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ACTS, 2015

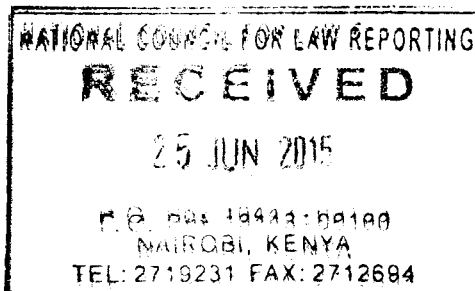
NAIROBI, 3rd June, 2015

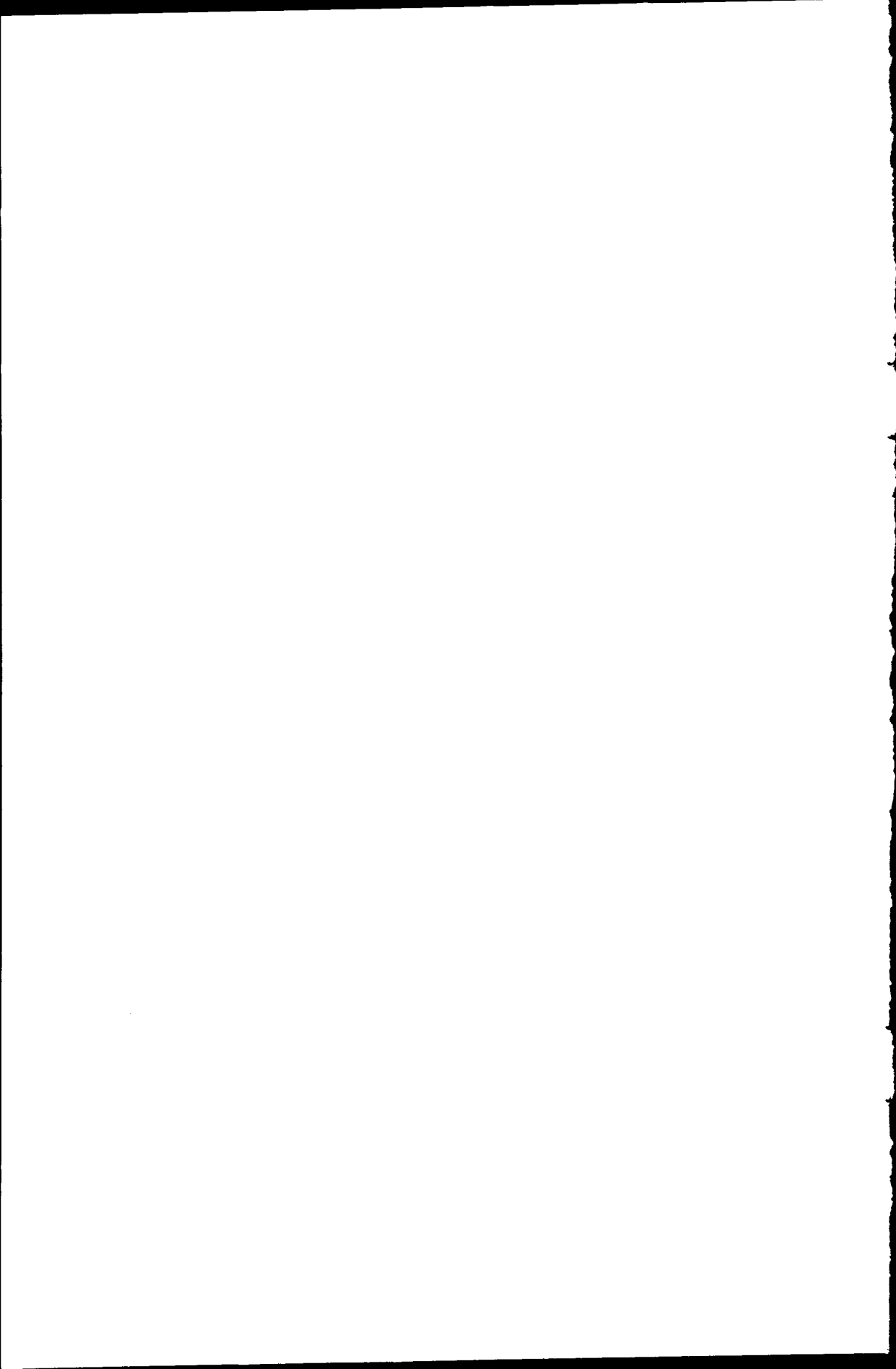
CONTENT

Act—

PAGE

The Environmental Management and Co-ordination
(Amendment) Act, 2015.....51





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

No. 5 of 2015

Date of Assent: 27th May, 2015

Date of Commencement: 17th June, 2015

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

ENACTED by the Parliament of Kenya, as follows—

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

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

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

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

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

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

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

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

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

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

Short title.

