa. Its members were drawn from the donor community; KCCWG; Ministries of Finance and Environment; Parliamentary Network on Renewable Energy and Climate Change (PANEREC); the then Office of the Prime Minister and the State Law Office. It was chaired by Dr John Mutunga, CEO of the Kenya National Farmers Federation.

Together with them in Naivasha were the drafters of the draft Bill: Mr Joash Dache the then CEO of Law Review Commission, Mr. Makoloo Odhiambo, the then Director Institute for Law and Environmental Governance and Mr. Wilson Dima who was working with the State Law Office at the time.

They painstakingly took the Task Force through each clause. During the dynamic discussion that ensued, the Task Force provided feedback on 81 different issues.

Among the feedback provided were points like: *What would it mean to the Bill in the event that referenced constitutional articles were repealed? How will the proposed Climate Authority work seamlessly with existing*



institutions? This Authority shouldn't appear as the Bill's main component and swallow all the oxygen in the room. How will the Authority diffuse its functions to the counties?

The feedback was also quite specific: In section 3, there should be an additional sub-section focusing on education and awareness creation. In section 6(2)(e); delete the phrase 'viable alternative sources of energy' and replace with the phrase '*low carbon development strategies*.' In Section 6(2)(g); replace the phrase 'disaster risk reduction and related matters with '*climate related disasters*'. Such feedback wasn't just about semantics because in law, a single word or even letter can have massive consequences.

In addition, there was technical feedback like the length of the title and the definitions of terminologies used. Indeed, members of the Task Force were using a fine tooth comb to peruse and analyse what the drafters presented to them. They felt the weight of the nation on their shoulders, knowing that Kenyans were counting on them to deliver a superb, well-thought out, well-written Bill that would deliver the nation to unparalleled climate smartness.

The Task Force members were all cognizant of the immortal words of Voltaire the French philosopher that, 'men argue, nature acts.' Hopefully, the Bill they were sweating on would help both Parliament and eventually Kenyans to act more and argue less.

Consistent political goodwill from Hon. (Dr) Ottichilo and other parliamentarians was a great boon in powering the process forward. Their efforts bore fruit and later in 2012, the Bill's second reading was tabled in Parliament.

The legislative finish line is in sight, John Kioli, the KCCWG Chair remarked to his colleagues in a Board meeting. He, however, cautioned that there was still a lot of work ahead so they had to keep rolling up their sleeves if they were to cross that finish line. That is why even as the parliamentary process dragged on, the civil society fast tracked its Climate Hearings and continued sensitising the masses on the Bill's importance.



6. FLOORING - CLIMATE CHANGE HEARINGS THAT UNDERPINNED PUBLIC PARTICIPATION

Before a floor is sparkling marble or polished wood, it has been cemented, brushed, wiped and taken through demanding processes that ensure its stability and beauty.

The concept of Climate Hearings, first brought forward by Oxfam in 2005, was a way of reaching out to communities on a two-sided journey: to raise awareness about the climate change Bill process but also gather community stories on the impacts of climate change and their indigenous adopting strategies. This provided invaluable input into the Bill development process.

The Climate Hearings were built on the belief that even though scientific consensus on the causes and consequences of climate change had already been reached, the diverse impacts of climate change on communities remain hazy. In essence, these hearings brought down the climate change discussions to the community level, where people were most vulnerable. In this regard, they innovatively unearthed the hidden impacts of climate change on communities.

In the context of the Kenya Climate Change Bill development, the Hearings were held between the years 2009 and 2014. They were executed in three stages: Planning; Local Organizing Committee Action; Execution and Integration.

The Planning stage started with the identification of the target regions depending on presence of members in the areas and exposure of the areas to climate change impacts. Once identified, reconnaissance visits were made to prepare the ground.



The second stage was the setting up of Local Organizing Committees. This was a firm nod to the fact that hearings couldn't be imposed on communities and had to be locally owned if they were to be successful. All relevant stakeholders including government officials, community leaders, faith-based institutions and private sector groups were involved at this stage.

