



THE REPUBLIC OF KENYA

LAWS OF KENYA

NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT

NO. 4 OF 2016

Revised Edition 2020 [2016]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 4 OF 2016

NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title
2. Interpretation

PART II – THE NATIONAL DROUGHT MANAGEMENT AUTHORITY

3. Establishment of the Authority
4. Headquarters
5. Functions of the Authority
6. Powers of the Authority
7. Drought co-ordination institutional framework
8. Board of the Authority
9. Vacancy in the Board
10. Functions of Board
11. Conduct of business and affairs of the Board
12. Secretary of the Authority
13. Appointment of Staff
14. Delegation of powers of the Board
15. Remuneration of members of the Board
16. Code of conduct
17. Seal of the Authority

PART III – FINANCIAL PROVISIONS

18. Sources of funds for the Authority
19. Financial year of the Authority
20. Annual estimates
21. Accounts and audit
22. Investment of funds
23. Exemption from charges

PART IV – MISCELLANEOUS PROVISIONS

24. Annual report
25. Publication of information
26. Conflict of interest
27. Protection from personal liability
28. Legal proceedings against the Authority
29. Offences and penalties
30. Regulations

PART V – SAVINGS, TRANSITION AND REPEAL

31. Savings and transition
32. Repeal

SCHEDULES

NO. 4 OF 2016

NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT

[Date of assent: 1st April, 2016.]

[Date of commencement: 21st April, 2016.]

AN ACT of Parliament to establish the National Drought Management Authority, to provide for the membership, powers and functions of the Authority and for connected purposes

[Act No. 4 of 2016, Act No. 18 of 2018, Act No. 12 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Drought Management Authority Act, 2016.

2. Interpretation

In this Act, unless the context otherwise requires—

"Authority" means the National Drought Management Authority established under section 3;

"Board" means the Board of the Authority established under section 8;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to drought management;

"Chairperson" means the chairperson of the Board established under section 8;

"former Authority" means the Authority established under paragraph 3 of the National Drought Management Authority Order, 2011 made by Legal Notice Number 171 of 2011;

"former Board" means the Board established under paragraph 6 of the National Drought Management Authority Order, 2011 made by Legal Notice Number 171 of 2011;

"Fund" *deleted by Act No. 12 of 2020, s. 2.*;

"Order" means the National Drought Management Authority Order, 2011 made by Legal Notice Number 171 of 2011; and

"Secretary" means the Secretary to the Authority appointed under section 12.

[Act No. 12 of 2020, s. 2.]

PART II – THE NATIONAL DROUGHT MANAGEMENT AUTHORITY

3. Establishment of the Authority

(1) There is established a body to be known as the National Drought Management Authority.

(2) The Authority shall be the successor to the former Authority existing immediately before the commencement of this Act.

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

- (a) suing and being sued;
- (b) purchasing, acquiring, holding or disposing of property;
- (c) entering into contracts; and
- (d) doing or performing all such other acts as may be necessary for the proper performance of its functions under this Act.

4. Headquarters

- (1) The headquarters of the Authority shall be in Nairobi.
- (2) The Authority may establish offices in other counties.

5. Functions of the Authority

The functions of the Authority shall be to—

- (a) exercise overall coordination over all matters relating to drought management including implementation of policies and programmes relating to drought management;
- (b) coordinate drought response initiatives being undertaken by other bodies, institutions and agencies;
- (c) promote the integration of drought response efforts into development policies, plans, programmes and projects in order to ensure the proper management of drought;
- (d) develop, in consultation with stakeholders, an efficient, drought early warning system and operate the system;
- (e) facilitate national and county level drought contingency processes and the preparation of national and county level drought contingency plans;
- (f) establish and review, in consultation with stakeholders and relevant institutions and agencies, drought preparedness strategies;
- (g) identify, design and implement projects and programmes that shall strengthen resilience to drought and climate change;
- (h) publish and disseminate manuals, codes or guidelines relating to drought management and prevention or abatement of the extreme effects of drought on human, plant and animal life;
- (i) conduct research on drought management and generate, consolidate and disseminate drought management information;
- (j) render advice and technical support to persons, bodies or institutions engaged in drought management so as to enable them to carry out their responsibilities effectively;
- (k) coordinate with the national government where a drought situation requires the declaration of a national or international disaster;
- (l) coordinate the design and implementation of the country's regional and international commitments pertaining to drought management;
- (m) prepare and issue an annual report on the state of drought management in Kenya; and
- (n) perform such other functions as are incidental or conducive to the exercise, by the Authority, of any or all of the functions provided for under this Act.

