

REPUBLIC OF KENYA



*Approved*  
*28/8/16*

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ELEVENTH PARLIAMENT-FOURTH SESSION

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MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES  
OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015,  
(NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

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REPORT ON THE NATURAL RESOURCES (CLASSES OF  
TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015, (NATIONAL  
ASSEMBLY BILL NO. 54 OF 2015)

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JOINT CLERKS' CHAMBERS  
PARLIAMENT OF KENYA  
NAIROBI

AUGUST, 2016

## 1.0 INTRODUCTION

### 1.1 Establishment of the Committee

The Mediation Committee on the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015 (National Assembly Bill No. 54 of 2015) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) of National Assembly and the Speaker of the Senate pursuant to Standing Order 154 (2) of the Senate on 4<sup>th</sup> August, 2016, and 5<sup>th</sup> August, 2016, respectively.

The Members of the Committee were:-

1. The Hon. (Dr.) Wilbur Ottichillo, MP	Chairperson
2. The Hon. Sen. George Khaniri, M.P	Vice Chairperson
3. The Hon. Amina Abdalla, CBS, M.P	Member
4. The Hon. Sen. Lenny Kivuti, M.P	Member
5. The Hon. Sen. Liza Chelule, MP	Member
6. The Hon. Joyce Emanikor, MP	Member

### 1.2 Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya and the National Assembly Standing Order No. 149 and Senate Standing Orders No. 154.

The Committee was established to develop a version of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015 (National Assembly Bill No. 54 of 2015) that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No. 154 (6).

### 1.3 Committee Sittings

The Mediation Committee held a total of three sittings. The first sitting of the Committee was held on Tuesday, 16<sup>th</sup> August, 2016 at ten am where the Hon. (Dr) Wilbur Ottichillo, M.P and The Hon. Sen. George Khaniri, MP were elected as Chairperson and Vice-Chairperson respectively. The Committee held its second sitting on the same day at four pm and considered the contentious clauses in the Natural Resources (Classes of Transaction Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015). The Committee held its last sitting on Thursday, 18<sup>th</sup> August, 2016 where it reviewed and adopted the Mediation Report on the Natural Resources (Classes of Transaction Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015).

#### 1.4 Committee Resolutions

The Committee deliberated on the on the submissions from stakeholders on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is hereby appended to this report.

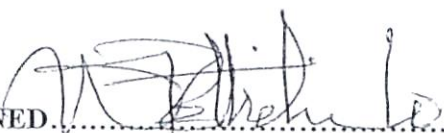
#### 1.5 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

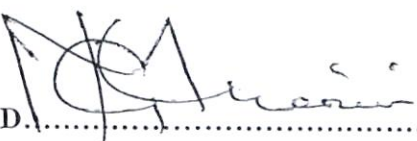
The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 150 (1), to present a report of the Mediation Committee on the Natural Resources (Classes of Transaction Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) for consideration by the House.

SIGNED  DATE 15/8/16

THE HON. (DR.) WILBUR OTTICHILLO, MP (CHAIRPERSON)

SIGNED  DATE 18/8/2016

THE HON. SEN. GEORGE KHANIRI, M.P (VICE CHAIRPERSON)

## 2.0 BACKGROUND

The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015, (National Assembly Bill No. 54 of 2015) was published in the Kenya Gazette Supplement No. 139 of 18<sup>th</sup> August, 2015 as a bill originating in the National Assembly. The Bill underwent the First and Second readings and was subjected to public participation as required by the Constitution and National Assembly Standing Orders and was passed with amendments on 9<sup>th</sup> March, 2016. It was then referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142.

The Bill was read a first time in the Senate on 14<sup>th</sup> April, 2016 and committed to the Standing Committee on Land and Natural Resources pursuant to Standing Order 130(1).

The Senate subjected the Bill to a public participation forum which was held on 2<sup>nd</sup> June, 2016 at Shimba Hall, Kenyatta International Convention Center to take into account the views and recommendations of the public. The Bill was passed by the Senate with amendments on 13<sup>th</sup> July, 2016.

Pursuant to Article 110 (4) of the Constitution and the provisions of Standing Orders 40 (1) and 149 of the Senate Standing Orders, the Senate conveyed a message to the National Assembly on Tuesday, 19<sup>th</sup> July, 2016, seeking the concurrence of the National Assembly to the amendments made to the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015.

The National Assembly, on its Sitting of Tuesday, 2<sup>nd</sup> August, 2016 considered the proposed amendments by the Senate and by a resolution agreed to the Senate's amendments save for the amendments of the New Clause 9A of the Bill. This message was conveyed by the Speaker of the Senate on 5<sup>th</sup> August, 2016.

Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154, the Bill and specifically the new Clause 9A of the Bill were referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

### 3.0 DELIBERATIONS OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTION SUBJECT TO RATIFICATION) BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

#### 3.1. Senate amendments to the Natural Resources (Classes of Transaction Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015)

##### NEW CLAUSE 9A

THAT the Bill be amended by inserting the following new clause immediately after clause 9

Procedure for approval by the Parliament.