Amendment
of section 2
of No. 8 of
1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“person” means a legal person;

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

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

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

No. 47 of 2013

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

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

3. Section 3 of the principal Act is amended—

Amendment
of section 3 of
No. 8 of 1999.

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

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

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

(c) in subsection (3), by—

(i) deleting the words “ If a person alleges that the entitlement conferred under subsection (1) has been, is being or is likely to be contravened in relation to him” and substituting therefor the words “If a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, in relation to him”; and

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

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

Access to information.

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

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

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

Repeal of section 4 of No. 8 of 1999.

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

Amendment of section 5 of No. 8 of 1999.

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

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

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

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

Repeal of section 6 of No. 8 of 1999.

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

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

Headquarters.

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

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

Amendment of section 9 of No. 8 of 1999.

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

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

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

10. Section 10 of the principal Act is amended—

Amendment
of section 10 of
No. 8 of 1999.

(a) in subsection (1) (c) by—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Remuneration of the Director-General and Directors.

14. The Director-General and the Directors of the Authority shall be paid such salaries and allowances, as may, from time to time, be determined by the Board on the advice of the Salaries and Remuneration Commission.

13. Section 23 of the principal Act is amended—

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

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

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

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

No. 18 of 2012

14. Section 24 of the principal Act is amended—

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

(a) in subsection (3)—

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

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

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

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

Amendment
of section 26 of
No. 8 of 1999.

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

Amendment
of section 27 of
No. 8 of 1999.

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

Amendment
of section 28 of
No. 8 of 1999.

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

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

Secretary”; and

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

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

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

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

County
Environmental
Committee.

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

(2) Every County Environment Committee shall consist of—

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

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

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

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

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

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

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

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

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

Functions of the
County
Environment
Committee.

30. The County Environment Committee shall—

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

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

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

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

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

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

Amendment of section 32 of No. 8 of 1999.

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

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

Amendment of section 33 of No. 8 of 1999.

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

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

National
Environment Action
Plan.
National

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

2015

Environmental Management and Co-ordination (Amendment)

No. 5

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

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

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

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

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

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

Repeal of section 39 of No. 8 of 1999.

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

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

County environment action plan.

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

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

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

environment action plan referred to in section 37.

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

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

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

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

Contents of county environment action plan.

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

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

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

Purpose of Environmental Action Plans.

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

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

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

Monitoring
compliance with
Environmental Plans.

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

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

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

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

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

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

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

28. Section 42 of the principal Act is amended -

Amendment of
section 42 of No.
8 of 1999.

(a) in subsection (1)—

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

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

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

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

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

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

29. Section 43 of the principal Act is amended—

Amendment of
section 43 of No.
8 of 1999.

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

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

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

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

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

Amendment of section 45 of No. 8 of 1999.

31. Section 48 of the principal Act is amended—

Amendment of section 48 of No. 8 of 1999.

(a) in subsection (1), by—

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

No.7 of 2005

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

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

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

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

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

Amendment of section 49 of No. 8 of 1999.

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

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

Amendment of section 50 of No. 8 of 1999.

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

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

Amendment of section 51 of No. 8 of 1999.

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

Amendment of section 52 of No. 8 of 1999.

36. Section 53 of the principal Act is amended—

Amendment of section 53 of No. 8 of 1999.

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

(b) in subsection (2)—

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

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

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

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

conservation of the environment and natural resources;

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

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

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

Amendment of section 54 of No. 8 of 1999.

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

38. Section 55 of the principal Act is amended—

Amendment of section 55 of No. 8 of 1999.

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

any other way escape into the Coastal Zone, any person responsible for management of the polluting or hazardous substances shall be liable-

- (a) for any resultant damage; and
- (b) for the cost of any measures reasonably taken after the release or escape for the purpose of preventing, reversing or minimising any damage caused by such discharge, release or escape; and
- (c) for any damage caused by any measures so taken.

