



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

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DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT ON:

THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023)

THE NATIONAL ASSEMBLY PARLIAMENT BUILDINGS	
DATE: 23 AUG 2023	DAY: WED
TABLED BY:	Hon David Gukaria, MP Chairperson, Committee on Environment
CLERK OF THE TABLE:	Enlaysia Muriuki

CLERKS CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

AUGUST 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
WDP	-	Wiper Democratic Party
KUP	-	Kenya Union Party
UPIA	-	United Party of Independent Alliance
USD	-	United States Dollar
NDC	-	Nationally Determined Contributions
BAU	-	Business As Usual
CO2	-	Carbon Dioxide
NGO	-	Non-Governmental Organisations
GHG	-	Greenhouse Gas
CDM	-	Clean Development Mechanisms
CER	-	Certified Emission Reduction
VCS	-	Verified Carbon Standard
NRT	-	Northern Rangelands Trust
NKRCP	-	Northern Kenya Rangeland Carbon Project
PES	-	Payment for Ecosystem Services
CIX	-	Climate Impact X
SGX	-	Singapore Exchange
NCCC	-	National Climate Change Council
UK	-	United Kingdom
CMO	-	Carbon Market Office
EPA	-	Environmental Protection Agency
GCR	-	Ghana Carbon Registry
GAM	-	Grievance and Appeal Mechanism
CSTI	-	Centre for Science and Technology Innovations (ISTI)

LIST OF ANNEXURES

1. Report adoption Schedule
2. Minutes
3. Copy of the newspaper advertisement on public participation
4. Letter inviting stakeholders for meetings with the Committee
5. Stakeholder submissions

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committees on Environment, Forestry and Mining on its consideration of the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) which was published on 19th July 2023. The Bill went through the First Reading on 8th August 2023 and was thereafter committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has sixteen (16) clauses and seeks to amend the Climate Change Act, 2016 to provide for the regulation of the carbon markets. The Bill creates and enhances the mandate of several institutions responsible for regulation of the carbon markets.

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution.

Following placement of advertisements in the print media on Wednesday, 16th August 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received twelve (12) memoranda from the following institutions and individuals:

- i. Kenya Private Sector Alliance
- ii. Kenya Association of Manufacturers
- iii. Kenya Climate Change Working Group
- iv. Kenya Wildlife Conservancy Association
- v. Northern Rangelands Trust
- vi. The Nature Conservancy
- vii. Nairobi Climate Network
- viii. Prof. George Odera, Technical University of Kenya
- ix. BURN Manufacturing Company
- x. TAMUWA Limited
- xi. Environment Institute of Kenya
- xii. Centre for Science and Technology Innovations (CSTI)
- xiii. Ministry of Environment, Climate Change and Forestry

The Committee also acknowledges receipt of memoranda from the following institutions: American Chamber of Commerce (Kenya); CITADEL Law Africa; World Leaders of Today; and Mr. Shadrack Agaki.

The Committee also invited stakeholders vide letter REF: NA/DDC/EF&M/2023/037 dated 17th August 2023 for a stakeholders' engagement meeting on the Bill which was held in the Mini Chamber, County Hall, Parliament Buildings on 21st August 2023 with nine (9) stakeholders making oral presentations before the Committee.

Majority of the stakeholders were of the view that there are currently no laws in place to deal with carbon markets. They observed that some amendments need to be made to the Bill for clarity, inclusivity and effectiveness.

In considering the Bill, Members observed that enactment of the Bill will raise our profile globally since it will ensure high quality trading since the entire process, encompassing project registration, verification, measurements, benefits sharing among governments, proponents, and communities will be regulated.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Kimani Ichung'wah, MP, Leader of the Majority Party and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and Secretariat who made useful contributions towards consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Environment, Forestry and Mining and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*).

It is my pleasure to report that the Committee has considered the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) and has the honor to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

Hon. Gikaria David, M.P.
Chairperson, Departmental Committee on Environment, Forestry and Mining

PART ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Environment, Forestry and Mining is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. ***To study and review all the legislation referred to it;***
 - v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider matters related to Climate change, environment management and conservation, forestry, mining and natural, pollution, waste management.
3. In executing its mandate, the Committee oversees the Ministry of Environment, Climate Change and Forestry, and the State Department for Mining.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Environment, Forestry and Mining was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. David Gikaria, MP
Nakuru Town East Constituency

UDA Party

Vice-Chairperson

Hon. Charles Kamuren, MP
Baringo South Constituency

UDA Party

Members

Hon. Mbalu Jessica Nduku Kiko, CBS, MP
Kibwezi East Constituency

WDP Party

Hon. Mwanyanje Gertrude Mbeyu, MP
Kilifi County

ODM Party

Hon. Hiribae Said Buya, MP
Galole Constituency

ODM Party

Hon. Salim Feisal Bader, MP
Msambweni Constituency

UDA Party

Hon. Emathe Joseph Namuar, MP
Turkana Central Constituency

UDA Party

Hon. Joseph Wainaina Iraya, MP
Nominated

UDA Party

Hon. Kemei Beatrice Chepngeno, MP
Kericho County

UDA Party

Hon. Kururia Elijah Njore Njoroge, MP
Gatundu North Constituency

Independent Member

Hon. Masito Fatuma Hamisi, MP
Kwale County

ODM Party

Hon. Nguro Onesmus Ngogoyo, MP
Kajiado North Constituency

UDA Party

Hon. Titus Lotee, MP
Kachaliba Constituency

KUP Party

Hon. Mohamed Tubi Bidu, MP
Isiolo South Constituency

Jubilee Party

Hon. Yakub Adow Kuno, MP
Bura Constituency

UPIA Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Mr. Fredrick O. Otieno
Clerk Assistant II/Head of Secretariat

Ms. Mercy Wanyonyi
Senior Legal Counsel

Mr. Hamdi Hassan Mohamed
Clerk Assistant III

Dr. Joseph Kuria
Research Officer III

Ms. Nancy Chamunga
Fiscal Analyst III

Ms. Catherine Wangui
Senior Sergeant-At-Arms

Ms. Edith Chepngeno
Media Relations Officer III

Ms. Maryan Gabow
Public Communications Officer III

Ms. Lydia Shallon
Research Officer III

Mr. Boniface Mushila
Sergeant-At-Arms

Mr. Muchiri Mwangi
Audio Recording Officer

PART TWO

2.0 BACKGROUND OF FOOD AND FEED SAFETY REGULATIONS IN KENYA

2.1 INTRODUCTION

6. **Article 42** guarantees every person the right to a clean and healthy environment. **Article 69** provides for obligations of the state in respect of the Environment. It compels the government to develop and implement policies and laws aimed at conserving, protecting the environment and natural resources, including genetic resources, wildlife, forests and reducing carbon footprint. **Specifically 69(g)** “eliminate processes and activities that are likely to endanger the environment”.
7. The Climate Change Act, 2016 is a national legislation intended to enhance response to climate change and provide mechanisms and measures to achieve low carbon climate-resilient development.
8. It establishes institutions and mechanisms for coordination and implementation of climate change activities, and emphasizes the need for public participation, vulnerability assessments, emissions monitoring, and integration of climate change considerations into planning processes. However, it does not provide for the regulation of the carbon markets.

2.2 SITUATIONAL ANALYSIS

9. Kenya, as a signatory to the Paris Agreement having ratified it on the 28th December, 2016 is obligated to prepare and submit her Nationally Determined Contributions (NDCs) towards the fulfilment of the Paris Agreement’s objective of keeping the increase in global temperature to well below 2°C with respect to the pre-industrial era, and further aim to limit it to 1.5°C.
10. Kenya’s historical emission contribution is negligible, at less than 0.1% of the total global emissions. Kenya aims to reduce greenhouse emissions by 32% by 2030 relative to the business as usual (BAU) scenario of 143 metric tonnes of carbon dioxide equivalent (MtCO₂eq) in line with our sustainable development agenda and national circumstances.
11. Carbon emissions trading refer to a cap-and-trade regulatory programme designed to limit carbon emissions resulting from industrial activities.
12. Greenhouse as defined in Climate Change Act 2016, include but not limited to: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and indirect greenhouses gases.
13. The carbon markets are divided into compliance (regulated by national and international authorities) and voluntary markets (provides a flexible trading scheme for individuals, businesses, governments and Non-Governmental Organizations (NGOs) regardless of the participant’s geographical location).
14. Kenya being a signatory of the Paris Agreement embraces voluntary cooperation in the implementation of its Nationally Determined Contributions (NDCs) which aims to reduce greenhouse gas emissions (GHG) by 32% using internationally transferred mitigation outcomes.
15. Article 6 of the Paris Agreement allows countries to voluntarily cooperate with each other to achieve emission reduction targets set out in their NDCs. Under the Article, emission reductions that have been authorized for transfer by the selling country’s government may be sold to another country, but only

one country may count the emission reduction toward its NDC. This to avoid double counting so that global emission reductions are not overestimated.

16. Additionally, the Clean Development Mechanism (CDM) established under the Kyoto Protocol, allows emission-reduction projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one tonne of carbon dioxide (CO₂). These CERs can be traded and sold and used by industrialized countries to meet a part of their emission reduction targets.
17. Before trading the carbon credits, they must be verified. For instance, Verra with headquarters in Washington, DC was founded in 2007 by environmental and business leaders who saw the need for greater quality assurance in voluntary carbon markets. It manages the world's leading voluntary carbon markets program, the Verified Carbon Standard (VCS) Program.
18. According to the Voluntary Carbon Market Overview 2022 by Climate Focus, Kenya is regarded as a leader in carbon credit trading having been ranked 8th in the world among countries selling carbon credits from nature-based solutions and accounting for 23% of the value of carbon credit issued under voluntary markets in Africa as per FSD Kenya.

2.3 PROJECTS IMPLEMENTED IN KENYA

19. In Kenya there are various projects which have been implemented to promote sustainable development while reducing greenhouse gas emissions.

2.3.1 THE NORTHERN KENYA RANGELANDS CARBON PROJECT (NKRCP)

20. The Northern Kenya Rangeland Carbon Project by Northern Rangelands Trust (NRT) is one of the 135 conservancy-funded development projects that have been successfully implemented since 2015.
21. It is the world's largest soil carbon removal project and proof of concept for rangelands restoration and community-based development through the carbon market. It is anticipated to remove 50 million tons of CO₂ over 30 years, the equivalent of the annual emissions from over 10,000,000 cars and generate hundreds of millions of dollars for local communities.
22. The NKRCP's carbon credits have generated USD 14.6 million for local conservancies to date. In February 2022, each of the 14 NRT member community conservancies participating in the Project's activities received USD 324,000, first of three payments. The purchasers of carbon credits generated by the project include Netflix and Meta.
23. The award-winning carbon offset project was suspended by Verra which issues credits after serious questions were raised about its validation and methodology.

2.3.2 KASIGAU WILDLIFE CORRIDOR (BETWEEN TSAVO EAST AND WEST NATIONAL PARKS) REDD+ PROJECT

24. REDD+ is a framework that guides activities in the forest sector that reduces emissions from deforestation and forest degradation. It was the first project to issue voluntary forestry carbon credits in Kenya.

25. It is a project by Wildlife Works a company founded by Mike Korchinsky a Canadian citizen and a resident of Northern California. The corridor covers over 500,000 acres, which will offset 1 million tons of CO2 emissions per year for the next 30 years.
26. The project has generated carbon credits that have been sold to buyers who want to offset their carbon emissions. The revenue generated from the sale of carbon credits is used to fund community development projects, such as schools, health clinics and water projects. Project was awarded the Gold level status by the Community and Biodiversity Standard for exceptional biodiversity and climate benefits.

2.3.3 MIKOKO PAMOJA PROJECT

27. Mikoko Pamoja is a community-led mangrove conservation and restoration project in Gazi Bay, Kenya which was started in 2010, and the world's first blue carbon project. It involves the prevention of deforestation of the local mangrove forest, as well community-based reforestation, the project coordinator, a charity registered in Scotland.
28. Total Payment for Ecosystem Services (PES) payments made to participants was USD119,323.81, for a period from 2014 to 2021.
29. These projects represent a subset of initiatives dedicated to carbon reduction and involvement in carbon trading. However, the entire process, encompassing project registration, verification, measurements, and the equitable distribution of benefits among governments, proponents, and communities, is **unregulated** at the moment.
30. While carbon trading presents an opportunity for Kenya to reduce its carbon emissions and earn revenue through the sale of carbon credits, there is **no law** which guides and regulates carbon markets. Additionally, there are no established institutions responsible for overseeing the carbon trade.

2.4 COMPARATIVE ANALYSIS

2.4.1 SINGAPORE

31. **Singapore** implemented its Carbon Price Legislation in 2019 which established the Climate Impact X (CIX) in 2021 that governs its voluntary carbon market⁸. The CIX facilitates the sale of high-quality carbon credits through standardized contracts and it has collaborations with the Singapore Exchange (SGX), Singapore's sovereign wealth fund Temasek, DBS Bank, and Standard Chartered Bank. CIX is managed by an executive team that determines the strategic course, a board that ensures that market behaviour reflects their goals and values, and an international advisory council that offers opinions on the most recent advancements in science, policy, and market applications as well as guidance on project evaluation and best practice insights. Additionally, CIX levies a yearly membership fee and a transaction cost for each trade in carbon credits.
32. The CIX has an ecosystem made up of two digital platforms: a carbon market (CIX Project Marketplace) and a carbon exchange (CIX Exchange). The CIX Project Marketplace was introduced in March 2022 for companies and carbon project developers that want to post, compare, purchase, and retire high-quality, verified carbon credits.

2.4.2 NIGERIA

33. Nigeria enacted the Climate Change Bill in 2021 to provide for a framework to achieve **low greenhouse gas emissions** and to mainstream climate change actions into national plans and programmes.
34. The Act establishes the National Council on Climate Change (NCCC) and defines its membership and attributions. It is mandated to make policies and decisions on matters concerning climate change. Specifically, the Council is required to collaborate with the Federal Ministry responsible for Environment and the Federal Ministry responsible for Trade to develop and implement a mechanism for carbon emission trading.
35. The Act further provides for the creation of the Climate Change Fund to be maintained by the NCCC and into which shall be paid; carbon taxes and emission trading; appropriations from the National Assembly; funding from international organizations; fines and charges issued to private and public entities on offenses and subventions, grants, donations, and fees for services rendered. The fund shall be applied towards funding the climate change mitigation initiatives and running of the NCCC.
36. The Act states that the Federal Ministry of Environment in consultation with the Ministry of National Planning shall set the country's Carbon budgets which are periodic approved levels of emissions. In addition, the Federal Ministry of Environment shall provide a detailed National Climate Change Action Plan.

2.4.3 UNITED KINGDOM

37. The United Kingdom has a Climate Change Committee with similar mandate to the National Climate Change Council in Kenya. The Committee members are nominated by the national authorities whereas in the proposed Bill a representative of the private sector, civil society, marginalized community and youth will be appointed by the President and submitted to the Parliament for approval.
38. Trading system is established through a secondary legislation in UK while Kenya intends to anchor the system in law through the proposed Amendment Bill.
39. The Secretary of State is required to seek and take into account the advice of the Committee and consult those likely to be affected by the regulation.

2.4.4 GHANA

40. Ghana's carbon credit trading is undertaken in the voluntary market and its source of carbon credits has been from natural-based solutions. The country has a secretariat that was created to facilitate the implementation of the country's international carbon market and non-market alternatives framework while also providing administrative and technical services to the general public. The secretariat, known as the Ghana Carbon Market Office (CMO), was created in accordance with the Environmental Protection Agency (EPA) Act 490, 1994.
41. The Government of Ghana also established a voluntary registry known as the Ghana Carbon Registry (GCR), which is run by the CMO. It gathers bottom-up data, employs high-quality standards and protocols for calculating and verifying projects' reductions in greenhouse gas (GHG) emissions, issues carbon credits from said projects, and diligently and transparently tracks the credits. Additionally, the GCR features a Grievance and Appeals Mechanism (GAM), a system that helps the Article 6 Office, Mitigation Activity Participants, and the general public to resolve complaints and grievances on matters of carbon credit trading swiftly, effectively, and efficiently.

PART THREE

3.0 OVERVIEW OF THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023)

3.1 INTRODUCTION

- 42. Article 42 of the Constitution of Kenya guarantees every person the right to a clean and healthy environment. Article 69 of the Constitution of Kenya provides for obligations of the state in respect of the Environment. It compels the government to develop and implement policies and laws aimed at conserving, protecting the environment and natural resources, including genetic resources, wildlife, forests and reducing carbon footprint. Specifically Article 69(g) states “eliminate processes and activities that are likely to endanger the environment”.
- 43. The Climate Change Act, 2016 is a comprehensive legal framework for addressing climate change in Kenya. It establishes institutions and mechanisms for coordination and implementation of climate change activities, and emphasizes the need for public participation, vulnerability assessments, emissions monitoring, achievement of low carbon emissions, and integration of climate change considerations into planning processes for sustainable development.
- 44. Thus, there are no specific provisions on carbon markets in the Constitution and the Climate Change Act 2016 which necessitate enactment of the proposed Bill.
- 45. The Climate Change (Amendment) Bill, 2023 is a government sponsored Bill that seeks to amend the Climate Change Act, 2016 to provide for the regulation of the carbon markets. The Bill creates and enhances the mandate of several institutions responsible for regulation of the carbon markets.

3.2 REVIEW OF THE BILL

- 46. The Principal object of this Bill is to amend the Climate Change Act, 2016 to provide for the regulation of the carbon markets. The Climate Change Act, 2016 is national legislation intended to enhance response to climate change and provide mechanisms to measures to achieve low carbon climate-resilient development. However, the Act does not provide a legal framework for carbon trading.
- 47. The Bill has sixteen (16) clauses and has the following provisions:
- 48. Clause 2 of the Bill seeks to amend section 2 of the Act in order to provide for the definition of the new terms introduced by the proposed amendments.
- 49. Clause 3 of the Bill seeks to amend section 3 of the Act in order to provide for, as one of the objects of the Act, a legal framework on international market mechanism on carbon markets.
- 50. Clause 4 of the Bill seeks to amend section 4 of the Act to delete reference to the Schedule as the aspects of public participation are provided in section 24 and the Regulations.

51. Clause 5 of the Bill seeks to amend section 6 of the Act to mandate the Council, as the overarching policy organ on climate change, to provide guidance and policy direction on carbon markets in the country.
52. Clause 6 of the Bill seeks to amend section 7 of the Act to align the provisions on membership of the Council, for better operations.
53. Clause 7 of the Bill seeks to amend section 8 of the Act to enhance the powers and duties of the Cabinet Secretary.
54. Clauses 8 and 9 of the Bill seeks to amend sections 9 and 10 of the Act to rename the head of the Directorate as the Secretary.
55. Clause 10 of the Bill of the Bill seeks to amend section 13 of the Act to provide for components relating to carbon markets to be considered in the Action Plan as this is the main planning and mainstreaming document.
56. Clauses 11,12 13 and 14 of the Bill seek to amend section 15, 16, 24 and 36 of the Act to empower the Cabinet Secretary to make regulations as the Council's mandate is of a higher level of providing overarching policy and national climate change co-ordination mechanism.
57. Clause 15 of the Bill seeks to insert a new Part in the Act to provide for the regulation of carbon markets.
58. Clause 16 of the Bill seeks to delete the Schedule to the Act as section 24 already provides for making of regulations on public participation.

PART FOUR

4.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

59. Following the call for memoranda from the public through placement of adverts in the print media on Wednesday, 16th August 2023 and vide a letter REF: NA/DDC/ EF&M/2023/037 dated 17th August 2023 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:
- i. Kenya Private Sector Alliance
 - ii. Kenya Association of Manufacturers
 - iii. Kenya Climate Change Working Group
 - iv. Kenya Wildlife Conservancy Association
 - v. Northern Rangelands Trust
 - vi. The Nature Conservancy
 - vii. Nairobi Climate Network
 - viii. Academia
 - ix. BURN Manufacturing Company
 - x. TAMUWA Limited
 - xi. Environment Institute of Kenya
 - xii. Centre for Science and Technology Innovations (CSTI)
 - xiii. Ministry of Environment, Climate Change and Forestry.
60. The Committee also acknowledges receipt of memoranda from the following institutions: American Chamber of Commerce (Kenya); CITADEL Law Africa; World Leaders of Today; and Mr. Shadrack Agaki.
61. The stakeholders submitted as follows:

4.1 KENYA PRIVATE SECTOR ALLIANCE

In a meeting with the Committee held on Monday, 21st August 2023, representatives from KEPSA proposed the following amendments to the Bill:

Clause 2

Amend the definition of the term “carbon market” to read as follows: “*carbon market*” means mechanism that allows transaction of reduction units, offsets, or mitigation outcomes through carbon initiatives, programs, projects, products for compliance with national and international laws. To allow spur more long term and sustainable measures climate interventions since projects have definite timelines.

Committee’s Observation/Recommendation

The Committee adopted the amendment

62. Amend the definition of the term “carbon offset” to read as follows, “*carbon offset*” means a reduction or removal of emissions of carbon dioxide or other greenhouse gases made in order to compensate for equivalent number of emissions made elsewhere. To provide clarity on the boundaries and application of the parties involved in offset measures.

Committee’s Observation/Recommendation

The Committee adopted the amendment.

63. Amend the definition of the term “carbon projects” to read as follows: “*Carbon projects*” means interventions including but not limited to programs, projects, programs, products designed to remove, reduce, sequester or avoid carbon emissions for mitigation of climate change. To avoid repetition of project in the word and in the definition.

Committee’s Observation/Recommendation

The Committee adopted the amendment.

64. Amend the definition of the term “stakeholders” to read as follows: “*Stakeholders*” means persons, business, organization or communities that has interest or is affected by activities of carbon projects and the results those actions provide. Clause 23(E) of this Bill makes reference communities as key parties to a carbon arrangement.

Committee’s Observation/Recommendation

The Committee adopted the amendment.

Clause 6

65. Amend clause 6(a)(ii) to read as follows, “*A representative of the private sector well versed with climate change affairs, who is in good standing to a national private sector business membership organization*”. To ensure that representation at the council upholds the coordination approach amongst the different stakeholders to ensure there is a fair representation of the private sector at the council as opposed presentation of individual interest.

Committee’s Observation/Recommendation

The committee rejected since it had already adopted a proposal to allow two representatives to be members of the Council considering the central role that the private sector plays in climate change mitigation

66. Amend clause 6(a)(ii) to read as follows, “*A representative of civil society well versed with climate change affairs, nominated by the most representative Civil Society organization working on climate change*”. To ensure that the Civil Society Organization representative is linked to the wider civil society for proper feedback and to enhance coordination of civil society concerns.

Committee’s Observation/Recommendation

The Committee ejected the proposal and observed that the National Climate Change Council had never been operationalized due to on-going litigation as regards to the nomination by the most representative civil society as required by the Climate Change Act, 2016 .

Clause 7

67. Amend by inserting a new subsection 2(c) to read as follows, “*2(c) The Cabinet Secretary shall develop regulations for the Designated National Authority*”. It is important to direct development of further regulations that outline requirements for such an entity to qualify, its operations and functionalities and accountabilities.

Committee’s Observation/Recommendation

The Committee rejected the proposal as the same had already proposed to be provided for in the proposed amendment to Section 36 of the Act

Clause 23

68. Amend Clause 23C(1) by inserting a new paragraph 23C(1)(d) immediately after 23C(1)(c) to read as follows, "*(d) the cabinet Secretary shall make regulations and formulate guidelines for carbon market trading recognized under subsection 23C(1)*". To provide for the Cabinet Secretary to make regulations to be able to address the dynamics of trading in carbon market as well as outline the incentives both fiscal and non-fiscal for carbon trading.

Committee's Observation/Recommendation

The Committee rejected the proposal since it is already provided for in the proposed newSection 23A(2)

69. Amend clause 23E(5)(b) *to provide that all land based and non-land-based projects, shall apply the carbon credit revenue sharing formula developed in consultation with Commission of Revenue Allocation (CRA)*. To provide for consultation with the Commission of Revenue Allocation (CRA) in developing a general formula to guide revenue sharing for both land-based projects and non-land-based projects that takes in to account all parameters such as subsidies, inflation adjustments, taxes, corporate social responsibility accrued in the life time of the projects etc.

Committee's Observation/Recommendation

The Committee rejected the proposal as Pursuant to Article 215 of the Constitution, the principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government between the national and county governments and between the county governments

70. Amend clause 23E(7) *to provide that every carbon project undertaken pursuant to this act shall take into consideration and aim to improve the environmental economic social and cultural wellbeing of the community around the project*. In order to include also environmental benefits, Carbon projects should prioritize environmental benefits of reducing emissions to ensure the primary objective is not diverted to economic gains.

Committee's Observation/Recommendation

The Committee adopted the proposal.

4.2 KENYA ASSOCIATION OF MANUFACTURERS

In a meeting with the committee held on Monday, 21st August 2023, Ms. Miriam Bomett, KAM representative proposed the following amendments to the Bill:

Clause 6

71. Amend sub-clause 6(f) to read as follows, "*(f) Two representatives of the private sector representing the manufacturing and service sector*". To ensure the key sectors of the manufacturing and service sector are represented.

Committee's Observation/Recommendation

The Committee adopted the proposal.

Clause 10

72. Amend the clause to read as follows, "*The Cabinet Secretary with the recommendation of the Council shall within a year, publish regulations and guidelines relating to carbon budgets, carbon credits, carbon markets, carbon projects, and carbon offsets, community development agreement, sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities*". To provide for clarity on the key issues proposed to be introduced under this Bill such as on the carbon budgets, credits, markets, projects, and offsets.

Committee's Observation/Recommendation

The Committee rejected the proposal and observed that the Cabinet Secretary ought to consult the National Climate Change Council in the making of regulations since it is the apex body responsible for climate change matters hence ought to be informed.

73. Amend Clause 10 to read as follows, *10(2)(f) The Cabinet Secretary shall- "Authorize approval of entities under any, Internationally Transferred Mitigation Outcomes with recommendation from the Council and develop Rules guiding the same within one year"*. To allow business continuity through risk mitigation.

Committee's Observation/Recommendation

The Committee rejected the proposal as the Bill had already outlined the functions of the Cabinet Secretary with regards to matters of carbon trading in line with the Paris Agreement.

74. Amend section 23(4) to read as follows, "*The Council shall, on recommendation of the Cabinet Secretary shall within a year publish regulations on design and procedures to ensure the efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.*" To ensure that regulations on public participation are published within one year.

Committee's Observation/Recommendation

The proposal was rejected by the Committee it is already provided for in the schedule to the Climate Change Act.

Clause 15

75. Amend clause 15 to reduce the annual social contribution percentage to a minimum of at least 10% to the community from project earnings. To ensure both fairness and sustainability for businesses.

Committee's Observation/Recommendation

The Committee rejected the proposal as the proposed revenue formula was reasonable and would ensure that not only the communities but also project proponents benefit from carbon projects.

76. Amend Clause 15 on the carbon registry to introduce a new paragraph 23G (4) to read as follows, "*23G (4) the registers and the relevant details entered on the application shall be available for search to the public on terms set by the Council.*" To ensure transparent and user-friendly registry that promotes a better understanding of the carbon market and encourages more active participation from businesses.

Committee's Observation/Recommendation

The Committee adopted this proposal because it is in line with requirements for access to information.

4.3 KENYA CLIMATE CHANGE WORKING GROUP

In a meeting with the Committee held on Monday, 21st August 2023, Mr. Aryn A. Khan, Treasurer Convener of Adoption proposed the following amendments to the Bill:

Long Title

77. Amend long title of the Act to read as follows, *"AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate resilient development, and for connected purposes. It is also the instrument to facilitate implementation of national and international commitments."* For consistency with the Paris Agreement.

Committee's Observation/Recommendation

The proposal was rejected because is the same had already been catered for by the words "for connected purposes"

Clause 2

78. Amend by providing a clear definition of "whitelist".

Committee's Observation/Recommendation

This proposal was rejected because the Bill has already provide for the definition of "whitelist".

79. Propose an inclusion of the definition of "Impacted Community"

Committee's Observation/Recommendation

The Committee rejected this proposal since there is no specific definition provided in the proposal.

80. Amend definition of "Fund" to mean *"Fund" means the Fund established by the Cabinet Secretary under section 25 of the Climate Change Act, 2016 pursuant to Section 24 of the Public Finance Management Act, 2012.*

Committee's Observation/Recommendation

The Committee rejected the proposal in line with section 24 of the PFM Act. The definition is also provided for in the Climate Change ACT as it makes reference to the Fund as established by the Act..

NEW

81. Amend section 3(1) by deleting the phrase *'for the sustainable development of Kenya'* and replacing it with *'for sustainable development and eradication of poverty in Kenya.'*

Committee's Observation/Recommendation

This proposal was rejected by the Committee because it does not capture the purpose of the Bill and poverty does not form part of climate change.

Clause 4

82. Amend by deleting Clause 4.

Committee's Observation/Recommendation

This proposal was adopted by the Committee to align to the requirements of Article 118 of the Constitution on public participation.

NEW

83. Amend by deleting Section 6 (g) and replacing with the following, *"advise the Climate Change Fund Board on legislative, policy and other measures regarding climate finance, as appropriate"*.

Committee's Observation/Recommendation

This proposal was rejected by the Committee since there is no provision for Fund Board in the Bill.

Clause 6

84. Amend by Delete the proposed amendment to section 6(a)(ii). To allow Civil Service Organizations to choose their representatives.

Committee's Observation/Recommendation

This proposal was rejected to help facilitate operationalization of Climate Change Council.

85. Amend Section 7 of the principal Act by deleting the section and replacing it with
"(1) The Council shall comprise not more than eight members who shall be appointed by the President.
(2) The Council shall be constituted as follows:
a) The Cabinet Secretary responsible for environment and climate change affairs;
b) The Cabinet Secretary/Secretaries responsible for the National Treasury and Economic Planning;
c) The chairperson of the Council of Governors;
d) A representative of the private sector nominated in consultation with the Private Sector;
e) A representative of the Civil Society nominated in consultation with Civil Society Organizations;
f) A representative of the marginalized community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge nominated in consultation with the marginalised community; and
g) A representative of the academia nominated in consultation with the Commission for University Education."

86. Amend by inserting the following new section immediately after section 7-

- (1) There is established a Climate Change Technical Committee
- (2) The Committee shall be chaired by the Cabinet Secretary for the time being responsible for Climate Change Affairs
- (3) The Climate Change Secretary shall be the secretary to the Committee.

87. Functions of the Committee

The Committee shall provide an overarching national climate change coordination mechanism and shall—

- a) ensure the mainstreaming of the climate change function by the national and county governments;
- b) approve and oversee implementation of the National Climate Change Action Plan;
- c) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;
- d) set the targets for the regulation of greenhouse gas emissions;
- e) Oversee the implementation of the carbon markets framework;
- f) Approve proposals for funding through the Climate Change Fund;
- g) Facilitate implementation and tracking of the Kenya Nationally Determined Contribution;

- h) Oversee the implementation of the Monitoring, Reporting, and Verification of Climate Change;
- i) Provide technical guidance on climate change action and support as appropriate.

88. Members of the Climate Change Technical Committee

- (1) The Climate Change Technical Committee shall comprise not more than fifteen members who shall be appointed by the Cabinet Secretary for the time being responsible for Climate Change.
- (2) The Committee shall be constituted as follows.
 - a) The Permanent Secretary responsible for Climate Change;
 - b) The Permanent Secretary/Secretaries responsible for the National Treasury and Economic Planning;
 - c) The Permanent Secretary responsible for Energy;
 - d) The Permanent Secretary responsible for Crop Development;
 - e) The Permanent Secretary responsible for Industry;
 - f) The Permanent Secretary responsible for Blue Economy;
 - g) The chairperson of the Committee responsible for Climate Change at the Council of Governors;
 - h) A representative of the private sector nominated in consultation with the Private Sector;
 - i) A representative of the Civil Society nominated in consultation with Civil Society Organizations;
 - j) A representative of the youth nominated in consultation with youth organizations/networks working climate change;
 - k) A representative of Indigenous people, within the meaning of Article 260 of the Constitution, nominated in consultation with the indigenous peoples' organizations; and
 - l) A representative of the academia nominated in consultation with the Commission for University Education.

Committee's Observation/Recommendation

This proposal was rejected because the functions proposed are the same as the functions of the Council and the Directorate.

Clause 7

89. Insert a new paragraph to provide that- *(bd) authorize the establishment of the REDD+ Registry and other sector registries to feed into the National Carbon Registry.* This will increase access to carbon market information within the County as well facilitation of negotiations and agreements.

Committee's Observation/Recommendation

This proposal was adopted by the Committee as the Bill had already provided for the establishment of the Designated National Authority

Clause 8

90. Delete the proposed amendment to section 9(2). The directorate should be checked and held accountable by the ministry of Environment, Climate Change and Forestry.

Committee's Observation/Recommendation

The Committee did not adopt this proposal because the Directorate is established under the State Department of environment hence administratively it ought to report to the Principal Secretary and not the Cabinet Secretary.

