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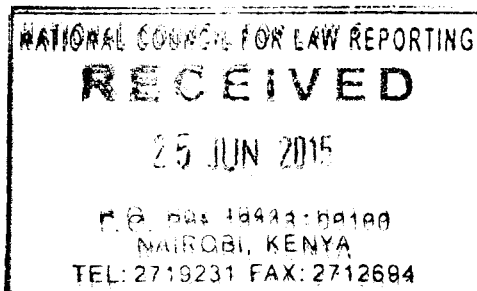
NAIROBI, 3rd June, 2015

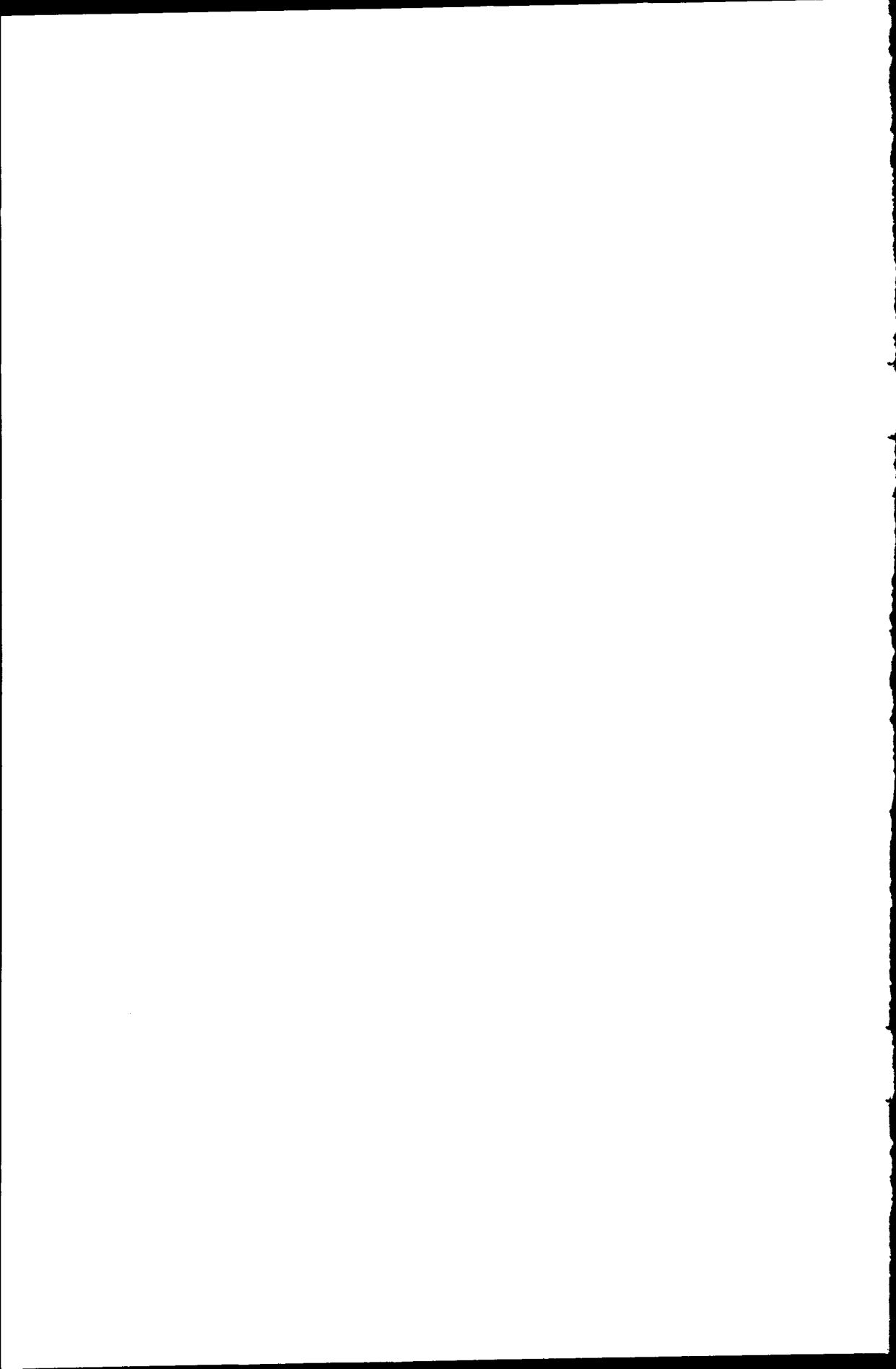
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**THE ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION (AMENDMENT) ACT, 2015**

No. 5 of 2015

Date of Assent: 27th May, 2015

Date of Commencement: 17th June, 2015

**AN ACT of Parliament to amend the
Environmental Management and Co-ordination
Act, 1999**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Environmental Management and Co-ordination (Amendment) Act, 2015.