(9) Where there arises a grave and imminent threat or danger of damage of discharge, release or escape of polluting or hazardous substances into the Coastal Zone, any person responsible for management of the polluting or hazardous substances shall be liable—

(a)

- (a) for the cost of any measures reasonably taken for the purpose of preventing, minimising or controlling any such damage; and
- (b) for any damage caused by any measures so taken.

39. Section 56 of the principal Act is amended—

Amendment of section 56 of No. 8 of 1999.

- (a) in subsection (1), by deleting the words “Authority shall in consultation with the relevant lead agencies,” and substituting therefor the words “ Cabinet Secretary in consultation with the Authority”;
- (b) in subsection (2), by deleting the words “Authority shall, in consultation with the relevant lead agencies,” and substituting therefor the words “ Cabinet Secretary in consultation with the Authority”.

40. The principal Act is amended by inserting a new section immediately after section 56—

Insertion of section 56A in No. 8 of 1999.

Guidelines on climate
change.

56 A. The Cabinet Secretary shall, in consultation with relevant lead agencies, issue guidelines and prescribe measures on climate change.

41. The heading to Part VI of the principal Act is amended by deleting the words "Environmental Impact Assessment" and substituting therefor the words "Integrated Environmental Impact Assessment".

Amendment of
heading of Part VI
of No. 8 of 1999.

42. The principal Act is amended by inserting the following new section immediately after the heading of Part VI—

Insertion of
section 57A in
No. 8 of 1999.

Strategic
Environmental
Assessment.

57A. (1) All Policies, Plans and Programmes for implementation shall be subject to Strategic Environmental Assessment.

(2) For the avoidance of doubt, the plans, programmes and policies are those that are—

- (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;
- (b) determined by the Authority as likely to have significant effects on the environment.

(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.

(4) The Authority shall, in consultation with lead agencies and relevant

stakeholders, prescribe rules and guidelines in respect of Strategic Environmental Assessments.

43. Section 58 of the principal Act is amended—

Amendment of section 58 of No. 8 of 1999.

- (a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The proponent of any project specified in the Second Schedule shall undertake a full environmental impact assessment study and submit an environmental impact assessment study report to the Authority prior to being issued with any licence by the Authority:

Provided that the Authority may direct that the proponent forego the submission of the environmental impact assessment study report in certain cases.

- (b) in subsection (6), by deleting the words “in consultation with the Standards Enforcement and Review Committee”;

- (c) by inserting the following new subsection immediately after subsection (6)—

(6A) 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.

(6B) The Cabinet Secretary shall make regulations for the accreditation of experts on environmental impact assessments.

- (d) by inserting the following new subsection immediately after subsection (9)—

(10) A person who knowingly 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.

44. Section 59 of the principal Act is amended by—

Amendment of section 59 of No. 8 of 1999.

(a) deleting the words “for two successive weeks in the Gazette and in a newspaper circulating in the area or proposed area of the project” and substituting therefor the words “in the Gazette, in at least two newspapers circulating in the area or proposed area of the project and over the radio”;

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

(3) The Authority shall ensure that its website contains a summary of the report referred to in subsection (1).

45. Section 64 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 64 of No. 8 of 1999.

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

46. Section 67 of the principal Act is amended—

Amendment of section 67 of No. 8 of 1999.

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

(1) The Authority may, after the issuance of an environmental impact assessment licence—

(a) cancel or revoke such licence;
or

(b) suspend such licence, for such time, not more than twenty four months, where the licensee contravenes the provisions of the licence.

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

(1A) 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.

47. Section 68(1) of the principal Act is amended by inserting the words “or its designated agents” immediately after the word “Authority”.

Amendment of section 68 of No. 8 of 1999.

48. Section 69 of the principal Act is amended by inserting a new subsection immediately after subsection (1) as follows—

Amendment of section 69 of No. 8 of 1999.

(1A) Every lead agency shall establish an environmental unit to implement the provisions of this Act.

49. The principal Act is amended by repealing section 70.

Repeal of section 70 of No.8 of 1999.

50. The principal Act is amended by repealing section 71 and replacing it with the following new section—

Repeal and replacement of section 71 of No.8 of 1999.

Water quality standards.