New Clause

91. The principal Act is amended in section 25 by:
- a) deleting subsection 1 and replacing with the following words “the Cabinet Secretary for the time being responsible for finance may establish a Climate Change Fund, under section 24 of the Public Finance Management Act, 2012”.
 - b) deleting subsections 2-9

Committee’s Observation/Recommendation

The Committee did not adopt this proposal in line with Section 24 of the PFM Act as the Fund had already been established in the Climate Change Act, 2016.

Clause 15

92. *Propose an amendment of the section 23(B)(c) to include indicative time frames (minimum 5 years). Reasonable length of time is subject to different interpretations therefore vital to give a timeframe (at least 5 years).*

Committee’s Observation/Recommendation

The Committee did not adopt this proposal since the timeline is captured in the definition of Carbon Standards.

93. Amend 23(C)(2)(a) by inserting the phrase “*in consultation with the Attorney General, and with the approval of the cabinet*” after ‘may’ and before ‘enter into’.
94. Amend 23(C)(2)(b) by inserting the phrase “*in consultation with the Attorney General, and with the approval of the cabinet*” after ‘may’ and before ‘enter into’.
95. Amend section 23C(4) by replacing “*the Cabinet Secretary*” with “*the National Designated Authority.*”

The AG’s office in charge of the country’s agreement hence should be involved in the process. The Cabinet should be involved in this to ensure there is consultation.

The Cabinet Secretary does not report to UNFCCC in his/her capacity as a Cabinet Secretary. This is the role of the National Designated Authority.

Committee’s Observation/Recommendation

The Committee noted that the amendments were not necessary, hence did not adopt the proposals as the Attorney General is a member of Cabinet

96. Amend section 23E(5)(b) to provide that the National Treasury shall disburse the funds. For accountability and redress purposes.

Committee’s Observation/Recommendation

The Committee rejected the proposal. The disbursement of funds should remain with the respective Ministry responsible for environment as the Principal Secretary in the ministry of environment is responsible for the administration of the Fund

97. Amend section 23E(5)(f) by replacing 'two years' with 'five years.' Two years is a very short time for a carbon project to have borne results. More time necessary to ensure the review is beneficial.

Committee's Observation/Recommendation

The Committee rejected the proposal since of the proposed timeframe of five years had already been provided for in the Bill.

98. Amend section 23E(6) by providing for county registry. Having county registries will make reporting efficient, at the national level. It will also promote accountability and transparency.

Committee's Observation/Recommendation

The Committee rejected the proposal. No provision for County Registries in the Bill as the Designated National Authority had already been provided for in the Bill and that county governments at the moment lack the capacity and technical skills to deal with carbon trading

99. Amend section 23E(9) by inserting the words "in consultation with the County Government." after the words, "The Cabinet Secretary". To ensure checks and balances.

Committee's Observation/Recommendation

The Committee did not adopt the proposal as the Designated National Authority had already been provided for in the Bill and that county governments at the moment lack the capacity and technical skills to deal with carbon trading

4.4 KENYA WILDLIFE CONSERVANCY ASSOCIATION

In a meeting with the Committee held on Monday, 21st August 2023, Ms. Gladys Werigia, Policy Lead, submitted the following proposals on behalf of the KWCA:

Clause 15

100. Insert the following new principles 23 B –

(a) Eligible mitigation projects for international transfer shall demonstrate shall be environmental integrity, transparency and promote sustainable development;
(b) Carbon credit market that is of high integrity and high quality;
(c) Leverage carbon credits to meet the Country's national determined contribution mitigation commitments;
(d) Respect and safeguard of social and economic rights of local communities, while promoting access to equitable benefits;
(e) Mitigate against greenwashing;
(f) Promoting development of national and local skills and capacities across the carbon market value chain; and
(g) Advance the conservation of the Country's biodiversity and environment agenda towards enhancing adaptation capacities.

The principles in the Bill are largely clearly structured as objective rather than guiding standards for Kenya's carbon market.

Committee's Observation/Recommendation

The Committee did not adopt the proposal as the principles had already been provided for in the proposed new section 23B and the same would be further provided for in the regulations to be made by the Cabinet Secretary.

101. Insert under 23E(4) *the specific government Authority that shall coordinate the preparation and monitor the negotiation of the community development and benefit sharing agreement in collaboration with the national and respective county government where the carbon credit trading project is situated.* Under 23(4), the benefit sharing administration is NOT placed within any specific national and county government entity, but generally on the two levels of government

102. Delete 23 E(8)

Committee's Observation/Recommendation

The Committee did not adopt the proposal as the Designated National Authority had already been provided for in the Bill and that county governments at the moment lack the capacity and technical skills to deal with carbon trading

103. Substitute 23E5(b) with the following

(b) the annual social contribution of the aggregate earnings of the credit issuance year to the community, to be disbursed to the community and managed for identified community led development initiatives and facilitate activities that promote carbon sequestration and ecosystem health. A previous year approach fails to take into consideration carbon credit vintage years, vesting systems, and other complexities of carbon markets. A gross revenue share formula is recommended to promote equity and transparency in the carbon market while mitigating against manipulation by project developers, through the net formula and other complexities of carbon markets.

Committee's Observation/Recommendation

The Committee did not adopt the proposal as declarations of revenue sharing are usually based on the aggregate earnings of the previous year .

104. Insert the following new paragraph immediately after 23E5(b) (ii)(b) (iii)- *A minimum of sixty percent (60%) of gross revenue of a given credit issuance to be disbursed for community payment, where the project is developed on community land through a lease arrangement or other agreed manner.* There is no guide as to a minimum on economic benefits accruing to a community where the carbon project is developed on community land through lease model or otherwise.

Committee's Observation/Recommendation

The Committee did not adopt the proposal as the proposed revenue formula was reasonable and would ensure that not only the communities but also project proponents benefit from carbon projects.

105. Insert the following new paragraphs immediately after 23E 5(ii) 23E(5)- *A community development agreement shall provide—*

(iii) rights and obligations of the private or public entity engaged in carbon credit trading business and local community;

(iv) monetary benefits that may accrue from the project and the initial contribution of the private or public entity engaged in the carbon credit trading business;

(v) terms on benefit sharing among the national government, respective county government, local community and other relevant stakeholders; and

(vi) rules and procedure of engagement and participation of the public and with the local community, process for obtaining free prior informed consent and approval by community.

The provisions on scope of community development agreement are inadequate especially on community safeguard, community engagement and transparency by carbon credit project developers.

Committee's Observation/Recommendation

The Committee did not adopt the proposal since the Bill had already provided for the same in the proposed new clause 23E on the contents of a community development agreement.

106. Insert the following new paragraph immediately after 23E 10- *The Cabinet Secretary may develop model community agreements to guide communities on basic terms for negotiations in development of the agreements.* The multiple governance structures in the Bill (Designated National Authority, Climate Directorate and the Cabinet Secretary) all with various powers and mandates in the regulation of carbon market, have the potential to overlap in discharge of their powers and duties, which is a dis-incentive for the carbon credit business.

107. A description of carbon rights be provided in the Bill to include intangible assets and or ownership of beneficial interest created by legislation or contractual arrangements, arising from carbon sequestered and carbon stored in forests, soil, grasslands or other approved means.

Committee's Observation/Recommendation

The Committee did not adopt the proposal since it can be provided for in the regulations. The Committee further proposed amendments to ensure that the Cabinet Secretary makes regulations for the same.

108. The Bill to provide comprehensive section on offences and a detailed schedule on the penalties which need to be commensurate to the value of the business, both in amounts of fines and term of sentence. The offences include but are not limited to:

- a) conduct of unauthorized carbon credit trade,*
- b) relating to social and environmental impact assessments*
- c) relating to maintenance of carbon records,*
- d) manipulation of measurements to claim additional measurements*
- e) selling to unauthorized entities*

- f) *false or misleading claims with respect to environmental or financial gains or benefits from carbon market investment*
- g) *financial crimes including money laundering, transfer miss-pricing*

In order for Kenya to develop and maintain high integrity and value carbon credit market, there is need for provision of offences and related penalties.

Committee's Observation/Recommendation

The Committee adopted the proposal with proposed penalty of a maximum of Kenya Shillings five hundred million (Kshs. 500,000,000) and ten (10) years jail term.

109. **Substitute 23H with the new paragraphs-**

1) Any dispute between parties to a carbon credit trading purchase agreement arising from land based and non-land based project shall be resolved through alternative dispute resolution mechanisms in the first instance.

2) If any dispute remains unresolved, through alternative dispute resolution mechanisms either party shall have the right to refer the dispute to arbitration.

3) Any person who is dissatisfied with the outcome of an arbitration process may refer the dispute to the Carbon Credit Trading Tribunal.

Committee's Observation/Recommendation

The Committee did not adopt the proposals as the dispute resolution mechanism for land-based projects ought to be distinguished from non-land based which are not based on community development agreements

4.5 NORTHERN RANGELANDS TRUST

In a meeting with the committee held on Monday, 21st August 2023, Hon. Chachu Ganya, Consultant, Northern Rangelands Trust proposed the following amendments to the Bill:

110. *Existing voluntary projects should be enabled and allowed to continue with their operations for a reasonable period of time until regulations are made pursuant to the Act. In order to provide for transitional provisions as regards to existing projects.*

Committee's Observation/Recommendation

This proposal was adopted by the Committee to allow for the transition. A clause to be provided with specific timelines.

4.6 NAIROBI CLIMATE NETWORK

In a meeting with the Committee held on Monday, 21st August 2023, Ms. Heloise Zimmermann, Co-Founder, Nairobi Climate Network proposed the following amendments to the Bill:

Clause 15

111. Amendment of the new clause 23A (c) by deleting the word "*whitelist*" and substituting with the words "*Kenya Carbon Standards List*". The government should not re-invent the wheel and should accredit existing carbon standards based on the Kenya Carbon Standards List as opposed to the white list which has favoured technologies.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee because the definition provided in the Bill is sufficient.

112. Amend the proposed new section 23B(c) by *inserting the words "as prescribed by the relevant carbon standards" at the end of the provision*. To avoid further standards in addition to the international standards for carbon credit certification which are already recognized as this can cause confusion and possible hesitance by foreign investors to invest into carbon credit projects in Kenya.

Committee's Observation/Recommendation

This proposal was adopted by the Committee because it seeks to provide clarity as regards to the carbon offset projects emissions are kept out of the atmosphere for a reasonable length of time, in line with the prescribed carbon standards.

113. Amend by deleting the proposed new section 23E(4) and substituting with the following- (4) *Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis*. The sector must be allowed to grow and flourish with guardrails in place rather than constraining it.
114. Amend the proposed new section 23E (5)(b) by deleting the words "*aggregate earnings of the*".
115. Amend by deleting the proposed new section 23E (5)(b)(i) and 23E (5)(b)(ii)

This will create a nightmare scenario where the carbon credit sector in Kenya is likely to shrink or collapse entirely. Such an impact is already being seen as a result of legislation recently passed in jurisdictions like Zimbabwe and Tanzania.

Committee's Observation/Recommendation

This proposal were not adopted by the Committee as the committee was of the view that the provisions of the Bill with respect to community development agreements and the proposed revenue formula would ensure that there is transparency and that local communities are safeguarded from exploitation and also benefit from the carbon projects

4.7 PROF. GEORGE ODERA OUTA

In a meeting with the Committee held on Monday, 21st August 2023, Prof. George Odera, Professor, Technical University of Kenya proposed the following amendments to the Bill:

116. *The definitions should be reviewed with a view to contextualising them*. Some of the definitions are rather heavily 'text-book' oriented and do not speak directly to the Kenyan situation

Committee's Observation/Recommendation

This proposal was not adopted by the Committee since it does not provide for specific definitions. The Committee further observed that most of the definitions were based on the international standards provided for in the Paris Agreement

117. *Amend section 4(i) to correct the typographical error i.e 4(i) refers to level of government (instead of levels of government which is the intention); also 'mechanism' (in the preamble) instead of mechanisms.*

Committee's Observation/Recommendation

This proposal was adopted by the Committee since it is meant to correct typos.

Clause 7

118. Instead of leaving appointments to be exercised discretionally, the representative of the academia be made from a national university department with an established and verifiable track record of teaching and research on matters of climate change. The only such university department in Kenya today is the Institute for Climate Change at the University of Nairobi. The act should leave it to the respective University departments to establish their internal criteria for nomination.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee since no specific proposed amendment is provided.

119. Review Section 8. The amendments seem to be reverting too much discretionary power to the CS, unlike what was envisaged in the original act: the vision of a Council that can complement the work on Climate Change without being rendered subservient to ministerial bureaucracy.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee since the proposed Bill is in line with the existing legislation as the functions of the Council and the Cabinet Secretary are distinct and that the proposed amendments would ensure that the Cabinet Secretary as opposed to the Council makes regulations but in consultation with the Council.

Clause 9

120. To harmonise with recent precedents within government, perhaps a title as Director-General may be more apt for this role.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee. Traditionally, the Directorates are normally headed by Secretaries.

Clause 10

121. On the proposed amendment to section 13(5)- *There is really no need to over-emphasize carbon markets under this paragraph and in so many other sections of the act. There is really no meaningful discourse on climate change in the absence of carbon, but this over-emphasis creates the impression of a competition between the two.*

Committee's Observation/Recommendation

This proposal was not adopted by the Committee since it is just a comment and not providing for any specific amendment.

Clause 15

122. Section 23E(5) - *Provision should be reworded to make it less intimidating to carbon traders. County governments could be proposed to take care of community interests instead of the often controversial, 'community.'*

Committee's Observation/Recommendation

This proposal was not adopted by the Committee since there is was specific proposal and that that the provisions of the Bill with respect to community development agreements and the proposed revenue formula would ensure that there is transparency and that local communities are safeguarded from exploitation and also benefit from the carbon projects

4.8 BURN MANUFACTURING COMPANY

In their memorandum, BURN Manufacturing Company proposed the following amendments to the Bill:

123. Propose a Data-Driven Community Benefit Tracking: specific percentages are removed from the legislation, and the Government of Kenya instead collects data on community benefit initiatives.
124. Inclusive Recognition of Existing Community Benefits: all forms of existing community benefit should be counted towards the percentage. Project developers should report their existing financial and non-financial community benefits to the government to show compliance, but the actual revenue sharing should be disbursed through the project or local stakeholder groups – and not by central or county government.

Committee's Observation/Recommendation

This amendment was not adopted by the Committee because it is not specific on the provisions of the Bill that ought to be amended.

4.9 TAMUWA LIMITED

In their memorandum, TAMUWA Limited proposed the following amendments to the Bill:

Clause 15

125. *Clause 23A (c): replace 'whitelist' with '...Kenya Carbon Standards List'. To avoid further 'standards' on top of International Standards for carbon credit certification which are already recognised as this would cause confusion and deter investment by foreign investors into carbon credit projects in Kenya.*

Committee's Observation/Recommendation

This amendment was not adopted by the Committee because the definitions are already provided for in the Bill and the committee further noted that it was important for the country to also uphold international standards on carbon trading in line with the Paris agreement.

126. Clause 23A (2): add to end of clause ‘...from time to time.’

Committee’s Observation/Recommendation

This amendment was not adopted by the Committee because the amendment had already been catered for in the definition of “carbon standards”.

127. Clause 23B (c): add to end of clause ‘...as prescribed by the relevant carbon standards;

Committee’s Observation/Recommendation

This amendment adopted by the Committee to cure the issue of timelines.

128. Clause 23E (3): rewrite to read as follows: *‘Every land-based project undertaken pursuant to this Act shall outline and report the intended community engagement, community development and community relationships of the proponents of the project in public and community land where the project is under development.’*

Committee’s Observation/Recommendation

This amendment was not adopted by the Committee as the committee was of the view that the provisions of the Bill with respect to community development agreements and the proposed revenue formula would ensure that there is transparency and that local communities are safeguarded from exploitation and also benefit from the carbon projects

129. Clause 23E (4): rewrite to read as follows: *‘Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis.’*

Committee’s Observation/Recommendation

This amendment was not adopted by the Committee as the committee was of the view that the provisions of the Bill with respect to community development agreements and the proposed revenue formula would ensure that there is transparency and that local communities are safeguarded from exploitation and also benefit from the carbon projects

130. Clause 23E (5): rewrite to read as follows: ‘Projects shall report on the following:’
131. Clause 23E (5)(b): rewrite to read as follows: ‘the annual social contribution of the previous year to the community.’
132. Clause 23E (5)(b)(i): DELETE
133. Clause 23E (5)(b)(ii): DELETE
134. Clause 23E (5)(f): DELETE
135. Clause 23E (6): DELETE
136. Clause 23E (8): DELETE

137. Clause 23E (9): DELETE

138. Clause 23F: DELETE

Committee's Observation/Recommendation

This proposals were not adopted by the Committee as the committee was of the view that the provisions of the Bill with respect to community development agreements and the proposed revenue formula would ensure that there is transparency and that local communities are safeguarded from exploitation and also benefit from the carbon projects

4.10 ENVIRONMENT INSTITUTE OF KENYA

In their memorandum, Environment Institute of Kenya proposed the following amendments to the Bill:

Clause 2

139. Define "Professional body" to mean a professional body dealing with the registration and regulation of the standards and practice of environmental professionals.

Committee's Observation/Recommendation

This proposal was rejected by the Committee because the term has not been used in the Bill or the principal Act.

Clause 6

140. Amend section 7 (iv) by inserting the following paragraph immediately before paragraph (g)- *A representative of a professional body relating to matters environment.* Environment Institute of Kenya boast of a membership from diverse environmental profession and serving in all stated Ministries.

Committee's Observation/Recommendation

This proposal was rejected by the Committee since the membership of the Council had already factored in players from the private sector.

Clause 8

141. A person shall be qualified for appointment as a Director/Secretary (new proposal) of Climate Change if the person – *Include (e) must be a registered and licensed member of a professional body relating to matters environment.* The Director/Secretary must be conversant with climate change and general environmental matters to enhance service delivery at the Directorate.

Committee's Observation/Recommendation

This proposal was rejected by the Committee as the qualifications of the Director as provided for in the Act were sufficient

4.11 CENTRE FOR SCIENCE AND TECHNOLOGY INNOVATION

In their memorandum, CSTI proposed the following amendments to the Bill:

Clause 15

142. Amendments to clause 25E(5)(d) do not provide a mechanism for ensuring benefits will occur. Environmental Credit Constraints need to be added.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee because there was no specific proposed amendment.

4.12 MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

In a meeting with the Committee held on Monday, 21st August 2023, the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry made the following submissions on the Bill:

143. The Climate Change (Amendment) Bill, 2023 seeks to introduce carbon trading that has enormous benefits to Kenya in that:

1. It supports the country to comply with the Paris Agreement that Kenya ratified and became a Party to, on 28th December, 2016. Article 6 of the Paris Agreement encourages Parties to raise their mitigation ambition through carbon markets and non-market approaches;
2. It supports climate change interventions by enabling Kenya in achieving her Nationally Determined Contributions (NDC) in line with Article 6 of the Paris Agreement. Kenya submitted her updated NDC in 2020 whose ambition is to reduce greenhouse gases by 32% relative to business-as-usual scenario of 143 metric tons of carbon dioxide equivalent by 2030. The NDC explicitly highlights Kenya's intention to access and use Article 6 of the Paris Agreement and that relevant legislation and institutions will be developed to enable Article 6 operationalization;
3. It ensures horizontal integration by institutionalizing the National Climate Change Council and vertical integration by mainstreaming climate change policy as determined by the Council through national and county institutions;
4. It will accelerate investments in carbon projects as well as facilitate reduced costs for low-carbon investments and transition;
5. It provides an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;

In addition, the Bill provides an opportunity for:

6. Global trading in sovereign forest carbon assets under the REDD+ process;
7. Domestic legislature that will enable Kenya to establish the necessary national arrangements such as approval of project level activities;
8. Coherence in approaches to climate investments in the country;
9. Sustainable development in the delivery of climate actions on the ground;
10. Equity in benefit sharing;
11. Change of mindsets on living with harmony with nature; and
12. Diversification of livelihood options at the local level and value addition.

The Cabinet Secretary submitted the following proposed amendments to the Bill:

Commencement

144. Not provided for in the Bill. *"Commencement of the Act should be by notice in the Gazette"*. To ensure that all pre-requisites for the Act's implementation are properly established beforehand.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee to allow the Act come into force within 14 days after enactment so as to ensure that the Act is operationalized within a reasonable timeframe.

Clause 10

145. Amend section 13(3)(a) of the Principal Act *by deleting the word "County" and replacing therefor with the word "Country"*. To correct a typographical error.

Committee's Observation/Recommendation

This proposal was adopted by the Committee because it is correcting typographical error.

Clause 15

146. Insertion of a new section 23(I)

Fees

There shall be charged such fees by the Designated National Authority and the Registrar as may be prescribed in the regulations for the proper administration of this Act. The proposed amendment seeks to insert a new section on fees to be charged by the Designated National Authority and the Registrar, as may be prescribed in the regulations for the proper administration of this Act.

Committee's Observation/Recommendation

This proposal was adopted by the Committee with deletion of *"and the Registrar"* since Bill does not provide for the establishment of the office of the Registrar yet the proposed amendment makes reference to the Registrar as regards the prescription of fees which may be charged.

PART FIVE

5.0 COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee observed that enacting the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) into law will bring several potential benefits to the country, including:

1. Supporting the country to comply with the Paris Agreement that Kenya ratified and became a Party to, on 28th December, 2016;
2. It supports climate change interventions by enabling Kenya in achieving her Nationally Determined Contributions (NDC) in line with Article 6 of the Paris Agreement. Kenya submitted her updated NDC in 2020 whose ambition is to reduce greenhouse gases by 32% relative to business-as-usual scenario of 143 metric tons of carbon dioxide equivalent by 2030;
3. It ensures horizontal integration by institutionalizing the National Climate Change Council and vertical integration by mainstreaming climate change policy as determined by the Council through national and county institutions;
4. It will accelerate investments in carbon projects as well as facilitate reduced costs for low-carbon investments and transition;
5. It provides an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;
6. The operationalization of the National Climate Change Council since the same has not been in operation since the enactment of the Climate Change Act into law in 2016; and
7. Providing an effective legal framework for carbon trading in the country.

PART SIX

6.0 COMMITTEE RECOMMENDATION

The Committee having reviewed the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) recommends that the House approves the Bill with amendments as proposed in the Schedule in Part seven of this report.

PART SEVEN

7.0 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

CLAUSE 2

1. THAT clause 2 of the Bill be amended—
 - (a) in the definition of “carbon market” by inserting the word “products,” immediately after the word “initiatives”;
 - (b) in the definition of “carbon offset” by inserting the words “with equivalent number of emissions” immediately after the word “compensate”;
 - (c) by deleting the definition of “carbon projects” and substituting therefor the following new definition—

“Carbon projects” means interventions including programs, projects, and products designed to remove, reduce, sequester or avoid carbon emissions;
 - (d) in the definition of “stakeholder” by inserting the word “community” immediately after the word “business”.

Justification-The amendment seeks to amend the proposed terms with respect to carbon trading so as to ensure that all aspects are captured

CLAUSE 4

2. THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

Amendment of
section 4 of No.
11 of 2016.

4. Section 4 of the principal Act is amended in subsection (1) by deleting the word “level” appearing immediately after the words “bind all” and substituting therefor the word “levels”.

Justification-The amendment seeks to ensure that the Schedule to the Act on public participation is not deleted as proposed in the Bill and also to correct a typographical errors

CLAUSE 6

3. THAT clause 6 of the Bill be amended in paragraph (a) by—
 - (a) deleting sub-paragraph (ii) and substituting therefor the following new sub-paragraph—
 - (i) deleting paragraph (f) and substituting therefor the following new paragraph—

(f) two representatives of the private sector representing the manufacturing and trading sectors;
 - (b) deleting sub-paragraph (v).

Justification-The amendment seeks to ensure that two representatives of the private sector, representing the manufacturing and trading sectors, are members of the National Climate Change Council and that the representative of the marginalized community in the National Climate Change Council is nominated in compliance with Article 260 as provided for in the Act.

CLAUSE 10

4. **THAT** clause 10 of the Bill be amended by inserting the following new paragraph immediately after the opening statement—
- (a) in subsection (3) by deleting the word “county” appearing in paragraph (a) and substituting therefor the word “country”;

Justification-The amendment seeks to correct a typographical error

CLAUSE 13

5. **THAT** the Bill be amended by deleting clause 13 and substituting therefor the following new clause—

Amendment of
section 24 of No.
11 of 2016.

4. Section 24 of the principal Act is amended by deleting subsection (3).

Justification-The amendment seeks to ensure that matters of public participation are provided for in the Act as is the case currently and not through regulations to be made by the Cabinet Secretary

NEW CLAUSES

6. **THAT** the Bill be amended by inserting the following new clauses immediately after clause 13—

NEW CLAUSE 13A

7. **THAT** the Bill be amended by inserting the following new clause immediately after clause 13—

Amendment of
section 33 of No.
11 of 2016.

- 13A.** Section 33 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

(1A) A person who—

- (a) willingly conducts unauthorized trade in carbon credit;
- (b) knowingly gives false or misleading information with respect to environmental or financial gains from the carbon market investment;
- (c) manipulates carbon credit measurements in order to claim addition measurements;
- (d) engages in money laundering through carbon trading;
- (e) knowingly sells carbon credits to unauthorized entities; or
- (f) fails to maintain carbon records,

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

Justification-The amendment seeks to provide for offences and penalties with respect to carbon trading

NEW CLAUSE 13B

Amendment of
section 35 of No.
11 of 2016.

13B. Section 35 of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1)—
 - (2) Sections 2, 3, 5 7, 10 and 15 of this Act, shall not apply, to entities that have existing carbon projects for a period of one year.

Justification-The amendment seeks to ensure that the provisions of the Act touching on carbon trading do not apply to persons currently undertaking carbon projects for a period of one year

CLAUSE 14

8. **THAT** the Bill be amended by deleting clause 14 and substituting therefor the following new clause—

Amendment of
section 36 of No.
11 of 2016.

14. Section 36 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

- (ba) the regulation of carbon markets;
- (bb) the regulation of carbon trading;
- (bc) the regulation of carbon registries; and
- (bd) the regulation of non-market approaches;

Justification- The amendment seeks to ensure that Cabinet Secretary makes regulations with regards to matters touching on carbon trading in line with Article 94(6) of the Constitution

CLAUSE 15

9. **THAT**, clause 15 of the Bill be amended—

- (a) in the proposed new section 23B by inserting the words “in accordance with the relevant carbon standards” immediately after the word “time” appearing in paragraph (c);
- (b) in the proposed new section 23E by inserting the words “environmental” immediately after the words “improve the” appearing in subsection (7); and
- (c) by inserting the following new section immediately after the proposed new section 23H—

Fees.

23I. The Designated National Authority shall charge such fees as may be prescribed by the Cabinet secretary in regulations for the proper administration of the Act

Justification- The amendment seeks to ensure that carbon offset projects emissions are kept out of the atmosphere for a reasonable length of time in accordance with the relevant carbon standards; carbon projects aim to improve environmental in addition to economic, social and cultural wellbeing of the community around the project; and that Cabinet Secretary

makes regulations with regards to matters touching on carbon trading in line with Article 94(6) of the Constitution

CLAUSE 16

10. That the Bill be amended by deleting clause 16.

Justification-The amendment seeks to ensure that the Schedule to the Act on public participation is not deleted

SIGNED..... DATE.....
HON. GIKARIA DAVID, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

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Report adoption Schedule



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

ADOPTION OF THE REPORT ON CONSIDERATION OF THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023)

We, the undersigned Honorable Members of the Departmental Committee on Environment, Forestry and Mining today Wednesday, 23rd August 2023 do hereby affix our signatures to the following Report on consideration of Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023) to affirm our approval and confirm its accuracy, validity and authenticity.

NO.	NAME	SIGNATURE
1.	The Hon. Gikaria David, MP - Chairperson	
2.	The Hon. Charles Kamuren, MP - Vice-Chairperson	
3.	The Hon. Mbalu Jessica Nduku Kiko, CBS, MP.	
4.	The Hon. Hiribae Said Buya, MP.	
5.	The Hon. Mwanyanje Gertrude Mbeyu, MP.	
6.	The Hon. Salim Feisal Bader, MP.	
7.	The Hon. Emathe Joseph Namuer, MP.	
8.	The Hon. Joseph Wainaina Iraya, MP.	
9.	The Hon. Kemei Beatrice Chepngeno, MP.	
10.	The Hon. Kururia Elijah Njore Njoroge, MP.	
11.	The Hon. Masito Fatuma Hamisi, MP.	
12.	The Hon. Mohamed Tubi Bidu, MP.	
13.	The Hon. Nguro Onesmus Ngogoyo, MP.	
14.	The Hon. Yakub Adow Kuno, MP.	
15.	The Hon. Titus Lotee, MP.	

Minutes



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION, 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENVIRONMENT, FORESTRY, AND MINING HELD IN MEDIA CENTER, MAIN
PARLIAMENT BUILDING ON WEDNESDAY, 23RD AUGUST 2023 AT 8:00 AM.**

PRESENT.

- | | |
|---|-------------------|
| 1. The Hon. Gikaria David, MP. | -Chairperson |
| 2. The Hon. Charles Kamuren, MP | -Vice-Chairperson |
| 3. The Hon. Salim Feisal Bader, MP | |
| 4. The Hon. Kemei, Beatrice Chepngeno, MP | |
| 5. The Hon. Onesmus Ngogoyo Nguro, MP | |
| 6. The Hon. Masito Fatuma Hamisi, MP | |
| 7. The Hon. Joseph Wainaina Iraya, MP | |
| 8. The Hon. Emathe Joseph Namuar, MP | |
| 9. The Hon. Elijah Njore Njoroge, MP | |
| 10. The Hon. Titus Lotee, MP | |
| 11. The Hon. Yakub Adow Kuno, MP | |

APOLOGY

1. The Hon. Mwanyanje Gertrude Mbeyu, MP
2. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP
3. The Hon. Tubi Bidu Mohamed, MP

ABSENT

The Hon. Hiribae Said Buya, MP.

IN-ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|--------------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant I |
| 2. Ms. Mercy Wanyonyi | - | Senior Legal Counsel |
| 3. Mr. Hamdi H. Mohamed | - | Clerk Assistant III |
| 4. Dr. Joseph Kuria | - | Research Officer |
| 5. Ms. Lydia Shallon | - | Research Officer III |
| 6. Ms. Maryan Gabow | - | Public Relations Officer |
| 7. Ms. Mercylyn Kerubo | - | Audio Officer |
| 8. Mr. Boniface Washila | - | Serjeant-At-Arm |
| 9. Ms. Edith Chepngeno | - | Media Relations Officer |
| 10. Ms. Libbie Kiragu | - | Media Relations officer |

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Consideration and Adoption of the proposed Amendments to Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023) and Consideration and Adoption of the Report on Climate Change (Amendment) Bill (National Assembly Bill No.42 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN/NO.NA/DC/EF&M/169/2023: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at ten minutes past eight O'clock followed by a prayer. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Titus Lotee, MP and the Hon. Joseph Emathe, MP respectively. Then everyone presents introduced themselves.

MIN/NO.NA/DC/EF&M/170/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Confirmation of the Minutes of the previous sitting was deferred to the next meeting

MIN/NO.NA/DC/EF&M/171/2023. CONSIDERATION AND ADOPTION OF THE PROPOSED AMENDMENTS TO CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in the definition of “carbon market” by inserting the word “products,” immediately after the word “initiatives”;
- (b) in the definition of “carbon offset” by inserting the words “with equivalent number of emissions” immediately after the word “compensate”;
- (c) in the definition of “carbon projects” by inserting the words “interventions including projects and programs designed to remove, reduce, sequester or avoid carbon emissions for mitigation of climate change”; and
- (d) in the definition of “stakeholder” by inserting the word “community” immediately after the word “business”.

Justification-The amendment seeks to amend the proposed terms with respect to carbon trading so as to ensure that all aspects are captured

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

Amendment 4. Section 4 of the principal Act is amended in subsection (1) by deleting of section 4 the word “level” appearing immediately after the words “bind all” and of No. 11 of substituting therefor the word “levels”.
2016.

Justification-The amendment seeks to ensure that the Schedule to the Act on public participation is not deleted as proposed in the Bill and also to correct a typographical error

CLAUSE 6

THAT clause 6 of the Bill be amended in paragraph (a) by—

(a) deleting sub-paragraph (ii) and substituting therefor the following new sub-paragraph—

(ii) deleting paragraph (f) and substituting therefor the following new paragraph—

(f) two representatives of the private sector representing the manufacturing and trading sectors;

(b) deleting sub-paragraph (v).

Justification-The amendment seeks to ensure that two representatives of the private sector, representing the manufacturing and trading sectors, are members of the National Climate Change Council and that the representative of the marginalized community in the National Climate Change Council is nominated in compliance with Article 260 as provided for in the Act.

CLAUSE 10

THAT clause 10 of the Bill be amended by inserting the following new paragraph immediately after the opening statement—

(a) in subsection (3) by deleting the word “county” appearing in paragraph (a) and substituting therefor the word “country”;

Justification-The amendment seeks to correct a typographical error

CLAUSE 13

THAT the Bill be amended by deleting clause 13 and substituting therefor the following new clause—

Amendment 4. Section 24 of the principal Act is amended by deleting subsection (3).
of section 24
of No. 11 of
2016.

