

# **Profile on Environmental and Social Considerations in Kenya**

ANNEX

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**Annex 1**

**The Environmental Management and Coordination  
Act, 1999**

# THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999 No 8 of 1999

## THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999

No 8 of 1999

Date of Assent: 6<sup>th</sup> January, 2000.

Date of commencement: 14<sup>th</sup> January, 2000.

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#### **FIRST SCHEDULE**

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#### **THIRD SCHEDULE**

**An ACT of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for the matters connected therewith and incidental thereto**

WHEREAS it is desirable that a framework environment legislation be promulgated so as to establish an appropriate legal and institutional framework for the management of the environment;

AND WHEREAS it is recognised that improved legal and administrative co-ordination of the diverse sectoral initiatives is necessary in order to improve the national capacity for the management of the environment;

AND WHEREAS the environment constitutes the foundation of national economic, social, cultural and spiritual advancement;

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya, as follows:-

#### **PART I - PRELIMINARY**

1. This Act may be cited as the Environmental Management and Co-ordination Act, 1999.
2. In this Act, unless the context otherwise requires –

"air quality" means the concentration prescribed under or pursuant to this Act of a pollutant in the atmosphere at the point of measurement;

"ambient air" means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

"analysis" means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or sub-sonic vibrations to determine the level or other characteristics of the noise or sub-sonic vibration or its effect on any segments of the environment;

"Analyst" means an analyst appointed or designated under section 119;

"annual report on the state of the environment" means the report prepared and issued under section 9;

"Authority" means the National Environment Management Authority established under section 7;

"beneficial use" means a use of the environment or any element or segment of the environment that is conducive to public health, welfare or safety and which requires protection from the effects of wastes, discharges, emissions and deposits;

"benefited environment" means that environment which has benefited through the imposition of one or more obligations on the burdened land;

"biological diversity" means the variability among living organisms from all sources including, terrestrial ecosystems, aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, among species and of ecosystems;

"biological resources" include genetic resources organisms or parts thereof, populations, or any other biotic component or ecosystem with actual or potential use or value for humanity

"burdened land" means any land upon which an environmental easement has been imposed;

"chemical" means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and for the purposes of this Act includes industrial chemicals, pesticides, fertilizers and drugs;

"Coastal zone" means any area declared to be a protected coastal zone under section 55;

"Continental Shelf" means the exclusive economic zone established under section 4 of the Maritime Zones Act;

"controlled area" means any area designated as such by the Minister under this Act;

"Deposit Bond" means a deposit bond paid under section 28;

"developer" means a person who is developing a project which is subject to an environmental impact assessment process under this Act;

"Director" means a Director appointed under section 10;

"Director-General" means the Director-General of the Authority appointed under section 10;

"District Environment Action Plan" means the District Environment Action Plan prepared under section 40;

"District Environment Committee" means the District Environment Committee appointed under section 29;

"Ecosystem" means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;

"effluent" means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the aquatic environment;

"element" in relation to the environment means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

"environment" includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

"environmental audit" means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving or preserving the environment;

"environmental education" includes the process of recognising values and clarifying concepts in order to develop skills and attitudes necessary to understand and appreciate the inter-relatedness among man, his culture and his biophysical surroundings;

"environmental impact assessment" means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment;

"Environmental Inspector" means any environmental inspector appointed or designated under section 117;

"environmental management" includes the protection, conservation and sustainable use of the various elements or components of the environment;

"environmental monitoring" means the continuous or periodic determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long-term;

"environmental planning" means both long-term and short-term planning that takes into account environmental exigencies;

"environmental resources" includes the resources of the air, land, flora, fauna and water together with their aesthetical qualities;

"environmental restoration order" means an order issued under section 108;

"environmentally friendly" includes any phenomenon or activity that does not cause harm or degradation to the environment;

"ex-situ conservation" means conservation outside the natural ecosystem and habitat of the biological organism;

"exclusive economic zone" means the exclusive economic zone established and delimited under section 4 of the Maritime Zones Act;

"financial year" means the period of twelve months ending on the thirtieth June in every year;

"General Fund" means the General Fund established under section 20;

"genetic resources" means genetic material of actual or potential value;

"good environmental practice" means practice that is in accordance with the provisions of this Act or any other relevant law;

"hazardous substance" means any chemical, waste, gas, medicine, drug, plant, animal or micro-organism which is likely to be injurious to human health or the environment;

"hazardous waste" means any waste which has been determined by the Authority to be hazardous waste or to belong to any other category of waste provided for in section 91;

"in-situ conservation" means conservation within the natural ecosystem and habitat of the biological organism;

"intergenerational equity" means that the present generation should ensure that in exercising its right to beneficial use of the environment, the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

"intragenerational equity" means that all people within the present generation have the right to benefit equally from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment;

"lead agency" means any Government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management of any element of the environment or natural resource;

"local authority" has the meaning assigned to it in section 2 of the Local Government Act;

"Minister" means the Minister for the time being responsible for matters relating to the environment;

"mixture containing oil" means a mixture of substances or liquids with such oil content as may be specified under this Act or, if such oil content is not specified, a mixture with an oil content of one hundred parts or more in one million parts of the mixture;

"National Council of Non-Governmental Organisations" means the Council established by section 23 of the Non-Governmental Organizations Co-ordination Act, 1990;

"National Environment Action Plan" means the plan referred to in section 37;

"natural resources" includes resources of the air, land, water, animals and plants including their aesthetic qualities;

"noise" means any undesirable sound that is intrinsically objectionable or that may cause adverse effect on human health or the environment;

"occupational air quality" means the concentration prescribed under or pursuant to this Act of a substance or energy in the atmosphere within a structure or underground space in which human activities take place;

"occupier" means a person in occupation or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

"oil" includes –

(a) crude oil, refined oil, diesel oil, fuel oil and lubricating oil; and

(b) any other description of oil which may be prescribed;

"owner" in relation to any premises means –

(a) the registered proprietor of the premises;

(b) the lessee, including a sub-lessee of the premises;

(c) the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative;

(d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant; and

in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship; except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship's operator, "owner" shall include such country and the master of the ship;

"ozone layer" means the layer of the atmospheric zone above the planetary boundary layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

"pollutant" includes any substance whether liquid, solid or gaseous which –

(a) may directly or indirectly alter the quality of any element of the receiving environment;

(b) is hazardous or potentially hazardous to human health or the environment; and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

"polluter-pays principle" means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

"pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

"practicable" means reasonably practicable having regard, among other things, to local conditions and knowledge and the term "practicable means" include the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;

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"precautionary principle" is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

"premises" include measures, buildings, lands, and hereditaments in every tenure and machinery, plant or vehicle used in connection with any trade carried on at any premises;

"project" includes any project, programme or policy that leads to projects which may have an impact on the environment;

"project report" means a summary statement of the likely environmental effect of a proposed development referred to in section 58;

"proponent" means a person proposing or executing a project, programme or an undertaking specified in the Second Schedule;

"proprietary information" means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Kenya or by any international treaty to which Kenya is a party;

"Provincial Director of Environment" means the Provincial Director of Environment appointed under section 16;

"Provincial Environment Committee" means the Provincial Environment Committee established under section 29;

"Public Complaints Committee" means the Public Complaints Committee established under section 31;

"radiation" includes ionising radiation and any other radiation likely to have adverse effects on human health and the environment;

"Regional development authority" means a regional development authority established by an Act of Parliament;

"regulations" mean regulations made under this Act;

"Restoration Fund" means the National Environment Restoration Fund established under section 25;

"segment" in relation to the environment means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

"ship" includes every description of vessel or craft or floating structure;

"soil" includes earth, sand, rock, shales, minerals, vegetation, and the flora and fauna in the soil and derivatives thereof such as dust;

"standard" means the limits of discharge or emissions established under this Act or under regulations made pursuant to this Act or any other written law;

"sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems;

"sustainable use" means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

"territorial waters" means territorial waters provided for under section 3 of the Maritime Zones Act;

"trade" means any trade, business or undertaking whether originally carried on a fixed premises or at varying places which may result in discharge of substances and energy and includes any activity prescribed to be a trade, business or undertaking for the purpose of this Act;

"Tribunal" means the National Environment Tribunal established under section 125;

"Trust Fund" means the National Environment Trust Fund established under section 24;

"waste" includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume composition or manner likely to cause an alteration of the environment;

"water" includes drinking water, river, stream, water-course, reservoir, well, dam, canal, channel, lake, swamp, open drain, or underground water;

"wetland" means areas permanently or seasonally flooded by water where plants and animals have become adapted;

## PART II – GENERAL PRINCIPLES

3. (1) Every person in Kenya is entitled to a clean and healthy environment and had the duty to safeguard and enhance the environment.
- (2) The entitlement to a clean and healthy environment under subsection (1) includes the access by any person in Kenya to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.
- (3) If a person alleges that the entitlement conferred under subsection (1) has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress and the High Court may take such orders, issue such writs or give such directions as it may deem appropriate to –

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- (a) prevent, stop or discontinue any act or omission deleterious to the environment;
  - (b) compel any public officer
  - (c) to take measures to prevent or discontinue any act or omission deleterious to the environment;
  - (d) require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act;
  - (e) compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and
  - (f) provide compensation for any victims of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.
- (4) A person proceeding under subsection (3) of this section shall have the capacity to bring an action notwithstanding that such a person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury provided that such action --
- (a) is not frivolous or vexatious; or
  - (b) is not an abuse of the court process.
- (5) In exercising the jurisdiction conferred upon it under subsection (3), the High Court shall be guided by the following principles of sustainable development;
- (a) the principle of public participation in the development of policies, plans and processes for the management of the environment;
  - (b) the cultural and social principle traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and are not repugnant to justice and morality or inconsistent with any written law;
  - (c) the principle of international co-operation in the management of environmental resources shared by two or more states;
  - (d) the principles of intergenerational and intragenerational equity;
  - (e) the polluter-pays principle; and
  - (f) the pre-cautionary principle.

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## PART III – ADMINISTRATION

### *The National Environment Council*

4. (1) There is established a council to be known as the National Environment Council (hereinafter referred to as the "Council") which shall consist of-
- (a) the Minister who shall be the chairman;
  - (b) the Permanent Secretaries in the Ministries for the time being responsible for the matters specified in the First Schedule;
  - (c) two representatives of public universities in Kenya to be appointed by the Minister;
  - (d) two representatives of specified research institutions in Kenya to be appointed by the Minister;
  - (e) three representatives of the business community, to be appointed by the Minister, one of whom shall be a representative of oil marketing companies;
  - (f) two representatives of Non-Governmental Organisations active in the environmental field to be appointed by the Minister;
  - (g) the Director-General who shall be the secretary; and
  - (h) such number of other members as may, from time, be co-opted by the Minister to be members of the Council.
- (2) Every appointment under paragraph (f) of subsection (1) shall be made from a list of nominees submitted by the Non-Governmental Organizations Council.
- (3) Every appointment under paragraph (c), (d), (e), (f) and (h) of subsection (1) shall be by name and by notice in the Gazette and shall be for a renewable period of three years, but shall cease if the appointee –
- (a) serves the Minister with a written notice of resignation; or
  - (b) is absent from three consecutive meetings of the Council without the permission of the Minister; or
  - (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
  - (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council; or
  - (e) conducts himself in a manner deemed by the Minister, in consultation with the Council, to be inconsistent with membership of the Council; or

- (f) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors.
5. The Council shall –
- (a) be responsible for policy formulation and directions for purposes of this Act;
  - (b) set national goals and objectives and determine policies and priorities for the protection of the environment;
  - (c) promote co-operation among public departments, local authorities, private sector, Non-Governmental Organisations and such other organisations engaged in environmental protection programmes; and
  - (d) perform such other functions as are assigned under this Act.
6. (1) The Council shall meet at least three times in every financial year, at such place as it may deem appropriate for the transaction of its business.
- (2) The Minister shall preside at all meetings of the Council but in his absence a person appointed by him shall preside on his behalf at such a meeting.
- (3) The secretary to the Council shall prepare and keep all the records of the business conducted at the meetings of the Council.
- (4) The powers of the Council shall not be affected by any vacancy in the membership thereof nor by any defect in the appointment of a person purporting to be a member of the Council.
- (5) Subject to this section, the Council shall regulate its own procedure.
- The Authority*
7. (1) There is established an Authority to be known as the National Environment Management Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –
- (a) suing and being sued;
  - (b) taking, purchasing, charging and disposing of movable and immovable property;
  - (c) borrowing money;
  - (d) entering into contracts; and
  - (e) doing or performing all such other things or acts for the proper administration of this Act, which may lawfully be performed by a body corporate.

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8. The Headquarters of the Authority shall be in Nairobi.

9. (1) The object and purpose for which the Authority is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

(2) Without prejudice to the generality of the foregoing, the Authority shall –

- (a) co-ordinate the various environmental management activities being undertaken by the lead agencies and promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya;
- (b) take stock of the natural resources in Kenya and their utilisation and conservation;
- (c) establish and review in consultation with the relevant lead agencies, land use guidelines;
- (d) examine land use patterns to determine their impact on the quality and quantity of natural resources;
- (e) carry out surveys which will assist in the proper management and conservation of the environment;
- (f) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of environment, as the case may be;
- (g) advise the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up the implementation of such agreements where Kenya is a party;
- (h) undertake and co-ordinate research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey;
- (i) mobilise and monitor the use of financial and human resources for environmental management;



- (j) identify projects and programmes or types of projects and programme, plans and policies for which environmental audit or environmental monitoring must be conducted under this Act;
  - (k) initiate and evolve procedures and safeguard for the prevention of accidents which may cause environmental degradation and evolve remedial measures where accidents occur;
  - (l) monitor and assess activities, including activities being carried out by relevant lead agencies, in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given;
  - (m) undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education and public awareness about the need for sound environmental management as well as for enlisting public support and encouraging the effort made by other entities in that regard;
  - (n) publish and disseminate manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation;
  - (o) render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection so as to enable them to carry out their responsibilities satisfactorily;
  - (p) prepare and issue an annual report on the state of the environment in Kenya and in this regard may direct any lead agency to prepare and submit to it a report on the state of the sector of the environment under the administration of that lead agency;
  - (q) perform such other functions as the Government may assign to the Authority or as are incidental or conducive to the exercise by the Authority of any or all of the functions provided under this Act.
- (3) The Minister shall lay every annual report on the state of the environment prepared under subsection (2) (p) before the National Assembly as soon as reasonably practicable after its publication.

10. (1) The Authority shall be managed by a Board which shall consist of -

- (a) a chairman appointed by the President; and

- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to the authority or an officer of that Ministry designated in writing by the Permanent Secretary.
- (c) a Director-General appointed by the President;
- (d) three Directors who shall be officers of the Authority;
- (e) seven members, not being public officers appointed by the Minister in consultation with the Council; and
- (f) the Secretary of the Board, who shall be appointed by the Authority.

- (2) No person shall be appointed under subsections (1) (a), (b), (c), (d) or (e) unless such person holds at least a post-graduate degree from a recognised university in the field of environmental law, environmental science or natural resource management or a relevant social science and in the case of the Director-General, has at least fifteen years' working experience in the relevant field.
- (3) The members referred to under section (1) (a) and (e) should be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
- (4) The members appointed under paragraphs (a), (c) and (e) of subsection (1) shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.
- (5) The Board shall elect a vice-chairman from among the members appointed under paragraph (e) of subsection (1).
- (6) The Board shall meet at least four times in every financial year.
- (7) The Chairman shall preside at every meeting of the Board at which he is present, but in his absence the vice-chairman shall preside, and in his absence, the members present shall elect one of their member who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairman.
- (8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.
- (9) The quorum for the transaction of the business of the Board shall be seven members including the person presiding; and all acts, matters or things

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authorized or required to be done by the Board, shall be effected by a resolution passed by a majority of the members present and voting.

- (10) The Secretary to the Board shall not be entitled to vote on any matter before the Board.
  - (11) Appointment of a member of the Board may be terminated by the appointing authority where the member -
    - (a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
    - (b) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
    - (c) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or
    - (d) becomes, for any reason, incapable or incompetent of properly performing the functions of his office.
  - (12) Where a member of the Board dies or resigns or otherwise vacates office before the expiry of his term of office, the appointing authority shall appoint another person in the place of such member.
  - (13) Where the Director-General is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute therefore to act with the full powers of the Director-General until such time as the President determines that the incapacity has ceased.
  - (14) (a) The Director-General shall be the chief executive of the Authority and shall, subject to this Act, be responsible for the day to day management of the affairs of the Authority.
    - (b) A Director shall perform such functions as are conferred by this Act and such additional duties as may be assigned by the Director-General.
    - (c) The Director-General and the Directors of the Authority shall be paid such salaries and allowances as may, from time to time, be determined by the President.
  - (15) Subject to subsections (6), (7), (8) and (9) the Board shall regulate its own Procedure.
11. The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to - control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;

- (a) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (b) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (c) enter into association with other bodies or organisations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
- (d) open a banking account or banking accounts for the funds of the Authority; and
- (e) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 26.
- 12. The Authority may, after giving reasonable notice of its intention so to do, direct any lead agency to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under this Act or any other written law, in the field of environment and if the lead agency fails to comply with such directions, the Authority may itself perform or cause to be performed the duties in question, and the expense incurred by it in so doing shall be a civil debt recoverable by the Authority from the lead agency.
- 13. (1) Subject to this Act, the Authority shall regulate its own procedure.
- 14. The Authority shall pay the Director-General and the Directors such salaries and allowances as may, from time, be determined by the President, but those salaries and allowances shall not be altered to their detriment during their term of office.
- 15. Subject to this Act, the Authority may, by resolution either generally or in any particular case, delegate to any committee of the Authority or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.
- 16. The Authority may appoint such officers or other staff of the Authority as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Authority may determine.
- 17. The common seal of the Authority shall be kept in such custody as the Authority may direct and shall not be used except on the order of the Authority.
- 18. No matter or thing done by a member of the Authority or any officer, employee or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.
- 19. The Provisions of section 18 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or

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- any of his interests caused by the exercise of the powers conferred on the Authority by this Act or by any other written law or by the failure, whether wholly or partially, or any works.
- 20.(1) There shall be a general fund of the Authority which shall vest in the Authority.
- (2) There shall be paid into the general fund –
- such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
  - such sums as may be granted to the Authority by the Minister pursuant to subsection (3); and
  - all monies from other source provided for or donated or lent to the Authority.
- (3) There shall be made to the Authority out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.
- (4) There shall be paid out of the general fund all sums required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its objectives, functions and duties.
21. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.
- 22.(1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.
- (2) The annual estimates shall make provisions for the estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for –
- the payment of the salaries, allowances and other charges in respect of the staff of the Authority;
  - the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
  - the proper maintenance of the buildings and grounds of the Authority;
  - the maintenance, repair and replacement of the equipment and other property of the Authority; and
  - the creation of such reserve funds to meet future contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or

equipment, or in respect of such other matter as the Authority may deem appropriate.

- (3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Authority shall not increase the annual estimates without the consent of the Minister.
- 23.(1) The Authority shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.
- (2) Within a period of four months from the end of each financial year, the Authority shall submit to the Auditor-General (Corporations) or to an auditor appointed under this section, the accounts of the Authority together with –
- a statement of the income and expenditure of the Authority during that year; and
  - a statement of the assets and liabilities of the Authority on the last day of that year.
- (5) The accounts of the Authority shall be audited and reported upon in accordance with section 29 and 30A of the Exchequer and Audit Act, by the Auditor-General (Corporations), or by an auditor appointed by the Authority with the approval of the Auditor-General (Corporations) given in accordance with section 29(2) (b) of the Exchequer and Audit Act.
- 24.(1) There is hereby established a fund to be known as the National Environment Trust Fund, (hereinafter referred to as the "Trust Fund").
- (2) The Trust Fund shall consist of –
- such sums of money as may be received by the Trust Fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Trust Fund;
  - such sums of money or other assets as may be specifically designated to the Trust Fund by the Authority out of its General Fund.
- (3) The Trust Fund shall be vested in the Authority and subject to this Act, shall be administered by a Board of five Trustees to be appointed by the Minister by a notice in the Gazette on such terms and conditions as he deems fit. The trustees shall be persons holding at least post-graduate degree from a recognised university in the field of environmental law, economics, environmental science or natural resource management at the time of their appointment.
- The object of the Trust Fund shall be to facilitate research intended to further the requirements of the environmental management, capacity building, environmental awards, environmental publications, scholarships and grants.

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- (4) The Board of Trustees may, on the recommendation of the Council, determine that certain donations to the Trust Fund shall be applied specifically and reserved only for prizes and awards for exemplary services to the environment. Such prizes and awards shall be applied by the recipient exclusively to the management of the environment.
- 25.(1) There is hereby established a fund to be known as the National Environment Restoration Fund, (hereinafter referred to as "The Restoration Fund").
- (2) The Restoration Fund shall consist of:-
- such proportion of fees or deposit bonds as may be determined by the Authority from time to time;
  - such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund.
- (3) The Restoration Fund shall be vested in the Authority and, subject to this Act, shall be administered by the Director-General. The object of the Restoration Fund shall be as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.
- (4) The Minister may, by notice in the Gazette, issue orders for the levying of funds from project proponents towards the Restoration Fund.
- 26.(1) Subject to this Act, the Authority may, invest any of its funds in securities in which trustees may, for the time being, invest trust funds or in any other securities which the Treasury may, from time to time, approve for that purpose.
- (2) Subject to this Act, the Authority may place on deposit with such bank or banks as it may determine, any moneys not immediately required for its purposes.
- (3) The assets of the Authority may be disposed of:-
- if they are current assets, in the normal course of business carried on by the Authority;
  - where the disposal and utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with section 22;
  - by way of sale or otherwise with the approval of the Minister and the Treasury where such disposal has not been taken into account in the estimates.
- 27.(1) As soon as practicable and not later than three months after the expiry of the financial year, the Director-General shall submit to the Council a financial report concerning the activities of the Authority during such financial year.
- (2) The Report of the Director-General under subsection (1) shall include information on the financial affairs of the Authority and shall be appended to the Report:-
- an audited statement of income and expenditure of the previous financial year;
  - estimates of income and expenditure of the Authority for the next ensuing financial year.
- (3) The Minister shall not later than fourteen days after the sitting of the National Assembly next after receipt of the Report referred to in subsection (1) lay it before the National Assembly.
- 28.(1) The Authority shall create a register of those activities and industrial plants and undertakings which have or are most likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices.
- (2) The Minister responsible for finance may, on the recommendations of the Council, prescribe that persons engaged in activities or operating industrial plants and other undertakings identified under subsection (1) pay such deposit bonds as may constitute appropriate security for good environmental practice.
- (3) The deposit bond determined in accordance with subsection (2) shall be refunded to the operator of the activity, industrial plant or any other undertaking by the Authority after such duration not exceeding twenty-four months without interest where the operator has observed good environmental practices to the satisfaction of the Authority.
- (4) The Authority may, after giving the operator an opportunity to be heard, confiscate a deposit bond where the operator is responsible for environmental practice that is in breach of the provisions of this Act, and the Authority may in addition cancel any licence issued to the operator under this Act if the Authority is satisfied that the operator has become a habitual offender.
- (5) Where an operator is dissatisfied with the confiscation of his deposit bond under this Act, he may refer the matter to a competent court of law.
- (6) The proceeds of every refundable deposit bond levied under this section shall be paid into the Restoration Fund and shall be treated as part of the Restoration Fund until refunded to the depositor subject to subsection (3) or confiscated by the Authority.
- (7) Any interest accruing from monies deposited into the Restoration Fund under this section shall be for the benefit of the Authority.

Provincial and District Environment Committees

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- 29.(1) The Minister shall by notice in the Gazette, appoint Provincial and District Environment Committees of the Authority in respect of every province and district respectively.
- (2) Every Provincial Environment Committee shall consist of –
- the Provincial Commissioner of the Province who shall be the chairman;
  - the Provincial Director of Environment of the Province who shall be the Secretary;
  - one representative each of the Ministries responsible for the matters specified in the First Schedule at the provincial level;
  - a representative of every local authority whose area of jurisdiction falls wholly or partly within the province;
  - two representatives of farmers or pastoralists within the province to be appointed by the Minister;
  - two representatives of the business community operating within the concerned province appointed by the Minister;
  - two representatives of the non-governmental organisations engaged in environmental management programmes within the province appointed by the Minister in consultation with the National Council of Non-Governmental Organisations; and
  - a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the province.
- (1) Every District Environment Committee shall consist of –
- the District Commissioner of the district who shall be the chairman;
  - the District Environment Officer of the district who shall be the secretary;
  - one representative each of the Ministries for the time being responsible for the matters specified in the First Schedule at the district level;
  - a representative of every local authority whose area of jurisdiction falls wholly or partially within the district;
  - two representatives of farmers or pastoralists within the district to be appointed by the Minister;
  - two representatives of the business community in the district to be appointed by the Minister;
  - two representatives of the non-governmental organisations engaged in environmental management programmes, operating in the district, to be

appointed by the Minister in consultation with the National Council of Non-Governmental Organisation; and

- two representatives of the community-based organizations engaged in environmental programmes operating in the district, to be appointed by the Minister.

30. The Provincial and District Environment Committee shall –
- be responsible for the proper management of the environment within the province or district in respect of which they are appointed.
  - perform such additional functions as are prescribed by this Act or as may, from time to time, be assigned by the Minister by notice in the Gazette.
31. (1) There is hereby established a committee of the Authority to be known as the Public Complaints Committee (hereinafter referred to as "the Complaints Committee") which shall consist of –
- a Chairman appointed by the Minister and who shall be a person qualified for appointment as a Judge of the High Court of Kenya;
  - a representative of the Attorney-General;
  - a representative of the Law Society of Kenya;
  - a representative of non-governmental organisations appointed by the National Council of Non-Governmental Organisations and who shall be the secretary of the Complaints Committee;
  - a representative of the business community appointed by the Minister;
  - two members appointed by the Minister for their active role in environmental management.
- (2) The members of the Complaints Committee, other than the chairman, shall hold office for a period of three years but shall be eligible for reappointment: Provided that no member shall hold office for more than two terms.
- (3) A member of the Complaints Committee other than the member appointed under subsection (1) (b) may –
- at anytime resign from office by notice in writing to the Minister through the chairman;
  - be removed from office by the Minister if the member –
- has been absent from three consecutive meetings of the Committee without permission from the chairman;
  - is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
  - is incapacitated by prolonged physical or mental illness; or
  - is otherwise unable or unfit to discharge his functions.
- (4) If a member of the Complaints Committee vacates office before the expiry of his term, the appointing authority shall appoint a suitable replacement thereof. Where a member of the Complaints Committee is unable to perform the

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functions of his office due to any temporary incapacity which may be prolonged, the appointing authority may appoint a substitute for the member until such time as the Minister determines the incapacity has ceased.

- (6) Subject to this Act, the Complaints Committee shall regulate its own procedure.
32. The functions of the Complaints Committee shall be –
- to investigate –
- any allegations or complaints against any person or against the Authority in relation to the condition of the environment in Kenya;
  - on its own motion, any suspected case of environmental degradation, and to make a report of its findings together with its recommendation thereon to the Council;
- to prepare and submit to the Council, periodic reports of its activities which report shall form part of the annual report on the state of the environment under section 9 (3); and
  - to perform such other functions and exercise such powers as may be assigned to it by the Council.
- 33.(1) The Complaints Committee may, by notice in writing, require any person to –
- give to the Complaints Committee all reasonable assistance in connection with the investigation of any complaint under section 32; or
  - appear before the Complaints Committee for examination concerning matters relevant to the investigation of any complaint under section 32.
- (2) A Person who –
- refuses or fails to comply with the requirement of the Complaints Committee which is applicable to him, to the extent to which he is able to comply with it; or
  - obstructs or hinders the Complaints Committee in the exercise of his powers under this Act; or
  - furnishes information or makes a statement to the Complaints Committee which he knows to be false or misleading in any material particular; or
  - when appearing before the Complaints Committee for examination, makes a statement which he knows to be false or misleading in any material particular
- commits an offence.
- A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding fifty thousand shillings.
- (3) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable

to a fine of one thousand shillings for each day during which the offence continues.

34. No proceedings shall lie against the chairman or any member of the Complaints Committee in respect of anything done *bona fide* in the performance of the duties of the Complaints Committee under this Act.
35. (1) If a member of the Complaints Committee is directly or indirectly interested in any matter before the Complaints Committee and is present at a meeting of the Complaints Committee at which the matter is the subject of investigation, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions in respect of the matter, or be counted in the quorum of the meeting during the consideration of the matter.
- A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.
- 36.(1) There shall be paid to the chairman and members of the Complaints Committee, such remuneration, fees or allowances for expenses as the Council may determine.
- The remuneration fees or allowances referred to in subsection (1) together with any other expenses incurred by the Complaints Committee in the execution of its functions under this Act shall be paid out of monies provided by Parliament for that purpose.

#### PART IV – ENVIRONMENTAL PLANNING

- 37.(1) There is established a committee of the Authority to be known as the National Environment Action Plan Committee and which shall consist of –
- the Permanent Secretary in the Ministry for the time being responsible for national economic planning and development who shall be the chairman;
  - the Permanent Secretaries in the Ministries responsible for the matters specified in the First Schedule or their duly nominated representatives;
  - four representatives of the business community to be appointed by the Minister;
  - representatives of each of the institutions specified in the Third Schedule;
  - five representatives of non-governmental organisations nominated by the National Council of Non-Governmental Organisations;
  - representatives of specialised research institutions that are engaged in environmental matters as may be determined by the Minister; and
  - a Director of the Authority who shall be the secretary.

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- (2) The National Environment Action Plan Committee shall, after every five years, prepare a national environment action plan for consideration and adoption by the National Assembly.
38. The national environment action plan shall –
- contain an analysis of the natural resources of Kenya with an indication as to any pattern of change in their distribution and quantity over time;
  - contain an analytical profile of the various uses and value of the natural resources incorporating considerations of intergenerational and intragenerational equity;
  - recommend appropriate legal and fiscal incentives that may be used to encourage the business community to incorporate environmental requirements into their planning and operational processes;
  - recommend methods for building national awareness through environmental education on the importance of sustainable use of the environment and natural resources for national development;
  - set out operational guidelines for the planning and management of the environment and natural resources;
  - identify actual or likely problems as may affect the natural resources and the broader environment context in which they exist;
  - identify and appraise trends in the development of urban and rural settlements, their impacts on the environment, and strategies for the amelioration of their negative impacts;
  - propose guidelines for the integration of standards of environmental protection into development planning and management;
  - identify and recommend policy and legislative approaches for preventing, controlling or mitigating specific as well as general adverse impacts on the environment;
  - prioritise areas of environmental research and outline methods of using such research findings;
  - without prejudice to the foregoing, be reviewed and modified from time to time to incorporate emerging knowledge and realities; and
  - be binding on all persons and all government departments, agencies, state corporations or other organs of Government upon adoption by the National Assembly.
39. Every Provincial Environment Committee shall every five years, prepare a provincial environment action plan in respect of the province for which it is appointed, incorporating the elements of the relevant district environment action plans prepared under section 40 and shall submit such plan to the chairman of the National Environment Action Plan Committee for incorporation into the national environment action plan.
40. Every District Environment Committee shall, every five years, prepare a district environment action plan in respect of the district environment for which it is appointed and shall submit such plan to the chairman of the Provincial Environment Action Plan Committee for incorporation into the provincial environment action plan proposed under section 39.
41. Every provincial environment action plan and every district environment action plan prepared under section 39 and 40 respectively shall contain provisions dealing with matters contained in section 38 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) in relation to their respective province or district.

#### PART V – PROTECTION AND CONSERVATION OF THE ENVIRONMENT

- 42.(1) No person shall, without prior written approval of the Director-General given after an environmental impact assessment, in relation to a river, lake or wetland in Kenya, carry out any of the following activities –
- erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake or wetland;
  - excavate, drill, tunnel or disturb the river, lake or wetland;
  - introduce any animal whether alien or indigenous in a lake, river or wetland;
  - introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake or wetland;
  - deposit any substance in a lake, river or wetland or in, on, or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake or wetland;
  - direct or block any river, lake or wetland from its natural and normal course; or
  - drain any lake, river or wetland.
- (2) The Minister may, by notice in the Gazette, declare a lake shore, wetland, coastal zone or river bank to be protected area and impose such restrictions as he considers necessary, to protect the lake shore, wetlands, coastal zone and river bank from environmental degradation. In declaring a lake shore, wetland, coastal zone or river bank a protected area, the Minister shall take into consideration the following factors –
- the geographical size of the lake shore, wetland, coastal zone or river bank; and
  - the interests of the communities resident around the lake shore, wetland, coastal zone or river bank concerned.
- (3) The Minister may, by notice in the Gazette, issue general and specific orders, regulations or standards for the management of river banks, lake shores, wetlands or coastal zones and such orders, regulations or standards may include management, protection, or conservation measures in respect of any area at risk of environmental degradation and shall provide for –
- the development of an overall environmental management plan for a lake, river, wetland or coastal area, taking into account the relevant sectoral interests;
  - measures for the prevention or control of coastal erosion;
  - the conservation of mangrove and coral reef ecosystems;
  - plans for the harvesting of minerals within the coastal zone, including strategies for the restoration of mineral sites;
  - contingency plans for the prevention and control of all deliberate and accidental discharge of pollutants into the sea, lakes or rivers;
  - plans for the protection of wetlands;
  - the regulations of harvesting of aquatic living and non-living resources to ensure optimum sustainable yield;
  - special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea and the Exclusive Economic Zone;
  - promotion of environmentally friendly tourism; and
  - the management of biological resources;
- (4) The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of the environment of lakes and rivers.
- (5) Any person who contravenes or fails to comply with any orders, regulations or standards issued under this section shall be guilty of an offence.
43. The Minister may, by notice in the Gazette, declare the traditional interests of indigenous communities customarily resident within or around a lake shore, wetland, coastal zone or river bank to be protected interests.
44. The Authority shall, in consultation with the relevant lead agencies, develop issue and implement regulations, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain areas so as to protect water catchment areas, prevent soil erosion and regulate human settlement.
- 45.(1) Every District Environment Committee shall identify the hilly and mountainous areas under their jurisdiction which are at risk from environmental degradation.
- (2) A hilly or mountainous area is at risk from environmental degradation if –
- it is prone to soil erosion;
  - landslides have occurred in such an area;
  - vegetation cover has been removed or is likely to be removed from the area at a rate faster than it is being replaced; or
  - any other land use activity in such an area is likely to lead to environmental degradation.
- Each District Environment Committee shall notify the Director-General of the hilly and mountainous areas it has identified as being at risk from environmental degradation under subsection (1).
- (3) The Director-General shall maintain a register of hilly and mountainous areas identified under subsection (1) to be at risk from environmental degradation.
- 46.(1) Every District Environment Committee shall specify which of the areas identified in accordance with section 45 (1) are to be targeted for afforestation or reforestation.
- (2) Every District Environment Committee shall take measures, through encouraging voluntary self-help activities in their respective local community, to plant trees or other vegetation in any areas specified under subsection (1) which are within the limits of its jurisdiction.
- (3) Where the areas specified under subsection (1) are subject to leasehold or any other interest in land including customary tenure, the holder of that interest shall implement measures required to be implemented by the District Environment Committee including measures to plant trees and other vegetation in those areas.
- 47.(1) The Authority shall, in consultant with the relevant lead agencies, issue guidelines and prescribe measures for the sustainable use of hill tops, hill slides and mountainous areas.
- (2) The guidelines issued and measures prescribed by the Authority under subsection (1) shall be by way of Gazette Notice and shall include those relating to –
- appropriate farming methods;
  - carrying capacity of the areas described in subsection (1) in relation to animal husbandry;
  - measures to curb soil erosion;
  - disaster preparedness in areas prone to landslides;
  - the protection of areas referred to in subsection (1) from human settlements;

- (f) the protection of water catchment areas; and
- (g) any other measures the Authority considers necessary.
- (3) The District Environment Committees shall be responsible for ensuring that the guidelines issued and measures prescribed under subsection (2) in respect of their districts are implemented.
- (4) Any person who contravenes any measure prescribed by the Authority under this section or who fails to comply with a lawful direction issued by a District Environment Committee under this section shall be guilty of an offence.
- 48.(1) Subject to subsection (2) the Director-General may, with the approval of the Director of Forestry, enter into any contractual arrangement with a private owner of any land on such terms and conditions as may be mutually agreed for the purposes of registering such land as forest land.
- (2) The Director-General shall not take any action, in respect of any forest or mountain area, which is prejudicial to the traditional interests of the indigenous communities customarily resident within or around such forest or mountain area.
- 49. The Authority shall, in consultation with the relevant lead agencies, promote the use of renewable sources of energy by –
  - (a) promoting research in appropriate renewable sources of energy;
  - (b) creating incentives for the promotion of renewable sources of energy;
  - (c) promoting measures for the conservation of non-renewable sources of energy; and
  - (d) taking measures to encourage the planting of trees and woodlots by individual land users, institutions and by community groups.
- 50. The Authority shall, in consultation with the relevant lead agencies, prescribe measures necessary to ensure the conservation of biological diversity in Kenya and in this respect the Authority shall –
  - (a) identify, prepare and maintain an inventory of biological diversity of Kenya;
  - (b) determine which components of biological diversity are endangered, rare or threatened with extinction;
  - (c) identify potential threats to biological diversity and devise measures to remove or arrest their effects;
  - (d) undertake measures intended to integrate the conservation and sustainable utilisation ethic in relation to biological diversity in existing government activities and activities by private persons;

- (e) specify national strategies, plans and government programmes for conservation and sustainable use of biological diversity;
  - (f) protect indigenous property rights of local communities in respect of biological diversity; and
  - (g) measure the value of unexploited natural resources in terms of watershed protection, influence on climate, cultural and aesthetic value, as well as actual and potential genetic value thereof.
51. The Authority shall, in consultation with the relevant lead agencies, prescribe measures adequate to ensure the conservation of biological resources *in-situ* and in this regard shall issue guidelines for –
- (a) land use methods that are compatible with conservation of biological diversity;
  - (b) the selection and management of protected areas so as to promote the conservation of the various terrestrial and aquatic ecosystems under the jurisdiction of Kenya;
  - (c) selection and management of buffer zones near protected areas;
  - (d) special arrangement for the protection of species, ecosystems and habitats threatened with extinction;
  - (e) prohibiting and controlling the introduction of alien species into natural habitats; and
  - (f) integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge.
52. The Authority shall, in consultation with the relevant lead agencies –
- (a) prescribe measures for the conservation of biological resources *ex-situ* especially for those species threatened with extinction;
  - (b) issue guidelines for the management of-
    - (i) germplasm banks;
    - (ii) botanical gardens;
    - (iii) zoos or aquaria;
    - (iv) animal orphanages; and
    - (v) any other facilities recommended to the Authority by any of its Committees or considered necessary by the Authority.
  - (c) ensure that species threatened with extinction which are conserved *ex-situ* are re-introduced into their native habitats and ecosystems where-
    - (i) the threat to the species has been terminated; or
    - (ii) a viable population of the threatened species has been achieved.

- 53.(1) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the sustainable management and utilisation of genetic resources of Kenya for the benefit of the people of Kenya.
- (2) Without prejudice to the general effect of subsection (1), the guidelines issued or measures prescribed under that subsection shall specify –
  - (a) appropriate arrangement for access to genetic resources of Kenya by non-citizens of Kenya including the issue of licences and fees to be paid for that access;
  - (b) measures for regulating the import or export of germplasm;
  - (c) the sharing of benefits derived from genetic resources of Kenya;
  - (d) biosafety measures necessary to regulate biotechnology;
  - (e) measures necessary to regulate the development, access to and transfer of biotechnology; and
  - (f) any other matter that the Authority considers necessary for the better management of the genetic resources of Kenya.
- 54.(1) The Minister may, in consultation with the relevant lead agencies, by notice in the Gazette, declare any area of land, sea, lake or river to be a protected natural environment for the purpose of promoting and preserving specific ecological processes, natural environment systems, natural beauty or species of indigenous wildlife or the preservation of biological diversity in general.
- (2) Without prejudice to subsection (1), the Authority may, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the management and protection of any area of environmental significance declared to be a protected natural environment area under this section.
- 55. (1) The Minister may, by notice in the Gazette, declare an area to be a protected coastal zone.
  - (2) As soon as practicable upon the commencement of this Act, the Authority shall, in consultation with the relevant lead agencies, prepare a survey of the coastal zone and prepare an integrated national coastal zone management plan based on the report of such survey.
  - (3) The Authority shall, from time to time, not exceeding every two years, review the national coastal zone management plan prepared under subsection (2).
  - (4) The report of the survey of the coastal zone shall contain-
    - (a) an inventory of all structures, roads, excavations, harbours, outfalls, dumping sites and other works located in the coastal zone;

- (b) an inventory of the state of the coral reefs, mangroves and marshes found within the coastal zone;
- (c) an inventory of all areas within the coastal zone of scenic value or of value for recreational and cultural purposes;
- (d) an inventory of areas within the coastal zone of special value for research in respect of fisheries, erosion, littorals movement and such other similar subjects;
- (e) an estimate of the quantities of sand, coral sea shells and other substances being removed from the coastal zone;
- (f) an estimate of the impacts of erosion on the coastal zone; and
- (g) an estimate of the extent, nature, cause and sources of coastal pollution and degradation;
- (h) an estimate of freshwater resources available in the coastal zone; and
- (i) any other relevant data or information that may be deemed appropriate.
- (5) Any person who releases or causes to be released into the coastal zone any polluting or hazardous substances contrary to the provisions of this Act shall be guilty of an offence and liable upon conviction to a fine of not less than one million shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.
- (6) The Minister shall, in consultation with the relevant lead agencies, issue appropriate regulations to prevent, reduce and control pollution or other form of environmental damage in the coastal zone.
- (7) Notwithstanding the generality of subsection (6) of this section, the regulations made thereunder shall provide for the control and prevention of pollution –
  - (a) of the marine environment from land based sources including rivers, estuaries, pipelines and outfall structures;
  - (b) from vessels, aircrafts and other engines used in the coastal zone;
  - (c) from installations and devices used in the exploration or exploitation of the natural resources of the seabed and subsoil of the exclusive economic zone; and
  - (d) of the marine environment arising from or in connection with seabed activities and from artificial islands installations and other structures in the exclusive economic zone.
- 56.(1) The Authority shall, in consultation with the relevant lead agencies, undertake or commission other persons to undertake national studies and give due recognition to developments in scientific knowledge relating to substances,

- activities and practices that deplete the ozone layer to the detriment of public health and the environment.
- (2) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and institute programmes concerning the-
- elimination of substances that deplete the stratospheric ozone layer;
  - controlling of activities and practices likely to lead to the degradation of the ozone layer and the stratosphere;
  - reduction and minimisation of risks to human health created by the degradation of the ozone layer and the stratosphere; and
  - formulate strategies, prepare and evaluate programmes for phasing out ozone depleting substances.
- 57.(1) Notwithstanding the provision of any relevant revenue Act, the Minister responsible for finance may, on the recommendation of the Council, propose to Government tax and other fiscal incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources or the prevention or abatement of environmental degradation.
- (2) Without prejudice to the generality of subsection (1) the tax and fiscal incentives, disincentives or fees may include -
- customs and excise waiver in respect of imported capital goods which prevent or substantially reduce environmental degradation caused by an undertaking;
  - tax rebates to industries or other establishments that invest in plants, equipment and machinery for pollution control, re-cycling of wastes, water harvesting and conservation, prevention of floods and for using other energy resources as substitutes for hydrocarbons;
  - tax disincentives to deter bad environmental behavior that leads to depletion of environmental resources or that cause pollution; or
  - user fees to ensure that those who use environmental resources pay proper value for the utilisation of such resources.

#### PART VI – ENVIRONMENTAL IMPACT ASSESSMENT

- 58.(1) Notwithstanding any approval, permit or licence granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall, before financing, commencing, proceeding with, carried out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the

Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.

