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THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION BILL, 2022

A Bill for

AN ACT of Parliament to provide an appropriate legal and institutional framework for the management of the environment; to repeal and replace the Environmental Management and Co-ordination Act, 1999; and for connected purposes

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, 2022.

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

   “alien species” has the meaning assigned to it in section 3(1) of the Wildlife Conservation and Management Act, 2013;

   “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 under section 162;

   “Authority” means the National Environment Management Authority established under section 8;
“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;

“biodiversity” means the variability among living organisms from all sources including ecosystems and the ecological complexes of which they are a part, compassing ecosystem, species and genetic diversity;

“biological resources” include genetic resources organisms or parts thereof, populations, or any other biotic component or ecosystems with actual or potential use or value for humanity;

“biopiracy” means the exploration of biological resources without the knowledge and non-coercive prior consent of the owners of the resources and without fair compensation and benefit sharing;

“bioprospecting” means the exploration of biodiversity for commercially valuable genetic and biochemical resources;

“biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

“burdened land” means any land upon which an environmental easement has been imposed;
“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to environmental management;

“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 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;

“community” means a group of individuals or families who share a common heritage, interest, or stake in identifiable land, land-based resources or benefits that may derived therefrom;

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

“controlled area” means any area designated as such by the Cabinet Secretary under this Act;

“County Environment Action Plan” mean a County Environment action plan prepared under section 72;

“Deposit Bond” means a deposit bond paid under section 49;

“derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity;

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

“Director-General” means the Director-General of the Authority appointed under section 22;
“ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;

“ecosystem services” are the many and varied benefits to humans gifted by the natural environment and from healthy ecosystems;

“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 mean 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 easement” means an easement imposed under section 151;

“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 156;

“environmental management” includes the protection, conservation and sustainable use of the various elements or components of the environment;
“Environmental Management Plan” means a site-specific plan developed to ensure that the project is implemented in an environmentally sustainable manner where all contractors and subcontractors, including consultants, understand the potential environmental risks arising from the proposed project and take appropriate actions to properly manage that risk;

“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 aesthetic qualities;

“environmental restoration order” means an order issued under section 147;

“environmental strategic plan” refers to the framework of co-ordination as between the Authority on the one hand and the lead agencies and county governments on the other hand and geared towards co-operating towards managing the environment as prescribed in this Act;

“excavation” means removal of soil or rock from a site to form an open space, hollow or cavity, using tools machinery or explosives;

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

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

“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 microorganism 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 136;

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

“integrated environmental assessments” includes cultural impact assessments, heritage impact assessments, health impact assessments, social impact assessments and environmental impact assessments;

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

“intra-generational 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 or any element of the environment or natural resources;

“mixture” means a combination of two or more pure substances in which each pure substance retains its individual chemical properties;

“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 Environment Action Plan” means the plan referred to in section 70;

“National Environment Ombudsman” means the National Environment Ombudsman established under section 52;

“natural resources” means physical non-human factors, whether renewable or non-renewable, including—

(a) sunlight;

(b) surface and ground water;

(c) forests, biodiversity and genetic resources; and

(d) rocks, minerals, fossils, fuels and other sources of energy;

“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 occupational 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”—
(a) in relation to any premises, means

(i) the registered proprietor of the premises;

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

(iii) the agent or trustee of any other owners described in paragraphs (a) and (b) or where such owner cannot be traced or has died, that owner's legal or personal representative;

(iv) 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

(b) 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" includes 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;

"person" includes a company, association or other body of persons whether incorporated or unincorporated;

"pollutant" includes—

(a) any substance, whether liquid, solid or gaseous, which—

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

(ii) is hazardous or potentially hazardous to human health or the environment; and
(b) includes objectionable odours, radioactivity, 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;

“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 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 projects 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 102;

“proponent” means a person proposing or executing a project, program or an undertaking specified in the Second Schedule;
“protected area” means a clearly defined geographical space, recognized, dedicated and managed through legal or other effective means, to achieve long term conservation of nature with associated ecosystem services and cultural values;

“National Federation of Public Benefit Organizations” means the Authority established by section 21 of the Public Benefits Organizations Act, 2013;

“public participation” means active involvement by the citizenry in decision making processes through, inter alia, use of the national media, relevant consultative mechanisms and public hearings;

“restoration” means the reinstatement of a previous practice, right, or situation;

“Restoration Fund” means the National Environment Restoration Fund established under section 48;

“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;

“sewerage services” means the development and management of infrastructure for transport, storage, treatment waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

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

“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;

“threatened ecosystem” means an ecosystem of high biodiversity value or habitat of endangered or endemic species that is under threat of degradation;

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

“traditional interest” includes the culturally accepted way of life for a community or linkages with the past that are actively kept alive by the traditional owners; traditional knowledge” means such knowledge as may be socially and culturally acquired within or without the context of conventional education by Kenyans;

“Tribunal” means the National Environment Tribunal established under section 169;

“Trust Fund” means the National Environment Trust Fund established under section 31;
“waste” means—

(a) any substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides and toxic substances but does not include radioactive waste;

(b) a substance, material or object that may be designated as waste by the Cabinet Secretary by notice in the Gazette,

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

(i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;

(ii) where approval for reuse, recycling or recovering is not required, it has been reused, recycled or recovered; or

(iii) where the Cabinet Secretary has, by notice in the Gazette and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

“water” includes drinking water, river, stream, watercourse, reservoir, well, dam, canal, channel, lake swamp, open drain, or underground water;

“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; and
“wildlife” has the meaning assigned to it in section 3 (1) of the Wildlife Conservation and Management Act, 2013.

PART II—GUIDING PRINCIPLES

3. (1) The right to a clean and healthy environment specified in Article 42 of the Constitution includes access by any person in Kenya to all public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.

(2) Every person shall co-operate with State organs to—

(a) protect and conserve the environment; and

(b) ensure the ecological and sustainable development and use of natural resources.

(3) Where 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, that person may on his or her own behalf or on behalf of a group or class of persons, members of an association or in the public interest, apply to the Environment and Land Court for redress and the Environment and Land Court may make such orders, issue such writs or give such directions as it may deem appropriate to—

(a) prevent, stop or discontinue any act or omission that is denying, violating, infringing on or threatening the right;

(b) compel any public officer to take measures to prevent or discontinue any act or omission that is denying, violating, infringing on or threatening the right;

(c) require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act;

(d) compel any person that is responsible for any form of environmental degradation to restore the

Right to a clean and healthy environment.
degraded environment as far as practicable to its immediate condition prior to the damage; and

(e) provide compensation for any victim 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 denial, violation, infringement or threat to the right.

(4) A person who initiates proceedings under subsection (3) may bring an action notwithstanding that such person cannot show that the defendant’s act or omission as caused or is likely to cause that person any personal loss or injury:

Provided that such proceedings shall not be—

(a) frivolous or vexatious; or

(b) an abuse of the court process.

(5) In exercising jurisdiction under subsection (3), the Environment and Land Court shall be guided by the following principles—

(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 principles traditionally applied by any community in Kenya for the management of the environment or natural resources to the extent that the principles are relevant and 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.

(6) A person exercising a power or performing a function under this Act in relation to environmental management shall be guided by the principles set out in this section.

4. (1) Every person has the right, individually and in association with others, to promote and to strive for the protection and realization of environmental and other related human rights as outlined in the Constitution and section 3 of this Act.

(2) It shall be the duty of the State, every State organ and private entity to respect, protect and uphold the rights and fundamental freedoms of environmental human rights defenders.

(3) The Cabinet Secretary shall put in place policies, regulations, measures and redress mechanisms to ensure that all incidents of violations are well documented and perpetrators of violations against environmental human rights defenders are held accountable.

(4) For the purposes of this section, "environmental human rights defender" means anyone (including groups of people, organizations, indigenous peoples, women and youth) working to defend environmental rights and other human rights related to the environment, including the right to a clean and healthy environment, when those rights have been denied, violated, infringed or threatened.

5. (1) Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

(2) The Authority shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.
(3) Where a person alleges that the right of nature has been, is being or is likely to be denied, violated, infringed or threatened, that person may on their behalf or on behalf of a group or class of persons, members of an association or in the public interest, apply to the Environment and Land Court for redress and the Environment and Land Court may make such orders, issue such writs or give such directions as those provided in section 3 of this Act.

(4) Nature has the right to be restored. This restoration shall be distinct from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

(5) Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.

(6) The Cabinet Secretary make Regulations, prescribing the conservation areas for which the rights in subsection (1) shall apply and the protection of the rights of nature.

(7) Persons, communities, peoples, and nations shall have the right to sustainably benefit from the environment and the natural wealth enabling them to enjoy a good way of living.

(8) For the purposes of this section, “rights of nature” means that nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

6. (1) Subject to the Access to Information Act, 2013, 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 who wishes to access information in accordance with subsection (1) shall apply to the Authority or lead agency or that other relevant person in the prescribed manner and may be granted access to such information on the payment of the prescribed fee.
PART III—POLICY, CO-ORDINATION AND GENERAL ADMINISTRATION

7. The Cabinet Secretary shall—

(a) be responsible for policy formulation and direction 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 stakeholders that undertake environmental protection programmes;

(d) involve the public, and provide proof thereof, in the formulation of environmental policies and the National Environment Action Plan;

(e) mobilise resources for environmental conservation;

(f) prepare, at least since in every three years, a report on the state of the environment in Kenya and lay the report before the National Assembly within ninety days after the report’s publication where the National Assembly is in session or, where the National Assembly is not in session, within twenty-one days after the day the National Assembly next sits after the report’s publication; and

(g) perform such other functions as may be assigned under this Act.

8. (1) There is established an authority to be known as the National Environment Management Authority, which shall be the successor to the National Environment Management Authority established under section 7 of the Environmental Management and Co-ordination Act, 1999.

The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

Functions of the Cabinet Secretary.

Establishment of the Authority.

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(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.

9. (1) The Authority shall be managed by a Board of Directors which shall consist of—

(a) a chairperson appointed by the President;

(b) the Cabinet Secretary responsible for matters relating to finance or the Cabinet Secretary’s representative appointed in writing;

(c) the Principal Secretary in the Ministry responsible for matters relating to the environment or the Principal Secretary’s representative appointed in writing;

(d) the Attorney-General or the Attorney-General’s representative appointed in writing;

(e) the Council of Governors or Council’s representative appointed in writing;

(f) five members, not being public officers, appointed by the Cabinet Secretary; and

(g) the Corporation Secretary, who shall be the secretary to the Board.

(2) A person shall not be appointed under subsection (1) (a) and (f) unless such person holds a post-graduate degree from a university recognized in Kenya in environmental law, environmental science, natural resource management or any social science.
(3) The members referred to under subsection (1) (a) and (f) shall be appointed at different times so that the respective expiry dates of the members’ terms of office shall fall at different times.

(4) The members appointed under paragraph (1) (a) and (f) shall hold office for a term of three years and may be eligible for reappointment for a further one term of three years.

10. (1) A member of the Board appointed under section 9(1) (a) or (f) may be removed from office where that member—

(a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his or her 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 or her duties as a member of the Board; or

(d) becomes, for any reason, incapable or incompetent of properly performing the functions of his or her office.

11. Where a vacancy occurs in the membership of the Board, the relevant appointing authority shall appoint another person in the place of such member for the remainder of the former member’s tenure.

12. (1) The Authority shall—

(a) exercise general supervision and co-ordination over all matters relating to the environment; and

(b) be the principal institution of Government for the implementation of policies relating to the environment.
(2) In addition to the functions under subsection (1), the Authority shall perform the following functions—

(a) co-ordinate environmental management activities undertaken in Kenya and in this regard may issue guidelines in respect of the preparation and submission of environmental strategic plans;

(b) in consultation with lead agencies or County governments, develop a co-ordination framework in respect of the development of environmental strategic plans;

(c) develop and submit policy proposals to the Cabinet Secretary in respect of environmental management;

(d) promote the integration of environmental considerations into development policies, plans, programmes and projects for the sustainable management and rational utilization of environmental resources;

(e) take stock of the natural resources in Kenya and monitor and audit their utilisation and conservation;

(f) make recommendations to relevant authorities with respect to land use planning;

(g) examine land use patterns and their impact on the quality and quantity of natural resources;

(h) advise the Government on legislative and other measures for the management of the environment;

(i) advise the Government on the implementation of relevant international environmental conventions, treaties and agreements;

(j) undertake environmental research, investigations and surveys and collect, collate and disseminate information about the findings of such research, investigations or surveys;
(k) identify projects, programmes and policies for which environmental audit or environmental monitoring require to be conducted under this Act;

(l) develop procedures and safeguards for the prevention of accidents which may cause environmental degradation and recommend remedial measures thereof;

(m) develop an early warning system on environmental emergencies;

(n) undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education, public awareness and public participation in environmental management;

(o) develop, publish and disseminate manuals, codes or guidelines, education and awareness materials relating to environmental management and prevention or mitigation of environmental degradation;

(p) provide advice and technical support, where possible, to entities engaged in natural resources management and environmental protection;

(q) at least once in every two years, prepare and submit to the Cabinet Secretary a 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;

(r) 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;

(s) 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;

(t) promote conservation and management of aquatic ecosystems;

(u) develop and enforce environmental standards and other legal instruments; and

(v) perform such other functions as are incidental or conducive to the exercise of its powers or performance of its functions as best promotes the purpose for which the Authority is established.

13. The Board shall have the power to—

(a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;

(c) receive, on behalf of the Authority, any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(d) enter, on behalf of the Authority, 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;

(e) open a banking account or banking accounts for the funds of the Authority; and

(f) invest, with the approval of the Cabinet Secretary responsible for matters relating to finance, any surplus funds of the Authority not immediately required for the Authority’s purposes in the manner provided in section 34.
14. (1) If a member of the Board is directly or indirectly interested in any matter before it and is present at a meeting of the Board at which the matter is the subject of deliberation, the member shall 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.

(2) A disclosure of interest made under paragraph (a) shall be recorded in the minutes of the meeting at which it is made.

15. Subject to this Act, the Board shall regulate its own procedure.

16. (1) Subject to this Act, the Board may invest any of the funds of the Authority which are not immediately required for the Authority’s purposes in securities in which the Cabinet Secretary responsible for matters relating to finance may approve for that purpose.

(2) Subject to this Act, the Authority may, in consultation with the Cabinet Secretary responsible for matters relating to finance, place on deposit with such bank or banks regulated by the Central bank of Kenya, any monies not immediately required for the Authority’s purposes.

(3) The Board may dispose of the assets of the Authority in accordance with the law relating to the disposal of public assets.

17. (1) The purpose of an environmental strategic plan shall be to—

(a) co-ordinate and harmonize environmental policies, plans, programmes and decisions of a lead agency that exercise functions that may affect the environment or is entrusted with powers and duties for the protection of the environment, in order to—
(i) minimise the duplication of procedures and functions; and

(ii) promote consistency in the performance of functions that may affect the environment;

(b) give effect to the principle of co-operative government;

(c) secure the protection of the environment in Kenya;

(d) prevent unreasonable actions by a county in respect of the environment that may be prejudicial to the economic or health interests of that county or another county; and

(e) enable the Authority to monitor the protection of the environment by lead agencies and county governments.

(2) An environment strategic plan shall constitute the framework of co-ordination between the Authority, and the lead agencies and county governments.

18. (1) The Director-General shall monitor compliance with environmental strategic plans and may—

(a) take any steps or make any inquiries that may be appropriate to determine if environmental strategic plans are being complied with; and

(b) if the Director-General determines that an environmental strategic plan is not substantially being complied with, serve a written notice on the concerned lead agency or county government, directing the lead agency or county government it to take such steps as may be specified in the notice to remedy the failure of compliance.

(2) Within fifteen days of the receipt of a notice under subsection (1) (b), the lead agency or county government shall respond to the notice in writing setting out any—
(a) objections to the notice;

(b) steps that the lead agency or county government
    shall take to remedy failures of compliance; or

(c) other information that the lead agency or county
    government considers relevant.

(3) The Director-General shall, within twenty days
    after receiving a response under subsection (2) and
    considering any other relevant information, issue a final
    notice—

    (a) confirming, amending or cancelling the notice
        referred to in subsection (1);

    (b) specify steps and period within which steps must
        be taken to remedy the failure of compliance; and

    (c) where necessary, request the intervention of the
        Cabinet Secretary under responsible for the lead
        agency or the Council of County Governors in the
        case of a county government.

19. (1) Each lead agency and county government
    shall, at least once in every five years, prepare an
    environmental strategic plan and submit it to the Authority.

    (2) An environmental strategic plan prepared under
        subsection (1) shall contain—

        (a) a description of policies, plans and programmes
            that may significantly affect the environment;

        (b) a description of the manner in which the relevant
            lead agency or the county government will ensure
            that the policies, plans and programmes referred to
            in paragraph (a) will comply with environmental
            principles as well as any national norms and
            standards as envisaged under the Constitution;

        (c) a description of the extent of compliance with the
            relevant lead agency policies by other organs of
            state and persons;
(d) a description of arrangements for co-operation with other lead agencies and county governments, including any existing or proposed memoranda of understanding entered into, or delegation or assignment of powers to other organs of state, with a bearing on environmental management; and

(e) a description of the manner in which the relevant lead agency or the county government will ensure that its functions are exercised so as to ensure compliance with relevant legislative provisions for the promotion, and protection of the environment; and

(3) Each lead agency and county government shall—

(a) exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental strategic plan prepared, submitted and adopted by that organ of state in accordance with this Act:

Provided that any deviation from an environmental strategic plan shall be reported to the Director-General in writing specifying the nature of the deviation, the reasons thereof and the measures proposed to address the deviation;

(b) plan, regulate and manage the environment sector within its mandate in accordance with the environmental strategic plan;

(c) undertake strategic environmental assessments and prepare a strategic environment action plan as may be required for the purpose of implementing the environmental strategic plan;

(d) prepare a report on the state of environment within the lead agency’s sector or county government’s jurisdiction in accordance with the guidelines issued by the Authority in in this regard;
(e) prioritize and mainstream recommendations in respect of the state of environment as may be necessary; and

(f) submit to the Authority at least once in each year and not later than four months after the end of the financial year a report on the implementation of the environmental strategic plan.

20. (1) The Authority may, after giving reasonable notice of its intention so to do, and having employed the co-ordination framework set out in section 17, direct a lead agency or county government to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency or county government by or under this Act or any other relevant written law.

(2) The Authority may draw from any lawful fund the cost of performing a duty otherwise imposed on a lead agency or county government and which has not been performed and so recover the costs of doing so in the manner prescribed by the law relating to public financial management.

