

ENVIRONMENTAL MANAGEMENT AND COORDINATION BILL, 2021

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3rd DRAFT KIANDANI BILL

DRAFT ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION BILL, 2021

A BILL FOR

AN ACT of Parliament to provide an appropriate legal and institutional framework for the management of the environment and for connected purposes.

PREAMBLE

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

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

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

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

PART I – PRELIMINARY

Short title and commencement.	1. This Act may be cited as Environmental Management and Coordination Act, 2021.
Interpretation. No. 47 of 2013. No. 47 of 2013.	2. In this Act— “alien species” has the meaning assigned to it in the Wildlife Conservation and Management Act; “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-

	<p>sonic vibration or its effect on any segments of the environment;</p> <p>“analyst” means an analyst appointed or designated under section 150;</p> <p>“annual report on the state of the environment” means the report prepared and issued under section 8;</p> <p>“Authority” means the National Environment Management Authority established under section 6;</p> <p>“authorized officer” includes a member of, the Service, a forest officer, a fisheries officer, a police officer, a customs officer, an administrative officer, or any person so designated under this Act;</p> <p>“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;</p> <p>“benefited environment” means that environment which has benefited through the imposition of one or more obligations on the burdened land;</p> <p>“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;</p> <p>“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;</p> <p>“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;</p> <p>“bio-piracy” 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;</p> <p>“bio-prospecting” means the exploration of biodiversity for commercially valuable genetic and biochemical resources;</p> <p>“biosafety” means the avoidance of risk to human health and safety and the conservation of the environment as a result of the use of genetically modified organisms;</p>
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<p>No. 17 of 2012.</p>	<p>“biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;</p> <p>“burdened land” means any land upon which an environmental easement has been imposed;</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matter relating to environment and natural resources;</p> <p>“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;</p> <p>“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;</p> <p>“Complaints Committee” means the National Environmental Complaints Committee established under section 38;</p> <p>“community” means a group of individuals or families who share a common heritage, interest, or stake in unidentifiable land, land based resources or benefits that may derived therefrom;</p> <p>“continental shelf” has the meaning assigned to it by the United Nations Convention on the Law of the Sea;</p> <p>“contravening a measure” means to offend the prohibition or order of a law treaty or code of conduct;</p> <p>“controlled area” means any area designated as such by the Cabinet Secretary under this Act;</p> <p>“County Environment Action Plan” mean a County Environment action plan prepared under section 50;</p> <p>“County Environment Committee” means a committee established under section 36;</p> <p>“county government” has the meaning assigned to it in section 2 of the County Governments Act;</p> <p>“Deposit Bond” means a deposit bond paid under section 35;</p> <p>“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</p>
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	<p>heredity;</p> <p>“developer” means a person who is developing a project which is subject to an environmental impact assessment process under this Act;</p> <p>“Director-General” means the Director-General of the Authority appointed under section 15;</p> <p>“ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;</p> <p>“ecosystem services” are the many and varied benefits to humans gifted by the natural environment and from healthy ecosystems;</p> <p>“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;</p> <p>“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;</p> <p>“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;</p> <p>“environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving or preserving the environment;</p> <p>“environmental easement” means an easement imposed under section 139;</p> <p>“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;</p> <p>“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</p>
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	<p>environment;</p> <p>“environmental inspector” means any environmental inspector appointed or designated under section 144;</p> <p>“environmental management” includes the protection, conservation and sustainable use of the various elements or components of the environment;</p> <p>“Environmental Management Plan” or (EMP) is a site specific plan developed to ensure that the project is 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 actions to properly manage that risk;</p> <p>“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;</p> <p>“environmental organization” means a public benefits organization whose objective is to conserve the environment and natural resources and is duly registered as a community based organization, or a public benefits organization;</p> <p>“environmental planning” means both long-term and short-term planning that takes into account environmental exigencies;</p> <p>“environmental resources” includes the resources of the air, land, flora, fauna and water together with their aesthetical qualities;</p> <p>“environmental restoration order” means an order issued under section 135;</p> <p>“environmentally friendly” includes any phenomenon or activity that does not cause harm or degradation to the environment;</p> <p>“environmental strategic plan” refers to the framework of coordination 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 the Act;</p> <p>“excavation” means removal of soil or rock from a site to form an open space, hollow or cavity, using tools machinery or explosives;</p> <p>“<i>ex-situ</i> conservation” means conservation outside the natural ecosystem and habitat of the biological organism;</p> <p>“exclusive economic zone” has the meaning assigned to it by the</p>
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	<p>United Nations Convention on the Law of the Sea;</p> <p>“financial statement” means the financial statements prescribed by the Accounting Standards Board;</p> <p>“financial year” means the period of twelve months ending on the thirtieth June in every year;</p> <p>“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;</p> <p>“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;</p> <p>“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 119;</p> <p>“indigenous knowledge” means any traditional knowledge of sources, components, capabilities, practices and uses of, and processes of preparation, use and storage of plant and animal species and their genetic resources;</p> <p>“indigenous technologies” means technologies employed by the native inhabitants of a country and which constitute an important part of its cultural heritage and should therefore be protected against exploitation by industrialized countries;</p> <p>“<i>in-situ</i> conservation” means conservation within the natural ecosystem and habitat of the biological organism;</p> <p>“integrated environmental assessments” includes cultural impact assessments, heritage impact assessments, health impact assessments, social impact assessments and environmental impact assessments;</p> <p>“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;</p> <p>“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;</p>
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<p>No. 19 of 1990.</p>	<p>“invasive species” has the meaning assigned to it in the Wildlife Conservation and Management Act;</p> <p>“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;</p> <p>“Ministry” means the Ministry for the time being responsible for matters relating to the environment;</p> <p>“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;</p> <p>“National Council of Public Benefit Organizations” means the Council established by section 23 of the Public Benefit Organizations Co-ordination Act, 1990;</p> <p>“National Environment Action Plan” means the plan referred to in section 48;</p> <p>“natural resources” means the physical non-human factors renewable or non-renewable including;</p> <ul style="list-style-type: none">(a) sunlight(b) surface and ground water(c) forests, biodiversity and genetic resources; and(d) rocks minerals fossils, fuels and other sources of energy; <p>“natural resource agreements” means an agreement which involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource in Kenya;</p> <p>“noise” means any undesirable sound that is intrinsically objectionable or that may cause adverse effects on human health or the environment;</p> <p>“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 under-ground space in which human activities take place;</p> <p>“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;</p> <p>“oil” includes—</p>
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	<p>(a) crude oil, refined oil, diesel oil, fuel oil and lubricating oil; and</p> <p>(b) any other description of oil which may be prescribed;</p> <p>“owner” in relation to any premises means—</p> <p>(a) the registered proprietor of the premises;</p> <p>(b) the lessee, including a sub-lessee of the premises;</p> <p>(c) the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative;</p> <p>(d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant; and</p> <p>in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship; except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship’s operator, “owner” shall include such country and the master of the ship;</p> <p>“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;</p> <p>“person” includes a company, association or other body of persons whether incorporated or unincorporated;</p> <p>“pest control product” is a product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, attracting or repelling any pest and includes –</p> <p>(a) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a pest control product to which it is added;</p> <p>(b) any active ingredient used for the manufacture of a pest control product;</p> <p>(c) plant growth regulators; and</p> <p>(d) any effective tick or other ectoparasite-destroying agent on animals;</p>
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	<p>“pollutant” includes any substance whether liquid, solid or gaseous which—</p> <ul style="list-style-type: none">(a) may directly or indirectly alter the quality of any element of the receiving environment;(b) is hazardous or potentially hazardous to human health or the environment; and <p>includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;</p> <p>“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;</p> <p>“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;</p> <p>“practicable” means reasonably practicable having regard, among other things, to local conditions and knowledge and the term “practicable means” includes the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;</p> <p>“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;</p> <p>“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;</p> <p>“project” includes any project, programme or policy that leads to</p>
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	<p>projects which may have an impact on the environment;</p> <p>“project report” means a summary statement of the likely environmental effects of a proposed development referred to in section 81;</p> <p>“proponent” means a person proposing or executing a project, program or an undertaking specified in the Second Schedule;</p> <p>“proprietary information” means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Kenya or by any international treaty to which Kenya is a party;</p> <p>“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;</p> <p>“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;</p> <p>“radiation” includes ionising radiation and any other radiation likely to have adverse effects on human health and the environment;</p> <p>“regional development authority” means a regional development authority established by an Act of Parliament;</p> <p>“regulations” mean regulations made under this Act;</p> <p>“restoration” means the reinstatement of a previous practice, right, or situation;</p> <p>“Restoration Fund” means the National Environment Restoration Fund established under section 33;</p> <p>“ranger” means a member of the Service in the uniformed and disciplined cadre and includes corporal, sergeant, senior sergeant and sergeant major;</p> <p>“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;</p> <p>“sewerage services” means the development and management</p>
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	<p>of infrastructure for transport, storage, treatment waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;</p> <p>“ship” includes every description of vessel or craft or floating structure;</p> <p>“soil” includes earth, sand, rock, shales, minerals, vegetation, and the flora and fauna in the soil and derivatives thereof such as dust;</p> <p>“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;</p> <p>“strategic environmental assessment” means a formal and systematic process to analyse and address the environmental effects of policies, plans, programmes and other strategic initiatives;</p> <p>“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;</p> <p>“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;</p> <p>“territorial waters” means territorial waters provided for under section 3 of the Maritime Zones Act;</p> <p>“threatened ecosystem” means an ecosystem of high biodiversity value or habitat of endangered or endemic species that is under threat of degradation;</p> <p>“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;</p> <p>“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</p>
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<p>No. 47 of 2013.</p>	<p>within or without the context of conventional education by Kenyans;</p> <p>“Tribunal” means the National Environment Tribunal established under section 158;</p> <p>“Trust Fund” means the National Environment Trust Fund established under section 23;</p> <p>“voluntary environmental management” means the principle of encouraging voluntary compliance in conserving the environment and which is a cost-effective and efficient method of attaining compliance with environmental regulations and of encouraging innovative conservation practices;</p> <p>“waste” means—</p> <p>(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;</p> <p>(b) a substance, material or object that may be designated as waste by the Cabinet Secretary by notice in the Gazette,</p> <p>PROVIDED that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—</p> <ul style="list-style-type: none">(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; <p>“water” includes drinking water, river, stream, water-course, reservoir, well, dam, canal, channel, lake swamp, open drain, or</p>
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	<p>underground water;</p> <p>“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</p> <p>“wildlife” has the meaning assigned to it in the Wildlife Conservation and Management Act.</p>
<p>PART II – GUIDING PRINCIPLES</p>	
<p>The right to a clean and healthy environment</p>	<p>3. (1) Every person has the right to a clean and healthy environment and has the duty to safeguard and enhance the environment.</p> <p>(2) The right to a clean and healthy environment under subsection (1) includes the access by any person in Kenya to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.</p> <p>(3) Every person shall cooperate with state organs to protect and conserve the environment and to ensure the ecological sustainable development and use of natural resources.</p> <p>(4) 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 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 it may deem appropriate to—</p> <ul style="list-style-type: none"> (a) prevent, stop or discontinue any act or omission deleterious to the environment; (b) collaboration and co-operation between the national and County governments; (c) compel any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment; (d) require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act; (e) compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and (f) provide compensation for any victim of pollution and the

	<p>cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.</p> <p>(5) A person proceeding under subsection (4) of this section shall have the capacity to bring an action notwithstanding that such a person cannot show that the defendant's act or omission has caused or is likely to cause that person any personal loss or injury provided that such action—</p> <ul style="list-style-type: none">(a) is not frivolous or vexatious; or(b) is not an abuse of the court process. <p>(6) In exercising the jurisdiction conferred upon it under subsection (4) the Environment and Land Court shall be guided by the following principles of sustainable development—</p> <ul style="list-style-type: none">(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 in so far as the same are relevant and are not repugnant to justice and morality or inconsistent with any written law;(c) the principle of international co-operation in the management of environmental resources shared by two or more states;(d) the principles of intergenerational and intragenerational equity;(e) the polluter-pays principle; and(f) the pre-cautionary principle. <p>(7) Environmental management and decisions shall also be guided by the foregoing principles.</p>
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<p>Access to information</p>	<p>4. (1) Subject to the law relating to access to information, every person has the right to access any information that relates to the implementation of this Act that is in the possession of the Authority, lead agencies or any other person</p> <p>(2) A person desiring the information referred to in subsection (1) shall apply to the Authority or a lead agency and may be granted access to such information on payment of the prescribed fee.</p>
<p align="center">PART III – POLICY, COORDINATION AND THE GENERAL ADMINISTRATION OF THE ACT</p>	
<p>Functions of the Cabinet Secretary.</p>	<p>5. The Cabinet Secretary shall—</p> <ul style="list-style-type: none"> (a) be responsible for policy formulation and directions for purposes of this Act and shall in this regard receive policy proposals from the Authority and the other bodies created under this Act; (b) set national goals and objectives and determine policies and priorities for the protection of the environment; (c) promote co-operation among public departments, local authorities, private sector, Non-Governmental Organisations and such other organizations engaged in environmental protection programmes; (d) provide evidence of public participation in the formulation of the policy and the environmental action plan; (e) mobilise resources for environmental conservation; (f) lay after every two years, a report on the state of the environment in Kenya prepared by the Authority, before the National Assembly – through the relevant committee within ninety days after its publication where the National Assembly is in session, or where not in session, within twenty-one days of the day the National Assembly next sits after such publication; and (g) perform such other functions as are assigned under this Act.
<p>Establishment of the National Environment Management Authority.</p>	<p>6. (1) There is established the National Environment Management Authority.</p> <p>(2) The Authority shall be a body corporate with perpetual</p>

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	<p>succession and a common seal and shall, in its corporate name, be capable of—</p> <ul style="list-style-type: none">(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.
Board of the Authority.	<p>7. (1) The Authority shall be managed by a Board, which shall consist of—</p> <ul style="list-style-type: none">(a) a Chairperson appointed by the President;(b) the Cabinet Secretary in charge of Finance or their representative appointed in writing;(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to the Environment or their representative appointed in writing;(e) five members, not being public officers, appointed by the Cabinet Secretary responsible for environment and natural resources; the Attorney General or their representative appointed in writing;(f) the Council of Governors or its representative appointed in writing; and(g) the Corporation Secretary who shall be secretary to the Board. <p>(2) A person shall not be appointed under subsections (1)(a) and (d) unless such person holds at least a post-graduate degree from a University recognized in Kenya in the fields of environmental law, environmental science, natural resource management or a relevant degree in social sciences.</p> <p>(3) The members referred to under subsection (1) (a) and (d) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.</p> <p>(4) The members appointed under paragraph (1) (a) and (e) shall hold office for a term of three years and shall be eligible for reappointment for a further one term.</p> <p>(5) The appointment of a member of the Board may be</p>

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	<p>terminated by the appointing authority where the member—</p> <ul style="list-style-type: none"> (a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; (b) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine; (c) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or (d) becomes, for any reason, incapable or incompetent of properly performing the functions of his office. <p>(6) Where a member of the Board dies or resigns or otherwise vacates office before the expiry of their term of office, the appointing authority shall appoint another person in the place of such member.</p>
<p>Functions of the Authority</p>	<p>8. (1) The purpose of the Authority is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.</p> <p>(2) Despite subsection (1), the Authority shall—</p> <ul style="list-style-type: none"> (a) co-ordinate the various environmental management activities being undertaken by the lead agencies, County governments and partners of the Authority and in this regard may issue guidelines to assist in the preparation and submission of environmental strategic plans by the lead agencies and county governments; (b) in exercising its coordination role the Authority in consultation with the lead agencies or county governments shall come up with a framework of coordination premised on environmental strategic plans to be submitted by the lead agencies and county governments; (c) prepare and submit policy proposals to the Cabinet Secretary as and when need arises; (d) promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya; (e) take stock or cause to take stock of the natural resources in Kenya and their utilisation and

	<p>conservation;</p> <ul style="list-style-type: none">(f) monitor and audit natural resources in Kenya and their utilization and conservation;(g) make recommendations to the relevant authorities with respect to land use planning;(h) examine land use patterns to determine their impact on the quality and quantity of natural resources;(i) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of environment, as the case may be;(j) advise the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up the implementation of such agreements where Kenya is a party;(k) undertake research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey J mobilise and monitor the use of financial and human resources for environmental management;(l) identify projects and programmes or types of projects and programmes, plans and policies for which environmental audit or environmental monitoring must be conducted under this Act;(m) initiate and evolve procedures and safeguards for the prevention of accidents which may cause environmental degradation and evolve remedial measures where accidents occur;(n) monitor and assess activities, including activities being carried out by relevant lead agencies, monitor environmental management and strategic plans in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given;(o) undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education, public awareness and public participation;(p) develop, publish and disseminate manuals, codes or guidelines, education and awareness materials relating to environmental management and prevention or abatement of environmental degradation;
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	<ul style="list-style-type: none"> (q) render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection; (r) prepare and submit to the Cabinet Secretary every two years, and 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; (s) 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; (t) 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; (u) promote conservation and management of aquatic ecosystems; (v) develop and enforce environmental standards and other legal instruments; and (w) perform such other functions as the Government may assign to the Authority or as are incidental or conducive to the exercise by the Authority of any or all of the functions provided under this Act.
Powers of the Authority.	<p>9. The Authority shall have powers to—</p> <ul style="list-style-type: none"> (1) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established; (2) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority; (3) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; (4) enter into association with other bodies or organisations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established; (5) open a banking account or banking accounts for the funds of the Authority; and (6) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 34.
Environmental	<p>10. (1) The purpose of environmental strategic plans is to-</p>

