

Report laid by Hon. Amukuni

on 29/04/15

Nairobi
PCA (LSP)



CLERK
NAIROBI CITY
COUNTY ASSEMBLY
P. O. Box 45844-00100
NAIROBI

NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY - SECOND SESSION

THIRTEENTH REPORT OF THE SECTORAL COMMITTEE ON AGRICULTURE, ENVIRONMENT AND NATURAL RESOURCES ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY URBAN AGRICULTURE PROMOTION AND REGULATION BILL, 2015

**Clerk's Chambers,
Nairobi City County Assembly
City Hall Buildings
Nairobi**

April, 2014

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1.0 PREFACE

Mr. Speaker Sir,

The Sectoral Committee on Agriculture, Environment and Natural Resources is established under Standing Order No. 191. Its mandate pursuant to Standing Order 191(5) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyse the relative success of the departments as measured by the results obtained as compared with its stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee on Appointments); and*
- g) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

The Committee comprises the following Members:-

- | | | |
|--|----------|-------------------------|
| 1. Hon. Benson L Amutavi, MCA | - | Chairperson |
| 2. Hon. Alhad Ahmed Adam, MCA | - | Vice Chairperson |
| 3. Hon. Michael Wainaina Wanjiku, MCA | | |
| 4. Hon. Hellen Katangie, MCA | | |
| 5. Hon. Alexander Mutisya Mulatya, MCA | | |
| 6. Hon. Dorcas Njoroge, MCA | | |
| 7. Hon. Peter Wahinya Njau, MCA | | |

8. Hon. Catherine Okoth, MCA
9. Hon. Samuel Kagiri Mwangi, MCA
10. Hon. Daniel Oria Odhiambo, MCA
11. Hon. Rosemary Macharia, MCA
12. Hon. Samwel Ndung'u Njoroge, MCA
13. Hon. Zulfa Hakim, MCA
14. Hon. Janet Wala Ayako, MCA
15. Hon. Peter Anyule Imwatok, MCA
16. Hon. Mike O Guoro, MCA
17. Hon. Margaret Sewe, MCA

Mr. Speaker Sir,

The Committee exercises oversight role on the work and administration of the following two Sectors:-

- i) Agriculture, Livestock Development & Fisheries
- ii) Water, Energy, Forestry and Natural Resources

In accordance with the Second Schedule of the Standing Orders, the Sectoral Committee is mandated to consider all matters relating to:-

- a) agriculture, including crop and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control and fisheries;*
- b) Animal control and welfare, including licensing of dogs and facilities for accommodation, care and burial of animals;*
- c) implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry and control of air pollution, noise pollution, other public nuisances and outdoor advertising; and*
- d) Refuse removal, refuse dumps and solid waste disposal*

Mr. Speaker Sir,

The Nairobi City County Urban Agriculture Promotion and Regulation Bill, 2015 was read a First Time on Thursday, 26th March, 2015 and thereafter committed to the Sectoral Committee on Agriculture, Environment and Natural Resources for consideration pursuant to Standing Order 121. This follows the re-introduction of the said Bill in the same form pursuant to the provisions of Standing Order 134(3) since the Bill had lapsed during the previous Session before undergoing Second Reading.

Mr. Speaker Sir,

The Committee placed a notice in the local dailies on **31st March, 2015** calling for any representations and amendments from the public on the Bill Pursuant to Article 196(b) of the Constitution of Kenya and Standing Order 121(3) which require public participation in the legislative and other business of the Assembly and its Committees. Following the notice, the Committee received written memoranda from the following stakeholders;

- i) Dr. Alex O Awiti, PhD - Director, East African Institute and Assistant Professor Aga Khan University
- ii) Dr. Maina Mwangi - School of Agriculture and Enterprise Development
- iii) Mr. Andrew S Munya - PhD candidate, the University of Auckland

In addition, before the Bill lapsed, the Committee had received written memoranda from Mr. Andrew M Mugambi (Agribusiness Consultant) and Mr. Sammy Lui, MBS. Similarly, the Committee also held a total of five (5) meetings and a retreat to consider the Bill and all representations received. The meetings included a meeting held with the **County Executive Committee (CEC) Member responsible for Agriculture, Livestock Development and Fisheries** and the **Legal Advisor to the Governor** to get the views of the County Executive on the Bill particularly on Clauses that were of concern to the Committee.

All the stakeholders who presented memoranda were agreeable in principle with the Bill although they proposed amendments to various Clauses.

Mr. Speaker Sir,

While examining the Bill, the Committee noted the following:

1. That the principle objective of the Bill is to encourage urban agriculture as an activity conducive to food security and well-being of the population, creation of work and economic opportunities. The Bill also aims at promoting increased access to agricultural extension services and the regulation of access to land and water for use for agriculture by the County Government.

The Committee noted that the Fourth Schedule to the Constitution devolves Agriculture as one of the functions of County Governments and as such the proposed legislation which intends to promote agriculture is both constitutional and well-intended.