21. Subject to this Act, the Board of the Authority may, by resolution, delegate to any committee of the Authority or member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions of the Authority under this Act.

22. (1) There shall be a Director-General of the Authority who shall be appointed by the Cabinet Secretary on the recommendation of the Board through an open, transparent and competitive recruitment process.

(2) A person shall be qualified for appointment as the Director-General if the person—

(a) is a citizen of Kenya;

(b) holds a post-graduate degree in environmental law, environmental science, natural resource
management or a relevant social science from a university recognized in Kenya;

(c) has at least ten years’ experience at management level; and

(d) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General shall serve on such terms and conditions as the Board may, on the advice of the Salaries and Remuneration Commission and approval of the Cabinet Secretary, determine.

(4) The Director-General shall hold office for a term of four years and may be eligible for reappointment for one further term.

(5) The Director-General shall, in the performance of the functions and duties of office, be responsible to the Board.

(6) The Director-General shall—

(a) be the chief executive officer of the Authority;

(b) be the accounting officer of the Authority;

(c) be responsible for—

(i) carrying into effect the decisions of the Board;

(ii) the day-to-day administration and management of the affairs of the Authority;

(iii) supervision of the staff of the Authority; and

(iv) performing such other duties as may be assigned by the Board.

23. (1) The Director-General may be removed from office on the following grounds—
(a) inability to perform functions of the office arising out of physical or mental infirmity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty;

(d) violation of the Constitution or any other written law; or

(e) any other grounds specified in the terms and conditions of service.

(2) Where the question of the removal of the Director-General from office under subsection (1) arises, the Board shall—

(a) notify the Director-General in writing of the reasons for the intended removal; and

(b) give the Director-General the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution.

24. (1) The office of the Director-General may become vacant if the holder of the office—

(a) dies;

(b) resigns by notice in writing to the appointing authority;

(c) is convicted of an offence and sentenced to imprisonment without the option of a fine;

(d) is found to have violated the provisions of the Constitution or any other written law; or

(e) is otherwise removed from office.

(2) The Board shall fill a vacancy in the office of Director-General in accordance with the provisions of section 22.
(3) Where the office of the Director-General falls vacant, the Board may, pending the filling of the vacancy, appoint an officer of the Authority to act in that capacity for a period that shall not exceed six months.

25. (1) The Board may appoint such officers and staff of the Authority as may be required for the proper discharge of the functions of the Authority, upon such terms of service as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

(2) The Board shall, in the appointment of officers and staff, ensure—

(a) equalization of opportunity for persons with disabilities;

(b) equalization of opportunities for the youth; and

(c) that the appointment reflects ethnic, gender and regional diversity of Kenya.

26. (1) There shall be a Corporation Secretary of the Authority who shall be appointed on such terms of service as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

(2) In the performance of his or her duties, the Corporation Secretary shall be responsible to the Board.

27. (1) The common seal of the Authority shall be such device as may be determined by the Authority.

(2) The common seal of the Authority shall be kept in the custody of the Corporation Secretary or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority shall be admissible in evidence in the absence of any proof to the contrary, and shall be deemed to be so executed or issued, as the case may be, without further proof.
28. No matter or thing done or omitted by—

(a) the Cabinet Secretary, the Authority or other institution exercising powers or functions under this Act;

(b) any person acting at the direction of the Cabinet Secretary; or

(c) a person acting at the direction of the Authority,

shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject the person in his or her personal capacity to any action, suit, claim or demand whatsoever.

29. The provisions of section 28 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or 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.

30. (1) The headquarters of the Authority shall be in Nairobi.

(2) Notwithstanding the generality of subsection (1), the Authority shall ensure its services are accessible in all parts of Kenya and in this regard, may establish other offices outside Nairobi.

31. (1) There shall be a trust fund to be known as the National Environment Trust Fund.

(2) The trust Fund shall be a basket mechanism for the catalysing and sustainable financing of good environmental governance and sustainable development actions and interventions in Kenya.

(3) The object of the Fund shall be to catalyse good environmental governance and sustainable development through—
(a) business development including identification of opportunities and partnerships and development of ideas, proposals, and other lawful means or methods of acquiring funds;

(b) mobilization and acquisition of funds through lawful means;

(c) the investment or disbursement of these funds for the sustainable financing for priority actions and interventions to be undertaken by public entities, and any person, as beneficiaries and on such terms and conditions as maybe prescribed by the Board of Trustees in accordance with the Constitution, this Act, or under any law for the time being in force in Kenya; and

(d) mobilization of resources for supporting environmental management, conservation and reporting.

32. The following principles and values of governance shall apply in the management and administration of the Trust Fund—

(a) respect for, protection of, fulfilment and promotion of rights and fundamental freedoms;

(b) meaningful public participation through providing access to information, dissemination of information to enhance public awareness, and consultations with the public during decision making while ensuring feedback is provided demonstrating how the public input contribute to, and impacted the decisions so made;

(c) good governance, transparency, accountability and the rule of law;

(d) inclusivity, non-discrimination, protection of the marginalized and vulnerable persons including persons with disabilities, patriotism, national unity, sharing and devolution of power, human dignity, equity, social justice, and equality;
(e) accountability for administrative acts;

(f) high standards of professional ethics;

(g) efficient, effective and economic use of resources;

(h) good environmental governance; and

(i) ecologically sustainable development.

33. (1) The Trust Fund shall be administered by a Board of Trustees who shall be unincorporated but have perpetual succession which shall comprise of—

(a) a chairperson, being a person holding a degree in the relevant field from a university recognized in Kenya, and relevant professional experience of not less than ten years, appointed by the President;

(b) the Principal Secretary responsible for Environment or his representative appointed in writing;

(c) the Principal Secretary responsible for the National Treasury or his representative appointed in writing;

(d) the Director-General of the Authority or his representative appointed in writing;

(e) a person nominated to represent the Council of County Governors; and

(f) five independent members appointed by the Cabinet Secretary, who shall comprise of—

(i) at least one person qualified in finance or accounting and demonstrable experience in audit, and

(ii) an Advocate of the High Court of Kenya nominated by the Law Society of Kenya;

(iii) one person qualified in natural resource management and related field of environmental studies;
(iv) one person representing the private sector and nominated by the Kenya Private Sector Alliance; and

(v) one person holding a degree from a university recognized in Kenya and possessing demonstrable experience in business development and mobilization of financing for public or private organizations; and

(g) the Chief Executive Officer of the Trust Fund, who shall be the secretary to the Board.

(2) Each Member of the Board of Trustees shall be appointed by name and by notice in the Gazette.

(3) The conduct of the business of the Board of Trustees shall be as specified in the Third schedule.

(4) The Cabinet Secretary shall, when making appointments under this section, ensure that not more than two-thirds of the members of the Board of Trustees shall be of the same gender.

(5) The members of the Board of Trustees shall be appointed at different times so that the respective expiry dates of the terms of their office shall fall at different times.

(6) The members of the Board of Trustees appointed under subsection (1) (a) and (f) shall serve for a term of three years and shall be eligible to be appointed for only one further term of three years.

(7) The members of the Board of Trustees appointed under this subsection (1) (f) shall possess experience that is relevant to the objects for which the Trust Fund is established.

34. (1) The powers and functions of the Board of Trustees shall be to—

(a) mobilize resources for the Fund in accordance with this Act and any other relevant written law;
(b) administer the monies of the Fund;

(c) set the strategic directions for application of the Fund;

(d) define the eligibility criteria for the Fund to finance actions and interventions to promote and enhance good environmental governance and sustainable development;

(e) approve procedures, criteria and eligibility for financing public entities and any other person in a sustainable manner; and

(f) approve the procedures for disbursement, recovery and repayment of loans including interest, and recouping returns on any investments so made.

(2) In the exercise of its powers and performance of its functions under subsection (1), the Board of Trustees shall approve programmes, plans and strategies for the mobilization and disbursement of funds through any manner permissible under this Act in an efficient and equitable manner based on soundness of concept, idea, proposal, investment, research or other output and in this regard, give priority to—

(a) supporting mechanisms, innovations and solutions to develop, rehabilitate, restore and sustain ecosystem services including payment mechanisms;

(b) mainstreaming human rights into development policies and programmes;

(c) supporting research and innovation in order to enhance ecologically sustainable development;

(d) supporting policies aimed at achieving and maintaining a tree cover of at least ten per cent of the land area of Kenya;

(e) supporting solutions for transition to a low-carbon climate-resilient pathway to sustainable development;
(f) supporting county governments in the achievement of their mandates that are aligned to the objects of the Fund;

(g) recognising and conferring awards on persons who have achieved measurable success on any matters relevant to the objects of the Fund;

(h) capacity building on innovations that advance the objects of the Fund; and

(i) such other priority areas as the Board of Trustees may identify.

(3) The Board of Trustees shall approve grants, loans and investments with respect to concepts, ideas, investment, research proposals or other permissible output to business, industry, civil society, academic entities, public entities and other persons that propose activities or business ideas with quantifiable impact as accelerator or enabler in terms of solutions for enhancing good environmental governance and sustainable development.

(4) The Board shall, in granting approvals under subsection (3), apply fiduciary responsibility and sufficient due diligence to evaluate risk and, for this purpose, may request the guidance of the National Treasury and in any event act in accordance with the Constitution and the law relating to public financial management.

35. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively recruited by the Board of Trustees and appointed by the Cabinet Secretary from amongst three candidates recommended by the Board of Trustees on such terms of service as shall be specified in the instrument of appointment on the advice of the Salaries and Remuneration Commission.

(2) A person shall be qualified for appointment as the Chief Executive Officer if that person—

(a) is a citizen of Kenya;

(b) has a postgraduate degree, knowledge and experience in any of the following fields from a university recognized in Kenya—
(i) finance or accounting;

(ii) economics;

(iii) law; or

(iv) environmental science, natural resources management or a relevant related field;

(c) has at least ten years' relevant experience, five of which shall be in a senior management position in a public or private organization; and

(d) satisfies the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be the accounting officer of the Fund and shall, subject to the directions of the Board of Trustees, be responsible for the management of the Fund including the—

(a) implementation of the decisions of the Board of Trustees;

(b) day-to-day management of the affairs of the Fund;

(c) organization and management of the employees of the Fund; and

(d) any other function that may be assigned by the Board of trustees in accordance with this Act.

(4) The Chief Executive Officer shall serve for a term of four years and shall be eligible for reappointment for one further term.

(5) The Fund may appoint such employees as may be necessary for the exercise and performance of its functions on such terms of service as determined by the Board of Trustees on the advice of the Salaries and Remuneration Commission.

36. (1) The Chief Executive Officer may be removed from office on the following grounds—
(a) inability to perform functions of the office due to physical or mental infirmity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty;

(d) violation of the Constitution or any other written law; or

(e) any other grounds specified in the terms of service.

(2) Where the question of the removal of the Chief Executive Officer under subsection (1) arises, the Board of Trustees shall—

(a) inform the Chief Executive Officer in writing of the reasons for intended removal; and

(b) give the Chief Executive Officer the opportunity to make representations in respect of the intended removal.

(3) Where the office of the Chief Executive Officer falls vacant, the Board of Trustees may, pending the appointment of a Chief Executive Officer, appoint an officer of the Authority to act in that capacity:

Provided that the appointment of an acting Chief Executive Officer shall be for a period not exceeding six months.

37. (1) The Board of Trustees shall, at least once on every three months, submit a report to the Cabinet Secretary on the performance of the Fund.

(2) The Cabinet Secretary shall, within six months of the coming into force of this Act, prescribe by notice in the Gazette the mechanisms and performance indicators to be applied by the Board of Trustees for the sound and sustainable management of the Fund.

(3) The Cabinet Secretary shall, at least once in each year, submit to Parliament a report on the performance of the Fund.
(4) The Cabinet Secretary shall publish and publicise the report submitted under subsection (3).

38. (1) If a member of the Board of Trustees is present at a meeting of the Fund or a Committee of the Board of Trustees at which a particular matter is the subject of consideration and in which matter that person is directly or indirectly interested, that member shall, as soon as is practicable after the commencement of the meeting and before commencement of substantive business, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching on such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and shall be, upon conviction, liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(4) The Board of Trustees shall keep and maintain a register of disclosures of interest made under subsection (1).

39. The Trust Fund shall consist of—

(a) monies appropriated by Parliament for the purposes of the Trust Fund;

(b) donations, grants, endowments, gifts and bequests made to the Trust Fund;

(c) monies received—

(i) from any other lawful source for disbursement as investment, grants or loans: or

(ii) as an investment from a third party; and

(d) income from any lawful investments made by the Board of Trustees.
40. The Board of Trustees, the Chief Executive Officer, employees of the Trust Fund, contractors and beneficiaries of the Fund shall, when exercising powers and functions under this Act, integrate the principles and values under section 32, and in any case, ensure that their actions and decisions do not contravene the provisions of section 32 or values and principles prescribed under Articles 10 and 232 of the Constitution.

41. The Trust Fund shall be administered in accordance with the provisions of the Public Finance Management Act, 2012.

42. The Board of Trustees may, with the written approval of the Cabinet Secretary responsible for matters relating to finance, invest any surplus funds not immediately needed for the purposes of the Trust Fund in the manner or securities or other financial instruments approved by the Cabinet Secretary responsible for matters relating to finance.

43. The financial year of the Trust Fund shall be the period of twelve months ending on the thirtieth day of June in each year.

44. (1) At least three months before the commencement of each financial year, the Board of Trustees shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for the estimated expenditure of the Fund for the financial year and in particular, make provision for the following—

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Fund;

(b) the payment of pensions, gratuities and other charges in respect of benefits which are payable out of the finances of the Fund;

(c) the maintenance of the buildings, grounds and facilities of the Fund;

Trustees, officers and staff of Trust Fund to integrate values and principles.

Administration of the Trust Fund.

Investment of surplus funds.

Financial year of the Trust Fund.

Annual estimates of the Trust Fund.
(d) the funding of capacity-building, research, investments, innovations, and development of any activities relevant to the objects of the Fund;

(e) the creation of such reserve funds required to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or loans;

(f) the maintenance, repair and replacement of the equipment and other property of the Trust Fund; and

(g) the meeting of obligations with respect to any investments or the payment of any monies to any beneficiaries for matters approved under this Act, under any contract or agreement thereto.

(3) The annual estimates shall be approved by the Board of Trustees before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

(4) The Board of Trustees shall not vary the annual estimates approved under subsection (4) without the written approval of the Cabinet Secretary.

**45.** (1) The Board of Trustees shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Fund and shall cause the accounts of the Fund to be audited within a period of three months after the end of each financial year.

(2) Within a period of three months after the end of each financial year, the Fund shall submit to the Auditor-General the accounts of the Fund in respect of that year, together with—

(a) a statement of the income and expenditure of the Fund during that year;

(b) a statement of the assets and liabilities of the Authority on the last day of that year; and
(c) a statement of any investments made by the Fund during that year including analysis of the risks and projected or actual gains.

(3) The annual accounts of the Fund 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.

46. The Fund may establish, control, manage, maintain and contribute to pension funds for the benefit of the employees of the Fund and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Fund or, as the case may be, to the dependents of any such officer upon such officer's death in accordance with applicable employment and pensions laws.

47. (1) The Cabinet Secretary shall, by notice in the *Gazette*, prescribe mechanisms and performance indicators to be applied by the Board of Trustees and employees of the Trust Fund for the sound and sustainable management of the Trust Fund's monies and assets in accordance with the object of the Fund and for the continuous evaluation of the impact of the funds provided out of the Trust Fund.

(2) The Board of Trustees shall, at least once in every three months, report to the Cabinet Secretary in respect of compliance with the mechanisms and performance indicators prescribed under subsection (1).

(3) The Cabinet Secretary shall, at least once in each year, prepare a report on the performance of the Trust Fund and lay the report before the national Assembly within four months after the end of the financial year.

48. (1) There is established a restoration fund to be known as the National Environment Restoration Fund.

(2) The Restoration Fund shall consist of—

(a) monies appropriated by Parliament;

(b) such proportion of fees or deposit bonds as may be determined by the Authority;
(c) such monies as may be received by the Fund in the form of donations, grants, gifts or bequests; and

(d) levies imposed on industries and other project proponents for the purposes of the Restoration Fund.

(3) The Restoration Fund shall be vested in the Authority and shall, subject to this Act, be administered by the Director-General.

(4) The object of the Restoration Fund shall be to act as a supplementary insurance for the mitigation of environmental degradation where—

(a) the person responsible for the degradation is not identifiable; or

(b) exceptional circumstances require the Authority to intervene to control or mitigate the degradation.

(5) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for matters relating to finance, by notice in the Gazette, prescribe the levies to be imposed on industries and project proponents for the purposes of the Restoration Fund.

49. (1) The Authority shall establish and maintain a register of activities and entities which have or are most likely to have significant adverse effects on the environment when operated in a manner that is inconsistent with best environmental practice.

(2) The Cabinet Secretary in consultation with the Cabinet Secretary responsible for finance may, on the recommendations of the Director-General, prescribe that the persons engaged in the activities or operating the entities registered under subsection (1) shall pay such deposit bonds as may constitute appropriate security for good environmental practice.

(3) The register established under subsection (1) shall not limit the Authority’s discretion in determining whether
or not an activity or entity that is not listed in the register has the potential to have significant adverse effects on the environment when operated in a manner that is inconsistent with good environmental practice.

(4) The deposit bond paid under subsection (2) shall be refunded without interest to the depositor within a period not exceeding six months after the issuance of a discharge certificate by the Authority.

(5) 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 license issued to the operator under this Act.

(6) Where a person who has paid a deposit bond is dissatisfied with the confiscation of the deposit bond, that person may appeal to the National Environment Tribunal against the confiscation.

(7) 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 subsections (4) and (5).

(8) Any interest accruing from monies deposited into the Restoration Fund under this section shall be retained in the Restoration Fund.

50. (1) There shall be an environment committee for each county whose members shall be appointed by the respective Governor by notice in the Gazette.

(2) A County Environment Committee shall consist of—

(a) the County Executive Committee Member responsible for 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 Committee;

(c) five representatives of the Cabinet Secretaries responsible, at the county level, for the matters specified in the First Schedule; and

(d) three persons representing the—

(i) most environmentally significant activity in the community;

(ii) business community operating in the county; and

(iii) the National Federation of Public Benefit Organizations.

(3) The appointments under subsection (2) (d) shall be made in consultation with the Authority.

(4) The Committee may co-opt a temporary member on such terms as may be appropriate, to provide requisite expertise and knowledge on any matter.

(5) 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.

(6) The members appointed under subsection (2) (d) shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

(7) Every County Environment Committee shall draw its operational expenses from the funds and budget of the respective county government.