9A. (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within sixty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If both Houses —

(a) approve the ratification of an agreement; or

(b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

(4) Where either the National Assembly or the Senate votes to reject an agreement, the agreement shall be deemed to have been rejected by Parliament and the Speaker of the National Assembly shall, within seven days of the rejection, notify the relevant Cabinet Secretary.

(5) If within sixty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate under subsection (2), the National Assembly shall be deemed to have approved the agreement and the Senate shall commence its consideration of the agreement.

(6) Where the Senate considers an agreement under subsection (5), the Speaker of the Senate shall within seven days of the decision, notify the relevant Cabinet Secretary.

##### The Schedule

That the Bill be amended in the Schedule by -

(a) deleting the tenth row that provides for “Genetic material”; and

(b) deleting the eleventh row that provides for “Genetic Resources”.

### 3.2. The National Assembly Comments on Senate Amendments

The National Assembly considered the proposed amendments by the Senate and recommended as follows:

#### New Clause 9A

THAT the Bill be amended by inserting the following new clause immediately after clause 9-

#### **Provides for Procedure for approval of an agreement by Parliament**

9A. (1) The process of approval of an agreement shall

commence in the National Assembly.

(2) The National Assembly shall consider an agreement

within sixty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If both Houses —

- (a) approve the ratification of an agreement; or
- (b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

(4) Where either the National Assembly or the Senate

votes to reject an agreement, the agreement shall be deemed to have been rejected by Parliament and the Speaker of the National Assembly shall, within seven days of the rejection, notify the relevant Cabinet Secretary.

5) If within sixty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate under subsection (2), the National Assembly shall be deemed to have approved the agreement and the Senate shall commence its consideration of the agreement.

(6) Where the Senate considers an agreement under subsection (5), the Speaker of the Senate shall, within seven days of the decision, notify the relevant Cabinet Secretary.

**The Committee rejected the proposed amendment.**

**Justification:** the proposed amendment is in conflict with the provisions of clauses 8 and 10 of the Bill. Clause 8 allows both Houses of Parliament sixty days within which to conclude

consideration of an agreement while the proposed new clause 9A allows the National Assembly to consider the agreement and forward its resolution to the Senate. The new clause 9A does not specify a particular period within which the Senate should conclude its consideration. This therefore creates conflicting timelines for consideration of the agreements by Parliament.

Further, clause 10 provides for mediation if one house fails to ratify a resolution, however in sub-clause (4) of the proposed new clause (9A) provides that where either House resolves not to ratify an agreement, the agreement shall be deemed to have been rejected by Parliament. This creates a conflict as to the process to be applied when the two Houses fail to agree on whether to ratify the agreement. Further, clause 8 of the Bill provides that the Parliament shall deal with such agreements in accordance with the laid down procedures, which are contained in the Constitution and Standing Orders.

### **The Schedule**

That the Bill be amended in the Schedule by-

- a) Deleting the tenth row that provides for “Genetic material”; and
- b) Deleting the eleventh row that provides for “Genetic resources”.

**The Committee agreed with the proposed amendment.**

**Justification:** the amendment will give universities and research institutions more freedom to carry out research on genetics.

## 4.0 RESOLUTIONS OF THE MEDIATION COMMITTEE

The Committee met on the 16<sup>th</sup> August, 2016 and unanimously resolved the contention on the new Clause 9A by amending it as follows:

### NEW CLAUSE 9A

THAT the Bill be amended by inserting the following new clause immediately after clause 9

Procedure for approval by the Parliament. 9A. (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses —

(a) approve the ratification of an agreement; or

(b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.



MINUTES OF THE 1<sup>ST</sup> SITTING OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015 HELD ON TUESDAY 16<sup>TH</sup> AUGUST, 2016 IN CPA ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 AM.

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PRESENT

1. The Hon. (Dr.) Wilbur Ottichillo, MP; Chairperson
2. Sen. George Khaniri, M.P Vice Chairperson
3. Sen. Liza Chelule, MP
4. The Hon. Joyce Emanikor, MP;

ABSENT WITH APOLOGY

1. Sen. Lenny Kivuti, M.P
2. The Hon. Amina Abdalla, CBS, M.P;

SECRETARIAT

1. Ms. Mwanate Shaban Second Clerk Assistant (Senate)
2. Ms. Tracy Chebet Second Clerk Assistant (National Assembly)
3. Ms. Carolyn Cheruiyot Legal Counsel (Senate)
4. Ms. Brigitta Mati Legal Counsel (National Assembly)

MIN.NO. MC/2016/01

PRELIMINARIES

The meeting was called to order at 10.25 am, and the Clerk of the National Assembly led with a word of prayer. This was followed by introductions.