Justification-The amendment seeks to ensure that matters of public participation are provided for in the Act as is the case currently and not through regulations to be made by the Cabinet Secretary

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 13—

NEW CLAUSE 13A

Amendment of section 33 of No. 11 of 2016. THAT the Bill be amended by inserting the following new clause immediately after clause 13—

13A. Section 33 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

(1A) A person who—

- (a) willingly conducts unauthorized trade in carbon credit;
- (b) knowingly gives false or misleading information with respect to environmental or financial gains from the carbon market investment;
- (c) manipulates carbon credit measurements in order to claim addition measurements;
- (d) engages in money laundering through carbon trading;
- (e) knowingly sells carbon credits to unauthorized entities; or
- (f) fails to maintain carbon records,

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

Justification-The amendment seeks to provide for offences and penalties with respect to carbon trading

NEW CLAUSE 13B

Amendment of section 35 of No. 11 of 2016. 13B. Section 35 of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1)—

(2) Sections 2, 3, 5 7, 10 and 15 of this Act, shall not apply, to entities that have existing carbon projects for a period of one year.

Justification-The amendment seeks to ensure that the provisions of the Act touching on carbon trading do not apply to persons currently undertaking carbon projects for a period of one year

CLAUSE 14

Amendment of section 36 of No. 11 of 2016. THAT the Bill be amended by deleting clause 14 and substituting therefor the following new clause—

14. Section 36 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

- (ba) the regulation of carbon markets;
- (bb) the regulation of carbon trading;

(bc) the regulation of carbon registries; and

(bd) the regulation of non-market approaches;

Justification- The amendment seeks to ensure that Cabinet Secretary makes regulations with regards to matters touching on carbon trading in line with Article 94(6) of the Constitution

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) in the proposed new section 23B by inserting the words “in accordance with the relevant carbon standards” immediately after the word “time” appearing in paragraph (c);
- (b) in the proposed new section 23E by inserting the words “environmental” immediately after the words “improve the” appearing in subsection (7); and
- (c) by inserting the following new section immediately after the proposed new section 23H—

Fees. 23I. The Designated National Authority shall charge such fees as may be prescribed by the Cabinet secretary in regulations for the proper administration of the Act

Justification- The amendment seeks to ensure that carbon offset projects emissions are kept out of the atmosphere for a reasonable length of time in accordance with the relevant carbon standards; carbon projects aim to improve environmental in addition to economic, social and cultural wellbeing of the community around the project; and that Cabinet Secretary makes regulations with regards to matters touching on carbon trading in line with Article 94(6) of the Constitution

CLAUSE 16

That the Bill be amended by deleting clause 16.

Justification-The amendment seeks to ensure that the Schedule to the Act on public participation is not deleted

MIN/NO.NA/DC/EF&M/172/2023: COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee observed that enacting the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) into law will bring several potential benefits to the country, including:

1. Supporting the country to comply with the Paris Agreement that Kenya ratified and became a Party to, on 28th December, 2016;
2. It supports climate change interventions by enabling Kenya in achieving her Nationally Determined Contributions (NDC) in line with Article 6 of the Paris Agreement. Kenya submitted her updated NDC in 2020 whose ambition is to reduce greenhouse gases by 32% relative to business-as-usual scenario of 143 metric tons of carbon dioxide equivalent by 2030;

3. It ensures horizontal integration by institutionalizing the National Climate Change Council and vertical integration by mainstreaming climate change policy as determined by the Council through national and county institutions;
4. It will accelerate investments in carbon projects as well as facilitate reduced costs for low-carbon investments and transition;
5. It provides an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;

MIN/NO.NA/DC/EF&M/173/2023: COMMITTEE RECOMMENDATION.

The Committee having reviewed the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) recommends that the House approves the Bill with amendments as proposed in the Schedule in Part seven of this report.

MIN/NO.NA/DC/EF&M/174/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.42 OF 2023

The Committee considered and unanimously adopted the report with amendments having been proposed and seconded by Hon. Titus Lotee, MP and Hon. Joseph Emathe, MP respectively:

MIN/NO.NA/DC/EF&M/175/2023: ADJOURNMENT AND DATE OF THE NEXT SITTING.

There being no other business, the meeting was adjourned at 1.50pm. The next meeting is to be held on notice

Signed..... Date: 23-08-23

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION, 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 26TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENVIRONMENT, FORESTRY, AND MINING HELD IN MINI CHAMBER, COUNTY HALL ON
MONDAY, 21ST AUGUST 2023 AT 3:00 PM.**

PRESENT.

- | | |
|---|-------------------|
| 1. The Hon. Gikaria David, MP. | -Chairperson |
| 2. The Hon. Charles Kamuren, MP | -Vice-Chairperson |
| 3. The Hon. Mwanyanje Gertrude Mbeyu, MP | |
| 4. The Hon. Salim Feisal Bader, MP | |
| 5. The Hon. Kemei, Beatrice Chepngeno, MP | |
| 6. The Hon. Onesmus Ngogoyo Nguro, MP | |
| 7. The Hon. Joseph Wainaina Iraya, MP | |
| 8. The Hon. Emathe Joseph Namuar, MP | |
| 9. The Hon. Titus Lotee, MP | |
| 10. The Hon. Yakub Adow Kuno, MP | |

APOLOGY

1. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP
2. The Hon. Elijah Njore Njoroge, MP
3. The Hon. Masito Fatuma Hamisi, MP
4. The Hon. Tubi Bidu Mohamed, MP

ABSENT

The Hon. Hiribae Said Buya, MP.

IN-ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|--------------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant I |
| 2. Ms. Marcy Wanyonyi | - | Legal Counsel |
| 3. Mr. Hamdi H. Mohamed | - | Clerk Assistant III |
| 4. Dr. Joseph Kuria | - | Research Officer |
| 5. Ms. Lydia Shallon | - | Research Officer III |
| 6. Ms. Maryan Gabow | - | Public Relations Officer |
| 7. Mr. Mwangi Muchiri | - | Audio Officer |
| 8. Mr. Boniface Washila | - | Serjeant-At-Arm |
| 9. Ms. Edith Chepngeno | - | Media Relations Officer |

IN-ATTENDANCE: MINISTRY OF ENVIRONMENT, CLIMATE AND FORESTRY

- | | | |
|------------------------------------|---|------------|
| 1. Hon. Roselinda Soipan Tuyu, CBS | - | CS, MECC&F |
|------------------------------------|---|------------|

- | | |
|------------------------------|---------------------------------------|
| 2. Eng. Festus Ngeno | - PS, State Department for E&CC |
| 3. Mr. Augustino Neto | - Advisor, CS |
| 4. Dr. Pacífica Ogola | - Director, Climate Change, MECC&F |
| 5. Ms. Resa Kombi | - Climate Change Advisor, MECC&F |
| 6. Mr. Mamo B Mamo | - DG, NEMA |
| 7. Dr. Jane Njuguna | - Ag. DG KEFRI |
| 8. Ms. Augustine K. Kenduiwa | - DD, Climate Change, MECC&F |
| 9. Mr. Njoroge Kiriho | - Legal Officer, MECC&F |
| 10. Ms. Ruth Jeptoo | - Assistant Secretary, MECC&F |
| 11. MS. Maureen Ntari | - PA, CS, MECC&F |
| 12. Mr. George Tams | - Deputy Director, Forest Conservator |
| 13. Mr. Alfred Gichu | - Ag. FCS, MECC&F |
| 14. Mr. Mabwa | - PA, PS State for E&CC |
| 15. Mr. Peter Mathenge | - TA, MECC&F |
| 16. Ms. Linda Kosgei | - Head of Multilateral Env, MECC&F |
| 17. Ms. Margot Washiali | - Communication, MECC |

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Meeting with the Ministry of Environment, Climate Change and Forestry on the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN/NO.NA/DC/EF&M/165/2023: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a prayer. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Gertrude Mbeyu, MP and the Hon. Onesmus Ngogoyo Nguro, MP respectively. Then everyone presents introduced themselves.

The chairperson thereafter welcomed Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry who accompanied the Principal Secretary and several heads of Departments in the Ministry.

The chairperson acknowledged the effort exhibited by the Ministry in regards to the preparation for hosting the Africa Climate Change Summit in September 2023. He further acknowledged that the amendment Act is timely as it came at time when the Country is hosting the Summit.

MIN/NO.NA/DC/EF&M/166/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Confirmation of the Minutes of the previous sitting was deferred to the next meeting

MIN/NO.NA/DC/EF&M/167/2023 SUBMISSIONS BY THE MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY.

The Ministry of Environment led the Cabinet Secretary, Hon Soipan Tuya, CBS appeared before the Committee to make submissions on the Climate Change Amendment Bill, 2023 as indicated below.

That, the Climate Change (Amendment) Bill, 2023 seeks to introduce carbon trading that has enormous benefits to Kenya in that:

That, it supports the country to comply with the Paris Agreement that Kenya ratified and became a Party to, on 28th December, 2016. Article 6 of the Paris Agreement encourages Parties to raise their mitigation ambition through carbon markets and non-market approaches.

That, it supports climate change interventions by enabling Kenya in achieving her Nationally Determined Contributions (NDC) in line with Article 6 of the Paris Agreement. Kenya submitted her updated NDC in 2020 whose ambition is to reduce greenhouse gases by 32% relative to business-as-usual scenario of 143 metric tons of carbon dioxide equivalent by 2030. The NDC explicitly highlights Kenya's intention to access and use Article 6 of the Paris Agreement and that relevant legislation and institutions will be developed to enable Article 6 operationalization.

That, it ensures horizontal integration by institutionalizing the National Climate Change Council and vertical integration by mainstreaming climate change policy as determined by the Council through national and county institutions.

That, it will accelerate investments in carbon projects as well as facilitate reduced costs for low-carbon investments and transition.

That, it provides an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;

In addition, the Bill provides an opportunity for:

- (a) Global trading in sovereign forest carbon assets under the REDD+ process;
- (b) Domestic legislature that will enable Kenya to establish the necessary national arrangements such as approval of project level activities;
- (c) Coherence in approaches to climate investments in the country;
- (d) Sustainable development in the delivery of climate actions on the ground;
- (e) Equity in benefit sharing;
- (f) Change of mindsets on living with harmony with nature; and
- (g) Diversification of livelihood options at the local level and value addition.

Further, the Cabinet Secretary submitted the following proposed amendments to the Bill:

Commencement

Not provided for in the Bill. "*Commencement of the Act should be by notice in the Gazette*". To ensure that all pre-requisites for the Act's implementation are properly established beforehand.

Under Clause 10

Amend section 13(3)(a) of the Principal Act *by deleting the word "County" and replacing therefor with the word "Country"*. To correct a typographical error.

Under Clause 15

Insertion of a new section 23(I)

Fees

There shall be charged such fees by the Designated National Authority and the Registrar as may be prescribed in the regulations for the proper administration of this Act. The proposed amendment seeks to insert a new section on fees to be charged by the Designated National Authority and the Registrar, as may be prescribed in the regulations for the proper administration of this Act.

MIN/NO.NA/DC/EF&M/168/2023: ADJOURNMENT AND DATE OF THE NEXT SITTING.

There being no other business, the meeting was adjourned at 1800Hrs. The next meeting is to be held on the 22nd August 2023 at 10.00am at a venue to be confirmed.

Signed.....

Date:

22-08-23

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION, 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 25TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ENVIRONMENT, FORESTRY, AND MINING HELD IN MINI CHAMBER, COUNTY HALL ON
MONDAY, 21TH AUGUST 2023 AT 10:00 AM.**

PRESENT.

- | | |
|---|-------------------|
| 1. The Hon. Gikaria David, MP. | -Chairperson |
| 2. The Hon. Charles Kamuren, MP | -Vice-Chairperson |
| 3. The Hon. Mwanyanje Gertrude Mbeyu, MP | |
| 4. The Hon. Salim Feisal Bader, MP | |
| 5. The Hon. Kemei, Beatrice Chepngeno, MP | |
| 6. The Hon. Onesmus Ngogoyo Nguro, MP | |
| 7. The Hon. Joseph Wainaina Iraya, MP | |
| 8. The Hon. Emathe Joseph Namuar, MP | |
| 9. The Hon. Titus Lotee, MP | |
| 10. The Hon. Yakub Adow Kuno, MP | |

APOLOGY

1. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP
2. The Hon. Elijah Njore Njoroge, MP
3. The Hon. Masito Fatuma Hamisi, MP
4. The Hon. Tubi Bidu Mohamed, MP

ABSENT

The Hon. Hiribae Said Buya, MP.

IN-ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|--------------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant I |
| 2. Ms. Marcy Wanyonyi | - | Senior Legal Counsel |
| 3. Mr. Hamdi H. Mohamed | - | Clerk Assistant III |
| 4. Dr. Joseph Kuria | - | Research Officer |
| 5. Ms. Lydia Shallon | - | Research Officer III |
| 6. Ms. Maryan Gabow | - | Public Relations Officer |
| 7. Mr. Mwangi Muchiri | - | Audio Officer |
| 8. Mr. Boniface Washila | - | Serjeant-At-Arm |
| 9. Ms. Edith Chepngeno | - | Media Relations Officer |

IN-ATTENDANCE: STAKEHOLDERS.

1. Ms. Heloise Zimmerman	-	National Climate Network (NCN)
2. Ms. Faith Ngige	-	KEPSA
3. Lucy Ngorongo	-	KEPSA
4. Ms. Miriam Bomett	-	KAM
5. Ms. Joyner Okonjo	-	KEPSA
6. Ms. Ebenezer Amadi	-	KEPSA
7. Mr. Aryn A Khan	-	KCCWG
8. Mr. John Kioli	-	KCCWG
9. Ms. Vexina Mueni	-	KCCWG
10. M. Mordester Lyn	-	KCCWG
11. Mr. Rosemary Okumbe	-	NRT
12. Ms. Gladys Warigia	-	KWCA
13. Mr. Ferdinard Musungu	-	KEPSA
14. Hon. Chachu Ganya	-	MP & NRT Consultant
15. Prof. George Outa	-	Technical University of Kenya
16. Dr. Caleb Baswey	-	KEPSA

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Public hearings/ Stakeholders' engagement on the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN/NO.NA/DC/EF&M/161/2023: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a prayer. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Yak Adow, MP and the Hon. Titus Lotee, MP respectively. Then everyone presents introduced themselves.

The chairperson thereafter welcomed the stakeholders and acknowledged their commitment to appear before the Committee.

MIN/NO.NA/DC/EF&M/162/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

The confirmation of the Minutes of the previous sitting was to be deferred to the next meeting

MIN/NO.NA/DC/EF&M/163/2023 SUBMISSIONS BY STATEHOLDER

Various stakeholders appeared before the Committee during its public hearing on the Climate Change Act 2023 and following are their submissions.

(a) Submissions by Kenya Association of Manufacturers

In a meeting with the committee held on Monday, 21st August 2023, Ms. Miriam Bomett, KAM representative proposed the following amendments to the Bill:

Under Clause 6

Amend sub-clause 6(f) to read as follows, "*(f) Two representatives of the private sector representing the manufacturing and service sector*". To ensure the key sectors of the manufacturing and service sector are represented.

Under Clause 10

Amend the clause to read as follows, "*The Cabinet Secretary with the recommendation of the Council shall within a year, publish regulations and guidelines relating to carbon budgets, carbon credits, carbon markets, carbon projects, and carbon offsets, community development agreement, sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities*". To provide for clarity on the key issues proposed to be introduced under this Bill such as on the carbon budgets, credits, markets, projects, and offsets.

Amend Clause 10 to read as follows, *10(2)(f) The Cabinet Secretary shall- "Authorize approval of entities under any, Internationally Transferred Mitigation Outcomes with recommendation from the Council and develop Rules guiding the same within one year"*. To allow business continuity through risk mitigation.

Amend section 23(4) to read as follows, "*The Council shall, on recommendation of the Cabinet Secretary shall within a year publish regulations on design and procedures to ensure the efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.*" To ensure that regulations on public participation are published within one year.

Under Clause 15

Amend clause 15 to reduce the annual social contribution percentage to a minimum of at least 10% to the community from project earnings. To ensure both fairness and sustainability for businesses.

Amend Clause 15 on the carbon registry to introduce a new paragraph 23G (4) to read as follows, "*23G (4) the registers and the relevant details entered on the application shall be available for search to the public on terms set by the Council.*" To ensure transparent and user-friendly registry that promotes a better understanding of the carbon market and encourages more active participation from businesses.

(b) Submissions by the Kenya Climate Change Working Group (KCCWG)

In a meeting with the Committee held on Monday, 21st August 2023, Mr. Aryn A. Khan, Treasurer Convener of Adaptation proposed the following amendments to the Bill:

Long Title

Amend long title of the Act to read as follows, *"AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate resilient development, and for connected purposes. It is also the instrument to facilitate implementation of national and international commitments."* For consistency with the Paris Agreement.

Under Clause 2

Amend by providing a clear definition of **"whitelist"**.

Propose an inclusion of the definition of **"Impacted Community"**

Amend definition of **"Fund"** to mean *"Fund" means the Fund established by the Cabinet Secretary under section 25 of the Climate Change Act, 2016 pursuant to Section 24 of the Public Finance Management Act, 2012.*

NEW

Amend section 3(1) by deleting the phrase *'for the sustainable development of Kenya'* and replacing it with *'for sustainable development and eradication of poverty in Kenya.'*

Under Clause 4

Amend by deleting Clause 4.

NEW

Amend by deleting Section 6 (g) and replacing with the following, *"advise the Climate Change Fund Board on legislative, policy and other measures regarding climate finance, as appropriate"*.

Under Clause 6

Amend by Delete the proposed amendment to section 6(a)(ii). To allow Civil Service Organizations to choose their representatives.

Amend Section 7 of the principal Act by deleting the section and replacing it with

"(1) The Council shall comprise not more than eight members who shall be appointed by the President"

(2) The Council shall be constituted as follows:

- a) The Cabinet Secretary responsible for environment and climate change affairs;
- b) The Cabinet Secretary/Secretaries responsible for the National Treasury and Economic Planning;
- c) The chairperson of the Council of Governors;
- d) A representative of the private sector nominated in consultation with the Private Sector;
- e) A representative of the Civil Society nominated in consultation with Civil Society Organizations;
- f) A representative of the marginalized community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge nominated in consultation with the marginalised community; and
- g) A representative of the academia nominated in consultation with the Commission for University Education."

Amend by inserting the following new section immediately after section 7-

(1) There is established a Climate Change Technical Committee

(2) The Committee shall be chaired by the Cabinet Secretary for the time being responsible for

Climate Change Affairs

- (3) The Climate Change Secretary shall be the secretary to the Committee.

Functions of the Committee

The Committee shall provide an overarching national climate change coordination mechanism and shall—

- a) ensure the mainstreaming of the climate change function by the national and county governments;
- b) approve and oversee implementation of the National Climate Change Action Plan;
- c) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;
- d) set the targets for the regulation of greenhouse gas emissions;
- e) Oversee the implementation of the carbon markets framework;
- f) Approve proposals for funding through the Climate Change Fund;
- g) Facilitate implementation and tracking of the Kenya Nationally Determined Contribution;
- h) Oversee the implementation of the Monitoring, Reporting, and Verification of Climate Change;
- i) Provide technical guidance on climate change action and support as appropriate.

Members of the Climate Change Technical Committee

- (1) The Climate Change Technical Committee shall comprise not more than fifteen members who shall be appointed by the Cabinet Secretary for the time being responsible for Climate Change.
- (2) The Committee shall be constituted as follows.
 - a) The Permanent Secretary responsible for Climate Change;
 - b) The Permanent Secretary/Secretaries responsible for the National Treasury and Economic Planning;
 - c) The Permanent Secretary responsible for Energy;
 - d) The Permanent Secretary responsible for Crop Development;
 - e) The Permanent Secretary responsible for Industry;
 - f) The Permanent Secretary responsible for Blue Economy;
 - g) The chairperson of the Committee responsible for Climate Change at the Council of Governors;
 - h) A representative of the private sector nominated in consultation with the Private Sector;
 - i) A representative of the Civil Society nominated in consultation with Civil Society Organizations;
 - j) A representative of the youth nominated in consultation with youth organizations/networks working climate change;
 - k) A representative of Indigenous people, within the meaning of Article 260 of the Constitution, nominated in consultation with the indigenous peoples' organizations; and
 - l) A representative of the academia nominated in consultation with the Commission for University Education.

Under Clause 7

Insert a new paragraph to provide that- *(bd) authorize the establishment of the REDD+ Registry and other sector registries to feed into the National Carbon Registry.* This will increase access to carbon market information within the County as well facilitation of negotiations and agreements.

Under Clause 8

Delete the proposed amendment to section 9(2). The directorate should be checked and held accountable by the ministry of Environment, Climate Change and Forestry.

New Clause

The principal Act is amended in section 25 by:

- a) deleting subsection 1 and replacing with the following words "the Cabinet Secretary for the time being responsible for finance may establish a Climate Change Fund, under section 24 of the Public Finance Management Act, 2012".
- b) deleting subsections 2-9

under Clause 15

Propose an amendment of the section 23(B)(c) to include indicative time frames (minimum 5 years). Reasonable length of time is subject to different interpretations therefore vital to give a timeframe (at least 5 years

Amend 23(C)(2)(a) by inserting the phrase "*in consultation with the Attorney General, and with the approval of the cabinet*" after 'may' and before 'enter into'.

Amend 23(C)(2)(b) by inserting the phrase "*in consultation with the Attorney General, and with the approval of the cabinet*" after 'may' and before 'enter into'.

Amend section 23C(4) by replacing "*the Cabinet Secretary*" with "*the National Designated Authority*."

The AG's office in charge of the country's agreement hence should be involved in the process. The Cabinet should be involved in this to ensure there is consultation.

The Cabinet Secretary does not report to UNFCCC in his/her capacity as a Cabinet Secretary. This is the role of the National Designated Authority.

Amend section 23E(5)(b) *to provide that the National Treasury shall disburse the funds.* For accountability and redress purposes.

Amend section 23E(5)(f) *by replacing 'two years' with 'five years.'* Two years is a very short time for a carbon project to have borne results. More time necessary to ensure the review is beneficial.

Amend section 23E(6) *by providing for county registry.* Having county registries will make reporting efficient, at the national level. It will also promote accountability and transparency.

Amend section 23E(9) by inserting the words "*in consultation with the County Government.*" after the words, "*The Cabinet Secretary*". To ensure checks and balances.

(c) Submissions by Kenya Wildlife Conservancy Association (KWCA)

In a meeting with the Committee held on Monday, 21st August 2023, Ms. Gladys Werigia, Policy Lead, submitted the following proposals on behalf of the KWCA:

Under Clause 15

Insert the following new principles 23 B –

- (a) *Eligible mitigation projects for international transfer shall demonstrate shall be environmental integrity, transparency and promote sustainable development;*
- (b) *Carbon credit market that is of high integrity and high quality;*

- (c) Leverage carbon credits to meet the Country's national determined contribution mitigation commitments;*
- (d) Respect and safeguard of social and economic rights of local communities, while promoting access to equitable benefits;*
- (e) Mitigate against greenwashing;*
- (f) Promoting development of national and local skills and capacities across the carbon market value chain; and*
- (g) Advance the conservation of the Country's biodiversity and environment agenda towards enhancing adaptation capacities.*

The principles in the Bill are largely clearly structured as objective rather than guiding standards for Kenya's carbon market.

Insert under 23E(4) *the specific government Authority that shall coordinate the preparation and monitor the negotiation of the community development and benefit sharing agreement in collaboration with the national and respective county government where the carbon credit trading project is situated.* Under 23(4), the benefit sharing administration is NOT placed within any specific national and county government entity, but generally on the two levels of government

Delete 23 E(8)

Substitute 23E5(b) with the following-

(b) the annual social contribution of the aggregate earnings of the credit issuance year to the community, to be disbursed to the community and managed for identified community led development initiatives and facilitate activities that promote carbon sequestration and ecosystem health. A previous year approach fails to take into consideration carbon credit vintage years, vesting systems, and other complexities of carbon markets. A gross revenue share formula is recommended to promote equity and transparency in the carbon market while mitigating against manipulation by project developers, through the net formula and other complexities of carbon markets.

Insert the following new paragraph immediately after 23E5(b) (ii)(b) (iii)- *A minimum of sixty percent (60%) of gross revenue of a given credit issuance to be disbursed for community payment, where the project is developed on community land through a lease arrangement or other agreed manner.* There is no guide as to a minimum on economic benefits accruing to a community where the carbon project is developed on community land through lease model or otherwise.

Insert the following new paragraphs immediately after 23E 5(ii) 23E(5)- *A community development agreement shall provide—*

- (iii) rights and obligations of the private or public entity engaged in carbon credit trading business and local community;*
- (iv) monetary benefits that may accrue from the project and the initial contribution of the private or public entity engaged in the carbon credit trading business;*
- (v) terms on benefit sharing among the national government, respective county government, local community and other relevant stakeholders; and*

(vi) rules and procedure of engagement and participation of the public and with the local community, process for obtaining free prior informed consent and approval by community.

The provisions on scope of community development agreement are inadequate especially on community safeguard, community engagement and transparency by carbon credit project developers.

Insert the following new paragraph immediately after 23E 10- *The Cabinet Secretary may develop model community agreements to guide communities on basic terms for negotiations in development of the agreements.* The multiple governance structures in the Bill (Designated National Authority, Climate Directorate and the Cabinet Secretary) all with various powers and mandates in the regulation of carbon market, have the potential to overlap in discharge of their powers and duties, which is a dis-incentive for the carbon credit business.

A description of carbon rights be provided in the Bill to include intangible assets and or ownership of beneficial interest created by legislation or contractual arrangements, arising from carbon sequestered and carbon stored in forests, soil, grasslands or other approved mean

The Bill to provide comprehensive section on offences and a detailed schedule on the penalties which need to be commensurate to the value of the business, both in amounts of fines and term of sentence. The offences include but are not limited to:

- a) conduct of unauthorized carbon credit trade,*
- b) relating to social and environmental impact assessments*
- c) relating to maintenance of carbon records,*
- d) manipulation of measurements to claim additional measurements*
- e) selling to unauthorized entities*
- f) false or misleading claims with respect to environmental or financial gains or benefits from carbon market investment*
- g) financial crimes including money laundering, transfer miss-pricing*

In order for Kenya to develop and maintain high integrity and value carbon credit market, there is need for provision of offences and related penalties.

Substitute 23H with the new paragraphs-

- 1) Any dispute between parties to a carbon credit trading purchase agreement arising from land based and non-land-based project shall be resolved through alternative dispute resolution mechanisms in the first instance.*
- 2) If any dispute remains unresolved, through alternative dispute resolution mechanisms either party shall have the right to refer the dispute to arbitration.*
- 3) Any person who is dissatisfied with the outcome of an arbitration process may refer the dispute to the Carbon Credit Trading Tribunal.*

(d) Submissions by the Northern Rangelands Trust (NRT)

In a meeting with the committee held on Monday, 21st August 2023, Hon. Chachu Ganya, Consultant, Northern Rangelands Trust proposed the following amendments to the Bill:

Existing voluntary projects should be enabled and allowed to continue with their operations for a reasonable period of time until regulations are made pursuant to the Act. In order to provide for transitional provisions as regards to existing projects

(e) Submissions by Nairobi Climate Network (NCN)

In a meeting with the Committee held on Monday, 21st August 2023, Ms. Heloise Zimmermann, Co-Founder, Nairobi Climate Network proposed the following amendments to the Bill:

Under Clause 15

Amendment of the new clause 23A (c) by deleting the word “whitelist” and substituting with the words “Kenya Carbon Standards List”. The government should not re-invent the wheel and should accredit existing carbon standards based on the Kenya Carbon Standards List as opposed to the white list which has favoured technologies

Amend the proposed new section 23B(c) by inserting the words “as prescribed by the relevant carbon standards” at the end of the provision. To avoid further standards in addition to the international standards for carbon credit certification which are already recognized as this can cause confusion and possible hesitance by foreign investors to invest into carbon credit projects in Kenya.

Amend by deleting the proposed new section 23E(4) and substituting with the following- (4) *Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis.* The sector must be allowed to grow and flourish with guardrails in place rather than constraining it.

Amend the proposed new section 23E (5)(b) by deleting the words “aggregate earnings of the”.

Amend by deleting the proposed new section 23E (5)(b)(i) and 23E (5)(b)(ii)

This will create a nightmare scenario where the carbon credit sector in Kenya is likely to shrink or collapse entirely. Such an impact is already being seen as a result of legislation recently passed in jurisdictions like Zimbabwe and Tanzania.

(f) Submission by Prof. George Odera Outa

In a meeting with the Committee held on Monday, 21st August 2023, Prof. George Odera, Professor, Technical University of Kenya proposed the following amendments to the Bill:

The definitions should be reviewed with a view to contextualising them. Some of the definitions are rather heavily ‘text-book’ oriented and do not speak directly to the Kenyan situation

Amend section 4(i) to correct the typographical error i.e 4(i) refers to level of government (instead of levels of government which is the intention); also ‘mechanism’ (in the preamble) instead of mechanisms.

Under Clause 7

Instead of leaving appointments to be exercised discretionally, the representative of the academia be made from a national university department with an established and verifiable track record of teaching and research on matters of climate change. The only such university department in Kenya today is the Institute

for Climate Change at the University of Nairobi. The act should leave it to the respective University departments to establish their internal criteria for nomination.

Review Section 8. The amendments seem to be reverting too much discretionary power to the CS, unlike what was envisaged in the original act: the vision of a Council that can complement the work on Climate Change without being rendered subservient to ministerial bureaucracy.

Under Clause 9

To harmonise with recent precedents within government, perhaps a title as Director-General may be more apt for this role.

Under Clause 10

On the proposed amendment to section 13(5)- *There is really no need to over-emphasize carbon markets under this paragraph and in so many other sections of the act. There is really no meaningful discourse on climate change in the absence of carbon, but this over-emphasis creates the impression of a competition between the two.*

Under Clause 15

Section 23E(5) - *Provision should be reworded to make it less intimidating to carbon traders. County governments could be proposed to take care of community interests instead of the often controversial, 'community.'*

(g) Submissions by Burn Manufacturing Company

In their memorandum, BURN Manufacturing Company proposed the following amendments to the Bill:

Propose a Data-Driven Community Benefit Tracking: specific percentages are removed from the legislation, and the Government of Kenya instead collects data on community benefit initiatives.

Inclusive Recognition of Existing Community Benefits: all forms of existing community benefit should be counted towards the percentage. Project developers should report their existing financial and non-financial community benefits to the government to show compliance, but the actual revenue sharing should be disbursed through the project or local stakeholder groups – and not by central or county government.

(h) Submissions by Tamuwa Limited

In their memorandum, TAMUWA Limited proposed the following amendments to the Bill:

Under Clause 15

Clause 23A (c): replace 'whitelist' with '*...Kenya Carbon Standards List*'. To avoid further 'standards' on top of International Standards for carbon credit certification which are already recognised as this would cause confusion and deter investment by foreign investors into carbon credit projects in Kenya.

Clause 23A (2): add to end of clause '*...from time to time.*'

Clause 23B (c): add to end of clause '*...as prescribed by the relevant carbon standards;*

Clause 23E (3): rewrite to read as follows: *'Every land-based project undertaken pursuant to this Act shall outline and report the intended community engagement, community development and community relationships of the proponents of the project in public and community land where the project is under development.'*

Clause 23E (4): rewrite to read as follows: *'Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis.'*

1. Clause 23E (5): rewrite to read as follows: *'Projects shall report on the following:'*
2. Clause 23E (5)(b): rewrite to read as follows: *'the annual social contribution of the previous year to the community.'*
3. Clause 23E (5)(b)(i): DELETE
4. Clause 23E (5)(b)(ii): DELETE
5. Clause 23E (5)(f): DELETE
6. Clause 23E (6): DELETE
7. Clause 23E (8): DELETE
8. Clause 23E (9): DELETE
9. Clause 23F: DELETE

(i) Submissions by Environment Institute of Kenya

In their memorandum, Environment Institute of Kenya proposed the following amendments to the Bill:

Under Clause 2

Define "Professional body" to mean a professional body dealing with the registration and regulation of the standards and practice of environmental professionals.

Under Clause 6

Amend section 7 (iv) by inserting the following paragraph immediately before paragraph (g)- *A representative of a professional body relating to matters environment. Environment Institute of Kenya boast of a membership from diverse environmental profession and serving in all stated Ministries.*

Under Clause 8

A person shall be qualified for appointment as a Director/Secretary (new proposal) of Climate Change if the person – *Include (e) must be a registered and licensed member of a professional body relating to matters environment.* The Director/Secretary must be conversant with climate change and general environmental matters to enhance service delivery at the Directorate.

(j) Submissions by Centre for Science and Technology Innovation (CFSTI)

In their memorandum, CSTI proposed the following amendments to the Bill:

Under Clause 15

Amendments to clause 25E(5)(d) *do not provide a mechanism for ensuring benefits will occur. Environmental Credit Constraints need to be added.*

MIN/NO.NA/DC/EF&M/164/2023: ADJOURNMENT AND DATE OF THE NEXT SITTING.

The meeting was adjourned twenty minutes past one o'clock for a heath break and to be resumed at three o'clock at the same venue.