- The proponent of a project shall undertake or cause to be undertaken at his own expense and environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the intended project may or is likely to have or will have a significant impact on the environment, so directs.
- The environmental impact assessment study report prepared under this subsection shall be submitted to the Authority in the prescribed form, giving the prescribed information and shall be accompanied by the prescribed fee..
- The Minister may, on the advice of the Authority given after consultation with the relevant lead agencies, amend the Second Schedule to this Act by notice in the Gazette.
- Environmental Impact Assessment studies and reports required under this Act shall be conducted or prepared respectively by individual experts or a firm of experts authorised in that behalf by the Authority. The Authority shall maintain a register of all individual experts or firms of all experts duly authorized by it to conduct or prepare environmental impact assessment studies and reports respectively. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.
- The Director-General may, in consultation with the Standards Enforcement and Review Committee, approve any application by an expert wishing to be authorised to undertake Environmental Impact Assessment. Such application shall be made in the prescribed manner and accompanied by any fees that may be required.
- Environmental impact assessment shall be conducted in accordance with the environmental impact assessment regulations, guidelines and procedures issued under this Act.
- The Director-General shall respond to the applications for environmental impact assessment licence within six months.
- Any person who upon submitting his application does not receive any communication from the Director-General within the stipulated time may within nine months of such submission start his undertaking.
- Upon receipt of an environmental impact assessment study report from any proponent under section 58(2), the Authority shall cause to be published in each of two successive weeks in the Gazette and newspaper circulating in the area or proposed area of the project once at least in each of two successive weeks in some one and the same a notice which shall state:-

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- a summary description of the project;
  - the place where the project is to be carried out;
  - the place where the environmental impact assessment study, evaluation or review report may be inspected; and
  - a time limit of not exceeding ninety days for the submission of oral or written comments by any member of the public on the environmental impact assessment study, evaluation or review report.
- (2) The Authority may, on application by any person extend the period stipulated in sub-paragraph (d) so as to afford reasonable opportunity for such person to submit oral or written comments on the environmental impact assessment report.
60. A lead agency shall, upon the written request of the Director-General, submit written comments on an environmental impact assessment study, evaluation and review report within thirty days from the date of the written request.
61. The Authority may set up a technical advisory committee to advise it on environmental impact assessment related reports and the Director-General shall prescribe the terms of reference and rules of procedure for the technical advisory committee appointed hereunder.
62. The Authority may require any proponent of a project to carry out at his own expense further evaluation or environmental impact assessment study, review or submit additional information for the purpose of ensuring that the environmental impact assessment study, review or evaluation report is as accurate and exhaustive as possible.
63. The Authority may, after being satisfied as to the adequacy of an environmental impact assessment study, evaluation or review report, issue an environmental impact assessment licence on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management.
- 64.(1) The Authority may, at any time after the issue of an environmental impact assessment licence direct the holder of such licence to submit at his own expense a fresh environmental impact assessment study, evaluation or review report within such time as the Authority may specify where -
- there is a substantial change or modification in the project or in the manner in which the project is being operated;

- the project poses environmental threat which could not be reasonably foreseen at the time of the study, evaluation or review; or
- it is established that the information or data given by the proponent in support of his application for an environmental impact assessment licence under section 58 was false, inaccurate or intended to mislead.

- (2) Any person who fails, neglects or refuses to comply with the directions of the Authority issued under subsection (1) shall be guilty of an offence.
- 65.(1) An environmental impact assessment licence may be transferred by the holder to another person only in respect of the project in relation to which such licence was issued.
- Where an environmental impact assessment licence is transferred under this section, the person to whom it is transferred and the person transferring it shall jointly notify the Director-General in writing of the transfer, not later than thirty days after the transfer.
  - Where no joint notification of a transfer is given in accordance with subsection (2), the registered holder of the licence shall be deemed for the purposes of this Act to be the owner or the person having charge or management or control of the project as the case may be.
  - Any transfer of an environmental impact assessment licence, under this section shall take effect on the date the Director-General is notified of the transfer.
  - Any person who contravenes any provisions of this section, shall be guilty of an offence.
- 66.(1) No civil or criminal liability in respect of a project or consequences resulting from a project shall be incurred by the Government, the Authority or any public officer by reason of the approval of an environmental impact assessment study, evaluation or review report or grant of an environmental impact assessment licence or by reason of any condition attached to such licence.
- The issuance of an environmental impact assessment licence in respect of a project shall afford no defense to any civil action or to a prosecution that may be brought or preferred against a proponent in respect of the manner in which the project is executed, managed or operated.
- 67.(1) The Authority shall, on the advice of the Standards and Enforcement Review Committee, cancel, revoke or suspend any environmental impact assessment licence for such time not exceeding twenty four months where the licensee contravenes the provisions of the licence.
- Whenever an environmental impact assessment licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the project which is the subject of the licence until a new licence is issued by the Authority.

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- (3) The Authority shall maintain a register of all environmental impact assessment licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

**PART VII – ENVIRONMENTAL AUDIT AND MONITORING**

- 68.(1) The Authority shall be responsible for carrying out environmental audit of all activities that are likely to have significant effect on the environment. An environmental inspector appointed under this Act may enter any land or premises for the purposes of determining how far the activities carried out on that land or premises conform with the statements made in the environmental impact assessment study report issued in respect of that land or those premises under section 58(2).
- (2) The owner of the premises or the operator of a project for which an environmental impact assessment study report has been made shall keep accurate records and make annual reports to the Authority describing how far the project conforms in operation with the statements made in the environmental impact assessment study report submitted under section 58(2).
- (3) The owner of premises or the operator of a project shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental impact assessment study report submitted under section 58(2) and shall prepare and submit an environmental audit report on those measures to the Authority annually or as the Authority may, in writing, require.

- 69.(1) The Authority shall, in consultation with the relevant lead agencies, monitor:-
- (a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or
- (b) the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment.
- (2) An environmental inspector appointed under this Act may enter upon any land or premises for the purposes of monitoring the effects upon the environment of any activities carried on that land or premises.

**PART VIII – ENVIRONMENTAL QUALITY STANDARDS**

- 70.(1) There is hereby established a Standards and Enforcement Review Committee to be a committee of the Authority.

- (2) The Standards and Enforcement Review Committee shall consist of the members set out in the Third Schedule to this Act.
- (3) The permanent secretary under the Minister shall be the Chairman of the Standards and Enforcement Review Committee.
- (4) The Director-General shall appoint a Director of the Authority to be a member of the Standards and Enforcement Review Committee who shall be the secretary to the Committee and shall provide the secretarial services to the Committee.
- (5) The Standards and Enforcement Review Committee shall regulate its own proceedings.
- (6) The Standards and Enforcement Review Committee may co-opt any person to attend its meetings and a person so co-opted shall participate at the deliberations of the Committee but shall have no vote.
- (7) The Standards and Enforcement Review Committee shall meet at least once every three months for the transaction of its business.
71. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies:-
- (a) advise the Authority on how to establish criteria and procedures for the measurement of water quality;
- (b) recommend to the Authority minimum water quality standards for all the waters of Kenya and for different uses, including –
- (i) drinking water;
- (ii) water for industrial purposes;
- (iii) water for agricultural purposes;
- (iv) water for recreational purposes;
- (v) water for fisheries and wildlife;
- (vi) and any other prescribed water use.
- (c) analyse and submit to the Director-General conditions for discharge of effluents into the environment.
- (d) prepare and recommend to the Director-General guidelines or regulations for the preservation of fishing areas, aquatic areas, water sources and reservoirs and other areas where water may need special protection.
- (e) identify and recommend to the Authority areas of research on the effects of water pollution on the environment, human beings flora and fauna;
- (f) advise the Authority to carry out investigations of actual or suspected water pollution including the collection of data;
- (g) advise the Authority to take steps or authorise any works to be carried out which appear to be necessary to prevent or abate water pollution from natural causes or from abandoned works or undertakings;
- (h) document the analytical methods by which water quality and pollution control standards can be determined and appoint laboratories for the

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- analytical services required or request the Director-General to establish such laboratories;
- (i) collect, maintain and interpret data from industries and local authorities on the pretreatment nature and levels of effluents;
- (j) recommend to the Director-General measures necessary for the treatment of effluents before being discharged into the sewerage system;
- (k) recommend to the Director-General works necessary for the treatment of effluents before being discharged into the water;
- (l) submit to the Director-General all such recommendations as may appear necessary for the monitoring and control of water pollution.
- 72.(1) Any person who upon the coming into force of this Act, discharge or applies any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants or permits any person to dump or discharge such matter into the aquatic environment in contravention of water pollution control standards established under this Part shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding one million shillings or to both such imprisonment and fine.
- (2) A person found guilty under subsection (1) shall, in addition to any sentence or fine imposed on him:-
- (a) pay the cost of the removal of any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants, including the costs of restoration of the damaged environment, which may be incurred by a Government agency or organ in that respect;
- (b) pay third parties reparation, cost of restoration, restitution or compensation as may be determined by a court of law on application by such third parties.
73. All owners or operators of irrigation project schemes, sewage systems, industrial production workshops or any other undertaking which may discharge effluents or other pollutants or have been discharging effluents or other pollutants shall within ninety days upon the coming into force of this Act or as may be demanded from time to time by the Authority, submit on demand, to the Authority accurate information about the quantity and quality of such effluent or other pollutant.
- 74.(1) Every owner or operator of a trade or industrial undertaking shall discharge any effluents or other pollutants originating from the trade or industrial undertaking only into existing sewerage systems and the relevant Local Authority operating or supervising such sewerage system shall issue, at a prescribed fee, the necessary licence for discharge.

- (2) The proponent or owner of a trade or an industrial undertaking shall, prior to being granted a licence to discharge effluents into the environment, install an appropriate plant for the treatment of such effluents before they are discharged into the environment.
- 75.(1) No Local Authority operating a sewerage system or owner or operator of any trade or industrial undertaking shall discharge any effluents or other pollutants into the environment without an effluent discharge licence issued by the Authority.
- (2) Every owner or operator of a trade or an industrial undertaking discharging any effluents or other pollutants into the environment before the commencement of this Act shall, within twelve months of such commencement apply to the Authority for an effluent discharge licence.
- (3) Every application for an effluent discharge licence shall be in the prescribed form and accompanied by the prescribed fee.
- (4) Before the issuance of a licence under subsection (1) and (2), the Authority shall –
- (a) solicit the comments of local authorities concerned and organisations and persons as he may deem fit;
- (b) take into consideration the possible effects of effluents or pollutants to be discharged on the quality of an affected water course or other source of water;
- (c) take into consideration the existing licences affecting the concerned water course or other source; and
- (d) take into consideration the water requirements of riparian residents and ecosystems, human settlements, and agricultural schemes which depend on the affected water course.
- (5) Where the Authority rejects an application for the grant of an effluent discharge licence it shall within twenty one days notify the applicant of its decision and state in writing its reasons for so rejecting the application.
- (6) An effluent discharge licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the licence and shall remain valid for such period and may be renewed for such further periods as may be prescribed or specified in the licence.
- 76.(1) The Authority may in writing, cancel any effluent discharge licence:-
- (a) if the holder of the licence contravenes any provision of this Act or any regulations made thereunder;
- (b) if the holder fails to comply with any condition specified in the licence; or
- (c) if the holder considers it in the interest of the environment or in the public interest so to do.
77. The Authority shall maintain a register of all effluent discharge

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licences issued under this Act. The register shall be a public document and may be inspected at any reasonable hour by any person on the payment of the prescribed fee.

- 78.(1) The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies:-
- (a) advise the Authority on how to establish criteria and procedures for the measurement of air quality;
  - (b) recommend to the Authority --
    - (i) ambient air quality standards;
    - (ii) occupational air quality standards;
    - (iii) emission standards for various sources;
    - (iv) criteria and guidelines for air pollution control for both mobile and stationary sources;
    - (v) any other air quality standards;
  - (c) advise the Authority on measures necessary to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under this section;
  - (d) recommend to the Authority guidelines to minimize emissions of green house gases and identify suitable technologies to minimize air pollution;
  - (e) advise the Authority on emissions concentration and nature of pollutants emitted;
  - (f) recommend to the Authority the best practicable technology available in controlling pollutants during the emission process;
  - (g) determine for consideration by the Authority the analytical methods for monitoring air contaminants and recommend to the Director-General the establishment of such number of laboratories for analytical services as may be needed;
  - (h) request the Authority to carry out investigations of actual or suspected air pollution including pollution produced by aircrafts and other self propelled vehicles and by factories and power generating stations;
  - (i) request the Authority to order any industry or other source of air pollution to file such returns and provide such information as it may require; and
  - (j) do all such things as appear necessary for the monitoring and controlling of air pollution.
- (2) Any person who emits any substances which cause air pollution in contravention of emission standards established under this Part shall be guilty of an offence and liable to imprisonment for a term of not more than two years

or to a fine of not more than five hundred thousand shillings or to both such fine and imprisonment.

- (3) A person found guilty under subsection (2) shall, in addition to any sentence or fine imposed on him;
- (a) pay the cost of the removal of the pollution, including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the emission; and
  - (b) the cost of third parties in the forms of reparation, restoration, restitution or compensation as may be determined by a competent court upon application by such third parties.
- 79.(1) The Minister, may on the advice of the Authority, by the Gazette Notice, declare any area to be a controlled area for the purposes of this Part.
- (2) The Minister may, on the advice of the Authority, in regulations, prescribe the air emission standards in respect of any controlled areas.
- 80.(1) An owner or operator of a trade, industrial undertaking or an establishment which after the commencement of this Act, is emitting a substance or energy which is causing or is likely to cause air pollution shall apply to the Authority for an emission licence.
- (2) In the case of any trade, industrial undertaking or establishment existing before the commencement of this Act, such application shall be made within twelve months after this Act has come into operation.
- (3) Every application for an emission licence shall be in the prescribed form and be accompanied by the prescribed fee.
- 81.(1) Before issuing a licence in respect of emissions, the Authority shall:-
- (a) consider the possible effects of the emissions on the quality of ambient air;
  - (b) consider existing licences affecting the same air resource;
  - (c) give due regard to the requirements for the residents, human settlements and other industrial and commercial activities;
  - (d) solicit the comments of relevant Local Authorities and concerned organisations;
  - (e) where the information accompanying the application appears inadequate, require the applicant to furnish further information relating to the undertaking in question, its location, materials, technology design or other appropriate matters;
  - (f) where it appears necessary to conduct an environmental impact study, require the applicant to conduct an environmental impact assessment study in respect of the undertaking in question in accordance with the provisions of Part VI.
- (2) An emission licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the

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licence and shall remain valid for such period and may be renewed for such further periods as may be prescribed or specified in the licence.

- (3) Where the Authority rejects an application for the grant of an emission licence, it shall within twenty one days of its decision, notify the applicant in writing of its reasons for such refusal.
82. No owner or operator of a motor-vehicle, train, ship, aircraft or other similar conveyance shall --
- (a) operate it in such a manner as to cause air pollution in contravention of the established emission standards; or
  - (b) import any machinery, equipment, device or similar thing that will cause emissions into the ambient air in contravention of prescribed emission standards.
83. The Authority may establish additional procedures for the application and grant of any licence under this Act and impose such conditions as it may deem appropriate.
84. The Authority may, in writing, cancel any emission licence:-
- (a) if the holder of the licence contravenes any provisions of this Act or of any regulations made under it;
  - (b) if the holder fails to comply with any conditions specified in the licence; or
  - (c) if the Authority considers it in the interest of the environment or in the public interest so to do;
85. The Authority shall maintain a register of all emission licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.
86. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority measures necessary to:-
- (1) identify materials and processes that are dangerous to human health and the environment; issue guidelines and prescribe measures for the management of the materials and processes identified under subsection (1);
  - (2) prescribe standards for waste, their classification and analysis, and formulate and advise on standards of disposal methods and means for such wastes; or
  - (3) issue regulations for the handling, storage, transportation, segregation and destruction of any waste.
- 87.(1) No person shall discharge or dispose of any wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person.
- (2) No person shall transport any waste other than --

(a) in accordance with a valid licence to transport wastes issued by the Authority; and

(b) to a wastes disposal site established in accordance with a licence issue by the Authority.

(4) No person shall operate a wastes disposal site or plant without a licence issued by the Authority.

(5) Every person whose activities generate wastes shall employ measures essential to minimize wastes through treatment, reclamation and recycling.

(6) Any person who contravenes any provisions of this section shall be guilty of an offence and liable to imprisonment for a term of not more than two years or to a fine of not more than one million shillings or to both such imprisonment and fine.

88.(1) Any person intending to transport wastes within Kenya, operate a wastes disposal site or plant or to generate hazardous waste, shall prior to transporting the wastes, commencing with the operation of a wastes disposal site or plant or generating hazardous wastes, as the case may be, apply to the Authority in writing for the grant of an appropriate licence.

(2) A licence to operate a waste disposal site or plant may only be granted subject to the payment of the appropriate fee and any other licence that may be required by the relevant Local Authority.

(3) Where the Authority rejects an application made under this section, it shall within twenty one days of its decision, notify the applicant of the decision specifying the reasons thereof.

89. Any person who, at the commencement of this Act, owns or operates a waste disposal site or plant or generated hazardous waste, shall apply to the Authority for a licence under this Part, within six months after the commencement of this Act.

90. The Authority may apply to a competent court for orders compelling any person to immediately stop the generation, handling, transportation, storage or disposal of any wastes where such generation, handling, transportation, storage or disposal presents an imminent and substantial danger to public health, the environment or natural resources.

91.(1) The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority standard criteria for the classification of hazardous wastes with regard to determining --

- (a) hazardous waste;
- (b) corrosive waste;
- (c) carcinogenic waste;
- (d) flammable waste;
- (e) persistent waste;
- (f) toxic waste;

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- (g) explosive waste;
  - (h) radioactive waste;
  - (i) wastes, reactive otherwise than as described in the forgoing paragraphs of this subsection;
  - (j) any other category of waste the Authority may consider necessary.
- (2) The Authority shall, on the recommendation of the Standards and Enforcement Review Committee issue guidelines and regulations for the management of each category of hazardous wastes determined under subsection (1).
- (3) No person shall import into Kenya any hazardous waste falling under any category determined under subsection (1).
- (4) No hazardous waste shall be exported to any country from Kenya without a valid permit granted by the Authority and written consent given by a competent authority of the receiving country.
- (5) No hazardous waste shall be transported within or through Kenya without a valid permit granted by the Authority.
- (6) Any person who contravenes any provision of this section or who withholds, falsifies or otherwise tampers with information relating to trafficking in hazardous or other waste shall be guilty of an offence and liable to imprisonment for a term of not less than two years or to a fine of not less than one million shillings or to both such imprisonment and fine.
- (7) A person found guilty under subsection (6) shall be responsible for the removal of the waste from Kenya and for its safe disposal.
92. The Minister may, on the advice of the Authority make regulations prescribing the procedure and criteria for –
- (a) classification of toxic and hazardous chemicals and materials in accordance with their toxicity and the hazard they present to the human health and to the environment;
  - (b) registration of chemicals and materials;
  - (c) labelling of chemicals and materials;
  - (d) packaging for chemicals and materials;
  - (e) advertising of chemicals and materials;
  - (f) control of imports and exports of toxic and hazardous chemicals and materials permitted to be so imported or exported;
  - (g) distribution, storage, transportation and handling of chemicals and materials;
  - (h) monitoring of the effect of chemicals and their residue on human health and the environment;
  - (i) disposal of expired and surplus chemicals and materials; and
  - (j) restriction and banning of toxic and hazardous substances and energy.

- 93.(1) No person shall discharge any hazardous substance, chemical, oil or mixture containing oil into any waters or any other segments of the environment contrary to the provisions of this Act or any regulations thereunder.
- (2) A person who discharges a hazardous substance, chemical, oil or a mixture containing oil into any waters or other segments of the environment contrary to subsection (1) commits an offence.
- (3) A person convicted of an offence under subsection (2) shall, in addition to any other sentence imposed by the court:–
- (a) pay the cost of the removal of the hazardous substance, chemical, oil or a mixture containing oil including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge; and
  - (b) the costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by a competent court on application by such third parties.
- (4) The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by –
- (a) giving immediate notice of the discharge to the Authority and other relevant Government officers;
  - (b) immediately beginning clean-up operations using the best available clean-up methods;
  - (c) complying with such directions as the Authority may, from time to time, prescribe.
- (5) Where the owner or operator of a production or storage facility, motor vehicle or vessel has refused, neglected and/or failed to take the mitigation measures prescribed in subsection (4), the Authority may seize the production or storage facility, motor vehicle or vessel.
- (6) Where the owner or operator fails to take the necessary measures under subsection (4) after the passage of a reasonable time not exceeding six months in all the circumstances, the Authority may, upon an order of court, dispose of the production or storage facility, motor vehicle or vessel to meet the costs of taking necessary measures under subsection (4) and other remedial and restoration measures.
- (7) The Court in convicting a person of an offence under this section shall take into account the measures taken by that person to comply with subsection (4).
94. The Standards and Enforcement Review Committee, in consultation with the relevant lead agencies shall –
- (a) prepare and submit to the Authority draft standards for the concentration of pesticides residues in raw agricultural commodities, processed foods

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- and animal feed and for the purposes of this paragraph raw agricultural commodities:–
- (i) include fresh or frozen fruit and vegetables in their raw state, grains, nuts, eggs, raw milk, meat and other agricultural produce;
  - (ii) do not include any agricultural produce or good which is processed, fabricated or manufactured by cooking, dehydrating, milling, or by any other similar means;
- (b) establish, revisit, modify and submit to the Authority draft standards to regulate the importation, exportation, manufacture, storage, distribution, sale, use, packaging, transportation, disposal and advertisement of pesticides and toxic substances with the relevant organisations;
  - (c) establish and submit to the Authority draft procedures for the registration of pesticides and toxic substances;
  - (d) establish and submit to the Authority draft measures to ensure proper labelling and packaging of pesticides and toxic substances;
  - (e) constantly review the use and efficacy of pesticides and toxic substances and submit the findings of such review to the Authority.
  - (f) recommend to the Authority measures for monitoring the effects of pesticides and toxic substances on the environment;
  - (g) recommend to the Authority measures for the establishment and maintenance of laboratories to operate as standards laboratories for pesticides and toxic substances;
  - (h) recommend to the Authority measures for the establishment of enforcement procedures and regulations for the storage, packaging and transportation of pesticides and toxic substances;
  - (i) constantly collect data from industries on the production, use and health effects of pesticides and toxic substances and avail such data to the Authority;
  - (j) keep up-to-date records and reports necessary for the proper regulations of the administration of pesticides and toxic substances;
  - (k) do all other things as appear necessary for the monitoring and control of pesticides and toxic substances;
- 95.(1) Subject to the provisions of this Act or any other written law applicable in Kenya, any person who intends to manufacture, import or process a new pesticide or toxic substance or who intends to reprocess an existing pesticide or toxic substance for a significantly new use, must apply to the Authority for the registration of the pesticide or toxic substance, before importing, manufacturing, processing or reprocessing such pesticides or toxic substance.
- (2) The application referred to in subsection (1) shall include the name, trade mark, and the molecular structure, proposed categories of use, an estimate of

the quantity of the pesticides or toxic substances and any data related to health and other environmental effects thereof that the Authority may require.

96. Any person who, being in Kenya, has been manufacturing, importing or processing a pesticide or toxic substance before the coming into force of this Act, shall apply to the Authority for registration of such pesticides or toxic substance within one year after the commencement of this Act.
- 97.(1) The Authority may, upon application, register a pesticide or toxic substance subject to such existing conditions and any other conditions that the Authority may determine.
- (2) Every pesticide or toxic substance shall be registered for ten years unless some other period is specified by the Authority, and may be renewed for a like period.
- (3) Where the Authority refuses to register any pesticide or toxic substance, the notice of refusal shall state the reasons for such refusal.
- 98.(1) No person shall –
- (a) detach, alter or destroy any labelling on a pesticide or toxic substance contrary to the provisions of this Act;
  - (b) change the composition of a pesticide or toxic substance, contrary to the provisions of this Act; or
  - (c) use or dispose into the environment a pesticide or toxic substance in contravention of the provisions of this Act.
- (2) No person shall distribute, sell, offer for sale, hold for sale, import, deliver for importation to, or receive from, deliver or offer to deliver to any other person any unregistered pesticide or toxic substance.
- (3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine of not more than one million shillings or to imprisonment for a term of not more than two years or to both such fine and imprisonment.
- 99.(1) Any pesticide or toxic substance which the Authority reasonably suspects to be the subject matter of an offence under this Act shall be liable to seizure by the Authority.
- (2) Whenever any pesticide or toxic substance is seized under subsection (1), the Authority shall serve a notice of seizure on the owner of the pesticide or toxic substance as soon as practicable.
- (8) Where any pesticide or toxic substance is seized under this section, the pesticide or toxic substance shall be placed under the custody of the Authority.
- (9) Any pesticide or toxic substance placed under the custody of the Authority under subsection (3) shall be released, if after six months –

- (a) no prosecution under this Act has been instituted with regard to the pesticide or toxic substance;
- (b) no person is convicted of an offence under this Act.
100. The Minister shall, in consultation with the relevant lead agencies, make regulations prescribing the contents of any application and the conditions for the registration of pesticides and toxic substances under this Act.
101. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies –
- (a) recommend to the Authority minimum standards for emissions of noise and vibration pollution into the environment as are necessary to preserve and maintain public health and the environment;
- (b) establish and submit to the Authority criteria and procedures for the measurement of noise and vibration pollution into the environment;
- (c) establish and submit to the Authority criteria and procedures for the measurement of sub-sonic vibrations;
- (d) establish and submit to the Authority standards of the emission of sub-sonic vibrations which are likely to have a significant impact on the environment;
- (e) recommend to the Authority guidelines for the minimisation of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;
- (f) establish and submit to the Authority noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic booms, industrial and commercial activities;
- (g) recommend to the Authority measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f);
- (h) measure the levels of noise emanating from the sources referred to in paragraph (f) details of which measurements shall be given to the owner or occupier of the premises from which the measurement was taken; and
- (i) recommend to the Authority guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.
102. Subject to the provisions of the Civil Aviation Act, any person who emits noise in excess of the noise emission standards established under this Part commits an offence.
- 103.(1) Notwithstanding the provisions of section 102, the Authority may on request grant a temporary permit not exceeding three months, allowing emission of noise in excess of established standards for such activities as fireworks, demolitions, firing ranges, and specific heavy industry on such terms and conditions as the Authority may determine.
- (2) Where an exemption has been granted under subsection (1), workers exposed to excessive levels of noise shall be adequately protected in accordance with the directives issued by the Authority.
104. Subject to the provisions of the Radiation Protection Act, the Authority, on the advice of the Standards and Enforcement Review Committee and in consultation with the relevant lead agencies, shall –
- (a) establish the standards for the setting of acceptable levels of ionising and other radiation in the environment;
- (b) establish criteria and procedures for the measurement of ionising and other radiation;
- (c) inspect and examine any area, place or premises or any vehicle, vessel, boat or any carrier of any description in or upon which the Authority has reasonable cause to believe that radioactive material or any source of ionising radiation is stored, used, transported or disposed of;
- (d) examine any person with respect to matters under this Act, where there is reasonable cause to believe that that person is contaminated with radioactive material or is unlawfully in possession of an ionising radiation source;
- (e) provide information, warn and protect the public in case of actual or potential public exposure to radioactive material or ionising radiation;
- (f) in collaboration with the Radiation Protection Board, conduct an ionising radiation monitoring programme and advise on ionising radiation control and protection measures;
- (g) maintain records of release of radioactive contaminants into the environment;
- (h) keep records of baseline data of radiation in the environment;
- (i) maintain a register of all radioactive substances imported into Kenya; and
- (j) do all such things as may be necessary for the monitoring and control of pollution from radiation.
105. An inspector of the Authority at any reasonable time may –
- (a) enter, inspect and examine any place, area, premises or any vehicle, vessel, boat, aircraft or any carriage of any description on which he has reasonable grounds to believe that radioactive materials or any source of ionising radiation is stored, used, transported or disposed of provided that no entry shall be made into any private dwelling house except with a court warrant;
- (b) order presentation of –
- (i) a licence authorising the possession or use of radioactive material or sources of dangerous ionising radiation;
- (ii) a licence authorising the mining and processing of radioactive materials; and

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- (iii) a register, certificate, notice or document kept under the control of the Radiation Protection Board.
- 106.(1) A person who imports, processes, mines, exports, possess, transports, uses, or disposes radioactive materials or other source of dangerous ionising radiation without a licence issued under this Act or regulation made thereunder, shall be guilty of an offence and liable upon conviction to a fine of not less than five hundred and fifty thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment.
- (2) In addition to the penalties provided in subsection (1) of this section, the radioactive material or other source of dangerous ionising radiation may be seized, impounded, destroyed or disposed of in such a manner as the Court may consider necessary to protect the public and the environment or may only be returned to the owner on order of the Court and under any other conditions set out in the licence issued by the Authority.
107. The Authority shall, in consultation with the relevant lead agencies, establish –
- (a) procedures for the measurement and determination of noxious smells;
- (b) minimum standards for the control of pollution of the environment by noxious smell; or
- (c) guidelines for measures leading to the abatement of noxious smells, whether from human activities or from naturally occurring phenomena.
- PART IX – ENVIRONMENTAL RESTORATION ORDERS, ENVIRONMENTAL CONSERVATION ORDERS AND ENVIRONMENTAL EASEMENTS**
- 108.(1) Subject to any other provisions of this Act, the Authority may issue and serve on any person in respect of any matter relating to the management of the environment an order in this Part referred to as an environmental restoration order.
- (2) An environmental restoration order issued under subsection (1) or section 111 shall be issued to –
- (a) require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order; prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;
- (b) award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;
- (c) levy a charge on the person on whom it is served which in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.
- (3) An environmental restoration order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the Authority, enable the order to achieve all or any of the purposes set out in subsection (2).
- (4) Without prejudice to the general effect of the purpose set out in subsection (2) an environmental restoration order may require a person on whom it is served to –
- (a) take such action as will prevent the commencement or continuation or cause of pollution;
- (b) restore land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land or sea as may be specified in the particular order;
- (c) take such action to prevent the commencement or continuation or cause of environmental hazard;
- (d) cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;
- (e) remove or alleviate any injury to land or the environment or to the amenities of the area;
- (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land or sea specified in the order or land or the environment contiguous to the land or sea specified in the order;
- (g) remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order;
- (h) pay any compensation specified in the order;
- (5) In exercising the powers under this section, the Authority shall –
- (a) be guided by the principles of good environmental management in accordance with the provisions of this Act; and
- (b) explain the right of appeal of the persons against whom the order is issued to the Tribunal or if dissatisfied with the decision of the Tribunal, to superior courts.

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- 109.(1) An environmental restoration order shall specify clearly and in a manner which may be easily understood:-
- the activity to which it relates;
  - the person or persons to whom it is addressed;
  - the time at which it comes into effect;
  - the action which must be taken to remedy the harm to the environment and the time, being not more than thirty days or such further period as may be prescribed in the order within which the action must be taken;
  - the powers of the Authority to enter any land and undertake the action specified in paragraph (d);
  - the penalties which may be imposed if the action specified in paragraph (d) is not undertaken;
  - the right of the person served with an environmental restoration order to appeal to the Tribunal against that order, except where the order is issued by a court of competent jurisdiction, in which case the right of appeal shall lie with superior courts.
- (2) An Environmental Inspector of the Authority may inspect or cause to be inspected any activity to determine whether that activity is harmful to the environment and may take into account the evidence obtained from that inspection in any decision on whether or not to serve an environmental restoration order.
- (3) The Authority may seek and take into account any technical, professional and scientific advice which it considers to be desirable for a satisfactory decision to be made on an environmental restoration order.
- (4) An environmental restoration order shall continue to apply to the activity in respect of which it was served notwithstanding that it has been complied with.
- (5) A person served with an environmental restoration order shall, subject to the provisions of this Act, comply with all the terms and conditions of the order that has been served on him.
- (6) It shall not be necessary for the Authority or its Inspectors in exercising the powers under subsection (2), to give any person conducting or involved in the activity which is the subject of the inspection or residing or working on or developing land on which the activity which is the subject of the inspection is taking place, an opportunity of being heard by or making representations to the person conducting the inspection.
- 110.(1) At any time within twenty-one days after the service of an environmental restoration order, a person upon whom the order has been served may, by giving reasons in writing, request the Authority to re-consider that order.

- (2) Where the Authority exercises the power under subsection (1), the expenses necessarily incurred by it in the exercise of that power shall be a civil debt recoverable summarily by it from the person referred to in subsection (1).
- 111.(1) Without prejudice to the powers of the Authority under this Act, a court of competent jurisdiction may, in proceedings brought by any person, issue an environmental restoration order against a person who has harmed, is harming or is reasonably likely to harm the environment.
- (2) For the avoidance of doubt, it shall not be necessary for a plaintiff under this section to show that he has a right or interest in the property, environment or land alleged to have been or likely to be harmed.
- 112.(1) A court may, on an application made under this Part, grant an environmental easement or an environmental conservation order subject to the provisions of this Act.
- (2) The object of an environmental easement is to further the principles of environmental management set out in this Act by facilitating the conservation and enhancement of the environment, in this Act referred to as the benefited environment, through the imposition of one or more obligations in respect of the use of land, in this Act referred to as the burdened land, being the land in the vicinity of the benefited environment.
- (3) An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law as the court may determine.
- (4) Without prejudice to the general effect of subsection (2), an environmental conservation order may be imposed on burdened land so as to -
- preserve flora and fauna;
  - preserve the quality and flow of water in a dam, lake, river or aquifer;
  - preserve any outstanding geological, physiological, ecological, archeological, or historical features of the burdened land;
  - preserve scenic view;
  - preserve open space;
  - permit persons to walk in a defined path across the burdened land;
  - preserve the natural contours and features of the burdened land;
  - prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of minerals or aggregates;
  - prevent or restrict the scope of any agricultural activity on the burdened land;
  - create and maintain works on burdened land so as to limit or prevent harm to the environment; or
  - create or maintain migration corridors for wildlife.

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- (5) Where an environmental easement is imposed on burdened land on which any person has at the time of the imposition of the easement, any existing right or interest to the land and that environmental easement will restrict that right or interest, there shall be paid to that person, by the applicant for the environmental easement such compensation as may be determined in accordance with section 116.
- (6) As environmental easement may exist in gross; that is to say, the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited or, of a person with an interest in that plot of land who can be benefited by the environmental easement.
- 113.(1) A person or a group of persons may make an application to the court for the grant of one or more environmental easements.
- (2) The court may impose such conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement.
- 114.(1) Proceedings to enforce an environmental easement may be commenced only by the person in whose name the environmental easement has been issued. Proceedings to enforce an environmental easement may request the court to:-
- grant an environmental restoration order;
  - grant any remedy available under the law relating to easements in respect of land.
- (2) The court shall have a discretion to adapt and adjust, so far as seems necessary to it, the law and procedures relating to the enforcement of the requirements of an environmental easement.
- 115.(1) Where an environmental easement is imposed on land, the title of which is registered under a particular system of land registration, the environmental easement shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for easements.
- (2) Where an environmental easement is imposed on any land other than land referred to in subsection (1), the District Environment Committee of the area in which that land is situated shall register the environmental easement on a register maintained for that purpose in accordance with the provisions of this Act.
- (3) In addition to any matter which may be required by any law relating to the registration of easements in respect of land, the registration of an environmental easement shall include the name of the applicant for the environmental easement as the person in whose name the environmental easement is registered.
- 116.(1) Any person who has a legal interest in the land which is the subject of an environmental easement, shall, in accordance with the provisions of this Act, be entitled to compensation commensurate with the lost value of the use of the land.
- (2) A person described in subsection (1) may apply to the court that granted the environmental easement for compensation stating the nature of his legal interest in the burdened land and the compensation sought.
- (3) The court may require the applicant for the environmental easement to bear the cost of compensating the person described in subsection (1).
- (4) The court may, if satisfied that the environmental easement sought is of national importance, order that the Government compensates the person described in subsection (1).
- (5) The court in determining the compensation due under this section shall take into account the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land.
- PART X - INSPECTION, ANALYSIS AND RECORDS
- 117.(1) The Director-General shall, by Gazette Notice, appoint duly qualified persons whether public officers or otherwise whether by name or by title of office, to be environmental inspectors of the Authority for such jurisdiction units as shall be specified in the Gazette Notice appointing them.
- (2) An environmental inspector shall:-
- monitor compliance with the environmental standards established under this Act;
  - monitor the activities of other sector-specific environmental inspectorates;
  - monitor the pattern of use of environmental resources;
  - conduct environmental audits; and
  - perform such other functions as may be required under this Act or under the Gazette Notice appointing him.
- (3) An environmental inspector may, in the performance of his duties under this Act or any regulations made thereunder, at all reasonable times and without a warrant -
- enter any land, premises, vessel, motor vehicle or ox-drawn trailer and make examinations and enquiries to determine whether the provisions of this Act are being complied with;
  - require the production of, inspect, examine and copy licences, registers, records and other documents relating to this Act or any other law relating to the environment and the management of natural resources;
  - take samples of any article and substances to which this Act relates and, as may be prescribed, submit such samples for test and analysis;

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- (d) carry out periodic inspections of all establishments and undertakings within their respective jurisdictional limits which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have significant impact on the environment, to ensure that the provisions of this Act are complied with;
- (e) seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence under this Act or the regulations made thereunder;
- (f) with the written approval of the Director-General order the immediate closure of any manufacturing plant or other establishment or undertaking which pollutes or is likely to pollute the environment contrary to the provisions of this Act and to require the owner or operator of such establishment or undertaking to implement any remedial measures that the environmental inspector may direct in the notice closing down the establishment or undertaking closed down under this paragraph may resume its operations only with the written approval of the Director-General;
- (g) with the approval of the Director-General issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, motor vehicle or other establishment or undertaking to cease any activities deleterious to the environment and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the Director-General may determine;
- (h) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act; and
- (i) install any equipment on any land, premise, vessel or motor-vehicle for purposes of monitoring compliance with the provisions of this Act, or the regulations made thereunder upon giving the owner or occupier of the land three months written notice.
- (4) In exercising his powers under this Act, the environmental inspector shall suitably identify himself.
118. Subject to the Constitution and the directions and control of the Attorney-General, an environmental inspector may, in any case in which he considers it desirable so to do:-
- (a) institute and undertake criminal proceedings against any person before a court of competent jurisdiction (other than a court-martial) in respect of any offence alleged to have been committed by that person under this Act; and
- (b) discontinue at any stage with the approval of the Attorney-General, before judgement is delivered any such proceedings instituted or undertaken by himself.
- 119.(1) The Director-General may, by Notice in the Gazette, designate such number of laboratories as he may consider necessary, analytical or reference laboratories for the purposes of this Act.
- (2) A notice under subsection (1) shall state the specific functions of the laboratory, local limits or subject matter which the laboratory shall serve and the persons appointed as analysts in respect of that laboratory.
- (3) The Authority shall, on the advice of the Standards Enforcement Review Committee, prescribe the form and manner in which samples will be taken for analysis.
- 120.(1) A laboratory designated as an analytical or reference laboratory under section 119 shall issue a certificate of analysis of any substance submitted to it under this Act.
- (2) The certificate of analysis shall state the methods of analysis followed and shall be signed by the analyst or the reference analyst, as the case may be.
- (3) A certificate issued under subsection (1) and complying with subsection (2) shall be sufficient evidence of the facts stated in the certificate for all purposes under this Act.
- (4) The results of any analysis made by the laboratory shall be open to inspection by all interested parties.
- 121.(1) The Director-General shall, by notice in the Gazette, prescribe the activities for which records shall be kept for the purposes of this Act, the contents of such records and the manner in which they shall be kept. The records kept in accordance with subsection (1) of this section and any other records available at the site of an establishment or undertaking shall be made available at such reasonable time to any environmental inspector for the purpose of -
- (a) an environmental audit;
- (b) environmental monitoring and evaluation;
- (c) pollution control;
- (d) inspection;
- (e) any other purpose that may be prescribed by the Director-General from time to time.
122. The records kept under section 121 shall be transmitted annually to the Authority or its designated representative to be received not later than one month after the end of each calendar year. The Authority shall keep all records

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transmitted hereunder and may maintain their confidentiality if the applicable circumstances so require.

- 123.(1) Subject to the provisions of section 122, any person may have access to any records transmitted to the Authority under this Act.
- (2) A person desiring access to such records referred to in subsection (1) may on application to the Authority, be granted access to the said records on the payment of a fee prescribed by the Authority.

#### PART XI – INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS

- 124.(1) Where Kenya is a party to an international treaty, convention or agreement, whether bilateral or multilateral, concerning the management of the environment, the Authority shall, subject to the direction and control of the Council, in consultation with relevant lead agencies:-
- (a) initiate legislative proposals for consideration by the Attorney-General, for purposes of giving effect to such treaty, convention or agreement in Kenya or for enabling Kenya to perform her obligations or exercise her rights under such treaty, convention or agreement; and
- (b) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.
- (2) The Authority shall, in relation to the formation of international treaties, conventions or agreements on the environment, assist the relevant lead agencies negotiating such treaties, conventions or agreements.
- (3) The Authority shall keep a register of all international treaties, agreements or conventions in the field of the environment to which Kenya is a party.

#### PART XII – NATIONAL ENVIRONMENT TRIBUNAL

- 125.(1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members -
- (a) a chairman nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya;
- (c) a lawyer with professional qualifications in environmental law appointed by the Minister; and
- (d) two persons who have demonstrated exemplary academic competence in the field of environmental management appointed by the Minister.
- (2) All appointments to the Tribunal shall be by name and by the Gazette Notice issued by the Minister.

- (3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
- (4) The office of a member of the Tribunal shall become vacant:-
- (a) at the expiration of three years from the date of his appointment;
- (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;
- (c) if he is removed from the membership of the Tribunal by the Minister for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and
- (d) if he resigns the office of member of the Tribunal.
- 126.(1) The Tribunal shall not be bound by the rules of Evidence Act.
- (2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.
- (3) The Tribunal shall sit at such times and in such places as it may appoint.
- (4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.
- (5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.
- 127.(1) The Tribunal may:-
- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths; or
- (c) on its own motion summon and hear any person as witness;
- (2) Any person who -
- (a) fails to attend the Tribunal after having been required to do so under subsection (1) (a);
- (b) refuses to take oath or affirmation before the Tribunal or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or
- (d) at any sitting of the Tribunal -
- (i) willfully insults any member or officer of the Tribunal;

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- (ii) willfully interrupts the proceedings or commits any contempt of the Tribunal;
- (e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal commits an offence under this Act.
- 128.(1) For the purposes of hearing and determining any cause or matter under this Act, the Chairman and two members of the Tribunal shall form a quorum.
- (2) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.
- 129.(1) Any person who is aggrieved by:-
- a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
  - the imposition of any condition, limitation or restriction on his licence under this act or regulations made thereunder;
  - the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
  - the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
  - the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder;
- may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.
- (2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.
- (3) Upon any appeal, the Tribunal may:-
- confirm, set aside or vary the order or decision in question;
  - exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
  - make such other order, including an order for costs, as it may deem just.
- (4) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

- 130.(1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.
- (2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced until the appeal has been determined.
- (3) Notwithstanding the provisions of subsection (2), where the Director-General is satisfied that immediate action must be taken to avert serious injuries to the environment, the Director-General shall have the power to take such reasonable action to stop, alleviate or reduce such injury, including the powers to close down any undertaking, until the appeal is finalised or the time for appeal has expired.
- (4) Upon the hearing of an appeal under this section, the High Court may:-
- confirm, set aside or vary the decision or order in question;
  - remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
  - exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
  - make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.
- (5) The decision of the High Court on any appeal under this section shall be final.
131. The Chairman of the Tribunal may appoint any persons with special skills or knowledge on environmental issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.
- 132.(1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law or to be of unusual importance or complexity, it may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction. Where any matter has been referred to the Tribunal under subsection (1), the Authority and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an Advocate.
- (2) Any person who is a party to proceedings before the Tribunal may appear in person or be represented by an Advocate before the Tribunal.
- 133.(1) The Chairman or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed

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themselves to have jurisdiction to do or order the act complained of and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

- (1) It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish such person for contempt in accordance with the provisions of this Act.
134. There shall be paid to the Chairman and the members of the Tribunal such remuneration and allowances as the Minister shall determine.
135. The Minister shall appoint a public officer to be the Secretary to the Tribunal who shall be paid such allowances as the Minister shall determine.
- 136.(1) The Minister may establish such other Tribunals in any part of Kenya as he deems appropriate.
- (2) The provisions of section 126-135 shall apply *mutatis mutandis* to any Tribunal established under subsection (1).