(8) The Cabinet Secretary shall, in consultation with the Authority, provide technical assistance and capacity-building to the County Environment Committees.
(9) Every County Environment Committee shall meet at least once every three months and shall within thirty days of every meeting, submit a report of its meeting to the County Governor and the County Commissioner.

51. The County Environment Committee shall—

(a) have overall responsibility for the proper management of the environment within the county;

(b) in consultation with the Authority and county governments, facilitate the development and review of the county environmental action plan;

(c) undertake public participation and give due consideration to existing County Environment Action Plans to facilitate harmony among different County Environment Action Plans;

(d) facilitate the submission of County Environment Action Plans prepared by the County Executive Committee Member to the Cabinet Secretary for incorporation into the national environment action plan;

(e) co-ordinate county environmental management and other environment-related functions in the county;

(f) facilitate the adoption of national environmental policies regarding—

(i) waste management including refuse removal, refuse dumps and solid waste disposal;

(ii) air pollution, noise pollution and other public nuisances;

(iii) county environmental planning and development including the development of the County Environment Action Plan; and
(iv) specific national government policies on natural resource management and environmental conservation including soil conservation, water conservation and management of forestry resources;

(g) facilitate the integration and mainstreaming of climate change programmes into County Integrated Development Plans;

(h) identify hilly and mountainous areas in the county which are at risk from environmental degradation and recommend the appropriate mitigation measures;

(i) encourage voluntary self-help activities in local communities including tree-planting or planting of other vegetation in any area that is at risk from environmental degradation;

(j) facilitate the implementation of the guidelines and measures prescribed by the Authority for the sustainable use of hill tops, hill slides and mountainous areas under section 82;

(k) cause the registration of environmental easements imposed on unregistered land in a register maintained for that purpose in accordance with this Act;

(l) monitor the implementation of county strategic environment action plans;

(m) give comments on the environmental impact assessment study and environmental audit reports for projects undertaken in the county; and

(n) perform such additional functions as are prescribed by this Act.

52. (1) There shall be established an environmental ombudsman known as the National Environment Ombudsman which shall be a body corporate with a
common seal and perpetual succession and 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.

(2) The Environment Ombudsman shall be managed by a Board which shall consist of—

(a) a chairperson appointed by the Cabinet Secretary who shall be a person qualified to be appointed as a judge of the Environment and Land Court;

(b) the Principal Secretary in the Ministry responsible for matters relating to finance or a representative appointed in writing by the Principal Secretary;

(c) the Principal Secretary in the Ministry responsible for matters relating to the environment or a representative appointed in writing by the Principal Secretary;

(d) a representative of the Attorney-General;

(e) an advocate of the High Court of Kenya with expertise and experience in alternative dispute resolution mechanisms, who shall be nominated by the Law Society of Kenya and appointed by the Cabinet Secretary;

(f) one person who has demonstrated competence in environmental matters, who shall be nominated by the Council of Governors and appointed by the Cabinet Secretary;
(g) a representative of the business community who shall be appointed by the Cabinet Secretary;

(h) two members of opposite gender appointed by the Cabinet Secretary for their active roles in environmental management;

(i) the Chief Executive Officer shall be an *ex-officio* member and the Secretary to Environment Ombudsman.

(2) The chairperson shall preside over every meeting of the Environment Ombudsman and, in the chairperson’s absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

53. (1) The members of the Environment Ombudsman, other than the members appointed under section 52 (2), (e), (f), (g), and (h) shall hold office for a period of three years but shall be eligible for reappointment for only one further term of three years.

54. A member of the Environment Ombudsman, other than the member appointed under section 52 (2) (b), (c), (d) and (i) may—

(a) at any time, resign from office by notice in writing addressed to the Cabinet Secretary;

(b) be removed from office if the member—

(i) has been absent from office for three consecutive meetings without reasonable cause;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iii) is incapacitated by prolonged physical or mental illness; or
(iv) is otherwise unable or unfit to discharge the functions of office.

55. The members of the Environment Ombudsman referred to under section 52 (2), (e), (f), (g), and (h) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

56. If a member of the Environment Ombudsman vacates office before the expiry of his term, the appointing authority shall appoint a suitable replacement therefor.

57. Where a member of the Environment Ombudsman is unable to perform the functions of the 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 Cabinet Secretary determines the incapacity has ceased.

58. Subject to the provisions of this Act, the Environment Ombudsman shall regulate its own procedure.

59. (1) There shall be a Chief Executive Officer of the Environment Ombudsman.

(2) The Chief Executive Officer shall be competitively recruited and appointed by the Cabinet Secretary on the recommendation of the Environment Ombudsman.

(3) A person is qualified to be appointed as the Chief Executive Officer if that person—

(a) holds a post graduate degree in environmental law, environmental science, natural resource management, climate change, land economics or a relevant social science from a university recognized in Kenya;

(b) has at least ten years’ relevant professional experience, five of which shall have been at senior management;
(c) has demonstrable competence in environmental matters; and

(d) satisfies the requirements of Chapter Six of the Constitution.

(4) The Chief Executive Officer shall—

(a) be the accounting officer;

(b) be responsible to the Environment Ombudsman for—

(i) implementing the decisions of the Environment Ombudsman;

(ii) day-to-day administration of the affairs of the Environment Ombudsman;

(iii) supervision of the staff of the Environment Ombudsman; and

(iv) performing any other duties as may be assigned by the Environment Ombudsman.

(5) The Chief Executive Officer shall serve on such terms of service as the Environment Ombudsman may, on the advice of the Salaries and Remuneration Commission, determine.

(6) The Chief Executive Officer shall hold office for a term of four years and shall be eligible to be reappointed for one further term of four years.

60. (1) The Chief Executive Officer may be removed from office by the Cabinet Secretary on recommendation by the Board of the Environment Ombudsman—

(a) inability to perform the functions of office due to physical or mental infirmity;

(b) gross misconduct or misbehaviour;
(c) incompetence or negligence of duty;

(d) violation of the Constitution or any other written law; or

(e) any other ground as may be specified in the terms of service.

(2) Where the question of the removal of the Chief Executive Officer of the Environment Ombudsman under subsection (1) arises, the Board shall inform the Chief Executive Officer of the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution.

61. (1) Where the office of the Chief Executive Officer of the Environment Ombudsman falls vacant, the Board may appoint an officer to act in that capacity until the appointment of a new Chief Executive Officer.

(2) An acting appointment under subsection (1) shall be for a period which shall not exceed six months.

62. (1) The functions of the Environment Ombudsman shall be to—

(a) investigate any allegations or complaints against any person or the Authority in relation to the condition of the environment in Kenya, and in case a complaint cannot be resolved after an investigation and the Environment Ombudsman determines that the environment has been degraded, the Committee may make such recommendations as it deems fit;

(b) on its own motion, investigate any suspected case of environmental degradation and make such recommendations as it deems fit;

(c) facilitate the resolution of any complaint brought before it by applying alternate dispute resolution mechanisms between or among parties;

(d) undertake public interest litigation on behalf of citizens in respect of environmental matters;

Vacancy in the office of chief executive officer of the Environment Ombudsman.

Functions of the Environment Ombudsman.
(e) at least once in every three months, prepare and submit to the Cabinet Secretary reports of its findings and recommendations of investigations which report shall form part of the biennial report on the state of the environment;

(f) co-operate with lead agencies in programs for the mitigation of environmental degradation, environmental education, public awareness and public participation;

(g) investigate complaints and where interventions by the Authority are necessary, immediately report the same to it for enforcement action; and

(h) perform such other functions and exercise such powers as may be assigned to it by the Cabinet Secretary.

(2) The Environment Ombudsman shall give any person against whom an adverse finding or recommendation is made under this section, an opportunity to make representations concerning the finding or recommendation before the Ombudsman includes the findings in its report or making any recommendations thereof.

63. (1) The Environment Ombudsman may, by notice in writing, require any person to—

(a) give it all reasonable assistance in connection with the investigation of any complaint under section 62;

(b) appear before it for examination concerning matters relevant to the investigation of any complaint under section 62; or

(c) implement any requirement and direction made in the exercise of its powers under this Act, within a reasonable period as shall be specified in the notice.

(2) A person commits an offence if that person—
(a) refuses or fails to comply with the requirement of the Environment Ombudsman under subsection (1);

(b) obstructs or hinders the Environment Ombudsman in the exercise of its powers under this Act;

(c) furnishes information or makes a statement to the Environment Ombudsman which is false or misleading in any material particulars; or

(d) when appearing before the Environment Ombudsman, makes a statement which is false or misleading in any material particulars.

(3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(4) Where an offence under subsection (2) is a continuing offence, the person convicted of that offence 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.

64. (1) If a member of the Board of the Environment Ombudsman is directly or indirectly interested in any matter before the Ombudsman and is present at a meeting of the Ombudsman at which the matter is the subject of consideration or discussion, the member shall, 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.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

65. The funds of the Environment Ombudsman shall comprise—
(a) monies appropriated by Parliament for the purposes of the Ombudsman;

(b) grants, gifts, donations, loans, bequests, or other endowments given to the Ombudsman; and

(c) monies accruing to the Ombudsman from any other lawful source.

66. (1) The Environment Ombudsman may appoint such staff as may be required for the performance of the Ombudsman’s functions on such terms of service as the Board of the Environment Ombudsman may, on the advice of the Salaries and Remuneration Commission, determine.

(2) In making appointments under subsection (1), the Board of the Environment Ombudsman shall ensure—

(a) equalization of opportunity for persons with disabilities;

(b) equalization of opportunity for the youth; and

(c) that appointments reflect the ethnic, gender and regional diversity of the peoples of Kenya.

PART IV—ENVIRONMENTAL RESEARCH AND PLANNING

67. The Authority shall—

(a) develop environmental indicators for environmental monitoring;

(b) co-ordinate lead agencies in research, investigation and surveys in the field of environment;

(c) collect, collate and disseminate information about the findings of research, investigation or surveys under paragraph (b);

(d) co-ordinate relevant agencies in auditing and inventorying environmental resources in Kenya and utilization and conservation of environmental resources;
(e) audit and determine the net worth or value of the environmental resources in Kenya and their utilization and conservation;

(f) mainstream research data and findings into the state of environment reporting;

(g) develop and maintain an environmental data repository mechanism; and

(h) collaborate with academic institutions in research and capacity building of experts in the field of environmental management.

68. (1) The Authority shall, in collaboration with relevant lead agencies and other stakeholders—

   (a) establish a national comprehensive environmental database; and

   (b) undertake in-depth analysis and develop model projections to predict environmental emergencies to enhance the state of preparedness and handling of environmental emergencies.

   (2) The Authority shall ensure that data is collected in accordance with harmonized environmental standards as may be prescribed under this Act.

69. (1) The Authority shall, at least once in every two years, prepare a national state of environment report in accordance with environmental principles.

   (2) The state of environment report prepared under subsection (1) shall—

   (a) guide environmental planning by national and county governments;

   (b) guide the preparation of the national environment action plan;

   (c) highlight environmental challenges, opportunities and proposed interventions to protect the environment; and
(d) be considered when making budgetary allocations for the environment sector.

(3) The Authority shall issue guidelines for the preparation of the state of environment reports by county governments, lead agencies and lead institutions.

(4) Each county government shall—

(a) prepare and submit to the Authority a report on the state of the environment in respect of the county;

(b) consider the county state of the environment report during the process of preparing the county budget and county budgetary allocations for the environmental sector; and

(c) consider the county state of the environment report during the implementation of the county integrated development plan.

(5) The Authority shall submit the state of environment report to the Cabinet Secretary within three months after the end of the financial year to which the report relates.

(6) The Cabinet Secretary shall present the state of environment report to Parliament within six months after receiving the report from the Authority.

(7) The national and county governments shall take into consideration the recommendations of the state of environment report presented to Parliament under subsection (6) when allocating financial and other resources for the environmental sector and the development of environmental action plans.

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

(2) The Authority shall co-ordinate the process for the preparation of environmental action plans.
(3) The Authority shall, within two years of the commencement of this Act and at least once every five years thereafter, prepare the National Environmental Action Plan and subject it to public participation before the adoption of the Plan.

(4) The Authority shall submit the National Environmental Action Plan to the Cabinet Secretary for approval and the Cabinet Secretary shall submit it to Parliament for adoption.

(5) The Cabinet Secretary shall, within ninety days after its adoption by Parliament, publish the National Environment Action Plan in the Gazette.

(6) Lead agencies shall incorporate the actions contained in the National Environment Action Plan approved under this section into the agencies’ respective sectors for implementation.

(7) The Authority shall review the National Environment Action Plan at least once in every three years.

71. The National Environment Action Plan shall—

(a) contain an analysis of the natural resources of Kenya with an indication as to any pattern of change in their distribution and quantity;

(b) contain an analytical profile of the uses and value of the natural resources of Kenya which shall incorporate considerations of intra-generational equity;

(c) recommend appropriate legal and economic incentives necessary to encourage the business community to incorporate environmental requirements into planning and operational processes;

(d) recommend methods for building national awareness through environmental education and the importance of sustainable use of the
environment and natural resources for national development;

(e) set out operational guidelines for the planning and management of the environment and natural resources;

(f) identify actual or likely problems that may adversely affect the natural resources;

(g) identify and appraise trends in the development of urban and rural settlements, their environmental impacts, and strategies for the mitigation of any negative impacts;

(h) propose guidelines for the integration of standards of environmental protection into development planning and management;

(i) recommend policy and legislative approaches for preventing, controlling or mitigating adverse impacts on the environment;

(j) prioritise areas of environmental research and outline methods of using the findings of such research;

(k) take into account and record all monuments and protected areas declared or deemed to have been declared as monuments under the National Museums and Heritage Act, 2006;

(l) contain an implementation matrix and monitoring plan;

(m) without prejudice to the foregoing, be reviewed and modified for the purpose of incorporating emerging knowledge and realities; and

(n) bind each Government department, agency, state corporation or State organ, on the approval of the National Assembly.

72. (1) Every County Environment Committee shall, at least once in every four years, prepare a county environment action plans.
environment action plan in respect of the county for adoption by the County Assembly.

(2) In the preparation of a county environment plan, the County Environment Committee shall undertake public participation and consider every other county environment action plan that has been adopted by the County Assembly with a view to achieving consistency among such plans.

(3) The County Environment Committee shall submit the county environment action plan to the—

(a) Cabinet Secretary for incorporation into the National Environment Action Plan approved under section 70; and

(b) Authority upon the county environment plan’s adoption by the County Assembly.

(4) The Authority shall consider every county environment action plan and recommend incorporation of such plan in the National Environment Action Plan or specify changes to be incorporated into a respective county environmental plan before the plan is incorporated in the National Environmental Action Plan.

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

(6) Each county government shall be responsible for allocating resources for the preparation of the county environment action plan.

73. Every county environmental action plan prepared under section 72 shall contain provisions dealing with matters contained in section 74, with the necessary modifications, in relation to the plan’s respective county.

74. The purpose of county environment action plans shall be to co-ordinate and harmonise environmental policies, plans, programmes and decisions of national and county governments, as the case may be, in order to—
(a) minimize the duplication of procedures and functions;

(b) promote consistency in the exercise of functions that may affect the environment;

(c) secure the protection of the environment; and

(d) 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.

75. (1) The Authority shall monitor compliance with the National Environmental Action Plan and county environment action plans and may take such steps or make such inquiries that may be necessary in order to determine if the plans are being complied with.

(2) Each County government shall mainstream areas prioritized in the state of environment report into the county’s County Integrated Development Plan.

(3) Each County government shall, at least once in each year, report the progress made in implementation of environmental actions to the County Assembly and submit a copy of the report to the Authority.

(4) If, as a result of any action taken or inquiry made under subsection (1), the Authority determines that an environmental action plan is not substantially being complied with, the Authority may notify in writing the entity concerned, and recommend such steps may be necessary to remedy the noncompliance.

(5) Within thirty days of the receipt of the notification under subsection (4), the entity shall respond to the notice in writing setting out any—

(a) objections to the notification, if any;

(b) the action that will be taken to ensure compliance with the respective environment action plan; or
(c) other information that the entity considers relevant to the notification.

(6) After considering the response from the entity under subsection (5) and any other relevant information, the Authority shall, within thirty days after receiving the response, issue a final notification to—

(a) confirm, amend or cancel the notification referred to in subsection (4); and

(b) specify any action and the period within which such action shall be taken to remedy the noncompliance.

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

76. (1) There is established a directorate to be known as the Directorate of Environmental Research.

(2) The Directorate shall be headed by a Director who shall be responsible to the Director-General.

(3) The Directorate shall be a national and international research centre for driving research, innovations and data development in the field of environment.

77. (1) The object and purposes of the Directorate shall be to offer science-driven environmental research, management and conservation and generate regular scientific data for the purpose of informing policy and decision-making in accordance with the provisions of this Act.

78. The Directorate shall—

(a) promote, streamline and undertake research, investigations and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigations or surveys;
(b) mobilize and consolidate comprehensive environmental data from primary and secondary research activities and host the data in a national environment data resource centre;

(c) establish frameworks of cooperation with relevant national and international agencies for promotion of environmental research and capacity building;

(d) mobilize resources for to support environmental research from national, regional and international development partners;

(e) establish research centres and laboratories as are necessary for the furtherance of environmental research;

(f) give information on early warning, disaster management, impacts and mitigation and adaptive strategies to climate change in environmental conservation areas;

(g) perform any other functions as may be assigned by the Director-General for the achievement of the purposes for which the Directorate is established.

PART V—PROTECTION AND CONSERVATION OF THE ENVIRONMENT

79. (1) The Authority shall exercise general supervision and co-ordination of wetland management in the country and the implementation of policies and strategies for the protection and conservation of wetlands.

(2) Notwithstanding any approval, permit or licence granted under this Act or any other written law, no person shall, without the prior written approval of the Authority given after an environmental impact assessment, in relation to a river, lake, sea or wetland in Kenya, carry out any of the following activities—

(a) erect, construct, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under a river, lake, sea or wetland;
(b) excavate, drill, tunnel or disturb a river, lake, sea or wetland;

(c) transport wetlands’ resources and materials from wetlands including sand without a permit from the Authority;

(d) harvest sand from a riverbank, riverbed, lakeshore, seashore or any other wetland without a permit from the Authority and the relevant county government;

(e) introduce any animal, whether alien or indigenous, or alive, in any river, lake, sea or wetland;

(f) introduce or plant any plant specimen or part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake, sea or wetland;

(g) deposit, discharge or store any substance or chemicals 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, sea or wetland;

(h) emit untreated effluent into any water body without meeting the water quality standards prescribed under this Act or any other relevant written law;

(i) direct or block any river, lake, sea or wetland from its natural and normal course;

(j) drain any lake, river, sea or wetland; or

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

(3) The Cabinet Secretary may, by notice in the Gazette, declare a lakeshore, wetland, coastal zone or riverbank to be a protected area and impose such restrictions as may be necessary to protect the lakeshore, wetland, coastal zone or riverbank from environmental
degradation and shall, in doing so, take into consideration the following factors—

(a) the geographical size of the lakeshore, wetland, coastal zone or riverbank; and

(b) the interests of the communities that are resident around the lakeshore, wetland, coastal zone or riverbank.