Signed..... Date: 23-08-23

**(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)**

**Copy of the
newspaper
advertisement on
public
participation**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. **THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2023);**
2. **THE KENYA NATIONAL LIBRARY SERVICES BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2023);**
3. **THE NATIONAL DISASTER RISK MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2023);**
4. **THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023); AND**
5. **KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2022)**

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023); the Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023); the National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023); the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023); and the Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022) were read a First Time on **Wednesday 9th August, 2023** and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)** is a Bill sponsored by **Hon. Joyce Kamene, MP** which seeks to amend the Higher Education Loans Board Act, No. 3 of 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and person with disabilities until such time as they have secured their first employment. The Bill further sets the percentage of interest that may be charged on the loan advanced at 3% and provides that the penalty charged on defaulting of the loan shall be charged after securing employment or five (5) years after completion of studies. The aim of these proposals is to reduce the financial burden on recent graduates who are expected to pay large sums of money to the Higher Education Loans Board even before securing employment or becoming financially stable.
2. **The Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023)** is a Bill sponsored by **Hon. Daniel Wanyama Sitati, MP** which seeks to give effect to Article 11 (2) (a) of the Constitution which mandates the State to promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.
3. **The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'u, MGH, MP, the Leader of the Majority Party** which seeks to provide a legal framework for the co-ordination of disaster risk management activities in both levels of government by establishing an intergovernmental Council on Disaster Risk Management and the National Disaster Management Authority to ensure co-ordination of disaster risk management issues. The Bill approaches disaster risk management in a manner that seeks first to respond effectively in a timely manner to any disaster and prevent the adverse effect of a disaster.
4. **The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'u, MGH, MP, the Leader of the Majority Party**, which seeks to amend the Climate Change Act, 2006 to provide for the regulation of the carbon markets.
5. **Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022)** is a Bill sponsored by **Hon. Elisha Odhiambo, MP** which seeks to amend the Kenya Information and Communication Act, 1998 to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for separation of such other business from telecommunication business. The amendments introduce a regulatory framework that requires licensed entities to report their compliance to the Communication Authority and prescribe a penalty for non-compliance. The amendment will aid in control of anti-competitive practice within the telecommunications sector.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)	Education
2. The Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023)	Sports and Culture
3. The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)	Regional Development
4. The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)	Environment, Forestry and Mining
5. Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022)	Communication, Information & Innovation

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cas@parliament.go.ke to be received on or before **Tuesday 22nd August, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
 16th August, 2023

"For the Welfare of Society and the Just Government of the People"



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. **THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2023);**
2. **THE KENYA NATIONAL LIBRARY SERVICES BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2023);**
3. **THE NATIONAL DISASTER RISK MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2023);**
4. **THE CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023); AND**
5. **KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2022)**

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023); the Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023); the National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023); the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023) and the Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022) were read a First Time on **Wednesday 9th August, 2023** and referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)** is a Bill sponsored by **Hon. Joyce Kamene, MP** which seeks to amend the Higher Education Loans Board Act, No. 3 of 1995 to waive the imposition of interest on the principal amount of a loan advanced to the youth and person with disabilities until such time as they have secured their first employment. The Bill further sets the percentage of interest that may be charged on the loan advanced at 3% and provides that the penalty charged on defaulting of the loan shall be charged after securing employment or five (5) years after completion of studies. The aim of these proposals is to reduce the financial burden on recent graduates who are expected to pay large sums of money to the Higher Education Loans Board even before securing employment or becoming financially stable.
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3. **The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'wah, MGH, MP, the Leader of the Majority Party** which seeks to provide a legal framework for the co-ordination of disaster risk management activities in both levels of government by establishing an intergovernmental Council on Disaster Risk Management and the National Disaster Management Authority to ensure co-ordination of disaster risk management issues. The Bill approaches disaster risk management in a manner that seeks first to respond effectively in a timely manner to any disaster and prevent the adverse effect of a disaster.
4. **The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)** is a Bill sponsored by **Hon. Kimani Ichung'wah, MGH, MP, the Leader of the Majority Party**, which seeks to amend the Climate Change Act, 2016 to provide for the regulation of the carbon markets.
5. **Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022)** is a Bill sponsored by **Hon. Elisha Odhiambo, MP** which seeks to amend the Kenya Information and Communication Act, 1998 to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for separation of such other business from telecommunication business. The amendments introduce a regulatory framework that requires licensed entities to report their compliance to the Communication Authority and prescribe a penalty for non-compliance. The amendment will aid in control of anti-competitive practice within the telecommunications sector.

NOTWITHSTANDING, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and holders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 10 of 2023)	Education
2. The Kenya National Library Services Bill (National Assembly Bill No. 20 of 2023)	Sports and Culture
3. The National Disaster Risk Management Bill (National Assembly Bill No. 24 of 2023)	Regional Development
4. The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)	Environment, Forestry and Mining
5. Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 52 of 2022)	Communication, Information & Innovation

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cn@parliament.go.ke to be received on or before **Tuesday 22nd August, 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
 16th August, 2023

"For the Welfare of Society and the Just Government of the People"

**Letter inviting
stakeholders for
meetings with the
Committee**



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: ena@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/EF&M/2023/036

17th August, 2023

Eng. Festus Kipkoech Ngéno
Principal Secretary
State Department for Environment and Climate Change
NHIF Building, Ragati Road, Upperhill
P.O. Box 30126-00100
NAIROBI

Dear

**RE: MEETING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT,
FORESTRY AND MINING WITH THE MINISTRY OF ENVIRONMENT,
CLIMATE CHANGE AND FORESTRY TO CONSIDER THE CLIMATE
CHANGE BILL, 2023**

The Departmental Committee on Environment, Forestry and Mining is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to, *inter alia*, "*study and review all legislation referred to it*".

The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023); was Read a First Time on **Tuesday, 8th August 2023** and thereafter referred to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House.

As the Ministry concerned with matters Climate Change, the Committee resolved to invite the Cabinet Secretary for a meeting on **Monday, 21st August 2023** in order to provide comments and apprise the Committee on the contents of the Bill.

The purpose of this letter therefore is to invite the Cabinet Secretary for a meeting with the Committee to consider the Bill on **Monday, 21st August 2023 at 10:00am**. The venue of the meeting will be communicated in due course.

The officers responsible for the coordination of these meetings are **Mr. Fredrick Otieno** who may be contacted on **Tel. No. 0724 561517** or email address fredrick.otieno@parliament.go.ke, **Mr. Hamdi Mohamed**, **Tel. No. 0724742973** or email address hamdi.mohamed@parliament.go.ke.

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: Hon. Rosclinda Soipan Tuya, CBS
Cabinet Secretary
Ministry of Environment and Forestry
NHIF Building, Ragati Road, Upperhill
P.O. Box 30126-00100
NAIROBI



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cnw@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/EF&M/2023/037

17th August, 2023

Ms. Carole Kariuki
Chief Executive Officer
Kenya Private Sector Alliance
5th Floor, Shelter Afrique House, Mamlaka Rd.
P.O. Box 3556-00100
NAIROBI

Mr. John Kioli
Chairman
Kenya Climate Change Working Group (KCCWG)
National Water Harvesting and Storage Authority
Dunga Road, Industrial Area
P. O BOX 61912-00200
NAIROBI

Prof. George Odera Outa
Technical University of Kenya
NAIROBI

Prof. Dan Olago
Chairman
Department of Climate and Earth sciences
University of Nairobi
NAIROBI

Mr. Héloïse Zimmermann
Co-Founder
Nairobi Climate Network
NAIROBI

Hon. Chachu Ganya
Northern Rangeland Trust (NRT)
NAIROBI

Dr. Mohammed Shibia
Director
Northern Rangeland Trust (NRT), Carbon Project
Private Bag
ISIOLO

Mr. Dickson Kaello
Chief Executive Officer
Kenya Wildlife Conservancy Association (KWCA)
Seminary Road, Off Magadi Rd, Karen
NAIROBI

Ms. Sheila Mulii
The Nature Conservancy
31 El Molo Drive, Off Maji Mazuri Rd, Lavington
P.O. Box 19738-00100
NAIROBI

Dear *Ms. Kaello*

**RE: CONSIDERATION OF THE CLIMATE CHANGE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 42 OF 2023)**

The Departmental Committee on Environment, Forestry and Mining is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to, *inter alia*, "study and review all legislation referred to it".

The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023); was Read a First Time on **Tuesday, 8th August 2023** and thereafter referred to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House pursuant to Standing Order 127(1) of the National Assembly Standing Orders.

Article 118(1) (b) of the Constitution provides that, "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.*" Further, the National Assembly Standing Order 127(3) provides that, "*the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House*".

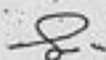
Pursuant to the above stated provisions, the National Assembly placed an advert calling for submission of memorandum from the public on the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023) on **16th August, 2023**. In this regard, the Committee has scheduled a Public Hearing and stakeholders meeting on **Monday, 21st August, 2023 in the Mini Chamber, County Hall, Parliament Buildings from 10:00 am.**

The Committee has identified your institution/organization as one of the key stakeholder to provide comments for purposes of enriching the Bill.

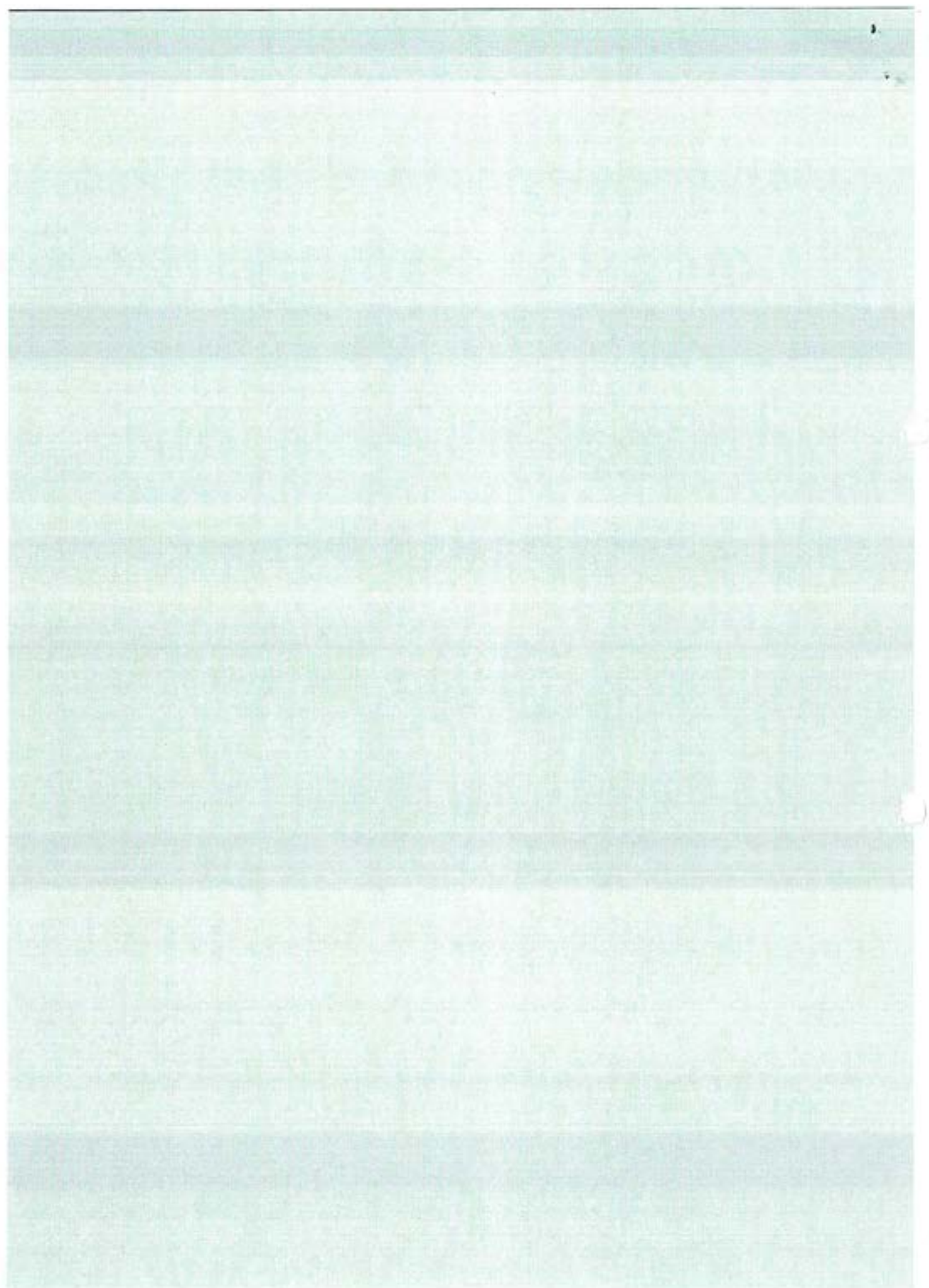
The purpose of this letter is to invite you for a stakeholder engagement meeting with the Committee to submit comments on the Bill.

The officers responsible for the coordination of these meetings are **Mr. Fredrick Otieno** who may be contacted on Tel. No. **0724 561517** or email address fredrick.otieno@parliament.go.ke. **Mr. Hamdi Mohamed**, Tel. No. **0724742973** or email address hamdi.mohamed@parliament.go.ke.

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY



Stakeholder submissions



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

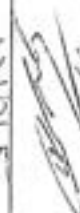

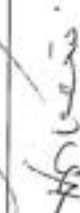
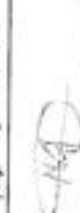


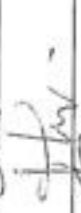



STAKEHOLDERS ATTENDANCE SCHEDULE

Date: 21/08/23 Time: 10:00 AM - 1:00 PM

VENUE: Mini Chamber, County Hall, Parliament Buildings

AGENDA: Public Hearings/Stakeholders engagement on the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)

No.	NAME	ORGANIZATION / INSTITUTION	DESIGNATION	TELEPHONE NUMBER	SIGNATURE
1.	HELOISE ZIMMERMANN	Nairobi Climate Network (NCN)	Co-founder	0743794707	
2.	FAITH NGIGIE	KEPSA	Climate Business Infrastructure Network - Coordinator	0720-813458	
3.	LUCY NGORONGO	KEPSA	Env. Sector Board	0722260111	
4.	MIRIAM BOMETT	KAM	Deputy Head	0721303335	
5.	JOYNER OKENSO	KEPSA	LEGAL ADVISER	0713 088668	
6.	EBENEZER AMADI	KEPSA	Program Manager	0711143378	

NAME	ORGANIZATION	DESIGNATION	TELEPHONE	SIGNATURE
7. Amy A. Kwan	KCCWC	Transverse & Curvature of Road	0722825307	
8. John Kibiti	KCCWC	Chairman	0722720915	
9. VEXINAH Mueki	KCCWC	Gender Governor	0723762749	
10. MURIEL LINDA	KCCWC	Youth Programme Lead	0712028843	
11. Rosemary Okunike	NRT	Lawyer	0724682280	
12. Glorice Wanjie	BWCA	Policy Lead	0720171205	
13. FERDINAND MUKUNGU	KERSA	Comm Officer	0718485636	
14. Hon. Chachue Ganyu	NRT	Consultant	0720917238	
15. GEORGE OUTA	TUKU	Professor	0711851324	
16. DR. EXETER BKEVED	KEPSA	Consultant	0722369139	
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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING


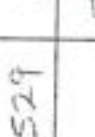
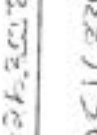

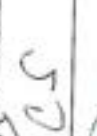
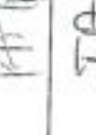


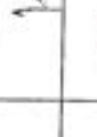



WITNESS/STAKEHOLDERS/VISITORS ATTENDANCE SCHEDULE

Date: 21/08/23 Time: 3:00 PM – 6:00 PM

VENUE: Mini Chamber, County Hall, Parliament Buildings.

AGENDA: Meeting with the Ministry of Environment, Climate Change and Forestry to consider the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023)

No.	NAME	ORGANIZATION / INSTITUTION	DESIGNATION	TELEPHONE NUMBER	SIGNATURE
1.	Soipan Tuys	MoECCF	CS	0700323377	
2.	Eng. F.R. Ngũgũ	Mureef	PS	0720589120	
3.	NGO - GPOHMO	Mureef	Mureef	072440345	
4.	DR. PAULINA OGOLA	DIRECTOR CLIMATE CHANGE	Mureef	07222916396	
5.	Dessa Kombi	MoECCF	Senior climate change officer	0794 461230	

NAME		ORGANIZATION		DISIGNATION		TELEPHONE	SIGNATURE
6.	Augustine K. Kenduwo	MECC&F		Deputy Director Climate Change		0792100263	
7.	Njoroge Kiriwo	MECC&F		Lead Officer		0705269529	
8.	Ruth Jepko	MECC&F		Assistant Secretary		072630292	
9.	MARCEEN NTAARI	MECC&F		PA/CS		075163035	
10.	George Tanyi	MECC&F		Deputy Director Forest and Wildlife		072227034	
11.	Alfred Gicheru	MECC&F		Asst. FCS		0722787403	
12.	Moses D. D. D.	"		PA/CS		072651331	
13.	Peter Muthenge	"		TA		0723966111	
14.	LINDA KASSI	"		HEAD MULTINATIONAL ENVIRONMENTAL MANAGEMENT		0722418343	
15.	ALANNO B. NTAARI	NTMFA		Dir		0735746893	
16.	Dr. Jane Njiriga	KEFRI		Ag. Director		0722812341	
17.	NJIRIGA J. NTAARI	MECC&F		Public Communication		070662395	
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PROPOSED AMENDMENTS TO THE CLIMATE CHANGE ACT, 2016

NO.	CURRENT PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
1.	<p><i>Section 2. interpretation</i></p> <p>Proposed new definitions</p>	<p><i>Section 2. interpretation</i></p> <p>“Aggregate Earnings” means total of all incomes in a carbon project without adjustment for inflation, taxation or types of double counting</p> <p>“Carbon budget” means the approved quantity of Greenhouse gas emissions that is acceptable over a specified time and shall be informed by the National Greenhouse Gas Inventory and guide on emission reduction allocation for Nationally Determined Contributions or any other use consistent with the CMA guidance and rule, modalities and procedures</p> <p>“Carbon credit” means a credit created when the equivalent of one metric tonne of CO2 is prevented from entering the atmosphere and is equal to one tonne of CO2 or the equivalent amount of a different GHG reduced, sequestered, or avoided</p> <p>“carbon market” means the mechanism that enables and allows public and private entities to transfer and transact emission reduction</p>	<p>To define new terms introduced in the Act.</p>

		<p>units, mitigation outcomes or offsets generated through carbon initiatives, programmes and projects, subject to compliance of national and international laws;</p> <p>"Carbon projects" means carbon reduction, carbon capture/removal, emission avoidance projects</p> <p>"Carbon offset" means a reduction or removal of emissions of carbon dioxide or other greenhouse gases made in order to compensate for emissions made elsewhere.</p> <p>"carbon standards" means a complete set of "established" rules, procedures, and methodologies that guide on the creation, generation, issuance and verification of certified carbon credits;</p> <p>"community" means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes- (a) common ancestry; (b) similar culture or unique mode of livelihood; (c) socio-economic or other similar common interest; (d) geographical space; (e) ecological space; or (f) ethnicity, as per the Land Act 2016</p> <p>"Corresponding adjustment" means the deduction of verified emission reductions by the Host Party and addition of the</p>
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	<p>corresponding amount of verified emission reductions by the Receiving Party, whereas such reductions will not count against the Host Party's NDC and will count towards the acquiring Party's NDC.</p> <p>"Designated National Authority (DNA) for the Article 6.4 mechanism" means the entity/organization granted the responsibility to authorize and approve participation in projects under the Paris Agreement.</p> <p>"Internationally Transferred Mitigation Outcomes" means real, additional and verified reduction in GHG emissions or removal of GHGs from the atmosphere, measured in tCO₂eq and representing one tCO₂eq per methodologies approved under the Paris Agreement Rules and generated by a specific Mitigation Activity from 2021 onwards.</p> <p>"Internationally recognized entity" means any entity that is accredited under an established set of rules as properly constituted to oversee a carbon market.</p> <p>"Mitigation Outcomes" means reductions in greenhouse gas emissions with global warming potential equivalent to one tonne of carbon dioxide that has been measured and verified in accordance with the Standards.</p>
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		<p>“National Carbon Registry” means the Carbon Registry established under section 23G;</p> <p>Nature-based solutions (NbS)” means Nature-based solutions are actions to protect, sustainably manage, or restore natural ecosystems, that address societal challenges such as climate change, human health, food and water security, and disaster risk reduction effectively and adaptively, simultaneously providing human well-being and biodiversity benefits;</p> <p>“non-market approaches” means approaches that aim at promoting mitigation and adaptation ambition; enhancing public and private sector participation in the implementation of nationally determined contributions in the context of sustainable development and poverty eradication; and enabling opportunities for coordination across instruments and relevant institutional arrangements;</p> <p>“Paris Agreement” means the international treaty on climate change that was adopted by the Conference of the Parties at its 21st session in Paris in 2015 (Decision 1/CP.21)</p> <p>“Project Proponent” means an entity responsible for carrying out a specific project and has the legal right to do so.</p>	
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	<p>“Recognized credible international body” means any entity that is tasked with accreditation of an internationally recognized entity.</p> <p>“Reduced Emissions from Deforestation and Forest Degradation (REDD+)” means activities in the forest sector that reduces greenhouse gas emissions from deforestation and forest degradation, as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks at national and sub national levels;</p> <p>“share of proceeds” means levies from activities under the Paris Agreement that are used to cover administrative expenses as well as assisting developing country Parties that are vulnerable to the adverse effects of climate change to meet the costs of adaptation;</p> <p>“Stakeholder” means a person, business, or organization that has an interest in or is affected by the activities of carbon projects and the results those actions produce.</p> <p>“Secretary” means the head of the Climate Change Directorate</p> <p>“State Party” means a Country that has</p>
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		<p>ratified the Paris Agreement</p> <p>“Technology” means technologies used to reduce GHGs and to adapt to the adverse impacts of climate change</p> <p>“Tonnes of carbon dioxide equivalent(CO₂eq)” means an amount of carbon dioxide emission measured in metric tons would cause the same integrated radiative forcing or temperature change, over a given time horizon, as an emitted amount of a GHG or a mixture of GHGs.</p> <p>“UNFCCC” means the United Nations Framework Convention on Climate Change.</p> <p>“Voluntary carbon market” means a market where private investors, governments, non-governmental organizations, and businesses voluntarily buy and sell carbon credits that represent certified emissions removals or reductions of greenhouse gases in the atmosphere.</p> <p>“Whitelisted” means a non-binding, non-exhaustive periodic list of activities or technologies that can deliver mitigation outcomes as provided for in the NDC and that are preferred by the Government of Kenya for Article 6.2 bilateral cooperation.</p>	
2.	<i>Section 3. Objects and purposes</i>	<i>Section 3. Objects and purposes</i>	To provide legal framework for the market and non-market

	<p>(1) This Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.</p> <p>(2) Without prejudice to subsection (1), this Act shall be applied in all sectors of the economy by the national and county governments to—</p> <p>(a) mainstream climate change responses into development planning, decision making and implementation;</p> <p>(b) build resilience and enhance adaptive capacity to the impacts of climate change;</p> <p>(c) formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change;</p> <p>(d) mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities;</p>	<p>(1) This Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.</p> <p>(2) Without prejudice to subsection (1), this Act shall be applied in all sectors of the economy by the national and county governments to—</p> <p>(a) mainstream climate change responses into development planning, decision making and implementation;</p> <p>(b) build resilience and enhance adaptive capacity to the impacts of climate change;</p> <p>(c) formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change;</p> <p>(d) mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities;</p> <p>(e) mainstream intergenerational and gender equity in all aspects of climate</p>	approaches international market mechanisms
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	<p>(e) mainstream intergenerational and gender equity in all aspects of climate change responses;</p> <p>(f) provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development;</p> <p>(g) promote low carbon technologies, improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;</p> <p>(h) facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information;</p> <p>(i) mobilize and transparently manage public and other financial resources for climate change response;</p> <p>(j) provide mechanisms for, and facilitate climate change</p>	
	<p>change responses;</p> <p>(f) provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development;</p> <p>(g) promote low carbon technologies, improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;</p> <p>(ga) provide guidance in the development and implementation of carbon markets and non-market approaches in compliance with international obligations.</p> <p>(h) In paragraph (h) by inserting the following phrase immediately after "climate change responses" "including carbon market an non-market approaches"</p> <p>(i) mobilize and transparently manage public and other financial resources for climate change response;</p> <p>(j) provide mechanisms for, and facilitate climate change research and development, training and capacity</p>	

	research and development, training and capacity building;	building;	
	<p>(k) mainstream the principle of sustainable development into the planning for and decision making on climate change response; and</p> <p>(l) integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between the national government and county governments.</p> <p>(3) The rights and duties conferred under this Act are in addition to those conferred by any other law.</p>	<p>(k) mainstream the principle of sustainable development into the planning for and decision making on climate change response; and</p> <p>(l) integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between the national government and county governments.</p> <p>(3) The rights and duties conferred under this Act are in addition to those conferred by any other law.</p>	
3.	<p>Section 4. Guiding Values and Principles</p> <p>1) The guiding values and principles of low Guiding values carbon climate change resilient and development in this and principles. section shall bind all level of government and all persons when—</p> <p>(a)enacting, applying or interpreting any provisions of this Act; and</p> <p>(b)making or implementing public policy decisions on climate change.</p>	<p>Section 4. Guiding Values and Principles</p> <p>1) The guiding values and principles of low Guiding values carbon climate change resilient and development in this and principles. section shall bind all level of government and all persons when—</p> <p>(a)enacting, applying or interpreting any provisions of this Act; and</p> <p>(b)making or implementing public policy decisions on climate change.</p> <p>(2) In discharging their functions and duties</p>	<p>To align with the provisions in the PUBLIC PARTICIPATION AND ACCESS TO CLIMATE CHANGE INFORMATION REGULATIONS, 2023</p>

	<p>(2) In discharging their functions and duties under this Act the Council, the Cabinet Secretary, county government, any state officer and state organ shall be guided by the following—</p> <p>(a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;</p> <p>(b) be guided by the provisions of Articles 42 and 69 of the Constitution;</p> <p>(c) ensure promotion of sustainable development under changing climatic conditions;</p> <p>(d) ensure equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;</p> <p>(e) ensure integrity and transparency;</p> <p>(f) ensure participation and consultation with stakeholders in accordance with the Schedule.</p>	<p>under this Act the Council, the Cabinet Secretary, county government, any state officer and state organ shall be guided by the following—</p> <p>(a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;</p> <p>(b) be guided by the provisions of Articles 42 and 69 of the Constitution;</p> <p>(c) ensure promotion of sustainable development under changing climatic conditions;</p> <p>(d) ensure equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;</p> <p>(e) ensure integrity and transparency;</p> <p>(f) Ensure participation and consultation with stakeholders in accordance with the schedule</p> <p>Section 4 of the principal Act is amended in subsection (2) (f) by deleting the words "in accordance with the Schedule" appearing in paragraph (f).</p>	
4.	<p>Section 6. Functions of the Council</p> <p>The Council shall provide an overarching national climate change</p>	<p>Section 6. Functions of the Council</p> <p>The Council shall provide an overarching national climate change coordination</p>	<p>The NCCC being the overarching</p>

	coordination mechanism and shall—	mechanism and shall—	policy organ on climate change, it should have an explicit role touching on carbon markets
	<p>(a) ensure the mainstreaming of the climate change function by the national and county governments;</p> <p>(b) approve and oversee implementation of the National Climate Change Action Plan;</p> <p>(c) advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;</p> <p>(d) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;</p> <p>(e) provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate change to the national and county governments, the public and other stakeholders;</p>	<p>(a) ensure the mainstreaming of the climate change function by the national and county governments;</p> <p>(b) approve and oversee implementation of the National Climate Change Action Plan;</p> <p>(c) advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;</p> <p>(d) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;</p> <p>(e) provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate change to the national and county governments, the public and other stakeholders;</p> <p>(f) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act;</p>	

	<p>(f) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act;</p> <p>(g) administer the Climate Change Fund established under this Act; and</p> <p>(h) Set the targets for the regulation of greenhouse gas emissions.</p>	<p>(f) provide guidance and policy direction on carbon markets and non-market approaches to the national and county governments, the public and other stakeholders.</p> <p>(g) Set the targets for the regulation of greenhouse gas emissions.</p>	
5.	<p>Section 7. Members of the Council</p> <p>(1)The Council shall comprise not more than nine members who shall be appointed by the President.</p> <p>(2) The Council shall be constituted as follows -</p> <p>(a)the Cabinet Secretary responsible for environment and climate change affairs;</p> <p>(b)the Cabinet Secretary responsible for the National Treasury;</p> <p>(c)the Cabinet Secretary responsible for economic planning;</p> <p>(d)the Cabinet Secretary responsible for energy;</p>	<p>Section 7. Members of the Council</p> <p>Section 7 of the principal Act is amended—</p> <p>(a) in sub section (2) by—</p> <p>(i) deleting paragraph (c);</p> <p>(ii)deleting the words “nominated by the body representing the largest number of institutions in the private sector” appearing in paragraph (f);</p> <p>(iii)deleting the words “nominated by the most representative registered national umbrella association of civil societies working on climate change” appearing in paragraph (g);</p>	To operationalize the Council

	<p>(e)the chairperson of the Council of Governors;</p> <p>(f)a representative of the private sector nominated by the body representing the largest number of institutions in the private sector;</p> <p>(g)a representative of the Civil Society nominated by the most representative registered national umbrella association of civil societies working on climate change;</p> <p>(h)a representative of the marginalised community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge; and</p> <p>(i)a representative of the academia nominated by the Commission for University Education.</p> <p>(3) A person shall be appointed under subsection (2)(f), (g),(h) and (i), if the person has expertise and experience in matters of climate change, economy, finance, law, environment and public administration.</p> <p>(4)The names of persons nominated for appointment under subsection (2) (f), (g), (h) and (i) shall be submitted to Parliament for approval.</p> <p>(5) Except for members appointed under</p>	<p>(iv)inserting the following new paragraph immediately after paragraph (g)– (ga) a representative of the youth;</p> <p>(v)deleting the words “within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge” appearing in paragraph (h);</p> <p>(vi)deleting the words “nominated by the Commission for University Education” appearing in paragraph (i);</p> <p>(b) by deleting subsection (7);</p> <p>(c) in subsection (12) by deleting the words “Except as provided in subsection (7)”.</p>	
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<p>subsection (2)(a), (b), (c), (d) and (e) each person shall be qualified for appointment as member of the Council if such person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) fulfils the requirements of Chapter 6 of the Constitution; and</p> <p>(c) has at least ten years' experience in the relevant field.</p> <p>(6) The President shall in the appointment of members ensure compliance with the two thirds gender principle.</p> <p>(7) The Council shall at its first sitting, ballot to determine which of the members appointed under subsection (2) (f), (g), (h) and (i) shall serve for a two year term to ensure pro rata succession of membership.</p> <p>(8) The Council may co-opt members with relevant expertise when needed to advise on specific matters.</p> <p>(9) The Council may from time to time establish committees for the better carrying out of its functions.</p> <p>(10) The members of the Council shall be paid such allowances as the Salaries and Remuneration Commission may determine.</p> <p>(11) The Council shall meet at least four times in a year.</p> <p>(12) Except as provided in subsection</p>		
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	(7) the membership of the Council shall be for a term of three years and renewable once.		
6.	<p>Section 8. Powers and duties of the Cabinet Secretary</p> <p>(1) Subject to the provisions of this Act, the Cabinet Secretary shall exercise control and provide guidance over climate change governance and implementation of this Act.</p> <p>(2) The Cabinet Secretary shall—</p> <p>(a) formulate and periodically review the climate change policy, strategy and the National Climate Change Action Plan and submit to the Council for approval;</p> <p>(b) co-ordinate negotiations on climate change related issues in consultation with the Cabinet Secretary responsible for foreign affairs;</p> <p>(c) formulate a national gender and intergenerational responsive public education and awareness strategy on climate change and implementation programme;</p>	<p>Section 8. Powers and duties of the Cabinet Secretary</p> <p>Section 8 of the principal Act is amended in subsection (2) by—</p> <p>(a) deleting the word “biannually” in paragraph (c) and substituting therefor the word “annually”</p> <p>(b) inserting the following new paragraphs immediately after paragraph (c)—</p> <p>(f) advise the Council on the carbon budget for trading based on Kenya’s international obligations;</p> <p>(g) approve International Transfers of Mitigation Outcomes and emission reduction based on advice from the Climate Change Directorate;</p> <p>(h) approve measurement, reporting and verification of greenhouse gas emissions;</p> <p>(i) authorize the establishment of the REDD+ Registry and other sector registries to feed into the National Carbon Registry.</p>	<p>There are new provisions and participating requirements under the guidance provided by decision 2/CMA.3 and Decision 3/CMA.3. The aspects that require approval could be accorded to the cabinet secretary</p>