MIN.NO. MC/2016/02

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as follows after being proposed by the Sen. George Khaniri, M.P and seconded by Hon. Joyce Emanikor, M.P:

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Election of Chairperson & Vice- Chairperson
4. Communication from the Chair
5. Consideration of the New Clause 9A of the Bill
6. Any Other Business
7. Date of Next Sitting
8. Adjournment

**MIN.NO. MC/2016/03: ELECTION OF CHAIRPERSON AND VICE- CHAIRPERSON**

Hon. Wilbur Ottichillo, M.P was elected as Chairperson of the Mediation Committee after being proposed by Sen. George Khaniri, M.P and seconded by Hon. Joyce Emanikor, M.P.

Sen. Khaniri was elected as Vice Chairperson of the Mediation Committee after being proposed by Sen. Liza Chelule, M.P and seconded by Hon. Joyce Emanikor, M.P.

**MIN.NO. MC/2016/04: COMMUNICATION FROM THE CHAIR**

The Chairperson and the Vice Chairperson each thanked the members for the opportunity and the Confidence they have shown them.

The Chairman gave the apologies of his Chairperson of the Committee on Environment and Natural Resources, Hon. Amina Abdalla, M.P who was away on official duty.

The Vice Chairperson gave apologies of his Chairperson of the Committee on Land and Natural Resources, Sen. Lenny Kivuti, M.P who was also away on official duty.

**MIN.NO. MC/2016/05: CONSIDERATION OF THE NEW CLAUSE 9A OF THE BILL**

The Committee deliberated on the Senate’s inclusion of a new Clause 9A. The clause was clarifying the process of ratifying an agreement. Clause 8 and 10 on the Bill had indicated that the ratification process was to follow the process of Bills in the House.

It was resolved that the meeting should be adjourned to 4.00pm in the afternoon to allow members time to consult.

**MIN.NO. MC/2016/06**


**ANY OTHER BUSINESS**

Members also resolved that the mediation meeting on Forest Conservation and Management Bill, 2015 should also be held at 4.30pm.

**MIN.NO. MC/2016/07**

**ADJOURNMENT**

There being no other business the meeting was adjourned at 11.00am.

SIGNED.....

HON. (DR.) WILBUR OTTICHILLO, MP; (CHAIRPERSON)

DATE.....

**MINUTES OF THE 2<sup>nd</sup> SITTING OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015 HELD ON TUESDAY 16<sup>TH</sup> AUGUST, 2016 IN CPA ROOM, MAIN PARLIAMENT BUILDINGS AT 4.00 PM.**

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**PRESENT**

- |  |                  |
|--|------------------|
| 1. The Hon. (Dr.) Wilbur Ottichillo, MP; | Chairperson      |
| 2. Sen. George Khaniri, M.P              | Vice Chairperson |
| 3. Sen. Liza Chelule, MP                 |                  |
| 4. The Hon. Joyce Emanikor, MP;          |                  |

**ABSENT WITH APOLOGY**

1. Sen. Lenny Kivuti, M.P
2. The Hon. Amina Abdalla, CBS, M.P;

**SECRETARIAT**

- |                           |  |
|---------------------------|--|
| 1. Ms. Mwanate Shaban     | Second Clerk Assistant (Senate)            |
| 2. Ms. Tracy Chebet       | Second Clerk Assistant (National Assembly) |
| 3. Ms. Carolyne Cheruiyot | Legal Counsel (Senate)                     |
| 4. Ms. Brigitta Mati      | Legal Counsel (National Assembly)          |

**MIN.NO. MC/2016/08: PRELIMINARIES**

The meeting was called to order at 4.15pm followed by prayers..

**MIN.NO. MC/2016/09: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as follows after being proposed by the Sen. George Khaniri and seconded by Hon. Joyce Emanikor:

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Consideration of the **New Clause 9A** of the Bill
4. Date of Next Sitting
5. Adjournment

**MIN.NO. MC/2016/10: CONSIDERATION OF THE NEW CLAUSE 9A OF THE BILL**

The Committee deliberated on the Senate’s inclusion of a new Clause 9A.

It was noted that the agreements are different from Bills since they are commercial in nature and therefore the process needs to be defined so as to protect investments. The Committee considered the new clause that had come from Senate and the clause that the Senate Standing Committee on Land and Natural Resources had passed and they resolved to adopt the clause from the Senate Standing Committee on Land and Natural Resources which read as follows:

**NEW CLAUSE 9A**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 9 —

Procedure for approval by the Parliament.

**9A.** (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses —

- (a) approve the ratification of an agreement; or
- (b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

**MIN.NO. MC/2016/11: AOB & ADJOURNMENT**

There being no other business the meeting was adjourned at 4.30pm and the date of the next sitting was set to Thursday 18<sup>th</sup> August, 2016 at 10.00 am.

SIGNED.....

**HON. (DR.) WILBUR OTTICHILLO, MP; (CHAIRPERSON)**

DATE.....

MINUTES OF THE 4<sup>th</sup> SITTING OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015 AND THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015 HELD ON THURSDAY 18<sup>TH</sup> AUGUST, 2016 IN CPA ROOM, MAIN PARLIAMENT BUILDINGS FROM 10.00 AM.