Strategic Plans	<p>(1) co-ordinate and harmonize the environmental policies, plans, programmes and decisions of the various lead agencies that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of the environment, in order to-</p> <p>(i) minimise the duplication of procedures and functions; and</p> <p>(ii) promote consistency in the exercise of functions that may affect the environment;</p> <p>(2) give effect to the principle of co-operative government enshrined in the Constitution;</p> <p>(3) secure the protection of the environment across the country as a whole;</p> <p>(4) prevent unreasonable actions by counties in respect of the environment that are prejudicial to the economic or health interests of other counties or the country as a whole; and</p> <p>(5) enable the Authority to monitor the achievement, promotion, commitment and protection of the environment by the lead agencies and county governments.</p> <p>(2) Environment Strategic Plans shall constitute the framework of coordination between the Authority on the one hand and the lead agencies and county governments on the other.</p> <p>(3) The Director-General shall monitor compliance with environmental strategic plans and may-</p> <p>(a) take any steps or make any inquiries he deems fit to determine if environmental strategic plans are being complied with ; and</p> <p>(b) if, as a result of any steps taken or inquiry made under paragraph (a), he is of the opinion that an environmental strategic plan is not substantially being complied with, serve a written notice on the concerned lead agency or county government, calling on it to take such specified steps as the Director-General considers necessary to remedy the failure of compliance.</p> <p>(4) Within 15 days of the receipt of a notice contemplated in subsection (3) (b), the lead agency or county government must respond to the notice in writing setting out any-</p> <p>(a) objections to the notice;</p> <p>(b) steps that will be taken to remedy failures of compliance; or</p>
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	<p>(c) other information that the lead agency or county government considers relevant to the notice.</p> <p>(5) After considering the representations from the lead agency or county government and any other relevant information, the Director-General will within a further 20 days of receiving a response referred to in subsection 4 (a) issue a final notice-</p> <p>(a) confirming, amending or cancelling the notice referred to in subsection (3) (b);</p> <p>(b) specify steps and a time period within which steps must be taken to remedy the failure of compliance;</p> <p>(c) request the intervention of the Cabinet Secretary under whose portfolio the lead agency falls or the Council of Governors in the case of a county government.</p>
<p>Functions of lead agencies and county governments</p>	<p>11. Every lead agency and county government shall-</p> <p>(1) prepare an environmental strategic plan every five years and submit the same to the Authority;</p> <p>(2) ensure the environment strategic plan contains-</p> <p>a) a description of policies, plans and programmes that may significantly affect the environment;</p> <p>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;</p> <p>c) a description of the extent of compliance with the relevant lead agency policies by other organs of state and persons;</p> <p>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</p> <p>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</p> <p>(3) exercise every function it may have, or that has been assigned</p>

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	<p>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:</p> <p>PROVIDED that any deviation from an environmental strategic plan must be reported forthwith to the Director-General; and</p> <p>(4) plan, regulate and manage the environment sector within its mandate;</p> <p>(5) undertake strategic environmental assessments as provided for in the Act;</p> <p>(6) prepare a strategic environment action plan in accordance with the Act;</p> <p>(7) prepare the State of Environment within their sector in accordance with the guidelines issued by the Authority in the Act;</p> <p>(8) prioritize and mainstream recommendations of the State of Environment as approved by Parliament;</p> <p>(9) ensure that any activity undertaken within its area of jurisdiction is in compliance with this Act;</p> <p>(10) implement the decisions of the Authority and provisions of this Act with respect to the segment of environment under its mandate; and</p> <p>(11) report to the Authority annually and within four months of the end of every financial year on the implementation of its adopted environmental strategic plan.</p>
<p>Powers in respect of lead agencies and county governments</p>	<p>12. (1) The Authority may after giving reasonable notice of its intention so to do, and having employed the framework of coordination mechanism in sections 10 and 11, direct any lead agency and county government to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under this Act or any other written law, in the field of environment.</p> <p>(2) The Authority may draw from any lawful fund, the cost of performing the duties otherwise imposed upon the lead agencies and county governments and which has not been performed and so recover the costs of doing so as a civil debt recoverable summarily.</p> <p>(3) A person who fails to comply with sub-section (1) commits an offence.</p>
<p>Delegation by the</p>	<p>13. Subject to this Act, the Authority may, by resolution, delegate to</p>

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Authority.	any committee of the Authority or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.
Conduct of business and affairs of the Authority.	14. Subject to this Act, the Authority shall regulate its own procedure.
Director General.	<p>15. (1) The Cabinet Secretary shall on recommendation by the Board through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Director General to the Authority.</p> <p>(2) A person shall be qualified for appointment as the Director General to the Authority if the person-</p> <ul style="list-style-type: none"> (a) is a citizen of Kenya; (b) 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; (c) has had at least ten years proven experience at management level; (d) meets the requirements of Chapter Six of the Constitution. <p>(3) The Director General shall serve on such terms and conditions as the Board may determine.</p> <p>(4) The Director General shall hold office for a term of four years but may be eligible for reappointment for a further one term.</p> <p>(5) The Director General shall, in the performance of the functions and duties of office, be responsible to the Board.</p> <p>(6) The Director General shall-</p> <ul style="list-style-type: none"> (a) be the Chief Executive Officer of the Authority; (b) be the accounting officer of the Authority; (c) be responsible for- <ul style="list-style-type: none"> (i) carrying into effect the decisions of the Board; (ii) day-to-day administration and management of the affairs of the Authority; (iii) supervision of the staff of the Authority; and (iv) perform such other duties as may be assigned by the Board.
Removal from office of Director General	16. The Director General may be removed from office by the Cabinet Secretary on recommendation by the Board in accordance with

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	<p>the terms and conditions of service, for–</p> <ol style="list-style-type: none"> (1) inability to perform functions of the office arising out of physical or mental infirmity; (2) gross misconduct or misbehavior; (3) incompetence or negligence of duty; (4) violation of the Constitution and any other written law; or (5) any other grounds specified in terms and conditions of service of the Authority. <p>(2) Where the question of removal of the Director General under subsection (1) arises, the Board shall-</p> <ol style="list-style-type: none"> (a) inform the Director General in writing of the reasons for 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. <p>(3) Where the office of the Director General falls vacant, the Board may, pending the appointment of a Director General, appoint an officer of the Authority to act in that capacity provided that such appointment shall not exceed a period of six months.</p>
Staff of the Authority.	<p>17. (1) The Board may appoint such officers or other staff of the Authority as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Authority may determine.</p> <p>(2) The Board shall, in the appointment of employees, ensure-</p> <ol style="list-style-type: none"> (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.
Corporation Secretary.	<p>18. There shall be a Corporation Secretary to the Board who shall be appointed on such terms and conditions of the Authority. In the performance of his duties under this Act, the Secretary shall be responsible to the Director-General.</p>
The common seal of the Authority.	<p>19. (1) The common seal of the Authority shall be such device as may be determined by the Authority.</p> <p>(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.</p> <p>(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority shall be admissible in</p>

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	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.
Protection from personal liability.	<p>20. No matter or thing done or omitted by —</p> <p>(a) the Cabinet Secretary, the Authority or other institution exercising powers or functions under this Act;</p> <p>(b) any person acting at the direction of the Cabinet Secretary; or</p> <p>(c) a person acting at the direction of the Authority</p> <p>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.</p>
Liability of the Authority for damages.	<p>21. The provisions of section 20 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, of any works.</p>
Headquarters.	<p>22. The headquarters of the Authority shall be in Nairobi but the Authority shall ensure its services are accessible in all parts of the Republic.</p>
Establishment of the National Environment Trust Fund	<p>23. (1) There is hereby established the National Environment Trust Fund which shall be the basket mechanism for the catalysing and sustainable financing of good environmental governance and sustainable development actions and interventions in Kenya.</p> <p>(2) The Fund is a body corporate with perpetual succession and a common seal and shall have power, in its corporate name, to sue and to be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.</p> <p>(3) The object of the Fund is to-catalyse good environmental governance and sustainable development through-</p> <p>a. business development including identification of opportunities and partnerships and development of ideas,</p>

	<p>proposals, and other lawful means or methods of acquiring funds;</p> <p>b. mobilization and acquisition of funds through lawful means;</p> <p>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</p> <p>d. mobilization of resources for supporting environmental management, conservation and reporting.</p>
<p>Principles and values of the Fund</p>	<p>24. (1) In exercise of any mandate under this Act concerning the Fund, the Cabinet Secretary, the Board of Trustees, employees, contractors and beneficiaries of the Fund shall at all times be bound by the following principles and values of governance –</p> <p>(a) respecting, protecting, fulfilling and promoting the human rights guaranteed under the Constitution;</p> <p>(b) undertaking 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;</p> <p>(c) Good governance, transparency, accountability and the rule of law;</p> <p>(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;</p> <p>(e) accountability for administrative acts;</p> <p>(f) high standards of professional ethics;</p> <p>(g) efficient, effective and economic use of resources;</p> <p>(h) good environmental governance; and</p> <p>(i) ecologically sustainable development.</p>

	<p>(2) The Board of Trustees, the Chief Executive Officers, Employees of the Fund, Contractors and beneficiaries of the Fund shall at all times when exercising powers and functions under this Act ensure that they have integrated the principles and values under this section, and in any event, ascertain that their actions and decisions do not contravene these principles and values or those prescribed under Article 10 and 232 of the Constitution.</p>
Board of Trustees	<p>25. (1) The powers and functions of the Trust Fund shall be exercised and performed under the direction of a Board of Trustees as shall from time to time be appointed and in the manner provided in this section.</p> <p>(2) Prior to assuming office and performing any functions under this Act, and notwithstanding any other legal provision, the Trustees shall individually append their signatures to the Declaration of Trust set out in the Third Schedule to this Act which represents acceptance of personal and collective fiduciary responsibility over the exercise of the powers and functions under this Act, and administration of monies vested in the Trust Fund.</p> <p>(3) The Board of Trustees shall be unincorporated but shall have perpetual succession.</p> <p>(4) The Board of Trustees shall comprise of nine members appointed as follows:</p> <ul style="list-style-type: none">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 following four persons, appointed by the Cabinet Secretary-<ul style="list-style-type: none">c) the Principal Secretary responsible for Environment or his representative appointed in writing;d) the Principal Secretary responsible for the National Treasury or his representative appointed in writing.e) The Director General of the Authority or his representative appointed in writing;f) A person nominated to represent the Council of Governors; andg) Five independent members appointed by the Cabinet Secretary, who shall include:<ul style="list-style-type: none">i. At least one person qualified in finance or accounting and demonstrable experience in audit, andii. 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;

	<p>iv. One person representing the private sector and nominated by the Kenya Private Sector Alliance; and</p> <p>v. One other 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.</p> <p>PROVIDED that the independent members appointed under this clause shall possess experience that is, demonstrably, relevant to the objects of the Trust Fund.</p> <p>(5) Each Member of the Board of Trustees shall be appointed by name through a legal notice in the Gazette and once appointed such person shall remain a member of the Board of Trustees until expiry of the term of office or until the appointment is revoked by the appointing authority through similar means.</p> <p>(6) The conduct of the business of the Board of Trustees shall be as specified in the Fourth schedule.</p> <p>(7) 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.</p> <p>(8) 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.</p>
<p>Powers and functions of the Board of Trustees</p>	<p>26. (1) The powers and functions of the Board of Trustees shall be to –</p> <ul style="list-style-type: none"> a) mobilize resources for the Fund from sources permissible under this Act and provisions of Kenyan law, and which are compatible with the object of the Fund. b) administer the monies of the Fund and set the strategic directions for application of the Fund in accordance with its objects. c) undertake business development of programmes to mobilize resources and promote the objects of the fund in a sustainable manner. d) Define the eligibility criteria for the Fund to finance actions and interventions to promote and enhance good environmental governance and sustainable development undertaken by any person including individuals, body corporates, and public entities including state corporations, county governments, constitutional commissions, and state departments. e) approve procedures, criteria and eligibility for financing public entities and any other person in a sustainable manner whether for research, innovations, development, investment ventures, conditional and unconditional grants to promote the object of the Fund. f) approve the procedures for disbursement, recovery and repayment of loans including interest, and recouping returns on any

	<p>investments so made.</p> <ul style="list-style-type: none">g) approve rules and procedures for disbursement of grants and other monies in accordance with agreements with third parties providing the financing and in compliance with guideline and rules stipulated under the national law relating to public financial management.h) approve procedures to ensure that the operations of the Fund are inclusive, equitable, respect human rights, ensure gender and intergenerational equity, and generally apply the principles in section 24 above.i) approve any other procedures and requirements for effective and transparent administration of the Fund, including tracking and accounting for the monies held in the Fund, and monitoring and evaluation procedures. <p>(2) In implementing the mandate under (1) above, the Board of Trustees shall be responsible for approving programmes, plans and strategies for mobilizing money and disbursement 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, giving priority to -</p> <ul style="list-style-type: none">(i) supporting mechanisms, innovations and solutions to develop, rehabilitate, restore and sustain ecosystem services including payment mechanisms;(ii) mainstreaming human rights including procedural rights, right to life, social economic rights, right to a clean environment, equity and non-discrimination into development policies and programmes;(iii) Support research and innovations into solutions for enhancing ecologically sustainable development into Kenya’s socio-economic development activities;(iv) Supporting government policy to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya including innovations for public open spaces;(v) Supporting solutions for implementation of a just transition to a low carbon climate resilient pathway to sustainable development;(vi) supporting county governments in achievement of their mandates and aligned to the object of the Fund;(vii) Conferring Awards to persons who have achieved measurable success on any matters relevant to the object of the Fund;(viii) capacity building on innovations that advance the object of the Fund; and(ix) Such other priority areas as the Board of Trustees may from time to time identify.
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	<p>(3) The Board of Trustees shall approve grants, loans and the making of investments with respect to concepts, ideas, investment, research, proposals or other permissible output to business, industry, civil society, academia, public entities and other persons including startups 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.</p> <p>(4) In undertaking (3) above, the Board of Trustees shall apply fiduciary responsibility and sufficient due diligence to evaluate risk, particularly where it involves conditional grants, loans and investments with expected returns, and for this purpose may request the guidance of the National Treasury and in any event act in accordance with the Constitution and the national law relating to public financial management.</p>
Chief Executive Officer of the Fund	<p>27. (1) There shall be a Chief Executive Officer of the Fund who shall be appointed by the Cabinet Secretary from amongst three candidates recommended by the Board of Trustees after competitive recruitment and upon such terms as may be specified in the instrument of appointment in accordance with the guidelines made by the Salaries and Remuneration Commission.</p> <p>(2) A person is qualified for appointment as Chief Executive Officer if that person-</p> <ul style="list-style-type: none">i. is a citizen of Kenyaii. has a postgraduate degree, knowledge and experience in any of the following fields from a university recognized in Kenya –<ul style="list-style-type: none">a. Finance or accounting;b. Economics;c. Law; andd. Environmental science, natural resources management or a relevant related field.iii. has at least ten years' relevant experience, five of which should be in a senior management position in a public or private organization; andiv. meets the requirements of leadership and integrity set out in Chapter Six of the Constitution. <p>(3) The Chief Executive Officer so appointed shall be the</p>

	<p>accounting officer of the Fund and shall be responsible for management of the Fund, subject to the directions of the Board of Trustees, including –</p> <ol style="list-style-type: none"> 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 lawful function that may be assigned by the Board of trustees in accordance with this Act. <p>(4) The Chief Executive Officer shall serve for a term of four years and shall be eligible for reappointment for one further term based on satisfactory performance.</p> <p>(5) The Fund may appoint such employees as maybe necessary for the exercise and performance of its functions upon such terms and conditions as may be determined by the Board of Trustees in accordance with guidelines made by the Salaries and Remuneration Commission.</p>
<p>Removal from Office of the Chief Executive Officer</p>	<p>28. (1) The Chief Executive Officer may be removed from office by the Cabinet Secretary on recommendation by the Board of Trustees in accordance with the terms and conditions of service, for–</p> <ol style="list-style-type: none"> (1) inability to perform functions of the office arising out of physical or mental infirmity; (2) gross misconduct or misbehavior; (3) incompetence or negligence of duty; (4) violation of the Constitution and any other written law; or (5) any other grounds specified in terms and conditions of service of the Authority. <p>(2) Where the question of removal of the Chief Executive Officer under subsection (1) arises, the Board of Trustees shall-</p> <ol style="list-style-type: none"> (a) inform the Chief Executive Officer in writing of the reasons for intended removal; and (b) give the Chief Executive Officer the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution. <p>(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 such appointment shall not exceed a period of six months.</p>

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<p>Monitoring mechanisms</p>	<p>29. (1) The Cabinet Secretary shall, within six months of this Act coming into force and from time to time as may be necessary, through a legal notice in the Gazette publish mechanisms and performance indicators to be applied by the Board of Trustees and employees of the Fund for the sound and sustainable management of the Fund’s monies and assets in accordance with the object of the Fund and to continuously evaluate the impact of the financing provided by the Fund.</p> <p>(2) The Board of Trustees shall report quarterly to the Cabinet Secretary on the compliance with subsection (1) above, in addition to updating on progress in implementing the mandate of the Fund under this Act.</p> <p>(3) The Cabinet Secretary shall submit to Parliament an annual report of the Fund disseminate this report to the public.</p>
<p>Declaration of conflict of interest</p>	<p>30. (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 in a private capacity, the respective 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 such matter.</p> <p>(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.</p> <p>(3) A person who contravenes subsection (1) commits an offence and, upon conviction, shall be 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.</p>
<p>Monies of the Fund</p>	<p>31. (1) The monies of the Fund shall consist of monies –</p> <ul style="list-style-type: none"> (a) appropriated by Parliament from the national budget for the purposes of the Fund; (b) received by the Fund from donations, grants, endowments, gifts and bequests from other sources; (c) any monies received from whatsoever lawful source whether for disbursement as investment, grants, loan, or received as an investment by a third party; (d) sovereign debt in any form as maybe approved by the Cabinet Secretary to the National Treasury; (e) Income from any lawful investments made by the Board of

	<p>Trustees.</p> <p>(2) In order to maximize the use of financing towards its object, the Trust Fund may, in accordance with applicable law, apply for exemption from various taxes applicable to income, earnings or gains made from investments made under subsection (1) above.</p> <p>(3) The Board of Trustees shall exercise a fiduciary duty in administration of the Fund and subsidiary funds and in the best interests of intended beneficiaries and may invest monies of the Fund to achieve the maximum rate of return, without incurring undue risks and while taking into account the factors that may affect the funding and ability of the Fund to meet its financial obligations, and at all times in accordance with the national law relating to public financial management and any requirements or guidelines issued by the National Treasury.</p> <p>(4) The Board of Trustees may, for purposes of prudent financial management, establish and manage subsidiary funds as maybe necessary for sustainable financing towards good governance and sustainable development, including but not limited to –</p> <ul style="list-style-type: none"> i. endowment fund for institutional sustainable financing or other lawful purpose which may be financed from various lawful sources; ii. revolving funds; iii. sinking funds; and iv. other lawful category of fund permissible under Kenyan law. <p>(5) The subsidiary funds in (4) above may be utilized to access special windows of financing, or to enhance prudence in the sourcing, utilization and management of monies received by the Fund.</p>
<p>Financial year, annual estimates and audit of the Fund</p>	<p>32. (1) The financial year of the Fund shall be the period of twelve months ending on the thirtieth day of June in each year.</p> <p>(2) At least three months before the commencement of each financial year, the Fund shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.</p> <p>(3) The annual estimates shall make provision for the</p>