6. Powers of the Authority

(1) The Authority shall have all powers necessary for the execution of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority shall have power to—

- (a) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (b) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements from such monies in accordance with the provisions of this Act;
- (c) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate so as to aid the furtherance of the purposes for which the Authority is established;
- (d) open and maintain a bank account or accounts for the funds of the Authority;
- (e) offer its services to any person upon such terms as the Authority may from time to time determine;
- (f) take appropriate actions that aim at minimizing drought induced risks and building drought and climate change resilience among communities; and
- (g) obtain, collate and publish information from any public or non-governmental organization whose aim is to build drought and climate change resilience and respond to drought and climate change risks.

7. Drought co-ordination institutional framework

(1) The Authority shall, in the performance of its functions—

- (a) facilitate co-ordination frameworks at national and county levels of government by providing appropriate policy guidance; and
- (b) ensure that action taken by all stakeholders in response to drought and climate change risks is timely, harmonized and effective.

(2) *deleted by Act No. 12 of 2020, s. 3 (b).*

[Act No. 12 of 2020, s. 3.]

8. Board of the Authority

(1) The management of the Authority shall vest in a Board which shall comprise

-
- (a) a Chairperson appointed by the President;
 - (b) the Principal Secretary in the ministry for the time being responsible for matters relating to drought management or a person designated by the Principal Secretary;
 - (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a person designated by the Principal Secretary;
 - (d) four persons appointed by the Cabinet Secretary;
 - (e) one person who shall be nominated by the Council of County Governments; and

(f) the Secretary.

(2) A person shall qualify for appointment under subsection (1)(a) or (d) if the person—

- (a) holds a degree from a recognized university;
- (b) has at least ten years experience in the relevant field;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) is not a State officer.

(3) In appointing the members of the Board under subsection (1)(a) and (d), the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.

(4) The members of the Board shall, at the first meeting of the Board and whenever need arises, elect a vice-chairperson from amongst the members appointed under subsection (1)(d).

(5) The chairperson and the members of the Board appointed under subsection (1)(d) and (e) shall hold office for a term of four years and shall be eligible for reappointment for a further and final term of four years.

[Act No. 18 of 2018, Sch.]

9. Vacancy in the Board

(1) The office of the chairperson or of a member of the Board appointed under section 8(1)(d) shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the Cabinet Secretary resigns from office;
- (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
- (d) is absent from three consecutive meetings of the Board without good cause; or
- (e) is removed in accordance with the provisions of the Constitution.

(2) The Cabinet Secretary shall as soon as practicable notify every resignation, vacancy or termination in the *Gazette*.

(3) Where a vacancy occurs in the membership of the Board, the appointment procedure provided for in this Act shall, with necessary modifications, apply.

10. Functions of Board

The Board shall—

- (a) formulate policies to achieve its mandate;
- (b) provide strategic direction, leadership and oversight to the secretariat; and
- (c) undertake such activities as may be necessary for the discharge of its functions and the exercise of its powers.

11. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

12. Secretary of the Authority

(1) There shall be a Secretary of the Authority who shall be appointed by the Board through an open, transparent and competitive recruitment process.

(2) A person shall be qualified for appointment as the Secretary if the person—

- (a) holds a degree from a recognized university;
- (b) has at least ten years post-qualification experience;
- (c) has at least five years experience in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Secretary shall, in the performance of the functions and duties of office, be accountable to the Board.

(5) The Secretary shall be—

- (a) the chief executive officer of the Authority and shall be responsible for the day to day management of the Authority;
- (b) the secretary of the Board;
- (c) the head of the secretariat;
- (d) the custodian of all of the Authority's records;
- (e) responsible for—
 - (i) executing decisions of the Board;
 - (ii) facilitating, coordinating and ensuring execution of the Authority's mandate;
 - (iii) preparing and submitting for approval, by the Board, programmes of work for the achievement of the Authority's mandate;
 - (iv) ensuring staff compliance with public ethics and values; and
 - (v) the performance of such other duties as may be assigned by the Board or by any other written law.

(6) The Secretary shall hold office for a period of five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for reappointment for a further and final term of five years.

