THE KENYA NATIONAL COMMISION ON HUMAN RIGHTS

ADVISORY ON
THE WATER BILL, 2014

PRESENTED TO

THE STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
**Introduction**

Kenya is guided by her Constitution which is supreme and it reinforces the rule of law, respect and promotion for human rights and fundamental freedoms and the sovereignty of the people. Article 43 of the Constitution speaks to Economic, Social and Cultural Rights which are to be progressively realized.

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution (NHRI) established under the Constitution of Kenya and in line with the Paris Principles. The National Commission’s mandate is to promote the respect, protection and observance of human rights and fundamental freedoms in Kenya.

In line with this mandate KNCHR, reviews legislation and policy to ensure it is in compliance with constitutional provisions, regional and international standards and principles. This is the basis of the review of the Water Bill, 2014 herein.

**General comments**

1. As we applaud the efforts to improve the water governance sector in Kenya through the introduction of the Water Bill, 2014, such efforts must be comprehensive and therefore there is urgent need to accelerate the process of reviewing the national water policy which anchors the Water Bill, 2014.

2. The institutional structure of the water sector in the bill is convoluted with the creation of multiple institutions and this will have an adverse impact on accountability and governance of the sector as well as the management of intergovernmental relations.

3. Tariffs - the responsibility for setting tariffs should be clearly set out in the bill to safeguard the roles of national and county governments for the realization of the right water and sanitation. A balance between affordability and resource collection for development of water infrastructure must be achieved.

4. Waste water management is not well articulated in the Water Bill, 2014. This can be addressed through the drafting of a separate bill for waste water management.
5. Penalties- each offence must have a specific sanction as opposed the general penalty of paying a fine of one million Kenya Shillings

Specific comments

6. **Long Title**: Proposal - to include the term, “devolution of” immediately before water resources in the long title

7. **Clause 10 Functions of Water Resources Regulatory Authority**: KNCHR proposes to include a function on development of a sanitation policy at national level including monitoring structure

8. **Clause 12**: KNCHR proposes that the President should appoint chairperson to the Board in consultation with the Council of Governors because water is a devolved function.

9. **Clause 27**: There is an absence of concrete rationale for the creation of water basin committees and water recourses users association since the proposed function of the committees and associations can be executed by the Water Resources Regulatory Authority through opening branch offices in counties for protection of water catchment areas and basin areas.

Moreover, KNCHR views the creation of National Water Harvesting and Storage Authority is a duplication of the functions of the Water Resources Regulatory Authority created under Clause 10. Maintaining the water harvesting and storage functions within the Water Resources Regulatory Authority would be a cost cutting measure.

10. **Clause 38 (4)**: KNCHR proposes that there is need to ensure that public consultation and Environmental Impact Assessment are mandatory requirements before issuance of a permit and not optional as captured in the bill.

11. **Clause 46**: KNCHR proposes the insertion of and making provision for further recourse in a competent court of law after the matter is heard and determined by Water Tribunal if a party so desires.
12. **Clause 50**: KNCHR proposes for the need to prescribe a specified time period for issuance of notice of abandonment of permitted activities - 2 weeks’ notice.

13. **Clause 50 (3)**: KNCHR proposes for the consideration of deleting the words “*commits an offence*” and replace with an appropriate term to describe the failure to remove the works which in our view does not constitute a criminal act.

14. **Clause 59**: KNCHR proposes for the provision of a (7) seven day notice to permit holder to give information to the inspector

15. **Clause 60**: KNCHR notes that the clause gives unfettered powers to the inspector. Proposes to consider providing for the inspector to seek warrant of arrest from the courts

16. KNCHR proposes for inserting of **Clause 61 A** to provide for provision of adequate, affordable, assessable, clean, safe water and sanitation for all in Kenya.

17. **Clause 62 (3)**: KNCHR proposes the insertion to the clause a comprehensive provision for a strategy to ensure that the population has water that is adequate, affordable, assessable, clean- safe water and sanitation within a specified period of time.

18. **Clause 64**: Proposal to consider adding to the Water Resource Regulatory Authority, the functions in Clause 66 of the proposed board established in Clause 62 (1)

19. **Clause 75**: The privatization of the provision of water services should not be encouraged. Rationale: privatization will lead to higher water tariffs making it inaccessible to the public

20. **Clause 76 (1) (b)**: KNCHR proposes that the clause be deleted. Rationale is that the development of county assets cannot be the responsibility of the private water service provider, it should be the preserve of the water resource regulatory authority or national/ county governments.

21. **Clause 77 – 80**: KNCHR proposes that the clauses be deleted. Rationale is that all clauses on functions to private water service providers should be deleted.
22. **Clause 100**: KNCHR proposes for the amending and provision for revocation of the license instead of providing for special regulations for a provider who contravenes the conditions of the licence.

23. **Clause 101 (3)**: KNCHR proposes that the clause section be deleted. Rationale is that Proposal No. 25 seeks to revoke licences hence temporal measures do not apply.

24. **Clause 108**: KNCHR proposes for providing for express compensation when land is compulsory acquired.

25. **Clause 122**: KNCHR proposes for the inclusion of the provision of intergovernmental disputes resolution mechanism to be resolved by the tribunal.

26. **Clause 123**: KNCHR proposes for the need to consider extension of time to sixty days from date of delivery of Tribunals’ decision for the aggrieved party to appeal in a competent court of law.