2. (1) The Environmental Management and Co-ordination Act, 1999, in this Act referred to as the “principal Act” is amended in section 2—

(a) by deleting the definition of “coastal zone” and inserting the following new definition—

“coastal zone” means the geomorphologic area where the land interacts with the sea comprising terrestrial and marine areas made up of biotic and abiotic components or systems coexisting and interacting with each other and with socio-economic activities;

(b) by deleting the definition of “District Environment Committee”;

(c) by deleting the definition of “District Environment Action Plan”;

(d) by deleting the definition of “Provincial Environment Committee”;

(e) by deleting the definition of “exclusive economic zone” and inserting the following new definition—

“exclusive economic zone” has the meaning assigned to it by the United Nations Convention on the Law of the Sea;

(f) by deleting the definition of “local authority”;

Short title.

Amendment
of section 2
of No. 8 of
1999.

- (g) by deleting the definition of “natural resources” and inserting the following new definition—

“natural resources” has the meaning provided under Article 260 of the Constitution;

- (h) by deleting the definition of “wetland” and inserting the following new definition—

“wetland” means areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres;

- (i) by inserting, in proper alphabetical sequence, the following new definitions—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matter relating to environment and natural resources;

“continental shelf” has the meaning assigned to it by the United Nations Convention on the Law of the Sea;

“County Environment action plan” mean a County Environment action plan prepared under section 40;

“County Environment Committee” means a committee established under section 29;

“county government” has the meaning assigned to it in section 2 of the County Governments Act;

“environmental organization” means a public benefits organization whose objective is to conserve the environment and natural resources and is duly registered as a community based organization, or a public benefits organization;

“indigenous knowledge” means any traditional knowledge of sources, components, capabilities, practices and uses of, and processes of preparation, use and storage of plant and animal species and their genetic resources;

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

“natural resource agreements” means an agreement which involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource in Kenya;

“person” means a legal person;

“strategic environmental assessment” means a formal and systematic process to analyse and address the environmental effects of policies, plans, programmes and other strategic initiatives;

“traditional knowledge” means such knowledge as may be socially and culturally acquired within or without the context of conventional education by Kenyans; “voluntary environmental management” means the principle of encouraging voluntary compliance in conserving the environment and which is a cost-effective and efficient method of attaining compliance with environmental regulations and of encouraging innovative conservation practices; and

“wildlife” has the meaning assigned to it in the Wildlife Conservation and Management Act.

No. 47 of 2013

(2) The principal Act is amended by deleting the words in the first column and substituting therefor the words in the second column wherever they appear in the Act—

First Column	Second Column
Minister	Cabinet Secretary
Chairman	Chairperson
Complaints Committee	Department
District	County
District Environment Committee	County Environment Committee
High Court	Environment and Land Court
Permanent Secretaries	Principal Secretaries
Non-Governmental organizations	Public benefit organizations

3. Section 3 of the principal Act is amended—

Amendment
of section 3 of
No. 8 of 1999.

(a) in subsection (1), by inserting the words “ in accordance with the Constitution and relevant laws” immediately after the words “healthy environment”;

(b) by inserting the following new subsection immediately after subsection (2)—

“(2A) Every person shall cooperate with state organs to protect and conserve the environment and to ensure the ecological sustainable development and use of natural resources”.

(c) in subsection (3), by—

(i) deleting the words “ 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” and substituting therefor the words “If a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, in relation to him”; and

(ii) inserting the words “may on his behalf or on behalf of a group or class of persons, members of an association or in the public interest” immediately after the words “that person”.

4. The principal Act is amended by inserting the following new section immediately after section (3)—

Access to
information.

3A. (1) Subject to the law relating to access to information, every person has the right to access any information that relates to the implementation of this Act that is in the possession of the Authority, lead agencies or any other person.

(2) A person desiring the information referred to in subsection (1) shall apply to the Authority or a lead agency and may be granted access to such information on payment of the prescribed fee.

