

# THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999 No 8 of 1999

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No 8 of 1999

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### ARRANGEMENT OF SECTIONS

#### Sections

#### PART I – PRELIMINARY

1 – Short title.

2 – Interpretation.

#### PART II – GENERAL PRINCIPLES

3 – Entitlement to a clean and healthy environment.

#### PART III – ADMINISTRATION

##### *The National Environment Council*

4 – Establishment of the National Environment Council.

5 – Functions of the Council.

6 – Procedure of the Council.

##### *The Authority*

7 – Establishment of the National Environment Management Authority.

8 – Headquarters.

9 – Objects and functions of the Authority.

10 – Board of Authority.

11 – Powers of the Authority.

12 – Powers in respect of lead agencies.

13 – Conduct of business and affairs of the Authority.

14 – Remuneration of Director General and Directors.

15 – Delegation by the Authority.

16 – Staff of the Authority.

17 – The common seal of the Authority.

18 – Protection from personal liability.

19 – Liability of the Authority for damages.

20 – General Fund.

21 – Financial year.

22 – Annual estimates.

23 – Accounts and audit.

24 – National Environment Trust Fund.

25 – National Environment Restoration Fund.

26 – Investment of funds and disposal of assets.

27 – Annual Financial Report.

28 – Deposit Bonds.

##### *Provisional and District Environment Committees*

29 – Provincial and District Environment Committees.

30 – Functions of Provincial and District Environment Committees.

31 – Public Complaints Committees.

32 – Functions of the Complaints Committee.

33 – Powers of the Complaints Committee.

34 – Proceedings of the Complaints Committee privileged.

35 – Disclosure of interest.

36 – Remuneration and other expenses of the Complaints Committee.

#### PART IV – ENVIRONMENTAL PLANNING

37 – National Environment Action Plan Committee.

38 – Provisions of the National Environment Action Plan.

39 – Provisional Environment Action Plans.

40 – District Environment Action Plans.

41 – Contents of Provisional and District Environment Action Plans.

#### PART V – PROTECTION AND CONSERVATION OF THE ENVIRONMENT

42 – Protection of rivers, lakes and wetlands.

43 – Protection of traditional interests.

44 – Protection of hill tops, hill sides, mountain areas and forests.

45 – Identification of hilly and mountainous areas.

46 – Re-forestation and afforestation of hill tops, hill slopes and mountainous areas.

47 – Other measures for management for hill tops, hill sides and mountainous areas.

48 – Protection of forests.

49 – Conservation of energy and planting of trees or woodlots.

50 – Conservation of biological diversity.

51 – Conservation of biological resources *in situ*.

52 – Conservation of biological resources *ex situ*.

53 – Access to genetic resources of Kenya.

54 – Protection of environmentally significant areas.

55 – Protection of the coastal zone.

56 – Protection of the ozone layer.

57 – Fiscal incentives.

## **PART VI – ENVIRONMENTAL IMPACT ASSESSMENT**

- 58 – Application for an Environmental Impact Assessment Licence.
- 59 – Publication of Environmental Impact Assessment.
- 60 – Comments on Environmental Impact Assessment report by Lead Agencies.
- 61 – Technical Advisory Committee on Environmental Impact Assessment.
- 62 – Further Environmental Impact Assessment.
- 63 – Environmental Impact Licence.
- 64 – Submission of fresh Environmental Impact Assessment report after Environmental Impact Assessment Licence issued.
- 65 – Transfer of Environmental Impact Assessment Licence.
- 66 – Protection in respect of an Environmental Impact Assessment Licence.
- 67 – Revocation, suspension or cancellation of Environmental Impact Assessment Licence.

## **PART VII – ENVIRONMENTAL AUDIT AND MONITORING**

- 68 – Environmental Audit.
- 69 – Environmental monitoring.

## **PART VIII – ENVIRONMENTAL QUALITY STANDARDS**

- 70 – Establishment of Standards and Enforcement Review Committee.
- 71 – Function of Standards and Enforcement Review Committee.
- 72 – Water pollution prohibition.
- 73 – Duty to supply plant information to the Authority.
- 74 – Effluents to be discharged only into sewerage system.
- 75 – Licence to discharge effluents.
- 76 – Cancellation of effluent discharge licence.
- 77 – Register of effluent discharge licences.
- 78 – Air quality standards.
- 79 – Controlled areas.
- 80 – Licensing emissions.
- 81 – Issue of emission licence.
- 82 – Emissions by motor vehicles and other conveyances.
- 83 – Additional licensing procedures.
- 84 – Cancellation of emission licence.
- 85 – Register of emission of licences.
- 86 – Standards for waste.
- 87 – Prohibition against dangerous handling and disposal of wastes.
- 88 – Application for waste licences.
- 89 – Licences for existing wastes disposal sites and plants.
- 90 – Court Orders to cease operation.
- 91 – Hazardous Wastes.
- 92 – Regulations of toxic and hazardous materials etc.

- 93 – Prohibition of discharge of hazardous substances, chemicals and materials or oil into the environment and spiller's liability.
- 94 – Standards of pesticides and toxic substances.
- 95 – Application for registration of pesticides and toxic substances.
- 96 – Application for registration of existing operations involving pesticides and toxic substances.
- 97 – Registration of pesticides and toxic substances.
- 98 – Offences relating to pesticides and toxic substances.

- 99 – Seizure of pesticides and toxic substances.
- 100 – Regulations regarding registration of pesticides and toxic substances.
- 101 – Standards for noise.
- 102 – Noise in excess of established standards prohibited.
- 103 – Exemptions in respect of noise standards.
- 104 – Standards for ionising and other radiation.
- 105 – Powers of inspectors relating to ionising radiation.
- 106 – Offences relating to ionising radiation.
- 107 – Standards for the control of noxious smells.

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

- 108 – Issues of environmental restoration orders.
- 109 – Contents of environmental restoration orders.
- 110 – Reconsideration of environmental restoration order.
- 111- Issue of environmental restoration order by a court.
- 112 – Environmental easements and environmental conservation orders.
- 113 – Application for environmental easement.
- 114 – Enforcement of environmental easements.
- 115 – Registration of environmental easements.
- 116 – Compensation for environmental easements.

## **PART X – INSPECTION, ANALYSIS AND RECORDS**

- 117 – Appointment of Environmental Inspectors.
- 118 – Environmental Inspector's powers to prosecute.
- 119 – Procedures for laboratory analysis of samples.
- 120 – Certificate of analysis and its effect.
- 121 – Records to be kept.
- 122 – Transmission of records to the Authority.
- 123 – Public Access to records transmitted to the Authority.

## **PART XI – INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS**

- 124 – Conventions, agreements and treaties on environment.

## **PART XII – NATIONAL ENVIRONMENT TRIBUNAL**

- 125 – Establishment of the National Environment Tribunal.

126 – Proceedings of the Tribunal.

127 – Awards of the Tribunal.

128 – Quorum of the Tribunal for determination.

129 – Appeals to the Tribunal.

130 – Appeals to the High Court.

131 – Power to appoint Environment Assessors.

132 – Immunity.

134 – Remuneration of members of the Tribunal.

135 – Appointment of a secretary of the Tribunal.

136 – Powers to establish other Tribunals.

### **PART XIII – ENVIRONMENTAL OFFENCES**

137 – Offences relating to inspection.

138 – Offences relating to environmental impact assessment.

139 – Offences relating to records.

140 – Offences relating to standards.

141 – Offences relating to hazardous wastes, materials, chemicals and radioactive substances.

142 – Offences relating to pollution.

143 – Offences relating to environmental restoration orders, easements, and conservation orders.

144 – General Penalty.

145 – Offences by bodies corporate, partnership, principals and employees.

146 – Forfeiture, cancellation and other orders.

147 – Regulations.

148 – Existing laws relative to the environment.

### **FIRST SCHEDULE**

### **SECOND SCHEDULE**

### **THIRD SCHEDULE**

## **An ACT of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for the matters connected therewith and incidental thereto**

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

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

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

**NOW THEREFORE BE IT ENACTED** by the Parliament of Kenya, as follows:-

### **PART I - PRELIMINARY**

1. This Act may be cited as the Environmental Management and Co-ordination Act, 1999.
2. In this Act, unless the context otherwise requires –

“air quality” means the concentration prescribed under or pursuant to this Act of a pollutant in the atmosphere at the point of measurement;

“ambient air” means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

“analysis” means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or sub-sonic vibrations to determine the level or other characteristics of the noise or sub-sonic vibration or its effect on any segments of the environment;

“Analyst” means an analyst appointed or designated under section 119;

“annual report on the state of the environment” means the report prepared and issued under section 9;

“Authority” means the National Environment Management Authority established under section 7;

“beneficial use” means a use of the environment or any element or segment of the environment that is conducive to public health, welfare or safety and which requires protection from the effects of wastes, discharges, emissions and deposits;

“benefited environment” means that environment which has benefited through the imposition of one or more obligations on the burdened land;

“biological diversity” means the variability among living organisms from all sources including, terrestrial ecosystems, aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, among species and of ecosystems;

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

“burdened land” means any land upon which an environmental easement has been imposed;

“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and for the purposes of this Act includes industrial chemicals, pesticides, fertilizers and drugs;

“Coastal zone” means any area declared to be a protected coastal zone under section 55;

“Continental Shelf” means the exclusive economic zone established under section 4 of the Maritime Zones Act;

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

“Deposit Bond” means a deposit bond paid under section 28;

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

“Director” means a Director appointed under section 10;

“Director-General” means the Director-General of the Authority appointed under section 10;

“District Environment Action Plan” means the District Environment Action Plan prepared under section 40;

“District Environment Committee” means the District Environment Committee appointed under section 29;

“Ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;

“effluent” means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the aquatic environment;

“element” in relation to the environment means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

“environment” includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

“environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving or preserving the environment;

“environmental education” includes the process of recognising values and clarifying concepts in order to develop skills and attitudes necessary to understand and appreciate the inter-relatedness among man, his culture and his biophysical surroundings;

“environmental impact assessment” means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment;

“Environmental Inspector” means any environmental inspector appointed or designated under section 117;

“environmental management” includes the protection, conservation and sustainable use of the various elements or components of the environment;

“environmental monitoring” means the continuous or periodic determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long-term;

“environmental planning” means both long-term and short-term planning that takes into account environmental exigencies;

“environmental resources” includes the resources of the air, land, flora, fauna and water together with their aesthetical qualities;

“environmental restoration order” means an order issued under section 108;

“environmentally friendly” includes any phenomenon or activity that does not cause harm or degradation to the environment;

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

“exclusive economic zone” means the exclusive economic zone established and delimited under section 4 of the Maritime Zones Act;

“financial year” means the period of twelve months ending on the thirtieth June in every year;

“General Fund” means the General Fund established under section 20;

“genetic resources” means genetic material of actual or potential value;

“good environmental practice” means practice that is in accordance with the provisions of this Act or any other relevant law;

“hazardous substance” means any chemical, waste, gas, medicine, drug, plant, animal or micro-organism which is likely to be injurious to human health or the environment;

“hazardous waste” means any waste which has been determined by the Authority to be hazardous waste or to belong to any other category of waste provided for in section 91;

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

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

“intragenerational equity” means that all people within the present generation have the right to benefit equally from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment;

“lead agency” means any Government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management of any element of the environment or natural resource;

“local authority” has the meaning assigned to it in section 2 of the Local Government Act;

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

“mixture containing oil” means a mixture of substances or liquids with such oil content as may be specified under this Act or, if such oil content is not specified, a mixture with an oil content of one hundred parts or more in one million parts of the mixture;

“National Council of Non-Governmental Organisations” means the Council established by section 23 of the Non-Governmental Organizations Co-ordination Act, 1990;

“National Environment Action Plan” means the plan referred to in section 37;

“natural resources” includes resources of the air, land, water, animals and plants including their aesthetic qualities;

“noise” means any undesirable sound that is intrinsically objectionable or that may cause adverse effect on human health or the environment;

“occupational air quality” means the concentration prescribed under or pursuant to this Act of a substance or energy in the atmosphere within a structure or underground space in which human activities take place;

“occupier” means a person in occupation or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

“oil” includes –

(a) crude oil, refined oil, diesel oil, fuel oil and lubricating oil; and

(b) any other description of oil which may be prescribed;

“owner” in relation to any premises means –

(a) the registered proprietor of the premises;

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

(c) the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative;

(d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant; and

in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship; except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship’s operator, “owner” shall include such country and the master of the ship;

“ozone layer” means the layer of the atmospheric zone above the planetary boundary layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

“pollutant” includes any substance whether liquid, solid or gaseous which –

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

(b) is hazardous or potentially hazardous to human health or the environment; and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“polluter-pays principle” means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

“practicable” means reasonably practicable having regard, among other things, to local conditions and knowledge and the term “practicable means” include the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;

“precautionary principle” is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

“premises” include measures, buildings, lands, and hereditaments in every tenure and machinery, plant or vehicle used in connection with any trade carried on at any premises;

“project” includes any project, programme or policy that leads to projects which may have an impact on the environment;

“project report” means a summary statement of the likely environmental effect of a proposed development referred to in section 58;