	<p>estimated expenditure of the Fund for the financial year and in particular, make provision for the following –</p> <ul style="list-style-type: none">(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.(d) the funding of capacity building, research, investments, innovations, and development of any activities relevant to the object of the Fund.(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 matter as the Fund may lawfully deem appropriate.(f) the maintenance, repair and replacement of the equipment and other property of the 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. <p>(4) 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 and after the Cabinet Secretary's approval, the Fund shall not increase the annual estimates without the consent of the Cabinet Secretary.</p> <p>(5) 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.</p> <p>(6) 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 –</p> <ul style="list-style-type: none">a. a statement of the income and expenditure of the Fund during that year; andb. a statement of the assets and liabilities of the Authority on the last day of that yearc. a statement of any investments made by the Fund during that year including analysis of the risks and/or projected or actual gains. <p>(7) 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.</p>
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	<p>(8) 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.</p>
<p>National Environment Restoration Fund.</p>	<p>33. (1) There is hereby established the National Environment Restoration Fund, (hereinafter referred to as “The Restoration Fund”).</p> <p>The Restoration Fund shall consist of—</p> <ul style="list-style-type: none"> (a) monies appropriated by Parliament from the national budget; (b) such proportion of fees or deposit bonds as may be determined by the Authority from time to time; (c) sums of money as may be received by the Fund in the form of donations; and (d) levies from industries and other projects proponents as a contribution towards the Restoration Fund. <p>(2) The Restoration Fund shall be vested in the Authority and, subject to this Act, shall be administered by the Director-General.</p> <p>(3) The object of the Restoration Fund shall be as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.</p> <p>(4) The Cabinet Secretary may, by notice in the Gazette, issue orders for the levying of funds towards the Restoration Fund.</p>
<p>Investment of funds and disposal of assets.</p>	<p>34. (1) Subject to this Act, the Authority may invest any of its funds in securities in which the Board may, for the time being, invest Authority’s funds or in any other securities which the National Treasury may, from time to time, approve for that purpose.</p> <p>(2) Subject to this Act, the Authority may upon consultation with the National Treasury, place on deposit with such bank or banks as it may determine, any moneys not immediately required for its purposes.</p> <p>(3) The assets of the Authority may be disposed of in accordance with the national law relating to Public Procurement and its subsidiary legislations.</p>

<p>Deposit bonds.</p>	<p>35. (1) The Authority shall create a register of those activities and industrial plants and undertakings which have or are most likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with best environmental practices.</p> <p>(2) The Cabinet Secretary in consultation with the Cabinet Secretary responsible for public finance may, on the recommendations of the Director General, prescribe that persons engaged in activities or operating industrial plants and other undertakings identified under subsection (1) pay such deposit bonds as may constitute appropriate security for good environmental practice.</p> <p>(3) The register established under sub-section (1) shall not limit the Authority’s discretion in determining whether an activity, industrial plant and undertaking and not listed in the register has the potential to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices.</p> <p>(4) The deposit bond determined in accordance with subsection (2) shall be refunded without interest to the operator of the activity, industrial plant or any other undertaking by the Authority after such duration not exceeding six months after the issuance of the discharge certificates.</p> <p>(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.</p> <p>(6) Where an operator is dissatisfied with the confiscation of his deposit bond under this Act, he may refer the matter to the National Environment Tribunal.</p> <p>(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).</p> <p>(8) Any interest accruing from monies deposited into the Restoration Fund under this section shall be for the benefit of the Authority.</p>
<p>County environment committees.</p>	<p>36. (1) The Cabinet Secretary shall, by notice in the Gazette, constitute a County Environment Committee of the County.</p> <p>(2) A County Environment Committee shall consist of—</p> <p>(a) the County Commissioner who shall be the chairperson;</p> <p>(b) the County Executive Committee Member responsible for environmental matters;</p>

	<p>(c) an officer of the Authority whose area of jurisdiction falls wholly or partially within the county who shall be the Secretary to the Committee;</p> <p>(d) five representatives of the Ministries responsible for the matters specified in the First Schedule at the county level; and</p> <p>(e) three persons representing the most environmentally significant activity in the community, business community operating within the county and a representative of the National Council of public benefits organization appointed by the Cabinet Secretary;</p> <p>(3) Appointments under subsection 2(e) shall be made in consultation with the Authority.</p> <p>(4) The Committee may co-opt a temporary member on such terms as he may deem fit, to provide the requisite expertise and knowledge on any matter.</p> <p>(5) The Cabinet Secretary, in making the appointments under this section, shall ensure—</p> <p>(a) equal opportunities for persons with disabilities and other marginalized groups; and</p> <p>(b) that not more than two-thirds of the members are of the same gender.</p> <p>(6) The members of the County Environment Committee appointed under paragraph (2) (e) shall hold office for a period of three years and shall be eligible for re-appointment for one further term.</p>
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<p>Functions of the Committee.</p>	<p>37. The County Environment Committee shall—</p> <p>(1) have overall responsibility for the proper management of the environment within the county;</p> <p>(2) develop and review the county environmental action plan every five years;</p> <p>(3) undertake public participation and give due consideration to existing County Environment Action Plans for purposes of ensuring harmony among different County Environment Action Plans;</p> <p>(4) submit County Environment Action Plans prepared by the</p>
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	<p>County Executive Committee Member to the Cabinet Secretary for incorporation into the national environment action plan provided for under section 48 of the Act;</p> <p>(5) coordinate county environmental management and other environment-related functions in the county as may be prescribed by county policies and legislation;</p> <p>(6) guide in the development and adoption of national policies with regards to the management of: -</p> <ul style="list-style-type: none">(i) waste (refuse removal, refuse dumps and solid waste disposal);(ii) air pollution, noise pollution and other public nuisances;(iii) county planning and development (County Environment Action Plan); and(iv) specific national government policies on natural resources and environmental conservation, including soil, water conservation and forestry. <p>(7) ensure integration and mainstreaming of climate change actions and duties into County Integrated Development Plans (CIDPs), and submit an annual report on the implementation of climate change actions to the County Assembly,</p> <p>(8) shall identify the hilly and mountainous areas under their jurisdiction which are at risk from environmental degradation and take necessary action;</p> <p>(9) encourage voluntary self-help activities in their respective local community, to plant trees or other vegetation in any area identified as being at risk from environmental degradation within the limits of its jurisdiction;</p> <p>(10) implement the guidelines and prescribed measures issued by the Authority for the sustainable use of hill tops, hill slides and mountainous areas under section 65 (1) of this Act;</p> <p>(11) issue lawful directions as envisaged under section 65 (4) of this Act and a person who contravenes such a lawful direction commits an offence;</p> <p>(12) cause the registration of environmental easements imposed</p>
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	<p>on unregistered land, on a register maintained for that purpose in accordance with the provisions of the Act;</p> <p>(13) monitor the implementation of county strategic environment action plans;</p> <p>(14) give comments on the Environmental Impact Assessment (EIA) study reports within their jurisdiction; and</p> <p>(15) perform such additional functions as are prescribed by this Act or as may, from to time, be assigned by the Cabinet Secretary by notice in the Gazette.</p>
National Environmental Complaints Committee	<p>38. (1) There is hereby established a Committee under the Ministry to be known as the National Environmental Complaints Committee (hereinafter referred to as “NECC”) which shall consist of-</p> <p>(a) a Chairperson appointed by the Cabinet Secretary and who shall be a person qualified for appointment as a judge of the Environment and Land Court of Kenya;</p> <p>(b) The Principal Secretary of the Ministry for the time being responsible for matters relating to the environment or his representative appointed in writing by the Principal Secretary.</p> <p>(c) a representative of the Attorney-General;</p> <p>(d) an Advocate of the High Court of Kenya with a bias in Alternative Dispute Resolution mechanism, nominated by the Law Society of Kenya;</p> <p>(e) one person who has demonstrated competence in environmental matters, nominated by the Council of Governors;</p> <p>(f) a representative of the business community appointed by the Cabinet Secretary; and</p> <p>(g) one member appointed by the Cabinet Secretary for his active role in environmental management.</p> <p>(2) The Chairperson shall preside over every meeting of the NECC and in his absence, the members present shall elect one of themselves who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.</p> <p>(3) The Chief Executive Officer shall be an ex-officio member and the</p>

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	<p>Secretary to the NECC.</p> <p>(4) The members of the NECC, other than the member appointed under subsections (1) (b) and (c), shall hold office for a period of three years but shall be eligible for reappointment for one further term.</p> <p>(5) A member of the NECC other than the member appointed under subsection (1) (b) and (c) may—</p> <p>(a) at any time resign from office by notice in writing addressed to the Cabinet Secretary through the chairperson;</p> <p>(b) be removed from office by the Cabinet Secretary if the member—</p> <p style="padding-left: 40px;">(i) has been absent from office for three consecutive meetings of the NECC without permission from the chairperson;</p> <p style="padding-left: 40px;">(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;</p> <p style="padding-left: 40px;">(iii) is incapacitated by prolonged physical or mental illness; or</p> <p style="padding-left: 40px;">(iv) is otherwise unable or unfit to discharge his functions.</p> <p>(6) The members referred to under subsection 1 (a), (d), (e), (f) and (g) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.</p> <p>(7) If a member of the NECC vacates office before the expiry of his term, the appointing authority shall appoint a suitable replacement therefor.</p> <p>(8) Where a member of the NECC 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.</p> <p>(9) Subject to this Act, the NECC shall regulate its own procedure.</p>
<p>Secretariat of the NECC</p>	<p>39. (1) There shall be a Secretariat of the NECC which shall be headed by a Chief Executive Officer.</p> <p>(2) The Chief Executive Officer shall be competitively recruited and appointed by the Cabinet Secretary on recommendation</p>

	<p>of the NECC.</p> <p>(3) A person is qualified to be appointed as the Chief Executive Officer if that person—</p> <p>(a) holds a post graduate degree in either environmental law, environmental science, natural resource management, climate change, land economics or a relevant social science from a university recognized in Kenya;</p> <p>(b) has at least ten years relevant professional experience five of which must have been at senior management;</p> <p>(c) has demonstrable competence in environmental matters; and</p> <p>(d) satisfies the requirements of leadership and integrity provided under Chapter Six of the Constitution.</p> <p>(4) The Chief Executive Officer shall—</p> <p>(a) be the accounting officer;</p> <p>(b) be responsible to the NECC for—</p> <p>(i) implementing the decisions of the NECC;</p> <p>(ii) day-to-day administration of the affairs of the NECC;</p> <p>(iii) supervision of the staff of the NECC; and</p> <p>(iv) performing any other duties as may be assigned by the NECC.</p> <p>(5) The Chief Executive Officer shall serve on such terms and conditions as the NECC may determine and in accordance with the Terms and Conditions of service of the Committee.</p> <p>(6) The Chief Executive Officer shall hold office for a term of four years renewable once upon satisfactory performance.</p>
<p>Functions of the NECC.</p>	<p>40. The functions of the NECC shall be—</p> <p>(1) to investigate—</p> <p>(a) any allegations or complaints against any person or</p>

	<p>against the Authority in relation to the condition of the environment in Kenya; and</p> <p>(b) on its own motion, any suspected case of environmental degradation;</p> <p>(2) Endeavour to resolve any complaint brought before it by applying Alternate Dispute Resolution mechanisms among parties with a view of resolving the complaint;</p> <p>(3) If the matter referred to in (a) cannot be resolved by Alternative Dispute Resolution and the NECC determines that the environment has been degraded, the NECC shall make such recommendations as it deems fit;</p> <p>(4) undertake public interest litigation on behalf of the citizens in environmental matters;</p> <p>(5) The NECC shall give any person against whom an adverse finding or recommendation is made, an opportunity to make representations concerning the finding or recommendation before the committee includes the findings in its report;</p> <p>(6) prepare and submit to the Cabinet Secretary quarterly reports of its findings and recommendations of investigations which report shall form part of the biennial report on the state of the environment under section 47;</p> <p>(7) Investigate complaints and where interventions by the Authority are necessary, immediately report the same to it for enforcement action and</p> <p>(8) to perform such other functions and exercise such powers as may be assigned to it by the Cabinet Secretary.</p>
Powers of the NECC.	<p>41. (1) The NECC may, by notice in writing, require any person to—</p> <p>(a) give it all reasonable assistance in connection with the investigation of any complaint under section 40(1)(a); or</p> <p>(b) appear before it for examination concerning matters relevant to the investigation of any complaint under section 40 (1) (a).</p> <p>(2) A person who—</p>

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	<p>(a) refuses or fails to comply with the requirement of the NECC; or</p> <p>(b) obstructs or hinders the NECC in the exercise of its powers under this Act; or</p> <p>(c) furnishes information or makes a statement to the NECC which is false or misleading in any material particulars; or</p> <p>(d) when appearing before the Complaints Committee for examination, makes a statement which is false or misleading in any material particulars, commits an offence.</p> <p>(3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings and in default to an imprisonment not exceeding twelve months or to both such fine and imprisonment.</p> <p>(4) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a fine of one thousand shillings for each day during which the offence continues.</p>
Disclosure of interest.	<p>42. (1) If a member of the Complaints Committee is directly or indirectly interested in any matter before the Complaints Committee and is present at a meeting of the Complaints Committee at which the matter is the subject of investigation, 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.</p> <p>(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.</p>
Funds of the Complaints Committee	<p>43. The funds and assets of the Complaints Committee shall comprise—</p> <p>(a) monies appropriated by Parliament for purposes of the Complaints Committee;</p> <p>(b) grants, gifts, donations, loans or other endowments given to the Complaints Committee; and</p>

	(c) monies from any other lawful source accruing to the Complaints Committee.
Staff of the Committee	<p>44. (1) The Complaints Committee may appoint such staff as it may consider sufficient for the performance of its functions under this Act.</p> <p>(2) Terms and conditions of service for the employees shall be determined by the Complaints Committee, on the advice of the Salaries and Remuneration Commission pursuant to Article 230 (4) (b) of the Constitution.</p>
PART IV – ENVIRONMENTAL RESEARCH AND PLANNING	
Research coordination	<p>45. The Authority shall:-</p> <ol style="list-style-type: none"> (1) develop environmental indicators for environmental monitoring; (2) coordinate lead agencies in research, investigation and surveys in the field of environment; (3) collect, collate and disseminate information about the findings of such research, investigation or survey; (4) coordinate relevant agencies in taking stock of the environmental resources in Kenya and their utilization and conservation; (5) audit and determine the net worth or value of the environmental resources in Kenya and their utilization and conservation; (6) mainstream research data and findings into the State of Environment reporting; (7) develop and maintain an environmental data repository mechanism; and (8) collaborate with Academic institutions in Research and Capacity Building of experts in the field of Environmental Management.
Environmental database.	<p>46. The Authority, in collaboration with relevant lead agencies, shall</p> <ol style="list-style-type: none"> (1) establish a national comprehensive Environmental database. (2) undertake in-depth analysis and develop model projections to predict early warning on impending environmental emergencies aimed at enhancing state of preparedness in handling environmental incidences.

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	<p>(3) The Authority shall, ensure that data is collected in accordance with harmonized environmental standards that may be prescribed under this Act or the Regulations made there under.</p>
State of the environment report.	<p>47. (1) The Authority shall prepare a national state of environment report in accordance with environmental principles.</p> <p>(2) The national state of environment report prepared under subsection (1) shall—</p> <p>(a) be made every two years to guide environmental planning and to feed into the national environment action plan; and</p> <p>(b) highlight environmental challenges, opportunities and proposed interventions to protect the environment.</p> <p>(3) The Authority shall issue guidelines for the preparation of the state of environment reports;</p> <p>(4) The county governments shall prepare and submit a report on the state of the environment under their administration;</p> <p>(5) The latest adopted county State of Environment Report shall form the basis for budgetary allocation for the environment sector and development of county integrated development plan.</p> <p>(6) The Authority shall submit the National State of Environment Report to the Cabinet Secretary within three months of the end of the relevant financial year.</p> <p>(7) The Cabinet Secretary shall present the national State of Environment Report to Parliament within six months for adoption; and</p> <p>(8) The latest adopted national State of Environment Report shall form the basis for budgetary allocation for the environment sector and development of national medium term environment action plan.</p>
National environmental action plan.	<p>48. (1) The Cabinet Secretary shall, on the recommendation of the Authority, issue guidelines and prescribe measures for the preparation of environmental action plans.</p> <p>(2) The Authority shall coordinate the environmental action planning process.</p> <p>(3) The Authority shall, within two years of the commencement of this Act and every Five years thereafter, formulate the National</p>

	<p>Environmental Action Plan and shall ensure that it has undertaken public participation before the adoption of the Plan.</p> <p>(4) The Authority shall submit the Plan referred to in subsection (1) to the Cabinet Secretary for approval and subsequently to the National Assembly and Senate for adoption.</p> <p>(5) The Cabinet Secretary shall within ninety days of adoption by the National Assembly and Senate publish the National Environment Action Plan in the Gazette.</p> <p>(6) Upon approval the lead agencies shall be expected to incorporate the proposed environmental actions in their respective sectors for implementation.</p> <p>(7) The Authority shall review the National Action Plan every three years.</p>
<p>Provisions of the National Environment Action Plan.</p>	<p>49. The National Environment Action Plan shall—</p> <ol style="list-style-type: none"> (1) contain an analysis of the natural resources of Kenya with an indication as to any pattern of change in their distribution and quantity over time; (2) contain an analytical profile of the various uses and value of the natural resources incorporating considerations of intra-generational equity; (3) recommend appropriate legal and economic incentives that may be used to encourage the business community to incorporate environmental requirements into their planning and operational processes; (4) recommend methods for building national awareness through environmental education on the importance of sustainable use of the environment and natural resources for national development; (5) set out operational guidelines for the planning and management of the environment and natural resources; (6) identify actual or likely problems as may affect the natural resources and the broader environment context in which they exist; (7) identify and appraise trends in the development of urban and rural settlements, their impacts on the environment, and strategies for the amelioration of their negative impacts; (8) propose guidelines for the integration of standards of environmental protection into development planning and management; (9) identify and recommend policy and legislative approaches for preventing, controlling or mitigating specific as well as