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PRESENT

- |  |                  |
|--|------------------|
| 1. The Hon. (Dr.) Wilbur Ottichillo, MP; | Chairperson      |
| 2. Sen. George Khaniri, M.P              | Vice Chairperson |
| 3. Sen. Liza Chelule, MP                 | Member           |
| 4. The Hon. Joyce Emanikor, MP;          | Member           |

ABSENT WITH APOLOGY

- |                                      |        |
|--------------------------------------|--------|
| 1. Sen. Lenny Kivuti, M.P            | Member |
| 2. The Hon. Amina Abdalla, CBS, M.P; | Member |

SECRETARIAT

- |                          |  |
|--------------------------|--|
| 1. Ms. Mwanate Shaban    | Second Clerk Assistant (Senate)            |
| 2. Ms. Tracy Chebet      | Second Clerk Assistant (National Assembly) |
| 3. Ms. Josephine Kusinyi | Senior Legal Counsel (Senate)              |
| 4. Ms. Brigitta Mati     | Legal Counsel (National Assembly)          |

MIN.NO. MC/2016/12: PRELIMINARIES

The meeting was called to order at 10.15am followed by prayers.

MIN.NO. MC/2016/13: ADOPTION OF THE AGENDA

Members resolved to combine the mediation meeting of Natural Resources Bill and the Forest Conservation and Management Bill to one meeting. The agenda of the meeting was unanimously adopted with amendments to read as follows:

AGENDA

1. Prayer
2. Adoption of the Agenda
3. **Confirmation of the minutes of the first and second mediation sittings of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015**
4. **Confirmation of the first minutes of mediation sitting of the Forest Conservation and Management Bill, 2015**
5. **Review and adoption of the Mediation Report on the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015**
6. **Review and adoption of the Mediation Report on the Forest Conservation and Management Bill, 2015**
7. Adjournment

**MIN.NO. MC/2016/14: CONFIRMATION OF THE MINUTES OF THE FIRST AND SECOND MEDIATION SITTINGS OF THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015**

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The Minutes of the first sitting of the Mediation Committee on Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 10.00 am, were confirmed by the Committee after being proposed Sen. Khaniri and seconded by Sen. Chelule.

The Minutes of the second sitting of the Mediation Committee on Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 4.00 pm were confirmed by the Committee after being proposed Sen. Chelule and seconded by Sen. Khaniri.

**MIN.NO. MC/2016/15: CONFIRMATION OF THE MINUTES OF THE FIRST MEDIATION SITTING OF THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015**

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The Minutes of the first sitting of the Mediation Committee on Forest Conservation and Management Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 4.30 pm, were confirmed by the Committee after being proposed Sen. Chelule and seconded by Sen. Khaniri.

**MIN.NO. MC/2016/16: REVIEW AND ADOPTION OF THE MEDIATION REPORT ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015**

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The Mediation Report on the Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 was adopted after it was proposed by Sen. Khaniri and seconded by Sen. Liza Chelule.

**MIN.NO. MC/2016/17: REVIEW AND ADOPTION OF THE MEDIATION REPORT ON THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015**

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The Mediation Report on the Forest Conservation and Management Bill, 2015 was adopted after it was proposed by Sen. Chelule and adopted by Sen. Khaniri.

**MIN.NO. MC/2016/18: AOB & ADJOURNMENT**

There being no other business the meeting was adjourned at 10.45 am.

SIGNED.....

HON. (DR.) WILBUR OTTICILLO, MP; (CHAIRPERSON)

DATE.....

REPUBLIC OF KENYA



THE JOINT MEETING OF THE SENATE AND THE NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT - FOURTH SESSION

MEDIATION COMMITTEE ON THE NATURAL RESOURCES  
(CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION)  
BILL, 2015  
ATTENDANCE REGISTER

DATE: 16 AUG 2016 TIME: 4:00 PM

VENUE: CPA ROOM

	NAME	SIGNATURE
1.	Hon. Abdalla, Amina, CBS, MP	
2.	Sen. Lenny Kivuti, M.P	
3.	Hon. (Dr.) Wilbur Ottichillo, MP	
4.	Sen. George Khaniri, M.P	
5.	Hon. Joyce Emanikor, MP	
6.	Sen Liza Chelule, MP	

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REPUBLIC OF KENYA

PARLIAMENT

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NATIONAL ASSEMBLY BILLS  
(*Bill No. 54 of 2015*)

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS  
SUBJECT TO RATIFICATION) BILL, 2015

(A version of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015 as agreed on 18<sup>th</sup> August, 2016, by the mediation committee appointed pursuant to Article 113 of the Constitution.)

N.A. /B/No. 54/2015

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**THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS  
SUBJECT TO RATIFICATION) BILL, 2015**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I—PRELIMINARY**

- 1—Short title.
- 2—Interpretation.
- 3—Application.

**PART II—CLASSES OF TRANSACTIONS**

- 4—Classes of transactions.