“proponent” means a person proposing or executing a project, programme or an undertaking specified in the Second Schedule;

“proprietary information” means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Kenya or by any international treaty to which Kenya is a party;

“Provincial Director of Environment” means the Provincial Director of Environment appointed under section 16;

“Provincial Environment Committee” means the Provincial Environment Committee established under section 29;

“Public Complaints Committee” means the Public Complaints Committee established under section 31;

“radiation” includes ionising radiation and any other radiation likely to have adverse effects on human health and the environment;

“Regional development authority” means a regional development authority established by an Act of Parliament;

“regulations” mean regulations made under this Act;

“Restoration Fund” means the National Environment Restoration Fund established under section 25;

“segment” in relation to the environment means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

“ship” includes every description of vessel or craft or floating structure;

“soil” includes earth, sand, rock, shales, minerals, vegetation, and the flora and fauna in the soil and derivatives thereof such as dust;

“standard” means the limits of discharge or emissions established under this Act or under regulations made pursuant to this Act or any other written law;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems;

“sustainable use” means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

“territorial waters” means territorial waters provided for under section 3 of the Maritime Zones Act;

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

“Tribunal” means the National Environment Tribunal established under section 125;

“Trust Fund” means the National Environment Trust Fund established under section 24;

“waste” includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume composition or manner likely to cause an alteration of the environment;

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

“wetland” means areas permanently or seasonally flooded by water where plants and animals have become adapted;

## **PART II – GENERAL PRINCIPLES**

3. (1) Every person in Kenya is entitled to a clean and healthy environment and had the duty to safeguard and enhance the environment.
- (2) The entitlement to a clean and healthy environment under subsection (1) includes the access by any person in Kenya to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.
- (3) 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, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress and the High Court may take such orders, issue such writs or give such directions as it may deem appropriate to –

- (a) prevent, stop or discontinue any act or omission deleterious to the environment;
  - (b) compel any public officer
  - (c) to take measures to prevent or discontinue any act or omission deleterious to the environment;
  - (d) require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act;
  - (e) compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and
  - (f) provide compensation for any victims of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.
- (4) A person proceeding under subsection (3) of this section shall have the capacity to bring an action notwithstanding that such a person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury provided that such action –
- (a) is not frivolous or vexatious; or
  - (b) is not an abuse of the court process.
- (5) In exercising the jurisdiction conferred upon it under subsection (3), the High Court shall be guided by the following principles of sustainable development;
- (a) the principle of public participation in the development of policies, plans and processes for the management of the environment;
  - (b) the cultural and social principle traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and are not repugnant to justice and morality or inconsistent with any written law;
  - (c) the principle of international co-operation in the management of environmental resources shared by two or more states;
  - (d) the principles of intergenerational and intragenerational equity;
  - (e) the polluter-pays principle; and
  - (f) the pre-cautionary principle.

## **PART III – ADMINISTRATION**

### ***The National Environment Council***

4. (1) There is established a council to be known as the National Environment Council (hereinafter referred to as the "Council") which shall consist of-
- (a) the Minister who shall be the chairman;
  - (b) the Permanent Secretaries in the Ministries for the time being responsible for the matters specified in the First Schedule;
  - (c) two representatives of public universities in Kenya to be appointed by the Minister;
  - (d) two representatives of specified research institutions in Kenya to be appointed by the Minister;
  - (e) three representatives of the business community, to be appointed by the Minister, one of whom shall be a representative of oil marketing companies;
  - (f) two representatives of Non-Governmental Organisations active in the environmental field to be appointed by the Minister;
  - (g) the Director-General who shall be the secretary; and
  - (h) such number of other members as may, from time to time, be co-opted by the Minister to be members of the Council.
- (2) Every appointment under paragraph (f) of subsection (1) shall be made from a list of nominees submitted by the Non-Governmental Organizations Council.
- (3) Every appointment under paragraph (c), (d), (e), (f) and (h) of subsection (1) shall be by name and by notice in the Gazette and shall be for a renewable period of three years, but shall cease if the appointee –
- (a) serves the Minister with a written notice of resignation; or
  - (b) is absent from three consecutive meetings of the Council without the permission of the Minister; or
  - (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
  - (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council; or
  - (e) conducts himself in a manner deemed by the Minister, in consultation with the Council, to be inconsistent with membership of the Council; or

- (f) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors.
5. The Council shall –
- (a) be responsible for policy formulation and directions for purposes of this Act;
  - (b) set national goals and objectives and determine policies and priorities for the protection of the environment;
  - (c) promote co-operation among public departments, local authorities, private sector, Non-Governmental Organisations and such other organisations engaged in environmental protection programmes; and
  - (d) perform such other functions as are assigned under this Act.
6. (1) The Council shall meet at least three times in every financial year, at such place as it may deem appropriate for the transaction of its business.
- (2) The Minister shall preside at all meetings of the Council but in his absence a person appointed by him shall preside on his behalf at such a meeting.
  - (3) The secretary to the Council shall prepare and keep all the records of the business conducted at the meetings of the Council.
  - (4) The powers of the Council shall not be affected by any vacancy in the membership thereof nor by any defect in the appointment of a person purporting to be a member of the Council.
  - (5) Subject to this section, the Council shall regulate its own procedure.
- The Authority*
7. (1) There is established an Authority to be known as the National Environment Management Authority.
- (2) 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) taking, purchasing, charging and disposing of movable and immovable property;
  - (c) borrowing money;
  - (d) entering into contracts; and
  - (e) doing or performing all such other things or acts for the proper administration of this Act, which may lawfully be performed by a body corporate.
8. The Headquarters of the Authority shall be in Nairobi.
9. (1) The object and purpose for which the Authority is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.
- (2) Without prejudice to the generality of the foregoing, the Authority shall –
- (a) co-ordinate the various environmental management activities being undertaken by the lead agencies and promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya;
  - (b) take stock of the natural resources in Kenya and their utilisation and conservation;
  - (c) establish and review in consultation with the relevant lead agencies, land use guidelines;
  - (d) examine land use patterns to determine their impact on the quality and quantity of natural resources;
  - (e) carry out surveys which will assist in the proper management and conservation of the environment;
  - (f) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of environment, as the case may be;
  - (g) advise the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up the implementation of such agreements where Kenya is a party;
  - (h) undertake and co-ordinate research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey;
  - (i) mobilise and monitor the use of financial and human resources for environmental management;



- (j) identify projects and programmes or types of projects and programme, plans and policies for which environmental audit or environmental monitoring must be conducted under this Act;
  - (k) initiate and evolve procedures and safeguard for the prevention of accidents which may cause environmental degradation and evolve remedial measures where accidents occur;
  - (l) monitor and assess activities, including activities being carried out by relevant lead agencies, in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given;
  - (m) undertake, in co-operation with relevant lead agencies, programmes intended to enhance 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;
  - (n) publish and disseminate manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation;
  - (o) render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection so as to enable them to carry out their responsibilities satisfactorily;
  - (p) prepare and issue an annual report on the state of the environment in Kenya and in this regard may direct any lead agency to prepare and submit to it a report on the state of the sector of the environment under the administration of that lead agency;
  - (q) perform such other functions as the Government may assign to the Authority or as are incidental or conducive to the exercise by the Authority of any or all of the functions provided under this Act.
- (3) The Minister shall lay every annual report on the state of the environment prepared under subsection (2) (p) before the National Assembly as soon as reasonably practicable after its publication.
10. (1) The Authority shall be managed by a Board which shall consist of –
- (a) a chairman appointed by the President; and

- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to the authority or an officer of that Ministry designated in writing by the Permanent Secretary.
  - (c) a Director-General appointed by the President;
  - (d) three Directors who shall be officers of the Authority;
  - (e) seven members, not being public officers appointed by the Minister in consultation with the Council; and
  - (f) the Secretary of the Board, who shall be appointed by the Authority.
- (2) No person shall be appointed under subsections (1) (a), (b), (c), (d) or (e) unless such person holds at least a post-graduate degree from a recognised university in the field of environmental law, environmental science or natural resource management or a relevant social science and in the case of the Director-General, has at least fifteen years' working experience in the relevant field.
- (3) The members referred to under section (1) (a) and (e) should be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
- (4) The members appointed under paragraphs (a), (c) and (e) of subsection (1) shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.
- (5) The Board shall elect a vice-chairman from among the members appointed under paragraph (e) of subsection (1).
- (6) The Board shall meet at least four times in every financial year.
- (7) The Chairman shall preside at every meeting of the Board at which he is present, but in his absence the vice-chairman shall preside, and in his absence, the members present shall elect one of their member who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairman.
- (8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.
- (9) The quorum for the transaction of the business of the Board shall be seven members including the person presiding; and all acts, matters or things

- authorized or required to be done by the Board, shall be effected by a resolution passed by a majority of the members present and voting.
- (10) The Secretary to the Board shall not be entitled to vote on any matter before the Board.
- (11) Appointment of a member of the Board may be terminated by the appointing authority where the member -
- (a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
  - (b) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
  - (c) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or
  - (d) becomes, for any reason, incapable or incompetent of properly performing the functions of his office.
- (12) Where a member of the Board dies or resigns or otherwise vacates office before the expiry of his term of office, the appointing authority shall appoint another person in the place of such member.
- (13) Where the Director-General is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute therefore to act with the full powers of the Director-General until such time as the President determines that the incapacity has ceased.
- (14) (a) The Director-General shall be the chief executive of the Authority and shall, subject to this Act, be responsible for the day to day management of the affairs of the Authority.
- (b) A Director shall perform such functions as are conferred by this Act and such additional duties as may be assigned by the Director-General.
  - (c) 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 President.
- (15) Subject to subsections (6), (7), (8) and (9) the Board shall regulate its own Procedure.
11. The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to – control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (a) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
  - (b) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
  - (c) enter into association with other bodies or organisations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
  - (d) open a banking account or banking accounts for the funds of the Authority; and
  - (e) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 26.
12. The Authority may, after giving reasonable notice of its intention so to do, direct any lead agency to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under this Act or any other written law, in the field of environment and if the lead agency fails to comply with such directions, the Authority may itself perform or cause to be performed the duties in question, and the expense incurred by it in so doing shall be a civil debt recoverable by the Authority from the lead agency.
- 13.(1) Subject to this Act, the Authority shall regulate its own procedure.
14. The Authority shall pay the Director-General and the Directors such salaries and allowances as may, from time, be determined by the President, but those salaries and allowances shall not be altered to their detriment during their term of office.
15. Subject to this Act, the Authority may, by resolution either generally or in any particular case, delegate to any committee of the Authority or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.
16. The Authority may appoint such officers or other staff of the Authority as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Authority may determine.
17. The common seal of the Authority shall be kept in such custody as the Authority may direct and shall not be used except on the order of the Authority.
18. No matter or thing done by a member of the Authority or any officer, employee or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.
19. The Provisions of section 18 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or

any of his interests caused by the exercise of the powers conferred on the Authority by this Act or by any other written law or by the failure, whether wholly or partially, or any works.

- 20.(1) There shall be a general fund of the Authority which shall vest in the Authority.
- (2) There shall be paid into the general fund –
- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
  - (b) such sums as may be granted to the Authority by the Minister pursuant to subsection (3); and
  - (c) all monies from other source provided for or donated or lent to the Authority.
- (3) There shall be made to the Authority out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.
- (4) There shall be paid out of the general fund all sums required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its objectives, functions and duties.
21. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.
- 22.(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 provisions for the estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for –
- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;
  - (b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
  - (c) the proper maintenance of the buildings and grounds of the Authority;
  - (d) the maintenance, repair and replacement of the equipment and other property of the Authority; and
  - (e) the creation of such reserve funds to meet future contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or

equipment, or in respect of such other matter as the Authority may deem appropriate.

- (3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Authority shall not increase the annual estimates without the consent of the Minister.
- 23.(1) The Authority shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.
- (2) Within a period of four months from the end of each financial year, the Authority shall submit to the Auditor-General (Corporations) or to an auditor appointed under this section, 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.
- (5) The accounts of the Authority shall be audited and reported upon in accordance with section 29 and 30A of the Exchequer and Audit Act, by the Auditor-General (Corporations), or by an auditor appointed by the Authority with the approval of the Auditor-General (Corporations) given in accordance with section 29(2) (b) of the Exchequer and Audit Act.
- 24.(1) There is hereby established a fund to be known as the National Environment Trust Fund, (hereinafter referred to as the "Trust Fund").
- (2) The Trust Fund shall consist of –
- (a) such sums of money as may be received by the Trust Fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Trust Fund;
  - (b) such sums of money or other assets as may be specifically designated to the Trust Fund by the Authority out of its General Fund.
- (3) The Trust Fund shall be vested in the Authority and subject to this Act, shall be administered by a Board of five Trustees to be appointed by the Minister by a notice in the Gazette on such terms and conditions as he deems fit. The trustees shall be persons holding at least post-graduate degree from a recognised university in the field of environmental law, economics, environmental science or natural resource management at the time of their appointment.
- The object of the Trust Fund shall be to facilitate research intended to further the requirements of the environmental management, capacity building, environmental awards, environmental publications, scholarships and grants.