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	<p>general adverse impacts on the environment;</p> <p>(10) prioritise areas of environmental research and outline methods of using such research findings;</p> <p>(11) take into account and record all monuments and protected areas declared or deemed to have been declared by the Cabinet Secretary under the National Museums and Heritage Act;</p> <p>(12) without prejudice to the foregoing, be reviewed and modified from time to time to incorporate emerging knowledge and realities; and</p> <p>(13) be binding on all persons and all government departments, agencies, state corporations or other organs of Government upon approval by the National Assembly.</p>
<p>County environment action plan.</p>	<p>50. (1) Every County Environment Committee shall, every four years, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly.</p> <p>(2) Every County Environment Committee, in preparing a county environment plan, shall undertake public participation and take into consideration every other county environment action plan already adopted with a view to achieving consistency among such plans.</p> <p>(3) The respective County Environment Committee members of every county shall submit the county environment action plan referred to in subsection (1) to the Cabinet Secretary for incorporation into the national environment action plan referred to in section 49.</p> <p>(4) Every County Environmental Committee shall submit to the Authority their respective County Environment Action Plan upon adoption by the County Assembly.</p> <p>(5) The Authority shall consider every county environment action plan and either recommend incorporation of such plan into the national environment action plan or specify changes to be incorporated into a respective county environmental plan.</p> <p>(6) The Cabinet Secretary shall, on the recommendation of the Authority, issue guidelines and prescribe measures for the preparation of environmental action plans.</p> <p>(7) Every County Government shall provide resources for the development of the County Environment Action Plans.</p>
<p>Contents of County Environment Action Plans.</p>	<p>51. Every county environment action plan prepared under section 50 shall contain provisions dealing with matters contained in section 49 (1) to (13) in relation to their respective county.</p>

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<p>Purpose of Environmental Action Plans.</p>	<p>52. (1) The purpose of environmental action plans is to co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the national and county governments, as the case may be, in order to—</p> <ol style="list-style-type: none"> (1) minimize the duplication of procedures and functions; and promote consistency in the exercise of functions that may affect the environment; and (2) secure the protection of the environment across the country; and (3) 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.
<p>Compliance to environmental plans.</p>	<p>53. (1) The Authority shall monitor compliance with the national and county environmental action plans and may take any steps or make any inquiries that it may consider necessary in order to determine if the plans are being complied with.</p> <p>(2) Each County Government shall mainstream areas prioritized in the state of environment report into their County Integrated Development Plans.</p> <p>(3) Each County Government shall report annually the progress on implementation of environmental actions to the county assembly with a copy to the Authority.</p> <p>(4) If as a result of any action taken or inquiry made under subsection (1) the Authority is of the opinion that a plan is not substantially being complied with, the Authority shall serve a written notice to the entity concerned, calling on it to take such specified steps as the Authority may consider necessary to remedy noncompliance.</p> <p>(5) Within thirty days of the receipt of the notice referred to in subsection (4), the organ shall respond to the notice in writing setting out any—</p> <ol style="list-style-type: none"> (a) objections to the notice, if any; (b) the action that will be taken to ensure compliance with the respective plan; or (c) other information that the organ considers relevant to the notice. <p>(6) After considering the representations from the entity and any other relevant information, the Authority shall within thirty days of receiving the response referred to in subsection (5) issue a final notice —</p> <ol style="list-style-type: none"> (a) to confirm amend or cancel the notice referred to in subsection (4);

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	<p align="center">(b) to specify any action and a time period within which such action shall be taken to remedy non-compliance.</p> <p align="center">(7) The Authority shall keep a record of all environmental action plans and ensure that such plans are available for inspection by the public.</p>
National Environment Research Institute.	<p>54. (1) There is established the National Environment Research Institute.</p> <p>(2) The Institute is a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—</p> <p>(a) suing and being sued;</p> <p>(b) taking, purchasing and disposing of movable and immovable property;</p> <p>(c) borrowing money;</p> <p>(d) entering into contracts; and</p> <p>(e) doing or performing such other things or acts for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.</p>
Board of the Institute.	<p>55. (1) The Board of the Institute which shall consist of—</p> <p>(1) a chairperson appointed by the President;</p> <p>(2) the Principal Secretary of the ministry responsible for matters of environment and natural resources or his representative;</p> <p>(3) the Principal Secretary of the ministry responsible for matters of public finance or his representative;</p> <p>(4) the Director of the Institute, who shall be the secretary; and</p> <p>(5) Six other members, recruited competitively with vast experience in environmental field and appointed by the cabinet Secretary for environment</p> <p>(2) The members of the Board of the Institute shall be appointed at different times so that the respective expiry dates of</p>

their terms of office shall fall at different times.

(3) At their first sitting, the members of the Board of the Institute shall elect a vice chairperson from among the members appointed under subsection (1).

(4) The Board of the Institute shall ensure the proper and effective performance of the functions of the Institute.

(5) The Board of the Institute may enter into partnership with another body or organization within or outside Kenya as it may consider appropriate in furtherance of the object and purpose for which the Institute was established.

(6) The members of the Board of the Institute shall be paid allowances as determined by the Salaries and Remuneration Commission.

(7) A member of the Board of the Institute, other than an ex-officio member, shall hold office for a term of three years and shall be eligible for re-appointment for one further term not exceeding three years.

(8) A member of the Board of the Institute may, at any time, resign from office by giving a notice, in writing, addressed to the appointing authority.

(9) A member of the Board of the Institute, other than an ex-officio member, who is absent from three consecutive meetings of the Board of the Institute without sufficient cause shall cease to be a member of the Board of the Institute.

(10) Where a member of the Board of the Institute is, for a sufficient cause, unable to act as a member, the Cabinet Secretary shall determine whether the inability would result in the declaration of a vacancy.

(11) Where there is a vacancy as a result of declaration under subsection (10) or by reason of the death of a member, the Cabinet Secretary shall appoint another person to fill that vacancy.

(12) A member of the Board of the Institute who has an interest in a matter for consideration by the Board of the Institute shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board of the Institute relating that matter.

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	<p>(13) A member of the Board of the Institute who fails to disclose interest in a matter shall cease to be a member of the Board of the Institute.</p> <p>(14) The Cabinet Secretary shall in consultation with the Board of the Institute and subject to other staff appoint the Director of the Institute through a competitive process.</p> <p>(15) A person shall not be qualified for the appointment as the Director unless that person holds an advanced degree from a recognized university in the field of wildlife, biodiversity, natural resource environment management or other natural resource-related discipline and has at least ten years' experience in the relevant field at senior management level.</p>
Object of the Institute.	<p>56. The object and purposes of the Institute shall be to undertake and co-ordinate environmental research in accordance with the provisions of this Act.</p>
Functions of the Institute.	<p>57. The Institute shall—</p> <ol style="list-style-type: none"> (1) undertake research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey; (2) take stock of the natural resources in Kenya and their utilization and conservation; (3) audit and determine the net worth or value of the natural resources in Kenya and their utilization and conservation; (4) examine land use patterns to determine their impact on the quality and quantity of natural resources; (5) advise the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up the implementation of such agreements where Kenya is a party; (6) establish and host national environmental database for Kenya; (7) participate in the Multilateral Environmental Agreements

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	<p>(MEAs) Conference of Parties Kenya has signed and ratified;</p> <p>(8) prepare in consultations with stakeholders the State of Environment Report for Kenya and submit to the Cabinet Secretary for Matters environment every 3 years;</p> <p>(9) establish with approval of the Cabinet Secretary research centres for as are necessary and in the furtherance of environmental research;</p> <p>(10) enter into association with other institutions of learning, within or outside Kenya, as the Institute may consider necessary or appropriate and in furtherance of environmental research and training;</p> <p>(11) give information on early warning, disaster management, impacts and mitigation and adaptive strategies to climate change in environmental conservation areas;</p> <p>(12) organize symposia, conferences, workshops and other meetings to promote the exchange of views on issues relating to environmental research and training; and</p> <p>(13) perform any other functions that are ancillary to the object and purpose for which the Institute is established; and</p> <p>(14) coordinate preparation of the National Environment Action Plan every six years.</p>
<p>Director of the Institute.</p>	<p>58. (1) A person appointed to be the Director of the Institute shall hold office for a term of four years but shall be eligible for re-appointment for one further term of four years.</p> <p>(2) The Director shall be the chief executive officer of the Institute.</p> <p>(3) The Board of the Institute may appoint such officers and other staff of the Institute that are necessary for the proper and effective performance of the function of the Institute.</p>

PART V – PROTECTION AND CONSERVATION OF THE ENVIRONMENT

Protection of rivers, lakes, seas and wetlands.

59. (1) The Authority shall exercise general supervision and coordination of wetland management in the country and the implementation of policies and strategies relating to wetlands

(2) Notwithstanding any approval, permit or licence granted under this Act or any other law in force in Kenya, 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—

- (1) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake, sea or wetland;
- (2) excavate, drill, tunnel or disturb the river, lake, sea or wetland;
- (3) transport wetlands resources and materials from wetlands including sand without a permit from the Authority;
- (4) harvest sand from a river bank, river bed, lake shore, sea shore or any other wetland without a permit from the Authority and the relevant county government;
- (5) introduce any animal, whether alien or indigenous, or alive, in any river, lake, sea or wetland;
- (6) introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake, sea or wetland;
- (7) 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;
- (8) emit untreated effluent into any water body without meeting the water quality standards;
- (9) direct or block any river, lake, sea or wetland from its natural and normal course;
- (10) drain any lake, river, sea or wetland; or
- (11) 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 lake shore, wetland, coastal zone or river bank to be a protected area and impose such restrictions as he considers necessary, to protect the lake shore, wetland, coastal zone and river bank from environmental degradation and shall, in doing so, take into consideration the following factors—

- (a) the geographical size of the lake shore, wetland,

	<p>coastal zone or river bank; and</p> <p>(b) the interests of the communities resident around the lake shore, wetland, coastal zone or river bank concerned.</p> <p>(4) The Cabinet Secretary shall on advise of the Authority, 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 orders, regulations or standards may include management, protection, or conservation measures in respect of any area at risk of environmental degradation and shall provide for—</p> <p>(a) the development of an overall environmental management plan for a lake, river, wetland or coastal area, taking into account the relevant sectoral interest.</p> <p>(b) measures for the prevention or control of coastal erosion;</p> <p>(c) the conservation of mangrove and coral reef ecosystems;</p> <p>(d) plans for the harvesting of minerals within the coastal zone, including strategies for the restoration of mineral sites;</p> <p>(e) contingency plans for the prevention and control of all deliberate and accidental discharge of pollutions into the sea, lakes or rivers;</p> <p>(f) plans for the protection of wetlands;</p> <p>(g) the regulation of harvesting of aquatic living and non-living resources to ensure optimum sustainable yield;</p> <p>(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;</p> <p>(i) promotion of environmentally friendly tourism; and</p> <p>(j) the management of biological resources.</p>
Power of the Authority to issue Guidelines.	<p>60. The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of the wetlands.</p>
Protection of traditional interests.	<p>61. (1) The Cabinet Secretary may on the advice of the Authority, 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.</p>

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	<p align="center">(2) The Authority shall, in consultation with the relevant lead agencies and stakeholders, identify, map and publish 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 resident therein.</p>
<p>Protection of hill tops, sides, mountain areas and forests.</p>	<p>62. The Authority shall, in consultation with the relevant lead agencies, develop, issue and implement regulations, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain area so as to protect water catchment areas, prevent soil erosion and regulate human settlement.</p>
<p>Identification of hilly and mountainous areas.</p>	<p>63. (1) Every County Environment Committee shall identify the hilly and mountainous areas under their jurisdiction which are at risk from environmental degradation.</p> <p>(2) A hilly or mountainous area is at risk from environmental degradation if—</p> <ul style="list-style-type: none"> (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 faster than it is being replaced; or (d) any other land use activity in such an area is likely to lead to environment degradation. <p>(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).</p> <p>(4) The Authority shall maintain a register of hilly and mountainous area identified under subsection (1) to be at risk from environmental degradation.</p>
<p>Re-forestation, afforestation and restoration of degraded areas.</p>	<p>64. (1) Every County Environment Committee shall specify which of the areas identified in accordance with section 63 (1) are to be targeted for afforestation or reforestation.</p> <p>(2) Every County Environment Committee shall take measures, through encouraging voluntary self-help activities in their respective local community, to plant trees or other vegetation in any area specified under subsection (1) which are within the limits of its jurisdiction.</p> <p>(3) Where the areas specified under subsection (1) are subject</p>

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	<p>to leasehold or any other interest in land including customary tenure, the holder of that interest shall implement measures required to be implemented by the County Environment Committee including measures to plant trees and other vegetation in those areas.</p> <p>(4) The Authority shall undertake actions to restore degraded areas as a result of natural erosion and degradation.</p>
<p>Other measures for management of hill tops, hill sides and mountainous areas.</p>	<p>65. (1) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the sustainable use of hill tops, hill slides and mountainous areas.</p> <p>(2) The guidelines issued and measures prescribed by the Authority under subsection (1) shall be by way of Gazette Notice and shall include those relating to—</p> <ul style="list-style-type: none"> (a) appropriate farming methods; (b) carrying capacity of the areas described in subsection (1) in relation to animal husbandry; (c) measures to curb soil erosion; (d) disaster preparedness in areas prone to landslides; (e) the protection of areas referred to in subsection (1) from human settlements; (f) the protection of water catchment areas; and (g) any other measures the Authority considers necessary. <p>(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.</p> <p>(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 shall be guilty of an offence</p>
<p>Protection of forests.</p>	<p>66. (1) Subject to subsection (2) and the Forests 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.</p> <p>(2) The Director-General shall not take any action, in respect of any forest or mountain area, which is prejudicial to the traditional interests of the local communities customarily resident within or around such forest or mountain area.</p> <p>(3) Where a forested area is declared to be a protected area under section 72(1), the Cabinet Secretary may cause to be ascertained, any</p>

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	<p>individual, community or government interests in the land and forests and shall provide incentives to promote community conservation.</p> <p>(4) A person who contravenes any conservation measure prescribed by the Authority, or fails to comply with a lawful conservation directive issued by the Authority or its Environment Committee at the counties commits an offence</p>
<p>Conservation of energy and planting of trees or woodlots.</p>	<p>67. (1) The Authority shall, in consultation with the relevant lead agencies, promote the use of renewable sources of energy by—</p> <ul style="list-style-type: none"> (1) promoting research in appropriate renewable sources of energy; (2) creating incentives for the promotion of renewable sources of energy; (3) promoting measures for the conservation of non-renewable sources of energy; and (4) taking measures to encourage the planting of trees and woodlots by individual land users, institutions and by community groups. <p>(2) Any measures undertaken under subsection (1) shall comply with existing laws.</p>
<p>Conservation of biological diversity.</p>	<p>68. (1) 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—</p> <ul style="list-style-type: none"> (a) identify, prepare and maintain an inventory of biological diversity of Kenya; (b) determine which components of biological diversity are endangered, rare or threatened with extinction; (c) identify potential threats to biological diversity and devise measures to remove or arrest their effects; (d) undertake measures intended to integrate the conservation and sustainable utilisation ethic in relation to biological diversity in existing government activities and activities by private persons; (e) specify national strategies, plans and government programmes for conservation and sustainable use of biological diversity; (f) protect indigenous property rights of local communities in respect of biological diversity; and (g) measure the value of unexploited natural resources in terms of watershed protection, influences on climate, cultural and aesthetic value, as well as actual and potential genetic value thereof.

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<p>Conservation of biological resources <i>in situ</i>.</p>	<p>69. (1) The Cabinet Secretary shall, on the recommendation of the Authority, prescribe measures adequate to ensure the conservation of biological resources <i>in situ</i> and in this regard shall issue guidelines for—</p> <ul style="list-style-type: none"> (a) land use methods that are compatible with conservation of biological diversity; (b) the selection and management of protected areas so as to promote the conservation of the various terrestrial and aquatic ecosystems under the jurisdiction of Kenya; (c) selection and management of buffer zones near protected areas; (d) special arrangements for the protection of species, ecosystems and habitats threatened with extinction; (e) prohibiting and controlling the introduction of alien species into natural habitats; and (f) Integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge.
<p>Conservation of biological resources <i>ex situ</i>.</p>	<p>70. The Cabinet Secretary shall, on the recommendation of the Authority—</p> <ul style="list-style-type: none"> (a) prescribe measures for the conservation of biological resources <i>ex-situ</i> especially for those species threatened with extinction; (b) issue guidelines for the management of— <ul style="list-style-type: none"> (i) germplasm banks; (ii) botanical gardens; (iii) zoos or aquaria; (iv) animal orphanages; and (v) any other facilities recommended to the Authority by any of its Committees or considered necessary by the Authority; (c) ensure that species threatened with extinction which are conserved <i>ex-situ</i> are re-introduced into their native habitats and ecosystems where— <ul style="list-style-type: none"> (i) the threat to the species has been terminated; or (ii) a viable population of the threatened species has been achieved.
<p>Access to genetic resources of Kenya.</p>	<p>71. (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</p>

	<p>knowledge associated with genetic resources that is held by indigenous and local communities for the benefit of the people of Kenya.</p> <p>(2) Without prejudice to the general effect of subsection (1), the guidelines issued or measures prescribed under that subsection shall specify—</p> <ul style="list-style-type: none"> (i) 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 issue of licences and fees to be paid for that access; (ii) measures for regulating the import or export of germplasm; (iii) the sharing of benefits derived from genetic resources of Kenya; (iv) biosafety measures necessary to regulate biotechnology; (v) measures necessary to regulate the development, access to and transfer of biotechnology; (vi) 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; (vii) measures necessary for the protection of traditional knowledge associated with genetic resources that is held by indigenous and local communities; and (viii) any other matter that the Cabinet Secretary considers necessary for the better management of the genetic resources of Kenya. <p>(3). The Authority shall develop and maintain a register for traditional knowledge associated with genetic resources that is held by indigenous and local communities.</p>
<p>Protection of environmentally significant areas.</p>	<p>72. (1) The Cabinet Secretary may, in consultation with the relevant lead agencies and in accordance with the Constitution, the Convention on Biological Diversity and other treaties, 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 specific ecological processes, natural environment systems, natural beauty or species of indigenous wildlife or the preservation of biological diversity in general.</p> <p>(2) The Authority in consultation with other lead agencies shall prepare integrated environmental management plans for Environmentally Significant Areas and shall maintain a register of the</p>