The stakeholders greatly assisted in mobilization of local people and articulation of local issues. In addition, the Kenya Meteorological Department was invited wherever they were present to help validate data generated from the Hearings.

KCCWG thematic group representatives assisted members of local organizing committees to develop presentations on prevailing climate issues and impacts in the area. Identified issues would then inform Hearing themes.

The third stage was the execution that involved the actual Climate Hearings. This entailed integration of indigenous knowledge; use of simple, where necessary, vernacular language with interpretation and focus on specific impacts of climate change within the communities' contexts.

The final stage involved the integration of the Climate Hearings into the Climate Bill development process.

Indeed, the hearings were a mixture of brain work and leg work as KCCWG members traversed the length and breadth of Kenya and engaged in fervent discussions with community members, mostly doing more listening.

6.1 Farmers – Kanyaa Village, Mwingi, Eastern Kenya

Although Kanyaa Village in Mwingi is not endowed with particularly lush and fertile land, villagers from there often attempt to put their best farming foot forward. Every year, they toil in their farms with diligence and commitment. Erratic rainfall has, however, short-changed their efforts on many occasions.

In a climate hearing dubbed, 'Micro Projects: Farmer's Practical Solutions to Climate Change and Sustainable Livelihoods,' these farmers shared their plight with eagerness and candour. Held in June 2009, the hearing was organized by the Kenya National Federation of Agricultural Producers





(KENFAP), Oxfam GB, KCCWG's Road to COP Thematic Group, and RISE from the community.

The hearing was extremely well attended, attracting over 3,000 people from Kanyaa village and its environs. It received excellent media coverage from Kenya Broadcasting Corporation - Vijana na Maendeleo, K24 TV, Citizen TV and Musyi FM, a radio station that transmits in the local Kikamba vernacular.

6.2 Agro-Pastoralists - Southeastern Kenya

Forest Action Network (FAN) is a key founding member of KCCWG and a long term player in Kenya's environmental scene. Together with Oxfam GB, they organized 7 mini hearings in May and June 2009 in Tana River and Kajiado.

Although it is Kenya's longest river, Tana River is not exempt from the twin climatic disasters of floods and droughts. These often cause conflicts pitting the pastoralist communities of Wardei and Orma on one side and the Pokomo farmers on the other side. Thanks to the climate hearings, both farmers and herders from the three communities were able to share their stories in a peaceful and secure environment that was solutions-oriented.

The hearings took place in the townships of Hola, Wenje and Moriani and Bububu villages along the banks of River Tana. In Kajiado, which is mostly populated by the Maasai community, hearings were held in Kisajoo, Il Bisil and Kajiado County Council.

6.3 Pastoralists – Wajir, Northern Kenya

Although Wajir in northern Kenya is only 493 kilometres from Nairobi, roughly the same distance between Mombasa and Nairobi, getting there can be a logistical nightmare. The roads are in bad shape and security remains a constant challenge. But this did not stop the climate brigade from descending into Wajir for climate hearings.

Arid Lands Development Focus (ALDEF), Wajir Sustainable Development Association (WASDA), District Pastoral Association, Wajir (DPA) and Oxfam GB, organised a series of climate hearings in the greater Wajir: Abakore Village in Wajir South; Wara and Hadado water trucking sites in Wajir East; and Gerille Village in Wajir West. Dozens of people attended these hearings that were held in August.





Pastoralism is the predominant source of livelihoods in Wajir and other Arid and Semi-Arid Lands (ASALs) of Kenya. They comprise over 80% of total land cover and are highly vulnerable to droughts given that they receive a meager 500mm and below of rainfall per year. Such were the issues that were captured and duly noted in the Climate Hearings.

6.4 Kakamega – Western Kenya

With a population of nearly two million people, Kakamega County is one of the most populated counties in Kenya. With most of these two million people earning their livelihoods from small scale farming, erratic rainfall has left them with less food on their tables and less money in their pockets. The Climate Hearings were therefore critical in capturing such pressing issues from them.