4. 5. The principal Act is amended by repealing section

Repeal of section
4 of No. 8 of
1999.

6. Section 5 of the principal Act is amended, by—

Amendment of
section 5 of No. 8
of 1999.

(a) deleting the word “Council” and substituting therefor the words “Cabinet Secretary”; and

(b) inserting the following new paragraph immediately after paragraph (c)—

(ca) provide evidence of public participation in the formulation of the policy and the environmental action plan.

6. 7. The principal Act is amended by repealing section

Repeal of section
6 of No. 8 of
1999.

8. The principal Act is amended by repealing section 8 and replacing it with the following new section—

Repeal and
replacement of
section 8 of No. 8
of 1999.

Headquarters.

8. The headquarters of the Authority shall be in Nairobi but the Authority shall ensure its services are accessible in all parts of the Republic.

9. Section 9 (2) of the principal Act is amended—

Amendment
of section 9 of
No. 8 of 1999.

- (a) by inserting the following new paragraph immediately after paragraph (b)—
- (bb) audit and determine the net worth or value of the natural resources in Kenya and their utilization and conservation;
- (b) by deleting paragraph (c) and substituting therefor the following new paragraph—
- “(c) make recommendations to the relevant authorities with respect to land use planning;”
- (c) by deleting paragraph (e);
- (d) in paragraph (h), by deleting the words “and coordinate” appearing immediately after the word “undertake”;
- (e) in paragraph (m), by deleting the words “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” and substituting therefor the words “environmental education, public awareness and public participation”;
- (f) in paragraph (n), by inserting the word “develop” immediately before the word “publish”;
- (g) in paragraph (o), by deleting the words appearing immediately after the word “protection”;
- (h) in paragraph (p), by deleting the words “ issue an annual” and substituting therefor the words “submit to the Cabinet Secretary every two years, and”;
- (i) by inserting the following new paragraphs immediately after paragraph (p)—
- (q) encourage voluntary environmental conservation practices and natural resource conservancies, easements, leases, payments for ecosystem services and other such instruments and in this regard, develop guidelines;

(r) work with other lead agencies to issue guidelines and prescribe measures to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya; and

(j) by renumbering paragraph (q) as paragraph (s).

10. Section 10 of the principal Act is amended—

Amendment
of section 10 of
No. 8 of 1999.

(a) in subsection (1) (c) by—

(i) inserting the words “who shall be the Secretary to the Board” immediately after the word “Director-General”;

(ii) deleting the word “President” and substituting therefor the words “Cabinet Secretary from amongst three persons selected by the Board through a competitive recruitment process”;

(b) by deleting subsection (1) (d) and substituting therefor the following new subsection—

(1) (d) the Principal Secretary in charge of finance or his representative;

(c) by deleting subsection (1) (e) and substituting therefor the following new subsection—

(1) (e) six members, not being public officers, appointed by the Cabinet Secretary;

(d) by deleting subsection (1) (f) and substituting therefor the following new subsection—

(1) (f) the Attorney General or his representative;

(e) by inserting the following new subsection immediately after subsection (3)—

(3A) Where the office of the Director - General falls vacant, the Board may, pending the appointment of a Director General, appoint a person to act in that

capacity provided that such appointment shall not exceed a period of six months;

(f) by deleting subsection (14) (c).

11. Section 12 of the principal Act is amended by—

Amendment of section 12 of Act No. 8 of 1999.

(a) deleting the word “directly” and substituting therefor the words “direct any” ;

(b) by renumbering section 12 as section 12 (1);

(c) by inserting the following new subsection immediately after subsection (1)—

(2) Any person who fails to comply with sub-section (1) commits an offence.

12. The principal Act is amended by repealing section 14 and replacing it with the following new section—

Repeal and replacement of section 14 of Act No. 8 of 1999.

Remuneration of the Director-General and Directors.

14. 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 Board on the advice of the Salaries and Remuneration Commission.

13. Section 23 of the principal Act is amended—

Amendment of section 23 of Act No. 8 of 1999.

(a) in subsection (2) by deleting the word “four” and substituting therefor the word “three” and deleting the words “(Corporations) or to an Auditor appointed under this section.”; and

(b) by deleting subsection (3) and substituting therefor the following new subsection—

(3) The annual accounts of the Authority shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Financial Management Act, 2012.

No. 18 of 2012

14. Section 24 of the principal Act is amended—

Amendment of section 24 of Act No. 8 of 1999.