(4) The Cabinet Secretary shall, on the advice of the Authority and by notice in the Gazette, prescribe measures, rules, guidelines, procedures, regulations and standards and issue general and specific orders for the management of river basins, lake basins, wetlands or coastal zones and such measures, rules, guidelines, procedures, regulations and standards may include management, protection, or conservation measures in respect of any area at risk of environmental degradation and shall provide for—

(a) the development of an environmental management plan for a lake, river, wetland or coastal area;

(b) measures for the prevention or control of riverbank, lakeshore or coastal erosion, as the case may be;

(c) the conservation of mangrove and coral reef ecosystems;

(d) measures for the regulation of the harvesting of minerals within the riverbank, lakeshore or coastal zone, including strategies for the restoration of sites where mineral harvesting has been permitted or undertaken:

(e) contingency plans for the prevention and control of all deliberate and accidental discharge of pollutions into the sea, lakes or rivers;

(f) measures for the protection of wetlands;

(g) measures for the regulation of harvesting of aquatic living and non-living resources to ensure optimum sustainable yield;
(h) special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea and the Exclusive Economic Zone;

(i) promotion of environmentally-friendly tourism activities; and

(j) the management of biological resources.

80. The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of wetlands.

81. (1) The Cabinet Secretary may, on the advice of the Authority and by notice in the Gazette, declare the traditional interests of local communities customarily resident within or around a lake basin, wetland, coastal zone or river basin or forest to be protected interests.

(2) The Authority shall, in consultation with relevant lead agencies and stakeholders, identify, map and publish in the Gazette the areas of traditional interests and 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 that are resident therein.

82. The Authority shall, in consultation with the relevant lead agencies, develop, issue, implement and enforce regulations, procedures, guidelines and measures for the sustainable use of hillsides, hilltops, mountain areas and forests and such regulations, guidelines, procedures and measures shall regulate the harvesting of forests and any natural resources located in or on a hillside, hilltop or mountain area so as to protect water catchment areas, prevent soil erosion and regulate human settlement.

83. (1) Each County Environment Committee shall identify the hilly and mountainous areas within the county’s boundaries which are at risk from environmental degradation.
(2) A hilly or mountainous area is at risk from environmental degradation if—

(a) it is prone to soil erosion;

(b) landslides have occurred in such an area;

(c) vegetation cover has been removed or is likely to be removed from the area at a rate that is faster than it is being replaced; or

(d) any other land use activity in such an area that is likely to lead to environmental degradation.

(3) Each County Environment Committee shall notify the Authority of the hilly and mountainous areas it has identified as being at risk from environmental degradation under subsection (1).

(4) The Authority shall maintain a register of hilly and mountainous area identified under subsection (1) that are at risk of environmental degradation.

84. (1) Every County Environment Committee shall specify which of the areas identified in accordance with section 83 (1) may be afforested or reforested.

(2) Every County Environment Committee shall take measures to plant trees or other vegetation in any area specified under subsection (1) within the county’s boundaries, including through encouraging voluntary self-help activities in local communities.

(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 for the protection or conservation of the area required to be implemented by the County Environment Committee including the planting of trees and other vegetation in those areas.

(4) The Authority shall, in consultation with relevant county governments, undertake actions to restore degraded areas as a result of natural erosion and degradation.
85. (1) The Authority shall, in consultation with the relevant lead agencies, by notice in the Gazette, issue guidelines and prescribe measures for the sustainable use of hilltops, hillsides and mountainous areas.

(2) The guidelines issued and measures prescribed by the Authority under subsection (1) shall include guidelines or measures relating to—

(a) appropriate farming methods;

(b) carrying capacity of the areas in relation to animal husbandry;

(c) measures to curb soil erosion;

(d) disaster preparedness in areas prone to landslides;

(e) the protection of the areas from human settlements;

(f) the protection of water catchment areas; and

(g) any other measures that may be necessary.

(3) The County Environment Committee shall be responsible for ensuring that the guidelines issued and measures prescribed under subsection (2) in respect of their counties 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 County Environment Committee under this section commits an offence.

86. (1) The Authority shall not take any action, in respect of any forest or mountain area, which is prejudicial to the traditional interests of the local communities that are customarily resident within or around a forest or mountain area.

(2) Where a forested area is declared to be a protected area under section 82, the Cabinet Secretary may cause to
be ascertained any individual, community or government interest in the land and forests and provide incentives to promote community conservation.

(3) Subject to subsection (1) and the Forests Conservation and Management Act, 2016, the Authority may, after consultation with the Chief Conservator of Forests, enter into any contractual arrangement with private owner of any land on such terms and conditions as may be mutually agreed for purposes of registering such land as forest land.

(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 the relevant County Environment Committee in respect of a forest or mountain area commits an offence.

87. (1) The Authority shall, in consultation with the relevant county government and 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.

(2) Any measures undertaken under subsection (1) shall comply with the relevant written law.

88. The Cabinet Secretary shall, on the advice of the Authority, 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 address the threats;

(d) prescribe measures for the integration of the conservation and sustainable utilisation ethic in relation to biological diversity in existing government activities and activities by private persons;

(e) prescribe national strategies, plans and government programmes for the protection, conservation and sustainable use of biological diversity;

(f) protect indigenous intellectual property rights of local communities in respect of biological diversity; and

(g) measure the value of unexploited natural resources in terms of watershed protection, influences on climate, cultural and aesthetic value, and actual and potential genetic value thereof.

89. The Cabinet Secretary shall, on the recommendation of the Authority, prescribe measures for the conservation of biological resources in situ and in this regard shall issue guidelines for—

(a) land use methods that are compatible with the conservation of biological diversity;

(b) the identification, establishment and management of protected areas for the conservation of terrestrial and aquatic ecosystems in Kenya;

(c) the establishment and management of buffer zones near protected areas;

(d) special arrangements for the protection of species, ecosystems and habitats threatened with extinction;
(e) regulating the introduction of alien species into natural habitats; and

(f) integrating traditional knowledge in the conservation of biological diversity with mainstream scientific knowledge.

90. The Cabinet Secretary shall, on the recommendation of the Authority—

(a) prescribe measures for the conservation of biological resources ex-situ especially in respect of 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; and

(c) ensure that species that are threatened with extinction which are conserved ex situ are reintroduced into the species’ native habitats and ecosystems where—

(i) the threat to the species has been terminated; or

(ii) a viable population for the continued survival of the threatened species has been achieved.

91. (1) The Cabinet Secretary shall, on the recommendation of the Authority, issue guidelines and prescribe measures for the sustainable management and utilisation of genetic resources and traditional knowledge

Conservation of biological resources ex situ.

Access to genetic resources of Kenya.
associated with genetic resources that is held by indigenous and local communities.

(2) Without prejudice to the generality of subsection (1), the guidelines issued or measures prescribed shall specify—

(a) appropriate arrangements for access to biological resources, genetic resources, traditional knowledge associated with genetic resources that is held by indigenous and local communities and ecological services of Kenya, by non-citizens including the issuance of licences and fees to be paid for that access;

(b) measures for regulating the import or export of germplasm

(c) the manner of the sharing of benefits derived from the genetic resources, traditional knowledge associated with genetic resources that is held by indigenous and local communities of Kenya;

(d) measures necessary to regulate the development, access to and transfer of biotechnology;

(e) measures necessary for the recognition, protection and enhancement of traditional knowledge associated with genetic resources that is held by indigenous and local communities and associated practices in the conservation of the environment and natural resources; and

(f) any other matter that the Cabinet Secretary considers necessary for the better management of the genetic resources of Kenya.

(3) The Authority shall develop and maintain a register of traditional knowledge associated with genetic resources that is held by indigenous and local communities.

92. (1) The Cabinet Secretary may, in consultation with the relevant lead agencies and in accordance with the
Constitution, any other written law and the relevant treaties, conventions and international agreements to which Kenya is a party, by notice in the Gazette, declare any area of land, wetlands or forest to be a protected natural environment for the purpose of promoting and preserving ecological processes, natural environment systems, natural beauty or species of indigenous wildlife or, generally, for the preservation of biological diversity.

(2) The Authority, in consultation with relevant lead agencies, shall prepare integrated environmental management plans for areas protected under subsection (a) and maintain a register of the protected areas and the integrated environmental management plans thereof.

93. (1) The Authority shall establish a committee to be known as the Committee on Environmentally Significant Areas.

(2) The Committee on Environmentally Significant Areas shall comprise of—

(a) a chairperson appointed by the Cabinet Secretary;

(b) the Director-General or the Director-General’s representative, who shall be the secretary;

(c) a representative of the Council of Governors;

(d) a representative of the National Land Commission;

(e) a representative of the Kenya Forest Service;

(f) a representative of the Kenya Wildlife Service;

(g) a representative of the Water Resources Authority;

(h) a representative of the National Museums of Kenya;

(i) a representative of the Kenya Water Towers Agency;

(j) a representative of the Cabinet Secretary responsible for matters relating to internal security;
(k) a representative of civil society organizations;

(l) a representative of the private sector.;

(m) a representative of indigenous communities; and

(n) a representative of a relevant lead agency.

(3) Members of the Committee on Environmentally Significant Areas shall serve for a term of three years and may be reappointed for only one further period of three years.

(4) There shall be paid to the Chairperson and the members of the Committee on Environmentally Significant Areas such remuneration as the Board of the Authority, on the advice of the Salaries and Remuneration Commission, shall determine.

(5) The Committee on Environmentally Significant Areas shall meet at least one in every six months and not more than once in every three months.

94. The Committee on Environmentally Significant Areas shall—

(a) co-ordinate and oversee the implementation of an Environmentally Significant Areas management plan by relevant stakeholders;

(b) advise on best practices in respect of activities undertaken in Environmentally Significant Areas;

(c) promote the conservation and management of Environmentally Significant Areas;

(d) review and adopt reports on the status of Environmentally Significant Areas;

(e) address any other matter that relates to the management of Environmentally Significant Areas; and
(f) at least once in each year, report to the Cabinet Secretary on the progress made in the implementation of the Environmentally Significant Areas management plan.

95. The Authority shall, in consultation with relevant County governments and lead agencies, issue guidelines for the management of Environmentally Significant Areas.

96. (1) The Cabinet Secretary may, by notice in the Gazette, declare an area to be a protected coastal zone.

(2) The Authority shall conduct a survey of the coastal zone and prepare an integrated coastal zone management plan based on the survey.

(3) The Authority shall, at least once every five years, review the integrated coastal zone management plan prepared under subsection (2).

(4) The Authority shall prepare a State of the Coast report which shall be based on the survey conducted under subsection (2) and contain the following—

(a) an inventory of all structures, roads, excavations, harbours, outfalls, dumping sites and other works in the coastal zone;

(b) an inventory of the state of coral reefs, mangroves and marshes found within the coastal zone;

(c) an inventory of the areas within the coastal zone of scenic value, recreational value or and cultural value:

(d) an inventory of the areas in the coastal zone of special value for research in respect of fisheries, erosion, littoral movement and such other similar matters;

(e) an estimate of the quantities of sand, coral seashells and other substances being removed from the coastal zone;
(f) an estimate of the impacts of erosion on the coastal zone;

(g) an estimate of the extent, nature, cause and sources of coastal pollution and degradation;

(h) an estimate of the freshwater resources in the coastal zone;

(i) an estimate of the extent, nature, cause and sources of coastal pollution and degradation and strategies towards mitigation and remediation of the pollution and degradation; and

(j) any other relevant data or information.

(5) Any person who releases or causes to be released into a coastal zone any polluting or hazardous substances contrary to the provisions of this Act commits an offence and shall be liable, on 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 Authority shall enforce environmental standards and implement measures to promote sustainable management of the Coastal Zone in the country.

(7) The Authority shall collaborate with other lead agencies in the development and implementation of Marine Spatial Plans for the Indian Ocean and inland waters:

Provided that Marine Spatial Plans shall not be implemented unless the Plans have been subjected to Strategic Environmental Assessment in accordance with this Act.

(8) The Cabinet Secretary shall, on the advice of the Authority, make Regulations for the prevention, reduction and control pollution or other form of environmental damage in the coastal zone.

(9) Notwithstanding the generality of subsection (8), 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 chemicals, including dispersants, used in oil spills or pollution control whose toxic effects affect human health, aquatic or marine life and the environment; and

(d) from installations and devices used in the exploration or exploitation of the natural resources of the seabed and subsoil of the exclusive economic zone.

(10) Where any polluting or hazardous substances are discharged, released or in any other way escape into the coastal zone, any person responsible for management of the polluting or hazardous substances shall be liable—

(a) for any resultant damage;

(b) for the cost of any measures reasonably taken after the release or escape for the purpose of preventing, reversing or minimizing any damage caused by such discharge, release or escape; and

(c) for any damage caused by any measures so taken.

97. (1) The Authority shall issue guidelines and institute programmes concerning the—

(a) elimination of substances that deplete the stratospheric ozone layer;

(b) control of activities and practices likely to lead to the depletion of the ozone layer and degradation of the stratosphere; and

(c) reduction and minimization of risks to human health created by the depletion of the ozone layer and degradation of the stratosphere.
(2) The Authority shall formulate strategies, prepare and evaluate programmes for phasing out ozone-depleting substances.

98. (1) The Authority shall, in consultation with the relevant county governments and lead agencies, develop, issue and implement Regulations, guidelines, procedures, and measures for the sustainable management and conservation of open green spaces within cities and urban areas in the country.

(2) In carrying out its mandate under subsection (1), the Authority, county governments and lead agencies shall be guided by the following principles—

(a) best planning for development that supports the inclusion of trees as natural solutions to air quality, drainage, cooling, and water purification including the requirement that development must be well balanced with green infrastructure while making adequate space for the planting of additional trees;

(b) accessibility of trees for all so that all persons enjoy the right to public green spaces as an intrinsic part of the right to life;

(c) tree-growing in cities and urban areas in order to mitigate any environmental damage and ensure a rich diversity of trees and vegetation in cities and urban landscapes where people, animals, and diverse species can thrive;

(d) treatment of the environment with care and responsibility to guarantee the right of future generations to enjoy the environment as espoused by the principle of intergenerational and intragenerational equity;

(e) trees as part of culture and heritage and remain an integral and valuable part of the national natural landscape and should be preserved at all costs including the celebration of the social and cultural
values of trees and not neglected when designing conservation management guidelines and policies;

(f) the legal and administrative protection of irreplaceable and iconic trees by the national government, county governments and lead agencies; and

(g) embedding tree-planting into policy and other plans by incorporating green spaces and trees into recovery plans and prescribing for regulatory frameworks and policies that support green spaces in government delivery platforms.

99. (1) Notwithstanding the provisions of any other written law relating to public revenue, the Cabinet Secretary responsible for matters relating to finance may, on the recommendation of the Cabinet Secretary, propose tax and other economic incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources or the prevention or mitigation of, and adaptation to, environmental degradation.

(2) Notwithstanding the generality of subsection (1), the tax and economic incentives, disincentives or fees may include—

(a) the waiver of import duties in respect of imported capital goods used in the prevention or substantial reduction of environmental degradation;

(b) tax rebates in respect of investments in plants, equipment and machinery for pollution control, recycling of waste, water harvesting and conservation, prevention of floods and for using alternative energy sources as substitutes for hydrocarbons;

(c) tax disincentives to deter activities that lead to the depletion of environmental resources or that cause pollution; and

(d) user fees to ensure that those who use environmental resources pay proper value for the utilization of such resources.
(3) The Authority shall prepare and submit to the Cabinet Secretary proposals on economic instruments for the protection of the environment and forward to the Cabinet Secretary.

(4) The Authority shall prepare guidelines and procedures on the preparation of economic instruments for the protection of the environment.

PART VI—INTEGRATED ENVIRONMENTAL ASSESSMENTS

100. (1) All policies, plans and programmes shall be subject to strategic environmental assessment if they are determined by the Authority as likely to have significant effects on the environment and—

(a) subject to preparation or adoption by an authority at regional, national, county or local level;

(b) prepared by an authority for adoption through a legislative procedure by Parliament or a county assembly;

(c) prepared by an authority for adoption by agreement between the Government and any other government; or

(d) prepared by an authority for adoption by agreement between the authority and any other person or entity.

(2) All entities which fall within the ambit of subsection (1) shall undertake or cause to be undertaken the preparation of strategic environmental assessments at their own expense and shall submit such assessments to the Authority for approval.

(3) The Authority may, after being satisfied as to the adequacy of a strategic environmental assessment, approve the assessment on such conditions as may be appropriate to facilitate sustainable development and sound environmental management.

(4) The Authority shall maintain a register of all strategic environmental assessments approvals issued.
under this Act which may be inspected by any person at reasonable person after the payment of the prescribed fee.

(5) The Authority shall, in consultation with lead agencies and relevant stakeholders, prescribe rules and guidelines in respect of strategic environmental assessments.

(6) Any person who fails to carry out a strategic environmental assessment as required by this Act commits an offence.

101. (1) Notwithstanding any approval, permit or license granted under this Act or any other written law, any person, being a proponent of a project, shall, before financing, commencing, proceeding with, carrying 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 an assessment report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.

(2) The assessment report prepared under this section shall take into account the environmental and social impacts of the proposed project including cultural, health and heritage impacts, environmental justice, rights of nature and climate justice.

(3) The proponent of any project eligible for assessment as specified in subsection (2) shall submit the necessary application or report prior to being issued with any licence by the Authority.

(4) The Cabinet Secretary 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.

(5) 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.
(6) 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.

(7) The register may be inspected at reasonable hours by any person on the payment of the prescribed fee.

(8) The Director-General may, approve any application by an expert wishing to be authorised to undertake environmental impact assessment and Environmental Audit.

(9) The Cabinet Secretary in consultation with the Authority shall make regulations and formulate guidelines for the practice of Integrated Environmental Impact Assessments and Environmental Audits.

(10) The Cabinet Secretary shall make regulations for the accreditation of experts on environmental impact assessments.