- (4) The Board of Trustees may, on the recommendation of the Council, determine that certain donations to the Trust Fund shall be applied specifically and reserved only for prizes and awards for exemplary services to the environment. Such prizes and awards shall be applied by the recipient exclusively to the management of the environment.
- 25.(1) There is hereby established a fund to be known as the National Environment Restoration Fund, (hereinafter referred to as "The Restoration Fund").
- (2) The Restoration Fund shall consist of:-
- (a) such proportion of fees or deposit bonds as may be determined by the Authority from time to time;
- (b) such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund.
- (3) The Restoration Fund shall be vested in the Authority and, subject to this Act, shall be administered by the Director-General. The object of the Restoration Fund shall be as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.
- (4) The Minister may, by notice in the Gazette, issue orders for the levying of funds from project proponents towards the Restoration Fund.
- 26.(1) Subject to this Act, the Authority may, invest any of its funds in securities in which trustees may, for the time being, invest trust funds or in any other securities which the Treasury may, from time to time, approve for that purpose.
- (2) Subject to this Act, the Authority may place on deposit with such bank or banks as it may determine, any moneys not immediately required for its purposes.
- (3) The assets of the Authority may be disposed of:-
- (a) if they are current assets, in the normal course of business carried on by the Authority;
- (b) where the disposal and utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with section 22;
- (c) by way of sale or otherwise with the approval of the Minister and the Treasury where such disposal has not been taken into account in the estimates.
- 27.(1) As soon as practicable and not later than three months after the expiry of the financial year, the Director-General shall submit to the Council a financial report concerning the activities of the Authority during such financial year.
- (2) The Report of the Director-General under subsection (1) shall include information on the financial affairs of the Authority and shall be appended to the Report:-
- (a) an audited statement of income and expenditure of the previous financial year;
- (b) estimates of income and expenditure of the Authority for the next ensuing financial year.
- (3) The Minister shall not later than fourteen days after the sitting of the National Assembly next after receipt of the Report referred to in subsection (1) lay it before the National Assembly.
- 28.(1) The Authority shall create a register of those activities and industrial plants and undertakings which have or are most likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices.
- (2) The Minister responsible for finance may, on the recommendations of the Council, prescribe that persons engaged in activities or operating industrial plants and other undertakings identified under subsection (1) pay such deposit bonds as may constitute appropriate security for good environmental practice.
- (3) The deposit bond determined in accordance with subsection (2) shall be refunded to the operator of the activity, industrial plant or any other undertaking by the Authority after such duration not exceeding twenty-four months without interest where the operator has observed good environmental practices to the satisfaction of the Authority.
- (4) The Authority may, after giving the operator an opportunity to be heard, confiscate a deposit bond where the operator is responsible for environmental practice that is in breach of the provisions of this Act, and the Authority may in addition cancel any licence issued to the operator under this Act if the Authority is satisfied that the operator has become a habitual offender.
- (5) Where an operator is dissatisfied with the confiscation of his deposit bond under this Act, he may refer the matter to a competent court of law.
- (6) The proceeds of every refundable deposit bond levied under this section shall be paid into the Restoration Fund and shall be treated as part of the Restoration Fund until refunded to the depositor subject to subsection (3) or confiscated by the Authority.
- (7) Any interest accruing from monies deposited into the Restoration Fund under this section shall be for the benefit of the Authority.

*Provincial and District Environment Committees*

29.(1) The Minister shall by notice in the Gazette, appoint Provincial and District Environment Committees of the Authority in respect of every province and district respectively.

(2) Every Provincial Environment Committee shall consist of –

- (a) the Provincial Commissioner of the Province who shall be the chairman;
- (b) the Provincial Director of Environment of the Province who shall be the Secretary;
- (c) one representative each of the Ministries responsible for the matters specified in the First Schedule at the provincial level;
- (d) a representative of every local authority whose area of jurisdiction falls wholly or partly within the province;
- (e) two representatives of farmers or pastoralists within the province to be appointed by the Minister;
- (f) two representatives of the business community operating within the concerned province appointed by the Minister;
- (g) two representatives of the non-governmental organisations engaged in environmental management programmes within the province appointed by the Minister in consultation with the National Council of Non-Governmental Organisations; and
- (h) a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the province.

(1) Every District Environment Committee shall consist of –

- (a) the District Commissioner of the district who shall be the chairman;
- (b) the District Environment Officer of the district who shall be the secretary;
- (c) one representative each of the Ministries for the time being responsible for the matters specified in the First Schedule at the district level;
- (d) a representative of every local authority whose area of jurisdiction falls wholly or partially within the district;
- (e) two representatives of farmers or pastoralists within the district to be appointed by the Minister;
- (f) two representatives of the business community in the district to be appointed by the Minister;
- (g) two representatives of the non-governmental organisations engaged in environmental management programmes, operating in the district, to be

appointed by the Minister in consultation with the National Council of Non-Governmental Organisation; and

- (h) two representatives of the community-based organizations engaged in environmental programmes operating in the district, to be appointed by the Minister.

30. The Provincial and District Environment Committee shall –

- (a) be responsible for the proper management of the environment within the province or district in respect of which they are appointed.
- (b) perform such additional functions as are prescribed by this Act or as may, from time to time, be assigned by the Minister by notice in the Gazette.

31. (1) There is hereby established a committee of the Authority to be known as the Public Complaints Committee (hereinafter referred to as “the Complaints Committee”) which shall consist of –

- (a) a Chairman appointed by the Minister and who shall be a person qualified for appointment as a Judge of the High Court of Kenya;
- (b) a representative of the Attorney-General;
- (c) a representative of the Law Society of Kenya;
- (d) a representative of non-governmental organisations appointed by the National Council of Non-Governmental Organisations and who shall be the secretary of the Complaints Committee;
- (e) a representative of the business community appointed by the Minister;
- (f) two members appointed by the Minister for their active role in environmental management.

(2) The members of the Complaints Committee, other than the chairman, shall hold office for a period of three years but shall be eligible for reappointment: Provided that no member shall hold office for more than two terms.

(3) A member of the Complaints Committee other than the member appointed under subsection (1) (b) may –

- (a) at anytime resign from office by notice in writing to the Minister through the chairman;
- (b) be removed from office by the Minister if the member –

(i) has been absent from three consecutive meetings of the Committee without permission from the chairman;

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

(iii) is incapacitated by prolonged physical or mental illness; or

(iv) is otherwise unable or unfit to discharge his functions.

(4) If a member of the Complaints Committee vacates office before the expiry of his term, the appointing authority shall appoint a suitable replacement thereof. Where a member of the Complaints Committee is unable to perform the

functions of his office due to any temporary incapacity which may be prolonged, the appointing authority may appoint a substitute for the member until such time as the Minister determines the incapacity has ceased.

(6) Subject to this Act, the Complaints Committee shall regulate its own procedure.

32. The functions of the Complaints Committee shall be –

(a) to investigate –

(i) any allegations or complaints against any person or against the Authority in relation to the condition of the environment in Kenya;

(ii) on its own motion, any suspected case of environmental degradation, and to make a report of its findings together with its recommendation thereon to the Council;

(b) to prepare and submit to the Council, periodic reports of its activities which report shall form part of the annual report on the state of the environment under section 9 (3); and

(c) to perform such other functions and exercise such powers as may be assigned to it by the Council.

33.(1) The Complaints Committee may, by notice in writing, require any person to –

(a) give to the Complaints Committee all reasonable assistance in connection with the investigation of any complaint under section 32; or

(b) appear before the Complaints Committee for examination concerning matters relevant to the investigation of any complaint under section 32.

(2) A Person who –

(a) refuses or fails to comply with the requirement of the Complaints Committee which is applicable to him, to the extent to which he is able to comply with it; or

(b) obstructs or hinders the Complaints Committee in the exercise of his powers under this Act; or

(c) furnishes information or makes a statement to the Complaints Committee which he knows to be false or misleading in any material particular; or

(d) when appearing before the Complaints Committee for examination, makes a statement which he knows to be false or misleading in any material particular

commits an offence.

A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding fifty thousand shillings.

(3) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable

to a fine of one thousand shillings for each day during which the offence continues.

34. No proceedings shall lie against the chairman or any member of the Complaints Committee in respect of anything done *bona fide* in the performance of the duties of the Complaints Committee under this Act.

35. (1) If a member of the Complaints Committee is directly or indirectly interested in any matter before the Complaints Committee and is present at a meeting of the Complaints Committee at which the matter is the subject of investigation, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions in respect of the matter, or be counted in the quorum of the meeting during the consideration of the matter.

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

36.(1) There shall be paid to the chairman and members of the Complaints Committee, such remuneration, fees or allowances for expenses as the Council may determine.

(2) The remuneration fees or allowances referred to in subsection (1) together with any other expenses incurred by the Complaints Committee in the execution of its functions under this Act shall be paid out of monies provided by Parliament for that purpose.

#### PART IV – ENVIRONMENTAL PLANNING

37.(1) There is established a committee of the Authority to be known as the National Environment Action Plan Committee and which shall consist of –

(a) the Permanent Secretary in the Ministry for the time being responsible for national economic planning and development who shall be the chairman;

(b) the Permanent Secretaries in the Ministries responsible for the matters specified in the First Schedule or their duly nominated representatives;

(c) four representatives of the business community to be appointed by the Minister;

(d) representatives of each of the institutions specified in the Third Schedule;

(e) five representatives of non-governmental organisations nominated by the National Council of Non-Governmental Organizations;

(f) representatives of specialised research institutions that are engaged in environmental matters as may be determined by the Minister; and

(g) a Director of the Authority who shall be the secretary.

- (2) The National Environment Action Plan Committee shall, after every five years, prepare a national environment action plan for consideration and adoption by the National Assembly.
38. The national environment action plan shall –
- (a) contain an analysis of the natural resources of Kenya with an indication as to any pattern of change in their distribution and quantity over time;
  - (b) contain an analytical profile of the various uses and value of the natural resources incorporating considerations of intergenerational and intragenerational equity;
  - (c) recommend appropriate legal and fiscal incentives that may be used to encourage the business community to incorporate environmental requirements into their planning and operational processes;
  - (d) recommend methods for building national awareness through environmental education on the importance of sustainable use of the environment and natural resources for national development;
  - (e) set out operational guidelines for the planning and management of the environment and natural resources;
  - (f) identify actual or likely problems as may affect the natural resources and the broader environment context in which they exist;
  - (g) identify and appraise trends in the development of urban and rural settlements, their impacts on the environment, and strategies for the amelioration of their negative impacts;
  - (h) propose guidelines for the integration of standards of environmental protection into development planning and management;
  - (i) identify and recommend policy and legislative approaches for preventing, controlling or mitigating specific as well as general adverse impacts on the environment;
  - (j) prioritise areas of environmental research and outline methods of using such research findings;
  - (k) without prejudice to the foregoing, be reviewed and modified from time to time to incorporate emerging knowledge and realities; and
  - (l) be binding on all persons and all government departments, agencies, state corporations or other organs of Government upon adoption by the National Assembly.
39. Every Provincial Environment Committee shall every five years, prepare a provincial environment action plan in respect of the province for which it is appointed, incorporating the elements of the relevant district environment action plans prepared under section 40 and shall submit such plan to the chairman of the National Environment Action Plan Committee for incorporation into the national environment action plan.

40. Every District Environment Committee shall, every five years, prepare a district environment action plan in respect of the district environment for which it is appointed and shall submit such plan to the chairman of the Provincial Environment Action Plan Committee for incorporation into the provincial environment action plan proposed under section 39.
41. Every provincial environment action plan and every district environment action plan prepared under section 39 and 40 respectively shall contain provisions dealing with matters contained in section 38 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) in relation to their respective province or district.

## PART V – PROTECTION AND CONSERVATION OF THE ENVIRONMENT

- 42.(1) No person shall, without prior written approval of the Director-General given after an environmental impact assessment, in relation to a river, lake or wetland in Kenya, carry out any of the following activities –
- (a) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake or wetland;
  - (b) excavate, drill, tunnel or disturb the river, lake or wetland;
  - (c) introduce any animal whether alien or indigenous in a lake, river or wetland;
  - (d) introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake or wetland;
  - (e) deposit any substance in a lake, river or wetland or in, on, or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake or wetland;
  - (f) direct or block any river, lake or wetland from its natural and normal course; or
  - (g) drain any lake, river or wetland.
- (2) The Minister may, by notice in the Gazette, declare a lake shore, wetland, coastal zone or river bank to be protected area and impose such restrictions as he considers necessary, to protect the lake shore, wetlands, coastal zone and river bank from environmental degradation. In declaring a lake shore, wetland, coastal zone or river bank a protected area, the Minister shall take into consideration the following factors –
- (a) the geographical size of the lake shore, wetland, coastal zone or river bank; and
  - (b) the interests of the communities resident around the lake shore, wetland, coastal zone or river bank concerned.