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	same.
Environmentally Significant Areas Committees.	<p>73. (1) The Authority shall establish a committee on Environmentally Significant Areas hereafter referred to as ESA committee.</p> <p>(2) The ESA committee shall comprise of:-</p> <p>(a) a Chairperson appointed by the Cabinet Secretary;</p> <p>(b) the Director General or his representative who shall be the secretary;</p> <p>(c) a representative of the Council of Governors;</p> <p>(d) a representative of the National Land Commission;</p> <p>(e) a representative of the Kenya Forest Service;</p> <p>(f) a representative of the National Museums of Kenya;</p> <p>(g) a representative of the Kenya Wildlife Service;</p> <p>(h) a representative of the Kenya Water Towers Agency;</p> <p>(i) a representative of the Ministry of Interior;</p> <p>(j) a representative of Water Resources Authority;</p> <p>(k) a representative of civil society organizations working in the area;</p> <p>(l) a representative of the private sector; and</p> <p>(m) any other representative of a relevant lead agency</p> <p>(3) Members of the ESA committee shall serve for a term of three years renewable once for a further period of 3 years based on satisfactory discharge of duties.</p> <p>(4) There shall be paid to the Chairperson and the members of the Committee such remuneration and allowances as the Board of the Authority on the recommendation of the Salaries and Remuneration Commission shall determine</p> <p>(5) The Committee shall meet at least twice every year and not more than once every quarter of a financial year.</p>
Functions of the ESA committee.	<p>74. The Committee shall:-</p> <p>(1) provide coordination and oversight on the implementation of Environmentally Significant Areas management plan by various stakeholders;</p> <p>(2) advise on best practices on Environmentally Significant Areas;</p> <p>(3) promote conservation and management of Environmentally Significant Areas;</p> <p>(4) review and adopt reports on the status of Environmentally</p>

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	<p align="center">Significant Areas;</p> <p align="center">(5) address any other matter that relate to the proper management of Environmentally Significant Areas; and</p> <p align="center">(6) report progress on implementation of the Environmentally Significant Areas management plan to the Cabinet Secretary on an annual basis or any other time as need may arise.</p>
<p>Power of Authority to issue Guidelines</p>	<p>75. The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of Environmentally Significant Areas.</p>
<p>Protection of the coastal zone.</p>	<p>76. (1) The Cabinet Secretary may, by notice in the Gazette, declare an area to be a protected coastal zone.</p> <p>(2) The Authority shall conduct a survey of the coastal zone and prepare an integrated national coastal zone management plan based on the report of such survey.</p> <p>(3) The Authority shall from time to time, not exceeding every five years review the integrated national coastal zone management plan prepared under subsection (2).</p> <p>(4) The survey of the coastal zone shall lead to the development of the State of the Coast report which shall contain the following;</p> <p>(a) an inventory of all structures, roads, excavations, harbours, outfalls, dumping sites and other works located in the coastal zone;</p> <p>(b) an inventory of the state of the coral reefs, mangroves and marshes found within the coastal zone;</p> <p>(c) an inventory of all areas within the coastal zone of scenic value or of value for recreational and cultural purposes;</p> <p>(d) an inventory of areas within the coastal zone of special value for research in respect of fisheries, erosion, littorals movement and such other similar subjects;</p> <p>(e) an estimate of the quantities of sand, coral sea shells and other substances being removed from the coastal zone;</p> <p>(f) an estimate of the impacts of erosion on the coastal zone; and</p> <p>(g) an estimate of the extent, nature, cause and sources of coastal pollution and degradation;</p> <p>(h) an estimate of freshwater resources available in the coastal zone;</p> <p>(i) an estimate of the extent, nature, cause and sources of coastal pollution and degradation and strategies towards mitigation and remediation; and</p>

	<p>(j) any other relevant data or information that may be deemed appropriate.</p> <p>(5) Any person who releases or causes to be released into the coastal zone any polluting or hazardous substances contrary to the provisions of this Act shall be guilty of an offence and liable upon conviction to a fine of not less than one million shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.</p> <p>(6) The Authority shall enforce environmental standards and implement measures to promote sustainable management of the Coastal Zone in the country.</p> <p>(7) The Authority shall collaborate with other lead agencies in the development and implementation of Marine Spatial Plans for the Indian Ocean and inland aquatic bodies which shall be subjected to Strategic Environment Assessment.</p> <p>(8) The Cabinet Secretary shall on the advice of the Authority, issue appropriate regulations to prevent, reduce and control pollution or other form of environmental damage in the coastal zone.</p> <p>(9) Notwithstanding the generality of subsection (8) of this section, the regulations made thereunder shall provide for the control and prevention of pollution—</p> <ul style="list-style-type: none">(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 (dispersants) used in oil spills or pollution control whose toxic effects affect human health, aquatic or marine life and 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. <p>(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—</p> <ul style="list-style-type: none">(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
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	<p>damage caused by such discharge, release or escape; and</p> <p>(c) for any damage caused by any measures so taken.</p>
<p>Protection of the Ozone layer.</p>	<p>77. (1) The Authority shall undertake national studies and give due recognition to developments in scientific knowledge relating to substances, activities and practices that deplete the ozone layer to the detriment of public health and the environment.</p> <p>(2) The Authority shall issue guidelines and institute programmes concerning the—</p> <p>(a) elimination of substances that deplete the stratospheric ozone layer;</p> <p>(b) controlling of activities and practices likely to lead to the degradation of the ozone layer and the stratosphere;</p> <p>(c) reduction and minimization of risks to human health created by the degradation of the ozone layer and the stratosphere; and</p> <p>(d) formulate strategies, prepare and evaluate programmes for phasing out ozone depleting substances.</p>
<p>Economic incentives.</p>	<p>78. (1) Notwithstanding the provisions of any national law relating to revenue matters, the Cabinet Secretary responsible for Finance may, on the recommendation of the Cabinet Secretary, propose to introduce 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 abatement of environmental degradation.</p> <p>(2) Despite subsection (1) the tax and economic incentives, disincentives or fees may include—</p> <p>(a) customs and excise waiver in respect of imported capital goods which prevent or substantially reduce environmental degradation caused by an undertaking;</p> <p>(b) tax rebates to industries or other establishments that invest in plants, equipment and machinery for pollution control, re-cycling of wastes, water harvesting and conservation, prevention of floods and for using other energy resources as substitutes for hydrocarbons;</p>

	<p>(c) tax disincentives to deter bad environmental behaviour that leads to depletion of environmental resources or that cause pollution; or</p> <p>(d) user fees to ensure that those who use environmental resources pay proper value for the utilization of such resources.</p> <p>(3) For purposes of minimizing environmental degradation, the Authority shall prepare proposals on economic instruments for the protection of the environment and forward to the Cabinet Secretary.</p> <p>(4) The Authority shall make economic instrument guidelines and procedures for environmental management.</p>
<p>PART VI – INTEGRATED ENVIRONMENT, CULTURAL, HEALTH, HERITAGE AND SOCIAL ASSESSMENTS</p>	
<p>Strategic environmental assessments.</p>	<p>79. (1) All Policies, Plans and Programmes for implementation shall be subject to Strategic Environmental Assessment.</p> <p>(2) For the avoidance of doubt, the plans, programmes and policies are those that are—</p> <p>(a) subject to preparation or adoption by an authority at regional, national, county or local level, or which are prepared by an authority for adoption through a legislative procedure by Parliament, Government or if regional, by agreements between the governments or regional authorities, as the case may be;</p> <p>(b) determined by the Authority as likely to have significant effects on the environment.</p> <p>(3) All entities 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.</p> <p>(4) The Authority shall, in consultation with lead agencies and relevant stakeholders, prescribe rules and guidelines in respect of Strategic Environmental Assessments.</p> <p>(5) Any person who fails to carry out a Strategic Environment Assessment as required by this Act and the National Guidelines prepared by the Authority in (4), commits an offence.</p>
<p>Application for an environmental assessment license.</p>	<p>80. (1) Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before financing, commencing, proceeding</p>

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 a proposed project to include cultural, health and heritage impacts.

(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. The Authority shall maintain a register of all individual experts or firms of all experts duly authorized by it to conduct or prepare environmental impact assessment studies and reports respectively. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

(6) The Director-General may, approve any application by an expert wishing to be authorised to undertake environmental impact assessment and Environmental Audit. Such application shall be made in the prescribed manner and accompanied by any fees that may be required.

(7) 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.

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

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

(10) 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.

(11) 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.

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	<p align="center">(12) 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.</p>
<p>Submission and of Publication assessments</p>	<p>81. (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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(5) Upon receipt of an environmental impact assessment study report from any proponent under section 81(3), 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—</p> <ul style="list-style-type: none"> (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. <p>(6)The Authority may, on application by any person extend the period stipulated in sub-paragraph (d) so as to afford reasonable opportunity for such person to submit oral or written comments on the environmental impact assessment report.</p> <p>(7)The Authority shall ensure that its website contains a summary of the report referred to in subsection (3).</p>

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<p>Comments on environmental impact assessment report by Lead Agencies.</p>	<p>82. (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.</p> <p>(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</p> <p>(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.</p>
<p>Technical advisory committee on environmental impact assessment.</p>	<p>83. (1) The Director General may appoint a Technical Advisory Committee for advise on any complex matter or a matter requiring wider technical or expert consultations.</p> <p>(2) The Authority shall prepare guidelines on the Technical Advisory Committee to advice the Director General on environmental matters.</p>
<p>Further environmental impact assessment.</p>	<p>84. 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.</p>
<p>Integrated Environmental Impact Assessment License.</p>	<p>85. (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.</p> <p>(2) The Authority shall maintain a register of all integrated environmental impact assessment licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of the prescribed fee.</p>
<p>Submission of fresh assessment report after integrated environmental impact assessment license issued.</p>	<p>86. (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—</p>

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	<p>(1) there is a substantial change or modification in the project or in the manner in which the project is being operated;</p> <p>(2) the project poses environmental threat which could not be reasonably foreseen at the time of assessment; or</p> <p>(3) 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 80 was false, inaccurate or intended to mislead.</p> <p>(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.</p> <p>(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.</p>
<p>Transfer of an integrated environmental impact assessment license.</p>	<p>87. (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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(5) A person who contravenes any provisions of this section, shall be guilty of an offence.</p>
<p>Protection in respect of an integrated environmental impact assessment license.</p>	<p>88. (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.</p> <p>(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</p>

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	<p>a proponent in respect of the manner in which the project is executed, managed or operated.</p>
<p>Revocation, suspension or cancellation of an integrated environmental impact assessment license.</p>	<p>89. (1) The Authority may, after the issuance of an integrated environmental impact assessment licence—</p> <p>(1) cancel or revoke such licence; or</p> <p>(2) suspend such licence, for such time, not more than twenty four months, where the licensee contravenes the provisions of the licence.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
<p>Environment compliance audit.</p>	<p>90. (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.</p> <p>(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 schedule 2.</p> <p>(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 81(3).</p> <p>(4) The owner of the premises or the project operator 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.</p> <p>(5) The operator shall continuously monitor the operation of the</p>

	<p>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.</p> <p>(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.</p> <p>(7) The operator must also keep records of chemicals used in the operation of the activity. The register must state the name of the product, the quantity used and information about risks to human health and the environment. The self –audit will inform the compliance audit by the Authority.</p> <p>(8) The Authority and relevant lead agencies shall prioritize control audit 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.</p> <p>(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.</p> <p>(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 under section 81(3).</p> <p>(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 section 81(3) and shall prepare and submit an environmental audit report on those measures to the Authority annually or as the Authority may, in writing, require.</p> <p>(12) The Audit Report referred to in subsection (11) shall be submitted upon payment of the prescribed fee.</p>
<p>Disposal of Assessments and study reports</p>	<p>91. (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 atleast seven years after the date of the issue of an integrated environmental impact license in the case of assessment reports and atleast seven years after the date of submission in the case of Audit reports, after which the Authority may dispose off the records.</p> <p>(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,</p>

	negotiation, open administrative review, or other action involving the record.
PART VII – ENVIRONMENTAL MONITORING	
Environmental Monitoring	<p>92. (1) The Authority shall develop monitoring mechanisms and set indicators to assess:</p> <ul style="list-style-type: none"> (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. <p>(2) The Authority shall develop mechanisms to promote replication of best practices in environmental management.</p> <p>(3) The Authority shall develop and maintain internal databases based on regulatory regimes to support decision-making in environmental management.</p> <p>(4) The Authority shall establish diverse engagement platforms to receive feedback from stakeholders on environmental management.</p> <p>(5) The Authority shall, in consultation with the relevant lead agencies, monitor—</p> <ul style="list-style-type: none"> (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. <p>(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.</p>
PART VIII – ENVIRONMENT QUALITY STANDARDS	
Water quality standards.	<p>93. (1) The Cabinet Secretary shall, on the recommendation of the Authority—</p> <ul style="list-style-type: none"> (1) establish criteria and procedures for the measurement of water quality; (2) recommend to the Authority minimum water quality standards for all the waters of Kenya and for different uses,

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	<p>including—</p> <ul style="list-style-type: none"> (2) drinking water; (3) water for industrial purposes; (4) water for agricultural purposes; (5) water for recreational purposes; (6) water for fisheries and wildlife; and (7) for any other prescribed water use; <ul style="list-style-type: none"> (3) Prescribe conditions for the discharge of effluents; (4) issue guidelines regulations for or the preservation of fishing areas, aquatic areas, water sources and reservoirs and other areas, where water may need special protection; (5) recommend measures necessary for the treatment of effluents before being discharged into the sewerage system; and (6) make any other recommendation that may be necessary for the monitoring and control of water pollution. <p>(2) The Authority shall consult and take into consideration the views of lead agencies before making the recommendations under subsection (1).</p>
<p>Water pollution prohibition.</p>	<p>94. (1) Any person, who upon the coming into force of this Act, discharges or applies any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants or permits any person to dump or discharge such matter into the aquatic environment in contravention of water pollution control standards established under this Part shall be guilty of an offence and liable to imprisonment for a term of not less than 6 months or to a fine of not less than five hundred thousand shillings or to both such imprisonment and fine.</p> <p>(2) A person found guilty under subsection (1) shall, in addition to any sentence or fine imposed on him—</p> <ul style="list-style-type: none"> (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 parties reparation, cost of restoration, restitution or compensation as may be determined by a court of law on application by such third parties.
<p>Duty to supply plant information to the Authority.</p>	<p>95. (1) All owners or operators of irrigation project schemes, sewerage systems, industrial production workshops or any other undertaking</p>

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	<p>which may discharge effluents or other pollutants shall within ninety days upon the coming into force of this Act or as may be demanded from time to time by the Authority, submit on demand, to the Authority accurate information about the quantity and quality of such effluent or other pollutant.</p> <p align="center">(2) In respect of (1) above, appropriate mechanisms shall be installed to monitor the quality and quantity of the effluent.</p>
<p>Effluent discharge into the sewer systems.</p>	<p>96. (1) Every owner or operator of a trade or industrial undertaking shall discharge pre-treated effluents or other pollutants originating from the trade or industrial undertaking only into existing sewerage systems and the relevant entity operating or supervising such sewerage system shall issue, at a prescribed fee, the necessary licence for discharge.</p> <p align="center">(2). All sewer service providers, before receipt of the prescribed fee, shall ensure proper functioning of their sewerage systems.</p> <p align="center">(3). In cases where the sewer is dysfunctional and the sewer service provider has nonetheless accepted the payable fee and the effluents, the said sewer service provider shall be guilty of an offence and shall upon conviction be liable to such fine and imprisonment as may be provided by this Act.</p>
<p>Effluent discharge into the environment.</p>	<p>97. 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.</p>
<p>License to discharge effluents.</p>	<p>98. (1) No entity operating a sewerage system or owner or operator of any trade or industrial undertaking shall discharge any effluents or other pollutants into the environment without an effluent discharge licence issued by the Authority.</p> <p align="center">(2) Every owner or operator of a trade or an industrial undertaking discharging any effluents or other pollutants into the environment shall apply to the Authority for an effluent discharge licence in the prescribed form and accompanied by the prescribed fee.</p> <p align="center">(3) Before the issuance of a licence under subsections (1) and (2), the Authority shall—</p> <p align="center">(a) take into consideration the possible effects of effluents or</p>

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	<p>pollutants to be discharged on the quality of an affected water course or other source of water;</p> <p>(b) require demonstration by the applicant of adoption of resource use efficiency and functional cleaner production technologies; and</p> <p>(c) take into consideration the water requirements of riparian residents and ecosystems, human settlements, and agricultural schemes which depend on the affected water course.</p> <p>(4) Where the Authority rejects an application for the grant of an effluent discharge licence it shall within ten days notify the applicant of its decision and state in writing its reasons for so rejecting the application.</p> <p>(5) An effluent discharge licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the licence .</p>
<p>Cancellation of effluent discharge license.</p>	<p>99. The Authority may in writing, cancel any effluent discharge licence—</p> <p>(1) if the holder of the licence contravenes any provision of this Act or any regulations made thereunder;</p> <p>(2) if the holder fails to comply with any condition specified in the licence; or</p> <p>(3) if the Authority considers it in the interest of the environment or in the public interest so to do.</p>
<p>Register of effluent discharge licenses.</p>	<p>100. The Authority shall maintain a register of all effluent discharge licences issued under this Act. The register shall be a public document and may be inspected at any reasonable hour by any person.</p>
<p>Air quality and green house gas emission standards.</p>	<p>101. (1) The Cabinet Secretary shall, on the recommendation of the Authority—</p> <p>(1) establish criteria and procedures for the measurement of air quality and Green House Gas Emission Standards;</p> <p>(2) set—</p> <p>(2) ambient air quality standards;</p> <p>(3) occupational air quality standards;</p> <p>(4) stack emission standards for stationary sources;</p> <p>(5) mobile source emission standards;</p> <p>(6) criteria and guidelines for air pollution control for both mobile and stationary sources; and</p> <p>(7) Green House Gas Emission Standards</p>