The two day climate events were held in October 2009. They were dubbed the Great Shivala Shieru (Meaning 'our world' in the Luhya language) Festival – ***Rauka ama Hatuta Survive*** (meaning 'wake up or we will not survive' in the Sheng slang of Swahili). They were hosted by the Young Environmental Network in Africa (Western chapter), NCKK - Kakamega, Norwegian Church Aid (NCA) and KCCWG's Road to COP. Such collaboration was a linchpin of the climate hearings and was illustrative of the collaborative efforts needed in the epic war against climate change.

Kakamega's climate hearings attracted about 3,000 people from the whole Western region. They were fully publicized by West FM a popular local FM station through extensive on-air coverage and an exciting road-shows through the streets of Kakamega town.

6.5 Mombasa – Coast

Research by South Africa's University of the Witwatersrand's, architecture and planning department has revealed that Mombasa risks losing Sh136 billion if projected sea level rise within fifty years occurs. Depending on the level of the sea rise, the damage both to livelihoods, infrastructure and even human lives could be much more. It was with this possible bleak future in mind that the climate hearing descended on the coastal city in August 2009.

The hearing was organized by Norwegian Church Aid (NCA) and KCCWG's Road to COP. It focused on the experience of fisher folk, and other communities living along Kenya's coastline on the Indian Ocean.



Key concerns for the communities along the coastline were issues related to rising sea levels and the resultant impacts on corals and other flora and fauna in the ocean. Many of the fishermen and women gave stories of how much their fish yields continued to dwindle and how the rise of sea levels had in some cases swept away structures near the shores of the ocean.

The climate hearing in Mombasa brought together two key events: a community sporting event at the Mombasa Baptist School and a concert at Milele beach, where Juliani performed the song ***Rauka ama Hatuta survive*** for the first time. It is estimated that about 2,000 people were reached in both events. The voices of the communities and youth in form of petitions were collected and put together with those from other hearings to form part of the advocacy evidence towards Kenya's youth and civil society campaign towards COP 15.



7. BREAKFAST MEETINGS

There is something about a breakfast meeting that is very refreshing. Probably because of the early hour, before the mind becomes clogged with deadlines, urgency, stress and a wide range of emotional upheavals, breakfast meetings can be quite effective.

To build consensus among key stakeholders, and particularly parliamentarians, private sector, the media and faith communities, Road to COP together with the wider Kenya Climate Change Working Group (KCCWG) conducted a number of breakfast meetings.

The first breakfast meeting was held in July 2009 at the Sarova Stanley. Fifty people attended comprising of parliamentarians, media, diplomatic corps, youth and faith-based organisations.

This inaugural breakfast meeting was used to reveal the catchy slogan, ***Rauka ama Hatuta survive*** as well as highlight climate change as a 'justice' issue. A challenge was raised by parliamentarians concerning the alternative options to be pursued in case a fair and legally binding deal was not realised in the much hyped COP15. They also shared the intention of the Kenya National Assembly to host the Second Pan African Parliamentary Conference on Climate Change later that year.

When this conference was held a few months later in October, it resulted in the revival of the Parliamentary Network on Renewable Energy and Climate Change (PANERECC), which was mandated by the Speaker of the National Assembly, Kenneth Marende, in August to bring forward climate change issues to the Legislature.

The following year in November 2010, KCCWG hosted another breakfast meeting in collaboration with PANERECC, and CAFOD East Africa. The meeting was attended by 50 participants drawn from the National Assembly, KEPSA, the informal sector and the media.

Held at the Laico hotel in Nairobi, this meeting introduced the pre-draft climate Bill that had already incorporated preliminary research by KCCWG's thematic groups. Dr. Mutunga, the Climate Bill taskforce Convenor, shared about the evolution of the pre-draft whilst Hon. (Dr) Ottichilo highlighted the various sections constituted.