71. (1) The Cabinet Secretary shall, on the recommendation of the Authority –

(a) establish criteria and procedures for the measurement of water quality;

(b) recommend minimum water quality standards for all the waters of Kenya and for different uses, including—

- (i) drinking water;
 - (ii) water for industrial purposes;
 - (iii) water for agricultural purposes;
 - (iv) water for recreational purposes;
 - (v) water for fisheries and wildlife; and
 - (vi) for any other prescribed water use;
- (c) analyse conditions for the discharge of effluents;
- (d) issue guidelines or regulations for the preservation of fishing areas, aquatic areas, water sources and reservoirs and other areas, where water may need special protection;
- (e) recommend measures necessary for the treatment of effluents before being discharged into the sewerage system; and
- (f) make any other recommendation that may be necessary for the monitoring and control of water pollution.

(2) The Authority shall consult and take into consideration the views of lead agencies before making the recommendations under subsection (1).

51. Section 74 (1) of the principal Act is amended by deleting the words "Local Authority" and substituting therefor the word "entity".

Amendment of
section 74 of No.
8 of 1999.

52. Section 75 (1) of the principal Act is amended by deleting the words "Local Authority" and substituting therefor the word "entity".

Amendment of
section 75 of No.
8 of 1999.

53. The principal Act is amended by repealing section 78 and replacing it with the following new section—

Repeal and replacement of section 78 of No. 8 of 1999.

Air quality standards

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

- (a) establish criteria and procedures for the measurement of air quality;
- (b) set—
 - (i) ambient air quality standards;
 - (ii) occupational air quality standards, emission standards for various sources;
 - (iii) criteria and guidelines for air pollution control for both mobile and stationary sources; and
 - (iv) any other air quality standards;
- (c) 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;
- (d) issue guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution; and
- (e) do all such things as appear necessary for the monitoring and controlling of air pollution.

(2) The Authority shall consult and take into consideration the views of lead

2015

Environmental Management and Co-ordination (Amendment)

No. 5

agencies before making the recommendations under subsection (1).

54. Section 79 of the principal Act is amended by inserting the words “Subject to the Constitution and any other relevant laws” immediately before the words “The Minister”.

Amendment of section 79 of No. 8 of 1999.

55. Section 86 of the principal Act is amended by deleting the words “The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority measures necessary to” and substituting therefor the following words “The Cabinet Secretary shall, on the recommendation of the Authority”.

Amendment of section 86 of No. 8 of 1999.

56. Section 91 of the principal Act is amended—

Amendment of section 91 of No. 8 of 1999.

(a) in subsection (1), by deleting the words “Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority” and substituting therefor the words “Cabinet Secretary shall, on the recommendation of the Authority determine”; and

(b) in subsection (2), by deleting the words “Authority shall, on the recommendation of the Standards and Enforcement Review Committee” and substituting therefor the words “Cabinet Secretary shall, on the recommendation of the Authority”.

57. The principal Act is amended by repealing section 94 and replacing it with the following new section—

Amendment of section 94 of No. 8 of 1999.

Standards of pesticides and toxic substances.

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

(a) determine standards for the concentration of pesticide residues in raw agricultural commodities. For the purposes of this paragraph, raw agricultural commodities—

- (i) include fresh or frozen fruit and vegetables in their raw state, grains, nuts, eggs, raw milk, meat and other agricultural produce;
 - (ii) do not include any agricultural produce or good which is processed, fabricated or manufactured by cooking, dehydrating, milling, or by any other similar means;
- (b) establish 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.

2015

Environmental Management and Co-ordination (Amendment)

No. 5

58. The principal Act is amended by repealing section 101 and replacing it with the following new section—

Amendment of
section 101 of No.
8 of 1999.

Standards for noise.

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

- (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;
- (b) determine criteria and procedures for the measurement of noise and vibration pollution into the environment;
- (c) determine criteria and procedures for the measurement of sub-sonic vibrations;
- (d) determine standards for the emission of sub-sonic vibrations which are likely to have a significant impact on the environment;
- (e) issue guidelines for the minimization of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;
- (f) determine noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic boom, industrial and commercial activities;
- (g) determine measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f); and
- (h) issue guidelines for the abatement of unreasonable noise and vibration pollution emitted

into the environment from any source.

59. The principal Act is amended by inserting the following new section immediately after section 103—

Insertion of section 104 in No. 8 of 1999.