**PART XIII ENVIRONMENTAL OFFENCES**

137. Any person who -
- hinders or obstructs an environmental inspector in the exercise of his duties under this Act or regulations made thereunder;
  - fails to comply with a lawful order or requirement made by an environmental inspector in accordance with this Act or regulations made thereunder;
  - refuses an environmental inspector entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter under this Act or regulations made thereunder;
  - impersonates an environmental inspector;
  - refuses an environmental inspector access to records or documents kept pursuant to the provisions of this Act or regulations made thereunder;
  - fails to state or wrongly states his name or address to an environmental inspector in the cause of his duties under this Act or regulations made thereunder;
  - misleads or gives wrongful information to an environmental inspector under this Act or regulations made thereunder;
  - fails, neglects or refuses to carry out an improvement order issued under this Act by an environmental inspector;
- commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding twenty four months, or to a fine of not more than five hundred thousand shillings, or both.

138. Any person who -
- fails to submit a project report contrary to the requirements of section 58 of this Act;
  - fails to prepare an environmental impact assessment report in accordance with the requirements of this Act or regulations made thereunder;
  - fraudulently makes false statements in an environmental impact assessment report submitted under this Act or regulations made thereunder;
- commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty four months or to a fine of not more than two million shillings or to both such imprisonment and fine.
139. Any person who -
- fails to keep records required to be kept under this Act;
  - fraudulently alters any records required to be kept under this Act;
  - fraudulently makes false statements in any records required to be kept under this Act;
- commits an offence and is liable upon conviction to a fine of not more than five hundred thousand shillings or to imprisonment for a term of not more than eighteen months or to both such fine and imprisonment.
140. Any person who -
- contravenes any environmental standard prescribed under this Act;
  - contravenes any measure prescribed under this Act;
  - uses the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act;
- commits an offence and shall be liable upon conviction, to a fine of not more than five hundred thousand shillings or to imprisonment for a term of not more than twenty four months or to both such fine and imprisonment.
141. Any person who -
- fails to manage any hazardous waste and materials in accordance with this Act;
  - imports any hazardous waste contrary to this Act;
  - knowingly mislabels any waste, pesticide, chemical, toxic substance or radioactive matter;
  - fails to manage any chemical or radioactive substance in accordance with this Act;
  - aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances and pesticides or hazardous substances;
  - disposes of any chemical contrary to this Act or hazardous waste within Kenya;

- (g) withholds information or provides false information about the management of hazardous wastes, chemicals or radioactive substances; commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term of not less than two years, or to both.
- 142.(1) Any person who –
- discharges any dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment contrary to the provisions of this Act;
  - pollutes the environment contrary to the provisions of this Act;
  - discharges any pollutant into the environment contrary to the provisions of this Act;
- commits an offence and shall on conviction, be liable to a fine not exceeding five hundred thousand shillings.
- (2) In addition to any sentence that the Court may impose upon a polluter under subsection (1) of this Section, the Court may direct that person to –
- pay the full cost of cleaning up the polluted environment and of removing the pollution;
  - clean up the polluted environment and remove the effects of pollution to the satisfaction of the Authority.
- (3) Without prejudice to the provisions of subsections (1) (2) of this section, the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution.
143. Any person who –
- Fails, neglects or refuses to comply with an environmental restoration order made under this Act;
  - fails, neglects or refuses to comply with an environmental easement, issued under this Act;
  - fails, neglects or refuses to comply with an environmental conservation order made under this Act;
- commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding five hundred thousand shillings, or to both.
144. Any person who commits an offence against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is liable, upon conviction, to imprisonment for a term of not more than eighteen months or to a fine of not more than three hundred and fifty thousand shillings or to both such fine and imprisonment.
- 145.(1) When an offence against this Act, is committed by a body corporate, the body

corporate and every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.

- (2) Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or who should have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.
- (3) A person shall be personally liable for an offence against this Act, whether committed by him on his own account or as an agent or servant of another person.
- (4) An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.
- 146.(1) The Court before which a person is charged for an offence under this Act or any regulations made thereunder may, in addition to any other order:-
- upon the conviction of the accused; or
  - if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence; order that the substance, motor vehicle, equipment and appliance or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the State and be disposed of as the court may direct.
- (2) In making the order to forfeit under subsection (1) the Court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance or any other thing provided for in that subsection be borne by the person convicted thereunder.
- (3) The Court may further order that any licence, permit or any authorisation given under this Act, and to which the offence relates, be cancelled.
- (4) The Court may further issue an order requiring that a convicted person restores at his own cost, the environment to as near as it may be to its original state prior to the offence.
- (5) The Court may in addition issue an environmental restoration order against the person convicted in accordance with the provisions of this Act.

#### PART XIV – REGULATIONS

- 147.(1) The Minister may, on the recommendation of the Authority and upon consultation with the relevant lead agencies, make regulations prescribing for

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- matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving full effect to the provisions of this Act.
- Regulations made under subsection (2) may –
- make provisions for the issue, amendment and revocation of any licence;
  - provide for the charging of fees and levying of charges;
  - adopt wholly or in part or with modifications any rules, standards, guidelines, regulations, by-laws, codes, instructions, specifications, or administrative procedures prescribed by any lead agency either in force at the time of prescription or publication or as amended from time.
148. Any written law, in force immediately before the coming into force of this Act, relating to the management of the environment shall have effect subject to modifications as may be necessary to give effect to this Act, and where the provisions of any such law conflict with any provisions of this Act, the provisions of this Act shall prevail.

#### FIRST SCHEDULE (s.4(1)(b), 29(1)(c), (3)(b), 37(1)(b))

Agriculture.  
Economic Planning and Development.  
Education.  
Energy.  
Environment.  
Finance.  
Fisheries.  
Foreign Affairs.  
Health.  
Industry.  
Law or Law Enforcement.  
Local Government.  
Natural Resources.  
Public Administration.  
Public Works.  
Research and Technology.  
Tourism.  
Water Resources.

#### SECOND SCHEDULE (s.58(1), (4))

#### PROJECTS TO UNDERGO ENVIRONMENTAL IMPACT ASSESSMENT

1. General –
- an activity out of character with its surrounding;

- any structure of a scale not in keeping with its surrounding;
  - major changes in land use.
2. Urban Development including:-
- designation of new townships;
  - establishment of industrial estates;
  - establishment or expansion of recreational areas;
  - establishment or expansion of recreational townships in mountain areas, national parks and game reserves;
  - shopping centres and complexes.
3. Transportation including –
- all major roads;
  - all roads in scenic, wooded or mountainous areas and wetlands;
  - railway lines;
  - airports and airfields;
  - oil and gas pipelines;
  - water transport.
4. Dams, rivers and water resources including –
- storage dams, barrages and piers;
  - river diversions and water transfer between catchments;
  - flood control schemes;
  - drilling for the purpose of utilising ground water resources including geothermal energy.
5. Aerial spraying.
6. Mining, including quarrying and open-cast extraction of –
- precious metals;
  - gemstones;
  - metalliferous ores;
  - coal;
  - phosphates;
  - limestone and dolomite;
  - stone and slate;
  - aggregates, sand and gravel;
  - clay;
  - exploitation for the production of petroleum in any form;
  - extracting alluvial gold with use of mercury.
- Forestry related activities including –
- timber harvesting;
  - clearance of forest areas;
  - reforestation and afforestation.
7. Agriculture including –
- large-scale agriculture;

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- (b) use of pesticide;
  - (c) introduction of new crops and animals;
  - (d) use of fertilizers;
  - (e) irrigation.
8. Processing and manufacturing industries including –
- (a) mineral processing, reduction of ores and minerals;
  - (b) smelting and refining of ores and minerals;
  - (c) foundries;
  - (d) brick and earthenware manufacture;
  - (e) cement works and lime processing;
  - (f) glass works;
  - (g) fertilizer manufacture or processing;
  - (h) explosive plants;
  - (i) oil refineries and petro-chemical works;
  - (j) tanning and dressing of hides and skins;
  - (k) abattoirs and meat-processing plants;
  - (l) chemical works and process plants;
  - (m) brewing and malting;
  - (n) bulk grain processing plants;
  - (o) fish-processing plants;
  - (p) pulp and paper mills;
  - (q) food-processing plants;
  - (r) plants for the manufacture of assembly of motor vehicles;
  - (s) plants for the construction or repair of aircraft or railway equipment;
  - (t) plants for the manufacture or assembly of motor vehicles;
  - (u) plants for the manufacture of tanks, reservoirs and sheet-metal containers;
  - (v) plants for the manufacture of coal briquettes;
  - (w) plant for manufacturing batteries;
9. Electrical infrastructure including –
- (a) electricity generation stations;
  - (b) electrical transmission lines;
  - (c) electrical sub-stations;
  - (d) pumped-storage schemes.
10. Management of hydrocarbons including –  
the storage of natural gas and combustible or explosive fuels.
11. Waste disposal including
- (a) sites for solid waste disposal;
  - (b) sites for hazardous waste disposal;
  - (c) sewage disposal works;
  - (d) works involving major atmospheric emissions;

- (d) works emitting offensive odours.
12. Natural conservation areas including –
- (a) creation of national parks, game reserves and buffer zones;
  - (b) establishment of wilderness areas;
  - (c) formulation or modification of forest management policies;
  - (d) formulation or modification of water catchment management policies;
  - (e) policies for the management of ecosystems, especially by use of fire;
  - (f) commercial exploitation of natural fauna and flora;
  - (g) introduction of alien species of fauna and flora into ecosystems.
13. Nuclear Reactors.
14. Major developments in biotechnology including the introduction and testing of genetically modified organisms.

(s. 37(1)(d), 70(2))

**THIRD SCHEDULE**

Representatives of the Government Ministries responsible for the following matters:-

Agriculture;  
Economic Planning and Development;  
Education;  
Energy;  
Environment;  
Finance;  
Fisheries;  
Health;  
Industry;  
Law and Law Enforcement;  
Local Government/Authority;  
Natural Resources;  
Public Administration;  
Public Works;  
Research and Technology;  
Tourism;  
Water Resources;  
Lands and settlement;  
Labour;  
Information;

Representatives of the following institutions:-  
Jomo Kenyatta University of Agriculture and Technology;  
Kenya Agricultural Research Institute;  
Kenya Bureau of Standards;  
Kenya Forestry Research Institute;

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Kenya Marine Research Institute;  
Kenya Medical Research Institute;  
Kenya Wildlife Service;  
Kenyatta University;  
Moi University;  
National Council of Sciences;  
National Museums of Kenya;  
University of Nairobi;  
Radiation Protection Board;  
Pesticides Products Control Board.

## **Annex 2**

**The Environmental (Impact Assessment and Audit)**

**Regulations, 2003**



**LEGAL NOTICE No. 101**

**THE ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT)  
REGULATIONS, 2003**

**ARRANGEMENT OF REGULATIONS**

**PART I - PRELIMINARY**

*Regulation*

- 1 - Citation.
- 2 - Interpretation.
- 3 - Application.
- 4 - Approval of environmental impact assessment.
- 5 - Technical Advisory Committees.
- 6 - Application for environmental impact assessment licence.

**PART II - THE PROJECT REPORT**

- 7 - Preparation of project report.
- 8 - Submission of project report.
- 9 - Comments on project report.
- 10 - Approval of project report.

**PART III - THE ENVIRONMENTAL IMPACT ASSESSMENT STUDY**

- 11 - Terms of reference.
- 12 - Environmental impact assessment guidelines.

- 13 - Approval of experts.
- 14 - Registration of environmental impact assessment experts.
- 15 - Environmental impact assessment expert licence.
- 16 - Environmental impact assessment study.
- 17 - Public participation
- 18 - Contents of environmental impact assessment study report.
- 19 - Submission of environmental impact study report.
- 20 - Invitation of comments from lead agencies.
- 21 - Submission of comments
- 22 - Public hearing.
- 23 - Decision of the Authority.
- 23 - Environmental impact assessment licence
- 25 - Variation of licence
- 26 - Transfer of licence.
- 27 - Surrender of licence.
- 28 - Cancellation of an environmental impact assessment licence.
- 29 - Access to information.
- 30 - Protection of proprietary information.

**PART V - ENVIRONMENTAL AUDIT AND MONITORING**

- 31 - Environmental audit study.
- 32 - Compliance with standards
- 33 - Control auditing

- or sub-sonic vibration or its effect on any segments of the environment.
- "Authority" means the National Environment Management Authority established under section 7 of the Act;
- "biological diversity" means the variability among living organisms from all sources including terrestrial ecosystems, aquatic ecosystems and the ecological complexes of which they are part, this includes diversity within species, among species, and of ecosystems;
- "chemical" means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and includes industrial chemicals, pesticides, fertilizers and drugs;
- "Director-General" means the Director-General of the Authority appointed under section 10 of the Act;
- "District Environment Committee" means the District Environment Committee appointed under section 29 of the Act;
- "economic analysis" means the use of analytical methods which take into account economic, socio-cultural, and environmental issues in an integrated manner in the assessment of projects;
- "environment" includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;
- "environmental audit study" means a systematic evaluation of activities and processes of an ongoing project to determine how far these activities and programmes conform with the approved environmental management plan of that specific project and sound environmental management practices;
- "environmental auditor" means an expert or firm of experts registered in accordance with regulation 14;
- "environmental control audit system" means a mechanism or procedure put in place by a proponent or proprietor in consultation with the Authority to determine compliance with environmental standards;
- "environmental impact assessment" means a systematic examination conducted to determine whether or not a programme, activity or project

- 34 - Self auditing.
- 35 - Contents of an environmental audit.
- 36 - The environmental audit report.
- 37 - Post audit orders.
- 38 - Inspections.
- 39 - Audit petition by public.
- 40 - Monitoring by the Authority and lead agencies.
- 41 - The monitoring report.

PART VI - MISCELLANEOUS PROVISIONS

- 42 - Strategic environmental assessment.
- 43 - Contents of strategic environmental impact report.
- 44 - Regional and international issues.
- 45 - Offences.
- 46 - Appeal to Tribunal.
- 47 - Registers.
- 48 - Fees.

PART I - PRELIMINARY

1. These Regulations may be cited as the Environmental (Impact citation, Assessment and Audit) Regulations, 2003.
2. In these Regulations unless the context otherwise requires -

"analysis" means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or sub-sonic vibrations to determine the level or other characteristics of the noise

will have any adverse impacts on the environment;

"environmental impact assessment study report" means the report produced at the end of the environmental impact assessment study process under section 58 of the Act and regulation 11;

"environmental impact assessment expert" means an individual expert or firm of experts registered under regulation 14 and includes a lead expert and an associate expert;

"environmental management" includes the protection, conservation and sustainable use of the various elements or components of the environment;

"environmental management plan" means all details of project activities, impacts, mitigation measures, time schedule, costs, responsibilities and commitments proposed to minimize environmental impacts of activities, including monitoring and environmental audits during implementation and decommissioning phases of a project;

"environmental monitoring" means the continuous or periodic determination of actual and potential effects of any activity or phenomenon of the environment whether short-term or long-term;

"guidelines" means the guidelines describing the methodology for implementation of environmental impact assessment requirements adopted by the Authority under section 58 of the Act;

"inspector" means an environmental inspector appointed under section 117 of the Act;

"lead agency" means any Government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management of any element of the environment or natural resources;

"mass media" includes publicly exhibited posters, newspapers, radio, television or other media used for public communication;

"mitigation measures" include engineering works, technological improvements, management and ways and means of minimising negative aspects, which may include socio-economic and cultural losses suffered by communities and individuals, whilst enhancing positive aspects of the project;

"natural resources" include resources of air, land, water, animals and plants including their aesthetic qualities;

"premises" include messages, buildings, lands and hereditaments in every tenure and machinery, plant or vehicle used in connection with any trade carried on at any premises;

"project" includes any project, programme or policy that leads to activities which may have an impact on the environment;

"project report" means a summary statement of the likely environmental effects of a proposed development referred to in section 58 of the Act;

"proprietary information" means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Kenya or by any international treaty to which Kenya is a party;

"proponent" means a person proposing or executing a project, programme or an undertaking specified in the Second Schedule of the Act;

"Provincial Environment Committee" means the Provincial Environment Committee appointed under section 29 of the Act;

"review" means a process of checking the adequacy of an environmental impact study to ensure that it meets the legal requirement and ensure wide acceptance of the environmental impact study findings;

"social analysis" means assessing or estimating in advance the social consequences from specific policy actions or project development including social justice and equity, social uncertainty, social cohesion, social networks and interactions, social status and gender desegregation;

"standard" means the limits of discharge or emissions established under the Act or under these Regulations;

"strategic environment assessment" means the process of subjecting public policy, programmes and plans to tests for compliance with sound environmental management;

"sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystem;

"sustainable use" means present use of the environment or natural resources, which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

"Standards and Enforcement Review Committee" means the Standards and Enforcement Review Committee established under section 70 of the Act;

"Technical Advisory Committee" means the Technical Advisory Committee on environmental impact assessment established under section 61 of the Act and regulation 5 of these Regulations;

"trans-boundary impacts" means impacts beyond the Kenyan borders;

"Tribunal" means the National Environment Tribunal established under section 125 of the Act;

"waste" includes any matter prescribed to waste and any matter whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume composition or manner likely to cause an alteration of the environment;

"water" includes drinking water, river, stream, watercourse, reservoir, well, dam, canal, channel, lake, swamp, open drain, or underground water.

3. These Regulations shall apply to all policies, plans, programmes, project and activities specified in Part IV, Part V and the Second Schedule of the Act.

4. (1) No proponent shall implement a project -

(a) likely to have a negative environmental impact; or

(b) for which an environmental impact assessment is required under the Act or these Regulations;

unless an environmental impact assessment has been concluded and approved in accordance with these Regulations.

(2) No licensing authority under any law in force in Kenya shall issue a licence for any project for which an environmental impact assessment is required under the Act unless the applicant produces to the licensing authority a licence of environmental impact assessment issued by the

Authority under these Regulations.

(3) No licensing authority under any law in force in Kenya shall issue a trading, commercial or development permit or license for any micro project activity likely to have cumulative significant negative environmental impact before it ensures that a strategic environmental plan encompassing mitigation measures and approved by the Authority is in place.

(4) If the Authority determines that an application for an environmental impact assessment raises issues that concern more than one district, it shall submit the application to the relevant Provincial Environment Committee.

5 (1) The Authority may set up technical advisory committees at national, provincial and district levels to advise it on environmental impact assessment related reports.

(2) A technical advisory committee set up under this regulation shall consist of not less than five multi-disciplinary specialists and such other persons as shall be indicated in the guidelines.

(3) The terms of reference and rules of procedure of a technical advisory committee shall be drawn by the Authority in accordance with section 61 of the Act.

(4) The Committees may, with the approval of the Director General, co-opt any persons it deems necessary for its proper functioning.

6 An application for an environmental impact assessment Application for licence shall be in the form of a project report in Form 1 set out in the Environmental First Schedule to these Regulations, and the applicant shall submit the application together with the prescribed fee to the Authority or the Authority's appointed agent in the District where the project is to be undertaken.

## PART II - THE PROJECT REPORT

7. (1) A proponent shall prepare a project report stating -

(a) the nature of the project;

(b) the location of the project including the physical area that may be affected by the project's activities;

- (c) the activities that shall be undertaken during the project construction, operation and decommissioning phases;
  - (d) the design of the project;
  - (e) the materials to be used, products and by-products, including waste to be generated by the project and the methods of their disposal;
  - (f) the potential environmental impacts of the project and the mitigation measures to be taken during and after implementation of the project;
  - (g) an action plan for the prevention and management of possible accidents during the project cycle;
  - (h) a plan to ensure the health and safety of the workers and neighbouring communities;
  - (i) the economic and socio-cultural impacts to the local community and the nation in general;
  - (j) the project budget; and
  - (k) any other information the Authority may require.
- (2) In preparing a project report under this regulation, the proponent shall pay particular attention to the issues specified in the Second Schedule to these Regulations.
- (3) A project report shall be prepared by an environmental impact assessment expert registered as such under these Regulations.
8. A proponent shall submit at least ten copies of the project report to the Authority or the Authority's appointed agent in the prescribed form accompanied by the prescribed fees.
- 9.(1) Where the project report conforms to the requirements of regulation 7(1), the Authority shall within seven days upon receipt of the project report, submit a copy of the project report to -
- (a) each of the relevant lead agencies;
  - (b) the relevant District Environment Committee; and
  - (c) where more than one district is involved, to the relevant Provincial Environment Committee, for their written comments which comments

shall be submitted to the Authority within twenty one days from the date of receipt of the project report from the Authority, or such other period as the Authority may prescribe.

(2) On receipt of the comments referred to in subparagraph (1) or where no comments have been received by the end of the period of thirty days from the date of receipt of the project report, the Authority shall proceed to determine the project report.

10 (1) On determination of the project report, the decision of the Authority, together with the reasons thereof, shall be communicated to the proponent within forty-five days of the submission of the project report.

(2) Where the Authority is satisfied that the project will have no significant impact on the environment, or that the project report discloses sufficient mitigation measures, the Authority may issue a licence in Form 3 set out in the First Schedule to these Regulations.

(3) If the Authority finds that the project will have a significant impact on the environment, and the project report discloses no sufficient mitigation measures, the Authority shall require that the proponent undertake an environmental impact assessment study in accordance with these Regulations.

(4) A proponent who is dissatisfied with the Authority's decision that an environmental impact assessment study is required may within fourteen days of the Authority's decision appeal against the decision to the Tribunal in accordance with regulation 46.

### PART III - THE ENVIRONMENTAL IMPACT ASSESSMENT STUDY

11. (1) A environmental impact assessment study shall be conducted in accordance with terms of reference developed during the scoping exercise by the proponent and approved by the Authority.

(2) The terms of reference shall include matters required to be considered in the making of an environmental impact assessment as may be contained in the Second Schedule to these Regulations and such other matters as the Director General may in writing require.

12. (1) An environmental impact assessment study shall be conducted in accordance with the general environmental impact assessment guidelines and sector environmental impact assessment guidelines set out in the

Third Schedule to these Regulations.

(2) Sector environmental impact assessment guidelines shall be developed by the lead agency in consultation with the Authority.

13. (1) A proponent shall, on the approval of the terms of reference under regulation 11, submit to the Authority the names and qualifications of the impact assessment experts appointed to undertake the environmental impact assessment study and authorized so to do in accordance with section 58 (5) of the Act.

(2) Every environmental impact assessment study shall be carried out by a lead expert qualified in accordance with the criteria of listing of experts specified in the Fourth Schedule to these Regulations.

(3) A person undertaking an environmental impact assessment study shall conduct themselves in accordance with an established code of practice issued by the Authority

14. (1) A person or firm wishing to apply for registration as an environmental impact assessment expert or firm of experts for carrying out environmental impact assessment studies or audits shall be required to meet the qualification criteria set out in the Fourth Schedule to these Regulations.

(2) An applicant for registration under sub-paragraph (1) shall submit an application in Form 4 set out in the First Schedule to these Regulations, accompanied by the prescribed fees.

(3) An environmental impact assessment expert practising under a firm of experts shall be registered as an individual expert.

(4) The Authority shall issue a certificate of registration to a qualified environmental impact assessment expert in Form 5 set out in the First Schedule to these Regulations.

(5) An environmental impact assessment expert registered as such under these Regulations may be de-registered if the expert contravenes any of provisions of the code of practice issued by the Authority.

15. (1) An environmental impact assessment expert registered under these Regulations may apply for an environmental impact assessment practising licence in Form 6 set out in the First Schedule to these Regulations.

(2) Where the Authority approves an application submitted under sub-

regulation (1), it shall issue an environmental impact assessment practising licence in Form 7 set out in the First Schedule to these Regulations.

(3) The approval of the experts to undertake an environmental impact assessment under this regulation shall be communicated to the proponent by the Authority within fourteen days of receipt of the proponent's application.

16. An environmental impact assessment study prepared under these Regulations shall take into account environmental, social, cultural, economic, and legal considerations, and shall -

(a) identify the anticipated environmental impacts of the project and the scale of the impacts;

(b) identify and analyze alternatives to the proposed project;

(c) propose mitigation measures to be taken during and after the implementation of the project; and

(d) develop an environmental management plan with mechanisms for monitoring and evaluating the compliance and environmental performance which shall include the cost of mitigation measures and the time frame of implementing the measures.

7.(1) During the process of conducting an environmental impact assessment study under these Regulations, the proponent shall in consultation with the Authority, seek the views of persons who may be affected by the project.

(2) In seeking the views of the public, after the approval of the project report by the Authority, the proponent shall -

(a) publicize the project and its anticipated effects and benefits by -

(i) posting posters in strategic public places in the vicinity of the site of the proposed project informing the affected parties and communities of the proposed project;

(ii) publishing a notice on the proposed project for two successive weeks in a newspaper that has a nation-wide circulation; and

(iii) making an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week

for two consecutive weeks;

- (b) hold at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments;
- (c) ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient for the affected communities and the other concerned parties; and
- (d) ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for onward transmission to the Authority.

#### PART IV - THE ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT

18. (1) A proponent shall submit to the Authority, an environmental contents of impact assessment study report incorporating but not limited to the environmental, following information -

- (a) the proposed location of the project;
- (b) a concise description of the national environmental legislative and regulatory framework, baseline information,
- (c) and any other relevant information related to the project; the objectives of the project;
- (d) the technology, procedures and processes to be used, in the implementation of the project;
- (e) the materials to be used in the construction and implementation of the project;
- (f) the products, by-products and waste generated project;
- (g) a description of the potentially affected environment;
- (h) the environmental effects of the project including the social and cultural effects and the direct, indirect, cumulative, irreversible, short-term and long-term effects anticipated;
- (i) alternative technologies and processes available and reasons for

preferring the chosen technology and processes;

- (j) analysis of alternatives including project site, design and technologies and reasons for preferring the proposed site, design and technologies.
  - (k) an environmental management plan proposing the measures for eliminating, minimizing or mitigating adverse impacts on the environment; including the cost, time frame and responsibility to implement the measures;
  - (l) provision of an action plan for the prevention and management of foreseeable accidents and hazardous activities in the cause of carrying out activities or major industrial and other development projects;
  - (m) the measures to prevent health hazards and to ensure security in the working environment for the employees and for the management of emergencies;
  - (n) an identification of gaps in knowledge and uncertainties which were encountered in compiling the information;
  - (o) an economic and social analysis of the project;
  - (p) an indication of whether the environment of any other state is likely to be affected and the available alternatives and mitigating measures; and
  - (q) such other matters as the Authority may require.
- (2) The environmental impact assessment study report shall be accompanied by a non-technical summary outlining the key findings, conclusions and recommendations of the study and shall be signed by the proponent and environmental impact assessment experts involved in its preparation.
19. A proponent shall submit ten copies and an electronic copy of an environmental impact assessment study report to the Authority in Form 1B set out in the First Schedule to these Regulations accompanied by the prescribed fees.
20. (1) The Authority shall within fourteen days of the receipt of the environmental impact assessment study report, submit a copy of the report to any relevant lead agencies for their comments.
- (2) Upon receiving the environmental impact assessment study report, the

lead agencies shall review the report to ensure that it complies with the terms of reference developed under regulation 11 and that it is comprehensive and shall thereafter send their comments on the study report to the Authority within thirty days or such extended period as the Authority may specify.

(3) If the lead agencies to which a copy of the environmental impact assessment study report is submitted fail to submit their comments within thirty days or such extended period as the Authority may specify, the Authority may proceed with the determination of the application for the implementation of the project

21. (1) The Authority shall, within fourteen days of receiving the environmental impact assessment study report, invite the public to make oral or written comments on the report.

(2) The Authority shall, at the expense of the proponent -

(a) publish for two successive weeks in the Gazette and in a newspaper with a nation-wide circulation and in particular with a wide circulation in the area of the proposed project, a public notice once a week inviting the public to submit oral or written comments on the environmental impact assessment study report; and (b) make an announcement of the notice in both official and local languages at least once a week for two consecutive weeks in a radio with a nation-wide coverage .

(3) The invitation for public comments under this regulation shall state -

(a) the nature of the project;

(b) the location of the project;

(c) the anticipated impacts of the project and the proposed mitigation measures to respond to the impacts;

(d) the times and place where the full report can be inspected; and

(e) the period within which the Authority shall receive comments.

(4) The notice to be published in the newspaper as specified under sub-regulation (3) shall be in Form 8 set out in the First Schedule to these Regulations.

22. (1) Upon receipt of both oral and written comments as specified Public hearing, by section 59 and section 60 of the Act, the Authority may hold a

public hearing.

(2) A public hearing under these Regulations shall be presided over by a suitably qualified person appointed by the Authority.

(3) The date and venue of the public hearing shall be publicized at least one week prior to the meeting -

(a) by notice in at least one daily newspaper of national circulation and one newspaper of local circulation;

(b) by at least two announcements in the local language of the community and the national language through radio with a nation wide coverage.

(4) The public hearing shall be conducted at a venue convenient and accessible to people who are likely to be affected by the project.

(5) A proponent shall be given an opportunity to make a presentation and to respond to presentations made at the public hearing.

(6) The presiding officer shall in consultation with the Authority determine the rules of procedure at the public hearing.

(7) On the conclusion of the hearing, the presiding officer shall compile a report of the views presented at the public hearing and submit the report to the Director General within fourteen days from the date of the public hearing.

23. (1) The Authority shall give its decision on an Decision of environmental impact assessment study report within three months of receiving an environmental impact assessment study report.

(2) The decision of the Authority shall be in writing and shall contain the reasons thereof.

(3) In making a decision regarding an environmental impact assessment licence under these Regulations, the Authority shall take into account -

(a) the validity of the environmental impact assessment study report submitted under regulation 18 with emphasis on the economic, social and cultural impacts of the project;

(b) the comments made by a lead agency and other interested parties under these Regulations;



(c) the report of the presiding officer compiled after a public hearing specified under regulation 22 where applicable; and

(d) other factors which the Authority may consider crucial in the implementation of the project.

(4) The decision of the Authority under this regulation shall be communicated to the proponent within fourteen days from the date of the decision and a copy thereof shall be made available for inspection at the Authority's offices.

24. Where the Authority approves an environmental impact assessment study report under regulation 23, it shall issue an environmental impact assessment licence in Form 3 set out in the First Schedule to these Regulations on such terms and conditions as it may deem necessary.

25. (1) Where a proponent wishes to vary the terms and conditions on which an environmental impact assessment licence has been issued, the holder of the licence has been apply for a variation of the environmental impact assessment licence in Form 9 set out in the First Schedule to these Regulations accompanied by the prescribed fees.

(2) The Authority may issue a certificate of variation of an environmental impact assessment licence in Form 10 set out in the First Schedule to these Regulations.

(3) A variation of an environmental impact assessment licence issued under regulation 24 may be issued without the holder of the licence submitting a fresh environmental impact assessment study report if the Authority is satisfied that the project it varied would comply with the requirements of the original licence.

(4) Where an environmental impact assessment is required under this regulation, the provisions of Part II of these Regulations shall apply.

26. (1) The holder of an environmental impact assessment licence may, on payment of the prescribed fee, transfer the licence to another person only in respect of the project to which such licence was issued.

(2) The transferee as well as the transferor of a licence under this regulation shall be liable for all liabilities, and the observance of all obligations imposed by the transfer in respect of the licence transferred, but the transferor shall not be responsible for any future liabilities or any obligations so imposed with regard to the licence from the date the

transfer is approved.

(3) Where an environmental impact assessment licence is to be transferred, the person to whom it is to be transferred and the person transferring it shall jointly notify the Director General of the transfer in Form 11 set out in the First Schedule to these Regulations.

(4) The Authority shall issue a certificate of transfer of an environmental impact assessment licence in Form 12 set out in the First Schedule to these Regulations.

(5) Where no joint notification of a transfer is given in accordance with this regulation, the registered holder of the licence shall be deemed for the purposes of these Regulations and the Act to be the owner or the person having charge, management or control of the project as the case may be.

27. (1) The holder of an environmental impact assessment licence may surrender the licence issued under these Regulations to the Authority after ceasing to be responsible for the implementation of the project.

(2) The holder of the licence shall notify the Authority of the intention to surrender the licence under sub-regulation (1) at least six months before the surrender by submitting a notification in Form 13 set out in the First Schedule to these Regulations together with the prescribed fees.

(3) The holder of a licence shall not surrender their licence without the consent of the Authority.

(4) The surrender of an environmental impact assessment licence shall not be effective until the Authority issues a certificate of surrender in respect of that licence in Form 14 set out in the First Schedule to these Regulations.

(5) A surrender shall be without prejudice to any liabilities or obligations which have accrued on the holder of the licence prior to the date of surrender.

28. (1) The Authority may, at any time after it issues a licence under these Regulations, on the advice of the Standards Enforcement and Review Committee -

(a) suspend the licence on such terms and conditions as the Authority may deem fit for a period not exceeding twenty-four months; or

(b) revoke or cancel the licence.

(2) The Authority may suspend, revoke or cancel a licence as specified under sub-regulation (1) where -

(a) the licensee contravenes the conditions set out in the licence;

(b) there is a substantial change or modification in the project or in the manner in which the project is being implemented;

(c) the project poses an environmental threat which could not be reasonably foreseen before the licence was issued; or

(d) it is established that the information or data given by the proponent in support of his application for an environmental impact assessment licence was false, incorrect or intended to mislead.

29. Information or documents submitted to the Authority by any person in connection with an environmental impact assessment together with the Authority's decision and the reasons thereof shall be made available to the public on such terms and conditions as the Authority may prescribe.

30. (1) A person submitting information to the Authority may at any time apply to the Authority in Form 15 set out in the First Schedule to these Regulations to exclude the information or parts thereof from being made available to the public on the basis of commercial confidentiality or national security.

(2) If the Authority grants the request made under sub-regulation (1), the information or specified parts of the information shall be excluded from public access, and an entry shall be made in a register to be maintained by the Authority indicating in general the nature of the information and the reason for which it is excluded from public access: Provided that this information shall remain available to the Authority, and the Authority shall take all measures to maintain confidentiality of the information and shall not copy, circulate, publish or disclose such information.

(3) If the Authority rejects the claim that the information is proprietary, it shall communicate the decision to the proponent within fourteen days of its decision.

(4) The Authority shall review its decision on an application made under this regulation from time to time to determine whether the reasons for exclusion are still valid and whether the exclusion should continue.

(5) A person who is aggrieved by the decision of the Authority under this regulation may appeal to the Tribunal against that decision.

#### PART V - ENVIRONMENTAL AUDIT AND MONITORING

31 (1) An environmental audit study shall be undertaken on the following development activities which are likely to have adverse environmental impacts -

(a) ongoing projects commenced prior to the coming into force of these regulations; or

(b) new projects undertaken after completion of an environmental impact assessment study report.

(2) An environmental audit shall, unless it is a self-auditing study under regulation 34, be conducted by a qualified and authorized environmental auditor or environmental inspector who shall be an expert or a firm of experts registered in accordance with regulation 14.

(3) The Authority shall require the proponent to undertake -

(a) in the case of an ongoing project-

(i) an initial environmental audit study followed by subsequent environmental control audit studies as may be necessary at such times as shall be agreed upon by the Authority and the proponent; and

(ii) an initial environmental audit study to provide baseline information upon which subsequent environmental control audit studies shall be based; and

(b) an environmental audit study based on baseline information provided in the environmental impact assessment report study.

(4) (a) The proponent of an ongoing Project shall undertake an environmental audit of the project within a period of twelve months from the date of publication of these Regulations.

(b) A proponent of a project that has undergone an environmental impact assessment study shall within a period of twelve months of the commencement of the operations, and not more than twenty four months after the completion of a project which ever is earlier, undertake an environmental audit of the project:

Provided that an audit may be required sooner if the life of the project is shorter than the period prescribed under this regulation.

- (5) An environmental audit study specified under this regulation shall be conducted in accordance with the terms of reference developed by the proponent in consultation with the Authority.
- (6) In carrying out the environmental audit study under this regulation, the auditor shall ensure that an appraisal of all the project activities, including the production of goods and services is carried out, gives adequate consideration to environmental regulatory frameworks, environmental health and safety measures and sustainable use of natural resources.
- (7) An audit report compiled under this regulation shall include but shall not be limited to the following information -
  - (a) the past and present impacts of the project;
  - (b) the responsibility and proficiency of the operators of the project;
  - (c) existing internal control mechanisms to identify and mitigate activities with a negative environmental impact;
  - (d) existing internal control mechanisms to ensure the workers' health and safety; and
  - (e) the existence of environmental awareness and sensitization measures, including environmental standards, and regulations, law and policy, for the managerial and operational personnel.
- 32. In carrying out an environmental audit study, the with standards, environmental auditor shall comply with any existing national environmental regulations and standards prescribed by the Authority, and in the absence of such national environmental regulations and standards shall use such other international standards as shall be prescribed by the Authority.
- 33. (1) A control audit shall be carried out by the Authority auditing, whenever the Authority deems it necessary to check compliance with the environmental parameters set for the project or to verify self-auditing reports.
  - (2) A control audit shall -
    - (a) confirm that the environmental management plan of the project is

being adhered to; and

- (b) verify the adequacy of the environmental management plan in mitigating the negative impacts of a project.
34. (1) In executing a project, after the environmental impact assessment study report has been approved by the Authority, or after the initial audit of an ongoing project, the proponent shall take all practical measures to ensure the implementation of the environmental management plan by -
- (a) carrying out a self-auditing study on a regular basis;
  - (b) preparing an environmental audit report after each audit and submitting the report to the Authority annually or as may be prescribed by the Authority; and
  - (c) ensuring that the criteria used for the audit is based on the environmental management plan developed during the environmental impact assessment process or after the initial audit.
35. (1) An environmental audit shall be carried out through an environmental questionnaire, an environmental site visits and test analysis and in the manner specified in this regulation.
- (2) In conducting an initial environmental audit an environmental auditor shall -
    - (a) consider the description of the project;
    - (b) indicate the objective, scope and criteria of the audit;
    - (c) study all relevant environmental law and regulatory frameworks on health and safety, sustainable use of natural resources and on acceptable national and international standards;
    - (d) verify the level of compliance by the proponent with the conditions of the environmental management plan;
    - (e) evaluate the proponent's knowledge and awareness of and responsibility for the application of relevant legislation;
    - (f) review existing project documentation related to all infrastructural facilities and designs;
    - (g) examine monitoring programs, parameters, and procedures in place

for control and corrective actions in case of emergencies;

(h) examine records of incidents and accidents and the likelihood of future occurrence of the incidents and accidents;

(i) inspect all buildings, premises and yards in which manufacturing, testing and transportation takes place within and without the project area, as well as areas where goods are stored and disposed of and give a record of all significant environmental risks associated with such activities;

(j) examine and seek views on health and safety issues from the project employees, the local and other potentially affected communities; and

(k) prepare a list of health and environmental concerns of past and ongoing activities.

(3) Where an environmental auditor is conducting a control audit, the environmental auditor shall -

(a) consider the description of the project;

(b) indicate the objective, scope and criteria of the audit;

(c) inspect all buildings, premises and yards in which manufacturing, testing and transportation takes place within and without the project area as well as areas where goods are stored and disposed of and give a record of all significant environmental risks associated with such activities;

(d) indicate the extent to which the environmental management plan corresponds to the planned arrangements and, if implemented, achieves the stated objectives;

(e) identify any significant source of air pollution, water pollution, land contamination and degradation, local community disturbance, wildlife disturbance and the health of the workers of the project; and

(f) prepare a list of concerns of on-going activities with recommendations.

36.(1) An environmental auditor shall indicate in an audit report the measures that exist under the environmental management plan of the proposed project to bring the project up to an acceptable environmental standard and how environmental impacts will be addressed and controlled.

(2) An environmental audit report compiled under these Regulations shall contain -

(a) a presentation of the type of activity being audited;

(b) an indication of the various materials, including non-manufactured materials, the final products, and by products, and waste generated;

(c) a description of the different technical activities, processes and operations of the project;

(d) a description of the national environmental legislative and regulatory frameworks on ecological and socio-economic matters;

(e) a description of the potentially affected environment on ecological and socio-economic matters;

(f) a prioritization of all past and on-going concerns of the project;

(g) an identification of all environmental and occupational health and safety concerns of the project;

(h) an opinion on the efficacy and adequacy of the environmental management plan of the project;

(i) detailed recommendations for corrective activities, their cost, timetable and mechanism for implementation;

(j) an indication of the measures taken under the environmental management plan to ensure implementation is of acceptable environmental standards; and

(k) a non technical summary outlining the key findings, conclusions and recommendations of the auditor.

37. The Authority may issue an improvement order for the carrying out of corrective measures for mitigating the environmental degradations revealed during any audit study.

38. (1) An inspector may, at reasonable times, enter on any land, premises or facility of a project for the purposes of inspection, to examine records and to make enquiries on the project.

(2) A person who refuses to answer questions, refuses to avail documents or refuses to give other information legitimately sought by the

inspector commits an offence.

39. A member of the public may, after showing reasonable cause in writing, petition the Authority to cause an audit to be carried out on any project.

40. (1) The Authority shall in consultation with lead agencies -

(a) monitor environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts,

(b) monitor the operations of any industry, project or activity with a view to determining its immediate and long term effect on the environment,

(c) except where a baseline survey has been carried out under regulation 31 cause the proponent to carry out a baseline survey to identify basic environmental parameters in the project area before implementation;

(d) determine the parameters and measurable indicators to be used in monitoring of projects; and

(e) conduct measurement of environmental changes that have occurred during implementation

(2) The Authority shall, in consultation with the lead agencies monitor ongoing projects on a continuous basis using parameters and indicators developed under this regulation.

(3) The Authority shall, in consultation with the lead agency upon detection of non-compliance with the conditions of approval of an environmental impact assessment licence immediately, institute remedial action.

41. (1) Where a lead agency has undertaken monitoring under The monitoring regulation 40, it shall submit a report to the Authority which report shall include the following -

(a) the name and address of proponent;

(b) the name of the proposed project;

(c) date of implementation of the proposed project;

(d) the date of the last monitoring report, including the report findings,

action taken and its result;

(e) details of the environmental parameters to be monitored;

(f) results of the actual monitoring exercise;

(g) new actions to be implemented including the criteria for the next evaluation; and

(h) a non technical summary of findings, conclusions and recommendations.

(2) An Inspector may enter upon any land or premises for the purposes of monitoring the effects of any activities carried on that land or premises upon the environment.

#### PART VI - MISCELLANEOUS PROVISIONS

42. (1) Lead agencies shall in consultation with the Authority Strategic subject all proposals for public policy, plans and programmes for environmental implementation to a strategic environmental assessment to determine which ones are the most environmentally friendly and cost effective when implemented individually or in combination with others.

(2) The assessment carried out under this regulation shall consider the effect of implementation of alternative policy actions taking into consideration -

(a) the use of natural resources;

(b) the protection and conservation of biodiversity;

(c) human settlement and cultural issues;

(d) socio-economic factors; and

(e) the protection, conservation of natural physical surroundings of scenic beauty as well as protection and conservation of built environment of historic or cultural significance.

(3) The Government, and all the lead agencies shall in the development of sector or national policy, incorporate principles of strategic environmental assessment.