**PART III—SUBMISSION OF AGREEMENTS TO PARLIAMENT**

- 5—Submission of agreement to Cabinet Secretary.
- 6—Submission of agreement to Parliament.
- 7—Validity of agreements.
- 8—Consideration by Parliament.
- 9—Relevant considerations on transactions subject to ratification.
- 10—Procedure for approval by Parliament.
- 11—Procedure in case of different resolutions.

**PART IV—ADMINISTRATIVE ARRANGEMENTS**

- 12—Register of transactions.
- 13—Confidentiality.

**PART V—MISCELLANEOUS**

- 14—Regulations.
- 15—Computation of time.
- 16—Savings.

**SCHEDULE—CLASSES OF TRANSACTIONS SUBJECT TO  
RATIFICATION**

**THE NATURAL RESOURCES (CLASSES OF  
TRANSACTIONS SUBJECT TO RATIFICATION)  
BILL, 2015**

**A Bill for**

**AN ACT of Parliament to give effect to Article 71 of the  
Constitution of Kenya, 2010 and for connected  
purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Natural Resources Short title.  
(Classes of Transactions Subject to Ratification) Act, 2015.

2. In this Act, unless the context otherwise requires— Interpretation.

“concession” means the right to exploit a natural resource pursuant to an agreement between the grantor and the beneficiary or a permit issued under national or county legislation;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to environment;

“days” means calendar days;

“effective date” has the meaning assigned to it in Article 260 of the Constitution;

“exploitation” means an activity that confers or is aimed at conferring a benefit on the beneficiary of the grant of the concession or right but does not include an activity that is exploratory in nature;

“grantor” means the person who or which under an agreement relating to natural resources has granted to another the concession or right to exploit a natural resource of Kenya;

“natural resources” has the meaning assigned to it in Article 260 of the Constitution;

“permit” includes a licence or other authorization validly issued under national or county legislation;

“state organ” has the meaning assigned to it in Article 260 of the Constitution; and

“transaction” means an arrangement or other dealing between a grantor and a beneficiary under which the

beneficiary lawfully acquires a concession or a right to exploit a natural resource of Kenya.

3. (1) This Act applies to any transaction entered into on or after the effective date which, under Article 71 of the Constitution, is subject to ratification by Parliament on account of the fact that the transaction—

Application.

- (a) involves the grant of a right or concession by or on behalf of any person to another person for the exploitation of a natural resource of Kenya; and
  - (b) falls within the class of transactions designated as subject to ratification by section 4 of this Act.
- (2) This Act applies to any transaction involving the —
- (a) national government, county government, state organ and all county government entities; and
  - (b) grant of a right or a concession by a private person in cases in which such transaction is required by this Act to be ratified by Parliament.

#### **PART II—CLASSES OF TRANSACTIONS**

4. (1) The classes of transactions set out in the Schedule are subject to ratification by Parliament pursuant to Article 71 of the Constitution.

Classes of Transactions.

(2) Notwithstanding subsection (1), the following classes of transactions shall not be subject to ratification by Parliament—

- (a) subject to paragraph (e), the grant of a concession or right to exploit a natural resource through a permit, licence or other authorization issued in accordance with the requirements of national or county government legislation;
- (b) the grant of a concession or right by a private person to exploit a natural resource through an agreement or a contract;
- (c) the grant of a concession or right to exploit a natural resource for scientific research, educational or other non-commercial purposes unless the exploitation involves taking the natural resource or an portion of it outside of the jurisdiction of Kenya;
- (d) the exploitation of a natural resource by a Kenyan

national for subsistence purposes in circumstances in which the law does not require that a permit, licence or other authorization be obtained; and

- (e) the exploitation of a natural resource in quantities falling below a threshold prescribed by the Cabinet Secretary by notice in the Gazette or below a threshold specified in the Schedule to the Act

### **PART III—SUBMISSION OF AGREEMENTS TO PARLIAMENT**

5. (1) As soon as practicable, but not later than fourteen days after entering into a transaction, a beneficiary shall submit an agreement or other instrument evidencing the transaction to the Cabinet Secretary responsible for the natural resource that is the subject of the transaction.

Submission of agreement to Cabinet Secretary.

(2) The agreement shall be accompanied by a memorandum in the prescribed form.

6. Within seven days of receiving the agreement and the memorandum, the Cabinet Secretary responsible for the natural resource that is the subject of the transaction shall submit the agreement and memorandum to Parliament for ratification in terms of Article 71 of the Constitution.

Submission of agreement to Parliament.

7. (1) A transaction which under this Act, is subject to ratification by Parliament shall only be effective once it is ratified, and where Parliament has declined to ratify any transaction under this Act, the transaction shall be null and void.

Validity of agreements.

(2) A public officer shall not give effect to or otherwise take cognisance of a transaction subject to ratification under this Act which has not been ratified in accordance with this Act.

8. Parliament shall deal with any agreement submitted to it under this Act within sixty days of receiving such agreement in accordance with the laid down procedures.

Consideration by Parliament.

9. (1) The following shall be relevant considerations in deciding whether or not to ratify an agreement—

Relevant considerations on transactions subject to ratification.