	<p>(d) provide through the Directorate, technical assistance on climate change actions and responses to county governments, based on mutual agreement and needs cited by the county governments; and</p> <p>(e) report biannually to Parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development.</p> <p>(3) The Cabinet Secretary in discharge of the duties and functions under this Act shall be assisted by the Climate Change Directorate established under this Act.</p>	<p>(c) inserting the following new subsection immediately after subsection (2)—</p> <p>(2A) The Cabinet Secretary shall appoint the Designated National Authority for market mechanisms and any other mechanisms deriving from Article 6 of the Paris Agreement.</p> <p>(2B) The Designated National Authority appointed under subsection (2A) shall, in addition to international obligations, maintain the National Carbon Registry established under section 23G.</p>	
7.	<p>Section 9. Climate Change Directorate</p> <p>(1) There is established the Climate Change Directorate, as a Directorate in the state Department for the time being responsible for climate change.</p> <p>(2) The Directorate shall be the lead</p>	<p>Section 9. Climate Change Directorate</p> <p>(a) in subsection (2) by deleting the words "and shall report to the Cabinet Secretary";</p> <p>(b) in subsection (3) by deleting the word "Director" and substituting therefor the word "Secretary";</p> <p>(c) in subsection (4) by deleting the word "Director" and substituting therefor the word "Secretary";</p>	

<p>agency of the government on national climate change plans and actions to deliver operational coordination and shall report to the Cabinet Secretary.</p> <p>(3) The Directorate shall be headed by a Director of Climate Change who shall be recruited competitively and appointed by the Public Service Commission.</p> <p>(4) A person shall be qualified for appointment as a Director of Climate Change if the person -</p> <p>(a) is a citizen of Kenya;</p> <p>(b) has a postgraduate degree, knowledge and experience in any of the following fields</p> <p>(i) environmental studies;</p> <p>(ii) engineering;</p> <p>(iii) meteorology;</p> <p>(iv) climatology;</p> <p>(v) law;</p> <p>(vi) economics; or</p> <p>(vii) such other relevant field as may be determined by the Cabinet Secretary in</p>	<p>(d) in subsection (4) by deleting the word "Director" and substituting therefor the word "Secretary";</p> <p>(e) in subsection (5) by deleting the word "Director" and substituting therefor the word "Secretary";</p> <p>(f) in subsection (6) by deleting the word "Director" and substituting therefor the word "Secretary".</p>	<p>How</p> <p>Why</p> <p>Who? KHIPS - Agreements</p> <p>Origin - Direct Permit - Allowed</p> <p>W -</p> <p>"CITED"</p> <p>* Sec 58" →</p> <p>* Sec 9" →</p> <p>re</p> <p>PAT</p> <p>MAI</p> <p>Dear → KWS</p> <p>Material</p> <p>CITES</p>
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<p>consultation with the Public Service Commission;</p> <p>(c) has at least ten years' experience at senior management level in the relevant field; and</p> <p>(d) meets the requirements of Chapter Six of the Constitution.</p> <p>(5) The Director appointed under subsection (4) shall</p> <p>be responsible for the performance of specific duties and functions of the Directorate as set out in this Act.</p> <p>(6) The Director shall advise the Cabinet Secretary on</p> <p>matters relating to legislation, policy, coordination, regulation and monitoring of climate change governance.</p> <p>(7) The Directorate shall, on behalf of the Council, perform functions as may be specifically set out in this Act</p> <p>and in regulations.</p> <p>(8) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—</p> <p>(a) provide analytical support on climate change to the various sector ministries,</p>		
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	<p>agencies and county governments;</p> <p>(b) establish and manage a national registry for appropriate mitigation actions by public and private entities;</p> <p>(c) serve as the national knowledge and information management centre for collating, verifying, refining, and disseminating knowledge and information on climate change;</p> <p>(d) in collaboration with other agencies at the national and county government levels-</p> <p>(i) identify low carbon development strategies and coordinate related measurement, reporting and verification;</p> <p>(ii) develop strategies and coordinate actions for building resilience to climate change and (iii) enhancing adaptive capacity;</p> <p>(iv) optimize the country's opportunities to mobilize climate finance;</p> <p>(e) coordinate adherence to the country's international obligations including associated reporting requirements;</p>		
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	<p>(f) coordinate implementation of the gender and intergenerational climate change education, consultation and learning at the national and county governments levels;</p> <p>(g) provide, on instruction of the Cabinet Secretary, technical assistance based on needs identified by county governments.</p> <p>(9) The Cabinet Secretary shall, in consultation with the Public Service Commission determine the staff establishment required for the Directorate to effectively perform its functions under this Act, including mechanisms to transition staff from the climate change secretariat to the Directorate, based on performance evaluation.</p>		
8.	<p>Section 10. Seal of the Council</p> <p>(1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Director of Climate Change.</p>	<p>Section 10. Seal of the Council</p> <p>(a) in subsection (1) by deleting the word "Director" and substituting therefor the word "Secretary";</p>	

	<p>(2) The affixing of the seal shall be authenticated by the chairperson of the Council and the Director of Climate Change.</p> <p>(3) Any document purporting to be under the seal of the Council or issued on behalf of the Council shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.</p>	<p>(b) in subsection (2) by deleting the word "Director" and substituting therefor the word "Secretary".</p>	
9.	<p>Section 13. Cabinet Secretary to coordinate the preparation of climate change action plans, strategies and policies.</p> <p>(1) The Cabinet Secretary shall, in accordance with Article 10 of the Constitution and section 3 of this Act, and through public consultation, formulate a National Climate Change Action Plan.</p> <p>(2) The National Climate Change Action Plan shall be presented for approval by the Council.</p> <p>(3) The National Climate Change</p>	<p>Section 13. Cabinet Secretary to coordinate the preparation of climate change action plans, strategies and policies.</p> <p>Section 13 of the principal Act is amended by—</p> <p>(a) in subsection (3) by inserting the following new paragraphs immediately after paragraph (n)—</p> <p>(o) to guide on the description of annual carbon budget for each of the years that make up the five-year cycle;</p> <p>(p) to identify past, current and projected sector-based greenhouse gases emission</p>	<p>The NCCAP is the main planning and mainstreaming document and it should capture carbon markets</p> <p>This will enable the country to tap opportunities and mainstream global climate change decisions on response measures (mitigation actions and policies that promote social, economic and</p>

Action Plan shall prescribe measures and mechanisms—		profile:	environmental benefits).
	<p>(a) to guide the county toward the achievement of low carbon climate resilient sustainable development;</p> <p>(b) to set out actions for mainstreaming climate change responses into sector functions;</p> <p>(c) for adaptation to climate change;</p> <p>(d) for mitigation against climate change;</p> <p>(e) to specifically identify all actions required as enablers to climate change response;</p> <p>(f) to mainstream climate change disaster risk reduction actions in development programmes;</p> <p>(g) to set out a structure for public awareness and engagement in climate change response and disaster reduction;</p> <p>(h) to identify strategic areas of national infrastructure requiring climate proofing;</p>	<p>(q) to set out proposed carbon credit project pipeline based on the white list;</p> <p>(r) to review and recommend on the level of compliance with international climate commitments;</p> <p>(s) to specifically identify, where appropriate, priority actions to explore carbon trading;</p> <p>(b) in subsection (5) by deleting paragraph (f) and substituting therefor the following new paragraph—</p> <p>(f) national and international laws and policies relating to climate change and carbon markets.</p>	

	<p>(i) to review and determine mechanisms for climate change knowledge management and access to information;</p> <p>(j) to enhance energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses;</p> <p>(k) to strengthen approaches to climate change research and development training and technology transfer;</p> <p>(l) to review and recommend duties of public and private bodies on climate change;</p> <p>(m) to review levels and trends of greenhouse gas emissions; and</p> <p>(n) to identify outputs, overall budget estimates and timeframes to realize expected results.</p> <p>(4) Without prejudice to the foregoing, the National Climate Change Action Plan shall address all sectors of the economy, and provide mechanisms for mainstreaming of the National Climate</p>		
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	<p>Change Action Plan into those sectors.</p> <p>(5) In formulating the National Climate Change Action Plan, the Cabinet Secretary shall be informed by—</p> <ul style="list-style-type: none"> (a) scientific knowledge about climate change; (b) technology and technological innovations relevant to climate change; (c) economic circumstances, in particular the likely impact of the action plan on the following— <ul style="list-style-type: none"> (i) the economy; (ii) the competitiveness of particular sectors of the economy; (iii) small and medium-size enterprises; (iv) employment opportunities; and (v) the socio-economic well-being of any segment or part of the population; (d) fiscal circumstances, in 		
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	<p>particular, the likely impact of the action plans, strategies and policies on the marginalised and disadvantaged communities;</p> <p>(e) social circumstances in particular, the likely impact of the action plans, strategies and policies on biodiversity and ecosystem services;</p> <p>(f) international law and policy relating to climate change; and</p> <p>(g) indigenous knowledge related to climate change adaptation and mitigation.</p> <p>(6) A notice shall be published in the Kenya Gazette and national newspapers to notify the public on approval of the National Climate Change Action Plan by the Council.</p> <p>(7) The Directorate shall undertake a biennial review of the implementation of the National Climate Change Action Plan and report to the Council.</p> <p>(8) The Cabinet Secretary shall, in every five-year period, review and update the National Climate Change Action Plan.</p>		
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	(9) The Cabinet Secretary, all public bodies, and any person or entity engaged in climate change governance and administration shall, when exercising any power or discharging any statutory duty or function, be bound by the contents of the National Climate Change Action Plan.		
10.		Section 15 of the principal Act is amended in subsection (3) by deleting the word "council" and substituting therefor the words "Cabinet Secretary"	
11.		Section 16 of the Principal Act is amended in subsection (2) by deleting the word "council" and substituting therefor the words "Cabinet Secretary"	
12.		Section 24 of the principal Act is amended in subsection (3) by deleting the words "The Council shall, on the recommendation of the Cabinet Secretary publish" and substituting therefor with "The Cabinet Secretary shall publish"	
13.	Insertion of new part on regulation of carbon markets	<p>NEW PART IVA—REGULATION OF CARBON MARKETS</p> <p>Carbon markets</p> <p>23A. Pursuant to section 6(fa), the policy direction on carbon markets shall cover all carbon markets and prescribe—</p> <p>(a) Carbon reduction credits that aim to reduce emissions from current sources</p>	To cater for carbon markets and facilitate its operationalization

	through projects;	
	<p>(b) removal or sequestration credits that take carbon dioxide out of the atmosphere and either use or store it via afforestation, reforestation, nature-based solutions or technology-based removal; and</p> <p>(c) technologies and projects on the whitelist;</p> <p>(i) previously used emission credits;</p> <p>(ii) emission reductions that have been achieved in violation of human rights and without free prior and informed consent;</p> <p>(iii) the emission reductions have had significant negative social or environmental impacts;</p> <p>(iv) emission reductions that were achieved before 1st January, 2013 and</p> <p>(v) emission reductions that were registered before 1st January, 2013.</p> <p>Principals governing trade in carbon markets</p> <p>23B. The trade in carbon markets shall be guided by the following principles--</p> <p>(a) transactions in carbon trading as carried out under this Act shall aim towards a reduction of greenhouse gas emissions as per the prescribed carbon standards;</p>	

		<p>(b) mitigation outcomes reported under the requirements of this Act shall be accounted for in tonnes of carbon dioxide equivalent;</p> <p>(c) carbon offset projects shall ensure that emissions are kept out of the atmosphere for a reasonable length of time; and</p> <p>(d) carbon offset projects shall ensure that emissions are kept out of the atmosphere for a reasonable length of time; and location of offset as required by the UNFCCC and other standard bodies.</p> <p>Participation in carbon markets</p> <p>23C. (1) The participation in an initiative authorizing trade in carbon credits shall be—</p> <p>(a) as a result of a bilateral or multilateral trading agreement;</p> <p>(b) as a result of trading with a private entity;</p> <p>(c) in a voluntary carbon market.</p> <p>(2) The Cabinet Secretary may—</p> <p>(a) enter into a bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals;</p> <p>(b) with the approval of the Cabinet, enter into an agreement with a private entity to offset carbon emissions;</p> <p>(c) with the approval of the Cabinet, enter into any agreement to trade in a carbon</p>	
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	<p>market established or overseen by an internationally recognized entity, approved by a recognized credible international body.</p> <p>(3) An agreement entered into under this Part shall aim to —</p> <p>(a) promote the mitigation of greenhouse gas emissions while fostering sustainable development; and</p> <p>(b) incentivize and facilitate participation in the mitigation of greenhouse gas emissions by authorized public and private entities.</p> <p>(4) The Cabinet Secretary shall, in the national reporting mechanism to the UNFCCC, include any emission reduction resulting from agreements entered into under this section.</p> <p>Environmental Impact Assessment</p> <p>23D. (1) Carbon trading projects authorized under this Act shall be required to undergo an environmental and social impacts assessment in accordance with the Environmental Management and Coordination Act.</p> <p>(2) Notwithstanding subsection (1), reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries projects are required to</p>	
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		<p>undergo REDD+ safeguard standards assessment.</p> <p>Provision of social and environmental benefits.</p> <p>23E.(1) A project undertaken pursuant to this Act shall specify the anticipated environmental, economic or social benefits of the project.</p> <p>(2) For purposes of subsection (1), the benefits shall include—</p> <p>(a) removal of greenhouse gases from the atmosphere and emissions reductions of greenhouse gases in order to meet Kenya's international obligations;</p> <p>(c) achievement of Kenya's greenhouse gases emissions reduction targets.</p> <p>(3) Every land based project undertaken pursuant to this Act shall have a community development agreement which shall outline the relationships and obligations of the proponents of the project in public and community land where the project is under development.</p> <p>(4) The National Government and the respective county government where the project is situated shall oversee and monitor the negotiation of the community development agreements with project</p>	
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	proponents and the stakeholders.	
	<p>(5) A community development agreement shall provide—</p> <p>(a) a list of stakeholders of the project including: project proponents, the impacted communities, the National Government and the county government where the project is being undertaken;</p> <p>(b) provision of an annual social contribution of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community; Provided that -</p> <p>(i) In land based projects the contribution shall be at least forty per centum of the aggregate earnings</p> <p>(ii) In non-land based projects the contribution shall be at least twenty five per centum of the aggregate earnings</p> <p>(c) manner of engagement with local stakeholders, especially the impacted communities;</p> <p>(d) sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities;</p> <p>(e) proposed socio-economic development</p>	

		<p>around community priorities; and</p> <p>(1) manner of its review or amendment, which shall be at least every two years.</p> <p>(6) A community development agreement entered into pursuant to this section shall be recorded in the National Carbon Registry.</p> <p>(7) Every carbon project undertaken pursuant to this Act shall take into consideration and aim to improve the economic, social, environmental and cultural well being of the community around the project.</p> <p>(8) The National Government and the respective county government where the project is situated shall enforce the community rights negotiated under a community development agreement.</p> <p>(9) The Cabinet Secretary may prescribe additional requirements relating to the formulation of the community development agreement.</p> <p>Share of proceeds and cancellation rates.</p> <p>23F. The Government of Kenya shall, in compliance with international obligation,</p>	
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	<p>undertake best practices regarding share of proceeds and cancellation rates for overall global mitigation.</p> <p>Carbon Registry</p> <p>23G. (1) There is established a registry to be known as the National Carbon Registry.</p> <p>(2) The Designated National Authority appointed under section 8(2A) shall be the custodian of the Registry.</p> <p>(3) The Register established under this section shall include—</p> <p>(a) the carbon credit projects and programmes implemented to reduce GHG emissions in Kenya;</p> <p>(b) a REDD+ Carbon registry;</p> <p>(c) the authorization granted to participate in an initiative/projects/ programmes under this Act;</p> <p>(d) the carbon budget and the emissions reduction units;</p> <p>(e) the amount of carbon credits issued or transferred by Kenya;</p> <p>(f) the amount of carbon credits issued to emission reduction projects and programs recognized by Kenya from national GHG registry account;</p> <p>(g) the transfer of carbon credits and any</p>	
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		<p>carbon credits issued or recognized by Kenya from a national GHG registry account;</p> <p>(h) the cancellation of carbon credits and any other carbon credits issued or recognized by Kenya from a national GHG registry account; and</p> <p>(i) any other carbon credits issued or recognized by Kenya from a national GHG registry account.</p> <p>(j) a record of corresponding adjustments where applicable with respect to carbon credits</p> <p>Additional Requirements</p> <p>23H. The Cabinet Secretary shall prescribe additional requirements on the regulation of carbon markets.</p> <p>Dispute Resolution</p> <p>23I. (1) Any dispute arising under a land-based project shall be subjected to the dispute resolution mechanism set out in the Community Development Agreement in the first instance</p> <p>(2) Any dispute that is not land based and is not subjected to a Community Development Agreement shall be resolved through Alternative Dispute Resolution in the first instance</p> <p>(3) Where a dispute under subsection (1) and (2) above is not resolved within thirty days of</p>	
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		submission, the dispute shall be referred to the National Environmental Tribunal.	
14.	Deletion of the Schedule	12. The principal Act is amended by deleting the Schedule.	The Act requires Public Participation Regulations

BENEFITS OF THE BILL

The Climate Change (Amendment) Bill, 2023 seeks to introduce carbon trading that has enormous benefits to Kenya in that:

1. It supports the country to comply with the Paris Agreement that Kenya ratified and became a Party to, on 28th December, 2016. Article 6 of the Paris Agreement encourages Parties to raise their mitigation ambition through carbon markets and non-market approaches;
2. It supports climate change interventions by enabling Kenya in achieving her Nationally Determined Contributions (NDC) in line with Article 6 of the Paris Agreement. Kenya submitted her updated NDC in 2020 whose ambition is to reduce green house gases by 32% relative to business-as-usual scenario of 143 metric tons of carbon dioxide equivalent by 2030. The NDC explicitly highlights Kenya's intention to access and use Article 6 of the Paris Agreement and that relevant legislation and institutions will be developed to enable Article 6 operationalization;
3. It ensures horizontal integration by institutionalizing the National Climate Change Council and vertical integration by mainstreaming climate change policy as determined by the Council through national and county institutions;
4. It will accelerate investments in carbon projects as well as facilitate reduced costs for low-carbon investments and transition;
5. It provides an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;

In addition, the Bill provides an opportunity for:

6. Global trading in sovereign forest carbon assets under the REDD+ process;
7. Domestic legislature that will enable Kenya to establish the necessary national arrangements such as approval of project level activities;
8. Coherence in approaches to climate investments in the country;
9. Sustainable development in the delivery of climate actions on the ground;
10. Equity in benefit sharing;
11. Change of mindsets on living with harmony with nature; and
12. Diversification of livelihood options at the local level and value addition.

13. Enhance the ownership of intellectual rights to share.

PROPOSED CLIMATE CHANGE (AMENDMENT) BILL, 2023

1.0 The objective

The Objective of the bill is to amend the Climate Change Act, 2016 and for connected purposes.

2.0 Specific Objectives

The specific objectives of the climate change (amendment) Bill, 2023 are to:

- a. Legislate on carbon, carbon rights, carbon markets and trading, qualifications of investors in carbon business, project requirements and inclusion of environmental and social impact assessment so as to enable high quality trading of emission reduction;
- b. Control and manage of carbon markets and trading with a focus on key sectors with potential to aid global emission reduction with adaptation co-benefits;
- c. Provide guidance on verification, certification, standards, issuance of emission reduction certificates to engage in carbon markets and trading; carbon benefit sharing, safeguards when dealing with carbon markets and trading as well as guidance on information disclosure and penalties for any contraventions.

3.0 Salient Features

The proposed Climate Change (Amendment) Bill has the following clauses:

- a) **Clause 1** is on citation.
- b) **Clause 2** of the Bill seeks to amend section 2 of the Act in order to provide for the definition of the new terms introduced in the amendments such as carbon markets, Designated National Authority, carbon budget etc.

- c) **Clause 3** of the Bill seeks to amend section 3 of the Act to provide for a legal framework on international market mechanisms on carbon markets as one of the objects of the Act.
- d) **Clause 4** of the Bill seeks to amend section 4 of the Act to delete reference to the Schedule
- e) **Clause 5** of the Bill seeks to amend section 6 to mandate the Council, as the overarching policy organ on climate change, to provide guidance and policy direction on carbon markets in the country.
- f) **Clause 6** of the Bill seeks to amend section 7 of the Act to align the provisions on membership of the council, for better operations.
- g) **Clause 7** of the Bill seeks to amend section 8 of the Act to provide for specific mandates of the Cabinet Secretary in relation to carbon markets, including designating a National Authority in compliance with international obligations.
- h) **Clause 8 and 9** of the Bill seek to amend sections 9 and 10 of the Act to rename the head of the directorate as secretary in line with Government nomenclature.
- i) **Clause 10** seeks to amend section 13 of the Act to provide for components relating to carbon markets to be considered in the Action Plan as this is the main planning and mainstreaming document.
- j) **Clause 11,12,13, and 14** seek to amend sections 15,16,24 and 36 of the Act to empower the Cabinet Secretary to make Regulations as the Council's mandate is of a higher level providing overarching policy and national climate change coordination mechanism
- k) **Clause 15** of the Bill seeks to insert a new Part in the Act on regulation of carbon markets.

- i) **Clause 16** of the bill seeks to delete the schedule to the Act as section 24 already provides for making of Regulations on Public Participation

SECTIONS TO BE AMENDED

Section 2 of No 11 of 2016 which it is proposed to amend—

s2. Interpretation

In this Act, unless the context otherwise requires—

"adaptation" means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;

"all levels of government" means all departments and agencies of the national and county governments;

"Authority" means the National Environmental Management Authority established by the Environmental Management and Coordination Act, 1999 or its successor legislation;

"Cabinet Secretary" means the Cabinet Secretary of the Ministry for the time being responsible for matters relating to climate change;

"climate change" means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period;

"climate change duties" means the statutory obligations conferred on public and private entities to implement climate change actions consistent with the national goal of low carbon climate resilient development;

"climate change resilience" means the capability to maintain competent function and return to some normal range of function even when faced with adverse impact of climate change;

"climate change secretariat" means the secretariat established by the Public Service Commission to coordinate climate change mitigation and adaptation actions and interventions;

"climate finance" means monies available for or mobilized by government or non-government entities to finance climate change mitigation and adaptation actions and interventions;

"Council" means the National Climate Change Council established under section 5;

"county executive committee member" means the county executive committee member for the time being responsible for matters relating to climate change;

"emissions", in relation to a greenhouse gas, means emissions of that gas into the atmosphere where the emissions are attributable to human activity;

"Fund" means the Climate Change Fund established under section 25;

"greenhouse gas" includes but is not limited to—

- (a) carbon dioxide;
- (b) methane;
- (c) nitrous oxide;
- (d) hydrofluorocarbons;
- (e) perfluorocarbons;
- (f) sulphur hexafluoride; and
- (g) indirect greenhouse gases;

"intergenerational" means with reference to equity among present and future generations and equity in the present generation;

"mainstreaming" means the integration of climate change actions into decision making and implementation of functions by the sector ministries, state corporations and county governments;

"mitigation" means efforts that seek to prevent or slow down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases;

"public entity" means body or person with functions of a public nature;

"private entity" means a body or person with functions of a private nature, and includes bodies registered under the Public Benefits Organisations Act, 2013, (No.18 of 2013);

"recycling", in relation to any waste, includes recovery and re-use whether or not the waste is subjected to any process and cognate expressions are to be construed accordingly; and

"waste" has the meaning assigned to it in section 2 of the Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999).

Section 3 of No 11 of 2016 which it is proposed to amend—

s3. Objects and purpose.

(1) This Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.

(2) Without prejudice to subsection (1), this Act shall be applied in all sectors of the economy by the national and county governments to—

- (a) mainstream climate change responses into development planning, decision making and implementation;
- (b) build resilience and enhance adaptive capacity to the impacts of climate change;
- (c) formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change;
- (d) mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities;
- (e) mainstream intergenerational and gender equity in all aspects of climate change responses;
- (f) provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development;

- (g) promote low carbon technologies, improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;
- (h) facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information;
- (i) mobilize and transparently manage public and other financial resources for climate change response;
- (j) provide mechanisms for, and facilitate climate change research and development, training and capacity building;
- (k) mainstream the principle of sustainable development into the planning for and decision making on climate change response; and
- (l) integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between the national government and county governments.

(3) The rights and duties conferred under this Act are in addition to those conferred by any other law.

Section 4 of No 11 of 2016 which it is proposed to amend—

s4. Guiding values and principles

(1) The guiding values and principles of low carbon climate change resilient and development in this section shall bind all level of government and all persons when—

- (a) enacting, applying or interpreting any provisions of this Act; and
- (b) making or implementing public policy decisions on climate change.

(2) In discharging their functions and duties under this Act the Council, the Cabinet Secretary, county government, any state officer and state organ shall be guided by the following—

- (a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;
- (b) be guided by the provisions of Articles 42 and 69 of the Constitution;
- (c) ensure promotion of sustainable development under changing climatic conditions;
- (d) ensure equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;
- (e) ensure integrity and transparency;
- (f) ensure participation and consultation with stakeholders in accordance with the Schedule.

Section 6 of No 11 of 2016 which it is proposed to amend—

s6. Functions of the Council

The Council shall provide an overarching national climate change coordination mechanism and shall—

- (a) ensure the mainstreaming of the climate change function by the national and county governments;
- (b) approve and oversee implementation of the National Climate Change Action Plan;
- (c) advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;
- (d) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;
- (e) provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate change to the national and county governments, the public and other stakeholders;

- (f) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act;
- (g) administer the Climate Change Fund established under this Act; and
- (h) set the targets for the regulation of greenhouse gas emissions.

Section 8 of No 11 of 2016 which it is proposed to amend—

s8. Powers and duties of the Cabinet Secretary

- (1) Subject to the provisions of this Act, the Cabinet Secretary shall exercise control and provide guidance over climate change governance and implementation of this Act.
- (2) The Cabinet Secretary shall—
 - (a) formulate and periodically review the climate change policy, strategy and the National Climate Change Action Plan and submit to the Council for approval;
 - (b) co-ordinate negotiations on climate change related issues in consultation with the Cabinet Secretary responsible for foreign affairs;
 - (c) formulate a national gender and intergenerational responsive public education and awareness strategy on climate change and implementation programme;
 - (d) provide through the Directorate, technical assistance on climate change actions and responses to county governments, based on mutual agreement and needs cited by the county governments; and
 - (e) report biannually to Parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development.
- (3) The Cabinet Secretary in discharge of the duties and functions under this Act shall be assisted by the Climate Change Directorate established under this Act.

Section 8 of No 11 of 2016 which it is proposed to amend—

s9. Climate Change Directorate

(1) There is established the Climate Change Directorate, as a Directorate in the state Department for the time being responsible for climate change.

(2) The Directorate shall be the lead agency of the government on national climate change plans and actions to deliver operational co-ordination and shall report to the Cabinet Secretary.

(3) The Directorate shall be headed by a Director of Climate Change who shall be recruited competitively and appointed by the Public Service Commission.

(4) A person shall be qualified for appointment as a Director of Climate Change if the person—

(a) is a citizen of Kenya;

(b) has a postgraduate degree, knowledge and experience in any of the following fields—

(i) environmental studies;

(ii) engineering;

(iii) meteorology;

(iv) climatology;

(v) law;

(vi) economics; or

(vii) such other relevant field as may be determined by the Cabinet Secretary in consultation with the Public Service Commission;

(c) has at least ten years' experience at senior management level in the relevant field; and

(d) meets the requirements of Chapter Six of the Constitution.

(5) The Director appointed under subsection (4) shall be responsible for the performance of specific duties and functions of the Directorate as set out in this Act.

(6) The Director shall advise the Cabinet Secretary on matters relating to

legislation, policy, co-ordination, regulation and monitoring of climate change governance.

Section 10 of No 11 of 2016 which it is proposed to amend—

s10. Seal of the Council

(1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Director of Climate Change.

(2) The affixing of the seal shall be authenticated by the chairperson of the Council and the Director of Climate Change.

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

Section 13 of No 11 of 2016 which it is proposed to amend—

s13. Cabinet Secretary to coordinate the preparation of climate change action plans, strategies and policies

(1) The Cabinet Secretary shall, in accordance with Article 10 of the Constitution and section 3 of this Act, and through public consultation, formulate a National Climate Change Action Plan.

(2) The National Climate Change Action Plan shall be presented for approval by the Council.

(3) The National Climate Change Action Plan shall prescribe measures and mechanisms—

(a) to guide the county toward the achievement of low carbon climate resilient sustainable development;

(b) to set out actions for mainstreaming climate change responses into sector functions;

(c) for adaptation to climate change;

(d) for mitigation against climate change;

(e) to specifically identify all actions required as enablers to climate change response;

(f) to mainstream climate change disaster risk reduction actions in development programmes;

(g) to set out a structure for public awareness and engagement in climate change response and disaster reduction;

(h) to identify strategic areas of national infrastructure requiring climate proofing;

(i) to review and determine mechanisms for climate change knowledge management and access to information;

(j) to enhance energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses;

(k) to strengthen approaches to climate change research and development training and technology transfer;

(l) to review and recommend duties of public and private bodies on climate change;

(m) to review levels and trends of greenhouse gas emissions; and

(n) to identify outputs, overall budget estimates and timeframes to realize expected results.

(4) Without prejudice to the foregoing, the National Climate Change Action Plan shall address all sectors of the economy, and provide mechanisms for mainstreaming of the National Climate Change Action Plan into those sectors.

(5) In formulating the National Climate Change Action Plan, the Cabinet Secretary shall be informed by—

(a) scientific knowledge about climate change;

(b) technology and technological innovations relevant to climate change;

(c) economic circumstances, in particular the likely impact of the action plan on the following—

(i) the economy;

(ii) the competitiveness of particular sectors of the economy;

(iii) small and medium-size enterprises;

(iv) employment opportunities; and

(v) the socio-economic well-being of any segment or part of the population;

(d) fiscal circumstances, in particular, the likely impact of the action plans, strategies and policies on the marginalised and disadvantaged communities;

(e) social circumstances in particular, the likely impact of the action plans, strategies and policies on biodiversity and ecosystem services;

(f) international law and policy relating to climate change; and

(g) indigenous knowledge related to climate change adaptation and mitigation.

(6) A notice shall be published in the Kenya Gazette and national newspapers to notify the public on approval of the National Climate Change Action Plan by the Council.

(7) The Directorate shall undertake a biennial review of the implementation of the National Climate Change Action Plan and report to the Council.

(8) The Cabinet Secretary shall, in every five-year period, review and update the National Climate Change Action Plan.

(9) The Cabinet Secretary, all public bodies, and any person or entity engaged in climate change governance and administration shall, when exercising any power or discharging any statutory duty or function, be bound by the contents of the National Climate Change Action Plan.

The Schedule to No 11 of 2016 which it is proposed to amend—

SCHEDULE

PROVISIONS ON PUBLIC CONSULTATION

[section 4(2)(f).]

1. (1) Where this Act imposes a requirement for public consultation in matters relating to climate change policy, strategy, programme, plan or action, the Council or respective public or private entity shall publish a notice—

- (a) in the Gazette;
- (b) in at least two newspapers with national circulation;
- (c) in at least one newspaper circulating in the locality to which the climate change policy, strategy, programme, plan or action relates; and
- (d) in at least one Kenyan radio station broadcasting in that locality.

(2) The notice shall in each case—

- (a) set out a summary of the policy, strategy, programme, plan or activity;
- (b) state the premises at which the details of the policy, strategy, programme, plan or action may be inspected;
- (c) invite written comments on or objections to the policy, strategy, programme, plan or action;
- (d) specify the person or body to which the comments are to be submitted; and
- (e) specify a date by which the comments or objections are required to be received, not being a date earlier than sixty days after publication of the notice.

2. The Council or public or private entity shall make arrangements for the public to obtain copies, at a reasonable cost, of documents relating to the policy, strategy, programme, plan or action which are in the possession of the respective entities.

3. The Council or the respective public or private entity shall consider the—

(a) written comments or objections received on or before the date specified under paragraph 1(2)(e); and

(b) comments, whether in writing or not, received at a public meeting held in relation to the policy, strategy, programme, plan or action at which the Council or respective public or private entity was represented, or by any other invitation, to comment.

4. The Council or the respective public or private entity shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision of the Council or the respective public or private entity relating to the policy, strategy, programme, plan or action, and the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2)(b).

5. Where regulations made under this Act so require, the Council or respective public or private entity shall cause a public meeting relating to a policy, strategy, programme, plan or action to be held before the Council or the respective public or private entity makes its decision on the policy, strategy, programme, plan or action.



KEPSA MEMORANDUM ON THE CLIMATE CHANGE AMENDMENT BILL 2023

DATE SUBMITTED: 21ST AUGUST 2023

Introduction

KEPSA is the umbrella body of the private sector for all sizes of local and foreign businesses, Trade Associations and Chambers of Commerce from all the sectors of the economy to enable them speak with one voice when engaging government and other stakeholders on cross cutting policy issues affecting private sector development. Through the International Chamber of Commerce- Kenya, which we host, and direct membership of corporates, SMEs and business associations, we reach to over two million business in Kenya. We are also the focal point of the East Africa Business Council (EABC) which brings us all private sector umbrella associations in the East African Region. KEPSA is a member of the Africa Business Council – the body of all Umbrella Associations and Chambers of Commerce in Africa. By hosting the ICC Kenya, and membership to the Africa Business Council, KEPSA has access to all the world Chambers of Commerce and Business Associations giving us access to over 45 million business globally. We support businesses with information and merging trends affecting investments and competitiveness, support training, B2B and opportunities to network for business, financial linkages, mentoring, access to markets, value chains and access to investment opportunities. The ease of doing business and competitiveness index is key in ensuring business make their contribution to sustainable economic development of the country. KEPSA has been very instrumental in institutionalizing public private dialogue between government and private sector to ensure competitiveness and ease of doing business locally and globally.