- (3) The Minister may, by notice in the Gazette, issue general and specific orders, regulations or standards for the management of river banks, lake shores, wetlands or coastal zones and such orders, regulations or standards may include management, protection, or conservation measures in respect of any area at risk of environmental degradation and shall provide for –
- (a) the development of an overall environmental management plan for a lake, river, wetland or coastal area, taking into account the relevant sectoral interests;
  - (b) measures for the prevention or control of coastal erosion;
  - (c) the conservation of mangrove and coral reef ecosystems;
  - (d) plans for the harvesting of minerals within the coastal zone, including strategies for the restoration of mineral sites;
  - (e) contingency plans for the prevention and control of all deliberate and accidental discharge of pollutants into the sea, lakes or rivers;
  - (f) plans for the protection of wetlands;
  - (g) the regulations of harvesting of aquatic living and non-living resources to ensure optimum sustainable yield;
  - (h) special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea and the Exclusive Economic Zone;
  - (i) promotion of environmentally friendly tourism; and
  - (j) the management of biological resources;
- (4) The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of the environment of lakes and rivers.
- (5) Any person who contravenes or fails to comply with any orders, regulations or standards issued under this section shall be guilty of an offence.
43. The Minister may, by notice in the Gazette, declare the traditional interests of indigenous communities customarily resident within or around a lake shore, wetland, coastal zone or river bank to be protected interests.
44. The Authority shall, in consultation with the relevant lead agencies, develop issue and implement regulations, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such regulations, guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain areas so as to protect water catchment areas, prevent soil erosion and regulate human settlement.
- 45.(1) Every District Environment Committee shall identify the hilly and mountainous areas under their jurisdiction which are at risk from environmental degradation.
- (2) A hilly or mountainous area is at risk from environmental degradation if –
- (a) it is prone to soil erosion;
  - (b) landslides have occurred in such an area;
  - (c) vegetation cover has been removed or is likely to be removed from the area at a rate faster than it is being replaced; or
  - (d) any other land use activity in such an area is likely to lead to environmental degradation.
- Each District Environment Committee shall notify the Director-General of the hilly and mountainous areas it has identified as being at risk from environmental degradation under subsection (1).
- (3) The Director-General shall maintain a register of hilly and mountainous areas identified under subsection (1) to be at risk from environmental degradation.
- 46.(1) Every District Environment Committee shall specify which of the areas identified in accordance with section 45 (1) are to be targeted for afforestation or reforestation.
- (2) Every District Environment Committee shall take measures, through encouraging voluntary self-help activities in their respective local community, to plant trees or other vegetation in any areas specified under subsection (1) which are within the limits of its jurisdiction.
- (3) Where the areas specified under subsection (1) are subject to leasehold or any other interest in land including customary tenure, the holder of that interest shall implement measures required to be implemented by the District Environment Committee including measures to plant trees and other vegetation in those areas.
- 47.(1) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the sustainable use of hill tops, hill slides and mountainous areas.
- (2) The guidelines issued and measures prescribed by the Authority under subsection (1) shall be by way of Gazette Notice and shall include those relating to –
- (a) appropriate farming methods;
  - (b) carrying capacity of the areas described in subsection (1) in relation to animal husbandry;
  - (c) measures to curb soil erosion;
  - (d) disaster preparedness in areas prone to landslides;
  - (e) the protection of areas referred to in subsection (1) from human settlements;



- (f) the protection of water catchment areas; and  
 (g) any other measures the Authority considers necessary.
- (3) The District Environment Committees shall be responsible for ensuring that the guidelines issued and measures prescribed under subsection (2) in respect of their districts are implemented.
- (4) Any person who contravenes any measure prescribed by the Authority under this section or who fails to comply with a lawful direction issued by a District Environment Committee under this section shall be guilty of an offence.
- 48.(1) Subject to subsection (2) the Director-General may, with the approval of the Director of Forestry, enter into any contractual arrangement with a private owner of any land on such terms and conditions as may be mutually agreed for the purposes of registering such land as forest land.
- (2) The Director-General shall not take any action, in respect of any forest or mountain area, which is prejudicial to the traditional interests of the indigenous communities customarily resident within or around such forest or mountain area.
49. The Authority shall, in consultation with the relevant lead agencies, promote the use of renewable sources of energy by –
- promoting research in appropriate renewable sources of energy;
  - creating incentives for the promotion of renewable sources of energy;
  - promoting measures for the conservation of non-renewable sources of energy; and
  - taking measures to encourage the planting of trees and woodlots by individual land users, institutions and by community groups.
50. The Authority shall, in consultation with the relevant lead agencies, prescribe measures necessary to ensure the conservation of biological diversity in Kenya and in this respect the Authority shall –
- identify, prepare and maintain an inventory of biological diversity of Kenya;
  - determine which components of biological diversity are endangered, rare or threatened with extinction;
  - identify potential threats to biological diversity and devise measures to remove or arrest their effects;
  - undertake measures intended to integrate the conservation and sustainable utilisation ethic in relation to biological diversity in existing government activities and activities by private persons;
- (e) specify national strategies, plans and government programmes for conservation and sustainable use of biological diversity;
- (f) protect indigenous property rights of local communities in respect of biological diversity; and
- (g) measure the value of unexploited natural resources in terms of watershed protection, influence on climate, cultural and aesthetic value, as well as actual and potential genetic value thereof.
51. The Authority shall, in consultation with the relevant lead agencies, prescribe measures adequate to ensure the conservation of biological resources *in-situ* and in this regard shall issue guidelines for –
- land use methods that are compatible with conservation of biological diversity;
  - the selection and management of protected areas so as to promote the conservation of the various terrestrial and aquatic ecosystems under the jurisdiction of Kenya;
  - selection and management of buffer zones near protected areas;
  - special arrangement for the protection of species, ecosystems and habitats threatened with extinction;
  - prohibiting and controlling the introduction of alien species into natural habitats; and
  - integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge.
52. The Authority shall, in consultation with the relevant lead agencies –
- prescribe measures for the conservation of biological resources *ex-situ* especially for those species threatened with extinction;
  - issue guidelines for the management of:-
    - germplasm banks;
    - botanical gardens;
    - zoos or aquaria;
    - animal orphanages; and
    - any other facilities recommended to the Authority by any of its Committees or considered necessary by the Authority.
  - ensure that species threatened with extinction which are conserved *ex-situ* are re-introduced into their native habitats and ecosystems where:-
    - the threat to the species has been terminated; or
    - a viable population of the threatened species has been achieved.

- 53.(1) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the sustainable management and utilisation of genetic resources of Kenya for the benefit of the people of Kenya.
- (2) Without prejudice to the general effect of subsection (1), the guidelines issued or measures prescribed under that subsection shall specify –
- (a) appropriate arrangement for access to genetic resources of Kenya by non-citizens of Kenya including the issue of licences and fees to be paid for that access;
  - (b) measures for regulating the import or export of germplasm;
  - (c) the sharing of benefits derived from genetic resources of Kenya;
  - (d) biosafety measures necessary to regulate biotechnology;
  - (e) measures necessary to regulate the development, access to and transfer of biotechnology; and
  - (f) any other matter that the Authority considers necessary for the better management of the genetic resources of Kenya.
- 54.(1) The Minister may, in consultation with the relevant lead agencies, by notice in the Gazette, declare any area of land, sea, lake or river to be a protected natural environment for the purpose of promoting and preserving specific ecological processes, natural environment systems, natural beauty or species of indigenous wildlife or the preservation of biological diversity in general.
- (2) Without prejudice to subsection (1), the Authority may, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the management and protection of any area of environmental significance declared to be a protected natural environment area under this section.
55. (1) The Minister may, by notice in the Gazette, declare an area to be a protected coastal zone.
- (2) As soon as practicable upon the commencement of this Act, the Authority shall, in consultation with the relevant lead agencies, prepare a survey of the coastal zone and prepare an integrated national coastal zone management plan based on the report of such survey.
- (3) The Authority shall, from time to time, not exceeding every two years, review the national coastal zone management plan prepared under subsection (2).
- (4) The report of the survey of the coastal zone shall contain:-
- (a) an inventory of all structures, roads, excavations, harbours, outfalls, dumping sites and other works located in the coastal zone;
  - (b) an inventory of the state of the coral reefs, mangroves and marshes found within the coastal zone;
  - (c) an inventory of all areas within the coastal zone of scenic value or of value for recreational and cultural purposes;
  - (d) an inventory of areas within the coastal zone of special value for research in respect of fisheries, erosion, littorals movement and such other similar subjects;
  - (e) an estimate of the quantities of sand, coral sea shells and other substances being removed from the coastal zone;
  - (f) an estimate of the impacts of erosion on the coastal zone; and
  - (g) an estimate of the extent, nature, cause and sources of coastal pollution and degradation;
  - (h) an estimate of freshwater resources available in the coastal zone; and
  - (i) any other relevant data or information that may be deemed appropriate.
- (5) Any person who releases or causes to be released into the coastal zone any polluting or hazardous substances contrary to the provisions of this Act shall be guilty of an offence and liable upon conviction to a fine of not less than one million shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.
- (6) The Minister shall, in consultation with the relevant lead agencies, issue appropriate regulations to prevent, reduce and control pollution or other form of environmental damage in the coastal zone.
- (7) Notwithstanding the generality of subsection (6) of this section, the regulations made thereunder shall provide for the control and prevention of pollution –
- (a) of the marine environment from land based sources including rivers, estuaries, pipelines and outfall structures;
  - (b) from vessels, aircrafts and other engines used in the coastal zone;
  - (c) from installations and devices used in the exploration or exploitation of the natural resources of the seabed and subsoil of the exclusive economic zone; and
  - (d) of the marine environment arising from or in connection with seabed activities and from artificial islands installations and other structures in the exclusive economic zone.
- 56.(1) The Authority shall, in consultation with the relevant lead agencies, undertake or commission other persons to undertake national studies and give due recognition to developments in scientific knowledge relating to substances,

activities and practices that deplete the ozone layer to the detriment of public health and the environment.

(2) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and institute programmes concerning the:-

- (a) elimination of substances that deplete the stratospheric ozone layer;
- (b) controlling of activities and practices likely to lead to the degradation of the ozone layer and the stratosphere;
- (c) reduction and minimisation of risks to human health created by the degradation of the ozone layer and the stratosphere; and
- (d) formulate strategies, prepare and evaluate programmes for phasing out ozone depleting substances.

57.(1) Notwithstanding the provision of any relevant revenue Act, the Minister responsible for finance may, on the recommendation of the Council, propose to Government tax and other fiscal incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources or the prevention or abatement of environmental degradation.

(2) Without prejudice to the generality of subsection (1) the tax and fiscal incentives, disincentives or fees may include –

- (a) customs and excise waiver in respect of imported capital goods which prevent or substantially reduce environmental degradation caused by an undertaking;
- (b) tax rebates to industries or other establishments that invest in plants, equipment and machinery for pollution control, re-cycling of wastes, water harvesting and conservation, prevention of floods and for using other energy resources as substitutes for hydrocarbons;
- (c) tax disincentives to deter bad environmental behavior that leads to depletion of environmental resources or that cause pollution; or
- (d) user fees to ensure that those who use environmental resources pay proper value for the utilisation of such resources.

## **PART VI – ENVIRONMENTAL IMPACT ASSESSMENT**

58.(1) Notwithstanding any approval, permit or licence granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall, before financing, commencing, proceeding with, carried out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the

Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.

(2) The proponent of a project shall undertake or cause to be undertaken at his own expense and environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the intended project may or is likely to have or will have a significant impact on the environment, so directs.

(3) The environmental impact assessment study report prepared under this subsection shall be submitted to the Authority in the prescribed form, giving the prescribed information and shall be accompanied by the prescribed fee..

(4) The Minister may, on the advice of the Authority given after consultation with the relevant lead agencies, amend the Second Schedule to this Act by notice in the Gazette.

(5) Environmental Impact Assessment studies and reports required under this Act shall be conducted or prepared respectively by individual experts or a firm of experts authorised in that behalf by the Authority. The Authority shall maintain a register of all individual experts or firms of all experts duly authorized by it to conduct or prepare environmental impact assessment studies and reports respectively. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

(6) The Director-General may, in consultation with the Standards Enforcement and Review Committee, approve any application by an expert wishing to be authorised to undertake Environmental Impact Assessment. Such application shall be made in the prescribed manner and accompanied by any fees that may be required.

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

(8) The Director-General shall respond to the applications for environmental impact assessment licence within six months.

(9) Any person who upon submitting his application does not receive any communication from the Director-General within the stipulated time may within nine months of such submission start his undertaking.