- (a) the applicable Government policy;
- (b) recommendations of the relevant regulatory agency;
- (c) comments received from the county government

*The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015*

within whose area of jurisdiction the natural resource that is the subject of the transaction is located;

- (d) adequacy of stakeholder consultation;
- (e) the extent to which the agreement has struck a fair balance between the interests of the beneficiary and the benefits to the country arising from the agreement;
- (f) the benefits which the local community is likely to enjoy from the transaction; and
- (g) whether, in granting the concession or right the applicable law has been complied with.

**10.** (1) The process of approval of an agreement shall commence in the National Assembly. Procedure for approval by Parliament.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and the Senate's resolution on the matter shall be deemed to be final.

(4) If both Houses —

- (a) approve the ratification of an agreement; or
- (b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

**11.** (1) Where one House of Parliament resolves to ratify the transaction but the other House resolves not to ratify the transaction, the matter shall be dealt with in accordance with the procedures and mechanisms provided in Articles 112 and 113 of the Constitution and the relevant Standing Orders of both Houses. Procedure in case of different resolutions.

(2) Where a mediation committee is constituted under subsection (1), the period for dealing with the agreement shall be extended by thirty days.

**PART IV—ADMINISTRATIVE  
ARRANGEMENTS**

12. (1) The Cabinet Secretary shall establish and maintain a central register of agreements relating to natural resources and other transactions which have been ratified as provided under this Act. Register of transactions.

(2) The Register shall be maintained in electronic format and any member of the public may inspect it without the payment of any fee.

(3) Upon request and on payment of a reasonable fee, any member of the public may obtain an authenticated printout of an agreement from the Cabinet Secretary.

(4) The Cabinet Secretary shall, on an annual basis, publish a report on the summary of the transactions submitted under this Act and the status of ratification of transactions.

13. (1) The Cabinet Secretary responsible for the transaction that is subject to ratification may, pursuant to Article 35 of the Constitution, grant a request that the agreement or portions of it ought not to be publicly disclosed on account of commercial confidentiality, national security or other public interest considerations. Confidentiality.

(2) Where the request for confidentiality is granted, the Cabinet Secretary responsible for the natural resource that is subject of the transaction shall submit the agreement to Parliament which shall conduct the process of ratification in camera without disclosing any confidential material, but a summary of the agreement shall be made available to the public.

(3) The decision of the Cabinet Secretary on the request for confidentiality may be challenged by any person through appropriate proceedings in the High Court, and the High Court shall have the power to call for and examine the Agreement in camera before determining the matter.

**PART V—MISCELLANEOUS**

14. (1) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for the applicable natural resource, make regulations for giving effect to the provisions of this Act and prescribing anything required under the Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations made under this section may—

- (a) prescribe the particular classes of transactions, entered into between the effective date and the commencement date which should be audited, the modalities for conducting such audits and the use for which such findings may be put;
- (b) define the thresholds, quantitatively, qualitatively or a combination of both, below which transactions need not be subject to ratification;
- (c) prescribe requirements and provide guidelines on the memorandum to accompany the agreement under section 5; and
- (d) prescribe procedures for making applications and requests to the Cabinet Secretary.

(3) The regulations to be prescribed under subsection 2(a) shall be made within two years of the commencement of this Act.

15. Where under this Act the computation of time depends on the Parliamentary calendar, the period during which Parliament is not in session shall be excluded in the computation. Computation of time.

16. A transaction that is subject to ratification by Parliament, which was lawfully entered into on or after the effective date but before the commencement date, shall continue in effect and be deemed valid and lawful notwithstanding the absence of ratification by Parliament. Savings.

SCHEDULE (ss. 4(1), 4(2)(e))

**CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION**

<i>Resource</i>	<i>Transaction requiring Parliament Ratification</i>
Crude Oil and Natural Gas	Authorization to extract crude oil or natural gas.
Minerals	Mineral agreements with a threshold of US \$ 500 million.
Water resources	The extraction of sea water within the territorial sea for private commercial use.
Underground	The extraction of underground steam within a water



*The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015*

<i>Resource</i>	<i>Transaction requiring Parliament Ratification</i>
water resources	conservation or other water resource protected area.
Wildlife	Extraction of oil, gas, and minerals within a wildlife conservation area or other wildlife protected area.
Wildlife	Export and re-export of endangered wildlife species.
Wildlife	Excision or change of boundaries of gazetted national park or wildlife protection area.
Forests	Long term concession of a gazetted forest resource.
Forests	Excision or change of boundaries of gazetted public forests or nature reserves
	Any other transaction subject to ratification under an Act of Parliament.

MINUTES OF THE 2<sup>nd</sup> SITTING OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015 HELD ON TUESDAY 16<sup>TH</sup> AUGUST, 2016 IN CPA ROOM, MAIN PARLIAMENT BUILDINGS AT 4.00 PM.