43 (1) A strategic environmental impact report prepared under this

regulation shall include the following information -

- (a) the title of the report;
  - (b) a summary of the potential significant impacts of a proposed policy, programme or plan;
  - (c) potential opportunities to promote or enhance environmental conditions;
  - (d) recommendations for mitigating measures; and
  - (e) alternative policy, programme or plan options to ensure compliance with the Act.
- (2) The proposed policy, programme or plan specified in this regulation shall state -
- (a) the purpose and rationale of the policy, programme or plan taking into consideration socio-economic, environmental and cultural issues;
  - (b) alternatives and strategies of the policy, programme or plans;
  - (c) areas and sectors affected by the policy, programme, plan, or proposed activities;
  - (d) an environmental analysis covering:
  - (i) baseline information focusing on areas potentially affected;
  - (ii) relevant legislative framework and related policy documents;
  - (iii) summary of views of key stakeholders consulted;
  - (iv) predicted impacts of the policy, programme or plan;
  - (v) alternative policy options and comparison against environmental indicators;
  - (vi) ongoing projects and how they fit in the proposed policy, programme or plan;
  - (e) recommendations outlining -

(i) suggested policy changes;

(ii) proposed mitigation measures;

(iii) strategic environment assessment; and

(f) relevant technical appendices such as stakeholders meetings referred to in the assessment.

44. Where a project is likely to have a transboundary impact, the proponent shall, in consultation with the Authority, ensure that appropriate measures are taken to mitigate any adverse impacts taking into account any existing treaties and agreements between Kenya and the other country.

45. (1) Notwithstanding any licence, permit or approval granted offences, under any written law, any person who commences, proceeds with, executes or conducts or causes to commence, proceed with, execute or conduct any project without approval granted under these regulations commits an offence and on conviction is liable to the penalty prescribed under the Act.

(2) Any person who -

(a) fails to prepare and submit a project report to the Authority contrary to regulations 7 and 8;

(b) fails to prepare and submit an environmental impact assessment study report contrary to regulations 18 and 19;

(d) is in breach of any condition of any licence or certificate issued under these Regulations;

(e) fraudulently makes a false statement in a project report or environmental impact assessment study report;

(f) fraudulently alters a project report or an environmental impact assessment study report;

(g) fraudulently makes a false statement in an environmental audit;

(h) fails to inform the Authority of a transfer of an environmental impact assessment licence in accordance with regulation 26; or

(i) after an audit report is submitted fails to implement any mitigation

Fees.

48. The Authority may, for the purposes of these Regulations charge the fees specified in the Fifth Schedule to these Regulations.

Fees.

measures specified under regulation 37; commits an offence and on conviction shall be liable to the penalty prescribed under the Act.

46 (1) Any person who is aggrieved by -

(a) a refusal to grant a licence or by a refusal to transfer a licence under these Regulations.

(b) the imposition of any condition, limitation or restriction on a licence;

(c) the revocation, suspension or variation of a licence issued under these Regulations;

(e) the imposition of any environmental restoration order or environmental improvement order on the project by the Authority; or

(f) the approval or reinstatement by the Authority of an environmental impact assessment licence, may within sixty days after the date of the decision against which he or she is dissatisfied, appeal to the Tribunal;

(2) A person aggrieved by a decision or order of Authority of an environmental impact assessment licence, may within sixty days of such a decision or order, appeal against such decision or order to the High Court.

(3) The fact that approval is given in respect of an environmental impact assessment shall not be a defence to any civil action or to a criminal prosecution under any enactment.

47. (1) The Authority shall maintain the following registers -

(a) a register of all individual experts or firms of experts duly authorized to conduct or prepare environmental impact assessment studies and audits;

(b) a register of all environmental impact assessment licences issued under these Regulations;

(c) a register of environmental impact assessment reports, audit study reports, strategic environmental assessment reports and monitoring reports; and

(d) a register of approvals of applications seeking exclusion of proprietary information from public access.

SECOND SCHEDULE

ISSUES TO BE CONSIDERED IN ENVIRONMENTAL IMPACT

ASSESSMENT

The following issues may, among others, be considered in the making of environmental impact assessments.

1. Ecological Considerations -

(a) Biological diversity including -

(i) effect of proposal on number, diversity, breeding habits, etc. of wild animals and vegetation;

(ii) gene pool of domesticated plants and animals e.g. monoculture as opposed to wild types.

(b) Sustainable use including -

(i) effect of proposal on soil fertility;

(ii) breeding populations of fish, game or wild animals;

(iii) natural regeneration of woodland and sustainable yield;

(iv) wetland resource degrading or wise use of wetlands.

(c) Ecosystem maintenance including -

(i) effect of proposal on food chains;

(ii) nutrient cycles;

(iii) aquifer recharge, water run-off rates etc;

(iv) a real extent of habitats;

(v) fragile ecosystems.

2. Social considerations including -

- (a) economic impacts;
- (b) social cohesion or disruption;
- (c) effect on human health;
- (d) immigration or emigration
- (e) communication - roads opened up, closed, rerouted
- (f) effects on culture and objects of culture value

3. Landscape -

- (a) views opened up or closed;
- (b) visual impacts (features, removal of vegetation, etc;
- (c) compatibility with surrounding area;
- (d) amenity opened up or closed, e.g recreation possibilities.

4. Land uses -

- (a) effects of proposal on current land uses and land use potentials in the project area.
- (b) possibility of multiple use.
- (c) effects of proposal on surrounding land uses and land use potentials.

5. Water:

Important aspects to consider are the effects of the proposal on:

- (a) water sources (quantity and quality) -
  - (i) rivers;
  - (ii) springs;
  - (iii) lakes (natural and man-made);

(iv) underground water;

(v) oceans;

(b) drainage patterns / drainage systems;

(r.12)

THIRD SCHEDULE

GENERAL GUIDELINES FOR CARRYING OUT AN ENVIRONMENTAL  
IMPACT ASSESSMENT STUDY

An environmental impact assessment study shall be conducted in accordance with the general environmental impact assessment guidelines and administrative procedures issued by the Authority. An environmental impact assessment study shall include the following:

1. Sources of Impact
2. Project Inputs
3. Project Activities
4. Areas of Impact on the Natural and Human Environments
5. Environmental Impacts (General Impacts on the Natural and human Environment)
6. Environmental Guidelines and Standards (National Legislation, International guidelines. International Conventions and Treaties)
7. Mitigation Measures
8. Environmental Management Plan
9. Environmental Monitoring and Auditing.



(r.13(2))

**FOURTH SCHEDULE  
CRITERIA FOR ENVIRONMENTAL IMPACT ASSESSMENT  
EXPERTS**

Local and foreign environmental impact assessment individual and firm of experts wishing to undertake environmental impact assessment activities in Kenya shall register as experts with the National Environment Management Authority on payment of the prescribed fees. The following shall be the criteria for registration of experts:-

**A. LEAD EXPERT**

A lead expert must have attained the following qualifications:-

A Doctorate degree or equivalent in any field plus training in environmental impact assessment from a recognized institution, with 3 years experience in environmental impact assessment related activities.

A Doctorate, Masters or Bachelors plus 5 years experience in environmental impact assessment related research consultancy or teaching and at least two relevant publications in referred journals.

or

A Masters degree or equivalent in any field plus training in environmental impact assessment from a recognised institution, with 5 years experience in environmental impact assessment related activities.

or

A Bachelors degree or an equivalent in any field plus training in environmental impact assessment from recognised institution, with 8 years experience in environmental impact assessment related activities.

**B. ASSOCIATE EXPERT**

An associate expert must have attained the following qualifications:-

A Bachelors degree or equivalent in any field plus training in environmental impact assessment from a recognized institution.

**C. FIRM OF EXPERTS**

A firm of experts must meet the following conditions:

Must be registered in Kenya

Must submit to the Authority a firm profile indicating capacity to undertake Environmental impact assessment /audit studies.

(r.48)

**FIFTH SCHEDULE**

**FEES**

1. Application for registration as Environmental Impact Assessment/Audit\* expert

	KSh.	KSh.
(a) Lead Expert.....	Citizen 3,000	Non-citizen 9,000
(b) Associate Expert.....	2,000	6,000
(c) Firm of Experts.....	5,000	15,000

2. Annual Licence to practice as Environmental Impact Assessment expert  
Citizen Non- Citizen

	KSh.	KSh.
(a) Lead Expert.....	Citizen 5,000	Non-citizen 15,000
(b) Associate Expert.....	3,000	9,000
(c) Firm of Experts.....	20,000	60,000

3. Inspection of records/register..... 200 per record/register.

4. Environmental impact assessment licence..... 0.1% of the total cost of the project.

5. Surrender, transfer or variation of environmental impact assessment

licence..... 5,000

**SPECIAL ISSUE**

27<sup>th</sup> February, 2009

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LEGAL NOTICE NO 30

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT  
(No 8 of 1999)**

IN EXERCISE of the powers conferred by section 147 of the Environmental Management and Co-ordination Act, 1999, the Minister for Environment and Mineral Resources makes the following Regulations:-

**THE ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT)  
(AMENDMENT) REGULATIONS, 2009**

1. These Regulations may be cited as the Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2009.
2. The Environmental (Impact Assessment and Audit) Regulations, 2003, are amended in the Fifth Schedule by deleting item 4 and substituting therefore the following new item

\*4. Environmental Impact Assessment licence-0.05% of the total cost of the project, to the minimum of KSh. 10,000 and maximum of KSh. 1,000,000 payable as follows:

- (a) 50% of the 0.05% being Processing Fee Payable upon submission of a project report;
- (b) 50% of the 0.05% being licence fee payable upon collection of the Environmental Impact Assessment Licence\*.

Dated the 11<sup>th</sup> February, 2009

**JOHN MICHUKI**  
*Minister for Environment and Mineral Resources.*

## **Annex 3**

### **The Wildlife (Conservation and Management) Act (Cap. 376) (1985) revised in 2009**

**First Schedule**

**Second Schedule**

**Third Schedule**

Power to make regulations.  
2 of 2002, Sch.

67. The Minister may make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of such powers, the regulations may —

- (a) specify the conditions subject to which any licence, permit or authorization may be granted or issued under this Act;
- (b) prescribe the procedure to be followed in respect of an application for the licence, permit or authorization;
- (c) classify game licences and specify the animals which may be included in any game licence, and the numbers thereof which may be hunted under that licence;
- (d) limit the number of game licences which may be issued to any person or in respect of any specified period or area;
- (e) prohibit the use of any specified type or calibre of weapon in the hunting of any specified type of game animal or game bird;
- (f) restrict, regulate or otherwise control the supply of trophies to dealers;
- (g) make provision for the manner and time in which applications for the award of compensation under section 62 may be made, for prescribing the level of such compensation and for the regulation of the proceedings of District Committees established under that section and the Appeal Tribunal established under section 65 and the manner and time within which appeals under section 65 (3) may be made;
- (h) make provision for the training of personnel for the service.

#### FIRST SCHEDULE

(s. 2)

##### GAME ANIMALS

###### Part I

Elephant.....	<i>Loxodonta africana</i> (Blumenbach).
Leopard.....	<i>Panthera pardus</i> (L.).
Lion.....	All races of <i>Panthera leo</i> (L.).
Rhinoceros.....	<i>Diceros bicornis</i> (L.).

###### Part II

Bongo.....	<i>Boocercus euryceros</i> (Ogilby).
Giraffe, Reticulated.....	<i>Giraffa Camelopardalis reticulata</i> (De Winton).
Giraffe, Rothschild.....	<i>Giraffa Camelopardalis rothschildi</i> Krumbiegel.
Hartebeeste, Kenya.....	<i>Alcelaphus busseolaphus Kenya</i> (Günther).
Kudu, Greater.....	<i>Tragelaphus strepsiceros</i> (Pallas).
Monkey, Black and White	
Colobus.....	All races of <i>Colobus abyssinicus</i> (Oken).
Oryx, Beisa.....	<i>Oryx beisa</i> (Ruppell).
Oryx, Fringe-eared.....	<i>Oryx beisa callotis</i> (Thomas).
Zebra, Grevy.....	<i>Equus grevyi</i> (Oustalet).

###### Part III

African Wild Cat.....	All races of <i>Felis lybica</i> Forster.
Buffalo.....	<i>Syncerus caffer</i> (Sparman).
Bushbuck.....	<i>Tragelaphus scriptus</i> (Fallas).
Civet.....	All species of the genera <i>Civetticus</i> (Pocock) and <i>Nandinia</i> (Gray).
Crocodile.....	<i>Crocodilus niloticus</i> (Laurenti).
Dikdik.....	<i>Rhynchotragus kirki</i> (Günther) and <i>Rhynchotragus guentheri</i> (Thomas).
Duiker, Red or Harvey's.....	All races of <i>Cephalophus natalensis</i> A. Smith.
Duiker, Blue.....	All races of <i>Cephalophus monticola</i> (Thunberg).
Duiker, Foster's or Hook's	
Black-fronted.....	All races of <i>Cephalophus nigrifrons</i> Gray.
Duiker, Grey.....	All races of <i>Sylvicapra grimmia</i> (L.).
Eland.....	<i>Taurotragus oryx</i> (Pallas).
Gazelle, Grant's.....	All races of <i>Gazella granti</i> Brooke.
Gazelle, Thomson's.....	<i>Gazella thomsoni</i> Günther.
Genet.....	All species and races of genus <i>Genetta</i> (Oken).
Gerenuk.....	<i>Litocranius walleri</i> (Brooke).
Giant Forest Hog.....	<i>Hylochoerus meinertzhageni</i> (Thomas).

Giraffe, Common.....	All races of <i>Giraffa camelopardalis</i> (L.).
Harebeeste, Coke's .....	<i>Alcelaphus buselaphus cokei</i> (Günther).
Hippopotamus .....	<i>Hippopotamus amphibius</i> (L.).
Honey-badger (Rate).....	<i>Mellivora capensis</i> (Schreber).
Hyrax, Rock .....	<i>Procavia capensis</i> (Pallas). <i>Heterohyrax brucei</i> (Gray).
Hyrax, Tree.....	<i>Dendrohyrax arboreus</i> (A. Smith). <i>Heterohyrax brucei</i> (Gray).
Impala.....	<i>Aepyceros melampus</i> (Lichtenstein).
Jackal.....	<i>Canis aureus</i> (L.), <i>Canis adustus</i> Sundevall and <i>Canis mesomelas</i> Schreber.
Klipspringer.....	<i>Oreotragus oreotragus</i> (Zimmermann).
Kudu, Lesser .....	<i>Tragelaphus imberbis</i> Blyth.
Zebra, Common .....	<i>Equus burchelli</i> (Gray).
Monkey, Blue or Syke's .....	All races of <i>Cercopithecus mitis</i> (Wolf).
Monkey, Putty-nosed .....	All races of <i>Cercopithecus nictians</i> (L.).
Monkey, Vervet.....	All races of <i>Cercopithecus aethiops</i> (L.).
Oribi, Cotton's and .....	All species and races of the genus <i>Ourebia</i> (Laurillard).
Haggard's and Kenya	
Ostrich .....	All races of <i>Struthio camelus</i> (L.).
Otter, River and Clawless.....	All members of the genera <i>Lutra</i> (Brisson) and <i>Aonyx</i> (Lesson).
Reedbuck, Bohot.....	<i>Redunca redunca</i> (Pallas).
Reedbuck, Chanler's.....	<i>Redunca fulvoriflua chanleri</i> (W. Rothschild).
Steenbok.....	<i>Raphicerus campestris</i> (Thunberg). Von Dueben.
Suni.....	All races of <i>Nesotragus moschatus</i> Von Dueben.
Topi.....	<i>Damaliscus korrigum</i> (Ogilby).
Warhog.....	<i>Phacochoerus aethiopicus</i> (Pallas).
Waterbuck, Common .....	<i>Kobus ellipsiprymnus</i> (Ogilby).
Waterbuck, Defassa.....	<i>Kobus defassa</i> (Rüppell).
Wild Dog .....	<i>Lycyon pictus</i> (Temminck).
Wildebeeste.....	All races of <i>Connochaetes taurinus</i> (Burchell).

## SECOND SCHEDULE

(s. 2)

## GAME BIRDS

Geese and Ducks.....	All members of the family <i>Anatidae</i> (Geese, Ducks, Pochards, Teals, Wigeons, Shovelers).
Francolins, Partridges, Quails, Guinea Fowls and Spurfowls	All members of the families <i>Phasianidae</i> and <i>Turturidae</i> .
Lesser Bustards .....	All members of the general <i>Eupodotis</i> , <i>Lophotis</i> and <i>Lissois</i> .
Snipe.....	All members of the general <i>Rostratula</i> , <i>Capella</i> and <i>Lymnocryptes</i> .
Sandgrouse .....	All members of the family <i>Pteroclididae</i> .
Pigeons and Doves.....	All members of the family <i>Columbidae</i> .

## THIRD SCHEDULE

(s. 2) L.N. 126/1981.

## PROTECTED ANIMALS

- Any game animal which is obviously immature, i.e. not fully grown.
- Any female game animal when it is either —
  - clearly or seemingly pregnant; or
  - in a condition indicating that it is suckling young, whether or not the young are apparent; or
  - accompanied by immature young, whether dependent or not.
- Albino and melanic animals of whatever species.
- All birds other than Game Birds, or queleas (genus *Quelea*) and Mouse-birds (genus *Colinus*).
- Any animal of any of the following species, sub-species or groups:
 

Aardvark.....	<i>Oryzotropus afer</i> (Pallas).
Aardwolf .....	<i>Proteles cristatus</i> (Sparman).

- Bat-eared Fox.....*Otocoryon megalotis* (Desmarest).
- Caracal or Lynx.....*Felis caracal* Schreber.
- Cheetah .....*Acinonyx jubatus* (Schreber).
- Dugong .....*Dugong dugong* (Mueller).
- Duiker, Abbot's .....*Cephalophus spadix* True.
- Duiker, Yellow-backed .....*Cephalophus silvicultor* (Afzelius).
- Golden Cat.....*Felis aurata* Temminck.
- Hartebeeste, var. Jackson's.....Stipulated sub-species or races of  
*Alcelaphus buselaphus* with the exception of Coke's hartebeeste  
*(Alcelaphus buselaphus cokei)*  
 Günther.
- Hunter's Antelope (or Hirtola).....*Damaliscus hunteri* (P.L. Sclater).
- Kob, Thomas's .....*Adonota kob thomasi* (P.L.Sclater).
- Monkey, De Brazza's .....All races of *Cercopithecus neglectus*  
 Schlegel.
- Monkey, Mangabey.....All races of *Cercocebus galertius*  
 Peters.
- Monkey, Red or Patas .....All races of *Erythrocerus patas*  
 (Schreber).
- Potto.....All races of *Perodicticus potto*  
 (P.L.S. Müller).
- Pangolins.....All members of the family *Manidae*.
- Roan Antelope.....All races of *Hippotragus equines*  
 (Desmarest).
- Sable Antelope.....All races of *Hippotragus niger*  
 (Harris).
- Serval Cat.....All races of *Felis brachyura* (Wagner)  
 and *Felis servat* (Schreber).
- Sitatunga.....All races of *Tragelaphus spekei*  
 (P.L. Sclater).
- Turtle, Green Marine.....*Chelonia mydas* (L.).
- Turtle, Hawksbill.....*Chelone imbricata* (L.).
- Baboons .....All races of *Papio anubis*.
- Bushbabies .....All members of the family *Galagidae*.

## **Annex 4**

### **Table 1 - Status of the Populations of Migratory Waterbirds (AEWA)**

**Table 1<sup>a/</sup>**  
**STATUS OF THE POPULATIONS OF MIGRATORY WATERBIRDS**  
**KEY TO CLASSIFICATION**

The following key to Table 1 is a basis for implementation of the Action Plan:

**Column A**

- Category 1:** (a) Species, which are included in Appendix I to the Convention on the Conservation of Migratory species of Wild Animals;  
 (b) Species, which are listed as threatened on the IUCN Red list of Threatened Species, as reported in the most recent summary by BirdLife International; or  
 (c) Populations, which number less than around 10,000 individuals.
- Category 2:** Populations numbering between around 10,000 and around 25,000 individuals.
- Category 3:** Populations numbering between around 25,000 and around 100,000 individuals and considered to be at risk as a result of:

- (a) Concentration onto a small number of sites at any stage of their annual cycle;
- (b) Dependence on a habitat type, which is under severe threat;
- (c) Showing significant long-term decline; or
- (d) Showing extreme fluctuations in population size or trend.

For species listed in categories 2 and 3 above, see paragraph 2.1.1 of the Action Plan contained in Annex 3 to the Agreement.

**Column B**

**Category 1:** Populations numbering between around 25,000 and around 100,000 individuals and which do not fulfil the conditions in respect of column A, as described above.

**Category 2:** Populations numbering more than around 100,000 individuals and considered to be in need of special attention as a result of:

- (a) Concentration onto a small number of sites at any stage of their annual cycle;
- (b) Dependence on a habitat type, which is under severe threat;
- (c) Showing significant long-term decline; or
- (d) Showing extreme fluctuations in population size or trend.

**Column C**

**Category 1:** Populations numbering more than around 100,000 individuals which could significantly benefit from international cooperation and which do not fulfil the conditions in respect of either column A or column B, above.

<sup>a/</sup>Table 1, "Status of the populations of migratory waterbirds" forms part of the Action Plan contained in Annex 3 to the Agreement.

**REVIEW OF TABLE 1**

The Table shall be:

- (a) Reviewed regularly by the Technical Committee in accordance with article VII, paragraph 3(b), of the Agreement; and
- (b) Amended as necessary by the Meeting of the Parties, in accordance with article VI, paragraph 9(d) of the Agreement, in light of the conclusions of such reviews.

**DEFINITION OF GEOGRAPHICAL TERMS USED IN RANGE DESCRIPTIONS<sup>\*</sup>**

North Africa	Algeria, Egypt, the Libyan Arab Jamahiriya, Morocco, Tunisia.
West Africa	Benin, Burkina Faso, Cameroon, Cape Verde, Chad, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo.
Eastern Africa	Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Uganda, the United Republic of Tanzania.
North-west Africa	Morocco, Algeria and Tunisia.
North-east Africa	Djibouti, Egypt, Eritrea, Ethiopia, Somalia, Sudan.
Southern Africa	Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe.
Central Africa	Cameroon, Central African Republic, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Sao Tome and Principe.
Sub-Saharan Africa	All African states south of the Sahara.
Tropical Africa	Sub-Saharan Africa excluding Lesotho, Namibia, South Africa and Swaziland.
Western Palearctic	As defined in <i>Handbook of the Birds of Europe, the Middle East and North Africa</i> (Cramp & Simmons 1977).
North-west Europe	Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Sweden, the United Kingdom of Great Britain and Northern Ireland.
Western Europe	North-west Europe with Portugal and Spain.

<sup>\*</sup>These definitions do not follow any geo-political or economic regionalisation; they are based on the ranges and biogeographical delineation of waterbird populations. Therefore, certain countries may appear in more than one definition.



North-east Europe	The northern part of the Russian Federation west of the Urals.
North Europe	North-west Europe and North-east Europe, as defined above.
Eastern Europe	Belarus, the Russian Federation west of the Urals, Ukraine.
Central Europe	Austria, the Czech Republic, Estonia, Germany, Hungary, Latvia, Liechtenstein, Lithuania, Poland, the Russian Federation around the Gulf of Finland and Kaliningrad, Slovakia, Switzerland.
South-west Europe	France, Italy, Malta, Monaco, Portugal, San Marino, Spain.
South-east Europe	Albania, Armenia, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Greece, FYR Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey.
South Europe	South-west Europe and South-east Europe, as defined above.
North Atlantic	Faroes, Greenland, Iceland, Ireland, Norway, the north-west coast of the Russian Federation, Svalbard, the United Kingdom of Great Britain and Northern Ireland.
East Atlantic	Atlantic seaboard of Europe and North Africa from northern Norway to Morocco.
Western Siberia	The Russian Federation east of the Urals to the Yenisey River and south to the Kazakhstan border.
Central Siberia	The Russian Federation from the Yenisey River to the eastern boundary of the Taimyr Peninsula and south to the Altai Mountains.
West Mediterranean	Algeria, France, Italy, Malta, Monaco, Morocco, Portugal, San Marino, Spain, Tunisia.
East Mediterranean	Albania, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, Greece, Israel, Lebanon, the Libyan Arab Jamahiriya, Montenegro, Serbia, Slovenia, the Syrian Arab Republic, The Former Yugoslav Republic of Macedonia, Turkey.
Black Sea	Armenia, Bulgaria, Georgia, Republic of Moldova, Romania, the Russian Federation, Turkey, Ukraine.
Caspian	Azerbaijan, Islamic Republic of Iran, Kazakhstan, South-west Russia, Turkmenistan, Uzbekistan.
South-west Asia	Bahrain, Iraq, Islamic Republic of Iran, Israel, Jordan, Kazakhstan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, the Syrian Arab Republic, eastern Turkey, Turkmenistan, the United Arab Emirates, Uzbekistan, Yemen.
Gulf	the Persian Gulf, Gulf of Oman and Arabian Sea west to the Gulf of Aden.
Western Asia	Western parts of the Russian Federation east of the Urals and the Caspian countries.

Central Asia	Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan.
Southern Asia	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.
Indian Ocean	Comoros, Madagascar, Mauritius, Seychelles.

**KEY TO ABBREVIATIONS AND SYMBOLS**

bre: breeding  
 N: Northern  
 S: Southern  
 NE: North-eastern  
 SE: South-eastern  
 win: wintering  
 E: Eastern  
 W: Western  
 NW: North-western  
 SW: South-western

O: Population status unknown. Conservation status estimated.

\*: By way of exception for those populations marked by an asterisk, hunting may continue on a sustainable use basis where hunting of such populations is a long-established cultural practice (see paragraph 2.1.1 of Annex 3 to the Agreement).

**NOTES**

1. The population data used to compile Table 1 as far as possible correspond to the number of individuals in the potential breeding stock in the Agreement area. The status is based on the best available published population estimates.
2. Suffixes (bre) or (win) in population listings are solely aids to population identification. They do not indicate seasonal restrictions to actions in respect of these populations under the Agreement and Action Plan.
3. The brief descriptions used to identify the populations are based on the descriptions used in the fourth edition of *Waterbird Population Estimates and the Handbook of the Birds of the World*.
4. Slash signs (/) are used to separate breeding areas from wintering areas.
5. Where a species' population is listed in Table 1 with multiple categorisations, the obligations of the Action Plan relate to the strictest category listed.

<b>SPHENISCIDAE</b>			
<i>Spheniscus demersus</i>			
- Southern Africa	1b		2a, 2c
<b>GAVIIDAE</b>			
<i>Gavia stellata</i>			
- North-west Europe (win)			2c
- Caspian, Black Sea & East Mediterranean (win)			(1)
<i>Gavia arctica arctica</i>			
- Northern Europe & Western Siberia/Europe			2c
<i>Gavia arctica suschkini</i>			
- Central Siberia/Caspian			(1)
<i>Gavia immer</i>			
- Europe (win)	1c		
<i>Gavia adamsii</i>			
- Northern Europe (win)	1c		
<b>PODICIPEDIDAE</b>			
<i>Tachybaptus ruficollis ruficollis</i>			
- Europe & North-west Africa			1
<i>Podiceps cristatus cristatus</i>			
- North-west & Western Europe			2c
- Black Sea & Mediterranean (win)			2c
- Caspian & South-west Asia (win)	2		
<i>Podiceps cristatus infuscatus</i>			
- Eastern Africa (Ethiopia to N Zambia)	1c		
- Southern Africa	1c		
<i>Podiceps grisegena grisegena</i>			
- North-west Europe (win)	3c		
- Black Sea & Mediterranean (win)	3c		
- Caspian (win)	2		
<i>Podiceps auritus auritus</i>			
- North-west Europe (large-billed)	1c		
- North-east Europe (small-billed)	2		
- Caspian & South Asia (win)	2		
<i>Podiceps nigricollis nigricollis</i>			
- Europe/South & West Europe & North Africa			2c
- Western Asia/South-west & South Asia			1
<i>Podiceps nigricollis gurneyi</i>			
- Southern Africa	2		
<b>PHAETHONTIDAE</b>			
<i>Phaethon aetheras aetheras</i>			
- South Atlantic	1c		
<i>Phaethon aetheras indicus</i>			

- Persian Gulf, Gulf of Aden, Red Sea		1c	
<i>Phaethon rubricauda rubricauda</i>			
- Indian Ocean		1c	
<i>Phaethon lepturus lepturus</i>			
- Persian Gulf, Gulf of Aden, Red Sea		1c	
<b>PELFCANIDAE</b>			
<i>Pelecanus onocrotalus</i>			
- Southern Africa		1	
- West Africa		1	
- Eastern Africa			
- Europe & Western Asia (bre)		1a 3c	
<i>Pelecanus rufescens</i>			
- Tropical Africa & SW Arabia		1	
<i>Pelecanus crispus</i>			
- Black Sea & Mediterranean (win)		1a 1c	
- South-west Asia & South Asia (win)		1a 1c	
<b>SULIDAE</b>			
<i>Sula (Morus) bassana</i>			2a
<i>Sula (Morus) capensis</i>			2a 2c
- Southern Africa		1b	
<i>Sula dactylatra melanops</i>			
- W Indian Ocean		1c	
<b>PHALACROCORACIDAE</b>			
<i>Phalacrocorax coronatus</i>			
- Coastal South-west Africa		1c	
<i>Phalacrocorax pygmaeus</i>			
- Black Sea & Mediterranean			1
- South-west Asia			1
<i>Phalacrocorax neglectus</i>			
- Coastal South-west Africa		1b 2	
<i>Phalacrocorax carbo carbo</i>			
- North-west Europe			1
<i>Phalacrocorax carbo sinensis</i>			
- Northern & Central Europe			1
- Black Sea & Mediterranean			1
- West & South-west Asia			(1)
<i>Phalacrocorax carbo lucidus</i>			
- Coastal West Africa			1
- Central & Eastern Africa			
- Coastal Southern Africa		2	
<i>Phalacrocorax nigrogularis</i>			
- Arabian Coast		1b	
- Gulf of Aden, Socotra, Arabian Sea		1b	
<i>Phalacrocorax capensis</i>			
- Coastal Southern Africa		2a 2c	

<b>FREGATIDAE</b>			
<i>Fregata minor alidabrensis</i>			
- W Indian Ocean		1c	
<i>Fregata ariel tredatieri</i>			
- W Indian Ocean		1c	
<b>ARDEIDAE</b>			
<i>Egretta ardensica</i>			
- Sub-Saharan Africa		1	
<i>Egretta vinaceigula</i>			
- South-central Africa		1b 1c	
<i>Egretta garzetta garzetta</i>			
- Sub-Saharan Africa			(1)
- Western Europe, NW Africa			1
- Central & E Europe, Black Sea, E Mediterranean			1
- Western Asia/SW Asia, NE & Eastern Africa			(1)
<i>Egretta gularis gularis</i>			
- West Africa			(1)
<i>Egretta gularis schistacea</i>			
- North-east Africa & Red Sea			(1)
- South-west Asia & South Asia		2	
<i>Egretta dimorpha</i>			
- Coastal Eastern Africa		2	
<i>Ardea cinerea cinerea</i>			
- Sub-Saharan Africa			1
- Northern & Western Europe			1
- Central & Eastern Europe			1
- West & South-west Asia (bre)			(1)
<i>Ardea melanocephala</i>			
- Sub-Saharan Africa			(1)
<i>Ardea purpurea purpurea</i>			
- Tropical Africa			1
- West Europe & West Mediterranean/West Africa		2	
- East Europe & South-west Asia/Sub-Saharan Africa			(2c)
<i>Casmerodius albus albus</i>			
- W, C & SE Europe/Black Sea & Mediterranean			1
- Western Asia/South-west Asia			(1)
<i>Casmerodius albus melanorhynchus</i>			
- Sub-Saharan Africa & Madagascar			(1)
<i>Mesophoyx intermedia brachyrhyncha</i>			
- Sub-Saharan Africa			1
<i>Bubulcus ibis ibis</i>			
- Southern Africa			1
- Tropical Africa			1
- South-west Europe			1
- North-west Africa			1
- East Mediterranean & South-west Asia			1

<i>Ardeola ralloides ralloides</i>					
- SW Europe, NW Africa (bre)		1c			
- C & E Europe/Black Sea & E Mediterranean (bre)			1		
- West & South-west Asia/Sub-Saharan Africa			(1)		
<i>Ardeola ralloides paludicola</i>					(1)
- Sub-Saharan Africa & Madagascar					
<i>Ardeola idae</i>					
- Madagascar & Aldabra/Central & Eastern Africa		1b 1c			
<i>Ardeola rufiventris</i>					
- Tropical Eastern & Southern Africa			(1)		
<i>Nycticorax nycticorax nycticorax</i>					
- Sub-Saharan Africa & Madagascar					1
- W Europe, NW Africa (bre)		3c			
- C & E Europe/Black Sea & E Mediterranean (bre)			2c		
- Western Asia/SW Asia & NE Africa			(1)		
<i>Ixobrychus minutus minutus</i>					
- W Europe, NW Africa/Sub-Saharan Africa		2			
- C & E Europe, Black Sea & E Mediterranean/Sub-Saharan Africa			2c		
- West & South-west Asia/Sub-Saharan Africa			(1)		
<i>Ixobrychus minutus paysonii</i>					(1)
- Sub-Saharan Africa			(1)		
<i>Ixobrychus sturmi</i>					(1)
- Sub-Saharan Africa			(1)		
<i>Botaurus stellaris stellaris</i>					
- W Europe, NW Africa (bre)		1c			
- C & E Europe, Black Sea & E Mediterranean (bre)			2c		
- South-west Asia (wint)			1		
<i>Botaurus stellaris capensis</i>					
- Southern Africa		1c			
<b>CICONIIDAE</b>					
<i>Mycerria ibis</i>					
- Sub-Saharan Africa (excluding Madagascar)			1		
<i>Anasotanus lamelligerus lamelligerus</i>					
- Sub-Saharan Africa					1
<i>Ciconia nigra</i>					
- Southern Africa		1c			
- South-west Europe/West Africa			1c		
- Central & Eastern Europe/Sub-Saharan Africa			2		
<i>Ciconia abdimii</i>					
- Sub-Saharan Africa & SW Arabia					(2c)
<i>Ciconia episcopus microscelis</i>					
- Sub-Saharan Africa					(1)
<i>Ciconia ciconia ciconia</i>					
- Southern Africa			1c		
- Iberia & North-west Africa/Sub-Saharan Africa			3b		
- Central & Eastern Europe/Sub-Saharan Africa					1
- Western Asia/South-west Asia			2		

<i>Leptoptilos crumeniferus</i>					
- Sub-Saharan Africa					1
<b>BALAENICPTIDAE</b>					
<i>Balaeniceps rex</i>					1c
- Central Tropical Africa					
<b>THRESKIORNIHIDAE</b>					
<i>Plegadis falcinellus falcinellus</i>					
- Sub-Saharan Africa (bre)					1
- Black Sea & Mediterranean/West Africa			3c		
- South-west Asia/Eastern Africa					(1)
<i>Geronticus eremita</i>					
- Morocco		1a 1b 1c			
- South-west Asia		1a 1b 1c			
<i>Threskiornis aethiopicus aethiopicus</i>					
- Sub-Saharan Africa			1c		
- Iraq & Iran					
<i>Platalea leucorodia leucorodia</i>			2		
- West Europe/West Mediterranean & West Africa			2		
- Cent. & SE Europe/Mediterranean & Tropical Africa					
<i>Platalea leucorodia archeri</i>					
- Red Sea & Somalia		1c			
<i>Platalea leucorodia balsaci</i>					
- Coastal West Africa (Mauritania)		1c			
<i>Platalea leucorodia major</i>					
- Western Asia/South-west & South Asia			2		
<i>Platalea alba</i>					
- Sub-Saharan Africa					1
<b>PHOENICOPTERIDAE</b>					
<i>Phoenicopterus roseus</i>					
- West Africa		3a			
- Eastern Africa		3a			
- Southern Africa (to Madagascar)		3a			
- West Mediterranean			2a		
- East Mediterranean			3a		
- South-west & South Asia			2a		
<i>Phoenicopatias minor</i>					
- West Africa		2			
- Eastern Africa			2a 2c		
- Southern Africa (to Madagascar)		3a			
<b>ANATIDAE</b>					
<i>Dendrocygna bicolor</i>					
- West Africa (Senegal to Chad)			1		
- Eastern & Southern Africa					(1)
<i>Dendrocygna viduata</i>					

- West Africa (Senegal to Chad)			1
- Eastern & Southern Africa			1
<i>Thalassornis leucostomus leucostomus</i>			
- West Africa	1c		
- Eastern & Southern Africa	2*		
<i>Oxyura leucocephala</i>			
- West Mediterranean (Spain & Morocco)	1a 1b 1c		
- Algeria & Tunisia	1a 1b 1c		
- East Mediterranean, Turkey & South-west Asia	1a 1b 1c		
<i>Oxyura maccoa</i>			
- Eastern Africa	1c		
- Southern Africa	1c		
<i>Cygnus olor</i>			
- North-west Mainland & Central Europe			1
- Black Sea		1	
- West & Central Asia/Caspian		2a 2d	
<i>Cygnus cygnus</i>			
- Iceland/UK & Ireland	2		
- North-west Mainland Europe		1	
- N Europe & W Siberia/Black Sea & E Mediterranean	2		
- West & Central Siberia/Caspian	2		
<i>Cygnus columbianus bewickii</i>			
- Western Siberia & NE Europe/North-west Europe	2		
- Northern Siberia/Caspian	1c		
<i>Anser brachyrynchus</i>			
- East Greenland & Iceland/UK		2a	
- Svalbard/North-west Europe		1	
<i>Anser fabalis fabalis</i>			
- North-east Europe/North-west Europe		1	
<i>Anser fabalis rossicus</i>			
- West & Central Siberia/NE & SW Europe			(1)
<i>Anser fabalis johannesi</i>			
- West & Central Siberia/Turkmenistan to W China			(1)
<i>Anser albifrons albifrons</i>			
- NW Siberia & NE Europe/North-west Europe			1
- Western Siberia/Central Europe		3c*	
- Western Siberia/Black Sea & Turkey			1
- Northern Siberia/Caspian & Iraq		2	
<i>Anser albifrons flavirostris</i>			
- Greenland/Ireland & UK		2*	
<i>Anser erythropus</i>			
- N Europe & W Siberia/Black Sea & Caspian		1a 1b 2	
<i>Anser anser anser</i>			
- Iceland/UK & Ireland		1	
- NW Europe/South-west Europe			1
- Central Europe/North Africa		1	
<i>Anser anser rubirostris</i>			
- Black Sea & Turkey		1	

- Western Siberia/Caspian & Iraq				1
<i>Brania leucopsis</i>				
- East Greenland/Scotland & Ireland			1	
- Svalbard/South-west Scotland			1	
- Russia/Germany & Netherlands				1
<i>Brania bernicla bernicla</i>				
- Western Siberia/Western Europe			2b 2c	
<i>Brania bernicla hrota</i>				
- Svalbard/Denmark & UK		1c		
- Canada & Greenland/Ireland		2		
<i>Brania ruficollis</i>				
- Northern Siberia/Black Sea & Caspian		1a 1b 3a 3c		
<i>Alopochen aegyptiaca</i>				
- West Africa		1c		
- Eastern & Southern Africa			1	
<i>Tadorna ferruginea</i>				
- North-west Africa		1c		
- East Mediterranean & Black Sea/North-east Africa		2		
- Western Asia & Caspian/Iran & Iraq			1	
<i>Tadorna cana</i>				
- Southern Africa			1	
<i>Tadorna tadorna</i>				
- North-west Europe			2a	
- Black Sea & Mediterranean		3c		
- Western Asia/Caspian & Middle East			1	
<i>Plectropterus gambensis gambensis</i>				
- West Africa			1	
- Eastern Africa (Sudan to Zambia)				1
<i>Plectropterus gambensis niger</i>				
- Southern Africa			1	
<i>Sarkidiornis melanotos melanotos</i>				
- West Africa			1	
- Southern & Eastern Africa				1
<i>Nettion auritus</i>				
- West Africa		1c		
- Southern & Eastern Africa			(1)	
<i>Anas capensis</i>				
- Eastern Africa (Rift Valley)		1c		
- Lake Chad basin?		1c		
- Southern Africa (N to Angola & Zambia)			1	
<i>Anas strepera strepera</i>				
- North-west Europe			1	
- North-east Europe/Black Sea & Mediterranean			2c	
- Western Siberia/SW Asia & NE Africa				(1)
<i>Anas penelope</i>				
- Western Siberia & NE Europe/NW Europe				1
- W Siberia & NE Europe/Black Sea & Mediterranean				2c

- Western Siberia/SW Asia & NE Africa					
<i>Anas platyrhynchos platyrhynchos</i>			2c		
- North-west Europe					1
- Northern Europe/West Mediterranean					1
- Eastern Europe/Black Sea & East Mediterranean					1
- Western Siberia/South-west Asia					(1)
<i>Anas undulata undulata</i>					
- Southern Africa					1
<i>Anas cygneata</i>					
- North-west & Central Europe (win)			1		
- W Siberia, NE & E Europe/S Europe & West Africa			2c		
- W Siberia/SW Asia, NE & Eastern Africa			2c		
<i>Anas erythrorhynchos</i>					
- Southern Africa					1
- Eastern Africa					1
- Madagascar			2		
<i>Anas acuta</i>					
- North-west Europe					1
- W Siberia, NE & E Europe/S Europe & West Africa			2c		
- Western Siberia/SW Asia & Eastern Africa					(1)
<i>Anas querquedula</i>					
- Western Siberia & Europe/West Africa			2c		
- Western Siberia/SW Asia, NE & Eastern Africa					(1)
<i>Anas crecca crecca</i>					
- North-west Europe					1
- W Siberia & NE Europe/Black Sea & Mediterranean			2c		
- Western Siberia/SW Asia & NE Africa					
<i>Anas hottentota</i>					
- Lake Chad Basin					1c
- Eastern Africa (south to N Zambia)					1
- Southern Africa (north to S Zambia)					1
<i>Marmaronetta angustirostris</i>					
- West Mediterranean/West Medit. & West Africa			1a 1b 1c		
- East Mediterranean			1a 1b 1c		
- South-west Asia			1a 1b 2		
<i>Nettion raghna</i>					
- South-west & Central Europe/West Mediterranean					1
- Black Sea & East Mediterranean					
- Western & Central Asia/South-west Asia			3c		
<i>Nettion erythrophthalma bramaea</i>					1
- Southern & Eastern Africa					1
<i>Aythya ferina</i>					
- North-east Europe/North-west Europe					1
- Central & NE Europe/Black Sea & Mediterranean					1
- Western Siberia/South-west Asia			2c		
<i>Aythya nyroca</i>					
- West Mediterranean/North & West Africa			1a 1c		
- Eastern Europe/E Mediterranean & Sahelian Africa			1a 3c		

- Western Asia/SW Asia & NE Africa					1a 3c
<i>Aythya fuligula</i>					
- North-west Europe (win)					1
- Central Europe, Black Sea & Mediterranean (win)					1
- Western Siberia/SW Asia & NE Africa					(1)
<i>Aythya marila marila</i>					
- Northern Europe/Western Europe					1
- W Western Siberia/Black Sea & Caspian					1
<i>Somateria mollissima mollissima</i>					
- Baltic, Denmark & Netherlands					2d
- Norway & Russia					1
<i>Somateria mollissima borealis</i>					
- Svalbard & Franz Joseph (bre)					1
<i>Somateria spectabilis</i>					
- East Greenland, NE Europe & Western Siberia					1
<i>Polytrichia stelleri</i>					
- Western Siberia/North-east Europe					1a 2
<i>Clangula hyemalis</i>					
- Iceland & Greenland					1
- Western Siberia/North Europe					1
<i>Melanitta nigra nigra</i>					
- W Siberia & N Europe/W Europe & NW Africa					2a
<i>Melanitta fusca fusca</i>					
- Western Siberia & Northern Europe/NW Europe					2a
- Black Sea & Caspian					1c
<i>Bucephala clangula clangula</i>					
- North-west & Central Europe (win)					1
- North-east Europe/Adriatic					1
- Western Siberia & North-east Europe/Black Sea					1
- Western Siberia/Caspian					
<i>Mergellus albellus</i>					
- North-west & Central Europe (win)					3a
- North-east Europe/Black Sea & East Mediterranean					1
- Western Siberia/South-west Asia					1
<i>Mergus serrator serrator</i>					
- North-west & Central Europe (win)					1
- North-east Europe/Black Sea & Mediterranean					1
- Western Siberia/South-west & Central Asia					1c
<i>Mergus merganser merganser</i>					
- North-west & Central Europe (win)					1
- North-east Europe/Black Sea					1c
- Western Siberia/Caspian					2
<b>GRUIDAE</b>					
<i>Buteo borealis borealis</i>					
- West Africa (Senegal to Chad)					2
<i>Buteo borealis borealis</i>					
- Eastern Africa (Sudan to Uganda)					3c

