



About Watershed

Watershed - empowering citizens programme is a strategic partnership between the Dutch Ministry of Foreign Affairs, IRC, Simavi, Wetlands International and Akvo.

Watershed aims at delivering improvements in the governance and management of water, sanitation and hygiene services as well as of the water resources on which they draw. Watershed is implemented in Kenya, Uganda, Mali, Ghana, Bangladesh and India.

The long-term objective of Watershed is improved governance for WASH and IWRM so that all citizens, including the most marginalised, can benefit from sustainable services.

The immediate goal is to enhance citizens' ability to obtain information so that civil society organisations (CSOs) can advocate for change based on reliable, accurate data.

CONTACT: s.shivaji@kewasnet.co.ke

MEMORANDUM TO THE KAJIADO COUNTY ASSEMBLY ON THE DRAFT RAINWATER HARVESTING BILL, 2019

Executive Summary

The Kajiado County Rainwater Harvesting Bill, 2019 is a private member's bill brought to the County Assembly of Kajiado for possible enactment into an Act of the Assembly. The Act would provide for compulsory harvesting of rainwater in every residential, commercial and institutional building within Kajiado County, to conserve and ensure availability of water while also ensuring recharge of groundwater. This Act may be cited as the Kajiado Rainwater Harvesting Act, 2019 and shall come into operation upon publication in the Kenya Gazette.

The Bill, however, does not make reference to the Kajiado County draft water policy, which would speak to the broader aspirations and prescriptions for the entire water sector, including conservation and supply guidelines. This memorandum makes reference to the Constitution of Kenya and suggests amendments and removal of some provisions in the Bill such as section 11 (2) which would be in contravention of the constitution's entitlement to the right to water and sanitation.

The purpose of this briefing note is to highlight the key areas of submission made to the Kajiado County Assembly by Watershed WP2 partners, through the leadership of the Kenya Water and Sanitation Civil Society Network (KEWASNET).

At a glance

Main challenges

The Kajiado County Rainwater Harvesting Bill does not make reference to the draft water policy that would speak to the broader aspirations and prescriptions for the entire water sector, including conservation and supply guidelines.

Proposing to take action on denial of service as a means of enforcing compliance to the Bill would be a contravention of the Constitution of Kenya.

Social Inclusion

There was inadequate time for comprehensive public participation and input into the Bill.

WASH Inventory

Key issues on governance, constitutionality and accountability were presented and defended for inclusion in the Kajiado County draft Water Policy.

Statement of civil society position

This section of the memorandum contains the civil society's input into the Kajiado County Rainwater Harvesting Bill, 2019. It reflects the position and understanding of issues regarding rainwater harvesting as at the time of submission of the memorandum. In our submission, we make two specific statements;

- That CSOs note that the Bill has not made any specific reference to draft water policy, which has been submitted to the Assembly, and which speaks to the subject of rainwater harvesting and conservation.
- That CSOs take exception to the short time window provided for substantive public participation, and the duration may not have been sufficient to allow for proper review, consultations and considered submissions.

Core policy standards to advise the Bill

This section is a statement of the general provisions in law and in practice which in the opinion of CSOs should be the basis of formulation and review of the draft Bill. Amongst others, the standards for reference outlined in the memorandum are;

1. Reference to intergovernmental relations as envisaged in the Constitution of Kenya under Art. 6 (distinctiveness and interdependency between national and county governments), Art. 189 (on intergovernmental consultation, coordination, cooperation, liaison, exchange of information and mutual assistance in implementation of laws related to the other level of government).
2. Reference to the framework for implementing Art. 191 of the Constitution of Kenya that specifically sets out the national standards and norms that should guide county governments in implementing water and sanitation functions.
3. Pointing out that a proposed provision in the Bill would be a violation of the constitutionally protected rights.