(11) Environmental impact assessment shall be conducted in accordance with the environmental impact assessment regulations, guidelines and procedures issued under this Act.

(12) The Authority shall, in consultation with relevant Lead Agencies, develop guidelines for integrating climate risk and vulnerability assessments as part of the environmental assessment study process.

(13) Any person who upon submitting his application does not receive any communication from the Director-General within the timelines stipulated under this Act or regulations, may start his undertaking.

(14) A person who submits a report which contains information that is false or misleading commits an offence and is liable on conviction, to a term of imprisonment of not more than three years, or to a fine of not more than five million shillings, or to both such fine and imprisonment and in addition, his licence shall be revoked.
102. (1) The project proponent of a low-risk project specified in the Second Schedule of this Act, shall submit a summary project report to the Authority, in the prescribed form, giving the prescribed information.

(2) The project proponent of a medium risk project specified in the Second Schedule shall submit a project report to the Authority, in the prescribed form.

(3) The project proponent of a high-risk project specified in the Second Schedule shall submit a study report to the Authority, in the prescribed form.

(4) The requirement for an environmental impact assessment study shall at all times be preceded by a participatory scoping process and scoping report and detailed terms of reference by the project proponent, in consultation with the Authority.

(5) Upon receipt of an environmental impact assessment study report from a proponent, the Authority shall cause to be published in the Gazette, in at least two newspapers circulating in the area or proposed area of the project and over the radio a notice which shall state—

(a) a summary description of the project;

(b) the place where the project is to be carried out;

(c) the place where the environmental impact assessment study, evaluation or review report may be inspected; and

(d) a time limit not exceeding sixty days for the submission of oral or written comments on environmental impact assessment study, evaluation or review report.

(6) The Authority may, on application by any person extend the period stipulated in subsection (5) (d) so as to afford reasonable opportunity for such person to submit oral or written comments on the environmental impact assessment report.
(7) The Authority shall ensure that its website contains a summary of the report referred to in subsection (3).

103. (1) 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.

(2) A lead agency shall, upon the written request of the Director-General, submit written comments on a project report within fourteen days from the date of the written request.

(3) The non-submission of lead agency reports and comments under subsection (1) and (2) within the required time period shall not act as a bar to the Authority from reviewing the assessment report before it.

104. (1) The Director-General may appoint a Technical Advisory Committee for advice on any complex matter or a matter requiring wider technical or expert consultations.

(2) The Authority shall prepare guidelines on the Technical Advisory Committee to advice the Director-General on environmental matters.

105. The Authority may require any proponent of a project to carry out at his own expense further evaluation or assessment study, review or submit additional information for the purposes of ensuring that the assessment study, review or evaluation report is as accurate and exhaustive as possible.

106. (1) A project proponent shall ensure that the person conducting an environmental and social assessment for the project proponent, whether personally or by employees, contractors or subcontractors, complies with this Act, any other applicable written law and administrative decisions in respect of assessments.

(2) For the avoidance of doubt, the project proponent shall be responsible for the accuracy and veracity of an assessment undertaken on the project proponent’s behalf.
(3) The project proponent shall integrate economic, cultural, heritage, health, social and environmental considerations in the assessments.

107. (1) The Authority may, after being satisfied as to the adequacy of an assessment under this part, issue an integrated environmental impact assessment licence on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management.

(2) The Authority shall maintain a register of all integrated environmental impact assessment licences issued under this Act.

(3) The register may be inspected at reasonable hours by any person on the payment of the prescribed fee.

108. (1) The Authority may, at any time after the issue of an integrated environmental impact assessment licence direct the holder of such licence to submit at his own expense a fresh assessment report within such time as the Authority may specify where—

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

(b) the project poses environmental threat which could not be reasonably foreseen at the time of assessment; or

(c) it is established that the information or data given by the proponent in support of his application for an integrated environmental impact assessment licence under section 107 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.

(3) Where the Authority has directed that a fresh assessment be carried out, or that new information is necessary from the project proponent, any integrated
environmental impact assessment licence that has been issued may be cancelled, revoked or suspended by the Authority.

109. (1) An integrated 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.

(2) Where an integrated 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.

(3) 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.

(4) Any transfer of an integrated environmental impact assessment licence, under this section shall take effect on the date the Director-General is notified of the transfer.

(5) A person who contravenes any provisions of this section, shall be guilty of an offence.

110. (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 on any assessment, evaluation or review report or grant of an integrated environmental impact assessment licence or by reason of any condition attached to such licence.

(2) The issuance of an integrated environmental impact assessment licence in respect of a project shall afford no defence 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.

111. (1) The Authority may, after the issuance of an integrated environmental impact assessment licence—
(a) cancel or revoke such licence; or

(b) suspend such licence, for such time, not exceeding two years, where the licensee contravenes the provisions of the licence.

(2) Where the Authority cancels, revokes or suspends a licence in accordance with this section, the reasons for such action shall be given to the licensee in writing.

(3) Whenever an integrated 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.

(4) The Authority shall maintain a register of all integrated environmental impact assessment licences revoked, cancelled and suspended 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.

112. (1) The Authority shall be responsible for carrying out periodic environmental compliance audits of all activities that are likely to have significant effect on the environment identified as high-risk activities under the Second schedule.

(2) The Authority shall from time to time carry out environmental compliance audits to mitigate against any potential risks to the environment from medium and low risk activities identified in Second Schedule.

(3) 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 submitted in respect of that land or those premises under section 101(3).

(4) The owner of the premises or the project proponent shall undertake a periodic self-audit as required by the Authority according to schedule two and submit to
Authority by end of February each year. The self -audit will include an assessment of all the activities, installations parameter and processes within the operations as set out in the conditions of integrated environmental license or permits issued by the Authority.

(5) The operator shall continuously monitor the operation of the activity to mitigate or prevent detrimental impacts on human health or the environment through conducting studies, analysis, samples and measurements or other means. The operator shall establish and document the monitoring procedures needed for compliance, and maintain the equipment in good conditions.

(6) The operator is required to systematically examine, identify and assess the environmental risks associated with the activity and take adequate action as necessary to prevent detrimental impacts. This includes identifying situations that could lead to non-compliance.

(7) The operator shall keep a register of the chemicals used in the operation of the activity and the name of the product, the quantity used and information about risks to human health and the environment.

(8) The Authority and relevant lead agencies shall prioritize control audits where there is public interest or cause to believe that a project has or may have adverse impacts on human health or the environment—

(a) carry out an environmental enforcement audit; or

(b) instruct the developer to carry out an environmental compliance audit, within a specified period determined by the Authority.

(9) Failure by the owner of a premise or an operator of a project to submit a self-audit report to the Authority shall constitute an offence.

(10) 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 assessments submitted to the Authority.

(11) 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 this Act and prepare and submit an environmental audit report on those measures to the Authority annually or as the Authority may, in writing, require.

(12) The audit report referred to in subsection (11) shall be submitted upon payment of the prescribed fee.

(13) For the purposes of this section—

“environmental compliance 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; and

“environmental organization” means a public benefits organization whose objective is to conserve the implemented in an environmental sustainable manner where all contractors and subcontractors, including consultants, understand the potential environmental risks arising from the proposed project and take appropriate environment and natural resources and is duly registered as a community based organization, or a public benefits organization.

113. (1) Assessment reports and Audit reports submitted by project proponents to the Authority in accordance with this part shall be retained by the Authority as public records for a period of at least seven years after the date of the issue of an integrated environmental impact license in the case of assessment reports and at least seven years after the date of submission in the case of Audit reports, after which the Authority may dispose of the records.

(2) Notwithstanding the provisions of subsection (1), any record may not be disposed of by the Authority if the
Authority is aware of any audit, litigation, public records request, claim, negotiation, open administrative review, or other action involving the record.

**PART VII—ENVIRONMENTAL MONITORING**

114. (1) The Authority shall develop monitoring mechanisms and set indicators to assess—

(a) the implementation of the Act and programmes of the Authority;

(b) activities carried out by relevant lead agencies, to ensure that the environment is not degraded by such activities and environmental management objectives, targets, duties and standards are adhered to; and

(c) the effects to the quality of the environment.

(2) The Authority shall develop mechanisms to promote replication of best practices in environmental management.

(3) The Authority shall develop and maintain internal databases based on regulatory regimes to support decision-making in environmental management.

(4) The Authority shall establish diverse engagement platforms to receive feedback from stakeholders on environmental management.

(5) The Authority shall, in consultation with the relevant lead agencies, monitor—

(a) all environmental situations with a view to making an assessment of any possible changes in the environment and their possible impacts;

(b) the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment;

(c) every lead agency shall establish an environmental unit to implement the provisions of this Act in the specific sectors.
(6) An environmental inspector appointed under this Act may enter upon any land or premises for the purposes of monitoring the effects on the environment of any activities carried on that land or premises.

**PART VIII—ENVIRONMENT QUALITY STANDARDS**

**115.** (1) Any person who discharges or applies any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutant 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 commits an offence and liable to imprisonment for a term of not less than six months or to a fine of not less than five hundred thousand shillings or to both.

(2) A person convicted of an offence under subsection (1) shall, in addition to the penalty thereof—

(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; and

(b) pay third-party reparation, cost of restoration, restitution or compensation as may be determined by a court of law on application by such third party.

**116.** (1) Each owner or operator of an irrigation project scheme, sewerage system, industrial production workshop or any other undertaking which discharges effluent or other pollutant shall submit, on demand, to the Authority accurate information about the quantity and quality of the effluent or other pollutant.

(2) Each owner or operator of an irrigation project scheme, sewerage system, industrial production workshop or any other undertaking which discharges effluent or other pollutant shall install mechanisms to monitor the quality and quantity of the effluent discharged therefrom.
117. The proponent or owner of a trade or an industrial undertaking shall demonstrate adoption of resource use efficiency and functional cleaner production technologies, prior to being granted a license to discharge effluents into the environment, install an appropriate plant for the treatment of such effluents before they are discharged into the environment.

118. (1) The Cabinet Secretary shall, on the recommendation of the Authority—

(a) prescribe the criteria and procedures for the measurement of air quality and greenhouse gas emission standards;

(b) prescribe—

(i) ambient air quality standards;

(ii) occupational air quality standards;

(iii) stack emission standards for stationary sources;

(iv) mobile source emission standards;

(v) the criteria and guidelines for air pollution control for all sources of air pollution; and

(vi) greenhouse gas emission standards;

(c) prescribe the measures for the reduction of sources of air pollution through the redesign of plants or installation of new technology or both, for the purposes of meeting the requirements of the standards prescribed under this section;

(d) prescribe guidelines for the minimisation of emissions of greenhouse gases and identification of suitable technologies to minimize air pollution; and

(e) do all such things as may be necessary for the monitoring and controlling of air pollution.
(2) The occupier of any industrial or trade premises shall install air pollution control equipment installed in or on the premises and ensure that the equipment is working in a proper and efficient manner whenever the industrial plant or fuel burning equipment is being used.

119. The Authority shall, in consultation with the relevant lead agencies, prescribe—

(a) procedures for the measurement and determination of noxious smells;

(b) minimum standards for the control of pollution of the environment by noxious smells; or

(c) guidelines for the abatement of noxious smells from human and other naturally occurring phenomena.

120. (1) The Cabinet Secretary may, by notice in the *Gazette*, and subject to the Constitution and any other relevant written law, on the advice of the Authority, declare any area to be a controlled area for the purposes of this Part.

(2) The Cabinet Secretary may, on the advice of the Authority prescribe in Regulations the air emission standards in respect of any controlled areas.

121. (1) The occupier of any industrial or trade premises that produces air emissions shall install air pollution control equipment in or on the premises.

(2) The occupier of any industrial or trade premises that produces air emissions shall ensure that the air pollution control equipment installed in accordance with subsection (1) is working in a proper and efficient manner.

(3) The occupier of any industrial or trade premises who fails to comply with subsection (1) or (2) commits an offence.

(4) The occupier of any industrial or trade premises, 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.

(5) An application under subsection (4) shall be in the prescribed form and accompanied by the prescribed fee.

122. (1) The Authority shall, before issuing a licence in respect of emissions—

(a) consider the possible effects of the emissions on the quality of ambient air;

(b) consider existing licences affecting the same air resource;

(c) consider air dispersal modelling of the subject area;

(d) give due regard to the requirements of the residents, human settlements and other industrial and commercial activities;

(e) where the information accompanying the application appears inadequate, require the applicant to furnish further information relating to the undertaking in question, its location, raw materials, technology design or other appropriate matters; and

(f) where it appears necessary to conduct an environmental impact study, require the applicant to conduct an environmental 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, subject to such conditions as may be prescribed in the licence and be valid for a period of twelve months.

(3) Where the Authority rejects an application for the grant of an emission licence, it shall, within ten days of the rejection, notify the applicant of the rejection and specify in writing the reasons for the refusal.
123. (1) Each owner and operator of a motor vehicle and other mobile emission source shall apply to the Authority for an emissions licence.

(2) An application under subsection (1) shall be in the prescribed form and accompanied by the prescribed fee.

(3) 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.

124. (1) The Authority may prescribe such additional procedures for the application and grant of a licence under this Act and impose such additional conditions as may be appropriate in the circumstances.

(2) The Authority shall publish the additional procedures and conditions contemplated in subsection (1) in the Gazette before the procedures and conditions are applicable.

125. (1) The Authority may cancel an emission licence issued under this Act if—

(a) 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 condition 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.

(2) The Authority shall notify the holder of licence of the licence’s cancellation in writing and specify the reasons for the cancellation in the notification.
126. (1) The Authority shall maintain a register of all emission licences issued under this Act.

(2) The register maintained under subsection (1) may be inspected at reasonable hours by any person.

127. The Cabinet Secretary shall, on the recommendation of the Authority—

(a) identify materials and processes that are dangerous to human health and the environment;

(b) prescribe guidelines and measures for the management of the materials and processes that are dangerous to human health and the environment;

(c) prescribe standards for waste, waste classification and analysis, and disposal methods and means for such wastes; and

(d) make Regulations for the handling, storage, transportation, segregation and destruction of waste.

128. (1) The Cabinet Secretary shall, in consultation with county Governments, develop policies in respect of waste management.

(2) The Authority shall—

(a) develop standards and guidelines on waste management;

(b) in consultation with county governments, generate and disseminate waste information for the public;

(c) in co-ordination with county governments, enforce compliance with relevant waste management legislation;

(d) license waste management activities;

(e) research, create awareness and offer training on sustainable waste management activities;
(f) establish a national waste information system for the recording, collection, management and analysis of data and information including—

(i) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, re-used, recycled, recovered and disposed of;

(ii) a register of waste management, recycling and other related activities that have been licensed;

(iii) status of the generation, collection, reduction, reuse, recycling and recovery, transportation, treatment and disposal of waste;

(iv) the impact of waste on health and the environment; and

(v) the levels and extent of waste management.

(3) Each County Government shall—

(a) implement the devolved function of waste management in accordance with the relevant national and county policies, laws, regulations and standards, and prescribe the financial and operational conditions to effectively carry out this mandate;

(b) ensure that the waste generate in the county is disposed of within the county boundaries:

Provided that county governments may establish a framework for the transportation of waste from one county to another and the management of such waste;

(c) establish a material recovery facility to enhance recycling;

(d) establish and improve waste management infrastructure to promote source segregation, collection, reuse, setup for materials;
(e) maintain data on the type and quantity of the respective waste category and submit annual reports in the prescribed format; and

(f) mainstream waste management into County Planning and budgeting.

129. (1) Each County Government shall, in consultation with relevant government agencies, the public and other relevant stakeholders, develop county waste management legislation.

(2) Without prejudice to the generality of subsection (1), County waste management legislation shall include —

(a) the establishment of a County Waste Management Fund whose sources shall include waste levies and fees from facilities developed by the counties and that meet the requirements of this Act, for the sole purpose of investment in waste management programs as determined by the County Environment Committee established under section 50 of this Act;

(b) through the National Land Commission, allocate sufficient county land for secure and sanitary waste management for which the County shall allocate at least twenty acres of land, in one or more lots, for waste management;

(c) incentivise investment opportunities in sustainable waste management especially in waste collection, separation, treatment, processing, recovery and disposal facilities;

(d) ensure cities plan for waste management facilities as part of city expansion;

(e) prepare a county waste management plan and quarterly monitoring reports for cities, urban areas, municipalities and administrative units; and

(f) at least once in each year, submit to the Authority and relevant County Assembly a report on the implementation of the county waste management legislation.
130. (1) Each County government shall submit its integrated waste management plan to the Authority.

(2) The Authority may, within ninety days after receiving an integrated waste management plan—

(a) request the County government to revise or amend the plan if the plan—

(i) does not comply with a requirement of this Act; or

(ii) is in conflict with, is not aligned to, or negates another county’s integrated waste management plan or the national waste management strategy;

(b) request a county government to comply with a specific provision of this Act relating to the process of drafting or amending integrated waste management plans if the County government has failed to comply with the process or provision; or

(c) approve the plan.

(3) Each County government shall submit its integrated waste management plan to the County Assembly for approval.

(4) Each County government shall include the approved integrated waste management plan in its integrated development plan.

131. (1) Every citizen shall—

(a) ensure that the waste generated is managed in accordance with the provisions of this Act;

(b) avoid the generation of waste and where such generation cannot be avoided—

(i) reduce, reuse, recycle and recover waste;

(ii) adopt the circular economy system in the management of waste;
(iii) segregate waste at source; and

(iv) minimise the amount of waste that is generated;

(c) where waste must be disposed of, ensure that the waste is disposed of in accordance with this Act; and

(d) manage the waste generated in such a manner that does not endanger human health or the environment or cause a nuisance through noise, odour or visual impacts.

(2) A person who does not manage waste in accordance with this section commits an offence and shall, upon conviction, be liable to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or to both.

132. (1) A person shall not discharge or dispose of any waste, 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 waste other than—

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

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

(3) A person who wishes to operate a waste disposal site or plant shall apply to the Authority for a licence in the prescribed form.

(4) An application under subsection (3) shall be accompanied by the prescribed fee and such information as the Authority may require.

(5) Each person whose activities generate wastes shall employ measures essential to minimize wastes through treatment, reclamation and recycling.
(6) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, 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.

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

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information as the Authority may require.

(3) A licence to operate a waste disposal site or plant shall only be granted subject to any other licence that may be required by the relevant county government.

(4) Where the Authority rejects an application made under this section, it shall, within twenty-one days after the rejection, notify the applicant of the decision in writing and specify the reasons therefor.

134. Each person who, owns or operates a waste disposal site or plant or generated hazardous waste, shall apply to the Authority for a licence in the prescribed form and after paying the prescribed fee.