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PRESENT

1. The Hon. (Dr.) Wilbur Ottichillo, MP; Chairperson
2. Sen. George Khaniri, M.P Vice Chairperson
3. Sen. Liza Chelule, MP
4. The Hon. Joyce Emanikor, MP;

ABSENT WITH APOLOGY

1. Sen. Lenny Kivuti, M.P
2. The Hon. Amina Abdalla, CBS, M.P;

SECRETARIAT

1. Ms. Mwanate Shaban Second Clerk Assistant (Senate)
2. Ms. Tracy Chebet Second Clerk Assistant (National Assembly)
3. Ms. Carolyne Cheruiyot Legal Counsel (Senate)
4. Ms. Brigitta Mati Legal Counsel (National Assembly)

MIN.NO. MC/2016/08: PRELIMINARIES

The meeting was called to order at 4.15pm followed by prayers..

MIN.NO. MC/2016/09: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as follows after being proposed by the Sen. George Khaniri and seconded by Hon. Joyce Emanikor:

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Consideration of the **New Clause 9A** of the Bill
4. Date of Next Sitting
5. Adjournment

**MIN.NO. MC/2016/10: CONSIDERATION OF THE NEW CLAUSE 9A OF THE BILL**

The Committee deliberated on the Senate's inclusion of a new Clause 9A.

It was noted that the agreements are different from Bills since they are commercial in nature and therefore the process needs to be defined so as to protect investments. The Committee considered the new clause that had come from Senate and the clause that the Senate Standing Committee on Land and Natural Resources had passed and they resolved to adopt the clause from the Senate Standing Committee on Land and Natural Resources which read as follows:

**NEW CLAUSE 9A**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 9 —

Procedure for approval by the Parliament.

**9A.** (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses —

(a) approve the ratification of an agreement; or

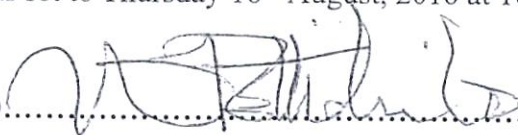
(b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

**MIN.NO. MC/2016/11: AOB & ADJOURNMENT**

There being no other business the meeting was adjourned at 4.30pm and the date of the next sitting was set to Thursday 18<sup>th</sup> August, 2016 at 10.00 am.

SIGNED.....



**HON. (DR.) WILBUR OTTICHILLO, MP; (CHAIRPERSON)**

DATE.....

18/8/16

**MINUTES OF THE 4<sup>th</sup> SITTING OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015 AND THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015 HELD ON THURSDAY 18<sup>TH</sup> AUGUST, 2016 IN CPA ROOM, MAIN PARLIAMENT BUILDINGS FROM 10.00 AM.**

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**PRESENT**

- |  |                  |
|--|------------------|
| 1. The Hon. (Dr.) Wilbur Ottichillo, MP; | Chairperson      |
| 2. Sen. George Khaniri, M.P              | Vice Chairperson |
| 3. Sen. Liza Chelule, MP                 | Member           |
| 4. The Hon. Joyce Emanikor, MP;          | Member           |

**ABSENT WITH APOLOGY**

- |                                      |        |
|--------------------------------------|--------|
| 1. Sen. Lenny Kivuti, M.P            | Member |
| 2. The Hon. Amina Abdalla, CBS, M.P; | Member |

**SECRETARIAT**

- |                          |  |
|--------------------------|--|
| 1. Ms. Mwanate Shaban    | Second Clerk Assistant (Senate)            |
| 2. Ms. Tracy Chebet      | Second Clerk Assistant (National Assembly) |
| 3. Ms. Josephine Kusinyi | Senior Legal Counsel (Senate)              |
| 4. Ms. Brigitta Mati     | Legal Counsel (National Assembly)          |

**MIN.NO. MC/2016/12: PRELIMINARIES**

The meeting was called to order at 10.15am followed by prayers.

**MIN.NO. MC/2016/13: ADOPTION OF THE AGENDA**

Members resolved to combine the mediation meeting of Natural Resources Bill and the Forest Conservation and Management Bill to one meeting. The agenda of the meeting was unanimously adopted with amendments to read as follows:

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. **Confirmation of the minutes of the first and second mediation sittings of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015**
4. **Confirmation of the first minutes of mediation sitting of the Forest Conservation and Management Bill, 2015**
5. **Review and adoption of the Mediation Report on the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015**
6. **Review and adoption of the Mediation Report on the Forest Conservation and Management Bill, 2015**
7. Adjournment

**MIN.NO. MC/2016/14: CONFIRMATION OF THE MINUTES OF THE FIRST AND SECOND MEDIATION SITTINGS OF THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015**

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The Minutes of the first sitting of the Mediation Committee on Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 10.00 am, were confirmed by the Committee after being proposed Sen. Khaniri and seconded by Sen. Chelule.

The Minutes of the second sitting of the Mediation Committee on Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 4.00 pm were confirmed by the Committee after being proposed Sen. Chelule and seconded by Sen. Khaniri.