<i>Balearica regulorum regulorum</i>				
- Southern Africa (N to Angola & S Zimbabwe)		1c		
<i>Balearica regulorum gibbericeps</i>				
- Eastern Africa (Kenya to Mozambique)		3c		
<i>Grus leucogeranus</i>				
- Iran (win)		1a 1b 1c		
<i>Grus virgo</i>				
- Black Sea (Ukraine)/North-east Africa		1c		
- Turkey (bre)		1c		
- Kalmykia/North-east Africa		1		
<i>Grus paradisea</i>				
- Extreme Southern Africa		1b 1		
<i>Grus carunculatus</i>				
- Central & Southern Africa		1b 1c		
<i>Grus grus</i>				
- North-west Europe/Iberia & Morocco			1	
- North-east & Central Europe/North Africa			1	
- Eastern Europe/Turkey, Middle East & NE Africa		3c		
- Turkey & Georgia (bre)		1c		
- Western Siberia/South Asia			(1)	
<b>RALLIDAE</b>				
<i>Sarothrura elegans elegans</i>				
- NE, Eastern & Southern Africa			(1)	
<i>Sarothrura elegans reichenovi</i>				
- S West Africa to Central Africa			(1)	
<i>Sarothrura boehmi</i>				
- Central Africa		1c		
<i>Sarothrura cyresi</i>				
- Ethiopia		1a 1b 1c		
- Southern Africa		1a 1b 1c		
<i>Rallus aquaticus aquaticus</i>				
- Europe & North Africa			2c	
<i>Rallus aquaticus korjilevi</i>				
- Western Siberia/South-west Asia			(1)	
<i>Rallus caerulescens</i>				
- Southern & Eastern Africa			(1)	
<i>Crecopsis egregia</i>				
- Sub-Saharan Africa			(1)	
<i>Crex crex</i>				
- Europe & Western Asia/Sub-Saharan Africa		1b	2c	
<i>Amuroornis flavirostris</i>				
- Sub-Saharan Africa			1	
<i>Porzana parva parva</i>				
- Western Eurasia/Africa			2c	
<i>Porzana pusilla intermedia</i>				
- Europe (bre)		1c		
<i>Porzana porzana</i>				

- Europe/Africa		2d		
<i>Actinotailia marginalis</i>				
- Sub-Saharan Africa		(2)		
<i>Porphyrio alleni</i>				
- Sub-Saharan Africa			(1)	
<i>Gallinula chloropus chloropus</i>				
- Europe & North Africa			1	
- West & South-west Asia			(1)	
<i>Gallinula angulata</i>				
- Sub-Saharan Africa			(1)	
<i>Fulica cristata</i>				
- Sub-Saharan Africa			1	
- Spain & Morocco		1c		
<i>Fulica atra atra</i>				
- North-west Europe (win)			1	
- Black Sea & Mediterranean (win)			1	
- South-west Asia (win)			(1)	
<b>DROMADIDAE</b>				
<i>Dromas ardeola</i>				
- North-west Indian Ocean, Red Sea & Gulf		3a		
<b>HAEMATOPODIDAE</b>				
<i>Haematopus ostralegus ostralegus</i>				
- Europe/South & West Europe & NW Africa			1	
<i>Haematopus ostralegus longipes</i>				
- SE Eur & W Asia/SW Asia & NE Africa			2a	
<i>Haematopus moquini</i>				
- Coastal Southern Africa		1c		
<b>RECUIROSTRIDAE</b>				
<i>Himantopus himantopus himantopus</i>				
- Sub-Saharan Africa (excluding south)			(1)	
- Southern Africa ('meridionalis')		2		
- SW Europe & North-west Africa			1	
- Central Europe & E Mediterranean/N-Central Africa			1	
- W, C & SW Asia/SW Asia & NE Africa			(1)	
<i>Recurvirostra avosetta</i>				
- Southern Africa		2		
- Eastern Africa			(1)	
- Western Europe & North-west Africa (bre)			1	
- South-east Europe, Black Sea & Turkey (bre)		(3c)		
- West & South-west Asia/Eastern Africa		2		
<b>BURRIDAE</b>				
<i>Burhinus senegalensis senegalensis</i>				
- West Africa			(2)	
<i>Burhinus senegalensis inornatus</i>				

- North-east & Eastern Africa	(2)		
<b>GLAREOLIDAE</b>			
<i>Pluvialis aegyptius aegyptius</i>			
- West Africa		(1)	
- Eastern Africa	(2)		
- Lower Congo Basin	2		
<i>Glareola pratensis pratensis</i>			
- Western Europe & NW Africa/West Africa	2		
- Black Sea & E Mediterranean/Eastern Sahel zone	2		
- SW Asia/SW Asia & NE Africa		(1)	
<i>Glareola nordmanni</i>			
- SE Europe & Western Asia/Southern Africa		2b 2c	
<i>Glareola ocularis</i>			
- Madagascar/East Africa		1c	
<i>Glareola nuchalis nuchalis</i>			
- Eastern & Central Africa		(1)	
<i>Glareola nuchalis libertae</i>			
- West Africa			1
<i>Glareola cinerea cinerea</i>			
- SE West Africa & Central Africa	(2)		
<b>CHARADRIIDAE</b>			
<i>Pluvialis apricaria apricaria</i>			
- Britain, Ireland, Denmark, Germany & Baltic (bre)		2c	
<i>Pluvialis apricaria alifrons</i>			
- Iceland & Faroes/East Atlantic coast			1
- Northern Europe/Western Europe & NW Africa			1
- Northern Siberia/Caspian & Asia Minor		(1)	
<i>Pluvialis fulva</i>			
- North-central Siberia/South & SW Asia, NE Africa		(1)	
<i>Pluvialis squatarola</i>			
- W Siberia & Canada/W Europe & W Africa			1
- C & E Siberia/SW Asia, Eastern & Southern Africa		1	
<i>Charadrius hiaticula hiaticula</i>			
- Northern Europe/Europe & North Africa		1	
<i>Charadrius hiaticula psammodyrona</i>			
- Canada, Greenland & Iceland/W & S Africa		(2c)	
<i>Charadrius hiaticula tundrae</i>			
- NE Europe & Siberia/SW Asia, E & S Africa			(1)
<i>Charadrius tibialis chronicus</i>			
- Europe & North-west Asia/West Africa			1
- West & South-west Asia/Eastern Africa		(1)	
<i>Charadrius pecuarius pecuarius</i>			
- Southern & Eastern Africa			(1)
- West Africa		(1)	
<i>Charadrius tricolor tricolor</i>			
- Southern & Eastern Africa			1

<i>Charadrius forbesi</i>			
- Western & Central Africa		(1)	
<i>Charadrius pallidus pallidus</i>			
- Southern Africa		2	
<i>Charadrius pallidus venustus</i>			
- Eastern Africa		1c	
<i>Charadrius alexandrinus alexandrinus</i>			
- West Europe & West Mediterranean/West Africa		3c	
- Black Sea & East Mediterranean/Eastern Sahel		3c	
- SW & Central Asia/SW Asia & NE Africa			(1)
<i>Charadrius marginatus meadowi</i>			
- meadow/venustus Inland East & Central Africa		2	
- Coastal E Africa		2	
- West Africa		2	
<i>Charadrius mongolus pamirensis</i>			
- West-central Asia/SW Asia & Eastern Africa			1
<i>Charadrius leschenaultii columbinus</i>			
- Turkey & SW Asia/E. Mediterranean & Red Sea		1c	
<i>Charadrius leschenaultii crassirostris</i>			
- Caspian & SW Asia/Arabia & NE Africa			(1)
<i>Charadrius leschenaultii leschenaultii</i>			
- Central Asia/Eastern & Southern Africa			(1)
<i>Charadrius asiaticus</i>			
- SE Europe & West Asia/E & South-central Africa		3c	
<i>Eudromias morinellus</i>			
- Europe/North-west Africa		(3c)	
- Asia/Middle East			(1)
<i>Vanellus vanellus</i>			
- Europe/Europe & North Africa			2c
- Western Asia/South-west Asia			(1)
<i>Vanellus spinosus</i>			
- Black Sea & Mediterranean (bre)			1
<i>Vanellus albiceps</i>			
- West & Central Africa			(1)
<i>Vanellus senegalensis senegalensis</i>			
- West Africa			(1)
<i>Vanellus senegalensis solitarius</i>			
- South-west Africa			(1)
<i>Vanellus senegalensis lateralis</i>			
- Eastern & South-east Africa			1
<i>Vanellus lugubris</i>			
- Southern West Africa		2	
- Central & Eastern Africa		3c	
<i>Vanellus melanopterus minor</i>			
- Southern Africa		1c	
<i>Vanellus coronatus coronatus</i>			
- Eastern & Southern Africa			1
- Central Africa		(2)	



<i>Vanellus coronatus xerophilus</i>				
- South-west Africa			(1)	
<i>Vanellus superciliosus</i>				
- West & Central Africa	(2)			
<i>Vanellus gregarius</i>				
- SE Europe & Western Asia/North-east Africa	1a, 1b 2			
<i>Vanellus leucurus</i>				
- Central Asian Republics/NW India	1a, 1b 1c			
- SW Asia/SW Asia & North-east Africa	2			
- Central Asian Republics/South Asia			(1)	
<b>SCOLOPACIDAE</b>				
<i>Scolopax rusticola</i>				
- Europe/South & West Europe & North Africa			1	
- Western Siberia/South-west Asia (Caspian)			(1)	
<i>Gallinago stenura</i>				
- Northern Siberia/South Asia & Eastern Africa			(1)	
<i>Gallinago media</i>				
- Scandinavia/probably West Africa			1	
- Western Siberia & NE Europe/South-east Africa			2c	
<i>Gallinago gallinago</i>				
- Europe/South & West Europe & NW Africa			2c	
- Western Siberia/South-west Asia & Africa			1	
<i>Gallinago gallinago faeroensis</i>				
- Iceland, Faroes & Northern Scotland/Ireland			1	
<i>Lymnecryptes minutus</i>				
- Northern Europe/S & W Europe & West Africa			2b	
- Western Siberia/SW Asia & NE Africa			1	
<i>Limosa limosa limosa</i>				
- Western Europe/NW & West Africa			2c	
- Eastern Europe/Central & Eastern Africa			2c	
- West-central Asia/SW Asia & Eastern Africa			(1)	
<i>Limosa limosa islandica</i>				
- Iceland/Western Europe	3a*			
<i>Limosa lapponica lapponica</i>				
- Northern Europe/Western Europe			2a	
<i>Limosa lapponica taimyrensis</i>				
- Western Siberia/West & South-west Africa			2a 2c	
<i>Limosa lapponica menzbieri</i>				
- Central Siberia/South & SW Asia & Eastern Africa			(1)	
<i>Numenius phaeopus phaeopus</i>				
- Northern Europe/West Africa			(1)	
- West Siberia/Southern & Eastern Africa			(1)	
<i>Numenius phaeopus islandicus</i>				
- Iceland, Faroes & Scotland/West Africa			1	
<i>Numenius phaeopus albocollaris</i>				
- South-west Asia/Eastern Africa	1c			
<i>Numenius tenuirostris</i>				
- East Atlantic Europe, West & Southern Africa (win)			1	

- Central Siberia/Mediterranean & SW Asia			1a, 1b, 1c	
<i>Numenius arquata arquata</i>				
- Europe/Europe, North & West Africa			1	
<i>Numenius arquata orientalis</i>				
- Western Siberia/SW Asia, E & S Africa			3c	
<i>Numenius arquata suschkini</i>				
- South-east Europe & South-west Asia (bre)			2	
<i>Tringa erythropus</i>				
- N Europe/Southern Europe, North & West Africa			(1)	
- Western Siberia/SW Asia, NE & Eastern Africa			(1)	
<i>Tringa totanus totanus</i>				
- Northern Europe (breeding)			1	
- Central & East Europe (breeding)			2c	
<i>Tringa totanus britannica</i>				
- Britain & Ireland/Britain, Ireland, France			2c	
<i>Tringa totanus ussuriensis</i>				
- Western Asia/SW Asia, NE & Eastern Africa			(1)	
<i>Tringa totanus robusta</i>				
- Iceland & Faroes/Western Europe			1	
<i>Tringa stagnatilis</i>				
- Eastern Europe/West & Central Africa			(1)	
- Western Asia/SW Asia, Eastern & Southern Africa			(1)	
<i>Tringa nebularia</i>				
- Northern Europe/SW Europe, NW & West Africa			1	
- Western Siberia/SW Asia, E & S Africa			(1)	
<i>Tringa ochropus</i>				
- Northern Europe/S & W Europe, West Africa			1	
- Western Siberia/SW Asia, NE & Eastern Africa			(1)	
<i>Tringa glareola</i>				
- North-west Europe/West Africa			1	
- NE Europe & W Siberia/Eastern & Southern Africa			(1)	
<i>Tringa cinerea</i>				
- NE Europe & W Siberia/SW Asia, E & S Africa			1	
<i>Tringa hypoleucos</i>				
- West & Central Europe/West Africa			1	
- E Europe & W Siberia/Central, E & S Africa			(1)	
<i>Arenaria interpres interpres</i>				
- NE Canada & Greenland/W Europe & NW Africa			1	
- Northern Europe/West Africa			(1)	
- West & Central Siberia/SW Asia, E & S Africa				
<i>Calidris tenuirostris</i>				
- Eastern Siberia/SW Asia & W Southern Asia			1c	
<i>Calidris canutus canutus</i>				
- Northern Siberia/West & Southern Africa			2a 2c	
<i>Calidris canutus islandica</i>				
- NE Canada & Greenland/Western Europe			2a 2c	
<i>Calidris alba</i>				
- East Atlantic Europe, West & Southern Africa (win)			1	

- South-west Asia, Eastern & Southern Africa (wit)			1
<i>Calidris minuta</i>			
- N Europe/S Europe, North & West Africa	(2c)		
- Western Siberia/SW Asia, E & S Africa			(1)
<i>Calidris temminckii</i>			
- Fennoscandia/North & West Africa	(1)		
- NE Europe & W Siberia/SW Asia & Eastern Africa			(1)
<i>Calidris maritima maritima</i>			
N Europe & W Siberia (breeding)			
NE Canada & N Greenland (breeding)			
<i>Calidris alpina alpina</i>	3c		
- NE Europe & NW Siberia/W Europe & NW Africa			
<i>Calidris alpina centralis</i>			
- Central Siberia/SW Asia & NE Africa			(1)
<i>Calidris alpina schinzii</i>			
- Iceland & Greenland/NW and West Africa			
- Britain & Ireland/SW Europe & NW Africa	2		
- Baltic/SW Europe & NW Africa	1c		
<i>Calidris alpina arctica</i>			
- NE Greenland/West Africa			
<i>Calidris ferruginea</i>	3a		
- Western Siberia/West Africa			
- Central Siberia/SW Asia, E & S Africa			1
<i>Limicola falcinellus falcinellus</i>			1
- Northern Europe/SW Asia & Africa	3c		
<i>Philomachus pugnax</i>			
- Northern Europe & Western Siberia/West Africa			
- Northern Siberia/SW Asia, E & S Africa	2c		
<i>Phalaropus lobatus</i>			
- Western Eurasia/Arabian Sea			1
<i>Phalaropus fuscarius</i>			
- Canada & Greenland/Atlantic coast of Africa			
2c			
<b>STERCORARIDAE</b>			
<i>Catharacta skua</i>			
- Red Sea & nearby coasts	1		
<i>Stercorarius longicaudus longicaudus</i>			
- Mediterranean/N & W coasts of Africa			
1a, 3a			
<b>LARIDAE</b>			
<i>Larus leucophthalmus</i>			
- Red Sea & nearby coasts	1a		
<i>Larus hemprichii</i>			
- Red Sea, Gulf, Arabia & Eastern Africa			2a
<i>Larus carus carus</i>			
- NW & Cent. Europe/Atlantic coast & Mediterranean			2c
<i>Larus carus heinet</i>			
- NE Europe & Western Siberia/Black Sea & Caspian			1
<i>Larus audouinii</i>			
- Mediterranean/N & W coasts of Africa			
1a, 3a			

<i>Larus marinus</i>			
- North & West Europe			1
<i>Larus dominicanus vetula</i>			
- Coastal Southern Africa			1
<i>Larus hyperboreus hyperboreus</i>			
- Svalbard & N Russia (bre)			(1)
<i>Larus hyperboreus leucereus</i>			
- Canada, Greenland & Iceland (bre)			(1)
<i>Larus glaucooides glaucooides</i>			
- Greenland/Iceland & North-west Europe			1
<i>Larus argentatus argentatus</i>			
- North & North-west Europe			1
<i>Larus argentatus argentus</i>			
- Iceland & Western Europe			2c
<i>Larus heuglini</i>			
- NE Europe & W Siberia/SW Asia & NE Africa			(1)
<i>Larus (heuglini) barabensis</i>			
- South-west Siberia/South-west Asia			(1)
<i>Larus armenicus</i>			
- Armenia, Eastern Turkey & NW Iran		3a	
<i>Larus cachinnans cachinnans</i>			
- Black Sea & Western Asia/SW Asia, NE Africa			1
<i>Larus cachinnans michahellis</i>			
- Mediterranean, Iberia & Morocco			1
<i>Larus fuscus fuscus</i>			
- NE Europe/Black Sea, SW Asia & Eastern Africa			(2c)
<i>Larus fuscus graellsii</i>			
- Western Europe/Mediterranean & West Africa			1
<i>Larus fuscus intermedius</i>			
- S Scandinavia, Netherlands, Ebro Delta, Spain			1
<i>Larus ichthyæus</i>			
- Black Sea & Caspian/South-west Asia		3a	
<i>Larus cirrocephalus ptocephalus</i>			
- West Africa			(1)
- Central & Eastern Africa			(1)
- Coastal Southern Africa (excluding Madagascar)			
<i>Larus narulae</i>			
- Coastal South-west Africa			1
<i>Larus ridibundus</i>			
- W Europe/W Europe, W Mediterranean, West Africa			2c
- East Europe/Black Sea & East Mediterranean			1
- West Asia/SW Asia & NE Africa			(1)
<i>Larus genei</i>			
- West Africa (bre)		2	
- Black Sea & Mediterranean (bre)			2a
- West, South-west & South Asia (bre)			2a
<i>Larus melanocephalus</i>			
- W Europe, Mediterranean & NW Africa			2a

<i>Larus minutus</i>				1
- Central & E Europe/SW Europe & W Mediterranean				
- W Asia/E Mediterranean, Black Sea & Caspian			(1)	
<i>Xema sabini sabini</i>				
- Canada & Greenland/SE Atlantic				(1)
<i>Rissa tridactyla tridactyla</i>			2a	
<b>STERNIDAE</b>				
<i>Sterna nilotica nilotica</i>				
- Western Europe/West Africa		2		
- Black Sea & East Mediterranean/Eastern Africa		3c		
- West & Central Asia/South-west Asia		2		
<i>Sterna caspia caspia</i>				
- Southern Africa (bre)		1c		
- West Africa (bre)			1	
- Europe (bre)		1c		
- Caspian (bre)		2		
<i>Sterna maxima albidorsalis</i>				
- West Africa (bre)			2a	
<i>Sterna bengalensis bengalensis</i>				
- Gulf/Southern Asia			2a	
<i>Sterna bengalensis par</i>				
- Red Sea/Eastern Africa		3a		
<i>Sterna bengalensis emigrata</i>				
- S Mediterranean/NW & West Africa coasts		1c		
<i>Sterna bergii bergii</i>				
- Southern Africa (Angola - Mozambique)		2		
<i>Sterna bergii enigma</i>				
- Madagascar & Mozambique/Southern Africa		1c		
<i>Sterna bergii thalassina</i>				
- Eastern Africa & Seychelles		1c		
<i>Sterna bergii velox</i>				
- Red Sea & North-east Africa		2		
<i>Sterna sandhicensis sandhicensis</i>				
- Western Europe/West Africa			2a	
- Black Sea & Mediterranean (bre)			2a	
- West & Central Asia/South-west & South Asia			2a	
<i>Sterna dougallii dougallii</i>				
- Southern Africa			1c	
- East Africa			3a	
- Europe (bre)			1c	
<i>Sterna dougallii ardeensis</i>				
- Madagascar, Seychelles & Mascarenes		2		
<i>Sterna dougallii bangsi</i>				
- North Arabian Sea (Oman)		1c		
<i>Sterna vittata vittata</i>				
- P-Edward, Marion, Crozet & Kerguelen/South Africa				
<i>Sterna vittata tristanensis</i>			1c	

- Tristan da Cunha & Gough/South Africa			1c	
<i>Sterna hirsundo hirsundo</i>				
- Southern & Western Europe (bre)				1
- Northern & Eastern Europe (bre)				1
- Western Asia (bre)				(1)
<i>Sterna paradisaea</i>				
- Western Eurasia (bre)				1
<i>Sterna albifrons albifrons</i>				
- Eastern Atlantic (bre)			3b 3c	
- Black Sea & Mediterranean (bre)			3b 3c	
- Caspian (bre)			2	
<i>Sterna albifrons guineae</i>				
- West Africa (bre)			1c	
<i>Sterna saundersi</i>				
- W South Asia, Red Sea, Gulf & Eastern Africa				(1)
<i>Sterna balaenarum</i>				
- Namibia & South Africa/Atlantic coast to Ghana			2	
<i>Sterna repressa</i>				
- W South Asia, Red Sea, Gulf & Eastern Africa				2c
<i>Sterna anaethetus melanopterus</i>				
- W Africa			1	
<i>Sterna anaethetus fuligula</i>				
- Red Sea, E Africa, Persian Gulf, Arabian Sea to W India				1
<i>Sterna anaethetus antarctica</i>				
- S Indian Ocean				1
<i>Sterna fuscata nubilosa</i>				
- Red Sea, Gulf of Aden, E to Pacific				2a
<i>Chlidonias hybridus hybridus</i>				
- Western Europe & North-west Africa (bre)				1
- Black Sea & East Mediterranean (bre)				(1)
- Caspian (bre)				(1)
<i>Chlidonias hybridus sclateri</i>				
- Eastern Africa (Kenya & Tanzania)				
- Southern Africa (Malawi & Zambia to South Africa)			2	
<i>Chlidonias leucopterus</i>			(2)	
- Eastern Europe & Western Asia/Africa				(1)
<i>Chlidonias niger niger</i>				
- Europe & Western Asia/Atlantic coast of Africa				2c
<i>Anous stolidus plumbeigularis</i>				
- Red Sea & Gulf of Aden				1
<i>Anous tenuirostris tenuirostris</i>				
- Indian Ocean Islands to E Africa				1
<b>RYNCHOPIDAE</b>				
<i>Rynchops flavirostris</i>				
- Coastal West Africa & Central Africa				2
- Eastern & Southern Africa				2

<b>ALCIDAE</b>			
<i>Alca alle alle</i>			
- High Arctic, Baffin Is - Novaya Zemlya		2a	
<i>Uria aalge aalge</i>			
- E North America, Greenland, Iceland, Faeroes, Scotland, S Norway, Baltic		2a	
<i>Uria aalge albionis</i>			
- Ireland, S Britain, France, Iberia, Heigoland		2a	
<i>Uria aalge hyperborea</i>			
- Svalbard, N Norway to Novaya Zemlya		2a	
<i>Uria lomvia lomvia</i>			
- E North America, Greenland, E to Severnaya Zemlya		2a	
<i>Alca torida torida</i>			
- E North America, Greenland, E to Baltic & White Seas			1
<i>Alca torida islandica</i>			
- Iceland, Faeroes, Britain, Ireland, Heigoland, NW France			1
<i>Cepphus grylle grylle</i>			
- Baltic Sea		1	
<i>Cepphus grylle mandtii</i>			
- Arctic E North America to Greenland, Jan Mayen & Svalbard E through Siberia to Alaska		1	
<i>Cepphus grylle arcticus</i>			
- N America, S Greenland, Britain, Ireland, Scandinavia, White Sea		1	
<i>Cepphus grylle islandicus</i>			
- Iceland		1	
<i>Cepphus grylle faeroensis</i>			
- Faeroes:		1	
<i>Fratercula arctica arctica</i>			
- Hudson bay & Maine E to S Greenland, Iceland, Bear Is, Norway to S Novaya Zemlya		2a	
<i>Fratercula arctica naumanni</i>			
- NE Canada, N Greenland, to Jan Mayen, Svalbard, N Novaya Zemlya		2a	
<i>Fratercula arctica grabae</i>			
- Faeroes, S Norway & Sweden, Britain, Ireland, NW France		2a	

## **Annex 5**

### **National Land Policy (May 2007)**



MINISTRY OF LANDS

NATIONAL LAND POLICY

NATIONAL LAND POLICY SECRETARIAT

MAY 2007

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## EXECUTIVE SUMMARY

Kenya has not had a single and clearly defined National Land Policy since independence. This, together with the existence of many land laws, some of which are incompatible, has resulted in a complex land management and administration system. The land question has manifested itself in many ways such as fragmentation, breakdown in land administration, disparities in land ownership and poverty. This has resulted in environmental, social, economic and political problems including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilization and abandonment of agricultural land, tenure insecurity and conflict.

To address these problems, the Government embarked on the formulation of a National Land Policy through a widely consultative process with the aim of producing a policy whose vision is *"To guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity"*. Stakeholders from public, private and civil society contributed towards the policy formulation through thematic groups based discussions, regional workshops and written submissions. Past initiatives such as the Presidential Commission of Inquiry into the Land Law System of Kenya, the Constitution of Kenya Review Commission and the Presidential Commission of Inquiry into the Illegal/Irregular Allocation of Public Land also informed the formulation process.

This land policy has thus been formulated to provide an overall framework and define the key measures required to address the critical issues of land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management. It also addresses constitutional issues, such as compulsory acquisition and development control as well as tenure. It recognizes the need for security of tenure for all Kenyans (all socio-economic groups, women, pastoral communities, informal settlement residents and other marginalized groups).

The Policy designates all land in Kenya as Public, Community or Private. Most significantly, it recognizes and protects customary rights to land. It also recognizes and protects private land rights and provides for derivative rights from all categories of land rights holding.

Through the policy, the government will ensure that all land is put into productive use on a sustainable basis by facilitating the implementation of key principles on land use, productivity targets and guidelines as well as conservation. It will encourage a multi-sectoral approach to land use, provide social, economic and other incentives and put in place an enabling environment for investment, agriculture, livestock development and the exploitation of natural resources.

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National, regional, urban, peri-urban, spontaneous settlements planning principles and guidelines will be formulated and implemented in a transparent, accountable, sustainable, comprehensive and participatory manner. To ensure sound and sustainable environmental management of land based resources, dealings in such land will be guided by conservation and sustainable utilization principles outlined in national environmental laws and policies.

Land administration and management problems will be addressed through streamlining and strengthening surveying and mapping systems, adjudication procedures and processes, land registration and allocation systems and land markets. To ensure access to justice in land related matters, land dispute institutions and mechanisms will be streamlined through the establishment of independent, accountable and democratic systems and mechanisms including Alternative Dispute Management regimes.

Inefficient and time consuming land information systems have complicated planning, zoning and overall management of land. The Government will prepare and implement national guidelines to improve the quality and quantity of land information through computerization at both national and local levels. This will cover all aspects such as standards, geo-referencing, pre-requisites for LIMS, security, intellectual property rights and land information dissemination and pricing.

Land issues requiring special intervention, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest-dwellers and pastoralists) and vulnerable groups will be addressed. The rights of these groups will be recognized and protected. Measures will be initiated to identify such groups and ensure their access to land and participation in decision making over land and land based resources.

The institutional framework will be reformed to ensure devolution of power and authority, participation and representation, justice, equity and sustainability. Three institutions will be set up: the National Land Commission, the District Land Boards and Community Land Boards. District Land Tribunals will also be established, as will be a National Land Trust Fund to mobilize finances. Land matters may in addition be referred to the land division of the High Court. The Ministry in charge of Lands will continue performing residual roles including policy formulation and enforcement, resource mobilization, and monitoring and evaluation. Implementation of the Land Policy will require building of in-house capacity to plan, prepare and implement the policy recommendations.

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## CHAPTER 1: INTRODUCTION

### 1.1 The Problem

1. Land is critical to the economic, social, political and cultural development of Kenya. Land was also a key reason for the struggle for independence and land issues remain politically sensitive and culturally complex.
2. Kenya does not have a single clearly defined or codified National Land Policy. The problems posed by the lack of a policy have been exacerbated by the existence of very many land laws, some of which are inconsistent and incompatible. The result is a very complex land administration system.

### 1.2 Vision of the Policy

3. A National Land Policy that will guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity.

### 1.3 Mission of the Policy

4. To promote positive land reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent institutions dealing with land.

### 1.4 Objectives of the Policy

5. The overall objective of the National Land Policy is to secure rights over land and provide for sustainable growth, investment and the reduction of poverty in line with the Government's overall development objectives. Specifically the policy shall offer a framework of policies and laws designed to ensure the maintenance of a system of land administration and management that will provide:
  - (a) All citizens with the opportunity to access and beneficially occupy and use land;
  - (b) An economically, socially equitable and environmentally sustainable allocation and use of land;
  - (c) The efficient, effective and economical operation of the land market;
  - (d) An efficient and effective utilisation of land and land-based resources; and
  - (e) Efficient and transparent land dispute resolution mechanisms.

### 1.5 National Land Policy Formulation Process

6. The National Land Policy Formulation Process had a three tier management structure, namely: the Minister, the Steering Committee and the Thematic Groups. The management structure

1

was supported by a coordinating unit and a technical advisory council.

### 1.5.1 Land Policy Principles

7. The implementation of this Policy will therefore be guided by the following principles:
  - (a) Equitable access to land for subsistence, commercial productivity and settlement, and the need to achieve a sustainable balance between these uses;
  - (b) Intra- and inter- generational equity;
  - (c) Gender equity;
  - (d) Secure land rights;
  - (e) Effective regulation of land development;
  - (f) Sustainable land use;
  - (g) Access to land information;
  - (h) Efficient land management;
  - (i) Vibrant land markets; and
  - (j) Transparent and good democratic governance of land.

### 1.5.2 Guiding Values

8. The national land policy formulation process was designed to be:

- (a) Consultative;
- (b) Participatory;
- (c) Interactive;
- (d) Inclusive;
- (e) Consensus-based;
- (f) Timely and professional;
- (g) Transparent;
- (h) Gender sensitive;
- (i) Innovative; and
- (j) Cost effective.

### 1.5.3 Methodology

9. This policy was generated from:

- (a) The Issues and Recommendations Report produced by the Thematic Groups comprising of state and non-state actors;
- (b) Regional workshops organized in the eight provinces of Kenya to collect views from stakeholders;
- (c) Reports documenting past initiatives on land policy reform; and
- (d) Written submissions from individuals, groups and organisations.

### 1.5.4 Policy Review

10. The National Land Policy is a living document which comprises an overall framework and set of principles to guide sectoral, legislative and institutional reforms in land administration and management.

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There will be need to review this Land Policy every ten years to take into account current and future needs in view of social and economic dynamics in the land sector. Contributions to enrich the policy will continue to be received to form the basis and agenda for periodic reviews.

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areas (20% of land mass) while the rest of the population live in the vast Arid and Semi-Arid Lands (ASALs). One consequence of this is that size and distribution of land varies quite widely as does population density which ranges from as low as 2 persons per sq. km. in the ASALs to a high of over 2000 in high potential areas.

17. The rural-urban balance stands at 78% and 22% respectively with the most rapid growth confined to major urban centres and satellite towns. According to the 1999 population census, the overall growth rate of Kenya's urban population stands at 6% implying a very rapid rural-urban migration pattern. The census also indicates that absolute poverty in the rural and urban areas now stands at 54% and 53% of the population respectively.
18. In the rural areas, the high to medium potential zones are dominated by small farm holdings. In some cases, insecure land-tenure systems have led to low investment in land improvement and productivity. Many smallholder areas are suffering continuous fragmentation of holdings into uneconomic sizes, and farms are getting smaller in the high rainfall areas and in the drier zones. In addition, many large farms that used to produce seed and breeding stock have been sub-divided and transferred from State to private ownership. The National Development Plan (2002-2008) has proposed the formulation of a National Land Use Policy that would facilitate the preparation and implementation of land use plans for all urban and rural areas.

## 2.2 The Origins of the Land Question

### 2.2.1 Political Aspects

19. It was expected that the transfer of power from colonial authorities to indigenous elites would lead to fundamental restructuring of the legacy on land. This did not materialise and the result was a general re-entrenchment and continuity of colonial land policies, laws and administrative infrastructure. This was because the decolonisation process of the country represented an adaptive, co-optive and pre-emptive process which gave the new power elites access to the European economy. Therefore:
  - (a) It had to be moulded, in a way that allowed the settlers to adapt to the changed economic and political situation by identifying new centres of influence that were not overtly political;
  - (b) It had to achieve the aim of socialising the new elite into the colonial political, economic and social patterns to ensure that the elite was able to rule functionally on an inherited political structure and co-operate with the outgoing rulers; and
  - (c) The process was geared towards preventing the mobilisation of a nationalist base that would be opposed to continuation of colonial policies after independence.

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## CHAPTER 2: THE LAND QUESTION

### 2.1 Country Background

#### 2.1.1 Geographical Features and Ecological Zones

11. The Republic of Kenya has an area of approximately 582,646 sq. km. comprising of 97.8% land and 2.2% water surface. Only 20% of the land area can be classified as medium to high potential agricultural land and the rest of the land is mainly arid or semi-arid. Forests, woodlands and national reserves and game parks account for ten percent (10%) of the land area, i.e. 58,264 sq. km.
12. Topographically, the country may be divided into four distinct geographical and ecological regions or zones with different patterns of land use, namely; the coastal plain, the arid low plateau, the highlands, and the Lake Victoria basin. The rainfall patterns are extremely varied but generally follow those regions, with the Lake Victoria basin receiving the heaviest and most consistent rainfall.

#### 2.1.2 Population Patterns

13. Kenya's population as per the 1999 Population Census was 30.4 million with an annual growth rate of 2.9% and is expected to rise to 55 million by 2050. In terms of demographic characteristics, the population remains relatively young with 60% being below the age of 18 years, and over 51% being female.
14. The decline in population growth rates in the last ten years was the result of both increased mortality (10% in 1995 to 12% in 2003) and stagnation in fertility levels (4.7% in 1995 to 4.9% in 2003). Mortality levels remain high as a result of the persistence of tropical diseases such as malaria and nutrition deficiency, as well as poverty related causes including widespread food shortages in major parts of the country.
15. More recently, the rapid spread of HIV and AIDS has accelerated mortality levels in both urban and rural areas. HIV and AIDS prevalence in most parts of the country now stands at about 7% of the adult population. This has led to reduction of gains achieved earlier in health standards, life expectancy, mortality and child survival. It has also retarded productivity levels and increased the dependency ratio and put the traditional care structures under strain in most parts of the country. Although considerable progress has been achieved in controlling this pandemic, mortality due to HIV and AIDS is yet to peak.

#### 2.1.3 Land Use and Population Distribution

16. Approximately seventy five per cent (75%) of the country's population lives within the medium to high potential agricultural

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20. Property rights protection was deemed imperative for the conclusion of the independence talks held in Lancaster House from 1960-1962. Having worked out an acceptable bargain, the new rulers set about consolidating their power in the new State. The issue of the landless natives proved a thorny one for this new Government prompting it to institute measures to appease the vocal Africans still clamouring for the land taken from them. Within a few years into the independence period, small holders in Kenya had become the main driving force behind agricultural production.

### 2.2.2 Economic Aspects

21. The genesis of the land question can be traced from the colonial times when the objective was to entrench a dominant settler economy while subjugating the African economy through administrative and legal mechanisms. The process of colonisation introduced an alien concept of property relations in Kenya, where the State or the protectorate as a political entity came to own land and grant to property users subsidiary rights. The economies of nearly all Kenyan communities remain largely dependent on land for livelihoods. Politically the land question is related to the administrative controls of the economy that use land as leverage for political support.

### 2.2.3 Legal Aspects

22. Since independence Kenya has had two land tenure systems, namely Customary and statutory land tenure systems. These Land systems are operated under the following statutes:
  - (a) Registration of Titles Act (Cap 281);
  - (b) Government Lands Act (Cap 280);
  - (c) Land Titles Act (Cap 282);
  - (d) Registered Land Act (Cap 300);
  - (e) The Land (Group Representatives) Act (Cap 287);
  - (f) The Trust Land Act (Cap 288); and
  - (g) Sectional Properties Act No.21 of 1987.
23. The net effect of these tenure systems on land administration was to perpetuate a dual system of economic relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry. The duality was manifest in:
  - (a) Systems of land tenure based on principles of English property law on one hand and a largely neglected regime of customary property law on the other hand;
  - (b) A structure of land distribution characterized by large holdings of high potential land, on the one hand, and highly degraded and fragmented small holdings on the other;

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- (c) An autonomous and producer controlled legal and administrative structure for the management of the European sector, as opposed to a coercive controlled structure for the African areas; and
- (d) A policy environment designed to facilitate the development of the European sector of the economy by under-developing its African counterpart.

### 2.3 Contemporary Manifestations and Impacts of the Land Question

- 24. Several developments in the country have brought the land question into sharp focus. These include:
  - (a) Rapid population growth in the small farm sector, the systematic breakdown in land administration and land delivery procedures, and inadequate participation by communities in the governance and management of land and natural resources;
  - (b) Rapid urbanization, general disregard for land use planning regulations, and the multiplicity of legal regimes related to land;
  - (c) Gross disparities in land ownership, gender and trans-generational discrimination in succession, transfer of land and the exclusion of women in land decision making processes;
  - (d) Lack of capacity to gain access to clearly defined, enforceable and transferable property rights, general deterioration in land productivity in the large farm sector; and
  - (e) Inadequate environmental management and conflicts over land and land based resources.
- 25. The impacts of these developments have been many and ultimately lead to low productivity and poverty. They include among others:
  - (a) Severe land pressure and fragmentation of land holdings into sub-economic units;
  - (b) Deterioration in land quality due to poor land use practices;
  - (c) Unproductive and speculative land hoarding;
  - (d) Under-utilization and abandonment of agricultural land;
  - (e) Severe tenure insecurity due to overlapping rights;
  - (f) Disinheritance of women and vulnerable members of society, and biased decisions by district tribunals, committees and boards;
  - (g) Landlessness and squatter phenomenon;
  - (h) Uncontrolled development, urban squalor and environmental pollution;
  - (i) Wanton destruction of forests, catchment areas and areas of unique biodiversity;
  - (j) Desertification in the arid and semi-arid lands; and
  - (k) Growth of extra legal land administration processes.

### 2.4 Land Policy Issues

- 26. On account of the above factors, immediate, holistic and systematic policy attention to the land question is needed from a historical as

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well as contemporary context to address the economic, social, cultural, governance and political ramifications of the land issue.

- 27. The important issues that the National Land Policy addresses are the following:
  - (a) Constitutional issues;
  - (b) Land tenure issues;
  - (c) Land use management issues;
  - (d) Land administration issues;
  - (e) Land issues requiring special intervention;
  - (f) Institutional framework; and
  - (g) Implementation framework.

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## CHAPTER 3: THE LAND POLICY FRAMEWORK

### 3.1 PHILOSOPHY OF THE NATIONAL LAND POLICY

- 28. Land policy is a vision that sets out goals and direction for the present and the future. It consists of measures and guidelines which the government implements to achieve its objectives of attaining the optimal utilization and management of land, and from which laws governing land administration and management are drawn.
- 29. Land is not just a commodity that can be traded in the market. It represents the following multiple values which should be protected by both policy and law:
  - (a) Land is an economic resource that should be managed productively;
  - (b) Land is a significant resource to which members of society should have equitable access;
  - (c) Land is a finite resource that should be utilized sustainably; and
  - (d) Land is a cultural heritage which should therefore be conserved for future generations.
- 30. Existing policies and laws on land in Kenya pursue economic productivity at the expense of other equally important values. These policies and laws assume that only individual tenure can ensure economic productivity. Accordingly, the thrust of previous laws and policies has been to individualize all modes of tenure, especially customary tenure. As a result, customary tenure has been neglected and treated as an inferior tenure system.
- 31. Some of the consequences of the policy of individualization of tenure are the deprivation of many Kenyans of access to land and the disruption of indigenous culture and conservation systems.
- 32. This Land Policy recognizes the values of economic productivity, equity, environmental sustainability and the conservation of culture, and seeks to facilitate their protection.
- 33. It adopts a plural approach, in which individual tenure and customary tenure should co-exist and benefit from equal guarantees of tenure security. The rationale for this plural approach is that the equal recognition and protection of individual and customary tenure will facilitate the reconciliation and realisation of the critical values which land represents.

### 3.2 CONSTITUTIONAL ISSUES

- 34. Land is a central category of property in Kenya. It is the principal source of livelihood and material wealth, and invariably carries cultural significance for many Kenyans. Fundamental issues in the Policy should be anchored in the Constitution. For these reasons, land should be treated as a constitutional issue.

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- 35. The current constitution does not recognize the uniqueness of land and instead lumps it with other categories of property.
- 36. In an ideal situation, a constitution should set out the broad principles for the governance of land, and establish an efficient and equitable institutional framework for land ownership, administration and management. Land policy reforms are not likely to succeed in the absence of such a sound constitutional framework. Accordingly, land reforms should be accompanied by constitutional reforms if they are to be effective.
- 37. The need for land reforms in Kenya largely arises due to the ineffectiveness of the current Constitution in establishing an efficient, accountable and equitable institutional framework for land ownership, administration and management. These deficiencies have resulted in the following:
  - (a) Centralisation of state responsibility over land matters, with the effect that governmental decisions have not been responsive to the citizenry, especially at the local level;
  - (b) Lack of governmental accountability in land governance leading to irregular allocations of public land;
  - (c) Constitutional protection of private property rights even where they are acquired in an illegitimate manner;
  - (d) Mass disinheritance of communities and individuals of their land;
  - (e) Inequitable distribution of land in Kenya. In particular, women, children, minority groups and persons with disabilities have been denied access to land rights; and
  - (f) Ineffective governmental regulation of private property rights, as a result of which unplanned settlements and environmental degradation have become commonplace.
- 38. The current Constitution does not provide an adequate framework for the taxation of land rights, as a result of which the problem of idle land has in particular emerged.
- 39. In order to establish a firm foundation for land policy reform, the Constitution should respect the following principles:
  - (a) Rational allocation of powers and responsibilities to State institutions and the transparency and accountability of such institutions;
  - (b) Participation of the citizenry in governmental decision-making processes, including land matters;
  - (c) Security of legitimate rights to land and equitable access to land in the interests of social justice;
  - (d) Resolution of genuine historical and present land injustices;
  - (e) State regulation of the use of privately owned land;
  - (f) Protection of human rights for all. In particular, it should provide protection against laws, customs and practices that discriminate against women, minorities, children and persons with disabilities, with respect to access to and ownership of land rights; and

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- (g) Sound framework for the taxation of resources such as land to facilitate efficient utilization and distribution of land rights.
40. The Constitution should embrace the constitutional principles outlined above and establish a firm foundation for the implementation of land policy reforms.
41. The Government shall establish a National Land Commission (NLC) to carry out land administration and management efficiently, equitably and sustainably.

### 3.2.1 Regulation of Property Rights

42. In the regulation of property rights, two particular powers of Government raise fundamental constitutional issues, and have neither been exercised effectively nor accountably. These are the powers of compulsory acquisition and development control.
43. The exercise of these powers should be based on rationalized land use plans and agreed upon public needs established through democratic processes.
44. The radical title shall be vested in the people of Kenya collectively as a nation, as communities and as individuals. Kenyans both as communities and as individuals can draw tenure rights from that radical title under specific laws.