Indeed, such breakfast meetings played a critical role in providing consultation and feedback platforms from all the different players in the climate change Bill process.

8. CRACKS AND LEAKS - FIXING THE BILL

In the Poetry Anthology, 'A Better Joy,' Bwak the Bantu Poet writes that, 'rejection is a beast that will eat you alive tear by tear.' As the climate warriors fought on for a successful third reading of their Bill in 2012, they did not know that the beast of rejection was waiting for them down the road.

Most of the first quarter of the year 2012 involved the tabling and debates on Climate Bill draft. *Remove this wording; re-phrase that paragraph; this word has a wrong connotation, change it.* The comments came in fast and furious as the Bill underwent fine-tuning and was gazetted as the Climate Change Authority Bill in March 2012 at the second tabling.

At this juncture, the Bill gathered a bit of support from the Executive, whose term would be ending in a few months time.

The third and final reading of the Bill, though re-scheduled three times mainly due to technical hitches, finally took place just before the closure of the national Parliament in preparation for the 2013 national general elections.

To avoid unwanted delays, the movers of the Bill removed the financial elements of the Bill that were bound to foster disagreements.

There was a collective sigh of relief in Kenya's climate community when the Bill sailed through the third reading by a whisker. Its journey through Parliament's legislative corridors was finally over and it was now ready for its date with the President's powerful pen.

The private sector, the Ministry of Environment and Mineral Resources plus other key stakeholders had been surprised by the Bill's successful



run through Parliament. It however wasn't a pleasant surprise to some in the Ministry and private sector and they started campaigning behind the scenes, calling for the Bill's rejection. In a strange and disheartening twist of events, a senior civil servant in the Ministry who had publicly supported the Bill was on the forefront of campaigning against its signing. With elections a few months away, elected officials who supported the Bill were unfortunately in election mode.

To sign or not to sign? This was the big question facing the President.

On 14th January 2013, just one day before the tenth parliament breathed its last, President Kibaki broke a national record by signing 30 bills into law in a single day, the most ever since independence. Unfortunately, the Climate Change Authority Bill 2012 wasn't among the lucky 30.

The outgoing President had rejected it, citing lack of sufficient public participation in crafting the bill. In particular, the President was concerned about the lack of sufficient engagement of the private sector and the reservations by the Ministry of Environment. The Ministry was concerned that the Bill was not only driven by the civil society, but was also developed without a policy framework and insisted that priority should have been given to developing a climate change policy first.

John Kioli and his deputy Frank Msafiri together with their fellow KCCWG Board members plus Hon. (Dr) Ottichilo and all the other climate warriors were a disappointed lot.

But being battle-hardened fighters, they were familiar with the principles of Sun Tzu's Art of War. The ancient Chinese strategist's timeless caution rang true in their ears, 'victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win.'

It was time to go back to the drawing board and win the President's signature.





9. REINFORCEMENT - REVAMPING THE BILL

In 2010, the country had ushered in a new constitutional era that allowed the carrying forward of rejected bills into new political dispensations after general elections.

As Kenya went through the 2013 transition into a new administration, the legislators and the civil society were actively strategizing the next steps for the Climate Change Bill. The new Cabinet Secretary and Principal Secretaries at the re-constituted Ministry of Environment were relatively more receptive to the Bill and were keen on moving it forward speedily.

Two key processes also converged to give a new lease of life to the Bill. The National Climate Change Response Strategy, whose development started in 2010, had been concluded with a call for the establishment of an enabling legal framework, and the Ministry of Environment had started the process of setting up a Climate Change Policy.

A compromise was thus reached to simultaneously carry out the Policy and Bill development processes in a symbiotic manner.

By September 2013, the Hon. Judi Wakhungu-led Environment Ministry set up a gazetted Task Force comprising the Ministry's Principal Secretary, civil society representatives and other line ministries. Notably, Hon. Otichillo who had been re-elected to parliament was also invited to join the task force. According to practice, parliamentarians were usually not included in ministerial Task Forces. This thus reflected the level of goodwill that the Ministry of Environment was seeking with the parliamentarians involved in the process.