(a) in subsection (3)—

- (i) by deleting the words “shall be vested in the Authority and, subject to this Act”;
 - (ii) by deleting the words “he deems fit” and substituting therefor the words “the Cabinet Secretary may prescribe, upon the advice of the Salaries and Remuneration Commission”;
 - (iii) by inserting the words “and subject to chapter Six of the Constitution” immediately after the word “management”;
- (b) by inserting the following new subsections immediately after subsection (3)—

(3A) The Board referred to in subsection (3) shall be known as the Board of Trustees of the Trust Fund and shall be a body corporate having perpetual succession and a common seal and may, in its corporate name, sue and be sued.

(3B) The Trust Fund shall be administered in the manner provided for under a Trust Deed, and for the purposes of this Act, the Trust Deed shall be deemed to constitute the rules and regulations that govern the operations and functions of the Fund.

15. Section 26 (2) of the principal Act is amended by inserting the words “upon consultation with the National Treasury” immediately after the words “Authority may”.

Amendment
of section 26 of
No. 8 of 1999.

16. Section 27 (1) of the principal Act is amended by deleting the word “Council” and substituting therefor the words “Cabinet Secretary”.

Amendment
of section 27 of
No. 8 of 1999.

17. Section 28(2) of the principal Act is amended—

Amendment
of section 28 of
No. 8 of 1999.

(a) in subsection (2), by deleting the words—

- (i) “Minister” and substituting therefor the words “Cabinet

Secretary”; and

- (ii) “Council” and substituting therefor the words “Cabinet Secretary”;

- (b) in subsection (3), by deleting the words “twenty-four” and substituting therefor the word “six”.

18. The principal Act is amended by repealing section 29 and replacing it with the following new section—

Repeal and replacement of section 29 of No. 8 of 1999.

County
Environmental
Committee.

29. (1) The Governor shall, by notice in the Gazette, constitute a County Environment Committee of the County.

(2) Every County Environment Committee shall consist of—

- (a) the member of the county executive committee in charge of environmental matters who shall be the chairperson;
- (b) an officer of the Authority whose area of jurisdiction falls wholly or partially within the county who shall be the Secretary to the County Environmental Committee;
- (c) one representative for each of the Ministries responsible for the matters specified in the First Schedule at the county level;
- (d) two representatives of farmers or pastoralists within the county to be appointed by the Governor;
- (e) two representatives of the business community operating within the concerned county appointed by the Governor;
- (f) two representatives of the public benefits organizations engaged in environmental management programmes within the county

appointed by the Governor in consultation with the National Federation of Public Benefit Organizations; and

- (g) a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the county.

(2) Appointments under this section shall be made in consultation with the relevant county organs that are representative of the nominees in the county.

(3) The Governor, in making the appointments under this section, shall ensure—

- (a) equal opportunities for persons with disabilities and other marginalized groups; and
- (b) that not more than two-thirds of the members are of the same gender.

(4) The members of the County Environment Committee appointed under paragraphs (c) to (g) of subsection (2) shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

19. The principal Act is amended by repealing section 30 and replacing it with the following new section—

Repeal and replacement of section 30 of No. 8 of 1999.

Functions of the
County
Environment
Committee.

30. The County Environment Committee shall—

- (a) be responsible for the proper management of the environment within the county for which it is appointed;
- (b) develop a county strategic environmental action plan every five years; and

- (c) perform such additional functions as are prescribed by this Act or as may, from time to time, be assigned by the Governor by notice in the Gazette.

20. The principal Act is amended in subsection (1) of section 31—

Repeal and replacement of section 31 of No. 8 of 1999.

- (a) by deleting the words “Public Complaints Committee” wherever they appear and substituting therefor the words “National Environmental Complaints Committee”; and
- (b) by deleting paragraph (d) and substituting therefor the following new paragraph—
- “(d) one person who has demonstrated competence in environmental matters, nominated by the Council of County Governors and who shall be secretary to the Complaints Committee”.

21. Section 32 of the principal Act is amended by—

Amendment of section 32 of No. 8 of 1999.

- (a) deleting the words “Complaints Committee” wherever they appear and substituting therefor the words “National Environmental Complaints Committee”;
- (b) inserting the following paragraph immediately after paragraph (b)—
- (bb) undertake public interest litigation on behalf of the citizens in environmental matters.

22. Section 33 is amended by deleting the words “Complaints Committee” wherever they appear and substituting therefor the words “National Environmental Complaints Committee”.