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	<p>(3) determine measures necessary to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under this section;</p> <p>(4) issue guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution; and</p> <p>(5) do all such things as appear necessary for the monitoring and controlling of air pollution.</p> <p>(2) The occupier of any industrial or trade premises shall ensure that any air pollution control equipment installed in or on the premises is working in a proper and efficient manner whenever the industrial plant or fuel burning equipment is being used.</p> <p>(3) The Authority shall consult and take into consideration the views of lead agencies before making the recommendations under subsection (1).</p>
Standards for the control of noxious smells.	<p>102. The Authority shall, in consultation with the relevant lead agencies, establish—</p> <p>(1) procedures for the measurement and determination of noxious smells;</p> <p>(2) minimum standards for the control of pollution of the environment by noxious smells; or</p> <p>(3) guidelines for measures leading to the abatement of noxious smells, whether from human or from naturally occurring phenomena.</p>
Controlled areas.	<p>103. (1) The Cabinet Secretary, subject to the Constitution and any other relevant laws may on the advice of the Authority, by Gazette Notice, declare any area to be a controlled area for the purposes of this Part.</p> <p>(2) The Cabinet Secretary may, on the advice of the Authority, in regulations, prescribe the air emission standards in respect of any controlled areas.</p>
Air quality licensing and monitoring.	<p>104. (1) The occupier of any industrial or trade premises that emit air shall install air pollution control equipment in or on the premises.</p> <p>(2) The occupier of any industrial or trade premises shall ensure that any air pollution control equipment installed in or on the premises is working in a proper and efficient manner whenever the industrial plant or fuel burning equipment is being used.</p>

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	<p>(3) Any occupier who fails to comply with subsection (1) or (2) shall be guilty of an offence.</p> <p>(4) An owner or operator of a trade, industrial undertaking or an establishment which after the commencement of this Act, is emitting a substance or energy which is causing or is likely to cause air pollution shall apply to the Authority for an emission licence.</p> <p>(5) Every application for an emission licence shall be in the prescribed form and be accompanied by the prescribed fee.</p> <p>(6) The Authority shall establish/or cause to establish monitoring stations or networks to locate sources of atmospheric pollution and determine their actual or potential danger in critical environments.</p>
<p>Issue of emissions license.</p>	<p>105. (1) Before issuing a licence in respect of emissions, the Authority shall—</p> <ol style="list-style-type: none"> (1) consider the possible effects of the emissions on the quality of ambient air; (2) consider existing licences affecting the same air resource; (3) consider air dispersal modelling of the subject area; (4) give due regard to the requirements of the residents, human settlements and other industrial and commercial activities; (5) 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; (6) 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. <p>(2) An emission licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the licence and shall remain valid a period of twelve months.</p> <p>(3) Where the Authority rejects an application for the grant of an emission licence, it shall within ten days of its decision, notify the applicant in writing of its reasons for such refusal.</p>
<p>Emissions by motor vehicles and other conveyances.</p>	<p>106. (1) The authority shall issue emission licenses to all motor vehicles and other mobile emission sources</p>

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	<p>(2) No owner or operator of a motor-vehicle, train, ship, aircraft or other similar conveyance shall—</p> <p>(a) operate it in such a manner as to cause air pollution in contravention of the established emission standards; or</p> <p>(b) import any machinery, equipment, device or similar thing that will cause emissions into the ambient air in contravention of prescribed emission standards.</p>
Additional license procedures.	<p>107. The Authority may establish additional procedures for the application and grant of any licence under this Act and impose such conditions as it may deem appropriate.</p>
Cancelation of emission license.	<p>108. The Authority may, in writing, cancel any emission licence—</p> <p>(1) if the holder of the licence contravenes any provisions of this Act or of any regulations made under it;</p> <p>(2) if the holder fails to comply with any condition specified in the licence; or</p> <p>(3) if the Authority considers it in the interest of the environment or in the public interest so to do.</p>
Register of emission licences.	<p>109. The Authority shall maintain a register of all emission licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person.</p>
Standards for waste.	<p>110. The Cabinet Secretary shall, on the recommendation of the Authority—</p> <p>(1) identify materials and processes that are dangerous to human health and the environment;</p> <p>(2) issue guidelines and prescribe measures for the management of the materials and processes identified under subsection (1);</p> <p>(3) prescribe standards for waste, their classification and analysis, and formulate and advise on standards of disposal methods and means for such wastes; and</p> <p>(4) issue regulations for the handling, storage, transportation, segregation and destruction of any waste.</p>
Coordination of waste management.	<p>111. (1) The Ministry shall be responsible for policy development on matters related to waste management in consultation with county</p>

	<p>Governments.</p> <p>(2) The Authority shall be responsible for—</p> <ul style="list-style-type: none">(a) development of standards and guidelines on waste management;(b) generating and disseminating waste information for the public in consultation with county governments;(c) compliance and enforcement of waste management legislation in coordination with county governments;(d) licensing of waste management activities;(e) research, awareness creation and 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—<ul style="list-style-type: none">(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) the status of the generation, collection, reduction, re-use, 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 <p>(3) The County Governments shall be responsible for implementing the devolved function of waste management in accordance with all relevant national and county policies, laws, regulations and standards, and establishing the financial and operational conditions to effectively carry out this mandate.</p> <p>(4) The County Governments shall dispose of their waste within their county borders except where there is an agreed framework for inter-county transport of waste.</p> <p>(5) The County Governments shall establish material</p>
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	<p>recovery facilities to enhance recycling.</p> <p>(6) The County Governments shall establish and improve waste management infrastructure to promote source segregation, collection, reuse, setup for materials.</p> <p>(7) The county government shall maintain data on the type and quantity of the respective waste category and submit annual reports in the prescribed format..</p> <p>(8) The County Governments shall mainstream waste management into County Planning and budgeting.</p>
<p>Policies, Regulations and reporting frameworks developed by Counties.</p>	<p>112. (1) The County governments shall, in consultation with the relevant government agencies, the public and other relevant stakeholders, develop county waste management legislation.</p> <p>(2) Without prejudice to the generality of the foregoing, the County legislation shall include —</p> <p>(a) the establishment of a County Waste Fund which shall be capitalized by 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 36 of this Act;</p> <p>(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;</p> <p>(c) incentivise investment opportunities in sustainable waste management especially in waste collection, separation, treatment, processing, recovery and final disposal facilities;</p> <p>(d) ensure cities plan for waste management facilities as part of city expansion;</p> <p>(e) prepare county waste management plan and quarterly monitoring reports for cities, urban areas municipalities and administrative units; and</p> <p>(f) report annually to the Authority and the County Assembly</p>

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	<p>on the implementation of the County Waste Management Act and regulations</p> <p>(3) Where a county fails to undertake its waste management duties within one year of the entry into force of the Act, the national government may withhold all or part of the national allocation for waste management to that county until that county conforms with the provisions of this Act and undertake to manage the waste under the polluter pays principle.</p>
<p>Waste management plan.</p>	<p>113. (1) Each County shall submit its integrated waste management plan to the Authority.</p> <p>(2) The Authority may within ninety working days of receiving an integrated waste management plan—</p> <p>(a) request a County government to adjust the plan or the amendment in accordance with the national proposal if the plan or amendment—</p> <p>(i) does not comply with a requirement of this Act; or</p> <p>(ii) is in conflict with, or is not aligned to, or negates another county’s integrated waste management plan or the national waste management strategy; or</p> <p>(b) request a County to comply with a specific provision of this Act relating to the process of drafting or amending integrated waste management plans if the County has failed to comply with the process or provision; or</p> <p>(c) approve the plan or amendment.</p> <p>(3) Each County shall submit its integrated waste management plan to the County Assembly for approval.</p> <p>(4) Each County shall include the approved integrated waste management plan in its integrated development plan</p>
<p>Duties of a citizen.</p>	<p>114. (1) Every citizen shall ensure that—</p> <p>(a) the waste that they generate is managed in accordance with the provisions of this Act;</p>

	<p>(b) they take all reasonable measures to avoid the generation of waste and where such generation cannot be avoided to—</p> <ul style="list-style-type: none"> (i) reduce, re-use, recycle and recover waste; (ii) to adopt circular economy in the management of waste; (iii) to segregate waste at source; and (iv) to minimise the amount of waste that are generated. <p>(c) where waste must be disposed of, ensure that the waste is disposed of in accordance with the provisions of this Act and in such facility as is provided for by the relevant County Government and the Authority; and</p> <p>(d) they manage their waste in such a manner that does not endanger their health or the environment or cause a nuisance through noise, odour or visual impacts.</p> <p>(2) A person who does not manage waste in accordance with the provisions subsection (1) above commits an offence and shall, upon conviction, be liable to a fine not exceeding Ksh 50,000 or to or a term of imprisonment not exceeding six months, or to both.</p>
<p>Prohibition against dangerous handling and disposal of wastes.</p>	<p>115. (1) A person shall not discharge or dispose of any wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person.</p> <p>(2) No person shall transport any waste other than—</p> <ul style="list-style-type: none"> (a) in accordance with a valid licence to transport wastes issued by the Authority; and (b) to a wastes disposal site established in accordance with a licence issued by the Authority. <p>(3) No person shall operate a wastes disposal site or plant without a licence issued by the Authority.</p> <p>(4) Every person whose activities generate wastes shall employ measures essential to minimize wastes through treatment, reclamation and recycling.</p>

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	<p>(5) Any person who contravenes any provisions of this section shall be guilty of an offence and liable to imprisonment for a term of not more than two years or to a fine of not more than one million shillings or to both such imprisonment and fine.</p>
Application for waste license.	<p>116. (1) Any person intending to transport wastes within Kenya, operate a wastes disposal site or plant or to generate hazardous waste, shall prior to transporting the wastes, commencing with the operation of a wastes disposal site or plant or generating hazardous wastes, as the case may be, apply to the Authority in writing for the grant of an appropriate licence.</p> <p>(2) A licence to operate a waste disposal site or plant may only be granted subject to the payment of the appropriate fee and any other licence that may be required by the relevant Local Authority.</p> <p>(3) Where the Authority rejects an application made under this section, it shall within twenty one days of its decision, notify the applicant of the decision specifying the reasons therefor.</p>
License for wastes disposal sites and plants.	<p>117. Any person who, owns or operates a waste disposal site or plant or generated hazardous waste, shall apply to the Authority for a licence under this part.</p>
Courts orders to cease operation.	<p>118. Any person may apply to a competent court for orders compelling any person to immediately stop the generation, handling, transportation, storage or disposal of any wastes and effluents where such generation, handling, transportation, storage or disposal presents an imminent and substantial danger to public health, the environment or natural resources.</p>
Hazardous wastes.	<p>119. (1) The Cabinet Secretary shall, on the recommendation of the Authority determine standard criteria for the classification of hazardous wastes which may include—</p> <ol style="list-style-type: none"> (1) carcinogenic waste; (2) flammable waste; (3) persistent waste; (4) toxic waste; (5) explosive waste; (6) radioactive waste; (7) Nuclear waste; (8) Electrical and electronic waste; (9) wastes, reactive otherwise than as described in the foregoing paragraphs of this subsection;

	<p>(10) any other category of waste the Authority may consider necessary.</p> <p>(2) The Cabinet Secretary shall, on the recommendation of the Authority issue guidelines and regulations for the management of each category of hazardous wastes determined under subsection (1).</p> <p>(3) No person shall import into Kenya any hazardous waste falling under any category determined under subsection (1) unless;</p> <p>(a) the said waste is required as a raw material for recycling or recovery industries; and</p> <p>(b) where the Authority has licensed the importer in the prescribed form upon payment of the prescribed fee.</p> <p>(4) No hazardous waste shall be exported to any country from Kenya without a valid permit granted by the Authority and written consent given by a competent authority of the receiving country.</p> <p>(5) No hazardous waste shall be transported within or through Kenya without a valid permit granted by the Authority.</p> <p>(6) Any person who contravenes any provision of this section or who withholds, falsifies or otherwise tampers with information relating to trafficking in hazardous or other waste shall be guilty of an offence and liable to imprisonment for a term of not less than two years or to a fine of not less than one million shillings or to both such imprisonment and fine.</p> <p>(7) A person found guilty under subsection (6) shall be responsible for the removal of the waste from Kenya and for its safe disposal.</p>
<p>Regulations of toxic and hazardous materials.</p>	<p>120. The Cabinet Secretary may, on the advise of the Authority make regulations prescribing the procedure and criteria for—</p> <p>(1) classification of toxic and hazardous chemicals and materials in accordance with their toxicity and the hazard they present to the human health and to the environment;</p> <p>(2) registration of chemicals and materials;</p> <p>(3) labelling of chemicals and materials;</p> <p>(4) packaging for chemicals and materials;</p> <p>(5) advertising of chemicals and materials;</p> <p>(6) control of imports and exports of toxic and hazardous chemicals and materials permitted to be so imported or exported;</p> <p>(7) distribution, storage, transportation and handling of chemicals and materials;</p> <p>(8) monitoring of the effect of chemicals and their residue on human health and the environment;</p>

	<p>(9) disposal of expired and surplus chemicals and materials; and (10) restriction and banning of toxic and hazardous substances and energy.</p>
<p>Prohibition of discharge of hazardous substance, chemicals and materials or oil into environment and spiller's liability.</p>	<p>121. (1) No person shall discharge any hazardous substance, chemical, oil or mixture containing oil into any waters or any other segments of the environment contrary to the provisions of this Act or any regulations thereunder.</p> <p>(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.</p> <p>(3) A person convicted of an offence under subsection (2) shall, in addition to any other sentence imposed by the court—</p> <p>(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</p> <p>(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.</p> <p>(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—</p> <p>(a) giving immediate notice of the discharge to the Authority and other relevant Government officers;</p> <p>(b) immediately beginning clean-up operations using the best available clean-up methods;</p> <p>(c) complying with such directions as the Authority may, from time to time, prescribe.</p> <p>(5) Where the owner or operator of a production or storage facility, motor vehicle or vessel has refused, neglected and/or failed to take the mitigation measures prescribed in subsection (4), the Authority may seize the production or storage facility, motor vehicle or vessel.</p> <p>(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.</p>

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	<p align="center">(7) The Court in convicting a person of an offence under this section shall take into account the measures taken by that person to comply with subsection(4).</p>
Standards of pesticides and toxic substance.	<p>122. The Cabinet Secretary shall, on the recommendation of the Authority—</p> <ul style="list-style-type: none"> (a) determine standards for the concentration of pesticide residues in the environment. (b) establish standards to regulate the importation, exportation, manufacture, storage, distribution, sale, use, packaging, transportation, disposal and advertisement of pesticides and toxic substances in consultation with the relevant organizations; (c) establish procedures for the registration of pesticides and toxic substances; (d) determine measures to ensure proper labelling and packaging of pesticides and toxic substances; (e) determine measures for monitoring the effects of pesticides and toxic substances on the environment; (f) determine measures for the establishment and maintenance of laboratories to operate as standards laboratories for pesticides and toxic substances; and (g) determine measures for the establishment of enforcement procedures and regulations for the storage, packaging and transportation of pesticides and toxic substances.
Register of approved and banned pesticides.	<p>123. (1) The Authority shall maintain a register of approved and banned pesticides</p> <p>(2) In doing so the Pests Control and Products Board shall submit to the authority updated list of registered pesticides.</p>
Offences relating to pesticides and toxic substances.	<p>124. (1) No person shall use or dispose into the environment a pesticide or toxic substance in contravention of the provisions of this Act or any other written law</p> <p>(2) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine of not more than one million shillings or to imprisonment for a term of not more than two years or to both such fine and imprisonment.</p>
Seizure of pesticides and toxic substances.	<p>125. (1) Any pesticide or toxic substance which the Authority reasonably suspects to be the subject matter of an offence under this Act</p>

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	<p>shall be liable to seizure by the Authority.</p> <p>(2) Whenever any pesticide or toxic substance is seized under subsection (1), the Authority shall serve a notice of seizure on the owner of the pesticide or toxic Substance as soon as practicable.</p> <p>(3) Where any pesticide or toxic substance is seized under this section, the pesticide or toxic substance shall be placed under the custody of the Authority.</p> <p>(4) Any pesticide or toxic substance placed under the custody of the Authority under subsection (3) shall be released, if after six months:-</p> <p>(1) no prosecution under the Act has been instituted with regard to the pesticide or toxic substance; or</p> <p>(2) no person is convicted of an offence under this Act.</p>
Standards for noise.	<p>126. The Cabinet Secretary shall, on the recommendation of the Authority—</p> <p>(a) recommend minimum standards for emissions of noise and vibration pollution into the environment as are necessary to preserve and maintain public health and the environment;</p> <p>(b) determine criteria and procedures for the measurement of noise and vibration pollution into the environment;</p> <p>(c) determine criteria and procedures for the measurement of sub-sonic vibrations;</p> <p>(d) determine standards for the emission of sub-sonic vibrations which are likely to have a significant impact on the environment;</p> <p>(e) issue guidelines for the minimization of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;</p> <p>(f) determine noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic bonus, industrial and commercial activities;</p> <p>(g) determine measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f); and</p> <p>(h) issue guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.</p>
Coordination of noise control.	<p>127. (1) The Ministry shall be responsible for policy development on matters related to Noise Pollution in consultation</p>

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	<p>with county Governments.</p> <p>(2) The Authority shall be responsible for—</p> <p>(a) development of national standards and guidelines on Noise Management;</p> <p>(b) monitoring noise compliance and enforcement of by the county governments; and</p> <p>(c) research, awareness creation and training on Noise pollution.</p> <p>(3) The County Governments shall be responsible for implementing the devolved function of Noise Pollution control in accordance with all relevant national and county policies, laws, regulations and standards, and establishing the financial and operational conditions to effectively carry out this mandate.</p> <p>(4) The County Governments shall invest in and make use of Noise monitoring equipments.</p> <p>(5) The County Governments shall mainstream Noise management into County Planning and budgeting.</p>
<p>Management of Noise by the Counties</p>	<p>128. (1) The County governments shall, in consultation with the relevant government agencies, the public and other relevant stakeholders, develop county Noise management legislation,</p> <p>(2) Without prejudice to the generality of the foregoing, the County legislation shall include the establishment of a spatial plan prescribing emissions levels per an identified zone or zonation.</p>
<p>Noise management.</p>	<p>129. (1) Each County shall submit its integrated noise management plan to the Authority.</p> <p>(2) The Authority may within ninety working days of receiving an integrated noise management plan—</p> <p>(a) request a County government to adjust the plan or the amendment in accordance with the national proposal if the plan or amendment—</p> <p>(i) does not comply with a requirement of this Act; or</p>