Impact of Carbon Trading on Businesses

Carbon trading is the buying and selling of permits of carbon credits that allow the holder to emit a certain amount of carbon dioxide and other greenhouse gases (GHGs). Essentially, businesses are awarded credits to allow them to continue to pollute up to a certain limit, often on a reducing basis.

While some businesses are able to cut their emissions, others are not able to do so thus propagating the business-as-usual scenario. For some, their emissions might even increase in the course of a given period. Those that cannot reduce their emissions are, however, allowed to continue operating, but usually at a higher cost. In some instances, businesses are unable to exhaust their credit limits even after operating for the marked duration. These are called “surplus” or

“excess” credits. When a business is left with un-utilised credits, it can sell them to other businesses. The business may also choose to keep the surplus credits for future use.¹

Article 6 of the Paris Agreement establishes a framework for supporting sustainable development through cooperative approaches, including the use of market and non-market-based approaches. The Paris Agreement provides for the use of carbon markets to reduce the effects of climate change and is dependent on the private sector to achieve its goals. Through the private sector, Kenya has the potential and capacity to close the nationally determined contribution targets and net zero emissions gap to support the realization of the transition required to align the global economy to a 1.5°C scenario. Carbon markets provide an approach to commercialize carbon emissions reduction interventions;

Kenya's share of global greenhouse gas emissions is 0.15%, none the less measures such, requirements for net zero targets for individual companies, international and local regulations on low carbon climate resilient sustainable development such as cross boarder adjustment mechanisms (CBAM), will negatively impact Kenyan exports especially horticulture and other products, meaning they will not be globally competitive as most trading partners in the international trade arena will make a shift and implement the carbon adjustment measures. This is gradually becoming a tariff and non-tariff barrier to trade and might lead to our exports being shunned in certain regional economic blocs and markets.

Challenges Businesses Face in Compliance

Although Kenya has a robust legal and regulatory framework on climate change, implementation is weak because businesses face the following challenges:

- a) Insufficient information on nexus between climate and business including carbon trading and carbon markets.
- b) Lack of technical capabilities on mapping of emissions and technologies such as renewable power sources and those that improve efficient use of energy.
- c) Limited access to climate change finance- In a 2021 Report, Treasury indicated that as of 2018, Ksh 243.3 billion of public and private capital was invested in climate-related activities. This being approximately one third of the financing that Kenya needs annually to meet its climate ambitions as depicted in its nationally determined contribution (NDC) to the Paris Agreement.²
- d) The carbon market currently is largely an export market and there are hardly local companies involved in this carbon trading.
- e) High capital intensity for project development and Limited number of project developers, operating in Kenya and Africa as a whole.
- f) High reliance to brokers and trader to bring supply to the market increasing the cost of trading in carbon markets.

¹ <https://fsdafrika.org/news/how-regulation-hitches-are-limiting-carbon-trading/>

² The Landscape of Climate Finance in Kenya: On the road to implementing Kenya's NDC (2021)

3. Change the Story, Developing a Local Carbon Market in Kenya, 2023

These challenges to implementation are of great concern because many global companies have already set internal targets to reach 'net zero' emissions in anticipation of government targets. These targets will affect all the operating countries of global firms, requiring action across offices. Companies not setting environmental targets are increasingly under pressure from consumers and shareholders, with negative consequences for brands that do not act. This may potentially lock out a number of non-compliant businesses from trading in the global arena, thus affecting our exports and while at it, continuing unsustainable business practices that are harmful to the environment, which will also lead to businesses facing a scarcity of resources, infrastructure destruction, and productivity loss.

In spite of the challenges, a regulatory framework is necessary to aid the creation of a level playing field, a conducive environment for all players and stakeholders, and the potential to increase revenue for the government, enhancement of the resilience of communities as well as support the realization of Kenya's Nationally Determined Contribution – (NDC) targets.

CALL FOR INPUT

Following the call for submission of memorandum from the public on the Climate Change Amendment Bill 2023 that seeks to domesticate the legislation and institutional framework to govern the market and non-market mechanisms with respect to carbon trading in Kenya, we as KEPSA submit as follows:

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
Clause 2 that proposes to insert the following Definitions under Section 2 of the Act.	Carbon market mechanism that allows transaction of reduction units, offsets, or mitigation outcomes through carbon initiatives programs, products for compliance with national and international laws	Carbon market mechanism that allows transaction of reduction units, offsets, or mitigation outcomes through carbon initiatives, programs, projects, products for compliance with national and international laws	Add the word products in the definition. not all carbon initiatives are projects and its important to capture products such as cook stoves and other interventions that private sector innovates to reduce or avert emissions. It allows spurs more long term and sustainable measures climate interventions since projects have definite timelines
	Carbon offset- reduction or removal of carbon dioxide or other green gas houses in order to compensate for emissions made elsewhere.	Carbon offset- reduction or removal of carbon dioxide or other green gas houses in order to compensate for equivalent number of emissions made	The indicated definition is direct googling definition, it is important to clearly define the boundaries and application of the parties involved in offset measures. Lastly elsewhere can be anywhere and is subject to varied interpretations.

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
		outside the host party jurisdiction.	
	Carbon projects- carbon reduction, carbon removal or carbon avoidance projects.	Carbon projects- interventions including but not limited to programs, projects, programs, products designed to remove, reduce, sequester or avoid carbon emissions for mitigation of climate change.	Avoid repetition of project in the word and in the definition. It provides clear linkage to elements covered in the carbon market mechanism, by adding sequestrations it provides for nature-based carbon solutions i.e. preventive measures for emissions to the atmosphere. Support prevention measures such as afforestation and not limit carbon projects to reduction and removal only. It's important to ensure carbon measures also cover products designed to reduce emissions and not limit off set measures to projects only.
	Stakeholders - persons, business or organization that has interest in or is affected by activities of carbon projects and the results those actions provide	Stakeholders- persons, business, or organization communities that has interest or is affected by activities of carbon projects and the results those actions provide.	The rights of communities in management of affairs that affect them is protected under Article 174 (d) of the Constitution Clause 23(E) of this Bill makes reference communities as key parties to a carbon arrangement.
Clause 6(a)(ii) that proposes to amend Section 7(2)(f) of the Act	6(ii) deleting the word nominated by the largest number of institutions of the private sector appearing in paragraph (f)	A representative of the private sector well versed with climate change affairs, who is in good standing to a national private sector business membership organization. .	The national climate change council is established as a coordination body for climate change affairs, it is important that representation at the council upholds this coordination approach amongst the different stakeholders to ensure there is a fair representation of the private sector at the council as opposed presentation of individual interest. It is important that the representative is linked to the wider private sector for proper feedback and to enhance coordination of business climate actions. We have internally developed a coordination mechanism- the climate business information network- within the private sector that is accepted and this has enhanced our

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
			<p>engagement and reporting of progress in implementation of business climate actions. Opening this up to all, will undermine the coordination mechanism established so far, under the country's GCF NAP readiness support project.</p> <p>The same applies to the other non-state actors in the council. The bill should instead provide a schedule to guide how to nominate non state actors to the council rather than removing the representation requirement.</p>
Clause 6(a)(iii) that proposes to amend Section 7(2)(g) of the Act		A representative of civil society well versed with climate change affairs, nominated by the most representative Civil Society organization working on climate change;	<p>Further to the above justification by private sector, it is important that representation at the council upholds this coordination approach amongst the different stakeholders to ensure there is a fair representation of civil society for public interest. Since Section 16 of the Act imposes climate change obligations on entities constituted under the Public Benefits Organizations Act, 2013 (No. 18 of 2013), it is important that the CSO representative is linked to the wider civil society for proper feedback and to enhance coordination of civil society concerns.</p>
Clause 6(a)(iii) that proposes to amend Section 7(2)(h) of the Act	It is a new addition.	None, inclusion of the youth is fully supported.	The youth are not only a key part of any policy discussions as a matter of right and law, but they will enrich discussions on how best to implement these policies and legislation, with a futuristic aspect to it.
Clause 7 (C) which seeks to amend Section 8 of the Act by inserting Subsection 2C.	Not included	2(c) The Cabinet Secretary shall develop regulations for the Designated National Authority	2(A) gives the cabinet secretary to appoint a designated national authority but does not have clear parameters for this appointment. It is important to direct development of further regulations that outline requirements for such an entity to qualify, its operations and functionalities and accountabilities.

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
23 (C) (1) (d)	Not included	(d) the cabinet Secretary shall make regulations and formulate guidelines for carbon market trading recognized under subsection 23C(1)	The current amendments do not provide adequate measures on carbon markets and trading regulation, it is imperative that further regulations are developed to be able to address the dynamics of trading in carbon market as well as outline the incentives both fiscal and non fiscal for carbon trading.
Clause 23E(5)(b)	Provided that: In land-based projects, the contribution shall at least be 40% of the aggregate earnings In non-land-based projects, the contribution shall at least be 25% of the aggregate earnings	All land based and non-land-based projects, shall apply the carbon credit revenue sharing formula developed in consultation with commission of revenue allocation (CRA).	Every carbon project has different financial structures and for this amendment, we propose removal of specific percentages from legislation. Further we propose consultation with the commission of revenue allocation (CRA) in developing a general formula to guide revenue sharing for both land-based projects and non-land-based projects that takes in to account all parameters such as subsidies, inflation adjustments, taxes, corporate social responsibility accrued in the life time of the projects etc. The actual revenue sharing to the community should be through the local community development mechanism and not through central or county government to ensure that communities get their proceeds in a timely manner and not be subject to government budgeting and procurement processes.
Clause 23(E) 7	Every carbon project undertaken pursuant to this act shall take into consideration and aim to improve the economic social and cultural wellbeing of the community around the project.	Every carbon project undertaken pursuant to this act shall take into consideration and aim to improve the environmental economic social and cultural wellbeing of the community around the project.	Include environmental benefits, Carbon projects should prioritize environmental benefits of reducing emissions to ensure the primary objective is not diverted to economic gains.

General comments

1. The Amendment Bill can outline some of the incentives and obligations for private sector contribution in achieving low carbon climate resilient development as provided for Section 3 (f) and Section 26 of the Act. These can be fiscal incentives and non-fiscal incentives such as carbon offsets, govt support and funding to promote research and development activities in the low carbon climate space.
2. Put in place measures that will facilitate and enhance proper collaboration between the Ministry, its agencies and county governments, private sector and other stakeholders in climate change action.
3. Provide clarity in carbon benefit sharing mechanisms in order to propel the creation and facilitation of incentives for climate action. Without proper benefit sharing mechanisms, climate action incentives are not enhanced as envisaged by the National Policy on Climate Finance (2016). The Bill can borrow from some of the proposals in the draft Carbon Credit Trading and Benefit Sharing Bill 2023.
4. Regionally, we can benchmark with Ghana and Tanzania that recently enacted their Environmental Management (Control and Management of Carbon Trading) Regulations, 2022, signaling formal participation in the global carbon trading markets.

Thank you for your consideration and attention.

Best regards,

Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer

KEPSA Business Membership Organization (BMOS)	
No	Name
1	Africa E-Mobility Alliance
2	Agricultural Employers' Association
3	Agrochemicals Association of Kenya
4	American Chamber of Commerce Kenya
5	Association of Consulting Engineers of Kenya
6	Association of Gaming Operators

7	Association of Kenya Feed Manufacturers
8	Association of Kenya Insurers
9	Association of women in Energy and Extractives in Kenya
10	British Chambers of Commerce Kenya
11	Business Ireland Kenya Association
12	Business Processes Outsourcing Association of Kenya
13	Car Importers Association of Kenya
14	Chartered Institute of Arbitrators (Kenya Branch)
15	Delegation of German Industry & Commerce in Kenya
16	Domain Registrars Association of Kenya
17	East African Private Equity & Venture Capital Association
18	East African Tea Trade Association
19	Electricity Sector Association of Kenya
20	Environment Institute of Kenya
21	European Business Council
22	Event Managers Association of Kenya
23	Federation of Kenya Employers
24	Federation of Public Transport Sector
25	French Society of Kenya
26	Geothermal Association of Kenya
27	Institute of Surveyors of Kenya
28	Institute of Certified Public Accountants of Kenya
29	Institute of Certified Secretaries
30	Institution of Engineers of Kenya
31	Japan External Trade Organization
32	Kenya Association of Air Operators
33	Kenya Association of International Schools
34	Kenya Association of Manufacturers
35	Kenya Association of Pharmaceutical Industry
36	Kenya Association of Travel Agents
37	Kenya Association of Women Business Owners
38	Kenya Association of Women in Tourism

39	Kenya Auto Bazaar Association
40	Kenya Bankers Association
41	Kenya Forex & Remittance Association
42	Kenya Green Building Society
43	Kenya Healthcare Federation
44	Kenya Institute of Supplies Management
45	Kenya International Freight & Warehousing Association
46	Kenya Motor Industry Association
47	Kenya Oil & Gas Association
48	Kenya Private Schools Association
49	Kenya Property Developers Association
50	Kenya Renewable Energy Association
51	Kenya Ships Agents Association
52	Kenya Tea Growers Association
53	Kenya Tourism Federation
54	Kenya Transporters Association of Kenya
55	Kenya Water Industry Association
56	Kenya Women Teachers Association
57	Law Society of Kenya
58	Leasing Association of Kenya
59	Marketing Society of Kenya
60	Medical Technology Industry Association of Kenya (MEDAK)
61	National Association of Private Universities of Kenya
62	Oil & Gas Contractors Association of Kenya
63	Organization of Women in International Trade
64	Petroleum Outlets Association of Kenya
65	Protective Security Industry Association
66	Public relations society of Kenya
67	Retail Trade Association of Kenya
68	Rural Private Hospitals Associations of Kenya
69	Safaricom Dealers Association
70	Seed Trade Association of Kenya

71	Shippers Council of Eastern Africa
72	SME Founders Association
73	Technology Service Providers Association of Kenya
74	The Architectural Association of Kenya
75	The Institute of Human Resource Management
76	The Kenya Flower Council
77	The SME Support Centre Limited
78	Town & County Planners Association of Kenya
79	United Business Association
80	Water Service Providers Association



MEMORANDUM ON THE CLIMATE CHANGE (AMENDMENT) BILL, 2023

Submitted to

**THE CLERK
NATIONAL ASSEMBLY
PARLIAMENT BUILDING
P.O BOX 41842-00100, NAIROBI**

Presented By

**ANTHONY MWANGI, CHIEF EXECUTIVE
KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

AUGUST 2023 – NAIROBI, KENYA

1.0 ABOUT KAM

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through her strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value add industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya playing a critical role. The EAC region integration is expected to spur the manufacturing sector enhancing intra-EAC trade in value added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Service ranging from **Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood, and Furniture; Electric and Electronic; Building, Mining and Construction; Agro-Processing.**

2.0 INTRODUCTION AND SUMMARY OF FEEDBACK

In summary our amendments touch on the following issues:

- (i) **Support for the Amendment Bill:** We commend the Government through the Ministry of Environment and the National Assembly for developing and prioritizing this amendment Bill whose objective is to regulate the carbon market. This proposal is aligned to the requests of manufacturers over the years for the country to regulate the already growing carbon market and provide the much needed incentives driven by the trade of carbon by the private sector. This move will place Kenya as a committed environmental champion that embraces new emerging initiatives aimed at supporting its commitments to Climate Actions as envisaged in the Constitution of Kenya and Climate Agreement commonly known as the Paris Agreement. The benefits for the manufacturing sector will be immense and will drive more climate interventions led by industry.
- (ii) **Representatives from the private sector:** The private sector is a critical stakeholder driving Kenya's climate change commitments. There is therefore needed to have more than one representative for the private sector from the two key sectors of manufacturing and trade/ service sectors. Currently, there is only one representative of the private sector under the Climate Change Council. We recommend two representatives from the private sector.

(iii) **Introduction of provisions on Internationally Transferred Mitigation Outcomes ("ITMOs"):** Article 6.2 of the United Nations Framework Convention on Climate Change ("UNFCCC") Treaty (Paris Agreement) provides a framework for countries to transfer greenhouse gas ("GHG") mitigation outcomes to other countries, or to parties based in other countries. These transferred climate change mitigation outcomes. This structure is a type of carbon credit, referred to as Internationally Transferred Mitigation Outcomes ("ITMOs"). We propose to include provisions recognizing this under the Amendments to be considered.

(iv) **Development of Regulations and Guidelines on carbon markets:** There is a need to include provisions providing for the Cabinet Secretary of Environment to develop regulations and guidelines related to the new provisions on carbon markets.

(v) **Provision of social and environmental benefits:** The proposal to have allocations to support social and environmental benefits is welcome. We propose a minimum target of 10% contribution being a new area in the country to ensure more buy-in from companies to engage in carbon trading.

(vi) **Carbon Registry:** The amendments in the Bill propose to include a carbon registry with several registers. We propose the inclusion of provisions to provide public access to the registers.

(vii) **Public Participation and Access to Information:** Despite the Climate Change Act coming into force in 2016, to date provisions of section 23 (4) of the Climate Change Act on public consultation have not been fully implemented due to the absence of regulations being developed. We propose to support the enactment of the regulations on design and procedures to ensure the efficacy of public consultations by inclusion of a timeline to have the same developed. This will ensure more meaningful consultations in the country.

3.0 DETAILED PROPOSED AMENDMENTS TO THE CLIMATE CHANGE (AMENDMENT) BILL, 2023

In response to the call for public participation on the afore-referenced Climate Change (Amendment) Bill, 2023 the following are our proposed amendments to be considered before the Bill is enacted:

KENYA ASSOCIATION OF MANUFACTURERS PROPOSALS CLIMATE CHANGE (AMENDMENT) BILL 2023			
	CLAUSE	PROPOSAL	JUSTIFICATION
1.	<p>Clause 6</p> <p>Members of the Council Amendment of section 7 of the Act on the Members of the Climate Change Council.</p>	<p>We propose to add the following words:</p> <p>'Two' immediately before the word 'of the private sector'; and the words 'representing the manufacturing and service sectors' as additional amendments under Clause 6 which seeks to amend section 7 (f) to read as follows:</p> <p>(f) Two representatives of the private sector representing the manufacturing and service sector.</p>	<p>We make this proposal based on the following justifications:</p> <ul style="list-style-type: none">• The private sector remains central in the mitigation and adaptation of climate strategies with the support of the Government. Also, regulation of the carbon market aims to facilitate the private sector to participate in the same.• There is a need for the private sector representation in the Council to have two representatives to ensure the key sectors of the manufacturing and service sector are represented. This will ensure the Council, as the highest level of structures informing the country on its climate strategies, receives critical information necessary for it to make informed decisions. This will also lead to better policy guidance and direction for the carbon market.
2.	<p>Clause 10</p> <p>National Climate Change Action</p>	<p>We propose to amend clause 10 to include provisions allowing for regulations and guidelines to be developed relating to</p>	<p>This proposal is based on the following justifications:</p> <ul style="list-style-type: none">• The new provisions introducing

	<p>Plan</p> <p>Amendment of section 13(3) of the Act.</p> <p>Regulations and Guidelines</p>	<p>carbon market provisions to read as follows:</p> <p><i>The Cabinet Secretary with the recommendation of the Council shall within a year, publish regulations and guidelines relating to carbon budgets, carbon credits, carbon markets, carbon projects, and carbon offsets, community development agreement, sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities.</i></p>	<p>carbon markets and trading require clarity on the key issues proposed to be introduced under this Bill such as on the carbon budgets, credits, markets, projects, and offsets.</p> <ul style="list-style-type: none"> • Providing support and guidance for building a robust carbon credit project pipeline can help businesses to maximize their potential in the carbon market. • A strong pipeline can increase investment, and job creation, and significantly impact climate change mitigation.
<p>3.</p>	<p>Clause 10</p> <p>National Climate Change Action Plan</p> <p>Carbon credits - Internationally Transferred Mitigation Outcomes ("ITMOs").</p>	<p>We propose to amend clause 10 to introduce new amendment to recognize Internationally Transferred Mitigation Outcomes ("ITMOs") provided for under the United Nations Agreement and give power to the cabinet secretary the authority to grant approval Letters of Authorisation for carbon credits under Internationally Transferred Mitigation Outcomes ("ITMOs") provided for under the Paris Agreement as follows:</p> <p>8(2)(f) The Cabinet Secretary shall—</p> <p>“Authorize approval of entities under</p>	<p>We make this proposal based on the following justifications:</p> <ul style="list-style-type: none"> • Article 6.2 of the United Nations Framework Convention on Climate Change ("UNFCCC") Treaty (Paris Agreement) provides a framework for countries to transfer greenhouse gas ("GHG") mitigation outcomes to other countries, or to parties based in other countries. These transferred climate change mitigation outcomes are a specific type of carbon credit, referred to as Internationally Transferred

		any, Internationally Transferred Mitigation Outcomes with recommendation from the Council and develop Rules guiding the same within one year.	<p>Mitigation Outcomes ("ITMOs").</p> <ul style="list-style-type: none"> Strategic stakeholders, particularly those manufacturing locally in Kenya, will benefit from the knowledge that the work they will be doing until such a time that the Framework is approved, and the applications are processed, will have the option to generate ITMOs. This will allow business continuity through risk mitigation.
4.	<p>Clause 15</p> <p>Proposed section 23E</p> <p>Provision of social and environmental benefits</p> <p>(5) A community development agreement shall provide –</p> <p>(b) provision of an annual social contribution of at least 25% of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community.</p>	<p>We propose to amend this clause 15 to reduce the annual social contribution percentage to a minimum of at least 10% to the community from project earnings.</p> <p>(b) <i>provision of an annual social contribution of at least 10% of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community.</i></p>	<p>We make this proposal based on the following justification:</p> <ul style="list-style-type: none"> Carbon markets being a new concept in the country, its implementation will be a learning process which will inform strategies to move forward. The annual social contribution to the community is a positive step to ensure distribution of resources to communities. We propose that a minimum amount be included of 10% annual contribution for this new initiative from the proposed 25% to ensure that it is both fair and sustainable for businesses. It will also balance the community benefits with business viability is crucial.

			<ul style="list-style-type: none"> The proposal will be in line with other such social contributions such as the royalty's contribution under Kenya's Mining Act which provides for a contribution of ten percent to the community (Section 183 (5)(c)).
5.	<p>Clause 15 Proposed section 23G Carbon Registry</p>	<p>We propose to amend Clause 15 on the carbon registry to introduce a new paragraph 23G (4) to introduce provisions to make the registers available to the public as follows:</p> <p>23G (4) The registers and the relevant details entered on the application shall be available for search to the public on terms set by the Council.</p>	<p>The proposal is made based on the following justifications:</p> <ul style="list-style-type: none"> With the proposed formation of a carbon registry that will maintain registers, there is a need to have easy access to the National Carbon Registry which will help businesses track their carbon credit projects and keep them up to date with relevant information. A transparent and user-friendly registry promotes a better understanding of the carbon market and encourages more active participation from businesses.
NEW PROPOSALS NOT INCLUDED UNDER THE BILL ON THE CLIMATE CHANGE ACT			
6.	<p>Section 24(3) of the Climate Change Act</p> <p>Public Participation and Access to Information</p>	<p>We propose the clause to be amended to include a timeline of one year requirement for the development of the Regulations on design and procedure to read as follows:</p> <p>Section 24 (3) The Council shall, on</p>	<p>The proposal is made based on the following justifications:</p> <ul style="list-style-type: none"> The Climate Change Act came into force on 27th May 2016. To date the regulations have not been enacted.

	<p>The Council shall, on recommendation of the Cabinet Secretary publish regulations on design and procedure to ensure efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.</p>	<p>recommendation of the Cabinet Secretary <i>shall within a year</i> publish regulations on design and procedures to ensure the efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.”</p>	<ul style="list-style-type: none"> • The proposed amendments seek to ensure the Regulations are developed to support consultations. This is especially critical to manufacturing entities due to the direct impact of the Act on their operations.
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MEMORANDUM ON THE CLIMATE CHANGE (AMENDMENT) BILL 2023

PRESENTED TO:

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

SUBMITTED TO:

PRINCIPAL SECRETARY,

STATE DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE

PURSUANT TO PUBLIC NOTICE FOR PUBLIC COMMENTS ON THE CLIMATE CHANGE BILL
2023

SUBMITTED COLLABORATIVELY BY:

KENYA CLIMATE CHANGE WORKING GROUP

BACKGROUND

To facilitate progress and achievement of the mandate of the Paris Agreement, Article 6 of the Paris Agreement provides cooperative approaches which countries can use to achieve the ambition of their Nationally Determined Contributions as communicated to the United Nations Framework Convention on Climate Change (UNFCCC). Article 6 describes two market approaches and one non-market approach for “voluntary cooperation”, which Parties use, that is, Bilateral or multilateral cooperative approaches, where Parties can transfer “internationally transferred mitigation outcomes” (ITMOs) to facilitate the achievement of their NDCs (Article 6.2); A centrally governed crediting mechanism to support sustainable development under the auspices of the Paris Agreement (Article 6.4). Emission reduction units can be issued for activities authorised by Parties and then be acquired by other Parties; and A framework to promote non-market approaches (Article 6.8).

Further guidance, rules, modalities, and procedures for the operation of the market approaches, and a work programme under the non-market approach have been concluded by Parties under the UNFCCC. Individual Parties are therefore expected to develop relevant policies, laws, regulations, and institutional frameworks to facilitate the implementation of the decisions taken under the UNFCCC on cooperative approaches.

In 2023, the Ministry of Environment, Climate Change and Forestry published the Draft Climate Change (Amendment) Bill of 2023, inviting comments. According to the Memorandum of Objects and Reasons accompanying the Bill, the proposed legislation seeks to provide a framework for the development and implementation of market and non-market approaches as well as benefit-sharing mechanisms relating to the said approaches.

OVERALL ASSESSMENT

After a careful look, we made the following observations.

1. Scope of the Amendment Bill

The proposed law focuses on carbon markets and the appointment of representatives of non-state actors to the council. We believe the scope should accommodate other sections that have not been implementable since the Parent

Act was enacted. Other than the Council, it has not been possible to establish a climate change fund provided for under Section 25 of the Parent Act.

2. Alteration to the representation of non-state actors in the Climate Change Council

We note that this has been a challenge since the Act was enacted. However, we still believe that with defined nomination criteria, non-state actors can have a role in the nominations of their representatives. We have proposed new language and a nomination criterion for your consideration.

3. Benefit Sharing Mechanism

The conversation on benefit sharing has been ongoing in the country, especially under the Mining Act. The Natural Resources (Benefit Sharing) Bill, 2022, is before Parliament. This bill should cross-reference the relevant sections of the Natural Resources Benefit Sharing Bill as appropriate. It should also borrow from the CDA Regulations under the Mining Act for consistency and to avoid duplicity.

4. Carbon Market Standards

While some international Institutions/Bodies develop standards, it is imperative to have a national body/institution responsible for the development of standards.

SPECIFIC COMMENTS TO THE BILL AND ADDITIONAL PROPOSED AMENDMENTS

Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Rationale/ justification amendment recommendation
Amendment of section 2 of No. 11 of 2016	"whitelist" means	No provision	"whitelist" should have a clear definition.	This will ensure uniformity in interpretation as the word is used in other sections of the bill.
		No provision	We propose an inclusion of the definition of "Impacted Community".	This accounts for inclusion in the carbon markets and provides reference points in cases of the community development agreement and conflict resolution the definition of who impacted community are
Amendment of section 4 of No. 11 of 2016.	Section 4	Section 4 of the principal Act is amended in subsection (2) by deleting the words "in	The current provision implies the deletion of the schedule. The schedule should not be deleted from the parent act.	The schedule provides the criteria through which public participation should

		accordance with the Schedule" appearing in paragraph (f).		take place. Public participation is paramount and it is not only a constitutional right but it is also provided for in Article 6 of the Paris Agreement
Amendment of section 8 No. 11 of 2016.	Section 6 a (iv)	<i>Deleting the words "nominated by the most representative registered national umbrella)</i>	Reject the amendment. The provisions of the Act to remain as it is	CSOs should be allowed to choose their representatives.
	Section 7	(bd) authorize the establishment of the REDD+ Registry and other sector registries to feed into the National Carbon Registry.	Provide for the establishment of County registries as well	County registries promote regional identification of carbon markets projects. This will increase access to carbon market information within the County as well facilitation of negotiations and agreements
Amendment of section 9 No. 11 of 2016.	Section 8 (a)	<i>Deleting the words "and shall report to the Cabinet Secretary"</i>	reject the amendment	The directorate should be checked and held accountable by the ministry.