59.(1) Upon receipt of an environmental impact assessment study report from any proponent under section 58(2), the Authority shall cause to be published in each of two successive weeks in the Gazette and newspaper circulating in the area or proposed area of the project once at least in each of two successive weeks in some one and the same a notice which shall state:-

- (a) a summary description of the project;
  - (b) the place where the project is to be carried out;
  - (c) the place where the environmental impact assessment study, evaluation or review report may be inspected; and
  - (d) a time limit of not exceeding ninety days for the submission of oral or written comments by any member of the public on the environmental impact assessment study, evaluation or review report.
- (2) The Authority may, on application by any person extend the period stipulated in sub-paragraph (d) so as to afford reasonable opportunity for such person to submit oral or written comments on the environmental impact assessment report.
60. A lead agency shall, upon the written request of the Director-General, submit written comments on an environmental impact assessment study, evaluation and review report within thirty days from the date of the written request.
61. The Authority may set up a technical advisory committee to advise it on environmental impact assessment related reports and the Director-General shall prescribe the terms of reference and rules of procedure for the technical advisory committee appointed hereunder.
62. The Authority may require any proponent of a project to carry out at his own expense further evaluation or environmental impact assessment study, review or submit additional information for the purpose of ensuring that the environmental impact assessment study, review or evaluation report is as accurate and exhaustive as possible.
63. The Authority may, after being satisfied as to the adequacy of an environmental impact assessment study, evaluation or review report, issue an environmental impact assessment licence on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management.
- 64.(1) The Authority may, at any time after the issue of an environmental impact assessment licence direct the holder of such licence to submit at his own expense a fresh environmental impact assessment study, evaluation or review report within such time as the Authority may specify where –
- (a) there is a substantial change or modification in the project or in the manner in which the project is being operated;
  - (b) the project poses environmental threat which could not be reasonably foreseen at the time of the study, evaluation or review; or
  - (c) it is established that the information or data given by the proponent in support of his application for an environmental impact assessment licence under section 58 was false, inaccurate or intended to mislead.
- (2) Any person who fails, neglects or refuses to comply with the directions of the Authority issued under subsection (1) shall be guilty of an offence.
- 65.(1) An environmental impact assessment licence may be transferred by the holder to another person only in respect of the project in relation to which such licence was issued.
- (2) Where an environmental impact assessment licence is transferred under this section, the person to whom it is transferred and the person transferring it shall jointly notify the Director-General in writing of the transfer, not later than thirty days after the transfer.
- (3) Where no joint notification of a transfer is given in accordance with subsection (2), the registered holder of the licence shall be deemed for the purposes of this Act to be the owner or the person having charge or management or control of the project as the case may be.
- (4) Any transfer of an environmental impact assessment licence, under this section shall take effect on the date the Director-General is notified of the transfer.
- (5) Any person who contravenes any provisions of this section, shall be guilty of an offence.
- 66.(1) No civil or criminal liability in respect of a project or consequences resulting from a project shall be incurred by the Government, the Authority or any public officer by reason of the approval of an environmental impact assessment study, evaluation or review report or grant of an environmental impact assessment licence or by reason of any condition attached to such licence.
- (2) The issuance of an environmental impact assessment licence in respect of a project shall afford no defense to any civil action or to a prosecution that may be brought or preferred against a proponent in respect of the manner in which the project is executed, managed or operated.
- 67.(1) The Authority shall, on the advice of the Standards and Enforcement Review Committee, cancel, revoke or suspend any environmental impact assessment licence for such time not exceeding twenty four months where the licensee contravenes the provisions of the licence.
- (2) Whenever an environmental impact assessment licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the project which is the subject of the licence until a new licence is issued by the Authority.

- (3) The Authority shall maintain a register of all environmental impact assessment licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

#### **PART VII – ENVIRONMENTAL AUDIT AND MONITORING**

68.(1) The Authority shall be responsible for carrying out environmental audit of all activities that are likely to have significant effect on the environment. An environmental inspector appointed under this Act may enter any land or premises for the purposes of determining how far the activities carried out on that land or premises conform with the statements made in the environmental impact assessment study report issued in respect of that land or those premises under section 58(2).

- (2) The owner of the premises or the operator of a project for which an environmental impact assessment study report has been made shall keep accurate records and make annual reports to the Authority describing how far the project conforms in operation with the statements made in the environmental impact assessment study report submitted under section 58(2).

- (3) The owner of premises or the operator of a project shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental impact assessment study report submitted under section 58(2) and shall prepare and submit an environmental audit report on those measures to the Authority annually or as the Authority may, in writing, require.

69.(1) The Authority shall, in consultation with the relevant lead agencies, monitor:-

- (a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or
- (b) the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment.
- (2) An environmental inspector appointed under this Act may enter upon any land or premises for the purposes of monitoring the effects upon the environment of any activities carried on that land or premises.

#### **PART VIII – ENVIRONMENTAL QUALITY STANDARDS**

70.(1) There is hereby established a Standards and Enforcement Review Committee to be a committee of the Authority.

(2) The Standards and Enforcement Review Committee shall consist of the members set out in the Third Schedule to this Act.

(3) The permanent secretary under the Minister shall be the Chairman of the Standards and Enforcement Review Committee.

(4) The Director-General shall appoint a Director of the Authority to be a member of the Standards and Enforcement Review Committee who shall be the secretary to the Committee and shall provide the secretarial services to the Committee.

(5) The Standards and Enforcement Review Committee shall regulate its own proceedings.

(6) The Standards and Enforcement Review Committee may co-opt any person to attend its meetings and a person so co-opted shall participate at the deliberations of the Committee but shall have no vote.

(7) The Standards and Enforcement Review Committee shall meet at least once every three months for the transaction of its business.

71. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies:-

- (a) advise the Authority on how to establish criteria and procedures for the measurement of water quality;
- (b) recommend to the Authority 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;
  - (vi) and any other prescribed water use.
- (c) analyse and submit to the Director-General conditions for discharge of effluents into the environment.
- (d) prepare and recommend to the Director-General 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) identify and recommend to the Authority areas of research on the effects of water pollution on the environment, human beings flora and fauna;
- (f) advise the Authority to carry out investigations of actual or suspected water pollution including the collection of data;
- (g) advise the Authority to take steps or authorise any works to be carried out which appear to be necessary to prevent or abate water pollution from natural causes or from abandoned works or undertakings;
- (h) document the analytical methods by which water quality and pollution control standards can be determined and appoint laboratories for the

- analytical services required or request the Director-General to establish such laboratories;
- (i) collect, maintain and interpret data from industries and local authorities on the pretreatment nature and levels of effluents;
- (j) recommend to the Director-General measures necessary for the treatment of effluents before being discharged into the sewerage system;
- (k) recommend to the Director-General works necessary for the treatment of effluents before being discharged into the water;
- (l) submit to the Director-General all such recommendations as may appear necessary for the monitoring and control of water pollution.
- 72.(1) Any person who upon the coming into force of this Act, discharge or applies any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants or permits any person to dump or discharge such matter into the aquatic environment in contravention of water pollution control standards established under this Part shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding one million shillings or to both such imprisonment and fine.
- (2) A person found guilty under subsection (1) shall, in addition to any sentence or fine imposed on him:-
- (a) pay the cost of the removal of any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants, including the costs of restoration of the damaged environment, which may be incurred by a Government agency or organ in that respect;
- (b) pay third parties reparation, cost of restoration, restitution or compensation as may be determined by a court of law on application by such third parties.
73. All owners or operators of irrigation project schemes, sewage systems, industrial production workshops or any other undertaking which may discharge effluents or other pollutants or have been discharging effluents or other pollutants shall within ninety days upon the coming into force of this Act or as may be demanded from time to time by the Authority, submit on demand, to the Authority accurate information about the quantity and quality of such effluent or other pollutant.
- 74.(1) Every owner or operator of a trade or industrial undertaking shall discharge any effluents or other pollutants originating from the trade or industrial undertaking only into existing sewerage systems and the relevant Local Authority operating or supervising such sewerage system shall issue, at a prescribed fee, the necessary licence for discharge.
- (2) The proponent or owner of a trade or an industrial undertaking shall, prior to being granted a licence to discharge effluents into the environment, install an appropriate plant for the treatment of such effluents before they are discharged into the environment.
- 75.(1) No Local Authority operating a sewerage system or owner or operator of any trade or industrial undertaking shall discharge any effluents or other pollutants into the environment without an effluent discharge licence issued by the Authority.
- (2) Every owner or operator of a trade or an industrial undertaking discharging any effluents or other pollutants into the environment before the commencement of this Act shall, within twelve months of such commencement apply to the Authority for an effluent discharge licence.
- (3) Every application for an effluent discharge licence shall be in the prescribed form and accompanied by the prescribed fee.
- (4) Before the issuance of a licence under subsection (1) and (2), the Authority shall –
- (a) solicit the comments of local authorities concerned and organisations and persons as he may deem fit;
- (b) take into consideration the possible effects of effluents or pollutants to be discharged on the quality of an affected water course or other source of water;
- (c) take into consideration the existing licences affecting the concerned water course or other source; and
- (d) take into consideration the water requirements of riparian residents and ecosystems, human settlements, and agricultural schemes which depend on the affected water course.
- (5) Where the Authority rejects an application for the grant of an effluent discharge licence it shall within twenty one days notify the applicant of its decision and state in writing its reasons for so rejecting the application.
- (6) An effluent discharge licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the licence and shall remain valid for such period and may be renewed for such further periods as may be prescribed or specified in the licence.
- 76.(1) The Authority may in writing, cancel any effluent discharge licence:-
- (a) if the holder of the licence contravenes any provision of this Act or any regulations made thereunder;
- (b) if the holder fails to comply with any condition specified in the licence; or
- (c) if the Authority considers it in the interest of the environment or in the public interest so to do.
77. The Authority shall maintain a register of all effluent discharge

licences issued under this Act. The register shall be a public document and may be inspected at any reasonable hour by any person on the payment of the prescribed fee.

- 78.(1) The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies:-
- (a) advise the Authority on how to establish criteria and procedures for the measurement of air quality;
  - (b) recommend to the Authority –
    - (i) ambient air quality standards;
    - (ii) occupational air quality standards;
    - (iii) emission standards for various sources;
    - (iv) criteria and guidelines for air pollution control for both mobile and stationary sources;
    - (v) any other air quality standards;
  - (c) advise the Authority on 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) recommend to the Authority guidelines to minimize emissions of green house gases and identify suitable technologies to minimize air pollution;
  - (e) advise the Authority on emissions concentration and nature of pollutants emitted;
  - (f) recommend to the Authority the best practicable technology available in controlling pollutants during the emission process;
  - (g) determine for consideration by the Authority the analytical methods for monitoring air contaminants and recommend to the Director-General the establishment of such number of laboratories for analytical services as may be needed;
  - (h) request the Authority to carry out investigations of actual or suspected air pollution including pollution produced by aircrafts and other self propelled vehicles and by factories and power generating stations;
  - (i) request the Authority to order any industry or other source of air pollution to file such returns and provide such information as it may require; and
  - (j) do all such things as appear necessary for the monitoring and controlling of air pollution.
- (2) Any person who emits any substances which cause air pollution in contravention of emission standards established under this Part shall be guilty of an offence and liable to imprisonment for a term of not more than two years

or to a fine of not more than five hundred thousand shillings or to both such fine and imprisonment.

- (3) A person found guilty under subsection (2) shall, in addition to any sentence or fine imposed on him;
- (a) pay the cost of the removal of the pollution, including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the emission; and
  - (b) the cost of third parties in the forms of reparation, restoration, restitution or compensation as may be determined by a competent court upon application by such third parties.
- 79.(1) The Minister, may on the advice of the Authority, by the Gazette Notice, declare any area to be a controlled area for the purposes of this Part.
- (2) The Minister may, on the advice of the Authority, in regulations, prescribe the air emission standards in respect of any controlled areas.
- 80.(1) An owner or operator of a trade, industrial undertaking or an establishment which after the commencement of this Act, is emitting a substance or energy which is causing or is likely to cause air pollution shall apply to the Authority for an emission licence.
- (2) In the case of any trade, industrial undertaking or establishment existing before the commencement of this Act, such application shall be made within twelve months after this Act has come into operation.
- (3) Every application for an emission licence shall be in the prescribed form and be accompanied by the prescribed fee.
- 81.(1) Before issuing a licence in respect of emissions, the Authority shall:-
- (a) consider the possible effects of the emissions on the quality of ambient air;
  - (b) consider existing licences affecting the same air resource;
  - (c) give due regard to the requirements for the residents, human settlements and other industrial and commercial activities;
  - (d) solicit the comments of relevant Local Authorities and concerned organisations;
  - (e) where the information accompanying the application appears inadequate, require the applicant to furnish further information relating to the undertaking in question, its location, materials, technology design or other appropriate matters;
  - (f) where it appears necessary to conduct an environmental impact study, require the applicant to conduct an environmental impact assessment study in respect of the undertaking in question in accordance with the provisions of Part VI.
- (2) An emission licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the