Specific proposals on the draft Kajiado County Rainwater Harvesting Bill, 2019

This section reflects on the specific content of the draft Kajiado County Rainwater Harvesting Bill, 2019. It proposes improvements in the textual content, through proposals for specific amendments. The intent for these proposals is to ensure that the provisions of the Bill are more specific in their prescription of actions, guidance on measures and limits, and have clarity on responsibilities. The proposals include amendment of the following sections:

- Section 6 (3) – On compliance to standards and procedures, and accountability
- Section 10 (2) – On imposition of a levy
- Section 11 (1) – On provision of rainwater harvesting structure
- Section 12 (2) – On provision of a whole or a proportion of financial assistance to resident welfare associations

Briefing Note

- Section 13 (2) – On awareness and promotion of rainwater harvesting.

Value proposition

By engaging in the process that ended up in submitting the memorandum, the civil society actors have achieved the following;

- Collaborated with the Department of Water to receive and work through the draft Bill.
- Positioned civil society as an important actor in the policy dialogue processes and conservations in Kajiado County.
- Presented and defended key issues on governance, constitutionality and accountability for inclusion in the draft policy.

Memorandum

on

Kajiado County Rainwater Harvesting bill, 2019

Presented to the County Assembly of Kajiado County

Presented

By

**Kenya Water and Sanitation Civil Society Network
(KEWASNET), on behalf and with member organizations
and collaborating partners.**

2 September 2019

Statement of positions advising Civil Society's input to the Kajiado County Rainwater Harvesting Bill, 2019

1. Our understanding is that this bill, though sponsored as a private bill, will potentially result into a law that is administratively domiciled within the Department of Water, Environment and Natural Resources. Subsequently, we advise that the bill should be advised by the policy definition work already in place by the department, and which was advised by a comprehensive public participation and input. The current bill as is, speaks closely to the letter and spirit of the draft policy provisions with regards to water harvesting and storage. Our preference would be that the bill is shelved, in favour of an anticipated *Kajiado County water bill*, that will be defined to speak to the broader aspirations and prescriptions for the entire water sector, including conservation and supply guidelines.
2. Civil society organizations formally received the content of the Kajiado County Rainwater Harvesting Bill, 2019 on 23 August 2019, in spite of the fact that the call for public participation for 26 – 31 August 2019 was announced on 26 July 2019. The time between our receipt of the bill, and our presentation of this memorandum was very short, and did not provide for sufficient consultation and internal review as we would have preferred. Nonetheless, we submit that the inputs provided herein are representative of the civil society position, and have been well considered by civil society representatives.

1. Overview of core policy standards and issues to be considered for inclusion in the Kajiado County Rainwater Harvesting Bill, 2019

The Kajiado County Rainwater Harvesting Bill, 2019 needs to be advised by a preceding policy statement, which as currently stands as draft before the Kajiado County Assembly departmental committee on Water, Environment and Natural Resources.

The Kajiado County Rainwater Harvesting Bill, 2019 needs to provide for the following core standards and issues among others–

- (a) Recognition for intergovernmental relations as envisaged in the Constitution under Art. 6 (distinctiveness and interdependency between national and county governments), Art. 189 (on intergovernmental consultation, coordination, cooperation, liaison, exchange of information and mutual assistance in implementation of laws related to the other level of government), from the consideration that water in land is considered a shared national resource.
- (b) Framework for implementing Art. 191 policy and legislative powers for functions that are implemented in the concurrent jurisdiction specifically setting out the national standards and norms that should guide county governments in implementing water and sanitation function and preventing counties from adopting policies that may hinder national economic policy, common market or hinder development in other counties.
- (c) Clearly define institutional responsibilities within the executive level for implementation and execution of provisions of the bill, once enacted in law.
- (d) Penalties proposed for non-compliance must be defined to be encouraging conformity.
- (e) Provisions in this bill cannot be in violation of the constitution. Provision contained in Section 11 (2) would be in contravention of the constitution's entitlement to the right to water and sanitation, in proposing to take action of denial of service as a means of enforcing compliance.
- (f) While we appreciate the emphasis on rainwater harvesting as a sustainable means of water provision to both urban and rural households (self-supply scheme), we are of the considered view that rainwater harvesting should be looked into holistically, to include the 3R approach (water recharge, retention and re-use). The bill needs to be more explicit about all these three aspects of 3R.