135. Any person may apply to a competent court for orders compelling any person to stop the generation, handling, transportation, storage or disposal of any waste and effluent where such generation, handling, transportation, storage or disposal presents an imminent and substantial danger to public health, the environment or natural resources.

136. (1) The Cabinet Secretary shall, on the recommendation of the Authority, prescribe criteria for the classification of hazardous wastes including standards for the classification of—
(a) carcinogenic waste;
(b) flammable waste;
(c) persistent waste;
(d) toxic waste;
(e) explosive waste;
(f) radioactive waste;
(g) nuclear waste;
(h) electrical and electronic waste;
(i) wastes, reactive or otherwise than as described in the foregoing paragraphs; and
(j) any other category of waste the Authority may consider necessary.

(2) The Cabinet Secretary shall, on the recommendation of the Authority, prescribe guidelines and make regulations for the management of each category of hazardous wastes specified under subsection (1).

(3) A person shall not import into Kenya waste falling under any category specified under subsection (1) unless—

(a) the waste is required as a raw material for recycling or recovery industries; and

(b) where the Authority has issued the importer with a licence to import the waste in the prescribed form and after payment of the prescribed fee.

(4) A person shall not export hazardous waste from Kenya to any country from Kenya without a permit granted by the Authority in the prescribed form and after the payment of the prescribed fee and the written consent of a competent authority of the receiving country.

(5) A person shall not transport hazardous waste within or through Kenya without a permit granted by the
Authority in the prescribed form and after payment of the prescribed fee.

(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 commits an offence and is liable, after conviction, 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.

(7) A person convicted of an offence under subsection (6) shall be responsible for the removal of the waste from Kenya and for its safe disposal.

137. The Cabinet Secretary may, on the advice of the Authority, make Regulations prescribing the procedure and criteria for the—

(a) classification of toxic and hazardous chemicals and materials in accordance with their toxicity and the hazard they present to human health and 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

Regulations of toxic and hazardous materials.
(j) restriction and control of toxic and hazardous substances.

138. (1) A person shall not discharge any hazardous substance, chemical, oil or mixture containing oil into any water or any other segment of the environment contrary to the provisions of this Act or the 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 penalty 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 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 the necessary measures under subsection (4) and other remedial and restoration measures.

(7) The Court, in dealing with an offence under this section, shall take into account the measures taken by the accused person to comply with subsection (4).

139. The Cabinet Secretary shall, on the recommendation of the Authority—

(a) prescribe 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) prescribe criteria and procedures for the measurement of noise and vibration pollution into the environment;

(c) prescribe criteria and procedures for the measurement of subsonic vibrations;

(d) prescribe standards for the emission of subsonic vibrations which are likely to have a significant impact on the environment;

(e) prescribe guidelines for the minimization of subsonic vibrations referred to in paragraph (d);

(f) prescribe noise level and noise emission standards that shall apply to construction sites, plants,
machinery, motor vehicles, aircraft including sonic booms, industrial and commercial activities;

(g) prescribe measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f); and

(h) prescribe guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.

140. (1) The Cabinet Secretary shall, in consultation with county governments, develop policies on noise pollution.

(2) The Authority shall—

(a) develop national standards and guidelines on noise management;

(b) monitor noise compliance and enforcement of by the county governments; and

(c) research, create awareness and facilitate training on noise pollution.

(3) Each County Governments shall—

(a) control noise pollution in accordance with the relevant national and county policies, laws, regulations and standards, and establish the financial and operational conditions for controlling noise pollution;

(b) invest in and make use of noise monitoring equipment; and

(c) mainstream noise management into county planning and budgeting.

141. (1) Each County governments shall, in consultation with the relevant government agencies, the public and other relevant stakeholders, develop county noise management legislation.
(2) Without prejudice to the generality of subsection (1), County noise management legislation may include the establishment of a spatial plan prescribing emissions levels for specified zones.

142. (1) Each County shall submit its integrated noise management plan to the Authority.

(2) The Authority may, within ninety days of receiving a county integrated noise management plan—

(a) request the County government to revise the plan if the plan—

(i) does not comply with a requirement of this Act; or

(ii) is in conflict with, is not aligned to, or negates another county government’s noise management plan or the national noise management strategy;

(b) request the county government to comply with a specific provision of this Act relating to the drafting or amending of the integrated noise management plan if the County has failed to comply with provision; or

(c) approve the plan.

(3) Each county government shall submit its integrated noise management plan to the County Assembly for approval.

(4) Each county government shall include the approved integrated noise management plan in its integrated development plan.

143. Subject to the provisions of the Civil Aviation Act, 2013, a person who emits noise in excess of the noise emission standards established under this Part commits an offence.
144. (1) Notwithstanding the provisions of section 139, the county government 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 conditions as the county government 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.

145. The Cabinet Secretary, on the recommendation of the Authority, shall—

(a) prescribe standards for the use, manufacture, distribution and import of all plastics in consultation with relevant lead agencies; and

(b) prescribe guidelines and make regulations for the management of plastics.

146. Any person using, manufacturing, distributing or importing plastics that are not within the prescribed standards commits an offence.

PART IX—ENVIRONMENTAL RESTORATION ORDERS, ENVIRONMENTAL CONSERVATION ORDERS AND ENVIRONMENTAL EASEMENTS

147. (1) Subject to any other provisions of this Act, the Authority may issue and serve on any person an environmental restoration order in respect of any matter relating to the management of the environment.

(2) An environmental restoration order issued under subsection (1) or section 147 shall—

(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;

(b) prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;
(c) 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; or

(d) 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 conditions and impose such obligations on the person on whom it is served as may 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 purposes 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; or

(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 prescribed by 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 a superior court.

148. (1) An environmental restoration order shall specify—

(a) the activity to which it relates;

(b) the person or persons to whom it is addressed;

(c) the time at which it comes into effect;

(d) the action which is required to be taken to remedy the harm to the environment and the time, which shall not exceed thirty days or such further period as may be specified in the order, within which the action shall be taken;

(e) the powers of the Authority to enter any land and undertake the action specified in subsection (2);

(f) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken; and
(g) the right of the person served with the order to appeal to the Tribunal against that order,

Provided that where the order is issued by a court of competent jurisdiction, the right of appeal shall lie with a superior court.

(2) An Environmental Inspector 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 on the person undertaking the activity.

(3) The Authority may seek and take into account any technical, professional and scientific advice which may be desirable for a satisfactory decision to be made in respect of an environmental restoration order.

(4) An environmental restoration order shall remain in force in respect of the activity for which it was served notwithstanding that the conditions of the order have been complied with.

(5) A person served with an environmental restoration order shall, subject to the provisions of this Act, comply with the conditions of the order.

149. (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 reconsider that order.

(2) Where the Authority declines to reconsider an order as requested under subsection (1), it shall specify the reasons thereof in writing.

150. (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 reasoning likely to harm the environment.
(2) For the avoidance of doubt, it shall not be necessary for a plaintiff under this 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.

151. (1) Subject to the provisions the Land Act, 2012, a court may, on an application made under this Part, grant an environmental easement or an environmental conservation order.

(2) An environmental easement granted under subsection (1) shall be granted for the purposes of facilitating the conservation and enhancement of the environment, referred to as the benefited environment, through the imposition of one or more obligations in respect of the use of land, 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) Subject to the provisions the Land Act, 2012, a court may, on an application made under this Part, impose an environmental conservation order on burdened land so as to—

(a) preserve flora and fauna;

(b) preserve the quality and flow of water in a dam, lake, river or aquifer;

(c) preserve any outstanding geological, physiographical, ecological, archaeological or historical features of the burdened land;

(d) preserve scenic view;

(e) preserve open space;
(f) permit persons to walk in a defined path across the burdensed land;

(g) preserve the natural contours and features of the burdensed land;

(h) prevent or restrict the scope of any activity on the burdensed land which has as its object the mining and working of mineral aggregates;

(i) prevent or restrict the scope of an agricultural activity on the burdensed land;

(j) create and maintain works on burdensed land so as to limit or prevent harm to the environment; or

(k) create or maintain migration corridors for wildlife.

(5) Where an environmental easement is imposed on burdensed 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 155.

(6) The principle of voluntary environment management shall be used to encourage landowners to grant an easement on their land and to encourage environmental conservation as a competitive land use option.

(7) An environmental easement shall not be dependent on the existence of a plot of land in the vicinity of the burdensed 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.

152. (1) A person or a group of persons may apply 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 may be best calculated to advance the object of an environmental easement.

153. (1) A person may commence proceedings to enforce an environmental easement only where the environmental easement was granted in that person’s name.

(2) The person who commences proceedings under subsection (1) may request the court to—

(a) grant an environmental restoration order; or

(b) grant any remedy available under the law relating to easements in respect of land.

(3) The court may adapt and adjust, so far as may be necessary, the law and procedures relating to the enforcement of the requirements of an environmental easement.

154. (1) Where an environmental easement has been imposed on any 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 law 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 County Environment Committee of the area in which that land is situated shall register the environmental easement in a register kept and 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 person in whose name the environmental easement is registered.
155. (1) Any person who has an interest in land which is the subject of an application for an environmental easement under this Act, 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) The person contemplated in subsection (1) may apply to the court that granted the environmental easement for compensation stating the nature of the 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 contemplated 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 contemplated in subsection (1).

(5) The court in determining the compensation due under this section shall consider the applicable provisions of the Constitution and any other written law relating to the compulsory acquisition of land.

PART X—INSPECTION, ANALYSIS AND RECORDS

156. (1) The Director-General shall, by notice in the Gazette, appoint qualified persons to be environmental inspectors for such jurisdiction units as shall be specified in the Notice appointing them.

(2) An environmental inspector shall—

(a) monitor compliance with the environmental standards established under this Act;

(b) monitor the activities of other sector-specific environmental inspectorates;

(c) monitor the pattern of use of environmental resources;
(d) conduct environmental audits;

(e) monitor, investigate and report on whether entities are complying with assigned climate change obligations; and

(f) perform such other functions as may be required under this Act.

(3) An environmental inspector may, in the performance of the duties specified under this Act, at all reasonable times and without a warrant—

(a) 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;

(b) require the production of, inspect, examine and copy licences, registers, records and other documents relating to any matter under this Act or any other relevant written law relating to the environment and the management of natural resources;

(c) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for tests and analyses;

(d) inspect the establishments and undertakings within inspector’s jurisdictional limit which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have significant impacts 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 the inspector reasonably believes has been used in the commission of an offence under this Act;

(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 remedial measures that the inspector may specify in writing in the notice closing down the establishment or undertaking:

Provided that an establishment or undertaking that has been closed down under this paragraph shall resume its operations only with the written approval of the Director-General or the order of a court of competent jurisdiction;

(g) with the approval of the Director-General, issue an improvement notice to 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 take appropriate remedial measures including the installation of new plant and machinery within such reasonable time as the Director-General may determine; and

(h) install any equipment on any land, premise, vessel or motor vehicle for purposes of monitoring compliance with the provisions of this Act, upon giving the owner or occupier of the land fourteen days’ written notice.

(4) In exercising the powers under this Act, an environmental inspector shall identify himself or herself as an environmental inspector and in this regard may present a document issued by the Authority identifying him or her as such.

(2) The Director-General shall revoke the appointment of an environmental inspector who contravenes the code of conduct and in which case, the inspector’s appointments shall abate.

(3) Before revoking the appointment of an environmental inspector, the Director-General shall give the inspector a reasonable opportunity to make representations in respect of the intended revocation.

158. (1) There is established a unit to be known as the Environmental Police Unit which shall consist of police officers seconded to the Authority by the Inspector-General of the National Police Service.

(2) The Authority shall, by notice in the Gazette and in consultation with the Inspector-General of the National Police Service, prescribe a code of conduct for the members of the Environmental Police Unit.

(3) The Authority shall, in respect of the members of the Environmental Police Unit, provide for any relevant duty allowances and superannuation scheme in accordance with the established procedures of the Authority and the advice of the Salaries and Remuneration Commission.

159. (1) The Cabinet Secretary may, by notice in the Gazette, and on the recommendation of the Authority appoint suitable persons as honorary environmental champions for the purposes of assisting in carrying out provisions of this Act.

(2) The honorary environment champions shall—

(a) promote best practices in sustainable environmental management;

(b) report environmental incidents to the Authority; and
(c) perform such other related functions as may be assigned by the Authority from time to time.

(3) The Authority may appoint suitable persons to be environmental scouts for the purposes of assisting the Authority in carrying out its functions under this Act.

(4) The Authority shall prescribe an engagement framework for the honorary environmental champions and scouts.

(5) The Authority shall provide for any relevant duty allowances for honorary environmental champions and environmental scouts in accordance with the advice of the Salaries and Remuneration Commission.

160. The Cabinet Secretary responsible for matters relating to firearms may, through the Inspector-General of the National Police Service, make available to the members of the Environmental Police Unit such firearms as may be necessary to carry out their functions under this Act.

161. Subject to Article 157 of the Constitution, and the general or specific directions and control of the Director of Public Prosecutions in that regard, an environmental inspector may, in any case in which the inspector considers it desirable so to do—

(a) institute and undertake criminal proceedings against any person before a court of competent jurisdiction, but not a court martial, in respect of any offence alleged to have been committed by that person under this Act; and

(b) discontinue, with the permission of the court, at any stage but before judgment is delivered, any such proceedings instituted or undertaken by the environmental inspector.

162. (1) The Director-General may, by notice in the Gazette, designate laboratories such as may be necessary as 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 prescribe in Regulations the form and manner in which samples shall be taken for analysis in a laboratory designated under subsection (1).

163. (1) A laboratory designated as an analytical or reference laboratory under section 162(1) shall be required to issue a certificate of analysis in respect of any substance submitted to it for analysis under this Act.

(2) The certificate issued under subsection (1) shall—

(a) state the method of analysis used by the analyst or the reference analyst; and

(b) be authenticated by signature and official stamp by the analyst or the reference analyst, as the case may be.

(3) A certificate issued under subsection (1) shall be sufficient evidence of the facts stated in the certificate for all purpose under this Act.

(4) The results of any analysis made by the laboratory shall be open to inspection by any interested parties.

164. (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 form in which the records shall be kept.

(2) The records kept under subsection (1) and any other relevant records available at the site of an establishment or undertaking shall be made available at such reasonable time to an environmental inspector for the purpose of—
(a) an environmental audit;

(b) environmental monitoring and evaluation;

(c) pollution control;

(d) inspection; and

(e) any other purpose that may be prescribed by the Director-General.

165. (1) The records kept under section 164 shall be transmitted annually to the Authority to be received not later than one month after the end of each calendar year.

(2) The Authority shall keep all records transmitted under subsection (1) and may maintain the records’ confidentiality if the circumstances so require.

166. (1) Subject to the provisions of section 165(2), any person may have access to the records transmitted to the Authority under this Act.

(2) A person desiring access to the records referred to in subsection (1) may, on application in writing to the Authority be granted access to the records on the payment of the prescribed fee.

PART XI—TREATIES, CONVENTIONS AND AGREEMENTS

167. (1) Where Kenya is a party to a treaty, convention or agreement concerning the management of the environment, the Cabinet Secretary shall, on the recommendation of the Authority and subject to the Treaty Making and Ratification Act, 2012—

(a) initiate legislative proposals to give effect to the treaty, convention or agreement or for enabling Kenya to perform the obligations or exercise the rights under the treaty, convention or agreement; and
(b) identify other appropriate measures necessary for the implementation of the treaty, convention or agreement.

(2) The Authority shall keep a register of all treaties, agreements or conventions in the field of the environment to which Kenya is a party.

168. (1) The Cabinet Secretary shall, in consultation with the Authority and lead agencies, propose legislation in respect of the transactions involving environmental resources that shall be submitted to Parliament for ratification.

(2) The proposed legislation shall specify the acreage, quantity, quality, value, location and dimensions of natural resources in respect of which transactions shall require Parliamentary approval.

(3) This section shall apply to the grant of a right or concession by or on behalf of any person, including a local community, a county government or the national government to another person—

(a) for the exploitation of wildlife resources and habitats; resources of gazetted forests, water resources, resources on community land and biological diversity resources; and

(b) in the case of a foreign national or company, land owned by such person of more than three hectares.

(4) The Cabinet Secretary may, by notice in the Gazette, specify any other transactions or classes of transactions in respect of environmental resources which shall be required to be submitted to Parliament for ratification.

(5) Any agreements in respect of environmental resources concluded before the promulgation of the Constitution and the coming into force of this Act may be
reviewed within a period of two years after the coming into force of this Act.

PART XII—DISPUTE RESOLUTION MECHANISM

169. (1) There is established a tribunal to be known as the National Environment Tribunal which shall consist of—

(a) a Chairperson who shall be a person qualified for appointment as a judge of the Environment and Land Court of Kenya who shall be nominated by the Judicial Service Commission;

(b) an advocate of the High Court of Kenya who shall have a postgraduate degree in environmental law and at least ten years’ post-admission experience who shall be nominated by the Law Society of Kenya;

(c) a lawyer with professional qualifications in environmental law appointed by the Cabinet Secretary; and

(d) two other persons, not being of the same gender, with demonstrated competence in environmental matters including land, energy, mining, water, forestry, wildlife and maritime affairs.

(2) The Cabinet Secretary shall appoint the members of the Tribunal by name and by notice in the Gazette.

(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.

170. The member of the Tribunal shall serve for a term of three years and shall be eligible for reappointment for only one further term of three years.

171. The office of a member of the Tribunal shall become vacant if that member—

(a) dies;
(b) resigns in writing by notice addressed to the
Cabinet Secretary;

c) accepts any office the holding of which, if the
member was not a member of the Tribunal, would
make the member ineligible for appointment to the
office of a member of the Tribunal; or

d) is removed from office for failure to discharge the
functions of office or for misbehaviour.

172. (1) The members of the Tribunal shall, in their
first meeting, elect from amongst themselves a Vice-
Chairperson from amongst the persons appointed under
section 169 (1) (b) and (c).

(2) The Chairperson and Vice-Chairperson shall be of
the same gender.

173. (1) In the absence of the Chairperson, the Vice-
Chairperson shall serve as the acting Chairperson for the
duration of the absence of the Chairperson and perform
such functions and exercise such powers as if the Vice-
Chairperson was the Chairperson.

(2) In the absence of both the Chairperson and the
Vice-Chairperson, the members of the Tribunal present may
nominate, from among their number, a person to act as the
Chairperson.

(3) The person nominated under subsection (2) shall
have the training and qualifications in law and, while acting
as the Chairperson, shall perform such functions and
exercise such powers as if that person were the
Chairperson.

