

NJ/Forest Conservation Bill/County Laws and Regulations/19/1

5th July 2019

The Clerk

County Assembly of Kilifi

P.O. Box 332 – 80200

KILIFI

By E-mail

kifassembly@gmail.com

Dear Sir/Madam,

REF: COMMENTS ON THE KILIFI COUNTY SOLID WASTE MANAGEMENT BILL, 2019

We write in response to the notice published in the Standard dated 25th June, 2019 inviting public comments on the captioned Bill.

Herein for your consideration are our comments and recommendations.

Sincerely,



Mark Odaga

mark@naturaljustice.org

COMMENTS ON THE KILIFI COUNTY SOLID WASTE MANAGEMENT BILL, 2016.

General Comments

- 1. There is a need to establish an administrative body responsible for overseeing the implementation of the provisions of the Bill**

This Bill fails to establish a competent and independent authority to oversee the implementation and enforcement of its provisions. Independent authorities are necessary to ensure compliance with the law. Such a body, if established should comprise of various authorising officers as defined in the Bill and representatives from the public who should work together towards ensuring that the proper and effective management of waste.

Specific Comments

Comment No.	Clause of the Bill	Subheading of the Clause	Proposed Changes	Rationale For Proposed Changes
1.	14	No licence for non-compliant Businesses, etc.	Inclusion of the requirement to meet the necessary legal environmental obligations including coming up with a Protect Report or conducting a full Environmental and Social Impact Assessment (ESIA) Study.	Depending on the quantity and type of solid waste to be generated, business entities should be required to fulfill all legally prescribed environmental obligations and obtain the necessary licences. These includes conducting an ESIA Study on the potential impacts of the waste produced and proposed mitigation measures. Our proposal is to amend the clause to read as follows:- "A person shall not be licenced to carry on a business or an activity that generates solid wastes unless that person demonstrates that he/she has, <i>in addition to obtaining all legal environmental licences,</i>

				has established measures to minimize solid waste generation by adopting the following cleaner production principles..."
2.	29 (2)	Treatment Licences	The Chief Officer should be required to consider an application for the installation and operation of an incinerator in consultation with the National Environmental Management Authority (NEMA).	<p>While the Chief Officer plays an important role in environmental protection at the county level, NEMA regulatory authority charged with environmental management. In line with the Constitution, it is a requirement for the national and county governments to cooperate in fulfilling their mandates. In the same way, the Chief Officer should work together with the County Environmental Officers of NEMA to ensure compliance with environmental laws. We therefore propose an amendment of this clause as follows:-</p> <p>"The Chief Officer, <i>working in consultation with the County Director for Environment</i>, shall upon consideration of the applications and being satisfied of the capabilities of the incinerator for the intended incineration activity may grant the applicant the permit."</p> <p>So as to give certainty in the licencing process, we would also recommend that the regulations include the factors which will be taken into account in determining whether to issue a licence or not. Specific reference could, for example be</p>

				made to the categories of incinerators provided for under the Third Schedule of the Waste Management Regulations, 2006.
3.	36 (1)	General Penalties	The penalties prescribed are too lenient, especially for corporate offenders.	<p>A maximum penalty of Ksh. 200,000 and/or imprisonment for a period not exceeding 2 years are in our view too lenient, especially for corporate offenders. Penalties for polluting the environment should be assessed based on the extent of damage caused by the polluter's activities. In addition to penalties, the polluter should, in our view, be required to bear the cost of restoring the environment back to its original status.</p> <p>The aim of having hefty penalties is to serve as a deterrent. Otherwise, business owners, particularly large scale operators will often prefer to simply pay the prescribed penalty because they can afford to, at the expense of exercising precaution.</p>