Radiation
Standards.
Cap. 243.

104. (1) Subject to the provisions of the Radiation Protection Act, the Cabinet Secretary, on the recommendation of the Authority, shall—

- (a) establish the standards for the setting of acceptable levels of ionizing and other radiation in the environment; and
- (b) establish criteria and procedures for the measurement of ionizing and other radiation.

(2) The Authority shall—

- (a) inspect and examine any area, place or premises or any vehicle, vessel, boat or any carrier of any description in or upon which the Authority has reasonable cause to believe that radioactive material or any source of ionizing radiation is stored, used, transported or disposed of;
- (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;
- (c) in collaboration with the Radiation Protection Board, conduct an ionizing radiation

monitoring programme and advise on ionizing and radiation control and protection measures;

- (d) maintain records of release of radioactive contaminants into the environment;
- (e) keep records of baseline data on radiation in the environment;
- (f) maintain a register of all radioactive substances imported into Kenya; and
- (g) do all such things as may be necessary for the monitoring and control of pollution from radiation.

60. Section 112 of the principal Act is amended—

- (a) in subsection (1), by inserting the words “and the Land Act, 2012” immediately after the word “ Act”;
- (b) by inserting the following new subsection immediately after subsection (5) –

(5A) 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.

61. Section 117 of the principal Act is amended—

- (a) in subsection 3(g), by inserting the words “or his designate” after the words “Director-General”;
- (b) in subsection 3(i), by deleting the words “three months” and substituting therefor the words “fourteen days”;
- (c) by inserting the following new subsection immediately after subsection (4)—

Amendment of section 112 of No. 8 of 1999.

No. 6 of 2012

Amendment of section 117 of No. 8 of 1999.

(5) In effecting arrest, the Authority may request the Inspector- General for such number of officers as it may require.

62. Section 118 of the principal Act is amended by—

- (a) deleting the words ‘Attorney-General’ wherever they occur and substituting therefor the words “Director of Public Prosecutions”;
- (b) inserting the words “section 29 of the Office of the Director of Public Prosecutions Act” immediately after the word “Constitution”.

Amendment of section 118 of No. 8 of 1999.

No. 2 of 2013.

63. Section 119 (3) of the principal Act is amended by deleting the words “on the advice of the Standards Enforcement Review Committee”.

Amendment of section 119 of No. 8 of 1999.

64. Section 124 of the principal Act is amended, by—

- (a) deleting the words “ direction and control of the Council, in consultation with relevant lead agencies” and substituting therefor the words “Treaty Making and Ratification Act”;
- (b) deleting subsection (2).

Amendment of section 124 of No. 8 of 1999.

No. 45 of 2012

65. The principal Act is amended, by inserting the following new section immediately after section 124—

Insertion of section 124A in No. 8 of 1999.

Transactions requiring Parliamentary ratification.

124A. (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.

(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.

(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—

(a) for the exploitation of wildlife resources and habitats; resources of gazetted forests, water resources, resources on community land and biodiversity resources; and

(b) in the case of a foreign national or company, land owned by such person of more than three hectares.

(4) The Cabinet Secretary may, by notice in the Gazette, specify additional environmental resources whose transactions require ratification by Parliament.

(5) Any agreements concluded before the promulgation of the Constitution and the coming into force of this Act may be reviewed within a period of two years.

66. Section 125 of the principal Act is amended—

Amendment of
section 125 of No.
8 of 1999.

(a) in subsection (1), by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) three persons with demonstrated competence in environmental matters, including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs.”

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

(5) The members of the Tribunal shall, in their first meeting, elect from amongst themselves the Vice-Chairperson to the Tribunal.

(6) The Chairperson and Vice-Chairperson shall be of opposite gender.

(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.

- (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.

- (9) The Chairperson may designate the Vice Chairperson and two other members to constitute a separate sitting of the Tribunal.”

67. Section 126 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of section 126 of No. 8 of 1999.

- (6) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.”

68. Section 128 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 128 of No. 8 of 1999.

- (1) Subject to section 125, the quorum for hearing or determining any cause or matter before the Tribunal under this Act shall be three members.

69. Section 129 of the principal Act is amended-

Amendment of section 129 of No. 8 of 1999.