KCCWG drew comfort from this enthusiasm that the new Executive was displaying straight off the blocks. The Kenya Climate Change Working Group had learnt the hard way earlier that year that the Executive's enthusiastic participation was not something to be taken for granted.

The Cabinet Secretary was particularly keen on having the Bill and its policy framework ready before COP 19 in Warsaw, Poland later that





November. Although this was ultimately not possible because of the tight timelines, it put the necessary pressure on fast tracking the finalization of the Bill. Through the support of DFID, A Consultative Forum was organized in Mombasa to analyze the Climate Change Bill and Policy alongside each other.

This Mombasa meeting proved to be a turning point as it provided a golden opportunity to educate Members of Parliament who were present on the Bill and mobilize them for the second reading that came soon afterwards. It was a vindication of fact-centered lobbying without which it is quite difficult to achieve results in Parliament.

10. REFINING THE BILL

A few months into the administration of President Uhuru Kenyatta, on 19th September 2013, the Climate Change Bill's technical committee held a consultative meeting at Nairobi's Intercontinental Hotel. Committee members were drawn from Parliament, government, private sector and civil society. They were charged with the vital task of ensuring meaningful participation from the civil society, the private sector, ministries and parliamentarians in the development of a workable Climate Change Bill. That way, the final bill would be worth its salt and would reflect comprehensive comments from a wide spectrum of Kenyans.

After opening remarks from Frank Msafiri, KCCWG's Vice Chairman and Hon. (Dr) Wilbur Ottichilo, committee members huddled in an ornate meeting room at the hotel and got down to work. Over cups of coffee and glasses of water, they deliberated on action plans of integrating comments into the Bill plus the overall way forward.

Although he had happily and diligently sponsored the previous Bill that was rejected by the President, Hon. (Dr) Ottichilo informed the gathering that this time round, the bill needed to be sponsored by a parent ministry. This would ensure funding from the exchequer, consequently ensuring sizeable implementation.

Hon. (Dr) Ottichilo's experience in the parliamentary process enabled him to share invaluable insights with his climate peers. First elected to Parliament in 2008, he brought into the august house his meticulous



professionalism and rich environmental credentials. He had previously served as Deputy Director of the Kenya Wildlife Service and subsequently as Director General of the Regional Centre for Mapping of Resources for Development (RCMRD). In the early eighties, he had worked in the Ministry of Environment and thereafter in the Ministry of Agriculture. He went on to acquire a PhD from the Institute of Geo-Information and Earth Sciences in the Netherlands, in Environmental Science with focus on using Remote Sensing in Environmental Assessment and Management.

In his calm manner, Hon. (Dr) Ottichilo assured the sitting that the climate change Bill was priority number three of the Parliamentary Committee on Environment and Natural Resources that he was a part of. It was chaired by Hon Amina Abdallah, a seasoned politician and consummate environmentalist. Once the Ministry of Environment brought the Bill to her committee, she would sign it then the committee would table it and defend it to the National Assembly.

The prospect of the climate Bill returning to the legislative corridors of Parliament was quite heartening to the men and women at Intercontinental Hotel that day. Among them was Suresh Patel, the Chair of the Kenya Private Sector Alliance's Environment, Water and Natural Resources committee. He was a firm believer in the private sector's role in enhancing sustainability and had been involved in UNEP's Green Economy initiatives for several years. Suresh pledged to ensure that all the organizations that are registered with KEPSA get to have a copy of the climate change bill so that they could provide input.

Alex Alusa, a veteran of the United Nations Environment Programme was another member of the committee. After his illustrious career at UNEP, he moved on to the then Prime Minister's Office and thereafter into consultancy.

There had been earlier suggestions of merging the Environmental Management and Co-ordination (EMCA) Act with the Climate Change Bill but Alex Alusa advised against that route, emphasizing that climate issues couldn't be housed solely in the environment house as their tentacles were also rooted in other economic and social issues.