(7) The Secretary may be removed from office by the Board only on grounds of—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) bankruptcy; or
- (d) incompetence.

(8) Prior to removal under subsection (7), the Secretary shall be—

- (a) informed, in writing, of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

(9) Where the Board does not intend to re-appoint the Secretary after the first term, the Board shall notify the Secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

13. Appointment of Staff

(1) The Authority may appoint such professional, technical and administrative officers and support staff as may be necessary for the proper discharge of its functions under this Act on such terms and conditions as the Board may determine.

(2) The Board may whenever it deems it necessary for the better performance of the functions of the Authority, request the Public Service Commission to second to the Authority such number of public officers as it may consider adequate for its purposes.

(3) The Board shall ensure that in the appointment of its staff —

- (a) not more than two-thirds of the staff shall be of the same gender;
- (b) the regional and other diversity of the people of Kenya is taken into account; and
- (c) persons with disabilities are afforded adequate and equal opportunities.

[Act No. 18 of 2018, Sch.]

14. Delegation of powers of the Board

Subject to this Act, the Board may, either generally or in a particular case, delegate to a member of the Board or to an 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.

15. Remuneration of members of the Board

The remuneration payable to members of the Board shall be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

16. Code of conduct

Members of the Board and the secretariat of the Authority shall subscribe to the code of conduct as the Board may, by regulations, prescribe.

17. Seal of the Authority

(1) The seal of the Authority shall be kept in the custody of the Secretary.

(2) The affixing of the seal shall be authenticated by the chairperson of the Board and the Secretary.

(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

(4) Notwithstanding subsection (2), the Board shall, in the absence of the chairperson or the Secretary, nominate one member of the Board to authenticate the seal on behalf of either the chairperson or the Secretary.

(5) A deed, instrument, contract or other document executed in accordance with subsection (2) shall bind the Board.

PART III – FINANCIAL PROVISIONS

18. Sources of funds for the Authority

The funds of the Authority shall be -

- (a) such monies as may be appropriated by Parliament;
- (b) such monies as may accrue to or vest in the Authority in the course of the exercise of its powers or performance of its functions under this Act;
- (c) such monies including fees as may be payable to the Authority pursuant to this Act or any other written law; and
- (d) such grants and donations, gifts or bequests as may be given to the Authority.

[Act No. 12 of 2020, s. 4.]

19. Financial year of the Authority

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

20. Annual estimates

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

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

- (a) payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Authority;
- (b) payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Authority;
- (c) proper maintenance of the buildings and grounds of the Authority;
- (d) maintenance, repair and replacement of the equipment and other property of the Authority; and
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

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

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Cabinet Secretary.

21. Accounts and audit

(1) The Board shall cause to be kept proper books and other records of account of the income, expenditure, assets and liabilities of the Authority.

(2) Within three months of the end of each financial year the Board shall submit to the Auditor-General the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (No. 12 of 2003).

22. Investment of funds

(1) The Board may invest any of the funds of the Authority in such manner as the Board may from time to time approve.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Authority.

23. Exemption from charges

The Cabinet Secretary may exempt the Authority from such taxes, duties, fees or other charges as the Cabinet Secretary may, by notice in the Gazette, specify.

PART IV – MISCELLANEOUS PROVISIONS

24. Annual report

(1) The Board shall, within three months of the end of a financial year, prepare and submit to the Cabinet Secretary an annual report on the operations of the Authority for the preceding year.

(2) The annual report submitted under subsection (1) shall include—

- (a) the financial statements of the Authority; and
- (b) a detailed report of the activities of the Authority.

(3) The Cabinet Secretary shall, within thirty days of receipt of the annual report, cause the report to be laid before the National Assembly.

25. Publication of information

(1) The Board shall publish and publicize all important information within the mandate of the Authority that affects the nation.

(2) A request for information in the public interest by a citizen—

- (a) shall be addressed to the Secretary or such other person as the Board may for that purpose designate and may be subject to the payment of a reasonable fee in instances where the Authority incurs an expense in providing the information; and
- (b) may be subject to confidentiality requirements of the Board.

(3) Subject to Article 35 of the Constitution, the Board may decline to give information to an applicant where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Board;
- (c) the prescribed fee is not paid; or
- (d) the applicant fails to satisfy any confidentiality requirements by the Board.