- (a) in subsection (1), by deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) 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 regulations made thereunder.
- (b) in subsection (2), by inserting the words “or its agents” immediately after the words “committees of the Authority”.
- (c) in subsection (3) (c), by inserting the words “orders to enhance the principles of sustainable development and” immediately after the word “including”.

70. Section 134 of the principal Act is amended—

Amendment of section 134 of No. 8 of 1999.

- (a) by inserting the words “on the recommendation of the Salaries and Remuneration Commission” immediately after the words “Minister”;
- (b) by renumbering the existing provision as subsection (1) and inserting a new subsection as follows—
 - (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.

71. The Principal Act is amended by inserting the following new section immediately after section 134—

Insertion of section 134A in No. 8 of 1999.

Staff of the Tribunal.

134A. “There shall be such other staff of the Tribunal as may be necessary for the performance of its functions”.

72. Section 137 of the principal Act is amended by deleting the words “not more than twenty-four months, or to a fine of not more than five hundred thousand shillings or to both such fine and imprisonment” and substituting therefor the words “of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment.”

Amendment of section 137 of No. 8 of 1999.

73. Section 139 of the principal Act is amended by deleting the words “of not more than five hundred thousand shillings, or to imprisonment for a term of not more than twenty-four months, or to both such fine and imprisonment” and substituting therefor the words “of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment.”

Amendment of
section 139 of No.
8 of 1999.

74. Section 140 of the principal Act is amended by deleting the words “not more than five hundred thousand shillings, or to imprisonment for a term of not more than twenty-four months, or to both such fine and imprisonment” and substituting therefor the words “of not less than one year but not more than four years or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment.”

Amendment of
section 139 of No.
8 of 1999.

75. Section 142 of the principal Act is amended by deleting the words “not more than five hundred thousand shillings” and substituting therefor the words “not less than two million shillings but not more than than five million shillings”.

Amendment of
section 142 of No.
8 of 1999.

76. Section 143 of the principal Act is amended—

- (a) in the marginal note, by inserting the words “orders of the Tribunal” immediately after the word “orders”;
- (b) by renumbering section 143 as section 143 (1);
- (c) by inserting a new paragraph immediately after paragraph (c) as follows—
 - “(d) fails, neglects or refuses to comply with any order made by the Tribunal.”;
- (d) by deleting the words “not more than twelve months, or to a fine of not more than five hundred thousand shillings, or both” and substituting therefor the words “of not less than one year and not more than four years or to a fine of not less than two million shillings and not more than four million shillings or to both such fine and imprisonment.”;

Amendment of
section 143 of No.
8 of 1999.

2015

Environmental Management and Co-ordination (Amendment)

No. 5

(e) by renumbering the existing provision as subsection (1) and inserting the following new subsection—

(2) Failure by a lead agency to comply with a directive of the Authority issued under section 12 of this Act shall constitute an offence.

77. Section 144 of the principal Act is amended—

Amendment of section 144 of No. 8 of 1999.

(a) by deleting the words “who commits an offence against” and substituting therefor the word “contravenes”; and

(b) by deleting the words “more than eighteen months, or to a fine of not more than three hundred and fifty thousand shillings” and substituting therefor the words “of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment.”

78. The principal Act is amended by inserting a new section immediately after section 147—

Insertion of section 147A in No. 8 of 1999.

County legislation.

147 A. 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.

79. The principal Act is amended by repealing section 148 and replacing it with the following section—

Repeal and replacement of section 148 of No. 8 of 1999.

Effect of existing laws.

148. 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.

80. The principal Act is amended by repealing the Second Schedule and substituting therefor the following new Schedule—

Repeal and replacement of the Second Schedule to No. 8 of 1999.

SECOND SCHEDULE

(s 58)

Projects requiring submission of an Environmental Impact Assessment Study report**1. Changes in land use including**

- (a) Major changes in land use.
- (b) Large scale resettlement schemes.

2. Urban Development including

- (a) Designation of new townships.
- (b) Establishment of industrial estates.
- (c) Establishment of new housing developments exceeding 30 housing units.
- (d) Establishment or expansion of recreational areas in National Parks, National reserves, Forest and nature reserves and any areas designated as environmentally sensitive.
- (e) Shopping centres and complexes.

3. Transportation

- (a) All paved roads.
- (b) Construction of new roads in environmentally sensitive areas.
- (c) Railway lines.
- (d) Airports and airfields.
- (e) Oil and gas pipeline.
- (f) Water transport.
- (g) Construction of tunnels.