- licence and shall remain valid for such period and may be renewed for such further periods as may be prescribed or specified in the licence.
- (3) Where the Authority rejects an application for the grant of an emission licence, it shall within twenty one days of its decision, notify the applicant in writing of its reasons for such refusal.
82. No owner or operator of a motor-vehicle, train, ship, aircraft or other similar conveyance shall –
- (a) operate it in such a manner as to cause air pollution in contravention of the established emission standards; or
  - (b) import any machinery, equipment, device or similar thing that will cause emissions into the ambient air in contravention of prescribed emission standards.
83. The Authority may establish additional procedures for the application and grant of any licence under this Act and impose such conditions as it may deem appropriate.
84. The Authority may, in writing, cancel any emission licence:-
- (a) if the holder of the licence contravenes any provisions of this Act or of any regulations made under it;
  - (b) if the holder fails to comply with any conditions specified in the licence; or
  - (c) if the Authority considers it in the interest of the environment or in the public interest so to do;
85. The Authority shall maintain a register of all emission licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.
86. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority measures necessary to:-
- (1) identify materials and processes that are dangerous to human health and the environment; issue guidelines and prescribe measures for the management of the materials and processes identified under subsection (1);
  - (2) prescribe standards for waste, their classification and analysis, and formulate and advise on standards of disposal methods and means for such wastes; or
  - (3) issue regulations for the handling, storage, transportation, segregation and destruction of any waste.
- 87.(1) No person shall discharge or dispose of any wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person.
- (2) No person shall transport any waste other than –
- (a) in accordance with a valid licence to transport wastes issued by the Authority; and
  - (b) to a wastes disposal site established in accordance with a licence issue by the Authority.
- (4) No person shall operate a wastes disposal site or plant without a licence issued by the Authority.
- (5) Every person whose activities generate wastes shall employ measures essential to minimize wastes through treatment, reclamation and recycling.
- (6) Any person who contravenes any provisions of this section shall be guilty of an offence and liable to imprisonment for a term of not more than two years or to a fine of not more than one million shillings or to both such imprisonment and fine.
- 88.(1) Any person intending to transport wastes within Kenya, operate a wastes disposal site or plant or to generate hazardous waste, shall prior to transporting the wastes, commencing with the operation of a wastes disposal site or plant or generating hazardous wastes, as the case may be, apply to the Authority in writing for the grant of an appropriate licence.
- (2) A licence to operate a waste disposal site or plant may only be granted subject to the payment of the appropriate fee and any other licence that may be required by the relevant Local Authority.
- (3) Where the Authority rejects an application made under this section, it shall within twenty one days of its decision, notify the applicant of the decision specifying the reasons thereof.
89. Any person who, at the commencement of this Act, owns or operates a waste disposal site or plant or generated hazardous waste, shall apply to the Authority for a licence under this Part, within six months after the commencement of this Act.
90. The Authority may apply to a competent court for orders compelling any person to immediately stop the generation, handling, transportation, storage or disposal of any wastes where such generation, handling, transportation, storage or disposal presents an imminent and substantial danger to public health, the environment or natural resources.
- 91.(1) The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority standard criteria for the classification of hazardous wastes with regard to determining –
- (a) hazardous waste;
  - (b) corrosive waste;
  - (c) carcinogenic waste;
  - (d) flammable waste;
  - (e) persistent waste;
  - (f) toxic waste;



- (g) explosive waste;
  - (h) radioactive waste;
  - (i) wastes, reactive otherwise than as described in the forgoing paragraphs of this subsection;
  - (j) any other category of waste the Authority may consider necessary.
- (2) The Authority shall, on the recommendation of the Standards and Enforcement Review Committee issue guidelines and regulations for the management of each category of hazardous wastes determined under subsection (1).
- (3) No person shall import into Kenya any hazardous waste falling under any category determined under subsection (1).
- (4) No hazardous waste shall be exported to any country from Kenya without a valid permit granted by the Authority and written consent given by a competent authority of the receiving country.
- (5) No hazardous waste shall be transported within or through Kenya without a valid permit granted by the Authority.
- (6) Any person who contravenes any provision of this section or who withholds, falsifies or otherwise tampers with information relating to trafficking in hazardous or other waste shall be guilty of an offence and liable to imprisonment for a term of not less than two years or to a fine of not less than one million shillings or to both such imprisonment and fine.
- (7) A person found guilty under subsection (6) shall be responsible for the removal of the waste from Kenya and for its safe disposal.
92. The Minister may, on the advice of the Authority make regulations prescribing the procedure and criteria for –
- (a) classification of toxic and hazardous chemicals and materials in accordance with their toxicity and the hazard they present to the human health and to the environment;
  - (b) registration of chemicals and materials;
  - (c) labelling of chemicals and materials;
  - (d) packaging for chemicals and materials;
  - (e) advertising of chemicals and materials;
  - (f) control of imports and exports of toxic and hazardous chemicals and materials permitted to be so imported or exported;
  - (g) distribution, storage, transportation and handling of chemicals and materials;
  - (h) monitoring of the effect of chemicals and their residue on human health and the environment;
  - (i) disposal of expired and surplus chemicals and materials; and
  - (j) restriction and banning of toxic and hazardous substances and energy.

- 93.(1) No person shall discharge any hazardous substance, chemical, oil or mixture containing oil into any waters or any other segments of the environment contrary to the provisions of this Act or any regulations thereunder.
- (2) A person who discharges a hazardous substance, chemical, oil or a mixture containing oil into any waters or other segments of the environment contrary to subsection (1) commits an offence.
- (3) A person convicted of an offence under subsection (2) shall, in addition to any other sentence imposed by the court:-
- (a) pay the cost of the removal of the hazardous substance, chemical, oil or a mixture containing oil including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge; and
  - (b) the costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by a competent court on application by such third parties.
- (4) The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by –
- (a) giving immediate notice of the discharge to the Authority and other relevant Government officers;
  - (b) immediately beginning clean-up operations using the best available clean-up methods;
  - (c) complying with such directions as the Authority may, from time to time, prescribe.
- (5) Where the owner or operator of a production or storage facility, motor vehicle or vessel has refused, neglected and/or failed to take the mitigation measures prescribed in subsection (4), the Authority may seize the production or storage facility, motor vehicle or vessel.
- (6) Where the owner or operator fails to take the necessary measures under subsection (4) after the passage of a reasonable time not exceeding six months in all the circumstances, the Authority may, upon an order of court, dispose of the production or storage facility, motor vehicle or vessel to meet the costs of taking necessary measures under subsection (4) and other remedial and restoration measures.
- (7) The Court in convicting a person of an offence under this section shall take into account the measures taken by that person to comply with subsection (4).
94. The Standards and Enforcement Review Committee, in consultation with the relevant lead agencies shall –
- (a) prepare and submit to the Authority draft standards for the concentration of pesticides residues in raw agricultural commodities, processed foods

and animal feed and 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, revisit, modify and submit to the Authority draft standards to regulate the importation, exportation, manufacture, storage, distribution, sale, use, packaging, transportation, disposal and advertisement of pesticides and toxic substances with the relevant organisations;

(c) establish and submit to the Authority draft procedures for the registration of pesticides and toxic substances;

(d) establish and submit to the Authority draft measures to ensure proper labelling and packaging of pesticides and toxic substances;

(e) constantly review the use and efficacy of pesticides and toxic substances and submit the findings of such review to the Authority.

(f) recommend to the Authority measures for monitoring the effects of pesticides and toxic substances on the environment;

(g) recommend to the Authority measures for the establishment and maintenance of laboratories to operate as standards laboratories for pesticides and toxic substances;

(h) recommend to the Authority measures for the establishment of enforcement procedures and regulations for the storage, packaging and transportation of pesticides and toxic substances;

(i) constantly collect data from industries on the production, use and health effects of pesticides and toxic substances and avail such data to the Authority;

(j) keep up-to-date records and reports necessary for the proper regulations of the administration of pesticides and toxic substances;

(k) do all other things as appear necessary for the monitoring and control of pesticides and toxic substances;

95.(1) Subject to the provisions of this Act or any other written law applicable in Kenya, any person who intends to manufacture, import or process a new pesticide or toxic substance or who intends to reprocess an existing pesticide or toxic substance for a significantly new use, must apply to the Authority for the registration of the pesticide or toxic substance, before importing, manufacturing, processing or reprocessing such pesticides or toxic substance.

(2) The application referred to in subsection (1) shall include the name, trade mark, and the molecular structure, proposed categories of use, an estimate of

the quantity of the pesticides or toxic substances and any data related to health and other environmental effects thereof that the Authority may require.

96. Any person who, being in Kenya, has been manufacturing, importing or processing a pesticide or toxic substance before the coming into force of this Act, shall apply to the Authority for registration of such pesticides or toxic substance within one year after the commencement of this Act.

97.(1) The Authority may, upon application, register a pesticide or toxic substance subject to such existing conditions and any other conditions that the Authority may determine.

(2) Every pesticide or toxic substance shall be registered for ten years unless some other period is specified by the Authority, and may be renewed for a like period.

(3) Where the Authority refuses to register any pesticide or toxic substance, the notice of refusal shall state the reasons for such refusal.

98.(1) No person shall –

(a) detach, alter or destroy any labelling on a pesticide or toxic substance contrary to the provisions of this Act;

(b) change the composition of a pesticide or toxic substance, contrary to the provisions of this Act; or

(c) use or dispose into the environment a pesticide or toxic substance in contravention of the provisions of this Act.

(2) No person shall distribute, sell, offer for sale, hold for sale, import, deliver for importation to, or receive from, deliver or offer to deliver to any other person any unregistered pesticide or toxic substance.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine of not more than one million shillings or to imprisonment for a term of not more than two years or to both such fine and imprisonment.

99.(1) Any pesticide or toxic substance which the Authority reasonably suspects to be the subject matter of an offence under this Act shall be liable to seizure by the Authority.

(2) Whenever any pesticide or toxic substance is seized under subsection (1), the Authority shall serve a notice of seizure on the owner of the pesticide or toxic substance as soon as practicable.

(8) Where any pesticide or toxic substance is seized under this section, the pesticide or toxic substance shall be placed under the custody of the Authority.

(9) Any pesticide or toxic substance placed under the custody of the Authority under subsection (3) shall be released, if after six months –

- (a) no prosecution under this Act has been instituted with regard to the pesticide or toxic substance;
- (b) no person is convicted of an offence under this Act.
100. The Minister shall, in consultation with the relevant lead agencies, make regulations prescribing the contents of any application and the conditions for the registration of pesticides and toxic substances under this Act.
101. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies –
- (a) recommend to the Authority 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) establish and submit to the Authority criteria and procedures for the measurement of noise and vibration pollution into the environment;
- (c) establish and submit to the Authority criteria and procedures for the measurement of sub-sonic vibrations;
- (d) establish and submit to the Authority standards of the emission of sub-sonic vibrations which are likely to have a significant impact on the environment;
- (e) recommend to the Authority guidelines for the minimisation of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;
- (f) establish and submit to the Authority noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic boom, industrial and commercial activities;
- (g) recommend to the Authority measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f);
- (h) measure the levels of noise emanating from the sources referred to in paragraph (f) details of which measurements shall be given to the owner or occupier of the premises from which the measurement was taken; and
- (i) recommend to the Authority guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.
102. Subject to the provisions of the Civil Aviation Act, any person who emits noise in excess of the noise emission standards established under this Part commits an offence.
- 103.(1) Notwithstanding the provisions of section 102, the Authority may on request grant a temporary permit not exceeding three months, allowing emission of noise in excess of established standards for such activities as fireworks, demolitions, firing ranges, and specific heavy industry on such terms and conditions as the Authority may determine.
- (2) Where an exemption has been granted under subsection (1), workers exposed to excessive levels of noise shall be adequately protected in accordance with the directives issued by the Authority.
104. Subject to the provisions of the Radiation Protection Act, the Authority, on the advice of the Standards and Enforcement Review Committee and in consultation with the relevant lead agencies, shall –
- (a) establish the standards for the setting of acceptable levels of ionising and other radiation in the environment;
- (b) establish criteria and procedures for the measurement of ionising and other radiation;
- (c) 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 ionising radiation is stored, used, transported or disposed of;
- (d) 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 unlawfully in possession of an ionising radiation source;
- (e) provide information, warn and protect the public in case of actual or potential public exposure to radioactive material or ionising radiation;
- (f) in collaboration with the Radiation Protection Board, conduct an ionising radiation monitoring programme and advise on ionising radiation control and protection measures;
- (g) maintain records of release of radioactive contaminants into the environment;
- (h) keep records of baseline data of radiation in the environment;
- (i) maintain a register of all radioactive substances imported into Kenya; and
- (j) do all such things as may be necessary for the monitoring and control of pollution from radiation.
105. An inspector of the Authority at any reasonable time may –
- (a) enter, inspect and examine any place, area, premises or any vehicle, vessel, boat, aircraft or any carriage of any description on which he has reasonable grounds to believe that radioactive materials or any source of ionising radiation is stored, used, transported or disposed of provided that no entry shall be made into any private dwelling house except with a court warrant;
- (b) order presentation of –
- (i) a licence authorising the possession or use of radioactive material or sources of dangerous ionising radiation;
- (ii) a licence authorising the mining and processing of radioactive materials; and

(iii) a register, certificate, notice or document kept under the control of the Radiation Protection Board.

106.(1) A person who imports, processes, mines, exports, possess, transports, uses, or disposes radioactive materials or other source of dangerous ionising radiation without a licence issued under this Act or regulation made thereunder, shall be guilty of an offence and liable upon conviction to a fine of not less than five hundred and fifty thousand shillings or to imprisonment for a term of not less than two years or to both such fine and imprisonment.

(2) In addition to the penalties provided in subsection (1) of this section, the radioactive material or other source of dangerous ionising radiation may be seized, impounded, destroyed or disposed of in such a manner as the Court may consider necessary to protect the public and the environment or may only be returned to the owner on order of the Court and under any other conditions set out in the licence issued by the Authority.