#### 3.2.1.1 Compulsory Acquisition

45. Compulsory acquisition is the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation, and is provided for in the current Constitution. This power is exercised by the Commissioner of Lands on behalf of the State. The current Constitution permits a modified form of acquisition in the case of Trust Land which may be activated by the President or local authorities. This is referred to as "setting apart".
46. The established procedures for compulsory acquisition are either abused or not adhered to leading to irregular acquisitions. In addition, the powers of the President and local authorities to set apart Trust Land overlap.
47. The Government shall:
- Review the law on compulsory acquisition in order to align it with the new categories of land ownership under Section 3.3.1 of this Policy;
  - Harmonize the institutional framework for compulsory acquisition to avoid overlapping mandates;
  - Establish compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable;
  - Institute legal and administrative mechanisms for the exercise of the power of compulsory acquisition by the State through the National Land Commission; and

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- (c) Confer pre-emptive rights on the original owners or their successor in title where the public purpose or interest justifying the compulsory acquisition fails or ceases.

#### 3.2.1.2 Development Control

48. Development control is the power of the State to regulate property rights in urban and rural land, and is derived from the State's responsibility to ensure that the use of land promotes the public interest.
49. Development control has not been extensively used to regulate the use of land and to ensure sustainability.
50. Development control is exercised by various Government agencies whose activities are uncoordinated with the result that the attendant regulatory framework is largely ineffective.
51. The Government shall:
- Align the power of development control with the new categories of land ownership under Part 3.3.1 of this Policy;
  - Empower all planning authorities in the country to regulate the use of land taking into account the public interest;
  - Harmonize the institutional framework for development control to facilitate coordination;
  - Establish development control standards, processes and procedures that are efficient, transparent and accountable taking into account International Conventions and national policies relating to the sustainable use of land and the preservation of environmental values;
  - Ensure effective enforcement of development control;
  - Ensure that the exercise of development control takes into account local practices and community values on land use and environmental management; and
  - Ensure effective public participation in the exercise of development control.

### 3.3 LAND TENURE ISSUES

52. Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted.
53. Existing policies and laws on land have protected private land rights, especially under the Registered Land Act, at the expense of indigenous or communal land rights.
54. The individualization of land rights has undermined indigenous culture and conservation systems, especially in areas inhabited by pastoral communities. In addition, colonial and post-colonial land administration in pastoral areas destroyed traditional resource management institutions, thereby creating uncertainty in access, exploitation and control of land and land-based resources.

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55. Successive governments in Kenya have been poor stewards of Government Land and Trust land, due to factors such as abuse of trust and lack of administrative capacities for effective management.

#### 3.3.1 Categories of Land

56. Land in Kenya is currently designated as government land, trust land and private land.
57. This Policy designates all land in Kenya as Public Land, Community Land and Private Land.
58. The Government shall enact a "Land Act" to govern all categories of land.

##### 3.3.1.1 Public Land

59. Public land comprises all land that is not private land or community land and any other land declared to be public land by an Act of Parliament.
60. There is currently no system for the registration of public institutional land. To safeguard such land, a practice emerged under which it was registered in the name of the Permanent Secretary in the Ministry of Finance.
61. To secure tenure to public land, the Government shall:
- Repeal the Government Land Act (Cap 280);
  - Identify and keep an inventory of all public land and place it under the National Land Commission (NLC) to hold and manage in trust for the people of Kenya;
  - Rationalise public land holding and use;
  - Establish an appropriate land taxation system to discourage land speculation and mobilise revenue;
  - Repossess any public land acquired irregularly;
  - Establish participatory and accountable mechanisms for the allocation, development and disposal of public land by the NLC; and
  - Establish an appropriate system for registering public institutional land.
62. The Land Act shall provide, under the National Land Commission, for the establishment of:
- The office of Keeper/Recorder of Public Lands who shall prepare and maintain a register of public lands and related statistics; and
  - A Land Titles Tribunal to determine the *bona fide* ownership of land that was previously public or trust land.

##### 3.3.1.2 Community Land

63. Community land refers to land lawfully held, managed and used by a specific community as shall be defined in the Land Act. Families and individuals within the community are allocated rights to use the

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land in perpetuity, subject to effective utilization. The ultimate ownership vests in the community.

64. The process of individualization of tenure, that is, land adjudication and/or consolidation, the eventual registration of interests in land under the Registered Land Act (Cap 300) and declaration of whole districts in the pre-independence period as Government land has affected customary tenure in two material respects:
- Undermining traditional resource management institutions; and
  - Ignoring customary land rights not deemed to amount to ownership, such as family interests in land, the rights of "strangers" (for example *jodak* among the Luo and the *ahaf* among the Kikuyu), and communal rights to clan land (such as rights to *inkutot* land among the Maasai and rights to *kaya* forests among the Mijikenda).
65. In addition, there has been widespread abuse of trust in the context of both the Trust Land Act (Cap 288) and the Land (Group Representatives) Act (Cap 287). Thus county councils, which are the trustees of Trust land, have in many cases disposed of trust land irregularly and illegally. Further, in the case of pastoral communities, the group representatives entrusted with the management of that land have in many cases disposed of group land without consulting the other members of their groups.
66. To secure community land, the Government shall:
- Document and map existing forms of communal tenure, whether customary or non-customary, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law;
  - Repeal the Trust Land Act (Cap 288);
  - Define, in the Land Act, the term "community" and vest ultimate ownership of community land in the community;
  - Lay out, in the Land Act, a clear framework and procedures for:
    - The recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women;
    - Restitution of illegally acquired parts of trust land to the affected communities;
    - Governing the grant to, and regulation of, use rights to members;
    - Reversion of former Government land along the Coastal region to community land after planning and alienation of land for public usage;
    - Governing community land transactions using participatory processes;
    - Accountability of groups, individuals and bodies entrusted with the management of community land, and community

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- participation in the allocation, development and disposal of community land;
  - vii. Incorporating mutually reinforcing customary mechanisms for land management and dispute resolution;
  - viii. Members opting out of the communal arrangements and buying out of non-members;
  - ix. Reviewing and harmonizing the Land (Group Representatives) Act (Cap 287) with the proposed Land Act;
  - x. Setting apart of community land for public use; and
  - xi. Vesting fish landing sites to appropriate local institutions.
- (e) Invest in capacity building for communal land governance institutions and facilitate their operations; and
- (f) Facilitate flexible and negotiated cross-boundary access among communities.

### 3.3.1.3 Private Land

67. Private land refers to land lawfully held, managed and used by an individual or other entity under statutory tenure. Private land is derived from the Government Land Act (Cap 280), the Registration of Titles Act (RTA) (Cap 281), the Land Titles Act (LTA) (Cap 282), Registered Land Act (RLA) (Cap 300), Trust Land Act (Cap 288) and the Indian Transfer of Property Act (ITPA).
68. In order to rationalize existing systems of private land ownership, the Government shall:
- (a) Harmonize existing modes of statutory tenure under the Land Act;
  - (b) Ensure that the alienation of private rights to land takes into account all other legitimate rights held or claimed by other persons over the affected land, such as the rights of spouses and children;
  - (c) Ensure that all private land is held on terms that are clearly subordinate to the doctrines of compulsory acquisition and development control;
  - (d) Ensure that land management in cooperative and company owned farms are regulated by law to secure the rights of affiliate members and safeguard against subdivisions into uneconomical land sizes and non-adherence to planning requirements;
  - (e) Ensure that private land is held, alienable and transmissible without discrimination on grounds of sex, ethnicity or geographical origin;
  - (f) Establish appropriate land taxation incentives to encourage optimal utilization of private land and discourage land speculation; and
  - (g) Ensure that all private land reverts to the State to be managed by the NLC on behalf of the people of Kenya, in case the owner dies

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without any heirs and in the absence of legally verifiable claims on the land.

### 3.3.2 Overall Tenure Principles

69. The principles guiding the acquisition, use and disposal of land rights shall include:
- (a) The equal recognition and enforcement of land rights arising under all tenure systems;
  - (b) Non-discrimination in ownership of, and access to land under all tenure systems;
  - (c) The protection and promotion of the multiple values of land; and
  - (d) The development of financial incentives to encourage the efficient utilization of land.

### 3.3.3 Rights of Ownership

70. Rights of ownership refer to the quantity of rights that different tenure systems confer on individuals or groups of individuals. The principal rights of ownership are the right to use, the right to dispose of, and the right to exclude others from the land owned. The definition and scope of these rights to land differ from one tenure system to another, depending on policy considerations such as the need to ensure equity in access to land.
71. The power of individual holders to sell land under the Registered Land Act (Cap 300) has often been exercised at the expense of persons who hold customary rights of use over the same land.
72. It is not possible for every person to own land since land is a finite resource. Further, it is often necessary to restrict the rights of ownership to facilitate sustainable resource utilization.
73. The goal of this policy is to facilitate secure access to land, and not necessarily to grant individual freehold rights to land to every person.
74. The Government shall facilitate the acquisition of rights of access to land through leasehold mechanisms.

#### 3.3.3.1 Freehold Tenure

75. Freehold connotes the largest quantity of land rights which the State can grant to an individual. While it confers unlimited rights of use, abuse and disposition, it is subject to the regulatory powers of the State. In Kenya, such interests are held under the Registration of Titles Act (Cap 281), the Land Titles Act (Cap 282) or the Government Lands Act (Cap 280). A similar quantity of land rights is conferred by the "absolute proprietorship," which was introduced by the Registered Land Act (Cap 300) to extinguish customary tenure and replace it with rights that would be individually and exclusively held.

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76. The dual existence of the freehold and the absolute proprietorship causes confusion. There is no need to continue these two separate classifications of what is essentially the same quantity of land rights.
77. To address and streamline freehold tenure, the Government shall:
- (a) Review and rationalize existing laws on freehold tenure, including:
    - i. Merging freehold tenure and absolute proprietorship; and
    - ii. Repealing the principle of absolute sanctity of first registration under the Registered Land Act; and
  - (b) Regulate the power of the primary rights holder to dispose of land in order to ensure that such disposal takes into account all the other legitimate rights held or claimed by other persons over the affected land, including family rights if any.

#### 3.3.3.2 Leasehold Tenure

78. Leasehold tenure is the right to use land for a defined period of time in exchange for the performance of certain obligations such as the payment of rent. Leasehold rights provide a flexible mechanism for transacting rights in land and for land use control.
79. To facilitate the exercise of leasehold rights, the Government shall:
- (a) Align all leases to this policy;
  - (b) Establish mechanisms for the creation of leasehold interests out of public, community and private land;
  - (c) Ensure that the duration of all leases do not exceed 99 years but is nevertheless sufficient to encourage long-term investments in land;
  - (d) Establish an appropriate mechanism for the surrender of interests currently held beyond 99 years in exchange for the proposed standard leasehold term;
  - (e) Subject the renewal of all leases to general planning requirements; and
  - (f) Encourage the use of leasehold rights to facilitate concurrent, multiple and shared access to land.

#### 3.3.3.3 Access to Rights of Ownership

80. Access to land in Kenya may be achieved through any one or a combination of the following:

##### Allocation of public land in rural and urban areas

81. The Government Lands Act (Cap 280) and Trust Land Act (Cap 288) set out procedures for the allocation of public land. In practice, these procedures have been routinely ignored by public officers, resulting in irregular and illegal allocation of public land in total disregard of the public interest.
82. Land allocation should principally be for investment, social infrastructure and human settlement. The land for these uses will be derived from Public Land and Community Land.

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83. To address allocation of public land the Government shall:
- (a) Assess the state of landlessness and develop a suitable programme to address it;
  - (b) Limit the amount of public land allocated to individuals or other entities depending on intended use and agro-ecological zone; and
  - (c) Harmonize and eliminate incidents of multiple allocations and allocate land through public auctions except for land earmarked for the support of livelihoods in urban and rural areas.

##### Land adjudication

84. Historically, the processes and procedures of land adjudication and consolidation were intended to extinguish customary tenure and replace it with statutory tenure. The implementation of the process of adjudication has been slow due to legislative and institutional constraints.

##### The Government shall:

- (a) Bring to completion on-going processes of adjudication and consolidation;
- (b) Ensure that future adjudication and consolidation processes adhere to this Policy; and
- (c) Ensure that adjudication and consolidation processes are speedy, transparent and accountable.

##### Land market operations

85. Land markets deal with the value, transfer, lease, and mortgage of interests in land. Land market operations in rural areas are hindered by policies and laws emphasizing individualization of tenure, which make communal tenure arrangements unattractive for commercial investments.

##### The Government shall:

- (a) Facilitate the commercialisation of land rights subject to principles of equity and sustainability; and
- (b) Develop structures and instruments that will make the land market operations more efficient and effective, including streamlining existing land transaction procedures.

##### Inheritance of Land

86. Land rights can be acquired through inheritance, which entails the transmission of land rights from one living person to another or through testate or intestate succession.

87. The Law of Succession Act was supposed to harmonize inheritance laws but in practice the transmission of land rights is largely done within customary law, which discriminates against women and children.

##### The Government shall:

- (a) Sensitize and educate Kenyans on the provisions of the Law of Succession Act;
- (b) Expedite the application of the Law of Succession Act; and

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- (c) Require that all Kenya Gazette notices pertaining to Succession cases be posted at the lowest local administrative level and at market centres.

#### 3.3.3.4 Access to Land by Non-Citizens

- 91. Under existing land laws, non-citizens can apply for and be allocated land for any permissible use. This differs from the practice in some countries where ownership of land by non-citizens is restricted.
- 92. To ensure that the grant of land rights to non-citizens does not unduly deny citizens access to land, the Government shall:
  - (a) Prohibit non-citizens from holding freehold interests in land;
  - (b) Allow non-citizens and foreign companies to acquire leasehold interests only; and
  - (c) Ensure that the standard leasehold term for land leased to non-citizens shall not exceed 99 years.

#### 3.3.3.5 Access to Land for Investment

- 93. Investments in land related ventures are important avenues for creating wealth that this Policy intends to promote and develop. To secure the national interest and confer benefits to local communities, the Government shall:
  - (a) Ensure that the acquisition of land for investment purposes is in accordance with national development objectives;
  - (b) Compulsorily acquire all land on which mineral resources have been discovered before allocating such land to interested investors in order to prevent the exploitation of local communities;
  - (c) Regulate the development of private resort cities and other major ventures to ensure they adhere to development planning and control and facilitate public access thereto;
  - (d) Acquire land for strategic public ventures such as ports, airports, and research facilities for purposes of security and planning and ensure that such land is accessible to private developers only through sub-leases;
  - (e) Create land banks for investment in industry and housing programmes to be availed at prevailing market rates after servicing; and
  - (f) Set aside serviced land for housing development for the poor at affordable rates.

#### 3.3.4 Resource Tenure Policy

- 94. Kenya is endowed with diverse land based natural resources, which contribute directly or indirectly to the socio-economic well being of its people. These resources include wildlife, forests, water, minerals, marine, and the land itself. Other resources include biodiversity, cultural heritage, palaeontology, archaeology, and indigenous

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knowledge. Sustainable management of these natural resources depends in large part on the governance systems, which defines the relationship between people and between people and the resources.

- 95. To secure access to land based natural resources the Government shall:
  - (a) Undertake an inventory of all natural resources both exploited and unexploited.
  - (b) Develop a comprehensive resource tenure policy as part of an overall land use policy. The formulation of this policy shall be informed by customary tenure principles relating to the common utilization, protection and development of land-based resources;
  - (c) Vest renewable resources such as wildlife, water and public forests in the State to hold in trust for the people of Kenya;
  - (d) Vest all non-renewable resources such as minerals, mineral oil and gas in the State to hold in trust for the people of Kenya;
  - (e) Establish legislative and administrative mechanisms for defining the obligations of the State as a trustee for land-based natural resources and determining beneficiaries thereof and their respective rights;
  - (f) Align, to the greatest extent possible, tenure to land based natural resources to the different land categories namely public, community and private. Where ownership of land-based natural resources are vested in a private entity or community, it shall ensure that they are managed sustainably;
  - (g) Ensure formal recognition of traditional knowledge related to land-based resources and provide the infrastructure for its development and use;
  - (h) Facilitate public access to beaches, lakes, rivers and fish landing sites unless restricted due to environmental fragility or due to security reasons;
  - (i) Provide incentives for communities and individuals to invest in income generating conservation programmes; and
  - (j) Recognize and protect the rights of forest, water dependent or other natural resources dependent communities and facilitate their access, co-management and derivation of benefits from the resources.

#### 3.3.4.1 Benefit-Sharing from Land - Based Natural Resources

- 96. Sustainable use and sharing of benefits from land based natural resources is a concept that has gained popularity in Kenya and globally. Communities and individuals are increasingly becoming aware of their rights to own and use natural resources within their environs, as well as participate in the conservation and management of such resources.
- 97. Benefit-sharing is a way of integrating the economic, social and environmental imperatives of land activities.

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- 98. Strategies for sharing benefits should be developed taking into account the nature of the resources involved and the contribution that diverse actors make to the management of the resources.
- 99. To protect community and individual interests over land based resources and facilitate benefit sharing, the Government shall:
  - (a) Establish legal frameworks to recognise community and private rights over renewable and non-renewable land-based natural resources and incorporate procedures for access to and sustainable use of these resources by communities and private entities;
  - (b) Devise and implement participatory mechanisms for compensation for:
    - i. Loss of land and related non-renewable natural resources;
    - ii. Loss of land where this is deemed imperative in the public interest for the sustainable management of renewable natural resources; and
    - iii. Damage occasioned by wild animals;
  - (c) Put in place legislative and administrative mechanisms for determining and sharing of benefits emanating from land based natural resources by communities and individuals where applicable;
  - (d) Make benefit-sharing mandatory where land based resources of communities and individuals are managed by national authorities for posterity; and
  - (e) Ensure the management and utilization of land-based natural resources involves all stakeholders.

#### 3.4 LAND USE MANAGEMENT ISSUES

- 100. The use of land in urban and rural areas as well as in the land/water interface has been a major area of concern to all Kenyans. Problems of rapid urbanization, inadequate land use planning, unsustainable production, poor environmental management, inappropriate ecosystem protection and management are commonplace and require appropriate policy responses.
- 101. The government shall put in place appropriate strategies for managing sustainable growth and development of urban and rural areas.

##### 3.4.1 Land Use Planning Principles

- 102. It is recognized that land use planning is essential to the efficient and sustainable utilization and management of land and land based resources. However, little effort has been made to ensure that such plans are effectively prepared and implemented. This has been largely due to the glaring functional disconnect between the plan preparatory authorities and implementing agencies, lack of

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appropriate technical and institutional capacity of local authorities, inadequate human resource establishment in the ministry responsible for physical planning, absence of broad based consultation and the lack of an effective coordinating framework for preparation and implementation of the planning proposals and regulations. Lack of a national land use framework has made the situation worse. These problems manifest themselves in terms of unmitigated urban sprawl, land use conflicts, environmental degradation, and spread of slum developments and low levels of land utilization among others.

103. Key Issues that need to be addressed in land use planning are:

- (a) Preparation of land use plans at national, regional and local levels on the basis of predetermined goals and integrating rural and urban development;
  - (b) Review and harmonize existing land use planning laws;
  - (c) Actualization of spatial frameworks for orderly management of human activities to ensure that such activities are carried out taking into account considerations such as the economy, safety, aesthetics, harmony in land use and environmental sustenance;
  - (d) Strategies for human settlement in relation to service centres, growth centres, transport and communication network, environmental conservation and rural development;
  - (e) Efficient and sustainable utilization and management of land and land based resources;
  - (f) An appropriate framework for public participation in the development of land use and spatial plans; and
  - (g) Effective framework for coordination of land use plans to ensure implementation of the planning proposals and regulations.
104. To address land use planning issues, the Government shall:
- (a) Amend the current Physical Planning Act (Cap 285) and Local Government Act (Cap 265) to take account of (a) above;
  - (b) Develop a national land use policy as a basis for land use management;
  - (c) Provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure that the planning process is integrated, participatory and meets stakeholder needs; and
  - (d) Facilitate appropriate institutional and technical capacity building initiatives for accelerating plan implementation at national, regional and local levels.

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#### 3.4.1.1 National and Regional Planning

105. The Government shall:

- (a) Develop national and regional physical development plans as a basis for investment and sustainable utilisation of natural resources, taking cognizance of the local land use practices;
- (b) Provide for implementation of cluster settlements for easier provision of infrastructure and to stop uncontrolled subdivision of land; and
- (c) Identify and map areas which are prone to natural calamities like floods, landslides, drought, etc. for national preparedness by relevant sectors.

#### 3.4.1.2 Rural Land Use Planning

106. To secure effective rural land use planning, the Government shall:

- (a) Review the current laws related to planning to provide for rural land use planning;
- (b) Recognize rural settlement planning as a tool for sustainable resource management, alignment of infrastructure standards and provision of public sites;
- (c) Provide for rural land use strategies to assist communities achieve optimum productivity; and
- (d) Make rural land use planning an integral part of land adjudication process.

#### 3.4.1.3 Urban and Peri-Urban Land Use Planning

107. Development of land in urban and peri-urban areas has been inhibited by poor planning, rapid growth of human settlements and activities, urban sprawl and inadequate provision of infrastructure. Proper planning will provide for well coordinated development of urban and peri-urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities.

108. The Government shall:

- (a) Prepare and implement local area development plans for all urban and peri-urban areas in the country in a participatory manner;
- (b) Establish an effective coordinating mechanism for the preparation, implementation of plans and development control; and
- (c) Encourage development of under utilised land within urban areas.

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- (a) Review planning and development control legislation to harmonize the governance structures, decision-making processes, planning standards and regulations;
- (b) Enhance institutional and human resource capacity of planning institutions;
- (c) Provide a coordinated framework enforcing planning decisions;
- (d) Establish effective and transparent mechanisms to resolve planning and development control disputes; and
- (e) Convert all freeholds in gazetted and planned urban areas to leaseholds.

#### 3.4.2 Sustainable Production Principles

117. Sustainable land use practices are key to the provision of food security and attainment of food self sufficiency status. Key problems that need to be resolved at the level of policy and law include:

- (a) Underutilisation of land particularly in large farms;
- (b) Land deterioration due to population pressure, massive soil erosion and variability in climatic patterns among other things;
- (c) Abandonment of agricultural activities due to poor infrastructure;
- (d) Emergence of land use conflicts as a result of competing land uses;
- (e) Uncontrolled subdivision of land;
- (f) Indiscriminate sale and purchase of land;
- (g) Overstocking in rangelands; and
- (h) Lack of alternative innovative land uses and planning for diversification of the rural economy.

118. The Government shall ensure that all land is put into productive use on a sustainable basis by facilitating the implementation of key land policy principles on conservation of land quality, environmental audit and assessment, productivity targets and guidelines, land sizes and land use planning.

##### 3.4.2.1 Productivity Targets and Principles

119. Land is needed for food production and for the support of economic activities in all sectors. Good agricultural land continue to be converted to other non-agricultural uses thereby threatening the country's productive capacity and long term food security. Large tracts of land remain underutilized. The following principles regarding land productivity targets and guidelines therefore shall be implemented:

- (a) Provision of appropriate incentives and sanctions to ensure that land owners use their land productively and sustainably;
- (b) Putting in place an enabling environment for agriculture and livestock development as well as other uses, including research,

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##### 3.4.1.4 Planning for Urban Agriculture and Forestry

109. Urban agriculture has not been properly regulated and facilitated.

110. The following principles shall be implemented to provide a framework for the proper carrying out of urban agriculture and forestry:

- (a) Promotion of multi-functional urban land use; and
- (b) Putting in place an appropriate legal framework to facilitate and regulate urban agriculture and forestry.

##### 3.4.1.5 Planning for Informal Sector Activities

111. Informal sector activities are a key feature in many parts of Kenya both in planned and unplanned areas and form a crucial part of the economy as a source of livelihood.

112. Informal sector activities have not been accommodated in urban and rural areas. Informal sector activities have arisen spontaneously as a result of rural-urban migration without corresponding availability of formal employment opportunities and other income generating activities.

113. The Government shall:

- (a) Facilitate the provision of land and land use planning to enable the development of informal commercial activities in a more ordered and sustainable manner;
- (b) Put in place mechanisms to allow for informal activities in planned areas;
- (c) Designate areas where informal activities can be carried out; and
- (d) Institute mechanisms to manage rural-urban migration such as decentralizing development to rural areas and minor urban areas.

##### 3.4.1.6 Regulating Use and Development of Land

114. The key to effective land use planning lies in the existence of requisite institutional capacity and governance structures for judicious implementation and enforcement of approved plans, policies and strategies.

115. Problems associated with development control include:

- (a) Weak and inadequate institutional capacity;
- (b) Lack of harmony among the principal statutes that govern planning and enforcement;
- (c) Outdated planning standards and regulations;
- (d) The absence of a coordinating framework between and amongst the public sector agencies and the private sector; and
- (e) A disconnect between plan preparation, implementation and development control.

116. To ensure that land use plans are applied as tools for effective land use management, the Government shall:

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extension services, finance and infrastructure, marketing, agro-processing, rural electrification and farmers' training;

- (c) Establishing a legal framework for periodic reviews of land use practices to facilitate the re-organisation of rural settlements and control excessive parcellation into sub-economic units;
- (d) Putting in place measures to determine appropriate land sizes according to use and productivity of land;
- (e) Putting in place appropriate measures that will enhance both large scale and small scale production of food for the maintenance of food security in the country;
- (f) Provide incentives to stimulate voluntary readjustment of land sizes;
- (g) Institute a regulatory framework for land rental markets to spur development of rural agricultural land; and
- (h) Review and provide for laws that encourage shared proprietorship, time sharing of land and property as opposed to individual ownership only.

##### 3.4.2.2 Land Sizes

120. Population growth and the demand for land have resulted in excessive fragmentation of land into sub-economic units. At the same time, a number of people own large tracts of land which is not economically utilized.

121. The Government shall ensure that all sub-divisions of land are tied to land use sizes specified for different ecological zones. To facilitate this, the Government shall:

- (a) Put in place a system to determine economically viable minimum land sizes for various zones; and
- (b) Promote conformity of land subdivisions with the set minimum economically viable land sizes.

122. To ensure that all land is productively utilized, the Government shall periodically commission field surveys on land holdings to determine levels of utilization with a view to ensuring that the use is economic and optimal.

##### 3.4.2.3 Restoration and Conservation of Land Quality

123. To restore the environmental integrity of land and facilitate sustainable management of land based resources, the Government shall:

- (a) Introduce incentives to encourage the use of technology and scientific methods for soil conservation
- (b) Encourage use of traditional land conservation methods;
- (c) Put measures to control degradation of land through abuse of inputs and inappropriate land use practices; and
- (d) Put in place institutional mechanisms for conservation of quality of land for environmental conservation purposes.

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#### 3.4.2.4 Land Reclamation

124. Land reclamation is the process of extending or improving land to support a specified end use. It is useful in dealing with land that has been affected by the extraction and processing of non-renewable resources, degraded environments, swampy and seasonally submerged wetland, and the shoreline of the sea or ocean.
125. The purpose of reclamation is to make land suitable for agriculture or settlement or such other planned use.
126. To ensure sustainable utilisation of reclaimed land the Government shall develop a regulatory framework for reclamation, rehabilitation, restoration and use of reclaimed land.

#### 3.4.3 Environmental Management Principles

127. Kenya faces a number of environmental problems including the degradation of natural resources such as forests, wildlife, water, marine and coastal resources as well as soil erosion and the pollution of air, water and land.
128. To conserve and manage the environment, measures on conservation and sustainable management, ecosystem protection, urban environment management and environmental assessment and audits shall be undertaken.

##### 3.4.3.1 Conservation and Sustainable Management of Land Based Natural Resources

129. Sustainable management of land based natural resources depends in large part on the governance systems, which defines the relationship between people, and between people and the resources.
130. To achieve an integrated and comprehensive approach to the management of land based natural resources, all policies, regulations and laws dealing with land based natural resources shall be harmonised with the framework established by the Environmental Management and Coordination Act (EMCA), 1999.
131. To sustainably manage land based natural resources, the Government shall:
- Encourage preparation of participatory environmental action plans by communities and individuals living near environmentally sensitive areas to preserve cultural and social-economic aspects;
  - Identify, map and gazette critical wildlife migration and dispersal areas and corridors in consultation with the communities and individual land owners;
  - Encourage the development of wildlife sanctuaries and conservancies and involve local communities and individuals living contiguous to the parks and protected areas in the co-management of protected areas;

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135. Development activities in all islands and front row beaches shall take into account concerns of public access to beaches, the fragility of the ecosystem and national security and shall be subject to strict controls and management orders.
136. The protection of water sheds, lakes, drainage basins and wetlands shall be guided by the following principles:
- Prohibition of settlement and agricultural activities in the water catchment areas;
  - Identification, delineation and gazettement of all water courses and wetlands in line with International Conventions; and
  - Integrated resource management based on eco-system structure regardless of administrative or political boundaries.
137. All land uses and practices shall conform to land use plans and the principles of biodiversity protection, conservation and sustainable development.

##### 3.4.3.3 Urban Environmental Management Principles

138. Kenya's rapid urbanization has infringed on environmentally sensitive areas such as wetlands, hilltops, water bodies and the coastline. Poor management of solid and liquid waste, gaseous emissions and unsafe quarries are some of the common urban environmental problems.
139. To address urban environmental problems the following measures shall be implemented:
- Prohibit discharge of untreated solid and liquid waste into rivers, lakes and the ocean by individuals and local authorities by providing appropriate waste management methods;
  - Encourage and require waste segregation and labelling for easier management;
  - Regulate all quarrying and excavation activities;
  - Encourage urban waste re-use and recycling; and
  - Develop a framework for rehabilitation of dumping sites and land that has been subjected to environmental degradation for enhanced livelihoods and environmental management.

##### 3.4.3.4 Environmental Assessment and Audit as Land Management Tools

140. To promote environmental impact assessment and audit as tools for land management, the Government shall implement following principles:
- Ensure that environmental impact assessments and audits are carried out on all land developments that have a propensity to degrade the environment and implement appropriate remedial measures;
  - Monitor annually and stringently urban and rural environmental degradation to avert both current and future socio-economic negativities in infrastructural developments;

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- Provide mechanisms for resolving grievances of communities arising from human/wildlife conflicts;
- Review the gazettement of forests and protected areas to ensure that they are protected for their ecosystem values and not merely to physically exclude human activities;
- Create an effective institutional framework and capacity to implement International Conventions especially those touching on access to land based natural resources; and
- Facilitate partnership with neighbouring countries to foster Trans-Boundary Natural Resource Management (TBNRM) in the interest of national and international conservation and development goals.

##### 3.4.3.2 Ecosystem Protection and Management Principles

132. Kenya has diverse ecosystems which include forests, wetlands marine and coastal ecosystems, national parks, arid and semi arid lands (ASALs), water sheds, lakes and drainage basins. The core problem in the conservation and management of these ecosystems is due to their trans-boundary nature and unsustainable exploitation arising principally from conflicting land uses and inadequate enforcement of natural resource management guidelines.
133. To ensure the protection of ecosystems and their sustainable management, the Government shall:
- Undertake a survey of all critical ecosystems to determine sustainable land uses for these ecosystems;
  - Establish measures to ensure that healthy ecosystems are protected through land use controls; and
  - Define and maintain beaches at high and low water marks and put in place measures to control beach erosion.
134. Fragile ecosystems shall be managed and protected using the following measures:
- Development of a comprehensive and integrated land use policy with regard to fragile areas that considers the needs of neighbouring communities and individuals in such areas;
  - Zoning forest land comprising water catchment areas to protect it from further degradation;
  - Development of procedures for co-management and rehabilitation of forest resources, recognizing traditional management systems and sharing of benefits with contiguous communities and individuals;
  - Putting in place participatory mechanisms for sustainable management of fragile ecosystems in partnership with public, private and community stakeholders;
  - Declaration of all national parks, game reserves, all islands, front row beaches and all areas hosting threatened biodiversity as fragile ecosystems;

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- Encourage public participation in the monitoring and protection of the environment; and
- Institute the polluter pays principle, and provide incentives to manufacturing concerns in order to promote cleaner production and prevent pollution of soil, water and air.

#### 3.4.4 Sectoral and Cross-Sectoral Land Use

141. Effective land management requires coordination and cooperation among different sectors. This Policy should be understood and implemented taking into account all related sectors such as agriculture, livestock, water, energy, human settlement, industry, tourism, wildlife, forestry and fisheries.
142. To achieve this, the Government shall:
- Facilitate an integrated and multi-sectoral approach to land use;
  - Formulate a clear land use policy to guide rural and urban development, avoid land use conflicts and spur productivity;
  - Encourage integrated land use planning through use of appropriate information technology and participatory processes;
  - Identify areas of interest for sharing/merging resources and expertise through Public-Private Partnerships;
  - Ensure that all public and private institutions whose functions are associated with land are involved in the implementation of this Policy;
  - Align the land use provisions of the Local Government Act (Cap 265) and Physical Planning Act (Cap 296) with this Policy; and
  - Rationalize and harmonize all relevant sectoral policies touching on land with this Policy.

#### 3.5 LAND ADMINISTRATION ISSUES

143. Land administration refers to the process of determining, recording and disseminating information about ownership, value and use of land. An efficient land administration system guarantees, the recording of land rights and land and tenure security, guides land transactions, provides land users with appropriate forms of documentation to guarantee land rights and supports the processes of land allocation, land dispute resolution and land taxation.
144. The principal components of land administration are:
- Ascertainment and registration of land rights;
  - Allocation and management of public land;
  - Facilitation of efficient transactions in land;
  - Maintenance of efficient and accurate land information system;
  - Mechanisms for assessment of land resources for fiscal development and revenue collection; and
  - Efficient and accessible mechanisms for resolving land disputes.

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145. The existing land administration system is bureaucratic, expensive, undemocratic and prone to abuse, resulting in inordinate delays and injustice in the administration of land.

### 3.5.1 Land Rights Delivery Principles

146. Land rights delivery is the process of mobilizing institutional mechanisms and personnel for ascertaining and registering rights. The current system of land rights delivery has not supplied adequate serviced land at an affordable price. Further, the system has not achieved equitable and fair distribution of the limited land resources. The unsatisfactory land rights delivery system is also a result of land speculation, corruption, political interference and the abuse of power by the public agencies mandated to manage land. The inefficiency of the existing land delivery system is due to poor record keeping which has encouraged multiple allocations and registrations of plots of land.
147. In order to establish an efficient land rights delivery system, the Government shall:
- Align land rights delivery procedures and processes with this Policy;
  - Consolidate, harmonize and streamline all land registration statutes to ensure clarity and reduce bureaucratic bottlenecks;
  - Ensure that land records are authenticated, documented, and their custody and sanctity secured; and
  - Computerize land records and facilitate access to land information.

### 3.5.2 Land Adjudication and Registration Principles

148. Land adjudication is the process of ascertaining and recording rights and interests in land claimed by individuals and other entities. Once ascertained, such rights and interests are entered into a land register, which facilitates the accuracy of the land information system and enables efficient transactions in land.
149. There are too many statutes dealing with the registration of land rights. No attempt has been made to harmonize these statutes to ease the process of registration of land rights and facilitate speedy access to land registration information. There is need to harmonize the registration statutes to enhance the efficiency, transparency and accountability of the process of land registration.
150. The Government shall:
- Enact a "Land Registration Act" which shall recognize and protect all legitimate rights and interests in land held under the categories of land set out in Section 3.3.1 of this Policy;
  - Repeal the Land Adjudication Act and Land Consolidation Act; and

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- Repeal the land registration provisions of the Registration of Titles Act (RTA) (Cap 281), the Land Titles Act (LTA) (Cap 282) and the Registered Land Act (RLA) (Cap 300).

### 3.5.3 Settlement Land Allocation Principles

151. There are no clearly defined procedures for the allocation of land in settlement schemes under the Agriculture Act (Cap 318) leading to manipulation of the lists of allottees and exclusion of the poor and the landless. These problems are compounded by the lack of clearly defined procedures for identifying, and keeping records of genuine squatters and landless people. In addition there are numerous cases of underutilized land by allottees.
152. To streamline land settlement procedures and processes, the Government shall:
- Bring in all the Settlement services currently under the Agriculture Act (Cap 318) to the proposed Land Act;
  - Lay out in the Land Act a clear framework for:
    - identifying, verifying and recording of genuine landless people;
    - acquisition of land for establishment of settlement schemes;
    - survey and demarcation of land in settlement schemes;
    - equitable and accountable allocation of settlement scheme plots;
  - Review and streamline the documentation process of settlement plots; and
  - Repossess and reallocate abandoned settlement plots.

### 3.5.4 Land Surveying and Mapping

153. The processes of land surveying and mapping are integral to an efficient land administration and management system. In addition to preparing the maps and plans to support land registration, they map the earth for land use planning.
154. These processes have been hampered by slow, cumbersome and out-dated modes of operation.
155. The Government shall:
- Amend the Survey Act (Cap 299) to allow for the use of modern technology such as Global Positioning Systems (GPS) and Geographical Information Systems (GIS), and streamline survey authentication procedures;
  - Establish a unitary and homogeneous network of control points of adequate density, preferably using dynamic technology such as GPS; and
  - Improve mapping standards in general boundary areas through definition, realignment and pegging of shared/general boundaries so that they fit into a computerized system.

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### 3.5.5 Cadastral Principles

156. An efficient system of land delivery requires that capability should exist for the preparation and maintenance of cadastral information indicating not merely who owns what interest in land, but other details such as land capability, uses, size, distribution and topographical characteristics. Due to various constraints, the Kenyan cadastre is still very in-optimal.
157. The Government shall:
- Modernize the infrastructural apparatus for land delivery, through computerization and use of other electronically linked systems;
  - Create human resource capacity to operate the modernized infrastructure; and
  - Remove constraints to the realization of an optimal cadastre.

### 3.5.6 Land Information Management Principles

158. Kenya lacks up to date land information on different uses such as agriculture, forestry, wildlife, water and infrastructure, among others. Lack of this vital information complicates effective planning, zoning and overall management of land.
159. Land information consists of datasets for decision making in land administration and management. These include geo-referencing and basic mapping data, land ownership and land rights, land use planning data, land valuation data, and inventories of public and community land.
160. A Land Information Management System (LIMS) is a computer-based information system that enables the capture, management, and analysis of geographically referenced land-related data in order to produce land information for decision-making in land administration and management.
161. Land information is currently held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making about land.
162. Other deficiencies of the existing LIMS include expensive cadastral surveys, centralization of cadastral processes, and slow, cumbersome procedures.
163. To facilitate the establishment of an efficient land information management system, the Government shall:
- Establish a comprehensive, efficient, user friendly, accessible, affordable, transparent and gender sensitive land information management system;
  - Ensure that the land information system facilitates the accurate classification and mapping of private land, public land, community land, as well as land claimed by minority groups,

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- pastoral communities, disputed land, and land identified to have been irregularly allocated;
- Establish national guidelines on land information, to govern matters such as land information standards, security, dissemination and pricing;
  - Make land information available in a form and language that can be understood by most citizens, including accessible and clear hard copy information products and simple maps;
  - Re-organize, update and authenticate existing land records (cadastres) and establish a computer based LIMS;
  - Establish a national spatial data infrastructure to ensure integration of and access to spatial data sets held by different national and sectoral agencies;
  - Provide necessary infrastructure, such as electricity, computers and internet connectivity at all levels of land administration;
  - Promote the growth of a viable land information market;
  - Enact a land information law to facilitate access to and management of land information;
  - Facilitate the sharing of information across Government departments;
  - Encourage public-private partnerships in the setting up of and administration of the LIMS;
  - Establish a regulatory body for Geo-Information professionals to generate and develop a code of ethics and to standardize training of professionals; and
  - Establish mechanisms for the incorporation of traditional land information in the LIMS and ensure that land records include full documentation of community land, land pertaining to indigenous and minority groups, and the existence of overlapping or disputed sets of land and resource rights.

### 3.5.7 Land Market Principles

164. The development of vibrant land markets is hindered by inadequate information, political interference, bureaucratic inefficiencies, corruption, and the persistence of insecure and unclear land tenure arrangements and the absence of innovative market mechanisms. There are currently emerging new land markets including rental markets, which should be encouraged since the more common land markets based on sale and long term leases is not effective in ensuring equity and access to land. Land rental markets thus have the potential to provide access to land to those who are productive but own little or no land.
165. In order to enhance the efficiency of land markets, the Government shall:
- Decentralise land registries;

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- (b) Facilitate allocation of serviced land for investment purposes;
- (c) Facilitate and promote the land market operations in community land; and
- (d) Encourage the development of land rental markets while protecting the rights of smallholders by providing better information about transactions to enhance their bargaining power.

### 3.5.8 Land Taxation

166. The purpose of land taxation is to provide a stable fund for acquisition of land for banking, land servicing, and facilitating efficient utilization of land. Existing laws empower the State and local authorities to assess and collect taxes such as stamp duty, estate duty and property rates.
167. Existing land taxation laws focus mainly on urban land. However, land taxation assessment and collection procedures under existing laws are not effective in raising revenue and discouraging hoarding of land.
168. To facilitate the efficient utilisation of land and land-based resources, the Government shall:
- (a) Apply the Unimproved Site Value and Improvement Value Taxation in urban areas;
  - (b) Introduce a development levy on undeveloped land;
  - (c) Apply the Development and Capital Gains Tax in order to capture some of the value created through public infrastructure improvements for society;
  - (d) Apply the Estate/Probate Tax subject to the remissions already enjoyed by certain types of properties and ownership to safeguard interests of the poor and the rural folk;
  - (e) Continue to apply Stamp Duty but review the stamp duty tariff from time to time to facilitate home ownership; and
  - (f) Improve the capacity of public institutions including local authorities to assess and collect taxes.

### 3.5.9 Dispute Resolution Principles

169. There is need to ensure access to timely, efficient and affordable dispute resolution mechanisms. This will facilitate efficient land markets, tenure security and investment stability in the land sector.
170. In order to facilitate effective, fair and efficient dispute resolution, the Government shall:
- (a) Establish an independent, accountable and democratic system backed by law to adjudicate land disputes at all levels;
  - (b) Establish appropriate institutions for dispute resolution and access to justice within communities with clear operational procedures, mechanisms for inclusion of community members in

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historical injustices. The Government shall develop a legal and institutional framework for handling land restitution.

#### 3.6.1.3 Resettlement

175. The purpose of resettlement is to grant internally displaced or historically dispossessed persons access to land, and to provide them with infrastructure and basic services such as shelter, water and sanitation facilities. Further, the resettlement principle seeks to procure adequate land for the reorganization of both rural and urban settlements in light of expanding populations. The Government shall establish criteria for the determination of who qualifies to benefit from resettlement programmes and ensure that it is carried out in a transparent and accountable manner.

#### 3.6.1.4 Land Banking

176. The implementation of the principles of redistribution, restitution and resettlement of the poor and the landless will depend on the availability of land.
177. To avail land for redistribution, restitution and resettlement, the Government shall:
- (a) Establish land banks and make land available for investment and development;
  - (b) Formulate and implement a government buy-back policy;
  - (c) Procure land for land banks through purchase and donations; and
  - (d) Institute a programme for land reclamation, as provided for in section 3.4.2.4 of this policy.

### 3.6.2 Resolution of Historical Injustices

178. Historical injustices are land grievances which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, treaties and agreements between local communities and the British. The grievances remain unresolved because successive post independence Governments have failed to address them in a holistic manner. In the post-independence period, the problem has been exacerbated by the lack of clear, relevant and comprehensive policies and laws.
179. The Government shall:
- (a) Establish mechanisms to resolve historical land claims arising in 1895 or thereafter. The rationale for this decision is that 1895 is the year when Kenya became a colony under the British East African Protectorate with the power to enact policies and laws under the Crown. It is these colonial policies and laws which

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- decision-making and clear record keeping to ensure transparency and the development of guiding rules for making decisions on specific matters; and
- (c) Encourage and facilitate the use of Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to reduce the number of cases that end up in the court system and delayed justice.