174. The Chairperson may designate the Vice-
Chairperson and two other members to constitute a separate
sitting of the Tribunal.
175. At least three months before the expiry of a member’s term of office, the Secretary to the Tribunal shall notify the Cabinet Secretary and the relevant institution of the expiry of the member’s term.

176. (1) The Tribunal shall not be bound by the strict rules of evidence set out in the Evidence Act.

(2) Subject to the provisions of this Act, the Tribunal shall regulate its procedure.

(3) 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.

(4) The Tribunal shall sit at such times and in such places as it may appoint.

(5) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(6) A person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.

177. (1) Upon any appeal, the Tribunal may—

(a) confirm, set aside or vary the decision, direction, or order in question;

(b) refer the matter to Alternative Dispute Resolution;

(c) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought;

(d) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
(e) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal or suspending the decision in question, so as to protect and preserve the substratum and subject matter of the appeal until the appeal is determined or until further orders by the Tribunal;

(f) if satisfied upon application by any party, review any orders made by the Tribunal under this section; or

(g) assess and issue orders as to party and party costs.

(2) In its exercise of powers under this section, the Tribunal may issue summons to any person or officer whose attendance it considers necessary to give evidence or produce a document or any other thing in an appeal or inquiry which is within that person’s knowledge, possession or control and for the purpose of this section, the Tribunal shall develop its rules of procedure.

178. (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 may be 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 whose attendance it considers necessary for evidence.

(2) A 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) gives false evidence or information which is misleading before the Tribunal; or

(d) at any sitting of the Tribunal—

(i) wilfully insults any member or officer of the Tribunal; or

(ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal; or

(e) fails or neglects to comply with a decision order, direction or notice of the Tribunal, commits an offence.

179. (1) The Tribunal shall, without prejudice to any law governing contempt proceedings arising from tribunals and subordinate courts, punish for contempt of the Tribunal.

(2) Contempt of the Tribunal includes any of the following—

(a) wilful disobedience of any judgment, decree, order or direction of the Tribunal;

(b) wilful breach of an undertaking given to the Tribunal;

(c) wilful insult of the Chairperson, Vice-Chairperson or member of the Tribunal; and
(d) publication, whether by spoken or written words, signs or other visible representation, of any matters or the doing of any other act which scandalises or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice.

(3) An offence of contempt of the Tribunal shall be tried summarily with consideration to the requisite standard of proof for contempt proceedings and the Tribunal shall keep a record of the proceedings.

(4) A person convicted of contempt of the Tribunal shall be liable to a fine not exceeding two million shillings or imprisonment for a term not exceeding four years or to both.

180. The quorum for hearing or determining any cause or matter before the Tribunal under this Act shall be three members.

181. 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 or in the determination of that matter by the Tribunal.

182. (1) Any person who is aggrieved by—

(a) the grant, refusal to grant, or transfer of a licence or permit under this Act;

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

(c) the revocation, suspension or variation of a licence granted under this Act;

(d) the fees required to be paid under this Act; or
(e) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority,

may, within sixty days or such other period as the Tribunal may allow, after the occurrence of the event for which the person is aggrieved, appeal to the Tribunal in the 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 or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be prescribed by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

(a) confirm, set aside or vary the order or decision in question;

(b) refer the matter to alternative dispute resolution mechanisms;

(c) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought;

(d) make such other order, including an order to enhance the principles of sustainable development and an order for costs, as may be just in the circumstances;

(e) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal or suspending the decision of the Authority, until the appeal is determined or until further orders by the Tribunal are made;
(f) if satisfied upon application by any party, review any orders made by the Tribunal under this section; or

(g) assess and issue orders as to party and party costs.

183. (1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days after being notified of the decision or order or within such further period as the Environment and Land Court may allow, appeal against the decision or order to the Environment and Land Court.

(2) A decision or order of the Tribunal shall not be enforced until the time for lodging an appeal has expired:

Provided that the decision or order that is the subject of the appeal is not one of dismissal of the appeal.

(3) Notwithstanding subsection (2), where the Director-General is satisfied that immediate action must be taken to avert serious injury to the environment, the Director-General may take such reasonable action to stop, alleviate or reduce such injury including closing 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 Environment and Land Court may—

(a) confirm, set aside or vary the decision or order in question;

(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may give;

(c) 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
(d) make such other order as may be just, including an
order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

(5) Any person aggrieved by a decision or order of the 
Environment and Land Court may appeal to the Court of 
Appeal against the decision or order.

184. The Chairperson of the Tribunal may appoint 
any person with special skills or knowledge on 
environmental issues which are the subject matter of any 
proceedings or inquiry before the Tribunal to advice the 
Tribunal in any case where it appears to the Tribunal that 
such special skills or knowledge are required for proper determination of the matter.

185. (1) When any matter to be determined by the 
Authority under this Act appears to involve a point of law or 
to be environmentally complex, the Authority may, after 
giving notice to the concerned parties, refer the matter to the 
Tribunal for direction:

Provided that the reference of a matter by the 
Authority under this subsection shall not prejudice any 
appeal that may be lodged against the Authority at the 
Tribunal.

(2) The Cabinet Secretary may refer any matter that 
appears to involve a point of law, environmental justice, 
novel jurisprudence or to be of unusual importance or 
complexity to the Tribunal for an expert opinion or 
direction.

(3) Where any matter has been referred to the Tribunal 
under subsection (1) or (2), the Authority and the parties 
thereto—

(a) shall be entitled to be heard by the Tribunal before 
any decision is made in respect of such matter; and
(b) may appear personally or be represented by an advocate.

186. The Chairperson or other members of the Tribunal shall not be liable to be sued in a civil court for any act done or omitted to be done or ordered to be done by the Tribunal, whether or not within the limits of the Tribunal’s jurisdiction:

Provided that the Chairperson or members of the Tribunal, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of.

187. (1) There shall be paid to the Chairperson and members of the Tribunal such remuneration and allowances as the Cabinet Secretary, on the recommendation of the Salaries and Remuneration Commission, shall determine.

(2) The remuneration and allowances referred to in subsection (1) and any other expenses incurred by the Tribunal in the execution of its functions under this Act shall be paid out of monies voted by Parliament for that purpose.

188. (1) The Tribunal may appoint such staff as may be sufficient for the performance of its functions, through—

(a) competitive recruitment;

(b) secondment from the Ministry responsible for matters relating to the environment; or

(c) with the approval of the Judicial Service Commission, the Judiciary.

(2) The Tribunal shall in the appointment of employees ensure—

(a) equalization of opportunity for persons with disabilities;
(b) equalization of opportunities for the youth; and

(c) that the appointment reflects ethnic, gender and regional diversity of the people of Kenya.

(3) The terms of service for the staff of the Tribunal shall be determined by the Tribunal, on the advice of the Salaries and Remuneration Commission.

189. (1) The Cabinet Secretary shall, on the recommendation of the Public Service Commission made through an open and competitive process, appoint a person to be the secretary to the Tribunal.

(2) A person shall be qualified for appointment as the secretary of the Tribunal if the person—

(a) holds a postgraduate degree from a university recognized in Kenya in the fields of environmental law, environmental science, natural resource management or a relevant social science;

(b) is an advocate of the High Court of Kenya of at least ten years’ experience;

(c) has at least seven years’ professional experience in senior management; and

(d) has satisfied the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be paid such remuneration and allowances as the Tribunal shall, on the advice of the Salaries and Remuneration Commission, determine.

190. The Secretary shall—

(a) be the accounting officer and chief executive officer of the Tribunal;
(b) be responsible for the overall administration and management of the Tribunal including—

(i) planning, preparing, implementing and monitoring of budgets and finances of the Tribunal including accounting for expenditure and any income;

(ii) staffing and other human resource matters at the Tribunal;

(iii) planning, development and sourcing of support services such as language translation and transcription services;

(iv) office stock and non-stock procurements, stores and disposal procedures;

(v) manage, update, publish and disseminate hearing lists of appeals filed at the Tribunal;

(vi) communicate Tribunal decisions and proceedings to the public and in this regard be the custodian of the seal of the Tribunal; and

(vii) perform such other functions as may be assigned by the Tribunal as may be required for the proper performance of the functions set out in this section.

191. The Secretary shall be appointed for a term of four years and shall be eligible for appointment of only one further term of four years.

192. Where the office of the Secretary to the Tribunal falls vacant, the Tribunal may, pending the appointment of a new Secretary, appoint and officer of the Tribunal to act in that capacity and such acting appointment shall not exceed six months.
PART XIII—FINANCIAL PROVISIONS

193. For the purposes of this Part, “environment institutions” means the Authority, National Environment Ombudsman and National Environment Tribunal.

194. The funds of environmental institutions shall consist of—

(a) monies appropriated by Parliament;

(b) such monies or assets as may accrue to or vest in the environmental institutions in the course of the exercise of their powers or performance of their functions under this Act;

(c) grants, gifts, donations, loans, bequests or other endowments given to environmental institutions; and

(d) monies from any other lawful source accruing to the environmental institutions.

195. The financial year of the environmental institutions shall be the period of twelve months ending on the 30th June in each year.

196. (1) Three months before the commencement of each financial year, each environmental institution shall cause to be prepared estimates of the revenue and expenditure of the institution for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the environmental institution for the financial year concerned and in particular, shall provide for—

(a) the payment of salaries, allowances and other charges in respect of the staff of the institution;

(b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the institution;
(c) the maintenance of the buildings, grounds and facilities of the institution;

(d) the funding of training, research and development of activities of the institution;

(e) the creation of such present or reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, loans or in respect of such other matters the institution may lawfully consider appropriate; and

(f) the maintenance, repair and replacement of the equipment and other property of the body corporate.

197. (1) Every environmental institution shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, each environmental institution shall submit its financial statements to—

(a) the Auditor-General with a copy to the Controller of Budget and the Commission on Revenue Allocation; and

(b) the Cabinet Secretary, who shall upon approving it submit a copy to the Cabinet Secretary responsible for matters relating to finance

(3) The annual statements of the environmental institution shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public finance management and public audit.

198. (1) Where the Authority or an environmental inspector has reasonable grounds to believe that a person has contravened the provisions of this Act, the Authority or environmental inspector may impose an administrative fine and serve a notice on that person.
(2) The Authority may require the person served with a notice under subsection (1) to pay the administrative fine within a time prescribed in the notice.

(3) A notice issued under this section shall—

(a) specify the nature of the contravention;

(b) specify the date on which the contravention occurred;

(c) set out in summary form the facts relating to the contravention; and

(d) specify the penalty or administrative fine payable to the Authority and the period within which it should be paid.

(4) The person on whom a notice has been served under subsection (1) shall pay the administrative fine specified in the notice.

(5) The Authority may issue guidelines setting out the criteria for issuing and payment of administrative fines.

(6) Any person who contravenes the provisions of this section commits an offence.

PART XIV—ENVIRONMENTAL OFFENCES

199. A person who—

(a) hinders or obstructs an environmental inspector in the exercise of the duties under this Act;

(b) fails to comply with a lawful order or requirement made by an environmental inspector under this Act;

(c) refuses entry to an environmental inspector upon any land or into any premises, vessel or motor.
vehicle which the inspector is empowered to enter under this Act;

(d) impersonates an environmental inspector;

(e) refuses access to an environmental inspector to records or documents kept pursuant to the provisions of this Act;

(f) fails to state or wrongly states his or her name or address to an environmental inspector in the cause of the inspector's duties under this Act;

(g) misleads or gives wrongful information to an environmental inspector under this Act; or

(h) 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 a fine not exceeding four million shillings or imprisonment for a term not exceeding four years, or to both.

200. A person who—

(a) fails to submit an environmental impact assessment report contrary to the requirements of this Act;

(b) fails to prepare an environmental impact assessment report in accordance with the requirements of this Act; or

(c) fraudulently makes false statements in an environmental impact assessment report submitted under this Act,
commit an offence and is liable on conviction to a fine not exceeding four million shillings or imprisonment for a term not exceeding four years, or to both.

**201.** A person who—

(a) fails to keep records required to be kept under this Act;

(b) fraudulently alters any records required to be kept under this Act; or

(c) fraudulently makes false statements in any records required to be kept under this Act,

commit an offence and is liable upon conviction to a fine not exceeding four million shillings, or imprisonment for a term not exceeding four years, or to both.

**202.** A person who—

(a) contravenes any environmental standard prescribed under this Act;

(b) contravenes any measure prescribed under this Act; or

(c) uses the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act,

commit an offence and shall be liable upon conviction to a fine not exceeding four million shillings, or to imprisonment for a term not exceeding four years, or to both.

**203.** A person who—
(a) fails to manage any hazardous waste and materials in accordance with this Act;

(b) imports any hazardous waste contrary to this Act;

(c) knowingly mislabels any waste, chemical, toxic substance or radioactive matter;

(d) fails to manage any chemical or radioactive substance in accordance with this Act;

(e) aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances and hazardous substances;

(f) disposes of any chemical contrary to this Act or hazardous wastes within Kenya;

(g) withholds information or provides false information about the management of hazardous wastes, chemicals or radioactive substances,

commits an offence and shall be liable upon conviction to a fine not exceeding four million shillings, or to imprisonment for a term not exceeding four years, or to both.

204. (1) A person who—

(a) discharges any dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment contrary to the provisions of this Act;

(b) pollutes the environment contrary to the provisions of this Act;

(c) discharges any pollutant into the environment contrary to the provisions of this Act,

commits an offence and shall be liable upon conviction to a fine not exceeding four million shillings, or to imprisonment for a term not exceeding four years, or to both.
(2) In addition to any sentence that the Court may impose on a person convicted of an offence under subsection (1), the Court may direct that person to—

(a) pay the full cost of cleaning up the polluted environment and of the removal of the pollution; or

(b) 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) and (2), the court may direct the person convicted of an offence under subsection (1) to meet the cost of the pollution to any third parties through compensation, restoration or restitution.

205. A person who—

(a) fails, neglects or refuses to comply with an environmental restoration order made under this Act;

(b) fails, neglects or refuses to comply with an environmental easement, issued under this Act;

(c) fails, neglects or refuses to comply with an environmental conservation order made under this Act; or

(d) fails, neglects or refuses to comply with any order made by the Tribunal,

commits an offence and shall be liable upon conviction to a fine not exceeding four million shillings, or to imprisonment for a term not exceeding four years, or to both.
206. Any person who contravenes any provision of this Act for which no penalty is specifically provided for, is liable upon conviction, to a fine not exceeding four million shillings or imprisonment for a term not exceeding four years, or to both.

207. (1) When an offence under 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 failed to exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.

(2) Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge of the commission of the offence and who failed to 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 under this Act whether committed by him or her on his or her 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 under this Act, unless the employer or principal proves that the offence was committed against the employer’s express or standing directions.

(5) A registered owner or joint owners of a motorized vessel, motor vehicle, motorboat, marine vessel or an aircraft shall be liable for an offence committed by a driver of that motorized vessel, motor vehicle, motor boat, a marine vessel or an aircraft under this Act, unless that registered owner or joint owners proves that the offence was committed against the owner’s express or standing directions.

208. (1) The Court before which a person is charged with an offence under this Act may, in addition to any other order—
(a) upon the conviction of the accused; or

(b) if it is satisfied that an offence was committed notwithwithstanding that no person has been convicted of the offence,

order that the substance, motor vehicle, equipment, 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, in addition—

(a) order that the cost of disposing of the substance, motor vehicle, equipment, appliance or other thing provided for in that subsection be borne by the person convicted thereunder;

(b) order that any licence, permit or any authorisation given under this Act, and to which the offence relates, be cancelled;

(c) order 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; or

(d) issue an environmental restoration order against the person convicted in accordance with the provisions of this Act.

209. (1) Ecocide means an unlawful, destructive or wanton act committed with knowledge that there is a substantial likelihood of severe, and widespread or long-term damage to the environment being caused by the act.

(2) For the purposes of subsection (1)—

(a) “wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
(b) “severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;

(c) “widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;

(d) long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time; and

(e) “environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

(3) Any person who commits an act or acts that amount to ecocide commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding twenty years or to a fine not exceeding one billion shillings or to both.

(4) Notwithstanding the provisions of this Act and of any other written law, the offence of ecocide shall be triable by the High Court exercising its original jurisdiction.

PART XV—REGULATIONS

210. (1) The Cabinet Secretary may, on the recommendation of the Authority, make Regulations prescribing for 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.

(2) Regulations made under subsection (1) may—

(a) make provisions for the issue, amendment and revocation of any licence;
(b) provide for the charging of fees and levying of charges; or

(c) provide for the establishment of a national inventory, database or portal of toxic and hazardous chemicals and materials including information on the name, molecular formula, chemical abstract service number, harmonised system code number, purpose, application or uses, quantities, hazardous characteristics and regulatory status thereof; and

(d) adopt wholly or in part or with modifications any Rules, standards, guidelines, Regulations, county legislation, 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 to time.

211. A County may enact legislation in respect of all such matters as are necessary or desirable that are required or permitted under the Constitution and this Act.

PART XVI—REPEALS AND TRANSITIONAL PROVISIONS

212. Any written law by the national and county governments relating to the management of the environment in force immediately before the commencement of this Act shall have effect, subject to such modifications as may be necessary to give effect to this Act, and where the provisions of such law are in conflict with any provisions of this Act, the provisions of this Act shall prevail.

213. The Environmental Management and Co-ordination Act, 1999 is repealed.

214. (1) For the purposes of this section—

"repealed Act" means the Environmental Management and Co-ordination Act, 1999;
“former institution” means—

(a) the National Environment Management Authority established under section 7 of the repealed Act;

(b) the National Environmental Complaints Committee established by section 32 of the repealed Act;

(c) the National Environment Trust Fund established under section 24 of the repealed Act; and

(d) the National Environment Tribunal established by section 125 of the repealed Act.