OTHER PROPOSED AMENDMENTS IN THE PARENT ACT

Amendment of the description of No. 11 of 2016		AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate development, and for connected purposes	The Principal Act is amended in its description by deleting the description and replacing it with the following: "AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate resilient development, and for connected purposes. It is also the instrument to facilitate implementation of national and international commitments."	This is in consistency with the Paris Agreement
Amendment of section 2 of No. 11 of 2016	Interpretation	"Fund" means the Climate Change Fund established under section 25;	"the principal Act", is amended in section 2 by deleting the definition of "Fund" and substituting therefore with the following definition "Fund" means the Fund established by the Cabinet Secretary under section 25 of the Climate Change Act, 2016 pursuant to Section 24 of the	This is consistent with the provisions of the PFM Act, 2012

Amendment of section 3 of No. 11 of 2016	Objects and Purposes		Public Finance Management Act, 2012.	This is in consistency with the Paris Agreement
			(1) This Act shall be applied for the management, implementation, and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.	The Principal Act is amended by deleting the phrase 'for the sustainable development of Kenya' and replacing it with 'for sustainable development and eradication of poverty in Kenya.'
Amendment of section 7 of No. 11 of 2016	Members of the Council		(a) (1) The Council shall comprise not more than nine members who shall be appointed by the President. (2) The Council shall be constituted as follows (a) The Cabinet Secretary responsible for environment and climate change affairs; (b) The Cabinet Secretary responsible for the National Treasury;	(a) Section 7 of the principal Act is amended by deleting the section and replacing it with "(1) The Council shall comprise not more than eight members who shall be appointed by the President. (2) The Council shall be constituted as follows a) The Cabinet Secretary responsible for environment and climate change affairs;
				The proposed new structure will be more effective in facilitating the implementation of the Climate Change Act

		<p>(c) The Cabinet Secretary responsible for economic planning;</p> <p>(d) The Cabinet Secretary responsible for energy;</p> <p>(e) The chairperson of the Council of Governors;</p> <p>(f) A representative of the private sector nominated by the body representing the largest number of institutions in the private sector;</p> <p>(g) A representative of the Civil Society nominated by the most representative registered national umbrella association of civil societies working on climate change;</p> <p>(h) A representative of the marginalised community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters</p>	<p>b) The Cabinet Secretary/Secretaries responsible for the National Treasury and Economic Planning;</p> <p>c) The chairperson of the Council of Governors;</p> <p>d) A representative of the private sector nominated in consultation with the Private Sector;</p> <p>e) A representative of the Civil Society nominated in consultation with Civil Society Organizations;</p> <p>f) A representative of the marginalised community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge nominated in consultation with the marginalised community; and</p>	
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		<p>relating to indigenous knowledge; and</p> <p>(i) A representative of the academia nominated by the Commission for University Education.</p>	<p>g) A representative of the academia nominated in consultation with the Commission for University Education."</p> <p>Note: Qualifications of appointees and conditions for appointment in Section 7 (3-6) of the Parent Act shall apply</p>	
Section 7bis			<p>Propose an additional section after section 7 as below.</p> <p>"</p> <p>(1) There is established a Climate Change Technical Committee</p> <p>(2) The Committee shall be chaired by the Cabinet Secretary for the time being responsible for Climate Change Affairs</p> <p>(3) The Climate Change Secretary shall be the secretary to the Committee.</p> <p>Functions of the Committee (Subsequent Section)</p>	<p>The functions proposed fit the technical role that the Committee should undertake</p>

			<p>The Committee shall provide an overarching national climate change coordination mechanism and shall—</p> <ul style="list-style-type: none"> a) ensure the mainstreaming of the climate change function by the national and county governments; b) approve and oversee implementation of the National Climate Change Action Plan; c) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme; d) set the targets for the regulation of greenhouse gas emissions. e) Oversee the implementation of the carbon markets framework f) Approve proposals for funding through the Climate Change Fund. 	
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			<p>g) Facilitate implementation and tracking of the Kenya Nationally Determined Contribution</p> <p>h) Oversee the implementation of the Monitoring, Reporting, and Verification of Climate Change</p> <p>i) Provide technical guidance on climate change action and support as appropriate.</p> <p>Members of the Climate Change Technical Committee (Subsequent section)</p> <p>(1) The Climate Change Technical Committee shall comprise not more than fifteen members who shall be appointed by the Cabinet Secretary for the time being responsible for Climate Change.</p> <p>(2) The Committee shall be constituted as follows.</p> <p>a) The Permanent Secretary responsible for Climate Change;</p>	
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			<ul style="list-style-type: none"> b) The Permanent Secretary/Secretaries responsible for the National Treasury and Economic Planning; c) The Permanent Secretary responsible for Energy; d) The Permanent Secretary responsible for Crop Development; e) The Permanent Secretary responsible for Industry f) The Permanent Secretary responsible for Blue Economy; g) The chairperson of the Committee responsible for Climate Change at the Council of Governors; h) A representative of the private sector nominated in consultation with the Private Sector; i) A representative of the Civil Society nominated in consultation with Civil Society Organizations; 	
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			<p>j) A representative of the youth nominated in consultation with youth organizations/networks working on climate change;</p> <p>k) A representative of indigenous people, within the meaning of Article 260 of the Constitution, nominated in consultation with the indigenous peoples' organizations; and</p> <p>l) A representative of the academia nominated in consultation with the Commission for University Education</p> <p>Note: Qualifications of appointees and conditions for appointment in Section 7 (3-6) of the Parent Act shall apply</p>	
Amendment of section 25 of No. 11 of 2016	Climate Change Fund	(1) There is hereby established the Climate Change Fund which shall be a financing mechanism for priority climate change actions and	<p>The principal Act is amended in section 25 by:</p> <p>a) deleting subsection 1 and replacing with the following words "the Cabinet Secretary</p>	This is consistent with the provisions of the PFM Act, 2012

		interventions approved by the Council. (2-9) Other financial provisions	for the time being responsible for finance may establish a Climate Change Fund, under section 24 of the Public Finance Management Act, 2012". b) deleting subsections 2-9	
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PART IVA—REGULATION OF CARBON MARKETS
Carbon Markets

Principles governing trade in carbon markets	Section 23B (c)	Carbon offset projects shall ensure that emissions are kept out of the atmosphere for a reasonable length of time	We propose an amendment of the section to include indicative timeframes	Reasonable length of time is subject to different interpretations therefore vital to give a timeframe
Participation in carbon markets.	23C(2)(a)	The Cabinet Secretary may enter into a bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals;	The bill is amended in section 23C(2)(a) by inserting the phrase "in consultation with the Attorney General, and with the approval of the cabinet" after 'may' and before 'enter into'. The new paragraph will read. "The Cabinet Secretary may, in consultation with the Attorney General, and with the approval of the cabinet, enter into a bilateral	The AG's office in charge of the country's agreement hence should be involved in the process. The Cabinet should be involved in this to ensure there is consultation.

			or multilateral agreement with another State Party to trade carbon for emission reductions and removals;”	
23C(2)(b)	The Cabinet Secretary may with the approval of the Cabinet, enter into an agreement with a private entity to offset carbon emissions;	The bill is amended in section 23C(2)(b) by inserting the phrase ‘in consultation with the Attorney General, and’ between ‘may’ and ‘with the’. The section will read.	The AG’s office in charge of the country’s agreement hence should be involved in the process.	
23C (4)	The Cabinet Secretary shall, in the national reporting mechanism to the UNFCCC, include any emission reduction resulting from agreements entered into under this section.	<p>“The Cabinet Secretary may in consultation with the Attorney General, and with the approval of the Cabinet, enter into an agreement with a private entity to offset carbon emissions;”</p> <p>Section 23C (4) of the bill is amended by replacing “the Cabinet Secretary” with “the National Designated Authority.” The section will read as below.</p> <p>“The National Designated Authority shall, in the national reporting mechanism to the UNFCCC, include any emission reduction resulting from</p>	The Cabinet Secretary does not report to UNFCCC in his/her capacity as a Cabinet Secretary. This is the role of the National Designated Authority	

			agreements entered into under this section."	
Provision of social and environmental benefits.	Section 23 E (5) (b)	Provision of an annual social contribution of at least twenty five percent (25%) of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community	It is suggested that this section of the Bill references the relevant provisions of the Natural Resource Benefit Sharing Bill for consistency.	Since this clause deals with allocation of resources, it should be very clear to allow for the highest levels of accountability.
			It is also suggested that clarity be provided on benefit sharing in the context of who shares the benefits, the buyer, the seller, or both. The body disbursing these funds should be specified.	The body disbursing these funds should be specific for accountability and redress purposes
	23 E (5) (f)	manner of its review or amendment, which shall be at least every two years	The section of the bill is amended by replacing 'two years' with 'five years.'	Two years is a very short time for a carbon project to have borne results. More time necessary to ensure the review is beneficial.
	23E (6)	A community development agreement entered into pursuant to this section shall be recorded in the National Carbon Registry.	The section is amended by including County Registry. The section therefore reads "A community development agreement entered into pursuant to this section shall be recorded in	Having county registries will make reporting efficient, at the national level. It will also promote

			the County and National Carbon Registries."	accountability and transparency.
	23 E (9)	The cabinet secretary may prescribe additional requirements relating to the formulation of the community development agreement	The section is amended by including "in consultation with the County Government." The section will read, "The Cabinet Secretary in consultation with county government where the project is situated, may prescribe additional requirements relating to the formulation of the community development agreement."	This will ensure checks and balance on the additional requirements that may be prescribed by the Cabinet Secretary. It will ensure that the requirements do not infringe on the rights of the impacted community and takes into consideration specific interests and needs of the community.
	23I (1)	Any dispute arising under this part shall be referred to the Principal Secretary responsible for climate change matters.	It is proposed that, in case of conflict as a result of carbon trade, ADR should be used before the case can be forwarded to the Principal Secretary. The national government, the county government, the investor and the community to get an arbitrator or mediator to lead the ADR.	

			<p>If the conflict is among community members, the community leaders (elders, chiefs) should lead the ADR.</p>	
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21st August, 2023

THE CLERK OF THE NATIONAL ASSEMBLY,
P.O. BOX 41842-00100,
NAIROBI, KENYA.

RE: MEMORANDUM ON THE CLIMATE CHANGE (AMENDMENT) BILL, No.42 of 2023 BY KENYA WILDLIFE CONSERVANCIES ASSOCIATION (KWCA)

Pursuant to the invitation dated 16th August 2023 to submit memoranda on the Climate Change (Amendment) Bill 2023, KWCA in consultation with and on behalf of 184-member community and private wildlife conservancies spread across 30 counties in Kenya submits this memorandum.

The Bill is designed towards enhancing climate change resilience and low carbon development for the sustainable development of Kenya. Aligned to this, wildlife conservancies in Kenya, which conserve over 9 million hectares of the country's land mass, have been recognized as locally led initiatives that serve as climate adaptation and mitigation tools, through participation in carbon credits programs, among others.

KWCA HEREBY SUBMITS AS FOLLOWS:

1. The Bill has a dual purpose; amending provisions on Climate Change and introducing regulation of the carbon market. While Part IVA on Regulation of Carbon Market is a significant milestone in activating Kenya's carbon market;

ISSUE: The multiple governance structures in the Bill (Designated National Authority, Climate Directorate and the Cabinet Secretary) all with various powers and mandates in the regulation of carbon market, have the potential to overlap in discharge of their powers and duties, which is a dis-incentive for the carbon credit business.

RECOMMENDATION: *Minimal bureaucratic procedures and processes for carbon projects under a one-stop shop institution* with powers, duties and capacity for carbon credit market administration, permitting, monitoring, carbon registry management, community agreement and benefit sharing administration, and compliance and enforcement. This will enable ease of developing the carbon market and incentivizing investments.

2. Despite carbon credits not creating the conventional property rights that can be strictly or directly be defined, it is nevertheless important to provide description on the nature and bundle of rights and entitlements, especially to inform equitable benefit sharing regime.

ISSUE: *The ownership and entitlement of carbon credit rights has not been addressed by the Bill.*

RECOMMENDATION: *a description of carbon rights be provided in the Bill to include intangible assets and or ownership of beneficial interest created by legislation or contractual arrangements, arising from carbon sequestered and carbon stored in forests, soil, grasslands or other approved means.*

3. The Bill is designed as a general legislative framework on regulation of carbon market.

ISSUE: The Bill is however silent on some substantive provisions on registration, market compliance and monitoring and enforcement of the carbon credit market. As much as the finer and administrative details on permitting will be provided in subsidiary regulations, key principles as to the nature of agreements for carbon credit business, permitting and licensing and the responsible government entity, need to be included in the primary legislation, as these are core in the regulation of the business.

RECOMMENDATION: *Comprehensive provisions on carbon credit trading agreements, principles for permitting and licensing of carbon credit trade be included in the Bill and the responsible authority be provided.*

4. Community development and benefit sharing agreements;

ISSUE: *The Bill narrowly views and assumes communities as beneficiaries of carbon credit projects*, thus only providing for social benefits as only benefit accruing to communities. Vast of carbon credit projects through rangelands and grasslands management and soil carbon have the biggest potential within community lands. In the a-foregoing, *communities are co-project or main developers* who may enter into project development agreements with the carbon credit buyers directly, in the name of the community. This elevates communities beyond only accessing social benefits to sales revenue.

RECOMMENDATION: The Bill to provide provision on income generation by where carbon credit trade projects are developed on community lands. A specific recommendation is provided below under 23E 5.

5. The Scope of the Bill, including its principles, is *largely silent on non-carbon markets*, whereas a new object of the Act (Sec 3(ga)) is to provide guidance in development and implementation of carbon markets and non-markets. The Bill presents an opportunity to promote and incentivize non-market approaches to enhance carbon reservoirs and sinks and enable co-benefits such as biodiversity conservation, in instances of limited potential for high-quality carbon offsets; and further application of taxes to discourage emissions. This is in consideration that Kenya is focused on advancing its offset capacity.
6. In order for Kenya to develop and maintain high integrity and value carbon credit market, *there is need for provision of offences and related penalties.*

ISSUE: The Bill does not provide for any offences or penalties related to the carbon credit trade, limiting transparency and accountability and exposing the country a high volatile market operation. This is a substantive area that requires address in the Act and not in subsidiary regulations.

RECOMMENDATION: The *Bill to provide comprehensive section on offences and a detailed schedule on the penalties* which need to be commensurate to the value of the business, both in amounts of fines and term of sentence. The offences include but are not limited to:

- conduct of unauthorized carbon credit trade,
- relating to social and environmental impact assessments
- relating to maintenance of carbon records,
- manipulation of measurements to claim additional measurements
- selling to unauthorized entities
- false or misleading claims with respect to environmental or financial gains or benefits from carbon market investment
- financial crimes including money laundering, transfer mis-pricing

FURTHER, KWCA MAKES THE FOLLOWING SPECIFIC RECOMMENDATIONS:

Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Justification and Rationale
Part IVA- Regulation of Carbon Markets	Principles governing trade in carbon markets- 23B	The trade in carbon market shall be guided by the following principles-	<p>Insert the following new principles 23 B –</p> <ul style="list-style-type: none"> (a) Eligible mitigation projects for international transfer shall demonstrate shall be environmental integrity, transparency and promote sustainable development (b) Carbon credit market that is of high integrity and high quality (c) Leverage carbon credits to meet the Country's national determined contribution mitigation commitments (d) Respect and safeguard of social and economic rights of local communities, while promoting access to equitable benefits (e) Mitigate against greenwashing (f) Promoting development of national and local 	The principles in the Bill are largely clearly structured as objective rather than guiding standards for Kenya's carbon market.

			skills and capacities across the carbon market value chain (g) Advance the conservation of the Country's biodiversity and environment agenda towards enhancing adaptation capacities	
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(1) Project anticipated environmental, economic or social benefits - the environmental benefits shall include— (b) incentives that promote offset projects;		Clarity on the nature of incentives to be provided to promote development of carbon sinks in the different sectors and to attract project development is recommended. Among incentives include tax incentives for development of carbon projects.
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(4) The National Government and the respective county government where the project is situated shall oversee and monitor the negotiation of the community development agreement with project proponents and the stakeholders. (8) The national government and the respective county	1. Insert under 23(4) the specific government Authority that shall coordinate the preparation and monitor the negotiation of the community development and benefit sharing agreement in collaboration with the national and respective county government where the carbon credit trading project is situated. 2. Delete 23 E(8)	<ul style="list-style-type: none"> Under 23(4), the benefit sharing administration is NOT placed within any specific national and county government entity, but generally on the two levels of government. This creates a legal and administrative lacuna as to who is responsible for coordinate the preparation and monitoring of development and oversight on implementation of community development and benefit sharing agreements. 23E(8) is unclear on which specific national and government entity is responsible to enforce community development and benefit sharing agreements. Aligned to earlier recommendation, a specific Authority

		government where the project is situated shall enforce the community rights negotiated under a community development agreement negotiated under section 23E.		with technical capacity to undertake coordinate preparation and monitor implementation need to be assigned this responsibility, thereby recommendation to delete 23 E(8) and include provisions in the rules under reviewed 23 (4)
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	<p>(5) A community development agreement shall provide—</p> <p>(b) the annual social contribution of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community;</p>	<p>1. Substitute 23E5(b) with the following- (b) the annual social contribution of the aggregate earnings of the <i>credit issuance year</i> to the community, to be disbursed to the community and managed for identified community led development initiatives and facilitate activities that promote carbon sequestration and ecosystem health.</p> <p>2. Insert the following new paragraph immediately after 23 E5(b) (ii) (b) (iii)- A minimum of sixty percent (60%) of gross revenue of a given credit issuance to be disbursed for community payment, where the project is developed on community land through a lease arrangement or other agreed manner.</p>	<ul style="list-style-type: none"> Further, under 23E 5(b), <i>benefit sharing should be determined based on credit issuance, and not previous years' revenue</i>. A previous year approach fails to take into consideration carbon credit vintage years, vesting systems, and other complexities of carbon markets. <i>A gross revenue share formula is recommended to promote equity and transparency in the carbon market while mitigating against manipulation by project developers, through the net formula and other complexities of carbon markets.</i> <i>There is no guide as to a minimum on economic benefits accruing to a community where the carbon project is developed on community land through lease model or otherwise. This leaves communities at a low bargaining business power with investors especially where the additional function primarily lies with them. Only minimum guide to social benefits is provided, which is general even when projects are on public land.</i>

				<ul style="list-style-type: none"> • KWCA's recommendation is a <i>minimum monetary income of 60% of gross revenue of the sales.</i>
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(5) A community development agreement shall provide—	<p>Insert the following new paragraphs immediately after 23 E 5(ii)</p> <p>23 E 5- A community development agreement shall provide—</p> <ul style="list-style-type: none"> • 5 (iii) rights and obligations of the private or public entity engaged in carbon credit trading business and local community • 5(iv) monetary benefits that may accrue from the project and the initial contribution of the private or public entity engaged in the carbon credit trading business • 5(v) terms on benefit sharing among the national government, respective county government, local community and other relevant stakeholders • 5(vi) rules and procedure of engagement and participation of the public and with the local community, process for obtaining free prior informed consent and approval by community 	<ul style="list-style-type: none"> • The provisions on scope of community development agreement are inadequate especially on community safeguard, community engagement and transparency by carbon credit project developers. • KWCA recommends that a community development agreement model is developed to inform communities on the bare minimum terms of agreement.

			<p>Insert the following new paragraph immediately after 23 E 10-</p> <p>The Cabinet Secretary may develop model community agreements to guide communities on basic terms for negotiations in development of the agreements</p>	
Part IVA- Regulation of Carbon Markets	Dispute Resolution- 23H	<p>1) Any dispute arising under a land-based project shall be subjected to the dispute resolution mechanism set out in the Community Development Agreement in the first instance and be resolved within thirty days from the date the dispute is lodged.</p> <p>(2) Any dispute that is not land based and is not subjected to a community development agreement shall be resolved through Alternative Dispute Resolution in the first instance.</p>	<p>Substitute 23 H with the new paragraphs-</p> <p>1) Any dispute between parties to a carbon credit trading purchase agreement arising from land based and non-land based project shall be resolved through alternative dispute resolution mechanisms in the first instance.</p> <p>2) If any dispute remains unresolved, through alternative dispute resolution mechanisms either party shall have the right to refer the dispute to arbitration.</p> <p>3) Any person who is dissatisfied with the outcome of an arbitration process may refer the dispute to the Carbon Credit Trading Tribunal.</p>	<p>1. The Bill assumes that the only disputes that may arise in carbon credit trade are only those in relation to implementation of community development projects. There are other potential disputes within carbon development projects which require a comprehensive dispute resolution mechanism.</p> <p>2. All nature of disputes, both land based and non-land based require equally opportunity to be addressed through alternative dispute (ADR) mechanism, in the first instance.</p> <p>3. The scope of carbon disputes are technical and complex, mainly business structured. Address of the dispute by the National Environment Tribunal (NET) may limit comprehensive address since the NET is designed for environmental related disputes and not business disputes.</p> <p><i>A special tribunal for carbon credit trading is required, equipped with specialized skills on the nature of the business.</i></p>

		(3) Where the dispute under subsections (1) and (2) is not resolved within thirty days of submission, the dispute shall be referred to the National Environmental Tribunal.		
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Yours Sincerely,



DICKSON OLE KAELO
CHIEF EXECUTIVE OFFICER
ceo@kwcakenya.com
KENYA WILDLIFE CONSERVANCIES ASSOCIATION



TAITA TAVETA
WILDLIFE
CONSERVANCIES
ASSOCIATION

22 August 2023

TO

Principal Secretary,
State Department of Environment and Climate Change
The Ministry of Environment, Climate Change and Forestry
NHIF Building, 12th floor,
P.O. Box 30126-00100,
Nairobi, Kenya.

FROM

Alfred Kirigha Mwanake
Chief Executive Officer
TTWCA
Po Box 26-80300
Voi, Kenya

Dear Sir/Madam

Re: Letter of Endorsement of the Memorandum on Draft Climate Change (Amendment) Bill, 2023 By Kenya Wildlife Conservancies Association (KWCA)

On behalf of Taita Taveta Wildlife Conservancies Association and its membership representing approximately 40,000 households in Taita Taveta County, I am writing this letter to express our full endorsement and enthusiastic support for the submission of the memorandum made by the Kenya Wildlife Conservancies Association regarding the Climate Change (Amendment) Bill, National Assembly Bill No. 42 of 2023. This bill is of significant importance to the future of our environment, and we commend the Kenya Wildlife Conservancies Association for their proactive engagement in this critical legislative process.

The Kenya Wildlife Conservancies Association, acting on behalf of wildlife conservancies across Kenya, has demonstrated a commendable commitment to the preservation of our environment and wildlife. We believe that their insights and recommendations encapsulate the concerns and interests of our member conservancies, reflecting the collective desire to address climate change comprehensively and responsibly.

In particular, we concur with the concerns raised in the memoranda regarding certain aspects of the bill. These issues include the bill's silence on non-carbon markets, the lack of a clear definition of carbon credit rights, and the absence of provisions for ownership of carbon reduction rights for land-based projects. These issues are of paramount importance in the context of climate change mitigation and adaptation efforts. Addressing them adequately within the legislative framework is essential to ensure the bill's effectiveness in achieving its intended goals.

We firmly believe that the inclusion of these recommendations in the Climate Change (Amendment) Bill will enhance its robustness and efficacy, leading to more comprehensive climate action in Kenya. By recognizing non-carbon markets, defining carbon credit rights, and establishing provisions for the ownership of carbon reduction rights, we can create a legal

framework that encourages innovation, investment, and partnerships in the fight against climate change.

As stakeholders deeply committed to environmental conservation and sustainable practices, we fully endorse and second the memoranda submitted by the Kenya Wildlife Conservancies Association. We urge the National Assembly to consider these recommendations seriously during the deliberation and amendment processes for the bill.

Thank you for your attention to this matter, and we look forward to the continued collaboration between our organizations in the pursuit of a more sustainable and resilient future for Kenya.

Kind regards,



Alfred Kirigha Mwanake

Chief Executive Officer

Taita Taveta Wildlife Conservancies Association

Tel: 0723635916

Email: ceo@ttwcakenya.com





The National Assembly,
Office of the Clerk
P.O Box 41842-00100
Nairobi

Your ref: NA/DDC/EF&M 2023/037

August 21, 2023

Dear Clerk to the National Assembly,

**Statement for input into considerations of Climate Change Amendment Bill
(National Assembly Bill No.43 of 2023)**

We refer to the above matter and your letter dated August 17, 2023; contents whereof have been duly noted.

Summary statement:

It is critically important that existing voluntary projects be enabled and allowed to continue their operations as they are presently structured pending issuance of final regulations promulgated pursuant to the Act.

They should further be given a reasonable length of time to continue operations following issuance of the regulations while their efforts are underway to restructure as needed to come into compliance. Any forced suspension of the NRT grazing project pending such compliance would be a significant setback both for these conservancies and the project itself.

Further detail if required for explanation:

Using the Northern Kenya Rangelands Carbon Project as a working case study, and one which is already delivering c.60% of total income to communities through its revenue sharing arrangements, we would like to highlight the risk to community conservancies and to the longer term success of the project, that would be posed by cutting off the source of the revenue stream from the project whilst the project restructures, as opposed to a recognized period of facilitation for restructuring.

Under this project, community members and their conservancy leadership are principally motivated to participate by two factors - improved soil health and forage, and income. Since its inception in 2013, the conservancies have seen measurable improvement in forage quantity and quality. Due to various circumstances, the project was not able to produce credits and take them to the market until 2021 and the conservancies did not receive their first revenues until 2022. This delay in revenue

LIST OF COUNTIES

SAMBURU
BARINGO
ISIOLO
LAKEPIA
MERU
MARSABIT

GARISSA
LAMU
TANA RIVER
TURKANA
WEST POKOT

REGIONAL SUPPORT OFFICES

NRT Centre
NRT North Rift
NRT North East
NRT Coast
NRT West

BUSINESS DEVELOPMENT
NRT Trading

**NORTHERN RANGELANDS TRUST
PRIVATE BAG
ISIOLO 60300
KENYA**

+254 (0) 701 555 000
info@nrt-kenya.org
nrt-kenya.org



realization preserved and even strengthened the widespread skepticism that people, principally foreigners, would pay them to "improve Kenya's air." This was evident from the notable increase in enthusiasm for cooperatively developing robust grazing plans that facilitated their return to traditional grazing practices, but in a self-organized fashion, and for following such plans.

To date, the conservancies have each received Kshs. 36.3 Million in both 2022 and 2023 and have earned an additional Kshs. 36.3 Million that should be available to them in 2024 as well. If the project is to progress as planned, it will continue to deliver meaningful revenue to these communities for the remaining crediting period (a further 19 years). Conservancies and the communities that own them have already become familiar with this regular income deriving from existing projects and not only rely on it to partially or fully fund conservancy operations but also to extend a significant portion (60%) to community identified needs - often development needs prioritized by the communities themselves.

If the enactment of the Act would mean cutting off the source of that revenue stream, by cutting off the issuance and sale of voluntary credits pending compliance with new regulations, we believe this could be a costly mistake. It would deprive the conservancies of, or at least postpone their receipt of, likely several years of revenues, and significantly depress future revenues by depressing enthusiasm for participating in the project, and thus depressing future accrual rates. We would expect to hear a lot of "I knew it was never going to work. I'm going to skip that grazing planning meeting next week." Instead, we ask for the implications on existing projects to be noted and considered within the drafting of the Act.

Please do not hesitate to contact the undersigned should you need further clarifications.

Regards,

Tom Lalampaa

CHIEF EXECUTIVE OFFICER

To: National Assembly's Departmental Committee on Environment and Climate Change

Parliament of Kenya
Nairobi

11th August 2023

Subject: Nairobi Climate Network's Second Response to Proposed Climate Change Act Amendment Bill, 2023

Dear Members of the Committee,

On the 26th of May 2023, the Nairobi Climate Network responded to the above public consultation. On the 9th of August, the updated version of the Bill was shared with us. We appreciate the opportunity to provide our technical expertise to inform the process as practitioners in the carbon market space.

As representatives of the carbon sector in Kenya, we would like to express our grave concern that the updated version of the Bill does very little to reflect the comments that we made in May. Those comments were submitted on behalf of 60 organisations involved in carbon trading in Kenya, following a significant consultation process.

As it stands, the Bill will deter inward investment into the Country. With better drafting, the Bill has the potential to crowd-in foreign exchange, make Kenya a green hub in all aspects of energy provision - not just renewable electricity - and be a beacon for landscape restoration. With the right legislation, carbon can become one of the country's largest export earners to the benefit of the People and the Treasury.

Recent announcements on carbon market taxation and regulation from other African governments have spooked investors, and led to a dramatic drop in financing. Given Kenya is hosting the upcoming Africa Climate Summit, this is an opportunity for Kenya to lead a coalition of governments that are pro-business, and design policies to enhance green growth, while ensuring communities get a fair share.

We wish to reiterate the key points in our initial response that are not reflected in the updated Bill:

1) **Section 23 E (5):** Prescribing a percentage of revenues that must be shared with the community in legislation is an impractical "one size fits all" approach that **will look like a tax to investors and will significantly deter investment**. It is a blunt approach that does not recognise that all projects and business models are different, that many projects incur investments (in technology, infrastructure, team development...) which must be paid back through future earnings, and that community benefits extend way beyond cash disbursements.

Requiring a disbursement of 40% of project earnings to communities would make most land-use projects currently non-viable economically. These projects often require large upfront investments which carbon credits contribute to repay. Kenya would stop being an attractive place to develop afforestation and reforestation projects, in direct contradiction with the country's ambition to accelerate tree planting.

Requiring a disbursement of 25% of project earnings to communities for all other projects would significantly reduce the current scope of investable projects in Kenya. For example, it makes no allowance for companies that make an investment in a technology that might take 5 or 10 years to pay back from sale of the emissions reductions – while the community itself is benefiting from cheaper energy. Or for a cookstove project, where there is no clear geographic community, but where every project participant benefits from an upfront carbon subsidy, and gains access to cleaner cooking, improved health, and fuel savings from day 1.

We suggest that clause Section 23 E (5) (b) be removed, so the text instead focuses on requiring disclosures for all projects on who the stakeholders are, and how the benefits are shared (including of non-monetary benefits, which often deliver higher value to communities); which will enable **greater transparency, better alignment on the role carbon projects play for society, and encourage investment** into carbon projects in Kenya.

2) **Section 23 A and 23 G:** The government should not try to "reinvent the wheel" and should accredit existing carbon standards onto a "Kenya Carbon Standards List". This approach is preferable to the proposed "white list" of favoured technologies. For example, if a project is certified under the Gold Standard, the UNFCCC's A6.4 or Verra, then it should qualify for the Kenya system to ensure a simple process in line with international norms. In the same spirit, there should be a system for projects to "qualify" for a transfer of mitigation outcomes, once the government's criteria are deemed to have been met. They will then appear on the registry (similar to Registration with the Clean Development Mechanism), as "Authorised Projects". As a second step, mitigation outcomes created by these Authorised Projects should be certified eligible for transfer, as "Authorised Mitigation Outcomes". These

can be transferred or retired, used for "compliance markets" or for "voluntary markets". This will give clarity and improve certainty for investors who know their projects will qualify for multiple years.

We collectively urge the Government of Kenya and the Parliament to make well developed and principled legislation that will be supported by project developers and investors.

In the Annex to this letter, we suggest more detailed responses to certain paragraphs in the Bill.

We welcome the opportunity to discuss this with you before the Bill goes further in Parliament.

Yours sincerely,

Héloïse Zimmermann,
Co-Founder, Nairobi Climate Network

On behalf the Carbon Markets Working Group



Annex

1. Clause 23A (c): replace "Whitelist" with "Kenya Carbon Standards List"

2. Clause 23B (c): add to end of clause '...as prescribed by the relevant carbon standards; and...'

Why: To avoid further 'standards' on top of International Standards for carbon credit certification which are already recognised as this can cause confusion and possible hesitance by foreign investors to invest into carbon credit projects in Kenya.

3. Clause 23E (4): rewrite to read as follows:

'Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis.'

Why: to avoid creating too many 'gatekeepers' that will discourage and stifle foreign investment and to allow the GoK to make informed decisions as to what, if and when to action to continue to stimulate growth in the sector whilst maximizing benefits for the GoK and the peoples of Kenya. The sector must be allowed to grow and flourish with guardrails in place rather than constraining it.

4. Clause 23E (5)(b): rewrite to read as follows:

'the annual social contribution of the previous year to the community.'

Clause 23E (5)(b)(i): DELETE

Clause 23E (5)(b)(ii): DELETE

Why: at this nascent stage of this sector in Kenya information is the key part. Any arbitrary 'one-size fits all' revenue share will be viewed as a tax and will kill many existing projects and will disincentivize and create uncertainty amongst the international investment community and squash any further growth in this sector. As a result, this will create a nightmare scenario where the carbon credit sector in Kenya is likely to shrink or collapse entirely. Such an impact is already being seen as a result of legislation recently passed in jurisdictions such as Zimbabwe and Tanzania.

5. Clause 23F: DELETE

Why: Direct involvement of National and county governments with regards to proceeds will discourage and stifle foreign investment into carbon credit projects in Kenya.

MEMORANDUM

FROM: PROF GEORGE ODERA OUTA, TECHNICAL UNIVERSITY OF KENYA AND NOMINEE
CLIMATE CHANGE COUNCIL *georgeouta*

TO : PARLIMANETARY DEPARTMENTAL COMITEE ON ENVIRONMENT, FORESTRY AND
MINING

DATE: AUGUST 21, 2023

THRU': CLERK OF THE NATIONAL ASSEMBLY

Dear Committee members;

**RE: BRIEF COMMENTS ON THE CLIMATE CHANGE (AMMENDMENT) BILL-NATIONAL
ASSEMBLY BILL NO 42 OF 2023**

1. Introduction

As promised, permit me to submit this memorandum in respect of the above-referenced subject matter that is currently before your committee. The brief memoranda follows my earlier oral submissions made today before the committee in the mini chamber of the National Assembly;

2. Substantive comments:

- 2.1 **Overarching comment:** Carbon trading globally is largely a Private Sector driven affair. In fact, before credits carry any weight, there are recognised global bodies such as the Climate Community and biodiversity (CCB) that verify projects. Our view is therefore that, over-centralising the role of government and the CS in carbon trade may have some risks that would render it counterproductive.

Our proposals: There is need to review section 23© in order to ensure that the primary role of the ministry remains one of working with stakeholders to create a conducive environment for carbon trade to flourish. This is best done through policies and legal frameworks and regulations that are less bureaucratic. Proposal under 23 © b to have the CS enter into agreements with private sector entities -for instance- may be a recipe for too much bureaucratic control and further create avenues for malfeasance;

2.2 **Amendments proposed under Section 7(2) iv and vi:**

- (i) It is not clear how the youth representative will be appointed;
- (ii) Also not clear how the representative of the academia will be appointed given that the amendment proposes deleting the role of the Commission for University Education (CUE) in the process.

Proposal: Instead of leaving appointments to be exercised discretionally, we propose that the representative of the academia be made from a national university department with an established and verifiable track record of teaching and research on matters of climate change. The only such university department in Kenya today is the Institute for Climate Change at the University of Nairobi. Admittedly, there are smaller university departments now putting consideration to the research teaching in

climate change. In these circumstances, the act should leave it to the respective University departments to establish their internal criteria for nomination.

2.3 **Amendments Proposed under Section 8 of the principal act: ; 15, 16 and 36.**

2.4

- (i) The amendments seem to be reverting too much discretionary power to the CS, unlike what was envisaged in the original act: the vision of a Council that can complement the work on Climate Change without being rendered subservient to ministerial bureaucracy.

Some examples:

- (ii) 8(b) for example expects the CS to be the one 'advising' the Council, instead of a vice-versa or complimentary role;
- (iii) Under 8(g) the CS will be relying on advice from the directorate with no input at all from the Council;
- (iv) Under 8(h) the CS will approve measurement, reporting and verification but it is not indicated where these highly scientific data and information will come from;
- (v) Under 8(2a) the CS shall appoint the Designated National Authority (DNA): this amendment seems to assume that DNA is some kind of individual, but this is not how the DNA's have worked before.

Our Proposal: There is need to review section 8 in its entirety in order to make sure that the CS role does not make it impossible for other institutions to independently function in the pursuit of what is best for Kenya in so far as adaptation and mitigation to climate change is concerned.

2.5 **Under section 9(a-f):** Amendment proposes the Climate Change Directorate (CCD) to be headed by a Secretary rather than the previous 'Director'

Our Proposal: To harmonise with recent precedents within government, perhaps a title as Director-General may be more apt for this role.

2.6 **Under section 13(5):** the proposal to amend the wording to "...national and international laws and policies relating to climate change and carbon markets."

Our Proposal: There is really no need to over-emphasise carbon markets under this paragraph and in so many other sections of the act. There is really no meaningful discourse on climate change in the absence of carbon, but this over-emphasis creates the impression of a competition between the two.

2.7 **Amendments under 23(e)** paragraph 5 calls for a 'Community Development Agreement' for every land-based project. There are a raft of provisions under this section, including benefits sharing.

We are of the view that, whereas community interests are paramount in certain instances, this provision/amendment is a recipe for chaos: It raises community expectations in a manner that could be off-putting to business. It is unlikely that private sector entities will deal with mass entities who will create unreasonable demands based largely on a limited understanding of what could be at stake.