2. Proposed specific amendments to the Kajiado County Rainwater Harvesting Bill, 2019

1) Section 2. Interpretation

AMEND The following definitions as contained in Part I, Section 2., by inserting the following new definitions;

1. **Kenya Bureau of Standards** is the National Standards Council as established by an Act of Parliament - the Standards Act, Chapter 496 of the Laws of Kenya.
2. **Non-potable water** is **water** that is not of drinking quality, but may still be used for many other purposes, depending on its quality.

2) Part II -Mandatory installation of rainwater harvesting structures

AMEND Section 5 (6) as follows –

In conducting the public participation under subsection (5), the county shall ensure the involvement of all persons and development agencies within the area of Kajiado County within which the rainwater harvesting structures are intended to be set up.

AMEND Section 5 (8) as follows –

The County Executive Committee member responsible for the department in charge of water shall appoint water harvesting and storage committee to be responsible for the implementation of rainwater harvesting structures by the county

DELETE Section 5 (9)

3) Part II - Compulsory rainwater harvesting by households and residential establishments

AMEND Section 6 (3) as follows –

The water harvesting and storage committee appointed in accordance to 5 (8) will be responsible for ensuring compliance to standards and procedures defined in the Schedule, and will be accountable to County Executive Committee member responsible, or his designated officer

AMEND Section 10 (2) as follows –

The county may impose a levy of not exceeding twenty-five thousand shillings per annum for every 1000 sq. ft. of built up and adjacent area to the building for the failure of the owner of any independent household building or person primarily in charge of the affairs of the commercial

AMEND Section 11 (1) as follows –

Where the rainwater harvesting structure is not provided as | required under Section (6) and (7), the county may, after giving notice to the owner or occupier of the building, take actions as stipulated in Section 26

AMEND Section 12 (2) as follows –

The county may, however, provide whole or a proportion of financial assistance to resident welfare associations, public and private schools, institutional buildings, hospitals and charitable institutions for construction of rainwater harvesting structures in their based on the proposals on rainwater harvesting structures submitted to the county for approval.

AMEND Section 13 (2) as follows –

For the purpose of spreading awareness and promotion of rainwater harvesting, including awareness and promotion through internet, the county shall partner with public benefit organizations and other agencies or institutions engaged in the field of rainwater harvesting within Kajjado County by providing them with financial assistance.

4) **Part III - Powers and exercise of power by county 3 executive committee member:**

AMEND Section 18 (1) as follows –

The county executive committee member in charge of water, environment, and natural resources shall be responsible for—

AMEND Section 19 (2) as follows –

A private consultant under subsection (1) may only be procured in accordance to public procurement and disposal (County Governments) regulations, on the recommendation of the County Executive Committee Member, where it is considered that the services of the consultant will be necessary

AMEND Section 21 as follows –

Committee Member or an officer authorized by the County Executive Committee Member who has reasonable grounds to believe that an offence has been committed or is about to be committed under this Act may cause to be arrested the proprietor of the activity, an employee of the proprietor

or any other person whom the County Executive Committee Member or the officer authorised by the County Executive Committee Member reasonably believes is involved in the execution of the activity.

AMEND Section 24 (1) as follows –

The County Executive Committee Member or an officer authorized by the County Executive Committee Member who carries out an inspection under this Act, and who finds noncompliance with any matter provided by this Act shall make a preliminary report immediately upon completion of the inspection in a prescribed format, a copy of which shall be retained in the premises, and another copy of which will be made publicly available.

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