Such was were the substantive discussions that welled up from these sessions when great minds and professionals passionate about climate



change came together to take yet another step towards ensuring that the climate change bill becomes the law of the land.

One of these great minds was Cecilia Kibe, the coordinator of the Kenya Climate Justice Women Champions (KCJWC). She was quite passionate about women and climate change issues. She reminded one of Margaret Thatcher's quip that, 'if you want something said, ask a man; if you want something done, ask a woman.'

Being a seasoned mobilizer, Cecilia advised that the Ministry of Environment should be tasked to meet all the other ministries and request their input. Along a similar vein, KEPISA should mobilize the private sector as KCCWG does the same with the civil society. Such peer to peer engagement would achieve results sooner rather than later.

Susy Wandera from SUSWATCH Kenya had unbridled passion for the environment. As she expressed concern about wide number of ministries, agencies and institutions that hadn't provided input to the draft Bill, one could sense her passion.

Many of the men and women in that room had attended previous United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COPs). This imbued in them an appreciation of broader global climate legislation that they could feed into the ongoing process to birth a climate change Bill for Kenya.

During the COP 17 in Durban, South Africa back in 2011, Kenya's nascent Climate Change Bill received widespread attention when the Permanent Secretary of the Ministry of Environment and Mineral Resources spoke appreciatively about it in a side event. Coming from a high ranking Kenya government official, this stamp of approval added further impetus to the Bill process.

Frank Msafiri the Vice Chair of KCCWG had articulated the very grassroots issues that the Bill was seeking to tackle, 'Climate change really impacts the community down at the grassroots level. These are the people who toil for water, who are looking for firewood, who are really impacted by climate change.'

This answer underlined his unwavering focus on climate change's effect to ordinary, vulnerable people all across Africa. These are the people whose plight was fuelling concerted discussions in that room.





11. FINALIZING THE BILL

Later that year in the third week of December, almost a whole year since the then President Hon. Mwai Kibaki rejected the Climate Change Bill, the steering committee of the new Climate Bill met in Mombasa for a workshop that proved to be a turning point in the Bill's tumultuous journey. Under Mombasa's sweltering heat, the team of thirty perused, reviewed and analysed the Climate Change Bill, 2012 and the input that had already been received since its rejection.

After opening remarks by Dr. Alice Kaudia the then Environment Secretary, representatives from the public and private sectors plus the civil society perused and dissected the bill in front of them.

As he listened to Suresh Patel from the Kenya Private Sector Alliance making a contribution, John Kioli, the Chairman of KCCWG drew comfort from the fact that the workshop had brought together all the key stakeholders in the Climate Change Bill journey. In early days of the Bill back in 2009, such unity had proved quite elusive.

Seated near John Kioli was the bespectacled Jacob Agoch from the Finance Innovation for Climate Change Fund (FICCF), component of DFID. He had an earnest look on his face as he listened to Adano Wario from the National Treasury, no doubt appreciating the figures talk.

As the workshop progressed, John Kioli gave a presentation on the Climate Change Bill 2012. He wiped his brow and talked about the Bill's history. He informed the participants how Hon. (Dr) Ottichilo had been instrumental in steering it through the legislative corridors of Parliament. Listening to him were people who would ensure that the current Bill didn't end up suffering the same Presidential rejection that the previous one had.

Comprehensive discussions on the draft Bill ensued after John Kioli's presentation. Many revolved around the mandate, duties and composition of the proposed National Climate Change Council. It would be hosted in the Office of the President and would play an active advisory role underpinned by convening powers. Technical coordination would, however, be handled at the Ministry responsible for climate change affairs.





After these comments and others were duly noted, it was agreed that a consultant would produce a revised Bill by 14th January, 2014 for appraisal and approval by National Steering Committee. The approved draft Bill would subsequently be subjected to stakeholder consultations at both national and county levels. After these thorough consultations – which former President Kibaki had found to be wanting in the previous Bill – the current Bill would be finalized.