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	<p align="center">(ii) is in conflict with, or is not aligned to, or negates another county’s noise management plan or the national noise management strategy;</p> <p align="center">(b) request a County to comply with a specific provision of this Act relating to the process of drafting or amending integrated noise management plans if the County has failed to comply with the process or provision; or</p> <p align="center">(c) approve the plan or amendment.</p> <p align="center">(3) Each County shall submit its integrated noise management plan to the County Assembly for approval.</p> <p align="center">(4) Each County shall include the approved integrated noise management plan in its integrated development plan</p>
<p>Noise in excess of established standards prohibited.</p> <p>Cap 294 Laws of Kenya.</p>	<p>130. Subject to the provisions of the Civil Aviation Act, a person who emits noise in excess of the noise emission standards established under this Part commits an offence.</p>
<p>Exemptions in respect of Noise Standards</p>	<p>131. (1) Notwithstanding the provisions of section 130, 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 terms and conditions as the Authority may determine.</p> <p>(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.</p>
<p>Radiation standards.</p> <p>Cap. 243 Laws of Kenya.</p>	<p>132. (1) Subject to the provisions of the Radiation Protection Act, the Cabinet Secretary, on the recommendation of the Authority, shall-</p> <p align="center">(a) establish the standards for the setting of acceptable levels of ionizing and other radiation in the environment; and</p> <p align="center">(b) establish criteria and procedures for the measurement of ionizing and other radiation.</p> <p>(2) The Authority shall—</p> <p align="center">(a) inspect and examine any area, place or premises or any</p>

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	<p>vehicle, vessel, boat or any carrier of any description in or upon which the Authority has reasonable cause to believe that radioactive material or any source of ionizing radiation is stored, used, transported or disposed of;</p> <p>(b) examine any person with respect to matters under this Act, where there is reasonable cause to believe that that person is contaminated with radioactive material, or is in unlawful possession of an ionizing radiation source;</p> <p>(c) in collaboration with the Radiation Protection Board, conduct an ionizing radiation monitoring programme and advise on ionizing and radiation control and protection measures;</p> <p>(d) maintain records of release of radioactive contaminants into the environment;</p> <p>(e) keep records of baseline data on radiation in the environment;</p> <p>(f) maintain a register of all radioactive substances imported into Kenya; and</p> <p>(g) do all such things as may be necessary for the monitoring and control of pollution from radiation.</p>
Standards for plastics.	<p>133. The Cabinet Secretary on recommendation of the Authority, shall-</p> <p>(1) establish standards for the use, manufacture, distribution and import of all plastics in consultation with relevant lead agencies;</p> <p>(2) issue guidelines and regulations for best management of plastics;</p> <p>(3) any person using, manufacturing, distributing or importing plastics that are not within the prescribed standards shall be guilty of an offence and shall be liable upon conviction to such penalty as shall be imposed by the Act.</p>
Standards for management of genetically modified organism.	<p>134. (1) The Cabinet Secretary shall, on recommendation of the Authority establish standards and regulations for the use of Genetically Modified Organisms.</p> <p>(2) Any use, experimental trials and importation of Genetically Modified organisms without the written authorization of the Authority shall be guilty of an offence and shall be liable upon conviction to such penalty as shall be imposed by the Act.</p>

**PART IX – ENVIRONMENTAL RESTORATION ORDERS,
ENVIRONMENTAL CONSERVATION ORDERS AND ENVIRONMENTAL
EASEMENTS**

Issue of environmental restoration orders.

135. (1) Subject to any other provisions of this Act, the Authority may issue and serve on any person in respect of any matter relating to the management of the environment an order in this Part referred to as an environmental restoration order.

(2) An environmental restoration order issued under subsection (1) or section 138 shall be issued to—

- (a) require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order;
- (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;
- (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 terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the Authority, enable the order to achieve all or any of the purposes set out in subsection (2).

(4) Without prejudice to the general effect of the purposes set out in subsection 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

	<p>to causing pollution or an environmental hazard;</p> <ul style="list-style-type: none"> (e) remove or alleviate any injury to land or the environment or to the amenities of the area; (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land or sea specified in the order or land or the environment contiguous to the land or sea specified in the order; (g) remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order; (h) pay any compensation specified in the order. <p>(5) In exercising the powers under this section, the Authority shall—</p> <ul style="list-style-type: none"> (a) be guided by the principles of good environmental management in accordance with the provisions of this Act; and (b) explain the right of appeal of the persons against whom the order is issued to the Tribunal or if dissatisfied with the decision of the Tribunal, to superior courts.
<p>Contents of environmental restoration orders.</p>	<p>136. (1) An environmental restoration order shall specify clearly and in a manner which may be easily understood—</p> <ul style="list-style-type: none"> (1) the activity to which it relates; (2) the person or persons to whom it is addressed; (3) the time at which it comes into effect; (4) the action which must be taken to remedy the harm to the environment and the time, being not more than thirty days or such further period as may be prescribed in the order within which the action must be taken; (5) the powers of the Authority to enter any land and undertake the action specified in sub section (2); (6) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken; (7) the right of the person served with an environmental restoration order to appeal to the Tribunal against that order, except where the order is issued by a court of competent jurisdiction, in which case the right of appeal shall lie with superior courts. <p>(2) An Environmental Inspector of the Authority may inspect or cause to be inspected any activity to determine whether that activity is harmful to the environment and may take into account the evidence obtained from that inspection in any decision on whether or not to serve</p>

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	<p>an environmental restoration order.</p> <p>(3) The Authority may seek and take into account any technical, professional and scientific advice which it considers to be desirable for a satisfactory decision to be made on an environmental restoration order.</p> <p>(4) An environmental restoration order shall continue to apply to the activity in respect of which it was served notwithstanding that it has been complied with.</p> <p>(5) A person served with an environmental restoration order shall, subject to the provisions of this Act, comply with all the terms and conditions of the order that has been served on him.</p> <p>(6) It shall not be necessary for the Authority or its Inspectors in exercising the powers under subsection (2), to give any person conducting or involved in the activity which is the subject of the inspection or residing or working on or developing land on which the activity which is the subject of the inspection is taking place, an opportunity of being heard by or making representations to the person conducting the inspection.</p>
<p>Reconsideration of environment restoration order.</p>	<p>137. (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.</p> <p>(2) Where the Authority exercises the power under subsection (1), the expenses necessarily incurred by it in the exercise of that power shall be a civil debt recoverable summarily by it from the person referred to in subsection (1).</p>
<p>Issue of environmental restoration order by a court.</p>	<p>138. (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.</p> <p>(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.</p>
<p>Environmental easements and environmental conservation orders.</p>	<p>139. (1) A court may, on an application made under this Part, grant an environmental easement or an environmental conservation order subject to the provisions of this Act and the Land Act, 2012, (No. 6 of 2012).</p> <p>(2) The object of an environmental easement is to further the principals of environmental management set out in this Act by facilitating the conservation and enhancement of the environment, in</p>

this Act referred to as the benefited environment, through the imposition of one or more obligations in respect of the use of land, in this Act referred to as the burdened land, being the land in the vicinity of the benefited environment.

(3) An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law as the court may determine.

(4) Without prejudice to the general effect of subsection (2), an environmental conservation order may be imposed on burdened land so as to—

- (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, archeological 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 burdened land;
- (g)** preserve the natural contours and features of the burdened land;
- (h)** prevent or restrict the scope of any activity on the burdened 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 burdened land;
- (j)** create and maintain works on burdened 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 burdened land on which any person has at the time of the imposition of the easement, any existing right or interest to the land and that environmental easement will restrict that right or interest, there shall be paid to that person, by the applicant for the environmental easement such compensation as may be determined in accordance with section 143.

(6) The principle of voluntary environment management shall be used to encourage land owners to grant an easement on their land and to encourage environmental conservation as a competitive land use option.

(7) An environmental easement may exist in gross; that is to say,

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	the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited or, of a person with an interest in that plot of land who can be benefited by the environmental easement.
Application to court for environmental easement.	<p>140. (1) A person or a group of persons may make an application to the court for the grant of one or more environmental easements.</p> <p>(2) The court may impose such conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement.</p>
Enforcement of environmental easements.	<p>141. (1) Proceedings to enforce an environmental easement may be commenced only by the person in whose name the environmental easement has been issued.</p> <p>(2) Proceedings to enforce an environmental easement may request the court to—</p> <p>(a) grant an environmental restoration order;</p> <p>(b) grant any remedy available under the law relating to easements in respect of land.</p> <p>(3) The court shall have a discretion to adapt and adjust, so far as seems necessary to it, the law and procedures relating to the enforcement of the requirements of an environmental easement.</p>
Registration of environmental easements.	<p>142. (1) Where an environmental easement is imposed on land, the title of which is registered under a particular system of land registration, the environmental easement shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for easements.</p> <p>(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 on a register maintained for that purpose in accordance with the provisions of this Act.</p> <p>(3) In addition to any matter which may be required by any law relating to the registration of easements in respect of land, the registration of an environmental easement shall include the name of the applicant for the environmental easement as the person in whose name the environmental easement is registered.</p>

<p>Compensation environmental easements.</p>	<p>for</p>	<p>143. (1) Any person who has a legal interest in the land which is the subject of an environmental easement, shall, in accordance with the provisions of this Act, be entitled to compensation commensurate with the lost value of the use of the land.</p> <p>(2) A person described in subsection (1) may apply to the court that granted the environmental easement for compensation stating the nature of his legal interest in the burdened land and the compensation sought.</p> <p>(3) The court may require the applicant for the environmental easement to bear the cost of compensating the person described in subsection (1).</p> <p>(4) The court may, if satisfied that the environmental easement sought is of national importance, order that the Government compensates the person described in subsection (1).</p> <p>(5) The court in determining the compensation due under this section shall take into account the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land.</p>
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PART X – INSPECTION, ANALYSIS AND RECORDS

<p>Appointment environmental inspectors.</p>	<p>of</p>	<p>144. (1) The Director-General shall, by Gazette Notice, appoint duly qualified persons whether public officer or otherwise, whether by name or by title of office, to be environmental inspectors of the Authority for such jurisdiction units as shall be specified in the Gazette Notice appointing them.</p> <p>(2) An environmental inspector shall—</p> <ul style="list-style-type: none"> (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 in compliance with the assigned climate change duties; and (f) perform such other functions as may be required under this Act or under the Gazette Notice appointing him. <p>(3) An environmental inspector may, in the performance of his duties under this Act or any regulations made thereunder, at all reasonable times and without a warrant—</p> <ul style="list-style-type: none"> (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
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	<p>this Act or any other law relating to the environment and the management of natural resources;</p> <p>(c) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for test and analysis;</p> <p>(d) carry out periodic inspections of all establishments and undertakings within their respective jurisdictional limits which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have significant impact on the environment, to ensure that the provisions of this Act are complied with;</p> <p>(e) seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence under this Act or the regulations made thereunder;</p> <p>(f) with the written approval of the Director-General order the immediate closure of any manufacturing plant or other establishment or undertaking which pollutes or is likely to pollute the environment contrary to the provisions of this Act and to require the owner or operator of such establishment or undertaking to implement any remedial measures that the environmental inspector may direct in the notice closing down the establishment or undertaking. Any establishment or undertaking closed down under this paragraph may resume its operations only with the written approval of the Director- General;</p> <p>(g) with the approval of the Director-General or his designate issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, motor vehicle or other establishment or undertaking to cease any activities deleterious to the environment and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the Director-General or his designate may determine;</p> <p>(h) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act; and</p> <p>(i) install any equipment on any land, premise, vessel or motor vehicle for purposes of monitoring compliance with the provisions of this Act, or the regulations made thereunder upon giving the owner or occupier of the land fourteen days written notice.</p> <p>(4) In exercising his powers under this Act, the environmental inspector shall suitably identify himself.</p> <p>(5) The Authority may request the Inspector- General for such</p>
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	number of officers as it may require.
Code of conduct of environmental inspectors.	<p>145. (1) The Authority shall prescribe a Code of Conduct and a coordination framework for all gazetted Environmental Inspectors.</p> <p>(2) The Director General shall degazette environmental Inspectors who shall be found to be in contravention of the code of conduct and in which case, their appointments shall abate.</p>
Establishment of uniformed/disciplined environmental protection and enforcement unit.	<p>146. (1) The Authority may, on such service, terms and conditions as it deems fit, and in consultation with the Inspector General of the National Police Service, second officers to be known as the environmental police unit and of the ranks specified in schedule five.</p> <p>(2) The functions of the Environmental Police Unit shall be similar as in the Police Service and for the purpose of this Act, to enforce environmental law and effect arrest where applicable.</p> <p>(3) Every person appointed under subsection (1) shall be subject to the Code of Conduct applicable in the Police Service as well as the Human resource guidelines applicable in the service of the Authority.</p> <p>(4) The Board shall provide for any relevant duty allowances and a staff superannuation scheme in accordance with established procedures of the Authority and advice from the Salaries and Remuneration Commission.</p>
Appointment of honorary environmental champions and scouts.	<p>147. (1) The Cabinet Secretary may, via a gazette notice, and on the recommendation of the Authority appoint suitable persons to be honorary environmental champions for the purposes of assisting in carrying out provisions of this Act.</p> <p>(2) The functions of the Honorary Environment Champions shall be to champion best practices in sustainable management of the Environment, to report environmental incidents and any other related functions as may be assigned by the Authority from time to time.</p> <p>(3) The Authority may appoint suitable persons to be Environmental Scouts for the purposes of assisting in carrying out provisions of this Act.</p> <p>(4) The Authority shall prescribe an engagement framework for the honorary environmental champions and scouts.</p>

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	<p>(5) The Authority shall provide for any relevant duty allowances in accordance with established procedures of the Authority and advice from the Salaries and Remuneration Commission</p>
Use of fire arms by environment enforcement and protection unit.	<p>148. The Cabinet Secretary responsible for matters relating to firearms may, through the Inspector-General of the National Police Service, make available to the Environmental Police Unit such firearms as may be necessary for the Unit to carry out its functions under this Act.</p>
Environmental inspector's powers to prosecute.	<p>149. Subject to the Constitution, the Office of the Director of Public Prosecutions Act and the directions and control of the Director of Public Prosecutions, an environmental inspector may, in any case in which he considers it desirable so to do—</p> <ol style="list-style-type: none"> (1) institute and undertake criminal proceedings against any person before a court of competent jurisdiction (other than a court martial) in respect of any offence alleged to have been committed by that person under this Act; and (2) discontinue at any stage but before judgment is delivered, any such proceedings instituted or undertaken by himself.
Procedure for laboratories analysis of samples.	<p>150. (1) The Director-General may, by Notice in the Gazette, designate such number of laboratories as he may consider necessary, analytical or reference laboratories for the purpose of this Act.</p> <p>(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.</p> <p>(3) The Authority shall, prescribe the form and manner in which samples will be taken for analysis.</p>
Certificate of analysis and its effect.	<p>151. (1) A laboratory designated as an analytical or reference laboratory under section 150 (1) shall be required to issue a certificate of analysis of any substance submitted to it for analysis under this Act.</p> <p>(2) The certificate of analysis shall state the methods of analysis followed and shall be authenticated by signature and official stamp, by the analyst or the reference analyst, as the case may be.</p> <p>(3) A certificate issued under subsection (1) and complying with subsection (2) shall be sufficient evidence of the facts stated in the certificate for all purpose under this Act.</p>

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	<p align="center">(4) The results of any analysis made by the laboratory shall be open to inspection by all interested parties.</p>
Establishment of the National Environmental Cleaner Production Centre.	<p>152. (1) There is established the National Environmental Cleaner Production Centre.</p> <p>(2)The Centre shall-</p> <ul style="list-style-type: none"> (a) provide for a voluntary environmental compliance tools in particular, Resource Efficient and Cleaner Production that prioritize pollution prevention; (b) in executing (a) above the proponents of facilities recruited into a compliance assistance program shall pay fees as defined in schedule seven; (c) provide incentives for beyond-compliance, regulations to operationalize section 78 of this Act; and (d) provide technical expertise and training for pollution prevention technologies <p>(3) The Authority shall develop guidelines defining practices or facilities that qualify for compliance assistance to prevent or reduce pollution and encourage circular economy.</p>
Records to be kept.	<p>153. (1) The Director-General shall, by notice in the Gazette, prescribe the activities for which records shall be kept for the purposes of this Act, the contents of such records and the manner in which they shall be kept.</p> <p>(2) The records kept in accordance with subsection (1) of this section and any other records available at the site of an establishment or undertaking shall be made available at such reasonable time to any environmental inspector for the purpose of—</p> <ul style="list-style-type: none"> (a) an environmental audit; (b) environmental monitoring and evaluation; (c) pollution control; (d) inspection; (e) any other purpose that may be prescribed by the Director-General from time to time.
Transmission of records to the Authority.	<p>154. The records kept under section 153 shall be transmitted annually to the Authority or its designated representative to be received not later than one month after the end of each calendar year. The Authority shall keep all records transmitted hereunder and may maintain their confidentiality if the applicable circumstances so require.</p>
Public access to records transmitted to	<p>155. (1) Subject to the provisions of section 154, any person may</p>

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the Authority.	<p>have access to any records transmitted to the Authority under this Act.</p> <p>(2) A person desiring access to such records referred to in subsection (1) may on application to the Authority be granted access to the said records on the payment of a fee prescribed by the Authority.</p>
<p>PART XI – TREATIES, CONVENTIONS AND AGREEMENTS</p>	
Conventions, agreements and treaties on environment.	<p>156. (1) Where Kenya is a party to a treaty, convention or agreement, whether bilateral or multilateral, 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—</p> <p>(1) initiate legislative proposals for consideration by the National Assembly, for purposes of giving effect to such treaty, convention or agreement in Kenya or for enabling Kenya to perform her obligations or exercise her rights under such treaty, convention or agreement; and</p> <p>(2) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.</p> <p>(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.</p>
Transactions requiring parliamentary ratification.	<p>157. (1) The Cabinet Secretary shall, within six months from the commencement date of this Act, in consultation with the Authority and lead agencies, develop legislation requiring certain transactions involving environmental resources to be submitted to Parliament for ratification.</p> <p>(2) The acreage, quantity, quality, value, location and dimensions of natural resources whose agreements require Parliamentary approval shall be specified in an Act of Parliament.</p> <p>(3) Any transaction requiring ratification by Parliament as required in this Section shall include the grant of a right or concession by or on behalf of any person, including a local community, a county or the national government. to another person—</p> <p>(a) for the exploitation of wildlife resources and habitats; resources of gazetted forests, water resources, resources on community land and biodiversity resources; and</p> <p>(b) in the case of a foreign national or company, land owned by such person of more than three hectares.</p> <p>(4) The Cabinet Secretary may, by notice in the Gazette, specify additional environmental resources whose transactions require ratification by parliament.</p> <p>(5) Any agreements concluded before the promulgation of the</p>