2. **Part I** of the Bill sets out the preliminary matters with respect to the Bill. Clause 1 provides for the short title of the Bill. Clause 2 sets out the definition of terms used in the Bill. Clause 3 outlines the objects and purposes of the proposed law with the main objective being the promotion and support of urban agriculture within the county.

Of concern to the Committee is that the Bill seems to leave out the aspect of breeding and keeping of livestock while defining the term agriculture at Clause 2. This concern was also raised by Mr. Andrew Mugambi in his memorandum and thus the Committee opines for inclusion of the aspect to avoid ambiguities. Mr. Andrew S Munya suggests that a definition of urban agriculture be included, while the Committee agrees with his sentiments, the definition of the term is already covered in various national legislations which are well cited in the Bill. The categorization of various agricultural activities as proposed by Mr. Munya may be addressed in regulations to be developed by the County Executive Committee Member as contemplated in Clause 16(1) since circumstances within the County may change with time.

On Clause 3, Mr. Andrew S Munya, proposes the establishment of a Committee to be known as Urban Food System Planning and Design Committee. However, the Committee opines that the roles of the suggested Committee would be a duplication of roles already provided for by the advisory board contemplated in Clause 11 of the Bill. Other issues raised can be well covered in the regulations.

3. **Part II** of the Bill contains provisions relating to the promotion of agriculture and ways within which urban agriculture may be carried out. The part sets out the duties of the CEC in promotion of urban agriculture. It also lists the responsibilities of the County Government in as far as promotion of urban agriculture is concerned. In particular, Clause 8 bestows upon the County Government responsibilities such as training and capacity building of farmers, facilitating collaboration of stakeholders in the management of organic waste for use in agriculture, supervising, coordinating and promoting livestock production, fish farming, crop and livestock management, ensuring hygienic and sanitary standards in handling of fish, meat and other products of human consumption, ensuring that urban agriculture programs are funded, promoting animal welfare, standards in livestock production activities, and promoting product identification and traceability systems.

Clause 5 and 6 emphasizes on the inclusion of urban agriculture in county physical planning and the development of a County Agriculture strategic plan respectively. In addition, Clause 9 provides that the County Government may contract private vacant land for small scale agricultural use within the County.

The Committee finds this part crucial to the Bill since it enumerates the critical functions of the County Government in the promotion of urban agriculture. The Committee notes that the operationalization of the provisions of Clause 8 would go a long way in the promotion of agriculture

within the County. It is worth noting that Mr. Sammy Lui in his memoranda to the Committee supported the provisions of this Clause. The Committee further opines that amendments proposed by Mr. Andrew Mugambi to Clause 8 and 10 have similar meaning as already provided for in the Bill and as such do not have any effect in changing the objectives of the Bill as drafted. Dr. Alex Owiti in his submissions proposes amendments on Clauses 8(d), 8 (f) and 8(g). However, the Committee noted that the proposed amendments doesn't in anyway change the original interpretation of the Clauses as drafted.

However, the Committee is critical with the intentions of Clause 9 since in the opinion of the Committee, the County Government should not be directly engaged in agriculture by way of contracting private land. Recent public administration trend shows that governments should only be concerned with service delivery and not business like ventures since this has been an avenue of corruption and miss-use of public resources. In fact, the CEC could not substantiate the reasoning behind the Clause. The Committee therefore proposes deletion of the Clause in its entirety.

The Committee lauds the provisions relating to the inclusion of urban agriculture in county physical planning and the development of a county agriculture plan. This will ensure that urban agriculture becomes an integral part of the county's priorities and thus supported through increased budgetary allocation contrary to the trend set by previous administrations. Dr. Maina Mwangi observes that in Clause 10(d), prohibition on the use of pesticide or fertilizers shall affect agriculture. However, the Committee noted that the prohibition is with respect to use of contracted private land whose terms shall be provided for in the agreement. In addition, the responsible County Executive Committee Member explained that the provision is to restrict environmental pollution in residential areas.

4. **Part III** of the Bill establishes the Nairobi City County Urban Agriculture Promotion Advisory Board responsible for advising the CEC on promotion of agriculture. The Board shall consist of; a Chairperson who shall be a person with experience in agriculture appointed by the Governor, four other members with the experience and knowledge in urban planning, livestock development, public health and economics respectively appointed by the Governor on the recommendation of the responsible CEC. The Chief Officer responsible for agriculture shall be the secretary to the Board.

The Committee is agreeable with the idea of the Board as contemplated by the Bill since it will help in ensuring that County agricultural matters are conducted in a professional manner. Both Dr. Alex Owiti and Dr. Maina Mwangi observed that the qualifications of persons to be appointed should also include qualifications in horticulture. The Committee resolved that in order to be clear on the expertise required, the term agriculture should be used which include both crop and animal expertise.

In addition, the Committee observed that persons nominated for appointment to the Board should be approved by the County Assembly to ensure that right persons are appointed as envisaged and to avoid cronyism when it comes to appointment. Further, the Committee fears on the financing of the Board were allayed by the responsible CEC who informed that since the Board shall be advisory in nature, it shall draw its finances from the sector's budgetary allocation.