Finally, it would be handed to the Cabinet Secretary, Ministry of Environment, Water and Natural Resources for presentation and approval by the Cabinet and subsequently by Parliament. It was game on and John Kioli, together with the other 30 participants left Mombasa feeling the momentum of the draft Bill.

In early 2014, several multi-stakeholder forums were organized under the leadership of the Ministry of Environment, where participants painstakingly went through the Bill and Policy simultaneously word by word. The new constitution proved to be an unlikely ally in this exercise since it clearly spelt out the different roles of the Executive and the Legislature. The former was for policy formulation while development of Bills was in the latter's domain. Either side could however make contributions on either of the processes.

A significant adjustment made to the Bill before it returned to Parliament was the change of its title from Climate Change Authority to Climate Change Bill. This was based on recommendations from several quarters that were not comfortable with the idea of a Climate Change Authority due to potential duplication of duties with the National Environment Management Authority. The Treasury was also keen on minimizing new institutions and instead merging some existing institutions to mainstream operations and reduce public expenditure.

Another significant change in the revised Bill was the incorporation of county level actions. This was in line with the devolved system of governance in the new constitution.

In March 2015, the Bill was then tabled in Parliament for the third reading by Hon (Ms) Abdalla, the Chairperson of the Parliamentary Committee on Environment and Natural Resources.

Supporting the Bill, Hon. Chachu, Member of Parliament for North Horr noted that, 'Climate change issues are cross-cutting. They cannot be left





to one sector or Ministry. The fact that the President will be chairing the Climate Council is very good for this country. That is the practice in many jurisdictions, where they have climate change law.'

At this stage, Hon. (Ms) Abdalla introduced several amendments deleting certain clauses or introducing new ones. These amendments were geared towards ensuring sustainable implementation. One of them touched on the Secretariat of the Council, 'the secretariat of that Council must be domicile in the Ministry responsible for climate change. Therefore, we are forming a secretariat with a director employed under the public service, who is going to be the person responsible for the day to day issues. That means that the Council will not be a body corporate.'

As per this amendment, the Secretariat of the Council would now be a Directorate in the Ministry in charge of climate change and it would be headed by a Director, not a CEO as had been previously envisioned.

Hon. Mwaura a nominated Member of Parliament raised reservations, 'I am getting concerned about these deletions. It is not because they are not relevant, but they are very sweeping to the point that even if you were to remove the roles that had been given to a CEO or a Board, some of these provisions are very good even in the spirit of transparency and accountability.'

But Hon (Ms) Abdalla reassured him that despite the amendments, the Bill still maintained strong bulwarks for transparency and accountability.

There were more overwhelmingly supportive contributions from other Members of Parliament including Hon. (Eng.) Gumbo, Member for Rarieda; Hon. M'uthari, Member for Igembe South; Hon. Ganya, Member for North Horr; Hon. (Ms) R.K. Nyamai, Member for Kitui South; Hon. (Ms.) Tobiko, Member for Kajiado East; and Hon. Ababu Namwamba, Member for Budalangi.

Hon (Ms) Abdalla later moved that the Climate Change Bill be read for a third time and was seconded by Hon. Kinyua, Member of Parliament for Mathira.

In seconding the third reading of the Bill, Hon. Kinyua said, 'this is a very progressive Bill. One that appreciates the fact that climate change cuts across all sectors of the economy and cannot be taken in isolation. This Bill has brought all the departments and all the Ministries that are affected by





the climate change and that contribute towards low carbon discharge and mitigation of its effects together.'

Away from governance, the Bill, would also leave a lasting mark on Kenya's educational sector. Section 24D (1) of the bill couldn't have been more categorical, 'the Kenya Institute of Curriculum Development shall, on advice of the Council integrate climate change into various disciplines and subjects of the national education curricula at all levels.'

Indeed, the Bill had thrust Kenya into the global scene as far as climate change legislation is concerned.