107. The Authority shall, in consultation with the relevant lead agencies, establish –

- (a) procedures for the measurement and determination of noxious smells;
- (b) minimum standards for the control of pollution of the environment by noxious smell; or
- (c) guidelines for measures leading to the abatement of noxious smells, whether from human activities or from naturally occurring phenomena.

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

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

(2) An environmental restoration order issued under subsection (1) or section 111 shall be issued to –

- (a) require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order; prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;
- (b) award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;

(c) levy a charge on the person on whom it is served which in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.

(3) An environmental restoration order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the Authority, enable the order to achieve all or any of the purposes set out in subsection (2).

(4) Without prejudice to the general effect of the purpose set out in subsection (2) an environmental restoration order may require a person on whom it is served to –

- (a) take such action as will prevent the commencement or continuation or cause of pollution;
- (b) restore land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land or sea as may be specified in the particular order;
- (c) take such action to prevent the commencement or continuation or cause of environmental hazard;
- (d) cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;
- (e) remove or alleviate any injury to land or the environment or to the amenities of the area;
- (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land or sea specified in the order or land or the environment contiguous to the land or sea specified in the order;
- (g) remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order;
- (h) pay any compensation specified in the order;

(5) In exercising the powers under this section, the Authority shall –

- (a) be guided by the principles of good environmental management in accordance with the provisions of this Act; and
- (b) explain the right of appeal of the persons against whom the order is issued to the Tribunal or if dissatisfied with the decision of the Tribunal, to superior courts.

- 109.(1) An environmental restoration order shall specify clearly and in a manner which may be easily understood:-
- (a) the activity to which it relates;
  - (b) the person or persons to whom it is addressed;
  - (c) the time at which it comes into effect;
  - (d) the action which must be taken to remedy the harm to the environment and the time, being not more than thirty days or such further period as may be prescribed in the order within which the action must be taken;
  - (e) the powers of the Authority to enter any land and undertake the action specified in paragraph (d);
  - (f) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken;
  - (g) the right of the person served with an environmental restoration order to appeal to the Tribunal against that order, except where the order is issued by a court of competent jurisdiction, in which case the right of appeal shall lie with superior courts.
- (2) An Environmental Inspector of the Authority may inspect or cause to be inspected any activity to determine whether that activity is harmful to the environment and may take into account the evidence obtained from that inspection in any decision on whether or not to serve an environmental restoration order.
- (3) The Authority may seek and take into account any technical, professional and scientific advice which it considers to be desirable for a satisfactory decision to be made on an environmental restoration order.
- (4) An environmental restoration order shall continue to apply to the activity in respect of which it was served notwithstanding that it has been complied with.
- (5) A person served with an environmental restoration order shall, subject to the provisions of this Act, comply with all the terms and conditions of the order that has been served on him.
- (6) It shall not be necessary for the Authority or its Inspectors in exercising the powers under subsection (2), to give any person conducting or involved in the activity which is the subject of the inspection or residing or working on or developing land on which the activity which is the subject of the inspection is taking place, an opportunity of being heard by or making representations to the person conducting the inspection.
- 110.(1) At any time within twenty-one days after the service of an environmental restoration order, a person upon whom the order has been served may, by giving reasons in writing, request the Authority to re-consider that order.
- (2) Where the Authority exercises the power under subsection (1), the expenses necessarily incurred by it in the exercise of that power shall be a civil debt recoverable summarily by it from the person referred to in subsection (1).
- 111.(1) Without prejudice to the powers of the Authority under this Act, a court of competent jurisdiction may, in proceedings brought by any person, issue an environmental restoration order against a person who has harmed, is harming or is reasonably likely to harm the environment.
- (2) For the avoidance of doubt, it shall not be necessary for a plaintiff under this section to show that he has a right or interest in the property, environment or land alleged to have been or likely to be harmed.
- 112.(1) A court may, on an application made under this Part, grant an environmental easement or an environmental conservation order subject to the provisions of this Act.
- (2) The object of an environmental easement is to further the principles of environmental management set out in this Act by facilitating the conservation and enhancement of the environment, in this Act referred to as the benefited environment, through the imposition of one or more obligations in respect of the use of land, in this Act referred to as the burdened land, being the land in the vicinity of the benefited environment.
- (3) An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law as the court may determine.
- (4) Without prejudice to the general effect of subsection (2), an environmental conservation order may be imposed on burdened land so as to –
- (a) preserve flora and fauna;
  - (b) preserve the quality and flow of water in a dam, lake, river or aquifer;
  - (c) preserve any outstanding geological, physiological, ecological, archeological, or historical features of the burdened land;
  - (d) preserve scenic view;
  - (e) preserve open space;
  - (f) permit persons to walk in a defined path across the burdened land;
  - (g) preserve the natural contours and features of the burdened land;
  - (h) prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of minerals or aggregates;
  - (i) prevents or restrict the scope of any agricultural activity on the burdened land;
  - (j) create and maintain works on burdened land so as to limit or prevent harm to the environment; or
  - (k) create or maintain migration corridors for wildlife.

- (5) Where an environmental easement is imposed on burdened land on which any person has at the time of the imposition of the easement, any existing right or interest to the land and that environmental easement will restrict that right or interest, there shall be paid to that person, by the applicant for the environmental easement such compensation as may be determined in accordance with section 116.
- (6) As environmental easement may exist in gross; that is to say, the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited or, of a person with an interest in that plot of land who can be benefited by the environmental easement.
- 113.(1) A person or a group of persons may make an application to the court for the grant of one or more environmental easements.
- (2) The court may impose such conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement.
- 114.(1) Proceedings to enforce an environmental easement may be commenced only by the person in whose name the environmental easement has been issued. Proceedings to enforce an environmental easement may request the court to:-
- grant an environmental restoration order;
  - grant any remedy available under the law relating to easements in respect of land.
- (2) The court shall have a discretion to adapt and adjust, so far as seems necessary to it, the law and procedures relating to the enforcement of the requirements of an environmental easement.
- 115.(1) Where an environmental easement is imposed on land, the title of which is registered under a particular system of land registration, the environmental easement shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for easements.
- (2) Where an environmental easement is imposed on any land other than land referred to in subsection (1), the District Environment Committee of the area in which that land is situated shall register the environmental easement on a register maintained for that purpose in accordance with the provisions of this Act.
- (3) In addition to any matter which may be required by any law relating to the registration of easements in respect of land, the registration of an environmental easement shall include the name of the applicant for the environmental easement as the person in whose name the environmental easement is registered.
- 116.(1) Any person who has a legal interest in the land which is the subject of an environmental easement, shall, in accordance with the provisions of this Act, be entitled to compensation commensurate with the lost value of the use of the land.
- (2) A person described in subsection (1) may apply to the court that granted the environmental easement for compensation stating the nature of his legal interest in the burdened land and the compensation sought.
- (3) The court may require the applicant for the environmental easement to bear the cost of compensating the person described in subsection (1).
- (4) The court may, if satisfied that the environmental easement sought is of national importance, order that the Government compensates the person described in subsection (1).
- (5) The court in determining the compensation due under this section shall take into account the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land.
- PART X – INSPECTION, ANALYSIS AND RECORDS**
- 117.(1) The Director-General shall, by Gazette Notice, appoint duly qualified persons whether public officers or otherwise whether by name or by title of office, to be environmental inspectors of the Authority for such jurisdiction units as shall be specified in the Gazette Notice appointing them.
- (2) An environmental inspector shall:-
- monitor compliance with the environmental standards established under this Act;
  - monitor the activities of other sector-specific environmental inspectorates;
  - monitor the pattern of use of environmental resources;
  - conduct environmental audits; and
  - perform such other functions as may be required under this Act or under the Gazette Notice appointing him.
- (3) An environmental inspector may, in the performance of his duties under this Act or any regulations made thereunder, at all reasonable times and without a warrant –
- enter any land, premises, vessel, motor vehicle or ox-drawn trailer and make examinations and enquiries to determine whether the provisions of this Act are being complied with;
  - require the production of, inspect, examine and copy licences, registers, records and other documents relating to this Act or any other law relating to the environment and the management of natural resources;
  - take samples of any article and substances to which this Act relates and, as may be prescribed, submit such samples for test and analysis;

- (d) carry out periodic inspections of all establishments and undertakings within their respective jurisdictional limits which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have significant impact on the environment, to ensure that the provisions of this Act are complied with;
- (e) seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence under this Act or the regulations made thereunder;
- (f) with the written approval of the Director-General order the immediate closure of any manufacturing plant or other establishment or undertaking which pollutes or is likely to pollute the environment contrary to the provisions of this Act and to require the owner or operator of such establishment or undertaking to implement any remedial measures that the environmental inspector may direct in the notice closing down the establishment or undertaking closed down under this paragraph may resume its operations only with the written approval of the Director-General;
- (g) with the approval of the Director-General issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, motor vehicle or other establishment or undertaking to cease any activities deleterious to the environment and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the Director-General may determine;
- (h) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act; and
- (i) install any equipment on any land, premise, vessel or motor-vehicle for purposes of monitoring compliance with the provisions of this Act, or the regulations made thereunder upon giving the owner or occupier of the land three months written notice.
- (4) In exercising his powers under this Act, the environmental inspector shall suitably identify himself.
118. Subject to the Constitution and the directions and control of the Attorney-General, an environmental inspector may, in any case in which he considers it desirable so to do:-
- (a) institute and undertake criminal proceedings against any person before a court of competent jurisdiction (other than a court-martial) in respect of any offence alleged to have been committed by that person under this Act; and
- (b) discontinue at any stage with the approval of the Attorney-General, before judgement is delivered any such proceedings instituted or undertaken by himself.
- 119.(1) The Director-General may, by Notice in the Gazette, designate such number of laboratories as he may consider necessary, analytical or reference laboratories for the purposes of this Act.
- (2) A notice under subsection (1) shall state the specific functions of the laboratory, local limits or subject matter which the laboratory shall serve and the persons appointed as analysts in respect of that laboratory.
- (3) The Authority shall, on the advice of the Standards Enforcement Review Committee, prescribe the form and manner in which samples will be taken for analysis.
- 120.(1) A laboratory designated as an analytical or reference laboratory under section 119 shall issue a certificate of analysis of any substance submitted to it under this Act.
- (2) The certificate of analysis shall state the methods of analysis followed and shall be signed by the analyst or the reference analyst, as the case may be.
- (3) A certificate issued under subsection (1) and complying with subsection (2) shall be sufficient evidence of the facts stated in the certificate for all purposes under this Act.
- (4) The results of any analysis made by the laboratory shall be open to inspection by all interested parties.
- 121.(1) The Director-General shall, by notice in the Gazette, prescribe the activities for which records shall be kept for the purposes of this Act, the contents of such records and the manner in which they shall be kept. The records kept in accordance with subsection (1) of this section and any other records available at the site of an establishment or undertaking shall be made available at such reasonable time to any environmental inspector for the purpose of –
- (a) an environmental audit;
- (b) environmental monitoring and evaluation;
- (c) pollution control;
- (d) inspection;
- (e) any other purpose that may be prescribed by the Director-General from time to time.
122. The records kept under section 121 shall be transmitted annually to the Authority or its designated representative to be received not later than one month after the end of each calendar year. The Authority shall keep all records

transmitted hereunder and may maintain their confidentiality if the applicable circumstances so require.

- 123.(1) Subject to the provisions of section 122, any person may have access to any records transmitted to the Authority under this Act.
- (2) A person desiring access to such records referred to in subsection (1) may on application to the Authority, be granted access to the said records on the payment of a fee prescribed by the Authority.

#### **PART XI – INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS**

- 124.(1) Where Kenya is a party to an international treaty, convention or agreement, whether bilateral or multilateral, concerning the management of the environment, the Authority shall, subject to the direction and control of the Council, in consultation with relevant lead agencies:-
- (a) initiate legislative proposals for consideration by the Attorney-General, for purposes of giving effect to such treaty, convention or agreement in Kenya or for enabling Kenya to perform her obligations or exercise her rights under such treaty, convention or agreement; and
- (b) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.
- (2) The Authority shall, in relation to the formation of international treaties, conventions or agreements on the environment, assist the relevant lead agencies negotiating such treaties, conventions or agreements.
- (3) The Authority shall keep a register of all international treaties, agreements or conventions in the field of the environment to which Kenya is a party.

#### **PART XII – NATIONAL ENVIRONMENT TRIBUNAL**

- 125.(1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members –
- (a) a chairman nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya;
- (c) a lawyer with professional qualifications in environmental law appointed by the Minister; and
- (d) two persons who have demonstrated exemplary academic competence in the field of environmental management appointed by the Minister.
- (2) All appointments to the Tribunal shall be by name and by the Gazette Notice issued by the Minister.