**MIN.NO. MC/2016/15: CONFIRMATION OF THE MINUTES OF THE FIRST MEDIATION SITTING OF THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015**

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The Minutes of the first sitting of the Mediation Committee on Forest Conservation and Management Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 4.30 pm, were confirmed by the Committee after being proposed Sen. Chelule and seconded by Sen. Khaniri.

**MIN.NO. MC/2016/16: REVIEW AND ADOPTION OF THE MEDIATION REPORT ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015**

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The Mediation Report on the Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 was adopted after it was proposed by Sen. Khaniri and seconded by Sen. Liza Chelule.

**MIN.NO. MC/2016/17: REVIEW AND ADOPTION OF THE MEDIATION REPORT ON THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015**

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The Mediation Report on the Forest Conservation and Management Bill, 2015 was adopted after it was proposed by Sen. Chelule and adopted by Sen. Khaniri.

**MIN.NO. MC/2016/18: AOB & ADJOURNMENT**

There being no other business the meeting was adjourned at 10.45 am.

SIGNED.....

**HON. (DR.) WILBUR OTTICILLO, MP; (CHAIRPERSON)**

DATE.....

MINUTES OF THE 4<sup>th</sup> SITTING OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015 AND THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015 HELD ON THURSDAY 18<sup>TH</sup> AUGUST, 2016 IN CPA ROOM, MAIN PARLIAMENT BUILDINGS FROM 10.00 AM.

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PRESENT

- |  |                  |
|--|------------------|
| 1. The Hon. (Dr.) Wilbur Ottichillo, MP; | Chairperson      |
| 2. Sen. George Khaniri, M.P              | Vice Chairperson |
| 3. Sen. Liza Chelule, MP                 | Member           |
| 4. The Hon. Joyce Emanikor, MP;          | Member           |

ABSENT WITH APOLOGY

- |                                      |        |
|--------------------------------------|--------|
| 1. Sen. Lenny Kivuti, M.P            | Member |
| 2. The Hon. Amina Abdalla, CBS, M.P; | Member |

SECRETARIAT

- |                          |  |
|--------------------------|--|
| 1. Ms. Mwanate Shaban    | Second Clerk Assistant (Senate)            |
| 2. Ms. Tracy Chebet      | Second Clerk Assistant (National Assembly) |
| 3. Ms. Josephine Kusinyi | Senior Legal Counsel (Senate)              |
| 4. Ms. Brigitta Mati     | Legal Counsel (National Assembly)          |

MIN.NO. MC/2016/12: PRELIMINARIES

The meeting was called to order at 10.15am followed by prayers.

MIN.NO. MC/2016/13: ADOPTION OF THE AGENDA

Members resolved to combine the mediation meeting of Natural Resources Bill and the Forest Conservation and Management Bill to one meeting. The agenda of the meeting was unanimously adopted with amendments to read as follows:

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. **Confirmation of the minutes of the first and second mediation sittings of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015**
4. **Confirmation of the first minutes of mediation sitting of the Forest Conservation and Management Bill, 2015**
5. **Review and adoption of the Mediation Report on the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015**
6. **Review and adoption of the Mediation Report on the Forest Conservation and Management Bill, 2015**
7. Adjournment

**MIN.NO. MC/2016/14: CONFIRMATION OF THE MINUTES OF THE FIRST AND SECOND MEDIATION SITTINGS OF THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015**

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The Minutes of the first sitting of the Mediation Committee on Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 10.00 am, were confirmed by the Committee after being proposed Sen. Khaniri and seconded by Sen. Chelule.

The Minutes of the second sitting of the Mediation Committee on Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 4.00 pm were confirmed by the Committee after being proposed Sen. Chelule and seconded by Sen. Khaniri.

**MIN.NO. MC/2016/15: CONFIRMATION OF THE MINUTES OF THE FIRST MEDIATION SITTING OF THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015**

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The Minutes of the first sitting of the Mediation Committee on Forest Conservation and Management Bill, 2015 that was held on 16<sup>th</sup> August, 2016 at 4.30 pm, were confirmed by the Committee after being proposed Sen. Chelule and seconded by Sen. Khaniri.

**MIN.NO. MC/2016/16: REVIEW AND ADOPTION OF THE MEDIATION REPORT ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL, 2015**

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The Mediation Report on the Natural Resources (Classes of Transactions subject to Ratification) Bill, 2015 was adopted after it was proposed by Sen. Khaniri and seconded by Sen. Liza Chelule.

**MIN.NO. MC/2016/17: REVIEW AND ADOPTION OF THE MEDIATION REPORT ON THE FOREST CONSERVATION AND MANAGEMENT BILL, 2015**

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The Mediation Report on the Forest Conservation and Management Bill, 2015 was adopted after it was proposed by Sen. Chelule and adopted by Sen. Khaniri.

**MIN.NO. MC/2016/18: AOB & ADJOURNMENT**

There being no other business the meeting was adjourned at 10.45 am.

SIGNED.....

HON. (DR.) WILBUR OTTICHILLO, MP; (CHAIRPERSON)

DATE.....