Amendment of section 33 of No. 8 of 1999.

23. The principal Act is amended by repealing section 37 and replacing it with the following new section—

Repeal and replacement of section 37 of No. 8 of 1999.

National
Environment Action
Plan.
National

37. (1) The Authority shall, within two years of the commencement of this Act and every six years thereafter, formulate the

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Environmental Management and Co-ordination (Amendment)

No. 5

National Environmental Action Plan and shall ensure that it has undertaken public participation before the adoption of the Plan.

(2) The Authority shall submit the Plan referred to in subsection (1) to the Cabinet Secretary for approval.

(3) Upon the approval of the Plan, the Cabinet Secretary shall submit it to the National Land Commission and the Ministry of Lands.

(4) The Cabinet Secretary shall publish the National Environment Action Plan in the Gazette.

(5) The Authority shall review the National Action Plan every three years.

24. The principal Act is amended by repealing section 39.

Repeal of section 39 of No. 8 of 1999.

25. The principal Act is amended by repealing section 40 and replacing it with the following new section—

Repeal and replacement of section 40 of No. 8 of 1999.

County environment action plan.

40. (1) Every County Environment Committee shall, within one year of the commencement of this Act and every five years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly.

(2) Every County Environment Committee, in preparing a county environment plan, shall undertake public participation and take into consideration every other county environment action plan already adopted with a view to achieving consistency among such plans.

(3) The respective County Executive Committee members of every county shall submit the county environment action plan referred to in subsection (1) to the Cabinet Secretary for incorporation into the national

environment action plan referred to in section 37.

(4) The Authority shall consider every county environment action plan and either recommend incorporation of such plan into the national environment action plan or specify changes to be incorporated into a respective county environmental plan.

(5) The Cabinet Secretary shall, on the recommendation of the Authority, issue guidelines and prescribe measures for the preparation of environmental action plans.

26. The principal Act is amended by repealing section 41 and replacing it with the following new section—

Repeal and replacement of section 41 of No. 8 of 1999

Contents of county environment action plan.

41. Every county environment action plan prepared under section 40 shall contain provisions dealing with matters contained in section 38 (a) to (j) in relation to their respective county.

27. The principal Act is amended by inserting the following new sections immediately after section 41—

Insertion of section 41A in No. 8 of 1999.

Purpose of Environmental Action Plans.

41A. (1) The purpose of environmental action plans is to co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the national and county governments, as the case may be, in order to—

- (i) minimize the duplication of procedures and functions; and promote consistency in the exercise of functions that may affect the environment; and
- (ii) secure the protection of the environment across the country; and
- (iii) prevent unreasonable actions by any person, state organ or

public entity in respect of the environment that are prejudicial to the economic or health interests of other counties or the country.

Monitoring
compliance with
Environmental Plans.

41B. (1) The Authority shall monitor compliance with the national and county environmental action plans and may take any steps or make any inquiries that it may consider necessary in order to determine if the plans are being complied with.

(2) If as a result of any action taken or inquiry made under subsection (1) the Authority is of the opinion that a plan is not substantially being complied with, the Authority shall serve a written notice to the organ concerned, calling on it to take such specified steps as the Authority may consider necessary to remedy non-compliance.

(3) Within thirty days of the receipt of the notice referred to in subsection (2), the organ shall respond to the notice in writing setting out any—

- (a) objections to the notice, if any;
- (b) the action that will be taken to ensure compliance with the respective plan; or
- (c) other information that the organ considers relevant to the notice.

(4) After considering the representations from the organ and any other relevant information, the Authority shall, within thirty days of receiving the response referred to in subsection (3), issue a final notice—

- (a) to confirm, amend or cancel the notice referred to in subsection (2);
- (b) to specify any action and a time period within which such action shall be taken to remedy non-compliance.

(5) The Authority shall keep a record of all environmental action plans and ensure that such plans are available for inspection by the public.

28. Section 42 of the principal Act is amended -

Amendment of
section 42 of No.
8 of 1999.

(a) in subsection (1)—

(i) by deleting the words “Director General” and substituting therefor the word “Authority” and inserting the word “sea” after the word ‘lake’;

(ii) by inserting a new paragraph immediately after paragraph (g) as follows—

(h) any other matter prescribed by the Cabinet Secretary on the advice of the Authority.