- (3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their, terms of office shall fall at different times.
- (4) The office of a member of the Tribunal shall become vacant:-
- (a) at the expiration of three years from the date of his appointment;
- (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;
- (c) if he is removed from the membership of the Tribunal by the Minister for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and
- (d) if he resigns the office of member of the Tribunal.
- 126.(1) The Tribunal shall not be bound by the rules of Evidence Act.
- (2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.
- (3) The Tribunal shall sit at such times and in such places as it may appoint.
- (4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.
- (5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.
- 127.(1) The Tribunal may:-
- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths; or
- (c) on its own motion summon and hear any person as witness;
- (2) Any person who –
- (a) fails to attend the Tribunal after having been required to do so under subsection (1) (a);
- (b) refuses to take oath or affirmation before the Tribunal or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or
- (d) at any sitting of the Tribunal –
- (i) willfully insults any member or officer of the Tribunal;



- (ii) willfully interrupts the proceedings or commits any contempt of the Tribunal;
- (e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal commits an offence under this Act.
- 128.(1) For the purposes of hearing and determining any cause or matter under this Act, the Chairman and two members of the Tribunal shall form a quorum.
- (2) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.
- 129.(1) Any person who is aggrieved by:-
- a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
  - the imposition of any condition, limitation or restriction on his licence under this act or regulations made thereunder;
  - the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
  - the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
  - the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder;
- may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.
- (2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.
- (3) Upon any appeal, the Tribunal may:-
- confirm, set aside or vary the order or decision in question;
  - exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
  - make such other order, including an order for costs, as it may deem just.
- (4) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.
- 130.(1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.
- (2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced until the appeal has been determined.
- (3) Notwithstanding the provisions of subsection (2), where the Director-General is satisfied that immediate action must be taken to avert serious injuries to the environment, the Director-General shall have the power to take such reasonable action to stop, alleviate or reduce such injury, including the powers to close down any undertaking, until the appeal is finalised or the time for appeal has expired.
- (4) Upon the hearing of an appeal under this section, the High Court may:-
- confirm, set aside or vary the decision or order in question;
  - remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
  - exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
  - make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.
- (5) The decision of the High Court on any appeal under this section shall be final.
131. The Chairman of the Tribunal may appoint any persons with special skills or knowledge on environmental issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.
- 132.(1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law or to be of unusual importance or complexity, it may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction. Where any matter has been referred to the Tribunal under subsection (1), the Authority and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an Advocate.
- (2) Any person who is a party to proceedings before the Tribunal may appear in person or be represented by an Advocate before the Tribunal.
- 133.(1) The Chairman or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed

themselves to have jurisdiction to do or order the act complained of and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

(1) It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish such person for contempt in accordance with the provisions of this Act.

134. There shall be paid to the Chairman and the members of the Tribunal such remuneration and allowances as the Minister shall determine.

135. The Minister shall appoint a public officer to be the Secretary to the Tribunal who shall be paid such allowances as the Minister shall determine.

136.(1) The Minister may establish such other Tribunals in any part of Kenya as he deems appropriate.

(2) The provisions of section 126-135 shall apply *mutatis mutandis* to any Tribunal established under subsection (1).

**PART XIII – ENVIRONMENTAL OFFENCES**

137. Any person who –

(a) hinders or obstructs an environmental inspector in the exercise of his duties under this Act or regulations made thereunder;

(b) fails to comply with a lawful order or requirement made by an environmental inspector in accordance with this Act or regulations made thereunder;

(c) refuses an environmental inspector entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter under this Act or regulations made thereunder;

(d) impersonates an environmental inspector;

(e) refuses an environmental inspector access to records or documents kept pursuant to the provisions of this Act or regulations made thereunder;

(f) fails to state or wrongly states his name or address to an environmental inspector in the cause of his duties under this Act or regulations made thereunder;

(g) misleads or gives wrongful information to an environmental inspector under this Act or regulations made thereunder;

(h) fails, neglects or refuses to carry out an improvement order issued under this Act by an environmental inspector;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding twenty four months, or to a fine of not more than five hundred thousand shillings, or both.

138. Any person who –  
(a) fails to submit a project report contrary to the requirements of section 58 of this Act;  
(b) fails to prepare an environmental impact assessment report in accordance with the requirements of this Act or regulations made thereunder;  
(c) fraudulently makes false statements in an environmental impact assessment report submitted under this Act or regulations made thereunder;

commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty four months or to a fine of not more than two million shillings or to both such imprisonment and fine.

139. Any person who –  
(a) fails to keep records required to be kept under this Act;  
(b) fraudulently alters any records required to be kept under this Act;  
(c) fraudulently makes false statements in any records required to be kept under this Act;

commits an offence and is liable upon conviction to a fine of not more than five hundred thousand shillings or to imprisonment for a term of not more than eighteen months or to both such fine and imprisonment.

140. Any person who –  
(a) contravenes any environmental standard prescribed under this Act;  
(b) contravenes any measure prescribed under this Act;  
(c) uses the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act;

commits an offence and shall be liable upon conviction, to a fine 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.

141. Any person who –  
(a) fails to manage any hazardous waste and materials in accordance with this Act;  
(b) imports any hazardous waste contrary to this Act;  
(c) knowingly mislabels any waste, pesticide, chemical, toxic substance or radioactive matter;  
(d) fails to manage any chemical or radioactive substance in accordance with this Act;  
(e) aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances and pesticides or hazardous substances;  
(f) disposes of any chemical contrary to this Act or hazardous waste within Kenya;

- (g) withholds information or provides false information about the management of hazardous wastes, chemicals or radioactive substances; commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term of not less than two years, or to both.
- 142.(1) Any person who –
- discharges any dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment contrary to the provisions of this Act;
  - pollutes the environment contrary to the provisions of this Act;
  - discharges any pollutant into the environment contrary to the provisions of this Act;
- commits an offence and shall on conviction, be liable to a fine not exceeding five hundred thousand shillings.
- (2) In addition to any sentence that the Court may impose upon a polluter under subsection (1) of this Section, the Court may direct that person to –
- pay the full cost of cleaning up the polluted environment and of removing the pollution;
  - clean up the polluted environment and remove the effects of pollution to the satisfaction of the Authority.
- (3) Without prejudice to the provisions of subsections (1) (2) of this section, the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution.
143. Any person who –
- Fails, neglects or refuses to comply with an environmental restoration order made under this Act;
  - fails, neglects or refuses to comply with an environmental easement, issued under this Act;
  - fails, neglects or refuses to comply with an environmental conservation order made under this Act;
- commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding five hundred thousand shillings, or to both.
144. Any person who commits an offence against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is liable, upon conviction, to imprisonment for a term of not more than eighteen months or to a fine of not more than three hundred and fifty thousand shillings or to both such fine and imprisonment.
- 145.(1) When an offence against this Act, is committed by a body corporate, the body

corporate and every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.

- Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or who should have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.
  - A person shall be personally liable for an offence against this Act, whether committed by him on his own account or as an agent or servant of another person.
  - An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.
- 146.(1) The Court before which a person is charged for an offence under this Act or any regulations made thereunder may, in addition to any other order:-
- upon the conviction of the accused; or
  - if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence;
- order that the substance, motor vehicle, equipment and appliance or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the State and be disposed of as the court may direct.
- In making the order to forfeit under subsection (1) the Court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance or any other thing provided for in that subsection be borne by the person convicted thereunder.
  - The Court may further order that any licence, permit or any authorisation given under this Act, and to which the offence relates, be cancelled.
  - The Court may further issue an order requiring that a convicted person restores at his own cost, the environment to as near as it may be to its original state prior to the offence.
  - The Court may in addition issue an environmental restoration order against the person convicted in accordance with the provisions of this Act.

#### **PART XIV – REGULATIONS**

- 147.(1) The Minister may, on the recommendation of the Authority and upon consultation with the relevant lead agencies, make regulations prescribing for

matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving full effect to the provisions of this Act.

Regulations made under subsection (2) may –

- (a) make provisions for the issue, amendment and revocation of any licence;
- (b) provide for the charging of fees and levying of charges;
- (c) adopt wholly or in part or with modifications any rules, standards, guidelines, regulations, by-laws, codes, instructions, specifications, or administrative procedures prescribed by any lead agency either in force at the time of prescription or publication or as amended from time.

148. Any written law, in force immediately before the coming into force of this Act, relating to the management of the environment shall have effect subject to modifications as may be necessary to give effect to this Act, and where the provisions of any such law conflict with any provisions of this Act, the provisions of this Act shall prevail.

#### **FIRST SCHEDULE (s.4(1)(b), 29(1)(c), (3)(b), 37(1)(b))**

Agriculture.  
Economic Planning and Development.  
Education.  
Energy.  
Environment.  
Finance.  
Fisheries.  
Foreign Affairs.  
Health.  
Industry.  
Law or Law Enforcement.  
Local Government.  
Natural Resources.  
Public Administration.  
Public Works.  
Research and Technology.  
Tourism.  
Water Resources.

#### **SECOND SCHEDULE (s.58(1), (4))**

#### **PROJECTS TO UNDERGO ENVIRONMENTAL IMPACT ASSESSMENT**

1. General –
  - (a) an activity out of character with its surrounding;

- (b) any structure of a scale not in keeping with its surrounding;
  - (c) major changes in land use.
2. Urban Development including:-
    - (a) designation of new townships;
    - (b) establishment of industrial estates;
    - (c) establishment or expansion of recreational areas;
    - (d) establishment or expansion of recreational townships in mountain areas, national parks and game reserves;
    - (e) shopping centres and complexes.
  3. Transportation including –
    - (a) all major roads;
    - (b) all roads in scenic, wooded or mountainous areas and wetlands;
    - (c) railway lines;
    - (d) airports and airfields;
    - (e) oil and gas pipelines;
    - (f) water transport.
  4. Dams, rivers and water resources including –
    - (a) storage dams, barrages and piers;
    - (b) river diversions and water transfer between catchments;
    - (c) flood control schemes;
    - (d) drilling for the purpose of utilising 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) stone and slate;
    - (h) aggregates, sand and gravel;
    - (i) clay;
    - (j) exploitation for the production of petroleum in any form;
    - (k) extracting alluvial gold with use of mercury.Forestry related activities including –
    - (a) timber harvesting;
    - (b) clearance of forest areas;
    - (c) reforestation and afforestation.
  7. Agriculture including –
    - (a) large-scale agriculture;

- (b) use of pesticide;
  - (c) introduction of new crops and animals;
  - (d) use of fertilizers;
  - (e) irrigation.
8. Processing and manufacturing industries including –
- (a) mineral processing, reduction of ores and minerals;
  - (b) smelting and refining of ores and minerals;
  - (c) foundries;
  - (d) brick and earthenware manufacture;
  - (e) cement works and lime processing;
  - (f) glass works;
  - (g) fertilizer manufacture or processing;
  - (h) explosive plants;
  - (i) oil refineries and petro-chemical works;
  - (j) tanning and dressing of hides and skins;
  - (k) abattoirs and meat-processing plants;
  - (l) chemical works and process plants;
  - (m) brewing and malting;
  - (n) bulk grain processing plants;
  - (o) fish-processing plants;
  - (p) pulp and paper mills;
  - (q) food-processing plants;
  - (r) plants for the manufacture of assembly of motor vehicles;
  - (s) plants for the construction or repair of aircraft or railway equipment;
  - (t) plants for the manufacture or assembly of motor vehicles;
  - (u) plants for the manufacture of tanks, reservoirs and sheet-metal containers;
  - (v) plants for the manufacture of coal briquettes;
  - (w) plant for manufacturing batteries;
9. Electrical infrastructure including –
- (a) electricity generation stations;
  - (b) electrical transmission lines;
  - (c) electrical sub-stations;
  - (d) pumped-storage schemes.
10. Management of hydrocarbons including – the storage of natural gas and combustible or explosive fuels.
11. Waste disposal including sites for solid waste disposal;
- (a) sites for hazardous waste disposal;
  - (b) sewage disposal works;
  - (c) works involving major atmospheric emissions;

- (d) works emitting offensive odours.
12. Natural conservation areas including –
- (a) creation of national parks, game reserves and buffer zones;
  - (b) establishment of wilderness areas;
  - (c) formulation or modification of forest management policies;
  - (d) formulation or modification of water catchment management policies;
  - (e) policies for the management of ecosystems, especially by use of fire;
  - (f) commercial exploitation of natural fauna and flora;
  - (g) introduction of alien species of fauna and flora into ecosystems.
13. Nuclear Reactors.
14. Major developments in biotechnology including the introduction and testing of genetically modified organisms.

### THIRD SCHEDULE

(s. 37(1)(d), 70(2))

Representatives of the Government Ministries responsible for the following matters:-

Agriculture;  
 Economic Planning and Development;  
 Education;  
 Energy;  
 Environment;  
 Finance;  
 Fisheries;  
 Health;  
 Industry;  
 Law and Law Enforcement;  
 Local Government/Authority;  
 Natural Resources;  
 Public Administration;  
 Public Works;  
 Research and Technology;  
 Tourism;  
 Water Resources;  
 Lands and settlement;  
 Labour;  
 Information;

– Representatives of the following institutions:-

Jomo Kenyatta University of Agriculture and Technology;  
 Kenya Agricultural Research Institute;  
 Kenya Bureau of Standards;  
 Kenya Forestry Research Institute;

Kenya Marine Research Institute;  
Kenya Medical Research Institute;  
Kenya Wildlife Service;  
Kenyatta University;  
Moi University;  
National Council of Sciences;  
National Museums of Kenya;  
University of Nairobi;  
Radiation Protection Board;  
Pesticides Products Control Board.