### 3.6 LAND ISSUES REQUIRING SPECIAL INTERVENTION

171. Several land related issues deserve special attention. These include:
- (a) Historical injustices;
  - (b) Pastoral land issues;
  - (c) Coastal region land issues;
  - (d) Land rights of minority and marginalized groups;
  - (e) Land rights of women;
  - (f) Land rights in informal settlements and for informal activities;
  - (g) Land rights of children; and
  - (h) The impact of the HIV and AIDS pandemic on agricultural production and access to land rights.

#### 3.6.1 Mechanisms for Resolving Special Land Issues

172. In the interest of social and economic development, the Government shall put in place measures to resolve land issues requiring special intervention taking into account the land reform principles of redistribution, restitution and resettlement in order to facilitate access to, and utilisation of, land and land-based resources.

##### 3.6.1.1 Redistribution

173. The purpose of land redistribution is to provide the disadvantaged and the poor with access to land for residential and productive purposes. The need for land redistribution also arises because of the gross disparities in ownership that have been occasioned by lopsided development priorities, environmental degradation, gender and trans-generational discrimination. In Kenya land redistribution has been carried out through the Settlement Schemes Programme. There is a need to establish clear legal framework for identifying, verifying and recording genuine landless people and establish clear and equitable criteria for allocation of settlement scheme plots.

##### 3.6.1.2 Restitution

174. The purpose of land restitution is to restore land rights to those that have unjustly been deprived of such rights. It is based on a recognition that the lack of access to land may be due to unfair governmental policies and laws. It underscores the need to address circumstances which give rise to such lack of access, including

formed the genesis of the mass disinheritance of various Kenyan communities of their land;

- (b) Establish a suitable legal and administrative framework to investigate the historical injustices and recommend mechanisms for their resolution;
- (c) Review all laws and policies adopted by post independence Governments that exacerbate the historical injustices, including the constitutional provisions on the right to private property and compensation on compulsory acquisition regardless of how the property was acquired; and
- (d) Establish suitable mechanisms for restitution, reparation and compensation of historical injustices and claims.

### 3.6.3 Pastoral Land Issues

180. Pastoralism is a livestock based economic activity. It is suited to the dry lands and has been adapted from generation to generation. Pastoralism has survived as a livelihood and land use system despite changes in life styles and technological advancements. This tenacity of pastoralism testifies to its appropriateness as a production system for the dry lands.
181. The problems of pastoral land tenure relations have their roots in the dispossession of some pastoralist communities of their land and land based resources. The expropriation of high potential areas for natural forests and game reserves, poor infrastructure and services attests to this problem. Colonial and post-colonial land administration in the pastoralist areas led to the deprivation of land management rights from the traditional institutions thereby creating uncertainty on the access, control and exploitation of land based resources including grazing lands, water and salt licks among others.
182. The special problems that women in dry land areas face due to lack of rights to land as they play their diverse roles are recognized.
183. To secure pastoralists livelihoods and tenure to land, the Government shall:
- (a) Recognize pastoralism as a legitimate land use and production system;
  - (b) Repeal the Land (Group Representatives) Act and provide for pastoralism in the Land Act;
  - (c) Institute alternative methods of registration that define individual rights in pastoral communities while allowing them to maintain their unique land use system and livelihoods;
  - (d) Establish a legislative framework to regulate dealings in land in pastoralist areas;
  - (e) Ensure that the rights of women in pastoral areas are recognized and protected;

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- (f) Provide for flexible and negotiated cross boundary access to protected areas, water, pastures and salt licks among different stakeholders for mutual benefit to facilitate the nomadic nature of pastoralism;
- (g) Ensure that all land uses and practices under pastoral tenure conform to the principles of sustainable resource management; and
- (h) Review the boundaries of reserved lands in pastoral areas to determine the current need.

### 3.6.4 Land Issues Peculiar to Coast Region

- 184. The land question within the Coast region is potentially explosive owing to its peculiar historical and legal origins. In spite of this situation no serious systematic efforts have been made by subsequent Governments to resolve them.
- 185. The Land Titles Act (Cap 282) radically altered the concept of land ownership under African customary tenure governing the indigenous coastal communities, and created biases in the land adjudication against the indigenous communities. The abuse of the Land Titles Act has had a great negative impact on coastal land leading to the area having the largest single concentration of landless indigenous people. Specifically, this is manifested in form of "squatters" on Government land, absentee land owners, tenants-at-will, idle land, mass evictions and lack of access to the sea.
- 186. The slow land adjudication process and delay in finalization of settlement programmes have denied the locals secure access to land.
- 187. The granting of freehold and leasehold tenure to beaches, some islands within the Indian Ocean to foreigners has further complicated land issues at the Coast by hampering public access to beaches, movement along the beaches for leisure, security maintenance or for fishing purposes and making development controls difficult to implement.
- 188. Salt mining, an activity peculiar only to the coast, has led to the ownership of large tracts of land suitable for agricultural production by salt harvesting companies which have left the land lying idle and excluded the local communities from accessing the land.
- 189. The coastal region hosts some unique and strategic government ventures which include the Kenya Ports Authority (KPA), the Kenya Navy Base, the Kenya Marine and Fisheries Research Institute among others. These institutions own large tracts of land. Some of this land has, however, been allocated to private developers who hold it for speculative purposes and without due consideration of the future development plans of the institutions.

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- (j) Sensitize and educate people on their land rights and land administration and management procedures;
- (k) Provide a framework for sharing benefits from land and land based resources with communities; and
- (l) Initiate and support the preparation of an integrated coast resource management plan.

### 3.6.5 Land Rights of Vulnerable Groups

- 195. Vulnerability is a manifestation of poverty and deprivation. It takes forms such as lack of adequate shelter, illiteracy, exposure to ill treatment, lack of power to influence decisions affecting one's life, and disabilities. The most vulnerable persons in Kenya include, but not limited to, subsistence farmers, pastoralists, hunters and gatherers, agricultural labourers, unskilled and low-skilled workers, unemployed youth, persons with disabilities, persons living with HIV and AIDS, orphans, slum and street dwellers, and the aged.
- 196. Poor and vulnerable people lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources.
- 197. The land rights of vulnerable individuals and groups are not protected and are subject to bias and discrimination. Further, the vulnerable lack cohesive institutions to represent their interests
- 198. To secure access to land and land based resources for vulnerable groups, the Government shall:
  - (a) Develop mechanisms for identifying, monitoring and assessing the vulnerable groups;
  - (b) Put in place mechanisms for redistribution of land and resettlement;
  - (c) Facilitate their participation in decision making over land and land based resources; and
  - (d) Protect their land rights from unjust and illegal expropriation.

### 3.6.6 Land Rights of Minority Communities

- 199. Minority communities are culturally dependant on specific geographical habitats. Over the years, they have lost access to land and land-based resources that are key to their livelihoods. This follows the gazettement of these habitats as forests or national reserves or their excision and allocation to individuals, who subsequently obtain titles to the land.
- 200. These communities have not been represented adequately in governmental decision making at all levels since they are relatively few in number. Their political and economic marginalization has also been attributed to the fact that colonial policies assimilated them into neighbouring communities. In addition, the colonial Government alienated their lands through forest preservation policies, which effectively rendered them landless as they were

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- 190. Private developments along and around navigation beacons, ship leading lights and other control points has negatively affected the maintenance of these installations.
- 191. Reclamation of land from the sea has in the past been an activity carried out by the KPA for specific uses for public good. Increasingly private developers have engaged in land reclamation for speculative purposes. Moreover, some of the land reclaimed by KPA has been allocated to private developers without due consideration for the intended use, or security of the port facilities.
- 192. The Tana and Sabaki rivers have their deltas in the coastal regions of Kipini and Malindi respectively. The Tana delta is Kenya's largest oceanic ecosystem and an important wetland housing unique varieties of mangrove trees among other life species. In spite of the area's ecological importance, speculative land allocation, inappropriate land uses as well as inadequate conservation measures are rampant.
- 193. Lamu Island is a recognised, world famous heritage site. Unfortunately land ownership arrangements have not taken this into account. In addition, many local inhabitants of the island remain landless due to ownership of land by foreigners.
- 194. To address the Coastal land problems, the Government shall:
  - (a) Take an inventory of all Government land along the '10 mile coastal strip' and other parts of the province where the problem is prevalent and come up with a framework for conversion to community land for eventual adjudication and resettlement;
  - (b) Vest all that land in the respective community structures within whose jurisdiction they are situated as trustees for the persons ordinarily resident in the area;
  - (c) Establish suitable legal and administrative mechanisms to address historical claims arising from the application of the Land Titles Act (Cap 282) of 1908;
  - (d) Provide a legal framework to protect the tenants at will;
  - (e) Establish convenient public utility plots along the coastline to serve as landing sites and for public recreation, and open up all public access roads to the beach;
  - (f) Institute controls to limit construction of walls along the high water mark;
  - (g) Provide a framework for beach management and for protection, conservation, and management of land that has been created through natural recession of the sea or through reclamation from the sea;
  - (h) Establish a framework for consulting indigenous occupants of land before establishing settlement schemes and other land use projects;
  - (i) Protect and conserve the Tana and Sabaki Delta ecosystems in collaboration with contiguous communities;

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denied the right to live in the forests. Colonial capitalism also led to the marginalization of hunter-gatherer communities at the expense of agricultural expansion.

- 201. To protect and sustain the land rights of minority communities, the Government shall:
  - (a) Undertake an inventory of the existing minority communities to obtain a clear assessment of their status and land rights;
  - (b) Develop a legislative framework to secure their rights to individually or collectively access and use land and land based resources;
  - (c) Provide legal and institutional frameworks for restitution in lieu of destroyed property and loss of cultural habitation; and
  - (d) Facilitate their resource management systems to ensure sustainability of land and land base resources.

### 3.6.7 Disaster Management

- 202. The country experiences disasters that should be managed in order to avoid the loss of both human and animal life, the negative impacts on agriculture, the natural environment and the destruction of property. Such disasters include floods, earthquakes and landslides. There are no legal, policy and institutional frameworks for the prevention and management of land-related disasters. There is also a dearth of appropriate technologies and financial resources to deal with these disasters.
- 203. The Government shall:
  - (a) Establish legal, policy and institutional frameworks for the prevention and management of land-related disasters; and
  - (b) Establish a suitable legal and administrative framework for resettlement in the event of natural disasters.

### 3.6.8 Refugees and Internally Displaced Persons

#### 3.6.8.1 Refugees

- 204. Kenya hosts a large number of refugees as a result of the civil strife in neighbouring countries.
- 205. Due to the unpredictable nature of refugee influxes, resources such as land, fuel wood, water and pasture are overstretched in already stressed environments. Widespread underdevelopment of infrastructure in the affected areas exacerbates the situation.
- 206. The location of refugee camps in fragile eco-system causes systematic ecological degradation.
- 207. The Government shall:
  - (a) Ensure that the establishment of refugee camps is subject to development planning and control;
  - (b) Put in place a legislative and administrative framework for establishing, planning and managing refugee camps taking into

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account this Policy, the Environmental Management Coordination Act and other sectoral laws on natural resources;

- (c) Build the capacity of relevant ministries, communities and the private sector to appreciate and address land-related environmental concerns in refugee camps;
- (d) Involve host communities in setting up, planning and managing refugee camps; and
- (e) Ensure the provision of adequate resources for the conservation and rehabilitation of refugee camps.

#### 3.6.8.2 Internally displaced persons

208. A significant number of Kenyans have been displaced from their land as a result of tribal and land clashes. These people are currently hosted in camps for internally displaced persons, roadside settlements, market centres and colonial villages established as community concentration centres.
209. There are no legal, policy or institutional frameworks for dealing with the issues that arise from internal displacement.
210. The Government shall:
- (a) Undertake an inventory of all genuine internally displaced persons;
  - (b) Identify problems associated with the presence of internally displaced persons such as additional land pressure and competition for land based resources;
  - (c) Establish legal, policy and institutional frameworks for dealing with the issues that arise from internal displacement; and
  - (d) Resettle as appropriate all internally displaced persons.

#### 3.6.9 Informal Settlements

211. The essence of 'informal' or 'spontaneous' or 'squatter' settlements is the absence of security of tenure and planning. Many Kenyans live as squatters, in slums and other squalid places. Squatters and informal settlements therefore present a challenge for land planning and development.
212. Squatters are found on public, community and private land.
213. To deal with the difficulties experienced and caused by squatters and informal settlements, the Government shall:
- (a) Take an inventory of genuine squatters and people who live in informal settlements;
  - (b) Determine whether land occupied by squatters is suitable for human settlement;
  - (c) Put in place appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement;
  - (d) Facilitate planning of land found to be suitable for human settlement;

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land whenever male house heads succumb to illnesses occasioned by the pandemic.

217. The HIV and AIDS pandemic underscores an urgent need to reform cultural and legal practices that discriminate against women and children with respect to access and ownership of land.
218. The Government shall:
- (a) Put in place mechanisms to protect the land rights of people living with HIV and AIDS and ensure that these are not unfairly expropriated by others to the detriment of such persons and their families; and
  - (b) Facilitate public awareness campaigns on the need to write wills to protect land rights of dependants in the event of death.

#### 3.6.10.2 The Rights of Children and Youth

219. Children and youth require special protection in matters related to land rights because they are minors under the law and may not be considered as grantees of land rights. Additionally, culture and tradition exclude children and youth from accessing, and making decisions over land.
220. In view of this precarious position and considering the problems related to HIV and AIDS, children and youth require special protection with regard to their land rights.
221. To protect the rights of children and youth, the Government shall:
- (a) Enforce the Children's Act (Cap 586) and supervise the appointment of guardians for orphans to safeguard their land rights;
  - (b) Review the legislative framework to provide that minority does not constitute a barrier to proprietorship where circumstances indicate that conferring ownership rights upon a minor would be appropriate;
  - (c) Review, harmonize and consolidate all the laws relating to children's inheritance of family land in order to recognize and protect the rights of orphans;
  - (d) Review the laws on trusts and administration of estates with a view to ensuring that trustees act in the best interests of the beneficiaries of trusts and estates; and
  - (e) Carry out public education campaigns so as to encourage the abandonment of cultural practices that bar the children and youth from inheriting family land.

#### 3.6.10.3 Gender and Equity Principles

222. Culture and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws. There is conflict between constitutional and international provisions on gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance.

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- (e) Ensure that land subject to informal settlement is developed in an ordered and sustainable manner;
- (f) Facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land;
- (g) Facilitate the registration of squatter settlements found on public and community land for purposes of upgrading or development;
- (h) Establish a legal framework and procedures for transferring unutilised land and land belonging to absentee land owners to squatters and people living in informal settlements;
- (i) Develop, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems;
- (j) Put in place measures to prevent further slum development on private land and open spaces;
- (k) Facilitate the carrying out of informal commercial activities in a planned manner;
- (l) Prohibit sale and/or transfer of land allocated to squatters and informal settlers; and
- (m) Put in place an appropriate legal framework for eviction based on internationally acceptable guidelines.

#### 3.6.10 Cross-Cutting Issues Requiring Special Intervention

214. This Policy recognizes the following as cross-cutting issues requiring special intervention: poverty, corruption, HIV and AIDS, youth and gender issues.
215. The Government shall:
- (a) Adhere to and enforce the principle of non-discrimination to ensure that these cross-cutting issues are adequately dealt with;
  - (b) Facilitate the channelling of resources to address poverty-related and HIV and AIDS occasioned problems;
  - (c) Facilitate the empowerment of youth and women;
  - (d) Mainstream youth and gender concerns in anti-poverty programmes; and
  - (e) Mainstream anti-corruption prevention measures and facilitate public education and awareness creation programmes for all stakeholders.

#### 3.6.10.1 HIV and AIDS

216. The HIV and AIDS pandemic has had a significant impact on economic productivity, specifically on utilisation and production from land based resources. It has affected the most productive age bracket. The pandemic has thus raised the need to reorganise rural settlements with a view to rationalising agricultural production systems. Further, it has adversely impacted on the land rights of widows and orphans, who are invariably disinherited of their family

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223. Women are not sufficiently represented in institutions that deal with land. Their rights under communal ownership and group ranches are also not defined and this allows men to dispose of family land without consulting women.
224. Few women have land registered in their names and lack of financial resources restricts their entry into the land market. Moreover International Conventions on women's rights relevant to women's land rights ratified by the Government of Kenya have not been translated into policies or laws.
225. To protect the rights of women, the Government shall:
- (a) Put in place appropriate legislation to ensure effective protection of women's rights to land and related resources;
  - (b) Repeal existing laws and outlay regulations, customs and practices that discriminate against women in relation to land;
  - (c) Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources;
  - (d) Make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure;
  - (e) Secure inheritance rights of unmarried daughters in line with the practices of the respective communities;
  - (f) Facilitate public awareness campaigns on the need to write wills to protect dependants in the event of death;
  - (g) Carry out public education campaigns to encourage the abandonment of cultural practices that bar women from inheriting family land; and
  - (h) Ensure proportionate representation of women in institutions dealing with land at all levels.

#### 3.6.10.4 Matrimonial Property

226. The existing laws and practices governing matrimonial property discriminates against spouses whose contribution to the acquisition of such property is indirect and not capable of valuation in monetary terms. Further, the courts have been inconsistent in determining what amounts to such contribution, with the result that some spouses have unfairly been denied of their rights to land.
227. To secure the rights of spouses to matrimonial property, the Government shall:
- (a) Review succession, matrimonial property and other related laws to ensure that they conform to the principle of equality between women and men;
  - (b) Enact specific legislation governing division of matrimonial property to replace the Married Women's Property Act of 1882 of England;

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- (c) Protect the rights of widows, widowers and divorcees through the enactment of a law on co-ownership of matrimonial property;
- (d) Put in place appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage and after the death of the spouse; and
- (e) Put in place mechanisms to curb selling and mortgaging of family land without the involvement of the spouses.

### 3.6.10.5 Corruption

228. Corruption has had serious negative effects in the distribution and management of land as a resource. Existing statutes enacted to specifically deal with corruption emphasizes on criminalizing it, thereby focusing on prosecutions as the most important means of fighting corruption (deterrence measures). This presupposes an ideal situation that cases will at all times be detected, thoroughly investigated, successfully prosecuted and convictions obtained. However, this has, more often than not, not been the case.
229. In order to prevent loss of the gains envisaged from the implementation of the NLP, the Government shall facilitate development and implementation of public education and awareness creation programmes against corruption targeting:-
- (a) Members of the public;
  - (b) All officers in the Ministry of Lands;
  - (c) Institutions envisaged in the NLP (National Land Commission, District Land Boards, Community Land Boards, Local Authorities, Land Property Tribunals, District Land Tribunals Land Courts and Land Reform Transformation Unit).

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## CHAPTER 4: INSTITUTIONAL FRAMEWORK

230. The existing institutional framework for land administration and management is highly centralized, complex, and exceedingly bureaucratic. As a result, it is perceived to be corrupt and has not been able to provide efficient services. In addition, it does not involve the public in decision making with respect to land administration and management, and is thus unaccountable.
231. The Government shall overhaul the existing institutional framework for land administration and management to:
- (a) Facilitate the delivery of efficient, cost-effective and equitable services;
  - (b) Ensure devolution of land administration and management;
  - (c) Facilitate access to land administration and management by the poor so that the sector can contribute to poverty reduction; and
  - (d) Ensure participation and accountability in land administration and management.

### 4.1 Structural Reform Principles

232. The institutional reform process will therefore be guided by the following key principles:
- (a) Devolution of power and authority;
  - (b) Stakeholder participation;
  - (c) Operational autonomy;
  - (d) Effective surveillance and performance monitoring systems;
  - (e) Access to justice, gender equity;
  - (f) Appropriate enforcement mechanisms;
  - (g) Environmental sustainability; and
  - (h) Smooth transition from the current to the proposed arrangements.

### 4.2 Policy Framework for Land Management Institutions

233. The Government will set up three key land management institutions: the National Land Commission (NLC), the District Land Boards (DLBs) and Community Land Boards (CLBs).

#### 4.2.1 The National Land Commission (NLC)

234. The NLC shall be a constitutional body. Its composition shall be defined by an Act of Parliament taking into account the need to ensure broad representation, expertise, integrity and equity. The nominees shall be vetted by Parliament and appointed by the President.

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235. The NLC shall have the following functions:
- (a) Hold title to and manage public land on behalf of the Government;
  - (b) Establishing and maintaining a register of all public, private and community land in the country;
  - (c) Coordinate the realization of the multiple values of land, namely, economic productivity, equity, environmental sustainability and conservation of indigenous culture;
  - (d) Exercise the powers of compulsory acquisition and development control on behalf of the State and local authorities or governments;
  - (e) Levy, collect and manage all land tax revenues except rates which shall be collected by district-based authorities;
  - (f) Develop the capacity of both DLBs and CLBs;
  - (g) Provide technical services and coordinate the work of DLBs and CLBs through establishment of NLC district offices;
  - (h) Install and operate an electronic land registry and also advise DLBs and CLBs on establishing computerized land registries at their respective levels;
  - (i) Establish a Land Policy Research Centre (LPRC) in partnership with universities and research institutions to coordinate land policy research; and
  - (j) Establish and manage a National Land Trust Fund (NLTF) to mobilize and pool financial resources for implementing this Policy. The NLTF shall be administered by the Board of the NLC.
236. Within two years of its establishment, the NLC shall establish legal and administrative mechanisms to:
- (a) Investigate and document claims of historical injustices;
  - (b) Determine genuine cases of historical injustices and mechanisms for redressing them;
  - (c) Recommend measures to be taken including restitution or compensation; and
  - (d) Specify a time period within which compensation should be claimed.

#### 4.2.1.1 Independence and Accountability of the NLC

237. The existing legislative practice of giving Ministers the "power to give directions of a general nature" to public agencies has invariably compromised their independence including agencies dealing with land.
238. The NLC should be accorded sufficient autonomy and independence to perform its functions effectively and fairly. It should, however, be accountable to the people of Kenya.
239. In order to ensure the independence and accountability of the NLC, the Government shall enact a 'National Land Commission Act' to:

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- (a) Grant the NLC operational autonomy;
- (b) Require the NLC to be directly accountable to Parliament for its operations;
- (c) Require ministerial directions to the NLC to be laid before Parliament in writing; and
- (d) Facilitate public participation and application of democratic principles in the establishment and management of the NLC.

#### 4.2.1.2 The NLC District Offices

240. The NLC district offices will have several technical sections that are needed to facilitate land administration and management including land use planning, land adjudication, settlement services, surveying and mapping, recording of transactions, issuance of titles and land valuation for operational land markets.
241. The transactions of the district land registry will cover private, public and community land.
242. The personnel of the NLC district offices shall be appointed on the basis of established guidelines, standards and minimum qualifications.

#### 4.2.2 The District Land Boards (DLBs)

243. The DLBs shall act as agents of the NLC at the district level and be accountable to the NLC in the performance of their functions.
244. The DLBs shall be composed of democratically elected community representatives and managed according to the structural reform principles outlined in this Policy while paying special attention to the needs of different communities.
245. The personnel of the DLBs shall be appointed by the NLC on the basis of established guidelines, standards and minimum qualifications.
246. District Land Boards shall have the mandate of promoting equitable access to land, conservation of cultural sites, protecting minority land rights and redressing historical injustices. They will administer public and private land on behalf of the NLC.
247. Other functions of DLBs shall include:
- (a) Facilitating the efficient operation of land markets at the district level; and
  - (b) Monitoring and evaluating land reform programmes at the district level.

#### 4.2.3 Community Land Boards

248. Community Land Boards (CLBs) shall constitute the third institution of the devolved land administration and management system for community land.
249. Membership of the CLB shall comprise of elected representatives of people ordinarily resident in an area as determined by the DLBs in

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consultation with the affected communities. Membership criteria shall respect ethnic diversity, gender, socio-political dynamics, and environmental sustainability.

250. The functions of the CLBs shall include:
- (a) Holding and managing community land;
  - (b) Documenting all community lands;
  - (c) Regulating all transactions relating to community land; and
  - (d) Facilitating the recording and issuance of title by the DLBs.

#### 4.3 Supporting Agencies

251. Other important institutions in the land sector shall include the ministry in charge of land, local authorities, land property tribunals, district land tribunals, Land Courts and a Land Reform Transformation Unit.

##### 4.3.1 The Ministry in charge of Lands

252. The Ministry in charge of Land shall within its rationalised roles and reorganized structures undertake to devolve land administration and management functions to the NLC, DLBs, CLBs and local authorities.

253. The functions of the Ministry shall include:
- (a) Giving policy direction to the NLC;
  - (b) Making policies on land and coordinate their implementation;
  - (c) Mobilising resources for the sector;
  - (d) Undertaking policy advocacy and providing political leadership;
  - (e) Facilitating implementation of the land policy reforms;
  - (f) Coordinating the management of the National Spatial Data Infrastructure (NSDI);
  - (g) Rationalising its functions with a view to privatising service delivery where appropriate. For instance, surveying, valuation, physical planning and revenue collection;
  - (h) Setting service standards, regulating providers, ensuring quality control and capacity building;
  - (i) Monitoring and evaluation of sector performance in collaboration with civil society, the private sector and other stakeholders; and
  - (j) Coordinating and overseeing the statutory bodies established to regulate land planners, surveyors, valuers and estate agents.

##### 4.3.2 Local Authorities

254. The land use planning functions of local authorities shall be reviewed to conform to this Land Policy.
255. The functions of local authorities set out in existing legislation on agriculture and land based natural resources shall be harmonized with this Policy.

##### 4.3.3 Property Tribunals

256. Currently there are two tribunals that regulate rents for residential and business premises, that is, the Rent Restrictions Tribunal and the Business Premises Tribunal respectively.
257. The Rent Restrictions Tribunal Act shall be reviewed in order to ascertain its necessity to protect workers and poor tenants from sudden and rapid rises in the level of house rents.
258. The continued relevance of the Business Premises Tribunal shall be reviewed in light of the liberalisation of investment and trade.

##### 4.3.4 Land Disputes Tribunals

259. The Land Disputes Tribunal Act (No. 18 of 1990) shall be repealed and replaced by a more appropriate legislation for dispute resolution at the District and Community levels.
260. Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration shall be used by CLBs and DLBs to facilitate fair and accessible justice on land matters.

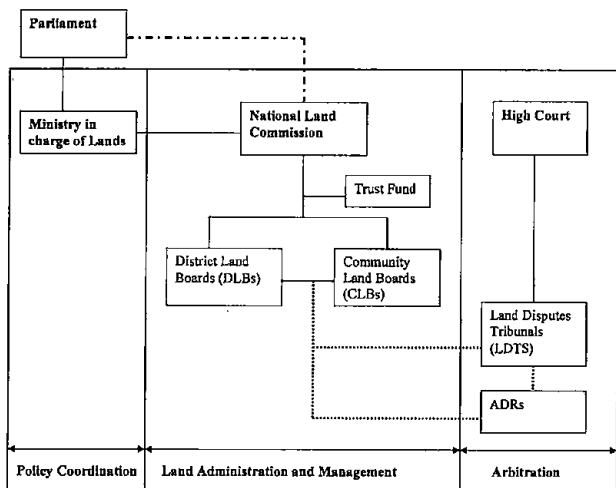
##### 4.3.5 Land Courts

261. Land disputes may, in addition to being addressed by DLBs and CLBs, be referred to the land division of the High Court.

#### Proposed Organization Structure

The main elements of the proposed organization chart are shown below.

#### Proposed Organization Structure



#### KEY

— Direct Linkage ..... Consultation Linkage - - - - Operation Linkage

#### CHAPTER 5: LAND POLICY IMPLEMENTATION FRAMEWORK

262. The Ministry shall, in consultation with other sectoral agencies and development partners, set out a framework for the implementation of this Policy. The envisaged Framework will provide for the establishment of an interim administrative mechanism to operationalize this Policy pending the establishment of the NLC. In addition, the Framework will provide for capacity building and mechanisms for financing the implementation of this Policy.

##### 5.1 Land Reform Transformation Unit

263. The Ministry of Lands shall establish a Land Reform Transformation Unit (LRTU) to prepare for the implementation of the land reform programme.
264. The LRTU shall be accorded decision making autonomy to enable it perform its functions.
265. The LRTU shall be led by a "Land Reform Coordinator" for an initial period of two years subject to extension, with the specific tasks of:
- (a) Facilitating the drafting and enactment of the legislation necessary to implement this Policy;
  - (b) Facilitating the establishing relevant institutions;
  - (c) Facilitating the recruitment and training required personnel;
  - (d) Facilitating the mobilisation of financial and other resources;
  - (e) Facilitating the organization of civic education; and
  - (f) Ensuring a smooth transition to this Policy.
266. The Land Reform Coordinator shall be guided by the programmes and priorities outlined in the "Land Policy Implementation Framework" under this Policy.

##### 5.2 Capacity Building

267. Training shall be undertaken to build capacity of ministerial staff, staff of the Land Reform Transformation Unit, national and local level institutions that will be involved in policy coordination, land administration and management, and arbitration functions.

##### 5.3 Policy Enforcement

268. In order to instil good governance in land administration and management, there will be need to put in place integrated enforcement measures and protect the Policy from political and/or other interference. This policy will form the basis for, and be recognized as the overall guide to all other land related policies.

**Annex 6**

**The Land Acquisition Act (Cap. 295) (1983)**

**Revised Edition 2010**



## LAWS OF KENYA

### THE LAND ACQUISITION ACT

#### CHAPTER 295

#### CHAPTER 295

#### THE LAND ACQUISITION ACT ARRANGEMENT OF SECTIONS

##### PART I—PRELIMINARY

###### Section

- 1—Short title.
- 2—Interpretation.

##### PART II—PROCEDURE FOR COMPULSORY ACQUISITION OF LAND

###### *Preliminaries to Acquisition*

- 3—Preliminary notice.
- 4—Power of entry for survey.
- 5—Payment for damage caused by entry for survey.

###### *Acquisition of Land*

- 6—Notice of acquisition.
- 6A—Effect of acquisition on plant and machinery.
- 7—Land to be marked out.

###### *Award of Compensation*

- 8—Compensation to be paid.
- 9—Inquiry as to compensation.
- 10—Award of compensation.
- 11—Notice of award.
- 12—Grant of land in lieu of award.

###### *Payment of Compensation*

- 13—Payment of compensation.
- 14—*Repealed*
- 15—Payment in error.
- 16—Payment of interest.

###### *Survey of Remaining Land*

- 17—Survey where part only of holding acquired.
- 18—Additional compensation where area found to be greater.

## Section

*Taking of Possession and Vesting*

- 19—Formal taking of possession and vesting.  
20—Surrender of documents of title to Commissioner.

*Supplemental*

- 21—Part only of building not to be acquired.  
22—Acquisition of other land where severance.  
23—Withdrawal of acquisition.

## PART III—TEMPORARY POSSESSION OF LAND

- 24—Power to obtain temporary occupation of land.  
25—Payment of compensation.  
26—Restoration of land.  
27—Where land needed for access.

## PART IV—DETERMINATION OF QUESTIONS BY THE COURT

- 28—Reference to Court by Commissioner.  
29—Access to the High Court and appeals to the Court of Appeal.

## PART V—GENERAL

- 30—Right of entry.  
31—Application for police assistance.  
32—Penalty for obstruction.  
33—Service of notices.  
34—Exemption from stamp duty.  
35—Bar to setting aside awards.  
36—Rules.

## SCHEDULE

## CHAPTER 295

## THE LAND ACQUISITION ACT

*Commencement: 23rd August, 1968*

An Act of Parliament to make provision for the compulsory acquisition of land for the public benefit

47 of 1968,  
11 of 1970,  
13 of 1972,  
6 of 1990,  
11 of 1992.

## PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Land Acquisition Act.

Interpretation.

2. In this Act—

“award” means an award of compensation made under section 10;

“Commissioner” means the Commissioner of Lands, or any person authorized by the Minister in writing in any particular case to exercise the powers conferred on the Commissioner by this Act;

“Court” means the High Court;

“land” includes all land, whether covered with water or not, and things attached to the land, or permanently fastened to anything attached to the land, and (where the meaning may be inferred) any estate, term, easement, right or interest in or arising out of land;

“notice of intention to acquire”, in relation to land, means a notice that the Government intends to acquire the land published under section 6 (2);

“person interested”, in relation to land or a building, means a person who has an interest in or right over the land or building;

“public body” means—

(a) the Government; or

(b) any authority, board, commission or other body which has or performs, whether permanently or temporarily, functions of a public nature, or which engages or is about to engage in the exploitation of natural resources or the provision of power or any other activity which is of benefit to the public;

“Registrar” means the person responsible for the registration of title to the land in question.

“Tribunal” means the Land Acquisition Compensation Tribunal established under section 29.

6 of 1990, s. 2.

#### PART II—PROCEDURE FOR COMPULSORY ACQUISITION OF LAND

##### *Preliminaries to Acquisition*

3. Whenever the Minister is satisfied that the need is likely to arise for the acquisition of some particular land under section 6, the Commissioner may cause notice thereof to be published in the Gazette, and shall deliver a copy of the notice to every person who appears to him to be interested in the land.

Preliminary notice.

4. (1) The Commissioner may in writing authorize any person, together with servants and workmen, to enter upon any land specified in a notice published under section 3 and to survey the land and to do all things which may be reasonably necessary to ascertain whether the land is suitable for the purpose for which it may be required.

Power of entry for survey.

(2) An authorization under subsection (1) shall not empower a person to enter a building, or an enclosed court or garden attached to a dwelling house, unless—

(a) he has first obtained the consent of the occupier; or

(b) failing consent, he has served on the occupier not less than seven days’ notice in writing of his intention so to enter.

5. As soon as practicable after entry has been made under section 4, the Commissioner shall make good or pay full compensation for any damage resulting from the entry.

Payment for damage caused by entry for survey.

##### *Acquisition of Land*

6. (1) Where the Minister is satisfied that any land is required for the purposes of a public body, and that—

Notice of acquisition.

(a) the acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land,

and so certifies in writing to the Commissioner, he may in writing direct the Commissioner to acquire the land compulsorily under this Part.

(2) On receiving a direction under subsection (1), the Commissioner shall cause a notice that the Government intends to acquire the land to be published in the Gazette, and shall serve a copy of the notice on every person who appears to him to be interested in the land.

6A. (1) Notwithstanding that plant and machinery are attached to land or permanently fastened to the land, the person interested in such plant and machinery may, after receipt by him of the notice of intention to acquire the land under section 6 (2) and not later than fifteen days before the inquiry appointed under section 9 (1), serve on the Commissioner a notice in writing that he desires to sever and remove the plant and machinery and the Commissioner shall within fifteen days, in writing, notify the person interested whether the plant and machinery may be severed and removed or whether they are required for the purpose for which the land is intended to be compulsorily acquired.

Effect of acquisition on plant and machinery.  
6 of 1990, s. 3.

(2) Where the Commissioner notifies the person interested that the plant and machinery may be severed and removed the person interested shall sever and remove them at his own expense at any time before the Commissioner takes possession under section 19; and the plant and machinery shall not be included in the computation of the compensation payable under this Act.

7. The Commissioner may cause the land which is to be acquired to be marked out and measured (if this has not already been done), and shall cause a plan of the land to be prepared.

Land to be marked out.

##### *Award of Compensation*

8. Where land is acquired compulsorily under this Part, full compensation shall be paid promptly to all persons interested in the land.

Compensation to be paid.

9. (1) The Commissioner shall appoint a date, not earlier than thirty days and not later than twelve months after the publication of the notice of intention to acquire, for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land, and shall—

Inquiry as to compensation.  
6 of 1990, s. 4.



(a) cause notice of the inquiry to be published in the Gazette at least fifteen days before the inquiry; and

(b) serve a copy of the notice on every person who appears to him to be interested or who claims to be interested in the land.

(2) The notice of inquiry shall call upon the persons interested in the land to deliver to the Commissioner, not later than the date of the inquiry, a written claim to compensation.

(3) On the date appointed under subsection (1), the Commissioner shall —

(a) make full inquiry into and determine who are the persons interested in the land;

(b) make full inquiry into the value of the land, and determine that value in accordance with the principles set out in the Schedule; and

(c) determine, in accordance with the principles set out in the Schedule, what compensation is payable to each of the persons whom he has determined to be interested in the land.

(4) The Commissioner may for sufficient cause postpone an inquiry or adjourn the hearing of an inquiry from time to time:

Provided that a postponement or an adjournment under this subsection shall not extend the inquiry beyond twenty-four months from the date appointed under subsection (1) for the holding of the inquiry.

(4A) Where an inquiry is not held within the time prescribed under this section the Minister shall be deemed to have revoked his direction to acquire the land and section 23 shall *mutatis mutandis* apply.

(5) For the purposes of an inquiry, the Commissioner shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to him of documents of title to the land.

(6) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

10. (1) Upon the conclusion of the inquiry, the Commissioner shall

Award of

compensation.

prepare a written award, in which he shall make a separate award of compensation to each person whom he has determined to be interested in the land.

(2) Every award shall be filed in the office of the Commissioner, and, subject to section 75 (2) of the Constitution and sections 18 and 29 of this Act, shall be final and conclusive evidence of—

(a) the area of the land to be acquired;

(b) the value, in the opinion of the Commissioner, of the land;

(c) the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry.

(3) Subject as aforesaid, an award shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

(4) Where an interest in land is held by two or more persons as tenants in common, the award shall state—

(a) the amount of compensation awarded in respect of that interest; and

(b) the shares in which it is payable to those persons.

II. On making an award, the Commissioner shall serve on each person whom he has determined to be interested in the land a notice of the award and offer of compensation.

Notice of award.

Grant of land in lieu of award.  
Cap. 280.

12. (1) Notwithstanding anything contained in the Government Lands Act, where the land is acquired for the Government the Commissioner may agree with the person whom he has determined to be the proprietor of the land that that person, instead of receiving an award, shall receive a grant of land, not exceeding in value the amount of compensation which the Commissioner considers would have been awarded, and upon the conclusion of the agreement that person shall, subject to section 18, be deemed conclusively to have been awarded and to have received all the compensation to which he is entitled in respect of his interest.

(2) An agreement under subsection (1) shall be recorded in the award.

*Payment of Compensation*

13. (1) After notice of an award has been served under section 11 on all the persons determined to be interested in the land, the Commissioner shall, as soon as practicable, pay compensation in accordance with the award to the persons entitled thereunder, except in a case where—

- (a) there is no person competent to receive payment; or
- (b) the person entitled does not consent to receive the amount awarded; or
- (c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which it is to be paid.

(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Commissioner may at any time pay the amount of the compensation into Court, notifying any persons interested accordingly.

*14. (Repealed by 13 of 1972, Sch.)*

15. Where a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commissioner may, by notice in writing served on that person, require that person to refund to the Commissioner the amount received, and the amount shall be a debt due from that person to the Commissioner.

16. (1) Where the amount of any compensation awarded is not paid or paid into Court on or before the taking of possession of the land, the Commissioner shall pay interest on the amount awarded at such rate as may be prescribed which shall not be less than six per cent per annum from the time of taking possession until the time of payment or payment into Court.

Payment of interest.  
6 of 1990, s. 5.

(2) Where additional compensation is payable under section 18, there shall be added to the amount of the additional compensation interest thereon at such rate as may be prescribed which shall not be less than six per cent per annum from the time when possession was taken or compensation was paid, whichever is the earlier.

*Survey of Remaining Land*

17. Where part only of the land comprised in documents of title has been acquired, the Commissioner shall, as soon as practicable, cause

Survey where part  
only of holding

acquired.  
a final survey to be made of all the land acquired.

18. Whenever the final survey provided for in section 17 discloses that the area of the land acquired is greater than the area of the land in respect of which the award has been made, compensation shall be paid for the excess area in accordance with this Act.

Additional  
compensation where  
area found to be  
greater.

*Taking of Possession and Vesting*

19. (1) After the award has been made, the Commissioner shall take possession of the land by serving on every person interested in the land a notice that on a specified day, which shall not be later than sixty days after the award has been made, possession of the land and the title to the land will vest in the Government.

Formal taking of  
possession and  
vesting.  
6 of 1990, s. 6.

(2) In cases of urgency, the Minister may direct the Commissioner to take possession of uncultivated or pasture or arable land upon the expiration of thirty days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commissioner, notwithstanding that no award has been made, shall take possession of that land in the manner prescribed by subsection (1).

(3) Upon taking possession of land under subsection (1) or subsection (2), the Commissioner shall also serve upon—

- (a) the registered proprietor of the land; and
- (b) the Registrar,

a notice that possession of the land has been taken and that the land has vested in the Government.

(4) Upon taking of possession, the land shall vest in the Government absolutely free from encumbrances.

20. (1) Where the documents evidencing title to the land acquired have not been previously delivered to him, the Commissioner shall in writing require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

Surrender of  
documents of title to  
Commissioner.

(2) On receipt of the documents of title, the Registrar shall—

- (a) where the whole of the land comprised in the documents has been acquired, cancel the documents;
- (b) where only part of the land comprised in the documents has been acquired, record upon the documents that so much of the

land has been acquired under this Act and thereafter return the documents to the person by whom they were delivered,

and upon such receipts, or if the documents are not forthcoming, cause an entry to be made in the register recording the acquisition of the land under this Act.

*Supplemental*

21. (1) The powers of acquisition conferred by this Part shall not be exercised so as to acquire a part only of a permanent building in any case where—

Part only of building  
not to be acquired.

(a) that part is reasonably required for the full and unimpaired use of that building; and

(b) some person interested in the building states that he desires that the whole of the building shall be acquired:

Provided that such person may, at any time before the Commissioner has made an award, withdraw or modify his statement by notice in writing served on the Commissioner.

(2) Where a question arises whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Commissioner to the Court in accordance with section 28 for determination.

22. (1) Where the Minister is of the opinion that a claim for compensation which a person interested in the land has made on account of the severing of the land to be acquired from his other land is unreasonable or excessive, the Minister may, at any time before taking possession of the land, in writing direct that the whole or any portion of the remaining land shall be acquired under this Act.

Acquisition of  
other land where  
severance.

(2) On the giving of a direction under subsection (1), the Commissioner shall without delay serve on the person interested a copy of the order, and thereafter shall proceed to make an award.

23. (1) The Minister may, at any time before possession is taken of any land acquired under this Act, revoke his direction to the Commissioner to acquire the land, and in that case the Commissioner shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land.

Withdrawal of  
acquisition.

(2) The principles relating to the determination of compensation set out in the Schedule shall apply, so far as they are relevant, to the determination of compensation payable under this section.

PART III—TEMPORARY POSSESSION OF LAND

24. (1) Where the Minister is satisfied that the possession of any land is required for a particular period not exceeding five years by a public body, and that—

Power to obtain  
temporary occupation  
of land.

(a) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property,

and so certifies in writing to the Commissioner, he may direct the Commissioner to take possession of the land for that period under this Part.

(2) On receiving a direction under subsection (1), the Commissioner shall serve on every person interested or who claims to be interested in the land, or on such of them as after reasonable inquiry are known to him, a notice that he has been directed to take possession of the land for the period in question.

(3) At the end of seven days after service of notices has been completed under subsection (2), the Commissioner may take possession of the land by entering, personally or by his officers or agents, on the land and posting on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.

Payment of  
compensation.

25. (1) Where possession is taken of land under this Part, full compensation shall be paid promptly to all persons interested in the land.

(2) As soon as practicable after entry on land has been made under section 24 (3), the Commissioner shall serve a notice in writing in the prescribed form on the persons who appear to him to be interested in the land, and shall make such offer of compensation as is fair in all the circumstances of the case.

(3) The compensation payable under subsection (1) may be in the form of a single sum of money or in the form of periodical payments of money, or in such other form as may be agreed.

26. On the expiration of the period for which possession is taken, or upon the land being sooner vacated, the land shall be restored by the Commissioner to the condition it was in before that occupation or use and, failing restoration, compensation in addition to that provided for in section 25 shall be paid for any damage done to the land, or for the reduction in the value of the land by reason of the occupation or use.

Restoration of land.

27. Whenever the Minister is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to other land, then—

Where land needed for access.

- (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- (b) the compensation to be paid under section 25 shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

#### PART IV — DETERMINATION OF QUESTIONS BY THE COURT

28. (1) The Commissioner may at any time of his own accord, by application in the prescribed form, refer to the Court for its determination any question as to—

Reference to Court by Commissioner.