(b) in subsection (3), by deleting the words “riverbanks” and “lake shores” and substituting therefor the words “river basins” and “lake basins” respectively;

(c) by inserting the following new subsection immediately after subsection (4)—

“(4A) The Cabinet Secretary may make Regulations prescribing for any interest in or over land in the interests of defence, public safety, public order, public morality, public health, or land use planning”.

29. Section 43 of the principal Act is amended—

Amendment of
section 43 of No.
8 of 1999.

(a) by deleting the words “riverbank” and “lake shores” and substituting therefor the words “river basin” and “lake basin” respectively;

(b) by renumbering section 43 as section 43(1) and inserting a new subsection immediately after subsection (1) as follows—

(2) The Authority shall, in consultation with the relevant lead agencies and stakeholders, issue guidelines and

prescribe measures for co-management of critical habitats within or around a lake basin, wetland, forest or coastal zone and such measures shall take into account the interests of the local communities resident therein.

30. Section 45 of the principal Act is amended in subsection (4) by deleting the words “Director-General wherever they appear and substituting therefor the word “Authority”.

Amendment of section 45 of No. 8 of 1999.

31. Section 48 of the principal Act is amended—

Amendment of section 48 of No. 8 of 1999.

(a) in subsection (1), by—

(i) inserting the words “and the Forests Act” immediately after the expression “subsection (2)”;

No.7 of 2005

(ii) deleting the words “Director-General” and substituting therefor the word “Authority”;

(b) by inserting the following new subsections immediately after subsection (2)—

(3) Where a forested area is declared to be a protected area under section 54(1), the Cabinet Secretary may cause to be ascertained, any individual, community or government interests in the land and forests and shall provide incentives to promote community conservation.

(4) A person who contravenes any conservation measure prescribed by the Authority, or fails to comply with a lawful conservation directive issued by the Authority or its Environment Committee at the counties commits an offence.

32. Section 49 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 49 of No. 8 of 1999.

(2) Any measures undertaken under subsection (1) shall comply with existing laws.

33. Section 50 of the principal Act is amended by deleting the words “Authority shall, in consultation with

Amendment of section 50 of No. 8 of 1999.

the relevant lead agencies” and substituting therefor the words “Cabinet Secretary shall, on the advice of the Authority”.

34. Section 51 of the principal Act is amended by deleting the words “The Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “The Cabinet Secretary shall, on the recommendation of the Authority”.

Amendment of section 51 of No. 8 of 1999.

35. Section 52 of the principal Act is amended by deleting the words “The Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “The Cabinet Secretary shall, on the recommendation of the Authority”.

Amendment of section 52 of No. 8 of 1999.

36. Section 53 of the principal Act is amended—

Amendment of section 53 of No. 8 of 1999.

(a) in subsection (1), by deleting the words “The Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “The Cabinet Secretary shall, on the recommendation of the Authority”; and

(b) in subsection (2)—

(i) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) appropriate arrangements for access to biological resources, genetic resources and ecological services of Kenya by non-citizens, including the issue of licences and fees to be paid for that access”;

(ii) by inserting the following new paragraphs immediately after paragraph (e)—

(f) measures necessary for the recognition, protection and enhancement of indigenous knowledge and associated practices in the

conservation of the environment and natural resources;

(g) measures necessary for the protection of indigenous knowledge of biodiversity and genetic resources of communities;

(iii) in paragraph (f), by deleting the word “Authority” and substituting therefor the words “Cabinet Secretary”; and by renumbering paragraph (f) as paragraph (h).”

37. Section 54 of the principal Act is amended, in subsection (1) by—

Amendment of section 54 of No. 8 of 1999.

- (a) inserting the words “ and in accordance with the Constitution, the Convention on Biological Diversity and other treaties immediately after the word “agencies”; and
- (b) inserting the word “forests” immediately after the word “lake”.

38. Section 55 of the principal Act is amended—

Amendment of section 55 of No. 8 of 1999.

- (a) in subsection (2), by deleting the words “as soon as practicable upon the commencement of this Act, the Authority shall, in consultation with the relevant lead agencies, prepare” and substituting therefor the words “The Cabinet Secretary shall conduct”;
- (b) in subsection (3)—
 - (i) by deleting the word “Authority” and substituting therefor the words “Cabinet Secretary”;
 - (ii) by deleting the word “two” and substituting therefor the word “four” ;
- (c) by inserting the following new subsections immediately after subsection (7)—
 - (8) Where any polluting or hazardous substances are discharged, released or in