



nema

mazingira yetu | uhai wetu | wajibu wetu

PROVISION OF LEGAL SERVICES

FUNCTIONS

Providing Effective Legal Services for sound Environmental Management

The Department offers legal support services to all departments of the Authority and the Environment Sector in the country. The core functions of the department include;

Legal Advice:

- Advising the Authority and the Board of Management on legal issues that arise in the operation of the Authority to enhance its regulatory role
- Advising on legislative issues and other measures for the management of the environment and their implementation.
- Advises the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party
- Oversees the domestication and implementation of environmental agreements to which Kenya is a Party.
- Participates in negotiations for regional and international conventions, treaties and agreements in the field of the environment.
- Advises the Authority on prosecution of environmental offences.

The department provides a link between the mandate of the Authority and environmental legislation as well as existing instruments

Legal Drafting:

- The Department coordinates drafting of rules, regulations, guidelines and other instruments to operationalize EMCA, 1999
- Prepares legal opinions, studies, reports and correspondences as required by the various Departments from time to time
- Drafting of Contracts, Memoranda of Understanding and any other relevant agreements and/or treaties on behalf of the Authority.

Legal Research and Documentation:

- Undertakes research on pertinent legal issues based on the operations of the Authority.

Litigation:

- Defending and instituting suits on behalf of the Authority
- Coordinating litigation and prosecution of cases for or against the Authority being handled by external advocates and Public Prosecutors.

OVERVIEW OF ENVIRONMENTAL LEGISLATION IN KENYA

CONSTITUTIONAL PROVISIONS ON THE ENVIRONMENT

The 4th Statement of the Preamble recognizes the importance of the environment in Kenya and states:

“Respectful of the Environment which is our heritage and determined to sustain it for the benefit of future generations”

This gives a high Constitutional status and importance the environment.

Bill of Rights

Article 42 of the Constitution gives every person the right to a clean and healthy environment. The Constitution requires both the State (Government) and individuals to take action to ensure realization of this right.

National Values

Article 10 of the Constitution provides national values and principles of governance including the Principle of Sustainable Development.

This ensures that the present generation uses resources sustainably to meet their present needs without compromising the ability of future generations to meet their needs.

State Obligations (Article 10, 42, 69, 70)

- To enact and enforce legislation on environmental management;
- To ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources
- Ensure the equitable sharing of the accruing benefits;
- To work to achieve and maintain a tree cover of at least ten per cent (10%) of the land area of Kenya;
- To protect and enhance intellectual property and indigenous knowledge of biodiversity and the genetic resources of the communities;
- To encourage public participation in the management, protection and conservation of the environment;
- To protect genetic resources and biological diversity;
- To establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- To eliminate processes and activities that are likely to endanger the environment;
- To utilise the environment and natural resources for the benefit of the people of Kenya; and
- Parliament to ratify all transactions involving the grant of a rights or concessions for exploitation of natural resources of Kenya.

Individual Obligations (Article 69)

Article 69 stipulates that every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

Enforcement of Obligations

Article 70, provides that any person who alleges violation of the right to a clean and healthy environment may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.

Upon such application, the court may prevent, stop or discontinue any act or omission harmful to the environment; compel any public officer to take measures to prevent or discontinue the violation or provide compensation for any victim of such violation.

Other Redress

Article 70 provides broad avenues for redress available under EMCA, 1999 and the National Environment Tribunal.

ii) Environment Management and Coordination Act, 1999

The Environmental Management and Coordination Act (1999) provides a framework law for environmental management in Kenya. It creates the legal and institutional framework in establishment of NEMA for the management of the Environment

Objective of NEMA

“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.

Powers of EMCA, 1999

The Act has key strengths that include;

- i) Protection and Conservation of the Environment (Part V of EMCA 1999)
- ii) Environmental Impact Assessments & Environmental Audits (Part VI and VII)
- iii) Environmental Quality Standards (Part VIII)

The Standards & Enforcement Review Committee (SERC) established by Part VIII of the Act advises the Authority on Environmental Quality Standards and recommends the formulation of various regulations.

The Minister for Environment is empowered by section 147 to gazette regulations and Guidelines to ensure sound environmental management

Our Environment, Our Life, Our Responsibility

For more information contact

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