(2) Notwithstanding the provisions of section 209—

(a) any area which immediately before the commencement of this Act, was gazetted or registered as a forest protected or conservation area under the repealed Act shall be deemed to so remain under this Act;

(b) any person appointed as an environmental inspector under the repealed Act, shall be deemed to appointed as an environmental inspector under this Act;

(c) any licence or approval issued under the repealed Act shall remain in force as if it were a licence or approval issued under this Act:

Provided that where the licence, or approval in force immediately before the commencement of this Act relates to activities now outlawed under this Act, shall cease upon commencement of this Act;

(d) subsidiary legislation made in accordance with the Environmental Management and Co-ordination
Act, 1999, and still in force on the date of the commencement of this Act, shall remain in force until they are revoked in accordance with the provisions of this Act;

(e) a person who immediately before the commencement of this Act was an employee of the former Institutions, shall continue to hold or act in that office as if appointed to that position under this Act, and all benefits accruing to employees under the repealed Act shall continue accruing to them under this Act; and

(f) members of the Boards of former institutions who immediately before the commencement of this Act were appointed as Board members of the Institutions under the repealed Act, shall continue to hold and act as Board members as if appointed to that position under this Act.
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SECOND SCHEDULE

s. 101(1), (4), 102(1), (2), (3), 112(1) and (2)

Projects that require an integrated environmental impact assessment

1. Low-risk projects

(a) establishment of places of worship including churches, mosques and temples;

(b) community based and social projects including sport facilities, stadia, social halls;

(c) community water projects including boreholes, water pans, sand dams and sub-surface dams;

(d) dispensaries, health centres and clinics;

(e) livestock holding grounds and cattle dips;

(f) expansion or rehabilitation of markets;

(g) car and bus parks;

(h) local roads and facility access roads;

(i) business premises including shops, stores, urban market sheds;

(j) cottage industry, jua kali sector and garages;

(k) small scale rehabilitation, maintenance and modernization of projects;

(l) schools and related infrastructure for learners not exceeding one hundred; and

(m) standard warehouses not exceeding one thousand four hundred square meters.

2. Medium-risk projects

(1) Urban Development including—

(a) establishment of multi-dwelling housing developments of not exceeding one hundred units;

(b) tourism and related infrastructure;

(c) hotels with bed capacity not exceeding one hundred and fifty; and

(d) shopping centres, commercial centres and complexes, business premises, shops and stores not exceeding ten thousand square meters.
(2) Transportation including—
   (a) construction and rehabilitation of roads including collectors
       and access roads;
   (b) construction of a light rail transit;
   (c) construction of jetties, marinas, piers and pontoons;
   (d) rehabilitation works of airports and airstrips;
   (e) helipads;
   (f) parking facilities; and
   (g) construction of bridges.
(3) Water resources and infrastructure, including—
   (a) drilling for purposes of utilizing ground water resources and
       related infrastructure;
   (b) water abstraction works; and
   (c) water supply and distribution infrastructures.
(4) Artisanal mining including quarrying of—
   (a) precious metals and gemstones;
   (b) limestone and dolomite;
   (c) harvesting of aggregate, sand, gravel, soil, clay, stone and slate;
   (d) gypsum;
   (e) pozollana;
   (f) carbon dioxide; and
   (g) ferrous and non-ferrous ores.
(5) Forestry related activities, including—
   (a) timber harvesting in plantation forests;
   (b) reforestation and afforestation; and
   (c) wood preservation or treatment facilities.
(6) Agriculture and related activities, including—
   (a) medium-scale agriculture not exceeding one hundred hectares;
   (b) medium size grain storage;
   (c) medium size agricultural and livestock produce storage
       facilities;
   (d) medium scale irrigation projects.
(7) Medium scale processing and manufacturing industries, including—

(a) brick and earth-ware manufacture;
(b) abattoirs and meat-processing plants;
(c) fish-processing plants;
(d) plants for the construction or repair of aircrafts or railway equipment;
(e) plants for the manufacture of tanks, reservoirs and sheet-metal containers;
(f) plants for manufacturing or recycling of plastics or paper;
(g) plants for manufacturing pharmaceuticals;
(h) plants for the manufacture of coal briquettes;
(i) distilleries;
(j) any other food-processing plants or agro-based processing plants; and
(k) go-downs for storage and warehouses.

(8) Power and infrastructure projects, including—

(a) hydropower development not exceeding ten megawatts;
(b) electrical sub-stations;
(c) pumped-storage schemes;
(d) cogeneration of power;
(e) low voltage power transmission lines; and
(f) solar power farms or plants.

(9) Hydrocarbons projects, including—

(a) service stations;
(b) liquefied petroleum gas filling plant; and
(c) lubricant blending facilities.

(10) Waste disposal, including—

(a) waste transfer stations or storage facilities;
(b) composting sites or plants;
(c) removal and onsite disposal of asbestos.
(11) Packaged treatment plants or onsite waste water treatment plants.
(12) Biofuels processing plants.
(13) Telecommunication infrastructures.
(14) Expansion of tertiary institutions and related infrastructures.

3. High-risk projects

(1) General—
   (a) an activity out of character with its surrounding; and
   (b) any structure of a scale not in keeping with its surrounding.

(2) Changes in land use including—
   (a) major changes in land use; and
   (b) large scale resettlement schemes.

(3) Urban Development including—
   (a) designation of new townships;
   (b) establishment or expansion of industrial estates;
   (c) establishment or expansion of recreational areas in National Parks, National reserves, forests, nature reserves and any areas designated as environmentally sensitive;
   (d) establishment of shopping centres, commercial centres and complexes;
   (e) establishment of hospitals;
   (f) hotels with a bed capacity exceeding one hundred and fifty;
   (g) establishment of new housing estate developments exceeding one hundred housing units;
   (h) establishment of schools and other learning institutions exceeding one hundred learners; and
   (i) other related urban developments.

(4) Transportation and related infrastructure projects, including—
   (a) all new major roads including trunk roads;
   (b) railway lines;
   (c) airports and airfields;
   (d) oil and gas pipelines;
(e) harbours and ports;
(f) construction of tunnels and channels;
(g) metro transport facilities; and
(h) underground transport works.

(5) Water resources and related infrastructure including—
(a) storage dams and barrages;
(b) river diversions and water transfer between catchments;
(c) flood control schemes;
(d) sea walls; and
(e) water abstraction works.

(6) Mining and other related activities including—
(a) precious metals;
(b) salt firms;
(c) gemstones;
(d) ferrous and non-ferrous ores;
(e) coal;
(f) phosphates;
(g) limestone and dolomite;
(h) quarrying of stone and slate;
(i) harvesting of aggregate, sand, gravel, soil and clay; and exploration for the production of petroleum and minerals in any form.

(7) Forestry related activities including—
(a) clearance of forest areas;
(b) reforestation and afforestation with alien species;
(c) introduction of alien species;
(d) excisions of gazette forests;
(e) conversion of forests for whatever purposes; and
(f) any projects located within forest reserves such as construction of dams or other control structures that flood large areas.

(8) Agriculture including—
(a) aerial spraying;
(b) large-scale agriculture exceeding one hundred hectares;
(c) introduction of new crops and animals;
(d) large scale irrigation exceeding one hundred hectares;
(e) major developments in biotechnology including the introduction and testing of genetically modified organisms; and
(f) biofuel plantations.

(9) Processing and manufacturing industries, including—
   (a) mineral or ores refining and processing;
   (b) large scale brick and earth-ware manufacture;
   (c) cement manufacturing plants and lime processing;
   (d) glass works;
   (e) fertilizer manufacture or processing;
   (f) explosive plants;
   (g) tanneries;
   (h) abattoirs handling more than one hundred animals per day and meat-processing plants;
   (i) brewing and malting;
   (j) bulk grain processing and storage plants;
   (k) large scale fish-processing plants;
   (l) pulp and paper mills;
   (m) heavy manufacturing plants;
   (n) lead smelting and processing plants;
   (o) edible oil plants;
   (p) steel mills;
   (q) sugar factories; and
   (r) any other chemical works and processing plants.

(10) Power and infrastructure projects, including—
   (a) thermal and hydropower development exceeding ten megawatts;
   (b) geothermal development;
(c) wind farms;
(d) nuclear reactors and nuclear plants; and
(e) high voltage electrical transmission lines.

(11) Hydrocarbon projects, including—
(a) depots and refinery facilities for hydrocarbons;
(b) depots for natural gas;
(c) oil and gas fields development; and
(d) oil refineries and petrochemical works.

(12) Waste disposal works, including—
(a) sewerage works and waste water treatment plants;
(b) installation for disposal of industrial wastes;
(c) installation of incinerators;
(d) sanitary landfill sites;
(e) hazardous waste treatment or disposal facilities;
(f) facilities for disposal of solid or liquid hazardous waste;
(g) sludge treatment facility;
(h) e-waste recycling facilities;
(i) waste oil recycling facilities;
(j) waste tyre processing and recycling facilities; and
(k) commercial asbestos disposal sites.

(13) Activities in natural conservation areas, including—
(a) establishment of protected areas, buffer zones and wilderness areas;
(b) actions likely to affect endangered species of flora and fauna;
(c) formulation or modification of water catchment management projects;
(d) projects for the management of ecosystems especially by manipulating fire and water;
(e) commercial exploitation of natural fauna and flora;
(f) introduction of alien species of fauna and flora into ecosystems;

(g) wetlands reclamation or any projects likely to affect wetlands;

(h) projects located in indigenous forest including those outside of gazetted forests; and

(i) any project in an environmentally sensitive area.

(14) Marine resource exploitation and reclamation, including—

(a) mineral exploitation of resources in the marine areas;

(b) reclamation of marine areas; and

(c) mariculture.

(15) Any other project which poses high environmental risks.
THIRD SCHEDULE

Procedure for Conduct of Meetings of the Board of Trustees of the National Environment Trust Fund

1. (1) The first meeting of the Board of Trustees shall be convened by the Cabinet Secretary.

(2) A first meeting of the Board of Trustees shall be necessary in every situation where either all members have been appointed afresh, or more than two-thirds of the members have been newly appointed.

(3) The Board of Trustees shall meet for the conduct of business at such times and places as it shall appoint, or failing any such appointment, as the Chairperson shall appoint:

Provided that the Board of Trustees shall hold regular meetings not less than four times in any financial year.

(4) Notwithstanding the above, the Board of Trustees may hold regular meetings as often as is necessary to carry out its mandate.

(5) In the conduct of its meetings, the Board of Trustees shall establish such number of committees as may be necessary

(6) Unless the majority of the total membership of the Board of Trustees otherwise agree, at least seven days' written notice of every meeting of the Board, including the draft agenda, shall be given to every member.

2. The Chairperson—

(a) on their own motion; or

(b) on the request of at least one-third of the Trustees,

shall, by not less than three days' written notice to all other members, summon a special meeting of the Board of Trustees at such time and place as the Board of Trustees shall appoint, or such other place as the Chairperson may appoint.
3. Except where a shorter period of notice is applicable, such as in subparagraph (3), notice of the date, time and place of each meeting shall be given in writing at least seven days beforehand to every member at such physical or electronic mail address in Kenya as they shall have notified to the Board of Trustees from time to time.

Provided that the failure of any member to receive such notice shall not invalidate any proceedings, except in instances where such meeting fails to raise the requisite quorum, as specified in paragraph 5.

4. (1) The quorum necessary for the transaction of business by the Board of Trustees shall be five members.

(2) Proceedings of the Board of Trustees shall not be invalid by reason only of a vacancy among the members provided there is a quorum

5. (1) The Chairperson or, in the absence of the Chairperson, a member appointed by the members then present shall preside at a meeting of the Board of Trustees.

(2) The presiding member at a meeting of the Board of Trustees shall cause a record of the proceedings at the meeting to be made.

6. Unless a unanimous decision is reached, a decision on any matter before the Board of Trustees shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or person presiding shall have a casting vote.

7. (1) The office of a member shall become vacant if—

(a) such member dies, resigns, or is lawfully removed from office by reason of inability to perform the functions of office arising from mental or physical incapacity;

(b) such member absents himself or herself from four consecutive meetings of the Board of Trustees,
unless—

(i) reasonable notice has been given by the member;

(ii) the Board of Trustees has granted the member leave to be absent from those meetings; or

(iii) within four weeks after the last of the four meetings, the member is excused by the Board of Trustees for having been absent from the meetings;

(c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(d) such member is adjudged or declared by any competent court or tribunal to be of unsound mind;

(e) such member is liable for gross misconduct; or

(f) such member is convicted of an offence punishable by imprisonment for a period exceeding six months.

(2) If the office of a member becomes vacant, the respective appointing authority shall fill the vacancies as prescribed in this Act.

8. (1) A member of the Board of Trustees who has a direct or indirect interest—

(a) in a matter which is being considered, or is about to be considered at a meeting of the Board of Trustees; or

(b) in a thing being done or about to be done by the Board of Trustees,

shall, as soon as possible after the relevant facts have
come to the member's knowledge, disclose the nature of the interest at a meeting of the Board of Trustees.

(2) A disclosure to the Board of Trustees that the member concerned—

(a) is a member, or is in the employment, of a specified company or any other body;

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board of Trustees shall cause particulars of any disclosure made under subparagraph (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subparagraph (1) or (2), the member shall not unless it is otherwise determined—

(a) be present during any deliberation, take part in any decision of the Board of Trustees or influence in any manner whatever decision with respect to that matter; or

(b) exercise or perform any powers or functions under this Act with respect to the subject matter of the disclosure.
MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to provide an appropriate legal and institutional framework for the management of the environment; to repeal and replace the Environmental Management and Co-ordination Act, 1999; and for connected purposes.

Part I of the Bill (clauses 1 and 2) provides for preliminary matters including the short title of the Act and the definitions of key terms.

Part II of the Bill (clause 3 to 6) provides for the guiding principles of the Act and access to information in respect of the Act.

Part III of the Bill (clauses 7 to 66) provides for the policy, co-ordination and administration of the Act. It provides for the functions of the Cabinet Secretary; the establishment, management, functions, powers, officers and staff of the National Environment Management Authority; the making and purposes of environmental strategic plans; the roles and functions of lead agencies; the establishment, functions, officers, staff, sources of funds, financial affairs and reports of the National Environment Trust Fund; the establishment, purpose and objective of the National Environment Restoration Fund; the imposition and purposes of deposit bonds; the establishment, members and functions of county environment committees; and the establishment, members, powers, functions, officers and staff of the National Environment Ombudsman.

Part IV of the Bill (clauses 67 to 78) deals with environmental research and planning. It provides for research co-ordination; the establishment of an environmental database; the preparation of the state of environment report by the national and county governments; the preparation, purpose and contents of the National Environment Action Plan and county environment action plans; and the establishment, object and purpose and functions of the Directorate of Environmental Research.

Part V of the Bill (clauses 79 to 99) deals with the protection and conservation of the environment. It makes provisions for the protection of rivers, lakes and wetlands; the protection of traditional interests; the protection of hilltops, hillsides, mountainous areas and forests; the conservation of energy and the planting of trees; the ex situ and in situ protection of biological resources; the regulation of access to the genetic resources of Kenya; the protection of coastal zones; the protection of the ozone layer; and economic incentives for the protection and conservation of the environment.
Part VI of the Bill (clauses 100 to 113) deals with integrated environment, cultural, health, heritage and social assessments. It provides for the preparation of strategic environmental assessment; the procedure for the application and issuance of an environmental impact assessment licence; the transfer, revocation, suspension or revocation of an environmental impact assessment licence; the conduct of environmental audits; and the disposal of environmental impact assessment studies and reports by the Authority.

Part VII of the Bill (clause 114) deals with environmental monitoring.

Part VIII of the Bill (clauses 115 to 146) deals with environment quality standards. It provides for the prohibition of water pollution; the provision of information to the Authority; the regulation of the discharge of effluent into the environment; air quality and greenhouse gases emission standards; standards for the control of noxious smells; the establishment and regulation of controlled areas; the issuance of emissions licenses; the regulation of emissions by motor vehicles and other conveyances; the cancellation of emissions licenses; the maintenance of a register of emissions licenses; standards for waste; the co-ordination of waste management between national and county governments; the preparation of waste management plans; the duties of citizens in waste management; the issuance of waste management licences; the regulation of toxic and hazardous materials; the control of noise pollution; standards of plastics and offences related to plastics.

Part IX of the Bill (clauses 147 to 155) deals with environmental restoration orders, environmental conservation orders and environmental easements. It provides for the application for and issuance of environmental restoration orders and contents thereof; it provides the reconsideration of environmental restoration orders by the issuing authority; it provides for the powers of the Environment and Land Court to issue environmental restoration orders; it provides for the application for, effect, enforcement and registration of environmental easements; and for compensation for environmental easements.

Part X of the Bill (clauses 156 to 166) deals with inspection, analysis and records. It provides for the appointment, qualifications and powers of environmental inspectors; code of conduct of environmental inspectors, establishment of the Environmental Police Unit; appointment of honorary environmental champions and scouts, the use of firearms by members of the environment enforcement and protection unit; prosecution of environmental offences by environmental inspectors; laboratory analysis of samples and certificates of analysis; the keeping of records and
their transmission to the Authority; and access to records kept under the Act by the Authority.

**Part XI of the Bill** (clause 167 and 168) deals with conventions, agreements and treaties on the environment that Kenya has entered into or ratified.

**Part XII of the Bill** (clauses 169 to 192) deals with dispute resolution mechanisms. It provides for the establishment of the National Environment Tribunal; the appointment and tenure of members of the Tribunal; the meetings of the Tribunal; the proceedings and awards of the Tribunal; the punishment for contempt of the Tribunal; appeals to the Tribunal and from decisions of the Tribunal to the Environment and Land Court; and for the officers and staff of the Tribunal.

**Part XIII of the Bill** (clauses 193 to 198) deals with the financial provisions in respect of the environmental institutions established under the Bill including the sources of their funds, the financial year of the institutions, the institution’s annual estimates, and accounts and audit of the financial affairs of the institutions.

**Part XIV of the Bill** (clauses 199 to 209) deals with environmental offences and their penalties. The offences include offences against inspection; environmental impact assessments; records; standards; hazardous wastes, materials, chemicals and radioactive substances; pollution; environmental restoration orders, easements, conservative orders, or orders of the tribunal. It also provides for a general penalty; and offences by bodies corporate, partnerships and employers; and forfeiture, cancellation and other orders.

**Part XV of the Bill** (clauses 210 and 211) deals with Regulations. It provides for the Cabinet Secretary’s power to make Regulations; and for the enactment of environmental legislation by county governments.

**Part XVI of the Bill** (clauses 212 to 214) deals with repeals and transitional provisions. It provides for the effect of its enactment on existing legislation; and for the repeal of the Environmental Management and Co-ordination Act, 1999.

**First Schedule**—Ministries represented in County Environmental Committees.

**Second Schedule**—Projects that require an integrated environmental impact assessment.

**Third Schedule**—Procedure for Conduct of Meetings of the Board of Trustees of the National Environment Trust Fund.
Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary to make Regulations on the recommendation of the National Environment Management Authority. The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

Pursuant to paragraph 22 of Part 1 of the Fourth Schedule to the Constitution and paragraph 10 of Part 2 of the Fourth Schedule to the Constitution, protection of environment and environmental conservation falls within the concurrent jurisdiction of both levels of government. In this regard, the Bill is a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 3rd February, 2022.

AMOS KIMUNYA,
Leader of Majority Party.