5. **Part IV** of the Bill contains provisions relating miscellaneous applications such as the delegated powers of the CEC which include making of regulations for the operationalization of the proposed Act. It also recognizes existing national legislations governing agriculture since the Constitution while devolving agriculture left policy formulation and control to the National Government.

The Committee acknowledges the relevance of this part particularly the need to allow the CEC to make regulations for the operationalization of the proposed law. However, in making the regulations, the CEC shall have to table before the County Assembly the proposed regulations for approval. The Committee is also cognizant of the fact that agriculture is a sensitive sector of the economy and the Constitution still recognizes the role of the National Government in formulating policies for the sector. To this end, the Committee agrees with the requirement of the part that relevant legislations still apply in the promotion of County agriculture.

Mr. Speaker Sir,

The Committee notes that agriculture is one of the functions devolved to Counties by Part (II) of the Fourth Schedule to the Constitution. However, Nairobi City County being an urban county, the type of agriculture to be practiced is unique hence this Bill is crucial for the development and promotion of agriculture within the County. Recent research and statistics indicate that as a response to escalating poverty and rising food prices or shortages, a majority of Nairobi residents especially those in low income neighborhoods have resorted to subsistence farming. Equally, there are farmers who are engaged in agriculture for commercial purposes particularly farmers located in the south-western part of the city who practice irrigated vegetable fields, battery hen houses, green house farming and grade dairy cattle rearing. Based on this statistics, there is need for both promotion and regulation of farming within the County. The Committee therefore notes that this Bill if enacted into law shall be instrumental in the promotion of agriculture within the County.

Mr. Speaker, Sir,

The Committee will propose amendments to the Bill in Clauses 2, 9 and 11. The amendments are aimed at ensuring that all aspects of agriculture are covered, the County Government remains committed to service delivery and not to venture in business like activities; and to strengthen the proposed agricultural advisory board respectively.

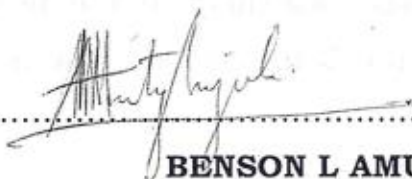
Mr. Speaker Sir;

The Committee thanks the Offices of the Speaker and the Clerk of the County Assembly for the support and services extended to Members of the Committee to enable them complete the exercise. I am grateful to the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat and the County Executive for their support.

On behalf of the Committee, I now have the honor and pleasure to present this report on the consideration of the Nairobi City County Urban Agriculture Promotion and Regulation Bill, 2015 for adoption.

Thank You.

SIGNED

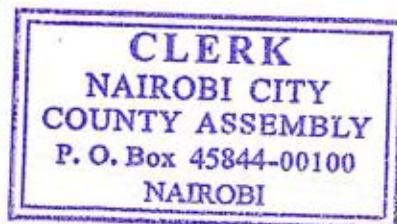


BENSON L AMUTAVI, MCA

(CHAIRMAN)

DATE

29/4/2015



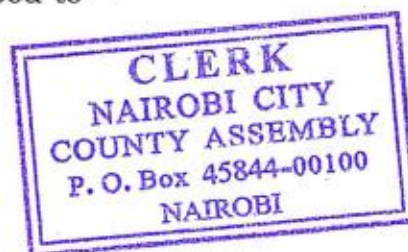
**2.0 COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY
URBAN AGRICULTURE PROMOTION AND REGULATION BILL, 2015**

3.01. While considering the Bill the Committee emphasized on the following two aspects;

- i) Whether the Bill is consistent with Part II of the Fourth Schedule to the Constitution. The Committee was convinced that the Bill is Constitutional since it aims at implementing the provisions of Paragraph 4 of Part II of the Fourth Schedule to the Constitution.
- ii) The impact of the Bill on agricultural promotion. The Committee was convinced that the Bill, if passed, will help in the promotion and regulation of agriculture within the County which has been neglected by previous administrations.

3.02. The Committee deliberated on the Bill as follows;

Clause 1	- agreed to
Clause 2	- proposed amendments.
Clause 3 to 8	- agreed to.
Clause 9	- proposed amendments.
Clause 10	- agreed to
Clause 11	- proposed amendments
Clause 12 to 16	- agreed to



3.0 COMMITTEE STAGE AMMENDMENTS

NOTICE is given that the Chairperson of the Sectoral Committee on Agriculture, Environment and Natural Resources, Hon. Benson Amutavi, M.C.A, intends to move the following amendments to the Nairobi City County Agriculture Promotion and Regulation Bill, 2015 —

CLAUSE 2

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

“(ff) breeding and keeping of livestock;”

CLAUSE 9

THAT, the Bill be amended by deleting Clause 9;

CLAUSE 11

THAT, Clause 11 be amended by—

- (a) inserting the words “with the approval of the County Assembly” immediately after the word “Governor’ appearing in sub clause (2a);
- (b) inserting the words “with the approval of the County Assembly” immediately after the word “member’ appearing in sub clause (2b);
- (c) deleting the words “livestock development” appearing in sub clause (2b) and replacing them with the word “agriculture”