4. Dams, rivers and water resources including—

- (a) Any project located within a distance prescribed by a written law from a wetland, ocean, sea, lake, river, dam, stream, spring or any other water body.
- (b) Storage dams, barrages and piers.
- (c) River diversions and water transfer between catchments.
- (d) Large scale flood control schemes.
- (e) Drilling for the purpose of utilizing ground water resources including geothermal energy.

5. Aerial spraying**6. Mining including quarrying and open cast extraction of—**

- (a) Precious metals.
- (b) Gemstones.
- (c) Metalliferous ores.
- (d) Coal.
- (e) Phosphates.
- (f) Limestone and dolomite.
- (g) Large scale commercial stone and slate.
- (h) Commercial large scale harvesting of aggregate, sand, gravel, soil and clay.
- (i) Exploration for the production of petroleum in any form.
- (j) Extracting alluvial gold with use of mercury.
- (k) Geothermal energy exploration and production.

7. Forestry related activities

- (a) Timber harvesting.
- (b) Clearance of forest areas.
- (c) Reforestation/afforestation with alien species.
- (d) Introduction of alien species.
- (e) Excisions of gazetted forest for whatever purposes.
- (f) Any projects located within forest reserves such as construction of dams or other control structures that flood large areas of relatively un degraded areas.

8. Agriculture including

- (a) Large scale agriculture.
- (b) Introduction of new pesticides.
- (c) Pest control programs (large scale).
- (d) Widespread introduction of new crops and animals.
- (e) Widespread introduction of fertilizers.
- (f) Irrigated agriculture exceeding 50 ha.

2015 *Environmental Management and Co-ordination (Amendment)* No. 5

- (g) Major developments in biotechnology including the introduction and testing of genetically modified organisms.

9. Processing and Manufacturing Industries including—

- (a) Mineral processing, reduction of ores and minerals.
- (b) Smelting and refining of ores and minerals.
- (c) Foundries.
- (d) Large scale brick and earth ware manufacture.
- (e) Cement works and lime processing.
- (f) Glass works.
- (g) Explosive plants.
- (h) Fertilizer manufacture or processing.
- (i) Oil refineries and petrochemical works.
- (j) Large scale tanning and dressing of hides and skins.
- (k) Large scale abattoirs (more than 15 animals/day) and meat processing plants.
- (l) Large scale brewing and malting.
- (m) Bulk grain processing and storage
- (n) Large scale fish processing plants.
- (o) Pulp and paper mills.
- (p) Large scale food processing plants.
- (q) Plants for manufacture of assembly of motor vehicles.
- (r) Plants for the construction and repair of aircrafts or railway equipment.
- (s) Plants for the manufacture of tanks, reservoirs and sheet metals containers.
- (t) Plants for the manufacture of coal brickets.
- (u) Plants for the manufacturing of batteries.
- (v) Chemical works and processing plants.
- (w) Plants for the manufacture or assembly of motor vehicles.

10. Electrical infrastructure including—

- (a) Electricity generation stations.

- (b) Electrical transmission lines above 66 KVA.
- (c) Electrical sub stations.
- (d) Pumped storage schemes.

11. Management of hydrocarbons

Bulk storage of natural gas, petroleum and any combustible and explosive fuels.

12. Waste disposal including—

- (a) Sites for solid waste disposal.
- (b) Sites for toxic, hazardous and dangerous wastes.
- (c) Waste water treatment plants.
- (d) Sewage treatment plants.
- (e) Works involving major atmospheric emissions.
- (f) Installations for disposal of industrial wastes.
- (g) Works emitting offensive odours.

13. Natural conservation areas—

- (a) Establishment of Protected areas, buffer zones, and wilderness Areas.
- (b) Commercial exploitation of natural fauna and flora.
- (c) Introduction of alien species of flora and fauna into ecosystems.
- (d) Actions likely to affect endangered species of flora and fauna.
- (e) Wetlands reclamation and or any projects likely to affect wetlands.
- (f) Projects located in indigenous forests including those outside of gazetted forests.
- (g) Projects that affect any areas designated as environmentally sensitive areas.

14. Nuclear reactors and nuclear plants

15. Marine areas

- (a) Mineral exploitation of resources in the marine areas.
- (b) Reclamation of marine areas.