	Constitution and the coming into force of this Act may be reviewed within a period of two years.
	PART XII- DISPUTE RESOLUTION MECHANISM
Establishment of the National Environment Tribunal.	<p>158. (1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members—</p> <ul style="list-style-type: none"> (1) a person nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the Environment and Land Court of Kenya who shall be the chairperson; (2) an advocate of the High Court of Kenya nominated by the Law Society of Kenya and who shall have a postgraduate degree in environmental law and a minimum of ten years post admission experience; (3) a lawyer with professional qualifications in environmental law appointed by the Cabinet Secretary; and (4) two persons with demonstrated competence in environmental matters, including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs. <p>(2) All appointments to the Tribunal shall be by name and by Gazette Notice issued by the Cabinet Secretary.</p> <p>(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.</p> <p>(4) The office of a member of the Tribunal shall become vacant—</p> <ul style="list-style-type: none"> (a) at the expiration of three years from the date of his appointment unless renewed for a further one 3 year term; (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal; (c) if his appointment is revoked by the Cabinet Secretary for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and (d) if he resigns the office of member of the Tribunal. <p>(5) The members of the Tribunal shall, in their first meeting, elect from amongst themselves a Vice Chairperson to the Tribunal from amongst the persons appointed under paragraphs (b) and (c) of subsection(1).</p> <p>(6) The Chairperson and Vice-Chairperson shall be of opposite</p>

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	<p>gender.</p> <p>(7) 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 the acting Chairperson shall perform such functions and exercise such powers as if that person were the Chairperson.</p> <p>(8) In the absence of both the Chairperson and the Vice-Chairperson, the members of the Tribunal present may nominate, from among themselves, a person to act as the Chairperson, which person shall have the training and qualifications in the field of law and such person, while acting as the Chairperson, shall perform such functions and exercise such powers as if that person were the Chairperson.</p> <p>(9) The Chairperson may designate the Vice-Chairperson and two other members to constitute a separate sitting of the Tribunal.</p> <p>(10) The Secretary of the Tribunal shall inform the Cabinet Secretary and/or the relevant institution of expiry of their nominee's/appointee's term 3 months before expiry of term to ensure timely appointment.</p>
<p>Proceedings at the Tribunal.</p> <p>Cap. 80 Laws of Kenya.</p>	<p>159. (1) The Tribunal shall not be bound by the rules of evidence as set out in Evidence Act and shall instead determine its administrative and management requirements, processes and rules.</p> <p>(2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.</p> <p>(3) The Tribunal shall sit at such times and in such places as it may appoint.</p> <p>(4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.</p> <p>(5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.</p> <p>(6) A person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.</p>
<p>Awards of the Tribunal.</p>	<p>160. (1) The Tribunal may—</p> <p>(1) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is</p>

	<p>sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;</p> <p>(2) take evidence on oath and may for that purpose administer oaths; or</p> <p>(3) on its own motion summon and hear any person whose attendance it considers necessary for evidence</p> <p>(2) A person who—</p> <p>(a) fails to attend the Tribunal after having been required to do so under subsection (1)(a);</p> <p>(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;</p> <p>(c) gives false evidence or information which is misleading before the Tribunal; or</p> <p>(d) at any sitting of the Tribunal—</p> <p style="padding-left: 40px;">(i) wilfully insults any member or officer of the Tribunal;</p> <p style="padding-left: 40px;">(ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;</p> <p>(e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal, commits an offence under this Act.</p>
<p>Contempt of the Tribunal</p>	<p>161. (1) The Tribunal shall without prejudice to any law governing contempt proceedings arising from tribunals and subordinate courts punish for contempt of the Tribunal.</p> <p>(2) Contempt of the Tribunal shall include-</p> <p>a) Wilful disobedience of any judgment, decree, Order or direction of the Tribunal;</p> <p>b) Wilful breach of an undertaking given to the Tribunal;</p> <p>c) Wilful insult of the Chairperson, Vice Chairperson or any member of the Tribunal; and</p> <p>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.</p>

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	<p>(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.</p> <p>(4) Upon conviction for an offence of Contempt of the Tribunal, a contemnor shall be liable to a fine not exceeding two million Kenya shillings or to an imprisonment not exceeding four years or to both such fine and imprisonment.</p>
<p>Quorum determination Tribunal.</p> <p>for by</p>	<p>162. (1) Subject to section 158(9) the quorum for hearing or determining any cause or matter before the Tribunal under this Act shall be three members.</p> <p>(2) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.</p>
<p>Appeals to the Tribunal.</p>	<p>163. (1) Any person who is aggrieved by—</p> <ol style="list-style-type: none"> (1) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations; (2) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations; (3) the revocation, suspension or variation of the person's licence under this Act or its regulations; (4) the amount of money required to be paid as a fee under this Act or its regulations; (5) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations, <p>may within sixty days or such other period as the Tribunal may allow on application, after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.</p> <p>(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 established by the Tribunal for that purpose.</p> <p>(3) Upon any appeal, the Tribunal may—</p> <ol style="list-style-type: none"> (a) confirm, set aside or vary the order or decision in question; (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or

	<ul style="list-style-type: none"> (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just; (d) if satisfied upon application by any party, issue orders maintaining the <i>status quo</i> 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; or (e) if satisfied upon application by any party, review any orders made by the Tribunal under this section; (f) assess and issue orders as to party and party costs.
<p>Appeals to the Environment and Land Court.</p>	<p>164. (1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order or within such further period as the Environment and Land Court may allow on application, appeal against such decision or order to the Environment and Land Court.</p> <p>(2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired.</p> <p>PROVIDED that the decision or order the subject of the appeal is not one of dismissal of the appeal.</p> <p>(3) Notwithstanding the provisions of subsection (2), where the Director- General is satisfied that immediate action must be taken to avert serious injuries to the environment, the Director-General shall have the power to take such reasonable action to stop, alleviate or reduce such injury, including the powers to close down any undertaking, until the appeal is finalised or the time for appeal has expired.</p> <p>(4) Upon the hearing of an appeal under this section, the Environment and Land Court may—</p> <ul style="list-style-type: none"> (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 deem fit to 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 it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal. <p>(5) The decision of the Environment and Land Court on any appeal under shall lie on appeal at the Court of Appeal.</p>

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<p>Power to appoint environment experts.</p>	<p>165. The Chairperson of the Tribunal may appoint any persons with special skills or knowledge on environmental issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as environmental experts in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.</p>
<p>Power to seek the directions of the Tribunal in complex environmental matters</p>	<p>166. (1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law or to be environmentally complex, it may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction.</p> <p>PROVIDED 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</p> <p>(2) The Cabinet Secretary may refer any matter that may be deemed to involve a point of law, environmental justice, novel jurisprudence or to be of unusual importance or complexity to the Tribunal for expert opinion and or direction.</p> <p>(3) Where any matter has been referred to the Tribunal under subsection (1) and (2), the Authority and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an Advocate.</p>
<p>Immunity.</p>	<p>167. The Chairperson or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of.</p>
<p>Remuneration of members.</p>	<p>168. (1) There shall be paid to the Chairperson and the members of the Tribunal such remuneration and allowances as the Cabinet Secretary on the recommendation of the Salaries and Remuneration Commission shall determine.</p> <p>(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.</p>

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Staff of the Tribunal.	<p>169. There shall be such other staff of the Tribunal as may be necessary for the performance of its functions.</p>
Appointment of the Secretary to the Tribunal.	<p>170. (1) The Cabinet Secretary shall in consultation with the Public Service Commission second a public officer to be the secretary to the tribunal.</p> <p>(2) A person shall be qualified for appointment as secretary if the person -</p> <ul style="list-style-type: none">(a) holds a degree in law;(b) is an Advocate of the High Court of Kenya of at least seven (7) years' experience;(c) has experience in management and public administration; and(d) has satisfied the requirements of chapter six of the Constitution. <p>(3) the Secretary shall be paid such allowances as the Salaries and Remuneration Commission shall determine.</p> <p>(4) The Secretary shall have the following functions-</p> <ul style="list-style-type: none">(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-(c) Planning, preparing, implementing and monitoring of budgets and finances of the Tribunal including accounting for expenditure and any income;(d) Staffing and other human resource matters at the Tribunal;(e) Planning, development and sourcing of support services such as language translation and transcription services;(f) Office stock and non-stock procurements, stores and disposal procedures;(g) Manage, update, publish and disseminate hearing lists of appeals filed at the Tribunal;(h) Communicate Tribunal decisions and proceedings to the public and in this regard be the

	<p align="center">custodian of the seal of the Tribunal; and</p> <p align="center">(i) Discharge such other functions as may be assigned by the Cabinet Secretary and the Tribunal members.</p> <p align="center">(5) The Secretary shall be appointed for a term of three (3) years with the option of another 3 year term renewal based on satisfactory performance</p>
<p>PART XIII- FINANCIAL PROVISIONS</p>	
<p>Funds of the Authority, the National Environment Research Institute and the National Environment Tribunal</p>	<p>171. The funds of the Authority, the National Environment Research Institute and the National Environment Tribunal shall respectively consist of-</p> <ul style="list-style-type: none"> (a) monies allocated by the government for the purposes of each body corporate established under this Act; (b) such monies or assets as may accrue to or vest in each body corporate in the course of the exercise of its powers or in performance of its functions under this Act; (c) grants, gifts, donations, loans, bequests or other endowments given to each body corporate; and (d) monies from any other lawful source accruing to each of the body corporate
<p>Financial Year</p>	<p>172. The financial year of each body corporate established under this Act shall be the period of twelve months ending on the thirtieth day of June in each year.</p>
<p>Annual Estimates</p>	<p>173. (1) Three months before the commencement of each financial year, each body corporate established under this Act shall cause to be prepared estimates of the revenue and expenditure of the body corporate for that year.</p> <p>(2) The annual estimates shall make provision for all the estimated expenditure of the respective body corporate for the financial year concerned and in particular, shall provide for-</p> <ul style="list-style-type: none"> (a) the payment of salaries, allowances and other charges in respect of the staff of the body corporate; (b) the payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the body corporate; (c) the maintenance of the buildings, grounds and facilities of the body corporate; (d) the funding of training, research and development of

	<p>activities of the body corporate;</p> <p>(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 body corporate may lawfully consider appropriate; and</p> <p>(f) the maintenance, repair and replacement of the equipment and other property of the body corporate</p>
<p>Accounts and Audit</p> <p>No. 18 of 2012; and No. 34 of 2015</p>	<p>174. (1) Every body corporate established under this Act shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities.</p> <p>(2) Within a period of three months after the end of each financial year, each body corporate shall submit its financial statements to-</p> <p>(a) the Auditor-General with a copy to the Controller of Budget and the Commission on Revenue Allocation; and</p> <p>(b) the Cabinet Secretary, who shall upon approving it submit a copy to the Cabinet Secretary in charge of finance</p> <p>(3) The annual statements of the Authority shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the national laws relating to public financial management and Audit.</p>
<p>PART XIV- ENVIRONMENTAL OFFENCES</p>	
<p>Offences relating to inspections</p>	<p>175. A person who—</p> <p>(1) hinders or obstructs an environmental inspector in the exercise of his duties under this Act or regulations made thereunder;</p> <p>(2) fails to comply with a lawful order or requirement made by an environmental inspector in accordance with this Act or regulations made thereunder;</p> <p>(3) refuses an environmental inspector entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter under this Act or regulations made thereunder;</p> <p>(4) impersonates an environmental inspector;</p> <p>(5) refuses an environmental inspector access to records or documents kept pursuant to the provisions of this Act or</p>

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	<p>regulations made thereunder;</p> <p>(6) fails to state or wrongly states his name or address to an environmental inspector in the cause of his duties under this Act or regulations made thereunder;</p> <p>(7) misleads or gives wrongful information to an environmental inspector under this Act or regulations made thereunder;</p> <p>(8) fails, neglects or refuses to carry out an improvement order issued under this Act by an environmental inspector,</p> <p>commits an offence and shall, on conviction be liable on conviction to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p>
<p>Offences relating to environmental impact assessment.</p>	<p>176. A person who—</p> <p>(1) fails to submit an impact assessment report contrary to the requirements of section 81 of this Act;</p> <p>(2) fails to prepare an assessment report in accordance with the requirements of this Act or regulations made thereunder;</p> <p>(3) fraudulently makes false statements in an assessment report submitted under this Act or regulations made thereunder,</p> <p>commits an offence and is liable on conviction to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p>
<p>Offences relating to records.</p>	<p>177. A person who—</p> <p>(1) fails to keep records required to be kept under this Act;</p> <p>(2) fraudulently alters any records required to be kept under this Act;</p> <p>(3) fraudulently makes false statements in any records required to be kept under this Act,</p> <p>commits an offence and is liable upon conviction to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p>
<p>Offences relating to standards.</p>	<p>178. A person who—</p> <p>(1) contravenes any environmental standard prescribed under this Act;</p> <p>(2) contravenes any measure prescribed under this Act;</p>

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	<p align="center">(3) uses the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act,</p> <p>commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p>
<p>Offences relating to hazardous wastes, materials, chemicals and radioactive substances.</p>	<p>179. A person who—</p> <ol style="list-style-type: none"> (1) fails to manage any hazardous waste and materials in accordance with this Act; (2) imports any hazardous waste contrary to this Act; (3) knowingly mislabels any waste, , chemical, toxic substance or radioactive matter; (4) fails to manage any chemical or radioactive substance in accordance with this Act; (5) aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances and hazardous substances; (6) disposes of any chemical contrary to this Act or hazardous waster within Kenya; (7) withholds information or provides false information about the management of hazardous wastes, chemicals or radioactive substances, <p>commits an offence and shall, on conviction, be liable upon conviction to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p>
<p>Offences relating to pollution.</p>	<p>180. (1) A person who—</p> <ol style="list-style-type: none"> (1) discharges any dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment contrary to the provisions of this Act; (2) pollutes the environment contrary to the provisions of this Act; (3) discharges any pollutant into the environment contrary to the provisions of this Act, <p>commits an offence and shall on conviction, be liable upon conviction to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p> <p>(2) In addition to any sentence that the Court may impose upon a polluter under subsection (1) of this Section, the Court may direct that person to—</p> <ol style="list-style-type: none"> (a) pay the full cost of cleaning up the polluted environment

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	<p>and of removing the pollution; or</p> <p>(b) clean up the polluted environment and remove the effects of pollution to the satisfaction of the Authority.</p> <p>(3) Without prejudice to the provisions of subsections (1) and (2) of this section, the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution.</p>
Offences relating to environmental restoration orders, orders of the Tribunal, easements, and conservative orders.	<p>181. A person who—</p> <p>(1) fails, neglects or refuses to comply with an environmental restoration order made under this Act;</p> <p>(2) fails, neglects or refuses to comply with an environmental easement, issued under this Act;</p> <p>(3) fails, neglects or refuses to comply with an environmental conservation order made under this Act,</p> <p>(4) fails, neglects or refuses to comply with any order made by the Tribunal,</p> <p>commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding four years or to a fine not exceeding four million shillings or to both such fine and imprisonment.</p>
General penalty.	<p>182. Any person who contravenes any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided for, is liable upon conviction, to imprisonment for a term not exceeding four years, or to a fine not exceeding four million shillings, or to both such fine and imprisonment.</p>
Offences by bodies corporate, partnerships and employers.	<p>183. (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 did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.</p> <p>(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 did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.</p> <p>(3) A person shall be personally liable for an offence under this Act, whether committed by him on his own account or as an agent or servant of another person.</p> <p>(4) An employer or principal shall be liable for an offence</p>

	<p>committed by an employee or agent under this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.</p> <p>(5) A registered owner or joint owners of a motorized vessel, motor vehicle, motor boat, a 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 his express or standing directions.</p>
<p>Forfeiture, cancellation and other orders.</p>	<p>184. (1) The Court before which a person is charged for an offence under this Act or any regulations made thereunder may, in addition to any other order—</p> <ol style="list-style-type: none"> (1) upon the conviction of the accused; or (2) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence, <p>order that the substance, motor vehicle, equipment and appliance or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the State and be disposed of as the court may direct.</p> <p>(2) In making the order to forfeit under subsection (1) the Court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance or any other thing provided for in that subsection be borne by the person convicted thereunder.</p> <p>(3) The Court may further order that any licence, permit or any authorisation given under this Act, and to which the offence relates, be cancelled.</p> <p>(4) The Court may further issue an order requiring that a convicted person restores at his own cost, the environment to as near as it may be to its original state prior to the offence.</p> <p>(5) The court may in addition issue an environmental restoration order against the person convicted in accordance with the provisions of this Act.</p>
<p>PART XV – REGULATIONS</p>	
<p>Power to make regulations.</p>	<p>185. (1) The Cabinet Secretary may, on the recommendation of the Authority and upon consultation with the relevant lead agencies, 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.</p> <p>(2) Regulations made under subsection (1) may—</p>

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	<p>(a) make provisions for the issue, amendment and revocation of any licence;</p> <p>(b) provide for the charging of fees and levying of charges;</p> <p>(c) 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.</p>
County legislation.	<p>186. A County may make legislation in respect of all such matters as are necessary or desirable that are required or permitted under the Constitution and this Act.</p>
Effect on existing laws.	<p>187. 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.</p>
Repeal	<p>188. The Environmental Management and Coordination Act, No. 8 of 1999 is repealed.</p>
Consequential provisions.	<p>189. (1) Section 33 of the Wildlife Conservation and Management Act (No 47 of 2013) is deleted.</p> <p>(2) Section 36 of the Water Act (Act 43 of 2016) is deleted.</p> <p>(3) Section 143 of the Water Act (Act 43 of 2016) is deleted.</p>
<p>FIRST SCHEDULE- Relevant Ministries</p> <p>s.36 (d)</p> <p>Agriculture. Economic Planning and Development. Education. Energy. Environment. Finance. Fisheries. Foreign Affairs. Health. Industry. Law or Law Enforcement. Local Government.</p>	

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Natural Resources.
Public Administration.
Public Works.
Research and Technology. Tourism.
Water Resources.

SECOND SCHEDULE- EIA Projects

(Insert Legal Notice 150 of 2016 attached)

THIRD SCHEDULE- DECLARATION OF TRUST (NETFUND)

(Insert from attachment)

FOURTH SCHEDULE- CONDUCT OF BUSINESS OF BOARD OF TRUSTEES (NETFUND)

(Insert from attachment)

FIFTH SCHEDULE- ENVIRONMENTAL POLICE RANKS

(To provide)

SIXTH SCHEDULE- COMPLIANCE ASSISTANCE PROGRAM FEES(NATIONAL CLEANER PRODUCTION CENTRE)

(To provide)