- (a) the construction, validity or effect of any instrument;
- (b) the persons who are interested in the land concerned;
- (c) the extent or nature of their interest;
- (d) the persons to whom compensation is payable;
- (e) the shares in which compensation is to be paid to tenants in common;
- (f) the question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or

(g) the condition of any land at the expiration of the term for which it is occupied or used.

(2) Without prejudice to the powers of the Court under this Part, the costs of any reference to the Court under subsection (1) shall be paid by such person as the Court may direct or, failing a direction, by the Commissioner.

29. (1) The right of access to the High Court conferred by section 75 (2) of the Constitution of an interested person shall be by way of appeal (exercisable as of right at the instance of the person interested) from the decision of the Tribunal.

Access to the High Court and appeals to the Court of Appeal 6 of 1990, s. 7, 11 of 1992, Sch.

(2) There shall be established a Tribunal to be known as the Land Acquisition Compensation Tribunal which shall consist of five members appointed by the Minister by notice in the Gazette of whom—

- (a) one shall be an advocate of not less than ten years' standing, who shall be the chairman; and
- (b) two shall be registered valuers of not less than ten years' standing.
- (c) one shall be a prominent businessman of not less than thirteen years standing; and
- (d) one shall be a prominent farmer of not less than ten years standing.

(3) A member of the Tribunal shall hold office for the period, not exceeding three years, specified in the instrument of his appointment unless, prior to the expiration of that period—

- (a) he resigns his office by written notice addressed to the Minister; or
- (b) the Minister being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.
- (4) The members of the Tribunal shall be paid such allowances or other remuneration as the Minister in consultation with the Treasury may authorize out of moneys provided by Parliament for the purposes of the Tribunal.

(5) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(6) There may be appointed such staff as are necessary to assist the Tribunal in the performance of its duties under this Act.

(7) A person interested who is dissatisfied with the award of the Commissioner may apply to the Tribunal in the prescribed manner for—

- (a) the determination of his interest or right in or over the land; or
- (b) the amount of compensation awarded to him under section 10; or
- (c) to amount of compensation paid or offered to him under section 5, 9, 23, 25 or 26.

(8) The public body for whose purposes the land is acquired may apply to the Tribunal against—

- (a) the amount of compensation awarded under section 10; or
- (b) the amount of compensation paid or offered under section 5, 9, 23, 25 or 26.

(9) If, on an application to the Tribunal, the sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum which the Commissioner did award as compensation, the Tribunal may direct that the Commissioner shall pay interest on the excess at such rate as may be prescribed which shall not be less than six per cent per annum from the date on which the Commissioner took possession of the land to the date of payment of the excess into court or to the person entitled.

(10) A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal thereon may, in the manner prescribed under section 72(3) of the Constitution, appeal to the court on any of the grounds of the application to the Tribunal and on any of the following grounds, namely—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the decision failed to determine some material issue of law

or usage having the force of law; or

(c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits.

(11) A party to an appeal under subsection (10) to the court who is dissatisfied with the decision of the court thereon may, upon giving notice of appeal to the other party or parties to that appeal within fifteen days after the date on which a notice of that decision has been served upon him, appeal to the Court of Appeal from the order made by the court; but an appeal to the Court of Appeal under this subsection may be made on a question of law only.

#### PART V — GENERAL

30. The Commissioner and any officer or person authorized by him under section 4 shall have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of this Act.

Right of entry.

31. If the Commissioner is opposed or impeded in taking possession of any land under this Act, he may apply to a police officer for assistance in taking possession, and the police officer shall thereupon take such steps as he may consider necessary to put the Commissioner in possession of the land.

Application for police assistance.

32. A person who wilfully hinders or obstructs the Commissioner or an officer or person mentioned in section 30 or section 31 in doing any of the acts authorized or required by this Act, or who wilfully fills up, destroys, damages or displaces any trench, post or mark made or put on land under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand shillings, or to both.

Penalty for obstruction.

33. A notice which may be given under this Act may be served on a person—

Service of notices.

- (a) by delivering it to the person personally; or
- (b) by sending it by registered post to the person's last known address or his last known address in Kenya; or
- (c) if the whereabouts of the person or his address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land; or
- (d) if the person is a body corporate, society or other association

of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land.

34. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay a fee for a copy thereof.

Exemption from stamp duty.

35. Except as otherwise provided in the Constitution, no proceeding shall be brought in any court to set aside or question an award.

Bar to setting aside awards.

36. The Minister may make rules generally for carrying out the purposes and provisions of this Act.

Rules.

#### SCHEDULE (ss. 9 (3) and 23 (2))

##### PRINCIPLES ON WHICH COMPENSATION IS TO BE DETERMINED

11 of 1970, Sch.,  
13 of 1972, Sch.,  
6 of 1990, s. 8.

1. (1) For the purposes of this Schedule, "market value" in relation to land means the market value of the land at the date of publication in the Gazette of the notice of intention to acquire the land.

Market value.

(2) In assessing the market value, the effect of any express or implied condition of title or law which restricts the use to which the land concerned may be put shall be taken into account.

(3) If the market value of land has been increased, or is currently increased, in either of the following ways, the increase shall be disregarded—

(a) an increase by reason of an improvement made by the owner or his predecessor in title within two years before the date of publication in the Gazette of the notice of intention to acquire the land, unless it is proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land;

(b) an increase by reason of the use of the land or premises thereon in a manner which could be restrained by a court or

is contrary to the law, or is detrimental to the health of the occupiers of the premises or to the public health.

2. In determining the amount of compensation to be awarded for land acquired under this Act, the following matters, and no others, shall be taken into consideration—

Matters to be considered in determining compensation.

(a) the market value as determined in accordance with paragraph 1;

(b) damage sustained or likely to be sustained by persons interested at the time of the Commissioner's taking possession of the land by reason of severing the land from his other land;

(c) damage sustained or likely to be sustained by persons interested at the time of the Commissioner's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings;

(d) if, in consequence of the acquisition, any of the persons interested is or will be compelled to change his residence or place of business, reasonable expenses incidental to the change;

(e) damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commissioner takes possession of the land.

3. In determining the amount of compensation to be awarded for land acquired under this Act, the following matters shall not be taken into consideration—

Matters to be ignored.  
6 of 1990, s. 8.

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the person interested to part with the land;

(c) damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;

(d) damage which is likely to be caused to the land after the date of publication in the Gazette of the notice of intention to acquire the land or in consequence of the use to which the land will be put;

(e) any increase in the actual value of the land as at the date of publication of the notice of intention to acquire likely to accrue from the use to which the land will be put when acquired;

(f) any outlay on additions or improvements to the land, incurred after the date of publication in the Gazette of the notice of intention to acquire the land, unless the additions or improvements were necessary for the maintenance of any building in a proper state of repair.

4. To the amount of compensation so determined there shall be added a sum equal to fifteen per cent of the market value as determined in accordance with paragraph 1, by way of compensation for disturbance.

Additional provisions  
and professional fees.

5. Where, at an inquiry made by the Commissioner under section 9, a person interested has—

(a) claimed compensation for any land or any interest therein, that person shall not at any time be awarded an amount beyond the amount claimed;

(b) refused, or omitted without sufficient reason to be allowed by the Court, to make a claim for compensation, that person shall not at any time be awarded an amount beyond the amount awarded by the Commissioner.

[Subsidiary]

## SUBSIDIARY LEGISLATION

Rules under section 75 (3) of the Constitution in respect of appeals under section 29 of the Act—

### THE LAND ACQUISITION (APPEALS TO THE HIGH COURT) RULES

L.N. 111/1970,  
L.N. 20/1971.

#### PART I—PRELIMINARY

1. These Rules may be cited as the Land Acquisition (Appeals to the High Court) Rules.

2. (1) In these Rules, unless the context otherwise requires—

“the Act” means the Land Acquisition Act;

“appeal” means an appeal to the Court brought pursuant to the provisions of section 29 of the Act;

“appropriate registry” has the meaning accorded by rule 6;

“decision in question” means (as the case may be) the determination by the Commissioner of the interest or right of the appellant in or over the land the subject of proceedings under the Act, the award by the Commissioner of compensation under section 10 of the Act, the payment of compensation under section 5, 23 or 26 of the Act, or the offer of compensation under section 25 of the Act, being the subject of an appeal;

“interested person” means a person (other than an appellant or the Commissioner) who claims or is stated to be liable to be interested in or adversely affected by the result of an appeal;

“notice of intention to appear” has the meaning accorded by rule 7(1);

“person” includes a public body for the purposes of which land is acquired within the meaning of section 29 (2) of the Act;

“register” means a register of appeals to be maintained pursuant to the provisions of rule 5;

“registrar” means the registrar, a deputy registrar or a district registrar of the High Court;

“registry” means the Central Office of the High Court in Nairobi or a district registry of the Court.

(2) Subject to paragraph (1) the words and expressions defined in the Act shall have the meanings thereby assigned to them.

[Subsidiary]

## PART II—INSTITUTION AND HEARING OF APPEALS

3. (1) Every appeal shall be preferred in the form of memorandum of appeal presented in duplicate to the registrar, and both the original and the duplicate memorandum shall be signed by the appellant or his advocate and there shall be annexed thereto a true copy of the notification (if any) given to the appellant by the Commissioner informing him of the decision in question.

(2) The memorandum shall state concisely in paragraphs numbered consecutively—

(a) the name, description and postal address in Kenya of the appellant, together with the name and postal address of the advocate (if any) who is representing him in the appeal;

(b) the date, reference or identification number and other short particulars of the decision in question, together with the land reference number or other details of the land the subject of that decision sufficient to enable the land to be identified;

(c) short particulars of any special facts upon which the appellant will seek to rely at the hearing of the appeal;

(d) the question or questions upon which the appellant seeks the decision of the Court;

(e) the grounds upon which the appellant intends to rely in support of the appeal;

(f) whether the appellant intends to adduce at the hearing expert evidence as to a question of valuation; and

(g) the name and address of any other person likely to be interested in or adversely affected by the appeal so far as known to the appellant with short details of the way in which that person may be interested or affected.

(3) There shall be annexed to the memorandum an affidavit of the appellant or his advocate verifying the special facts set out therein in support of the appeal.

(4) In the memorandum the Commissioner shall in the first instance be named as respondent to the appeal, but every other person who considers that he is or may be interested in or adversely affected by the results of the appeal may apply to the Court to be added as an additional respondent, and the Court may direct that he be so added.

(5) Where the decision in question appears to affect adversely more persons than one or more of those persons may appeal from the decision, and where two or more of those persons join together in preferring an appeal the provisions of these Rules shall have effect *mutatis mutandis* in relation to

[Subsidiary]

each appellant.

(6) Every memorandum of appeal and verifying affidavit shall be in the form set out in the Schedule with such variations as may be necessary.

(7) The postal address of the appellant or of his advocate to be stated in the memorandum as required by paragraph (2) shall, unless and until a change thereof shall have been notified to the registrar in writing, constitute the address of the appellant for the purpose of the service of notices and for all other purposes relative to the appeal.

4. A memorandum of appeal shall be presented to the registrar within thirty days from the date upon which notification in writing (if any) of the decision in question was served upon the appellant, but the Court may in any case in the interests of justice and for sufficient reason to be recorded extend the time for presentation whether or not the time prescribed by this rule has already expired.

5. (1) There shall be maintained in each High Court civil registry of a book to be known as the "Register of High Court Appeals under Section 29 of the Land Acquisition Act" in which there shall be entered by the registrar particulars of every appeal preferred to the Court at that registry.

(2) Upon being presented with a memorandum of appeal which appears to him to comply with the provisions of these Rules the registrar shall forthwith—

(a) endorse on the original and duplicate of the memorandum the date of presentation and the number of the appeal as recorded in the register;

(b) enter in the register particulars of the appeal as required by the form of the register, each appeal to be numbered consecutively in order of presentation during the calendar year;

(c) forward to the Commissioner the duplicate copy of the memorandum when endorsed as provided by subparagraph (a);

(d) forward to the appellant and to his advocate (if any) an acknowledgement of the receipt of the memorandum, together with particulars of the number accorded to the appeal in the register;

(e) send to every person (other than the appellant and the Commissioner) who is stated in the memorandum as likely to be interested in or adversely affected by the appeal notice of the presentation of the memorandum and of the time within which that person may intimate to the registrar his desire to appear and be heard on the hearing of the appeal as provided by rule 7.

6. (1) The Commissioner shall within twenty-one days of the receipt by him of a duplicate memorandum of appeal cause to be served on the registrar at the registry from which the memorandum has been received (in these Rules referred to as "the appropriate registry") and on the appellant a notice of receipt

Commissioner to serve notice.

Commissioner to



[Subsidiary]

and of his agreement or disagreement in whole or in part (as the case may be) with the contents of the memorandum.

(2) In the event of the Commissioner omitting so to cause notice to be served on the registrar of his disagreement (if any) with the contents he shall be deemed to have accepted them as correct.

7. (1) Every interested person (whether mentioned in the memorandum or not) who desires to appear and be heard on the hearing of an appeal shall give to the registrar at the appropriate registry a notice to that effect (in these Rules called a "notice of intention to appear") within fourteen days or such longer period as the registrar having regard to the circumstances of the case may fix.

Interested persons may appear.

Provided that the Court may in any case for reasons to be recorded permit an interested person who has omitted to give notice to be heard notwithstanding the absence of a notice.

(2) A person giving notice of intention to appear under this rule shall state in the notice short particulars of the following matters—

(a) whether he has been notified that an appeal has been presented to the High Court, and, if so, by whom and on what date he was so notified;

(b) the manner in which he may be interested in or adversely affected by the appeal or in which for any other reason he claims to be entitled to be heard on the appeal;

(c) whether he intends to appear alone or jointly with some other person;

(d) whether he wishes to be supplied with a copy of the memorandum of appeal and of any relevant notice of intention to appear which has been or may be received by the registrar from any other person;

(e) the order or other relief which he seeks and the grounds on which he intends to rely;

(f) whether he intends to adduce at the hearing expert evidence as to a question of valuation;

(g) an address within the jurisdiction at which documents may be served upon him.

(3) The registrar shall, on being requested so to do by any person who has given notice of intention to appear, supply to that person without delay a copy of the memorandum of appeal and of any relevant notice of intention to appear received by the registrar from any other person.

8. When in the opinion of the registrar all necessary parties have been served with copies of the proceedings as required the registrar shall by notice

Setting appeal down for hearing.

[Subsidiary]

inform all parties that the appeal is ready to be set down for hearing and shall invite them to appear before him on a day and time to be named by him in the notice (not being less than ten days from the date of service of the notice) to fix the hearing date; and on that day the registrar in the presence of such of the parties (or of their advocates) as may present themselves shall fix the hearing date and shall forthwith notify all the parties in writing of the date so fixed.

Number of judges.

9. (1) Every appeal unless otherwise directed shall be heard and determined by one judge; but the Chief Justice may direct that an appeal be heard and determined by a court consisting of three judges, in which event, should there be a division of opinion, the decision of the majority shall prevail.

(2) Interlocutory applications may be heard and determined by a single judge sitting in Chambers and shall be brought before him by means of a summons for that purpose.

#### PART III—GENERAL

Service of notices.

10. Every notice required by these Rules to be given may be served in any of the modes of service mentioned in section 33 of the Act.

Fees.

11. (1) No fee shall be chargeable on the presentation of a memorandum of appeal and verifying affidavit or of a notice of intention to appear or in respect of the furnishing by the registrar of copies thereof to any person entitled to them under these Rules, but the registrar shall be entitled to recover from the Commissioner or from such other party to the proceedings as the Court may direct, the expenses incurred by the registry in the preparation of copies of other documents and in the service of notices in the matter.

(2) Subject to the provisions of paragraph (1) the fees specified in the Schedule to Part IX of the High Court (Practice and Procedure) Rules in respect of civil matters shall where appropriate be payable to the registrar in regard to the matters specified therein.

Cap. 8,  
Sub. Leg.

Costs.

12. (1) The costs of any person other than the Commissioner of or in relation to an appeal shall be in the discretion of the Court and costs awarded by the Court shall in the absence of agreement be taxed in accordance with the provisions of the Advocates (Remuneration) Order relative to appeals from a subordinate court so far as they may be appropriate.

Cap. 16,  
Sub. Leg.

(2) The Court may, if it is satisfied that an appeal is clearly frivolous or that its presentation constituted an abuse of the process of the Court, direct that the costs and expenses of the Commissioner incurred in the matter shall when taxed be paid in whole or in part by the appellant or, of more than one, by some one or more of them.

Application of Civil Procedure Act and rules thereunder.  
Cap. 21.

13. Subject to the provisions of these Rules, and so far as they do not apply, the provisions of the Civil Procedure Act and of rules made thereunder and the practice of the Court in relation thereto shall have application to proceedings under these Rules.

[Subsidiary]

Limit of application of Rules.

14. These Rules shall not apply to—

- (a) proceedings touching the legality of the taking of possession or of the acquisition of any property, interest or right within the meaning of section 75 (2) (a) of the Constitution; or
- (b) proceedings for the purpose of obtaining prompt payment of compensation under section 75 (2) (b) of the Constitution; or
- (c) proceedings for the determination by the Court of questions submitted to it by the Commissioner pursuant to the provisions of section 28 (1) of the Act.

SCHEDULE

(rr 3 (6), 7)

FORM I MEMORANDUM OF APPEAL

In the High Court of Kenya at .....

Land Acquisition Act Appeal No. .... of 19..... between

A.B.

Appellant

The Commissioner of Lands

and

Respondent

MEMORANDUM OF APPEAL PREFERRED PURSUANT TO THE PROVISIONS OF THE LAND ACQUISITION (APPEALS TO THE HIGH COURT) RULES

Pursuant to the provisions of the above-mentioned Rules, I, (*name in full, description and postal address*), the appellant herein, hereby appeal against the under-mentioned decision upon the grounds set out below.

1. Decision (*give short particulars stating whether the decision in question is—*

- (i) a determination by the Commissioner of the interest or right of the appellant in or over the land as referred to in section 29 (1) (a) of the Land Acquisition Act; or
- (ii) an award of compensation under section 10 of the Act; or
- (iii) a payment of compensation under section 5, 23 or 26 of the Act; or
- (iv) an offer of compensation under section 25 of the Act).

2. Land (*give short description of the land, stating the province, district, municipality or township in which it is situated, together with its land reference*

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number or other identifying number).

- 3. The appellant will rely upon the following special facts in support of the appeal: (*set out*).
- 4. The question for the determination of the Court is (*set out*).
- 5. The appellant will rely in support of the appeal upon the following grounds: (*set out*).
- 6. It is intended (*or not intended*)\* to adduce expert evidence as to a question of valuation.
- 7. The names and addresses of the only other persons who may be interested in or adversely affected by the result of the appeal, so far as is known to the appellant, are (*set out in numbered subparagraphs*).
- 8. (*Set out the name and address of the advocate (if any) representing the appellant*):

Dated this ..... day of ....., 19.....

.....  
(*Signature of appellant or his advocate*).

\*Strike out as appropriate.

FORM 2 AFFIDAVIT OF VERIFICATION

I, (*name in full*), the appellant herein, hereby state that I have read the foregoing memorandum of appeal and that the special facts set out in paragraph 3 thereof are true and accurate to the best of my knowledge, information and belief.

Sworn etc.

This memorandum and affidavit are presented by (*state whether by the appellant in person or by his advocate*).

FORM 3 NOTICE OF INTENTION TO APPEAR ON THE HEARING OF THE APPEAL

(*Heading as in Form 1*)

To the Registrar of the High Court of Kenya at .....

TAKE NOTICE that pursuant to the provisions of rule 7 of the Land Acquisition (Appeals to the High Court) Rules, I, the under-mentioned, intend to appear at the hearing of this appeal and I submit the following particulars:

[Subsidiary]

(1) *(Set out the name, postal address and description of person giving the notice).*

(2) The manner in which I may be interested in or affected by the appeal and the grounds upon which I claim to be entitled to be heard are as follows: *(set out).*

(3) I intend to appear at the hearing *(state whether alone or jointly with some other person or persons, giving the names, addresses and descriptions of those persons).*

\*(4) I wish to be supplied by you free of charge with a copy of the memorandum of appeal and of any relevant notice of intention to appear received or to be received by you from any other person.

(5) The order which I will submit should be made on the appeal is that *(set out desired order)* on the ground that *(set out).*

(6) I intend *(or do not intend)\** to adduce expert evidence as to a question of valuation.

(7) Documents may be served upon me in this matter at *(state an address within Kenya).*

Dated this ..... day of ....., 19.....

.....  
*(Signature of person giving the notice).*

\*Strike out as appropriate.

[Subsidiary]

L.N. 31/2010.

THE LAND ACQUISITION ACT  
*(Cap. 295)*

THE LAND ACQUISITION (COMPENSATION TRIBUNAL)  
RULES, 2010

ARRANGEMENT OF RULES

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  - 3—Reference of dispute
- PART II—APPLICATION TO THE TRIBUNAL
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## PART VI—DETERMINATION OF APPLICATION

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[Subsidiary]

L.N. 31/2010.

## THE LAND ACQUISITION (COMPENSATION TRIBUNAL) RULES, 2010

## PART I—PRELIMINARY

Citation. 1. These Rules may be cited as the Land Acquisition (Compensation Tribunal) Rules, 2010.

Interpretation. 2. In these Rules, unless the context otherwise requires—

Cap. 295 “Act” means the Land Acquisition Act;

“applicant” means a person, his duly recognised agent or legal representative who makes an application to the Tribunal under section 29 (7) of the Act and includes a public body for purposes of which land is acquired within the meaning of section 29 (8) of the Act;

“Chairman” means the person holding office or acting Chairman of the Tribunal;

“disputed decision” means a decision of the Commissioner for an award against which an application is brought under these Rules;

“respondent” means any other party to the proceedings before the Tribunal other than the applicant.

Reference of dispute. 3. Any person who is aggrieved by an award of the Commissioner as specified in section 29 (7) and (8) of the Act may apply to the Tribunal in accordance with these Rules.

## PART II—APPLICATION TO THE TRIBUNAL

Notice of application. 4. (1) A party desirous of referring a disputed decision to the Tribunal shall file a written notice in the requisite form approved by the Tribunal.

(2) The applicant shall deliver six copies of the notice of application to the Tribunal so as to reach it not later than sixty days after the date on which the disputed decision was served upon him.

(3) The notice shall include—

(a) the name and address of the applicant;

(b) the particulars of the disputed decision;

(c) a statement of the purpose of the hearing; and

(d) a statement of the applicant's dissatisfaction with the decision which is the subject of the application.

(4) The applicant shall sign the notice of application.

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5. The applicant may, in his notice of application or in a separate application to the Tribunal include—

- (a) a request for an early hearing of the application, and the reasons for that request;
- (b) a notification that at the hearing of his application, he intends to call an expert witness and the name, address and description of the field of expertise of the proposed expert witness; or
- (c) a request that an expert who took part in the disputed decision attend the hearing of the application and give evidence.

6. (1) Upon receipt of a notice of application, the clerk shall—

- (a) acknowledge receipt of the notice of application by stamping and endorsing the date on which the notice of application is received;
- (b) enter the particulars of the notice of application\* in a register kept by the Tribunal for that purpose;
- (c) inform the applicant in writing of the case number of the application as entered in the register;
- (d) advise the applicant of the address to which notices and communications to the Tribunal shall be sent; and
- (e) advise the applicant of any steps required to be performed on his part to enable the Tribunal determine the application.

7. (1) Upon filing the notice of application with the Tribunal, the applicant shall serve a copy of the notice of application on the respondent within thirty days from the date of filing the notice.

(2) The Tribunal may, at the request of any party and on payment of such costs as the Tribunal may determine, serve a copy of the notice of application and of any reply, together with any amendments or supplementary statements, written representations or other documents received from any party on all parties to the proceedings and if any person or body is subsequently enjoined as a party, upon that person or body.

8. (1) The Tribunal may, on the application by a party to the proceedings, extend the time appointed by these Rules, not being a time limited by the Act, for doing any act or taking any proceedings and may do so upon such terms and conditions it considers fit.

(2) An application to the Tribunal for an extension of a time limit under paragraph (1) of this rule shall state the grounds on which the application is based and be supported by an affidavit of the applicant.

[Subsidiary]  
Documents  
to accompany  
application or reply.

9. (1) A party to a proceeding before the Tribunal shall deliver to the Tribunal with his application or reply, a copy of every document including every map, plan, certificate or report which he intends to rely on for the purposes of his application or reply.

(2) Where the Tribunal or parties to the proceeding are in possession of any document which a party intends to rely on during the hearing, the Tribunal may, on such terms as it considers fit, exempt a party from the provisions of paragraph (1) of this rule.

(3) If any document required to be delivered to the Tribunal under this rule is, in the opinion of the party who has possession of the document, related to his intimate personal or financial circumstances or is commercially sensitive and the party concerned seeks to restrict its disclosure, he shall inform the Tribunal of that fact and of his reasons for the restriction, whereupon the Tribunal shall serve the copies of the document in accordance with the directions of the Chairman.

Objection.

10. (1) An objection to the jurisdiction of the Tribunal or the admissibility of an application or any other objection shall be made in writing to the Tribunal within twenty one days from the date on which the party objecting was served with the application.

(2) The party making an objection under paragraph (1) of this rule shall serve a copy of the preliminary objection on the applicant within fifteen days from the date of lodging the objection.

(3) On receipt of any preliminary objection, the applicant shall submit written submissions on the objection within seven days from the date of service on him of the objection.

(4) The Tribunal shall suspend the hearing of the application pending its ruling on the objection.

Amendment  
of application  
and delivery of  
supplementary  
grounds of  
application.

11. (1) The applicant may, at any time before the application is set down for hearing, amend his notice of application or any statement of grounds of application or deliver a supplementary statement of grounds of application.

(2) The applicant may, with leave of the Tribunal, amend his notice of application or statement of grounds of application at any time after the application has been set down for hearing or during the hearing of the application.

(3) The Tribunal may grant leave to amend the notice of application or statement of grounds of application on such terms and conditions as it considers fit.

(4) The applicant shall deliver to the Tribunal and serve on the respondent and any other party to the proceedings, a copy of every amendment and supplementary statement.

Application by

12. (1) When the person by whom an application is brought is a minor

or is under a disability, the application may, subject to conditions which may be imposed by the Tribunal, be brought by a person legally authorised to act on his behalf or by a person appointed by the Tribunal.

(2) A person acting under paragraph (1) of this rule may take all necessary steps for the purpose of the application as an applicant is required by these Rules.

#### PART III—REPLY

13. (1) Upon receipt of a copy of a notice of application setting forth the grounds of application or a separate statement of grounds of application, the Commissioner shall deliver to the Tribunal a written reply which shall state—

- (a) whether or not the Commissioner intends to oppose the application;
- (b) where the Commissioner intends to oppose the application, the grounds on which he relies on in opposing the application;
- (c) the name and address of any other person who, in the opinion of the Commissioner, has a direct interest in the subject matter of the application.

(2) The Commissioner shall include with his reply, a statement summarising the facts relating to the disputed decision and if they are not part of that decision, the reasons thereof and shall deliver to the Tribunal six copies of the reply.

(3) Subject to paragraph (3) of rule 9, the Commissioner shall also deliver to the Tribunal any other relevant documents which he intends to rely on during the hearing of the application.

(4) The Commissioner shall serve the reply and any other documents filed under paragraph (3) of this rule on the applicant and on any other person named by the Commissioner as having a direct interest in the subject matter of the application.

(5) In his reply or in a separate notice to the Tribunal, the Commissioner may request—

- (a) further particulars of the application; or
- (b) a determination of any question as a preliminary issue.

(6) Every reply by the Commissioner shall be signed by the Commissioner and delivered to the Tribunal not later than twenty one days after the date of service on the Commissioner of the copy of the notice of application or, if received later, the copy of the separate grounds of application.

14. (1) The Commissioner may, at any time before the application is set

Amendment of reply.

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down for hearing, amend his reply or deliver to the Tribunal, a supplementary statement of reply.

(2) The Commissioner may, with the leave of the Tribunal, amend his reply after the application is set down for hearing or at the hearing of the application.

(3) The Tribunal may grant leave to Commissioner to amend his reply on such terms and conditions it considers fit.

(4) The Commissioner shall send a copy of every amendment and supplementary statement to the Tribunal and serve a copy on all parties to the hearing.

#### PART IV—THIRD PARTIES

Joinder of parties.

15. If it appears to the Tribunal, whether on application by a party to the hearing or on its own motion, that it is desirable that a person be made a party to the proceedings, the Tribunal may order that that person be enjoined as a respondent and may give directions as to the delivery and service of documents as it considers fit.

Intervener.

16. (1), The Tribunal may, in any proceedings before it and on the written request by a person, corporation or group of persons associated in the pursuit of any of the objectives of the Act, grant status as an intervener to that person, corporation or group of persons.

(2) A person seeking status as an intervener shall furnish to the Tribunal a statement in writing which shall include—

- (a) his full names and address;
- (b) the interests claimed in the subject matter; and
- (c) his position in relation to the application.

(3) The decision of the Tribunal shall be binding on a person granted the status of an intervener, in so far as it relates to matters in respect of which he intervened.

#### PART V—HEARING

Directions and Pre-hearing orders.

17. (1) The Tribunal may on its own motion or on the application by a party to the proceedings give directions, including directions for the furnishing of further particulars or supplementary statements, as are necessary to enable the parties prepare for the hearing or assist the Tribunal determine the issues related to the proceeding before it.

(2) The Tribunal may take into account the need to protect any matter that relates to the intimate personal or financial circumstance of any party, is commercially sensitive, consists of information communicated or obtained in

[Subsidiary]

confidence or concerns national security and may order that all or part of the evidence of a person be heard in private or prohibit or restrict the publication of that evidence.

(3) Subject to the provisions of paragraph (2) of this rule, all proceedings before the Tribunal shall be held in public.

(4) The Tribunal shall not compel a person to give any evidence or produce any document or other material that he could not be compelled to give or produce in a trial for an action in a court of law.

(5) An application by a party for directions shall be made in writing to the Tribunal and shall, unless accompanied by the written consent of all parties, be served by the party seeking directions on all other parties to the proceedings.

(6) If any party objects to the directions sought, the Tribunal shall consider the objection and if it considers it necessary, give the parties an opportunity to appear and be heard by it on the objection raised.

18. (1) Where a party fails to comply with directions given under these Rules, the Tribunal may, in addition to other powers available to it, before or at the hearing of the application dismiss the whole or part of the application, or, as the case may be, strike out the whole or part of a respondent's reply and where appropriate, direct that a party be excluded from participating in the proceedings.

Failure to comply with directions.

(2) The Tribunal shall not dismiss, strike out or give any directions under paragraph (1) of this rule unless it has served a notice on the party who has failed to comply with the direction, giving him an opportunity to show cause why the Tribunal should not give directions under paragraph (1) of this rule.

Varying or setting aside of directions.

19. A person on whom directions (including any summons) are served and who had no opportunity of objecting to the making of directions may apply to the Tribunal to vary or set aside the directions, but the Tribunal shall not do so without first notifying the person who applied for the directions and considering any representations made by him.

Subpoenas and orders.

20. (1) A person summoned to give evidence before the Tribunal shall be given at least seven days' notice of the hearing unless the person has informed the Tribunal that he accepts the shorter notice given.

(2) Any person other than the applicant or respondent required in obedience to a summons to attend and give evidence or produce any document shall not attend the hearing except on the undertaking that the necessary expenses of his attendance will be paid by the party requiring his attendance.

Place and time of hearing.

21. (1) The Tribunal may on its own motion or at the instance of any of the parties to the dispute fix the date, time and place for the hearing subject to giving any necessary directions by the Tribunal and in setting the hearing date the Tribunal shall have regard to any material circumstances including convenience as to the Tribunal's own diary and schedules of business.

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(2) A hearing notice may be issued by the Tribunal on its own motion or by any party to the hearing and served on all other parties to the proceedings not less than twenty one days before the date so fixed.

(3) The hearing notice shall include—

(a) a statement of the purpose of the hearing and a statement of the issues involved;

(b) information and guidance, in a form approved by the Minister, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation;

(c) a statement of the right of the parties to ask for and receive reasons in writing for a decision of the Tribunal; and

(d) a statement explaining the possible consequences of non-attendance and of the right of an applicant and of any respondent who has presented a reply, but who fails to attend and is not represented, to make representations in writing.

(4) The Tribunal may alter the place and time of any hearing and the Tribunal shall give the parties not less than seven days notice of the alteration.

Provided that any altered date shall not be a date prior to the date notified under paragraph (1) of this rule.

(5) The Tribunal may from time to time, on its own motion or on the application of a party to the proceedings, adjourn the hearing and if the date, place and time of the next hearing is announced in the presence of all the parties at the time of the allowing adjourning the hearing, no hearing notice shall be required to be issued to any party.

(6) Subject to this rule, the Tribunal may, if it considers fit, visit any site, and may conduct a hearing at the site on the day of the visit.

(7) The Tribunal shall transact business from Monday to Friday during official business hours.

Public notice of hearings.

22. The Tribunal shall provide for public inspection, at the principal office of the Tribunal and at the place where a hearing is to be held, a list of all applications for which a hearing is to be held and of the place and time fixed for the hearing.

Exclusion of persons disrupting Proceedings.

23. Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

Failure of Parties to attend hearing.

24. (1) Where a party fails to attend or be represented at a hearing of which he has been duly notified, the Tribunal may—

[Subsidiary]

(a) unless it is satisfied that there is sufficient reason for the absence of the party, hear and determine the application in the absence of that party; or

(b) adjourn the hearing;

and may make orders as to costs as it considers fit.

(2) Before disposing an application under paragraph 1 (a) of this rule, the Tribunal shall consider any representations made in writing submitted by that party in response to the notice of application and for the purposes of this rule, the application and any reply shall be treated as representations in writing.

(3) A party aggrieved by the decision of the Tribunal under paragraph 1 (a) may file an application within thirty days from the date of the decision for review of the order, and the Tribunal may within reasonable time review the order on such terms as it considers fit, if the Tribunal is satisfied that there was sufficient cause for non-attendance.

25. (1) The Chairman shall, at the commencement of the hearing, explain the order of proceedings which the Tribunal proposes to adopt.

Procedure at hearing.

(2) The Tribunal shall conduct the hearing in a manner as it considers suitable for the determination of the application or the clarification of issues before it and generally for the just handling of the proceedings and shall, so far as it appears to it appropriate, avoid legal technicality and formality in its proceedings.

(3) The parties shall be heard in such order as the Tribunal shall determine, and shall be entitled to give evidence, call a witness, and address the Tribunal on both evidence and generally on the subject matter of the application.

(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or written statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent or author of a written statement.

(5) The Tribunal may receive evidence of any fact which appears to it to be relevant to the application.

(6) The Tribunal may, during the hearing and if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of application or, as the case may be, his reply and to adduce any evidence not presented to the Commissioner before or at the time the Commissioner took the disputed decision.

(7) The Commissioner may require any witness to give evidence on oath or affirmation and for that purpose it may administer an oath or affirmation in the prescribed form.

26. The Tribunal may, at the request of any party and upon payment of

Demonstration and

[Subsidiary]

display facilities. the prescribed fees, provide visual demonstration facilities for the display of any maps, charts, diagrams, illustrations or texts and documents, which that party intends to exhibit during the hearing.

Judicial notice.

27. (1) The Tribunal may take judicial notice—

(a) of facts that are publicly known and that may be judicially noticed by a court of law; and

(b) of generally recognised facts and any information, policy or rule that is within its specialised knowledge.

(2) Before the Tribunal takes notice of any fact, information, opinion, policy or unwritten rule other than that which may be judicially noticed by a court, it shall notify the parties of its intention and afford them a reasonable opportunity to make representations with respect thereto.

28. The Tribunal shall grant to any party a reasonable opportunity—

(a) to be heard, submit evidence and make representations; and

(b) to cross-examine witnesses to the extent necessary to ensure fair hearing.

Change of advocate.

29. (1) A party represented by an advocate may, at any stage of the proceedings change his advocate upon giving notice to the Tribunal and his former advocate.

(2) The party shall serve the notice of change of advocate on all other parties to the proceedings.

#### PART VI—DETERMINATION OF APPLICATION

30. Where the Commissioner—

(a) fails to file a reply with the Tribunal within twenty one days or a longer time as the Tribunal may allow;

(b) states in writing that he does not oppose the application; or

(c) states in writing that he withdraws his opposition to the application,

and if there is no subsisting opposition to that application, the Tribunal may determine the application on the basis of the notice and grounds of application without proceeding with the hearing.

Withdrawal of application.

31. (1) The applicant may, with leave of the Tribunal and at any time before or at the hearing of the application, withdraw his application upon such conditions as the Tribunal considers fit, whereupon the application shall be marked as withdrawn.



[Subsidiary]

(2) Where an application is withdrawn under paragraph (1) of this rule, no application shall be heard by the Tribunal in relation to the same subject matter unless the Tribunal, for good reason shown, otherwise determines.

32. (1) The Tribunal may order any question of fact or law which is in issue in the application to be determined at a preliminary hearing.

Preliminary issues.

(2) If, in the opinion of the Tribunal, the determination of that question disposes of the whole application, the Tribunal may treat the preliminary hearing as the hearing of the application and may make orders by way of disposing of the application as the Tribunal considers fit.

(3) The Tribunal may, upon written consent by all parties and hearing submissions thereto, determine any question of fact or law under paragraph (1) of this rule without an oral hearing.

(4) Where the determination of the question of fact or law results in the disposal of the application, the Tribunal shall not make an order disposing the application without an oral hearing unless it has given the parties an opportunity to make representations in writing or the parties have agreed in writing that it may dispose the application without an oral hearing.

(5) The decision of the Tribunal in relation to a preliminary issue may be given orally at the end of the hearing, or may be reserved, but in either event (whether there has been a hearing on the preliminary issue or not), shall be recorded in writing in a statement which shall contain the reasons for its decision and be dated and signed by the Chairman.

(6) The Tribunal shall deliver a copy of the document recording the decision on the preliminary issue to each party.

33. The Tribunal may by consent in writing of all the parties to a hearing determine the application or any issue arising therefrom without an oral hearing.

Power to determine application without hearing.

34. The Tribunal may, in its discretion and upon giving the parties concerned an opportunity to be heard, order the consolidation of any applications before it where notices of application have been given in respect of the same matter or in respect of several interests in the same subject in dispute.

Consolidation of applications.

35 (1) A decision of Tribunal may be taken by a majority of the members present and the decision shall record whether it was unanimous or taken by a majority of the members present.

Decision of Tribunal.

(2) The decision of the Tribunal shall be valid if the dispute is heard and decided by three members of the Tribunal, one of whom shall be a valuer.

(3) The decision of the Tribunal may be given orally at the end of the hearing or may be reserved and shall—

(a) be reduced to writing whether there has been a hearing or not;

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and

(b) shall be signed and dated by the Chairman and every member who heard the matter.

(4) A dissenting opinion may be pronounced separately by the member who wrote it and shall be dated and signed by that member.

(5) Every document containing a decision referred to in this rule shall, as soon as may be reasonable, be entered in the register and the Tribunal shall send a copy of the entry to each party.

(6) Every copy of an entry sent to the parties under paragraph (5) of this rule shall be accompanied by a notification indicating the rights of the parties and of the time within which and place at which those rights may be exercised.

(7) Where the decision of the Tribunal refers to any evidence which has been heard in private, a summary of the decision, omitting such material as the Tribunal may direct, shall be entered in the register, but copies of the complete decision document shall be sent to the parties together with a copy of the entry.

(8) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the applicant.

(9) Where a final decision has been made by the Tribunal in respect of any application, the Tribunal shall, within thirty days thereafter, cause to be published—

(a) in the Kenya Gazette; and

(b) where the matter is of public importance, in at least one newspaper of national circulation,

a summary thereof stating the names of the parties, the nature of the application and the date and place of the decision.

(10) The Tribunal shall, in publishing its decision under paragraph (9) of this rule, have regard to the need to preserve the confidentiality of any evidence heard in private in accordance with these rules.

Reasons for decisions.

36. The Tribunal shall give reasons for reaching its decisions, and each decision shall include—

(a) a statement of the findings of fact made from the evidence adduced, including, where applicable, any relevant government policy; and

(b) a statement of the laws and rules of law applied, and the interpretation thereof.

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37. (1) The Tribunal shall not make an order awarding costs, but may, subject to paragraph (2) of this rule, make an order —

(a) against a party, including a party who has withdrawn his application or reply, if it is of the opinion that the party has acted frivolously or is vexatious or that his conduct in making, pursuing or resisting an application was wholly unreasonable;

(b) against the Commissioner, where it considers that the decision against which the application is brought was wholly unreasonable; or

(c) with respect to any costs or expenses incurred or any allowances paid, as a result of postponement or adjournment of a hearing at the request of a party.

(2) An order shall not be made under paragraph (1) against a party without first giving that party an opportunity to make representations against making of the order.

(3) Any costs required by an order under this rule to be taxed shall be assessed by the Tribunal.

#### PART VII — MISCELLANEOUS PROVISIONS

38. (1) The Tribunal may authorise the Chairman to do any act required or authorised by these Rules to be done by the Tribunal, not being an act which is required by the Act to be done by the Tribunal itself.

(2) In the event of the death or incapacity of the Chairman following the decision of the Tribunal in any matter, the functions of the Chairman for the completion of the proceedings, including a review of any decision, may be exercised by any other person duly acting as chairman of the Tribunal.

(3) The Chairman may by instrument in writing, delegate to any officer of the Tribunal any of his powers which are not required by the Act to be performed by him personally.

39. (1) The Tribunal may —

(a) where the parties to an application agree in writing upon the terms on which an application or issue should be decided, confirm the agreement reached by the parties and decide accordingly;

(b) at any stage of proceedings before it, by order strike out or amend any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious; or

(c) at any stage of the proceedings before it, by order strike out any application for want of prosecution.

[Subsidiary]

(2) Before making any order under paragraphs 1 (b) and (c) of this rule, the Tribunal shall send a notice to the party against whom the order is to be made, giving that an opportunity to show cause why the order should not be made.

40. (1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render any proceedings void.

(2) Where any irregularity comes to the attention of the Tribunal, the Tribunal may (and shall, if it considers that any person may have been prejudiced by the irregularity) give such directions as it considers just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Chairman or the Tribunal, or errors arising as a result of an omission, may be corrected by the Chairman by certificate under his hand or by the Tribunal.

41. (1) Any document purporting to be a document duly executed or issued by the Chairman shall, unless the contrary is proved, be considered to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Chairman to be a true copy of any entry of a decision in a register kept under these Rules shall, unless the contrary is proved, be sufficient evidence of the entry and of matters contained therein.

42. (1) The language of the Tribunal shall be English or Kiswahili.

(2) The Tribunal may, at its discretion, allow an application lodged in any local language spoken in Kenya by persons or a community directly affected by the subject matter of the application, if those persons or community cannot immediately obtain a translation but undertake to do so within a reasonable time.

(3) The Tribunal shall, taking into account all the circumstances, grant the assistance of a competent interpreter free of charge to a party or witness who does not understand or speak the language used at the hearing or who is deaf.

(4) The rulings of the Tribunal shall be prepared in the English language but may be translated, on request by a party, into the Kiswahili language.

43. (1) There shall be paid to the Tribunal such filing and other fees, including fees for service by the Tribunal of any notice or process, as shall be prescribed by the Minister.

(2) The Tribunal may, if it considers it to be in the interest of justice, or on grounds of financial hardship on the part of the applicant, waive all or part of the filing fees payable in any application.

44. The Tribunal may from time to time prescribe and issue free of charge forms as it may consider necessary for the purposes of filing applications or

Correcting irregularities.

Language.

Filing fees.

Prescribed forms.

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replies and for any interlocutory matters.

45 (1) The Chairman shall take or cause to be taken notes of all proceedings before the Tribunal or may order that the record of any proceedings before it shall be taken by short hand notes or tape-recorded or, at the discretion of the Tribunal, electronically recorded.

(2) A verbatim record of every hearing shall be made by the Tribunal, and copies of the transcript thereof shall be circulated to all members of the Tribunal and, on request, to any party to the hearing.