26. Conflict of interest

(1) If a person is present at a meeting of the Board or a committee of the Board at which the matter that is the subject of consideration and is one in which that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as practicable after commencement of the meeting, declare such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on such matter.

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

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

(4) A member of the Board and the staff of the Authority shall not transact any business or trade with the Authority.

27. Protection from personal liability

(1) No matter or thing done by a member of the Board or a member of staff or agent of the Authority shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of sub-section (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury caused by the exercise of any of the powers or functions conferred by this Act or any other written law.

28. Legal proceedings against the Authority

(1) Proceedings against the Authority shall be deemed to be proceedings against the Government and shall be subject to the Government Proceedings Act (Cap. 40).

(2) Any notice or other processes in respect of legal proceedings under subsection (1) shall be served upon the Secretary of the Authority.

29. Offences and penalties

A person who—

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Authority in exercise of the powers or the performance of the functions of the Authority under this Act;
- (b) willfully obstructs a member of the Board or an employee or agent of the Authority in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Authority in exercise of the powers or the performance of the functions of the Authority under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years or to both.

30. Regulations

(1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) For the purposes of Article 94(6) of the Constitution—

- (a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;
- (b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act, 2013 (No. 23 of 2013).

PART V – SAVINGS, TRANSITION AND REPEAL**31. Savings and transition**

On the commencement of this Act—

- (a) all assets and liabilities of the former Authority shall be transferred to and shall vest in the Authority;
- (b) an agreement, whether in writing or not, a deed, bond or other instrument to which the former Authority was a party to or which affected the rights or obligations of the former Authority immediately before the commencement of this Act shall have effect as if the Authority were a party to it or affected by it insofar as the former Authority was a party to it or was affected by it;
- (c) any proceedings pending immediately before the commencement of this Act to which the former Authority was a party may be continued as if the Authority was a party to those proceedings;
- (d) the person who immediately before the commencement of the Act held the office of chairperson of the former Board, appointed under paragraph 6 of the Order, shall, subject to the provisions of this Act, serve as the chairperson of the Board of the Authority under section 7 (1) (a) ;
- (e) a person who immediately before the commencement of the Act held the office of member of the former Board, appointed under paragraph 6 (d) of the Order, shall, subject to the provisions of this Act, serve as a member of the Board under section 7(1)(d);
- (f) the person who immediately before the commencement of the Act held the office of Chief Executive Officer of the former Authority, appointed under paragraph 8 of the Order, shall, subject to the provisions of this Act, serve as the Secretary of the Authority under section 11; and
- (g) a person who served as a staff member of the former Authority shall, subject to the provisions of this Act, continue in office as a staff member of the Authority under section 12.

32. Repeal

On the commencement of this Act, the Order shall stand repealed.

SCHEDULE

[Section 11.]

**PROVISIONS AS TO THE CONDUCT OF THE
BUSINESS AND AFFAIRS OF THE BOARD**

1. Meetings of the Board

- 1.(1) The Board shall hold such number of meetings at such places and at such times as the Board shall consider necessary for the proper discharge of its functions.
- (2) Notwithstanding paragraph 1, the Board shall meet not less than four times in each financial year.
- (3) A meeting of the Board shall be held on such date and at such time as the chairperson shall decide.
- (4) Unless the majority of the total membership of the Board otherwise agree, at least fourteen days notice shall be given prior to a meeting of the Board.

2. Special meetings

Notwithstanding the provisions of paragraph 1, the chairperson or any three members may call a special meeting whenever it is expedient for the transaction of the business of the Board by giving not less than seven days notice to the members.

3. Presiding at meetings

- 3.(1) The chairperson shall preside at all meetings of the Board.
- (2) In the absence of the chairperson at a meeting, the vice-chairperson shall preside at that meeting of the Board.
- (3) In the absence of the chairperson and the vice-chairperson at a meeting, the members present shall elect one of their number to preside at that meeting of the Board.

4. Quorum at meetings

The quorum for the conduct of business at a meeting of the Board shall be half of the members of the Board.

5. Voting

- 5.(1) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by the concurrence of a majority of votes of the members present.
- (2) In the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

6. Vacancies and defects in appointment

Proceedings of the Board shall not be invalid by reason only of a vacancy in the membership of the Board or by reason of a defect in the appointment of a member.

7. Records

The Secretary shall keep a record of all proceedings and meetings of the Board.