This was captured by Hon. Ganya, whose constituents are mostly pastoralists from Kenya's far flung north-eastern region and hence adversely affected by a changing climate: 'climate change is a major challenge of our time. Very few countries in the world have advanced climate change law. It is very controversial and very sensitive. It has a major impact on the economy of a country because it impacts on how industries operate in this country. Because of that, we have been a leader again not only in Africa, but in the world for having such a comprehensive climate change law.'

But one of the happiest people in Parliament on that day was Hon (Dr) Ottichilo, who had seen his private member's Bill in the previous Parliament rejected by the President. He shared his immense joy, 'I am a very happy person. It has been a long journey. This journey started in 2007 and I am happy that, at least, we are seeing light at the end of the tunnel. Climate change is the biggest challenge the globe is facing today. Unless mankind addresses the issue of climate change, the survival of this planet is at stake. I want to let this House know that Kenya now becomes among the first countries in the world to enact a climate change law, assuming that the President is going to assent to this law.'



12. ANOTHER DATE WITH THE PRESIDENTIAL PEN

Legislation is a marathon. But this marathon is not meant to stifle laws from seeing the light of the day. Rather, it is meant to ensure that laws pass through so much scrutiny and debate that by the time they are enacted, they are not just laws of the land, but laws for the people.

After it completed its passage through Senate, the Climate Change Bill 2014 was returned to the National Assembly for onward forwarding to the President. President Uhuru Kenyatta's desk was the final stop of an unprecedented bill that has been through a rigorous process that began in the previous decade. The bill was signed into law on 6th May 2016.

After the Bill's predecessor, the Climate Change Authority Bill 2012 suffered a still birth when former President Hon. Mwai Kibaki refused to assent to it; the climate change Bill's future had looked quite gloomy.

But sheer determination, unwavering unity and firm focus had pushed on the Kenya Climate Change Working Group, the private sector, the Executive and Legislature towards the finish line that has finally transformed the Climate Change Bill 2014 into the Law of the Land.



13. CONCLUSION: LESSONS LEARNT

Even after designing, digging a foundation, building walls, plumping and roofing, a house is incomplete. There is more work to be done on it before it can be habitable. The same is true of the Climate Change Act 2016, it will need to be fully implemented if it is to provide shelter for Kenyans from the ravages of Climate Change.

Looking back at the many years the Act has been under construction since 2008, it is clear that it has traversed a long and winding path. There were many challenges and successes in almost equal measure. Key successes were the wide community engagements and increased awareness and support for climate change issues. By the time the Bill went to the national Parliament, all key stakeholders had been engaged and a consensus had been reached on the Bill. The senate also held public consultative meetings because of the significance of the counties in implementing the Act.

However, key challenges were political complexities and structural pathways for developing the Bill. But these pathways, luckily, did not deform the Bill that ended up on the President's desk for assent.

An undeniable feather in the cap of this climate change legislation process is that it unified diverse and disparate climate change stakeholders in Kenya. This unity cuts across civil society through KCCWG, private sector, Parliament and the Executive.

It is unity that should play an even bigger role in implementing the Bill now that it has become the law of the land. Kenya's Climate Change law will be a sturdy, long-lasting house that will protect Kenyans from the ravages of Climate Change and help them to adopt accordingly.



REFERENCES

GOK (2010b). National Climate Change Action Plan 2011-2012. Published by the Ministry of Environment and Mineral Resources, Nairobi, Kenya

GOK (2010c). National Climate Change Response Strategy. Published by the Government Press, Nairobi, Kenya.

Heinrich Boll Stiftung (2010). Climate Change Vulnerability and Adaptation Preparedness in Kenya. Nairobi. Prepared by Camco Advisory Services (K) Limited.

IPCC; (IPCC report for policy makers: Ref.IPCC), 2014

Otiende B. (2009). The Economic Impacts of Climate Change in Kenya: Riparian Flood Impacts and Cost of Adaptation

SEI (2009). The Economics of Climate Change in Kenya