Our Proposal:

This provision should be reworded to make it less intimidating to carbon traders. County governments could be proposed to take care of community interests instead of the often controversial, 'community.'

- 2.8 **A comment on the Definitions:** The amendments have extended the definitions to give the intended focus on carbon trading. Some of the definitions are rather heavily 'text-book' oriented and do not speak directly to the Kenyan situation. The definition of 'carbon credits' for instance, is a mouth full.

Our Proposal: the definitions should be reviewed in light of this comment with a view to contextualising them

Note also: the principal(original act) was published with several typos that may confuse meanings, e.g. at 4(i) refers to level of government(instead of levels of government which is the intention); also 'mechanism' (in the preamble) instead of mechanisms.

ENDS



Eng. Festus K Ng'eno,
Principal Secretary, State Department for Environment & Climate Change,
Ministry of Environment, Climate Change & Forestry,
P.O. Box 30126-00100,
Nairobi

14th August 2023

Attn. Eng Ng'eno,

**RE: BURN MANUFACTURING'S FEEDBACK ON THE CLIMATE CHANGE (AMENDMENT)
BILL, 2023**

I am writing on behalf of BURN, a leading carbon project developer and clean cookstove manufacturer dedicated to promoting energy-efficient cooking in Kenya and across the continent. Our company is committed to contributing to national efforts to combat climate change and foster sustainable development.

We commend the Government's dedication to addressing climate change through the Climate Change (Amendment) Bill, of 2023. This legislation holds immense significance, empowering us to contribute further to both national and global climate change mitigation efforts.

With Kenya poised to host the upcoming Africa Climate Summit, we recognize a unique opportunity for Kenya to lead other nations in the development of progressive carbon market regulation that embeds community benefit without deterring foreign investment.

The world urgently needs investment in decarbonization projects, and investors need to manage their risks. Recent announcements on carbon market taxation and regulation from other African governments have spooked investors and led to a dramatic drop in financing. Kenya can lead a coalition of governments that are pro-business, and design policies to enhance green growth while ensuring communities get a fair share.

Kenyan businesses like BURN are already using carbon revenues to generate community benefits at scale. Since 2013, we have distributed 800,000 clean cookstoves in Kenya, impacting 3 million lives, saving 4 million tons of wood, and averting 7 million tons of CO₂e. In our latest projects, stoves are subsidized by up to 4500 KES using carbon investment (a ~90% discount). An independent randomized control trial in Nairobi found that every stove distributed generated over \$1000 for Kenyan society over three years in financial savings, health improvements, and environmental benefits.



BURN has a permanent commitment to Kenya as our global headquarters. All our cookstoves are made at our two Ruiru factories and exported across the continent. We employ 1,500 people in Kenya across our factories, our field agents, and our offices in Westlands. In the last two years alone, we have raised \$10M in international carbon finance to support stove subsidies for low-income families in Kenya.

With the Government of Kenya's support, we can continue to grow Kenya's carbon industry, provide employment opportunities, and help Kenya achieve her ambitious targets of 100% access to clean cooking fuels by 2028.

However, we are concerned that the proposal within the Climate Change Amendment Bill may be perceived by foreign investors as an imposition of taxes, potentially stifling investment in Kenya.

Considering this, we propose two potential pathways forward:

- 1. Data-Driven Community Benefit Tracking:** In this instance, specific percentages are removed from the legislation, and the Government of Kenya instead collects data on community benefit initiatives. In the future, guidelines could be developed by project type that considers their unique financial structures. For example, in a cookstove project, there is no clear geographic community, but every project participant benefits immediately from an upfront carbon subsidy and gains access to cleaner cooking, improved health, and fuel savings from day one.
- 2. Inclusive Recognition of Existing Community Benefits:** Or, if the Government of Kenya proceeds with the stipulated community benefit shares, we would recommend that all forms of existing community benefit should be counted towards the percentage. For example, if BURN provides an up-front subsidy for a cookstove, then the value of the subsidy must count towards the 25%. Project developers should report their existing financial and non-financial community benefits to the government to show compliance, but the actual revenue sharing should be disbursed through the project or local stakeholder groups – and not by central or county government.

We extend our sincere gratitude for considering our proposals, and we remain eager to contribute meaningfully to Kenya's sustainable development journey. Your guidance and partnership are invaluable as we collectively shape Kenya's approach to carbon market regulations that empower businesses and communities alike.

Thank you for your time and attention. We eagerly await your feedback and look forward to the opportunity to collaborate further.

Sincerely,

Peter Scott
CEO, BURN Manufacturing Co.



TAMUWA

Registration No. PVT/2016/0131144

To: Kenya's National Assembly Departmental Committee on Environment, Forestry and Mining

Date: 20th August 2023

RE: RESPONSE TO THE PROPOSED CLIMATE CHANGE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2023)

Dear Members of the Committee

We appreciate the opportunity to provide technical expertise to help inform on the process of the Climate Act Amendment Bill 2023. As operators and practitioners of carbon credit generating projects in renewable energy and regenerative agriculture in Kenya, veterans of financial and carbon markets for multiple decades and most importantly as Kenyans most concerned with the interest of Kenya and its peoples going forwards, we greatly value the opportunity to help guide this process to ensure the best outcome is achieved for all stakeholders.

The outcome of the various Bills relating to the future of carbon markets in Kenya is of utmost national importance. Today carbon markets represent a unique opportunity for Kenya and its peoples which can either be harnessed and built into a multi-billion-dollar sector (est. US\$ 5bn per annum by 2030 – see Annex II) or into a total failure where any potential foreign investment into this sector is diverted to other foreign jurisdictions providing more investor friendly terms, leaving Kenya with no carbon business at all. The outcome will all depend on how this opportunity is approached by the Government of Kenya and the legislation which is passed to guide and regulate the sector.

Recent announcements on carbon market taxation and regulation from other African governments have spooked investors and led to a dramatic drop in financing to carbon projects in these countries and Africa as a whole. These changes have affected the related countries negatively and consequentially revisions are already being implemented in some of these countries such as Zimbabwe and Tanzania to try and reverse the current and potential future damage they are facing as a result of implementing adverse regulation.

Green regulation around the globe today is being driven towards a common theme of taxing heavy polluters and providing incentives for green projects contributing to the great energy transition and social impact. Furthermore, community sharing and related benefits from green projects are being naturally implemented through free market dynamics. Projects which provide minimal community sharing and benefits are heavily penalized on the price of their carbon credits, whereas projects which put heavy emphasis on community sharing and benefits enjoy significantly higher prices for their carbon credits. This is naturally encouraging projects to commit as much as possible to social impact and community sharing.

We are advocating for the removal of the currently presented benefit sharing clauses in the current Bill as well as reporting requirements such that projects are forced to be transparent on all aspects of carbon revenues, profits and community sharing and benefits. The collection of information and data going forwards will enable the Government of Kenya to make informed decisions which will support continued growth of the carbon sector whilst maximizing the opportunity for Kenya and its peoples.

As it currently stands, **the Bill will unequivocally deter inward investment into carbon markets in Kenya.** With better drafting, the Bill has the potential to catalyse significant direct foreign investment, create a 'green hub' which will make Kenya the leader in carbon markets in Africa. We estimate that Kenya is currently receiving approximately US\$ 25 million per annum of direct foreign investment into carbon projects. **If the Bill can be improved to create an enabling environment this can be grown to billions of dollars of direct foreign investment every year.** This potential investment into carbon projects in Kenya would make carbon one of Kenya's largest exports providing significant revenues and benefits for the Government of Kenya, the Kenya Revenue Authority and the peoples of Kenya.

We have included suggested detailed changes in Annex I, which we believe would create the necessary enabling environment for carbon markets in Kenya. These changes address the following issues in the current Bill:

1. **Prescribing a percentage of earnings/profits which must be shared with the community in legislation is an impractical 'one size fits all' approach that will look like a tax to investors and will significantly deter investment.** It is a blunt approach that does not recognise that all projects and business models are different, that many projects incur investments in technology, infrastructure and people which must be paid back through future earnings. The country and community benefits way beyond cash disbursements from this.
2. **Requiring a disbursement of 40% of project earnings to communities would make most land-use projects economically non-viable.** Land based projects often require large upfront investments which carbon credits contribute to repay. Kenya would stop being an attractive place to develop afforestation and reforestation projects, in direct contradiction with the country's ambition to accelerate tree planting. This would also destroy any possibility of the Government of Kenya using all/part of its KFS land assets to run forest protection projects as it would not be able to generate the investment needed to run these projects. **Projects run on KFS land have the potential to be become a significant sized Sovereign Wealth Fund for Kenya.**



TAMUWA

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3. **Requiring a disbursement of 25% of project earnings to communities for all other projects would significantly reduce the current scope of investable projects in Kenya and kill many current projects in Kenya.** This clause makes no allowance for companies that make an investment in technology that might take 5 or 10 years to pay back from sale of the emissions reductions whilst the community itself benefits from cheaper energy. The same principle applies for cookstove projects, where there is no clear geographic community, but where every project participant benefits from an upfront carbon subsidy and gains access to cleaner cooking, improved health, and cheaper fuel.
4. **With regards to accreditation, the government should not try to 'reinvent the wheel' and should instead accredit existing carbon standards onto a 'Kenya Carbon Standards List'.** This approach is preferable to the proposed 'whitelist' of favoured technologies. For example, if a project is certified under the Gold Standard, the UNFCCC's A6.4 or Verra, then it should qualify for the Kenya system to ensure a simple process in line with international norms. In the same spirit, there should be a system for projects to 'qualify' for a transfer of mitigation outcomes, once the government's criteria are deemed to have been met. They will then appear on the registry (similar to Registration with the Clean Development Mechanism), as 'Authorised Projects'. As a second step, mitigation outcomes created by these Authorised Projects should be certified eligible for transfer, as 'Authorised Mitigation Outcomes'. These can be transferred or retired, used for 'compliance markets' or for 'voluntary markets'. This will give clarity and improve certainty for investors who know their projects will qualify for multiple years.

We believe our views are shared and supported with more than 60 organisations involved in carbon markets in Kenya, all of which have been through a significant consultation process and are represented by the Nairobi Climate Network who we understand have provided separate feedback on this Bill. **We urge the Government of Kenya and Parliament to make well developed and principled legislation that will be support an enabling environment which can make use of the opportunity which we have in front of us today.**

The Annex to this letter includes detailed suggested changes to certain paragraphs of the Bill. We welcome the opportunity to discuss this with the committee and/or any other related body to ensure we seize this opportunity for Kenya and its peoples.

Yours sincerely

Nils Razmilovic
Director & CEO
Tamuwa Limited

ANNEX I

Climate Change Amendment Bill 2023: *** SUGGESTED CHANGES ***

1. Clause 23A (c): replace 'whitelist' with '...Kenya Carbon Standards List;'

Why: To avoid further 'standards' on top of International Standards for carbon credit certification which are already recognised as this would cause confusion and deter investment by foreign investors into carbon credit projects in Kenya.

2. Clause 23A (2): add to end of clause '...from time to time.'

Why: To create comfort that the intent of this Amendment is not to overregulate but rather to create an enabling and stimulating environment that will encourage foreign investment into carbon credit projects in Kenya.

3. Clause 23B (c): add to end of clause '...as prescribed by the relevant carbon standards; and...'

Why: To avoid further 'standards' on top of International Standards for carbon credit certification which are already recognised as this would cause confusion and deter investment by foreign investors into carbon credit projects in Kenya.

4. Clause 23E (3): rewrite to read as follows:

'Every land-based project undertaken pursuant to this Act shall outline and report the intended community engagement, community development and community relationships of the proponents of the project in public and community land where the project is under development.'

Why: Any binding agreement which requires oversight/approval by National Government and respective county governments will create 'gatekeepers' that will discourage and stifle foreign investment into carbon credit projects in Kenya.

5. Clause 23E (4): rewrite to read as follows:

'Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis.'

Why: As above in point 3, AND the most appropriate and powerful course of action for the GoK is to gather information as the carbon market in Kenya grows. This will allow the GoK to make informed decisions as to what, if and when to action to continue to stimulate growth in the sector whilst maximising benefits for the GoK and the peoples of Kenya. The sector must be allowed to grow and flourish with guardrails in place rather than constraining it.



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Registration No. PVT/2016/0131144

6. Clause 23E (5): rewrite to read as follows: 'Projects shall report on the following:'

Why: As above in point 4, AND information is critical in being able to make informed decisions going forwards to be able to maximise benefits for the GoK and the peoples of Kenya.

7. Clause 23E (5)(b): rewrite to read as follows:

'the annual social contribution of the previous year to the community.'

Clause 23E (5)(b)(i): DELETE

Clause 23E (5)(b)(ii): DELETE

Why: As above in point 4 and 5, AND at this nascent stage of this sector in Kenya information is the key part. Any arbitrary 'one-size' fits all revenue share will be viewed as a tax and will kill many existing projects and will disincentives and create fear amongst the international investment community and kill any further growth in this sector. This will create a nightmare scenario where the carbon credit sector in Kenya starts to shrink and is eventually wiped out. Examples of this type of misguided legislation being implemented and the backlash created already exists in several jurisdictions in SSA.

8. Clause 23E (5)(f): DELETE

Why: Refers to the deleted community development agreement.

9. Clause 23E (6): DELETE

Why: Refers to the deleted community development agreement.

10. Clause 23E (8): DELETE

Why: Refers to the deleted community development agreement.

11. Clause 23E (9): DELETE

Why: Refers to the deleted community development agreement.

12. Clause 23F: DELETE

Why: Refers to proceeds from the deleted community development agreement. Furthermore, any direct involvement of National and county governments with regards to proceeds will discourage and stifle foreign investment into carbon credit projects in Kenya.



TAMUWA

Registration No. PVT/2016/0131144

ANNEX II

CARBON PROJECT INVESTMENT INTO KENYA TODAY:

- Global Voluntary Carbon Markets (VCM) ~ US\$ 2 bn
- Sub-Saharan Africa (SSA) hosting ~ 10% of the Global VCM project (~ US\$ 200m)
- Kenya is hosting ~ 23% of SSA projects (~ US\$ 50m)
- Annual of carbon revenue for Kenya today ~ **US\$ 25** (50% of actual revenue)

WHERE DOES CARBON INVESTMENT INTO KENYA GO WITH RESTRICTIVE LEGISLATION

US\$ 25 m → US\$ ZERO



WHERE CAN CARBON INVESTMENT INTO KENYA GO WITH AN ENABLING ENVIRONMENT

- Global VCM by 2030 ~ US\$ 50 bn to US\$ 100 bn
- SSA share of this at 10% ~ US\$ 5 bn to US\$ 10 bn
20% ~ US\$ 10 bn to US\$ 20 bn
- Kenya's share of this 23% ~ US\$ 1 bn to US\$ 2 bn (today)
35% ~ **US\$ 3.5 bn to US\$ 7 bn (per annum)**

US\$ 25 m → **US\$ 3.5 bn to US\$ 7 bn**



Kenya is in a unique position in that it has all the resources necessary to make this a reality. These levels of annual direct foreign investment in US\$ would be a game-changer for the Kenyan economy.

WHAT IS NEEDED TO REALISE THIS ENABLING SCENARIO

- Enabling legislation to create a fair, equitable and sustainable carbon market in Kenya.
- Define 'carbon credits' to 'onshore' them to bring all revenue onshore.



EIK Input on the Proposed Climate Change Amendment Bill 2023

In support of the Ministry of Environment, Climate Change and Forestry and National Assembly initiative for proposing the amendment of the Climate Change Act 2016 to provide further interpretation of its provisions.

EIK has reviewed the proposed regulations and the comments are herein as follows;

Part	Title and Clause Number	Current Provisions	Proposed Recommendations	Justification/Rationale
	Citation 2		“Professional body” means a professional body dealing with the registration and regulation of the standards and practice of environmental professionals.	It is critical and important to provide recognition of a professional body dealing with matters environment and climate change to be specific.
	6a(iv)	Section 7 in the Principal Act is amended by -	(iv) inserting the following paragraph immediately before paragraph (g) - A representative of a professional body relating to matters environment.	Environment Institute of Kenya boast of a membership from diverse environmental profession and serving in all stated Ministries.
	Principal Act 9(4)	A person shall be qualified for appointment as a Director/Secretary (new proposal) of Climate Change if the person –	A person shall be qualified for appointment as a Director/Secretary (new proposal) of Climate Change if the person – Include (e) must be a registered and licensed member of a professional body relating to matters environment.	The Director/Secretary (new proposal) must be conversant with climate change and general environmental matters to enhance service delivery at the Directorate.



CENTRE FOR SCIENCE AND TECHNOLOGY INNOVATIONS (CSTI)

Mission: Improving lives through science, technology, and innovation

Vision: to transform the use of African science and technology innovation towards socially and culturally embedded practices that improve regenerative systems



United Nations
Educational, Scientific and
Cultural Organization

P.O Box 42792, Nairobi, Kenya, 00100
Tel. No: +254-735 200458 / +254 20 4914305
Email: info@csti.or.ke
Web site: www.csti.or.ke

The Centre for Science and Technology
Innovations (CSTI) is a UNESCO Associated
scientific research trust focused on applied
learning and environmental technology transfer

YWCA Parkview Flats
Unit #16 (up the ramp and turn right)
Mamlaka Rd (opposite Mimet Building & Shelter Afrique)
Nairobi, Kenya 00100

22nd August, 2023

RE: Kenya Gazette Supplement, National Assembly Bills, 2023, Nairobi, 19th July, 2023 – The National Climate Change (Amendment) Bill, 2023 Page 1277

Overall

We concur with the establishment of a National Carbon Credit Registry. As part of Kenya's commitment to combat climate change and achieve its sustainable development goals, the establishment of a robust carbon credit registry system is paramount. This system will provide the foundation for accurate measurement, reporting, and verification of greenhouse gas (GHG) emissions reductions while promoting environmental restoration, green technology adoption, industrial growth, and consumer price reduction of renewable energy.

At the same time, several fundamental mechanisms must be added in order to ensure that Kenya's carbon trading activities serve to finance the reduction of greenhouse gas emissions and Nationally Determined Contributions (NDCs) while stimulating local manufacturing using science and technology innovations that will accelerate industrialization without the depletion of environmental, ecological, and social health.

In other words, the purpose of carbon credits is not to generate profits using the business-as-usual practices. The purpose of carbon credits is to bridge financial gaps in costs associated with technology and behavioural switches towards sustainable (80yr + horizon) eco-industrial and circular materials practices.

To this end, national planning timeframes should focus on consecutive 20-year plans with 5 year phased implantation strategies that ensure measurable continuity and succession planning. Workforce readiness is as important as business and financial readiness when developing national plans.

Following are specific recommendations for improvement:

Clause 23(B) Trade in Carbon Markets

Due to the unregulated nature of voluntary carbon markets, there is currently a high degree of fraudulent and anti-trust activity regarding pricing and fair trade. Disclosure of market rates is not guaranteed, conditions of trade (especially required changes of land or property ownership) are frequently not disclosed up front, liabilities for default or performance failure are not clear, insurance options typically cover intermediaries and buyers but not implementation entities. It is also important to understand that the pricing of carbon credits is a speculative activity which typically involves futures trading. Futures trading practices tend to occur on commodity exchanges where agricultural commodities are traded the same way securities are traded.

Clause 23(D) Environmental Impact Assessment (EIA)

Recommendation: At this time, there is a severe lack of data that can be used to develop scientifically validated Environmental Impact Assessments (EIAs).

The following policy recommendations outline key steps towards the successful implementation of such a system and should be added to Clause 23(D):

3. Implementation of an Annual Domestic GHG Inventory:

Kenya should mandate the development and maintenance of an annual domestic greenhouse gas inventory that accurately measures emissions from various sectors. This inventory will serve as the baseline against which emissions reductions are assessed. The inventory should encompass all major sources of emissions, including energy, transportation, agriculture, and industrial processes.

4. Emission Reduction Percentage Measurement:

Carbon credits should be issued based on actual percentage reductions in greenhouse gas emissions. This measurement should be calculated by comparing the annual emissions from each entity to the baseline domestic greenhouse gas inventory. The emissions reductions should be verified by accredited third-party auditors to ensure accuracy and transparency.

It is important to note that Impact Assessments cannot be subjective. The scope and severity of an impact must be assessed within the constraints of desired outcomes. Without specific targets and objectives, it is always possible to report a beneficial impact, even if the impact is negative.

Clause 23(E), 5 (b) Provision of Social and Environmental Benefits

i – land-based projects: the contribution shall be at least forty per centum of the aggregate earnings; and

ii in non land-based projects the contribution shall be at least twenty-five per centum of the aggregate earning.

The sub-clauses express an intention of directing carbon credit revenues towards environmentally and socially beneficial outcomes. However, they do not provide a mechanism for ensuring benefits will occur. Environmental Credit Constraints need to be added.

Environmental Credit Constraints and their Role in Carbon Credit Markets:

Environmental credit constraints are essential tools within carbon credit markets that ensure the integrity, effectiveness, and fairness of emissions reduction projects. These constraints place limits on the issuance of carbon credits, safeguarding against potential loopholes, inaccuracies, and unintended consequences. Integrating environmental credit constraints into Kenya's carbon credit registry system can enhance the credibility and impact of the system as a whole, while also fostering human resource development and local economic growth.

Types of Environmental Credit Constraints:

Several types of environmental credit constraints (limits to the issuances of carbon credits) can be applied to carbon credit markets, each serving a distinct purpose:

a) Additionality Constraint:

The additionality constraint ensures that carbon credits are only issued for projects that result in emissions reductions beyond what would have occurred in the absence of the project. This prevents projects that would have been implemented regardless of carbon credit incentives from benefitting from the system. The goal is to avoid directing carbon credit revenues towards activities that are not directly reducing emissions.

Example A: an organization can be growing fruit trees for 15 years. The orchard business is not an additional activity towards reducing emissions. However, if the organisation switches the harvesting equipment from diesel to solar powered electric this is an additionality because sulphur dioxide emissions are reduced.

Example B: a manufacturer has a combined 3 hectares of trees on its property. There is no reduction in the 10% nitrogen dioxide and carbon dioxide emissions at the site. The presence of trees is not an additionality because no efforts have been made to reduce the existing emissions from 10% to 5% or NetZero. The manufacturer would need to add stack filters or other emissions reduction mechanism to have a verified emissions reduction project. If the emissions reduction is 5%, trees that count would need to be additional trees that are scientifically proven to absorb the remaining 5% of nitrogen dioxide and carbon dioxide emissions at the site thereby achieving NetZero through both mechanical equipment and nature based solutions. NetPositive solutions would involve switching of transportation vehicles from diesel to liquid natural gas, electric, or hydrogen, thereby exceeding the original 10% emissions reduction and going carbon negative.

b) Baseline Constraint:

The baseline constraint establishes a reference point against which emissions reductions are measured. It prevents the overestimation of reductions and maintains accuracy by aligning the baseline with historical emissions data and credible projections.

c) Leakage Constraint:

Leakage occurs when emissions reductions in one area lead to emissions increases in another. The leakage constraint addresses this issue by accounting for potential shifts in emissions and ensuring that projects do not inadvertently cause higher emissions elsewhere.

d) Permanence Constraint:

The permanence constraint safeguards against the risk that carbon stored in forests or other carbon sinks is released back into the atmosphere due to events like deforestation or wildfires. Carbon credits are issued over time, contingent on the long-term stability of carbon sequestration efforts.

e) Discounting Constraint:

The discounting constraint acknowledges the time value of emissions reductions by adjusting the number of credits issued over time. This recognizes that emissions reductions achieved earlier are often more valuable than those achieved later.

Add a Human Resource Development Clause:

To ensure that carbon credits contribute to local economic growth and job creation, an additional clause should be included within the environmental credit constraints framework:

f) Human Resource Development Constraint:

Projects seeking to earn carbon credits must demonstrate a measurable annual percentage increase in local green economy and blue economy salaried jobs, accompanied by fair wages, benefits, and training opportunities. These jobs should be directly related to the project's activities and result in tangible improvements in livelihoods and skills development within the local community.

Benefits of the Human Resource Development Constraint:

Integrating a human resource development constraint into the carbon credit system offers several benefits:

Local Economic Growth: By requiring projects to generate green and blue economy jobs, the constraint stimulates local economic growth and diversification, reducing unemployment and poverty.

Skills Development: The constraint promotes skill acquisition and capacity-building within the local workforce, contributing to human capital development and long-term sustainability.

Equitable Distribution of Benefits: Local communities benefit directly from projects, as job opportunities and associated benefits are distributed fairly among community members.

- An across the board 40% local labour requirement is a lot easier to implement and harder to circumvent than a *40 per centum share of earnings* [land-based projects] or *25 per centum* [non land-based projects]. A project developer can simply use transfer pricing or shift asset allocations and use other mechanisms to declare negative earnings while still making positive cashflow.

Incorporating the Human Resource Development Constraint:

To effectively implement the human resource development constraint within the carbon credit registry system, Kenya should:

Define Measurable Metrics: Clearly outline the metrics for measuring annual percentage job increases and the quality of jobs, such as wages, benefits, and skill development.

Monitor and Verify: Develop mechanisms for ongoing monitoring and verification of job creation and benefits, utilizing a combination of local community involvement and independent third-party auditors.

Collaborate with Stakeholders: Engage with local communities, relevant government agencies, and industry stakeholders to ensure that the constraint aligns with local needs and aspirations.

Incorporating a human resource development constraint into Kenya's carbon credit registry system demonstrates the country's commitment not only to emissions reduction but also to inclusive and sustainable economic growth. By fostering local green and blue economy jobs, this constraint adds a valuable dimension to Kenya's climate action efforts, positioning the nation as a pioneer in coupling environmental protection with human development.

Additional Considerations:

Carbon credits are traded in the environmental commodity markets. Environmental policies shape environmental policy markets. A confusion arises when the discussion focuses on environmental services. Example: a tree can be treated the same as a tomato plant because the tree can be transplanted and consumed. However, if a tree is classified as an environmental service (improving clean air, fresh water), the commodity becomes clean air or fresh water (public goods) and the tree is the service provider. Those engaged in planting and maintaining the tree are also service providers.

Service trading (human resource skills such as arts, design, information technology, engineering, data analysis, etc.) was shown to have lower emissions in developing countries when compared to commodity trading (Saeed & Ghimire, 2022). However, emerging markets have a need to industrialize through an increase in domestic manufacturing.

The first challenge is that industrial growth is heavily dependent on commodity trading (manufacturing, plastics, agriculture, construction materials, mines and minerals, stones, precious elements, etc.). Ironically, rare earth metals are both critical to the growth of information technology and heavily toxic (Brouziotis, et. al., 2022). Market ready clean technologies require significant financial capital for development and technology diffusion (Golder, Jain & Bhattacharya, 2023). A silver lining is that technology switching costs are lower in emerging economies because of the lack of industrial scale manufacturing systems (Lema & Rabelotti, 2023). However, buyer markets for green products and services are still nascent with tariff barriers that tend to favour industrialized countries (Aggad & Luke, 2023). Carbon credit trading cannot solve this challenge. Active trading policy negotiations are needed to ensure that carbon credit revenues are effectively directed towards offsetting the technology switching costs of emerging markets such as Kenya. Current negotiations favour offsets for those with larger industrial systems. The reality is that offsets are needed globally for the IPCC targets to be achieved. Stated differently, Kenya cannot just sell offsets, Kenya must be able to buy offsets as well.

The second challenge is that market mechanisms have historically underproduced public goods, e.g., quality healthcare, education, affordable housing. Although the privatization of water along with issues of neighbourhood zoning and environmental justice bring forth the very real possibility that clean water and clean air can be exclusive public goods, the simultaneous reality is that the effects of pollution are transboundary negative externalities similar to getting lung cancer from secondhand smoking. Education and healthcare are public goods that have increasingly been privatized in Kenya. The issue of wildlife is another public good versus commodity trading consideration. Although biodiversity credits are available, in Kenya, the ownership of wildlife remains officially unresolved. Although government policy has supported community conservation efforts and 70% of Kenya's wildlife is not on government land, there is no official policy granting communities or individuals wildlife ownership (Mwaura, 2016). By extension this means there is no official policy granting communities or individuals the right to trade wildlife as commodity goods.

The question also reverts to the ecosystem services offered by wildlife along with the communities and individuals that maintain the health of wildlife and the spaces in which wildlife roam. Payments for ecosystem services (PES) are technically regarded as fictitious commodities (Brockington, 2011). PES proponents argue that internet services, now an integral part of modern life, were once fictitious commodities, so were land, labour, money, and knowledge/intellectual property (Cope, 2016). All of these have been assigned ownership rights that enable each to be transferred in ownership (bought and sold), example, if a company is sold, the employees are sold along with the company as *payroll*. Land is not physically moveable, but the ownership rights and use can be transferred. A defining characteristic of a fictitious asset is that it was not originally created for its commodity exchange purpose. Land existed prior to trading markets and human labour is the outcome of the need for employment but the primary purpose is family preservation. Money and knowledge are created independent of how they are traded. Meaning, one Kenyan shilling is created and can be used for healthcare exchanges or automobile exchanges. Trading knowledge can also be used for both.

One of the anticipated assets that can likely be commoditized is the **data on biodiversity** (wildlife roaming patterns can signal climate changes or potential changes in rangeland carbon sequestration). Soil data from the Knepp Estate in the U.K. demonstrated 25 year-old broadleaf woodlands showed improving topsoil increased carbon storage by 4.8 times per hectare; rewilding techniques (introducing species that cause natural disturbance - old English longhorn cattle, red (*Cervus elaphus*) and fallow deer (*Dama dama*), Tamworth pigs and Exmoor ponies) led to the return of the violet dor beetle (*Geotrupes mutator*) which had not been sighted in Sussex for 50 years (Fitt, 2023). However, the challenge with biodiversity data is that it is vulnerable to a high level of falsification in a voluntary carbon market that is already filled with fraudulent activities (Fredman & Phillips, 2022). To illustrate, I report the poop from my heard of 30 red *Cervus elaphus* has improved carbon storage on 1 hectare by .002% (additionality), how does an outsider verify the change is greater or less or caused by natural decay of existing tree foliage (not additionality)? If I report there is a corresponding increase of 600 violet dor beetles (*Geotrupes mutator*) who can verify the beetles were 600 and not 300? Independent audits are one mechanism but the issue of random verification auditor access on private land and community land is questionable. Knepp Estate works with U.K. government supported researchers for continuous verification. Lastly real-time public dissemination average prices versus advertised prices and the

corresponding pricing gap of carbon credits per industrial sector is needed to authenticate carbon prices within and between countries (Finch & van den Bergh, 2022). Although closely related to carbon credits, the issue of biodiversity credits is not addressed in the proposed National Climate Change (Amendment) Bill, 2023.

The above Clause 23(B), 23(D), and 23 (E) recommendations apply to both carbon credits and biodiversity credits. An addition is needed to section **23(F) Share of Proceeds and Cancellation Rates**

23(F) 1. Market Governance Mechanisms for Carbon Credits and Biodiversity Credits

(a) Floor Price to Cover Project Mitigation Costs:

A floor price for carbon credits should be established to ensure that the credits reflect the true mitigation costs of emission reduction projects. This will incentivize projects that might have higher upfront costs but contribute significantly to emissions reduction.

(b) Linkage to Verified Environmental Restoration Activities:

Carbon credit projects should be linked to verifiable environmental restoration activities that demonstrate an increase in biodiversity and ecosystem health. Such activities may include reforestation, wetland restoration, and habitat conservation. This linkage enhances the co-benefits of emission reduction projects.

(c) Transparency through Target Market Disclosure:

Buyers of carbon credits should be required to disclose the target market and prevailing price to the local communities or project implementation entities. This promotes transparency and accountability, ensuring that the benefits of carbon credit sales are appropriately shared with the communities affected by emission reduction projects.

(d) Incentive Mechanisms for Green Technology Adoption and Industrial Growth:

To encourage the adoption of green technologies and sustainable industrial growth, Kenya should implement incentives such as tax breaks, subsidies, and grants for businesses that invest in emissions reduction projects and sustainable practices. These incentives will accelerate the transition to a low-carbon economy.

(f) Consumer Price Reduction of Renewable Electricity:

A portion of the revenue generated from carbon credit sales could be directed towards reducing the consumer price of electricity purchased from renewable sources. This approach makes renewable energy more affordable and accessible to consumers, accelerating the shift away from fossil fuel-based energy.

The establishment of a comprehensive carbon credit registry system in Kenya, based on the principles of actual emissions reductions, annual domestic GHG inventories, floor prices, environmental restoration, transparency, and incentive mechanisms, will play a pivotal role in mitigating climate change, promoting sustainable development, and fostering a resilient and prosperous future for the country. By embracing these policy recommendations, Kenya can position itself as a leader in climate action while reaping the economic, social, and environmental benefits of a low carbon future.

It is important to note that Kenya is in the initial stages of establishing a warehouse receipting system to drive an agricultural commodities exchange (Kizito, 2023). Although daily crop pricing is available, regional trends and futures forecast are not yet available on KOMEX. The skills used in commodity futures trading are the same skills needed for carbon credits trading. As a result, a phased implementation strategy would enable adequate skilling and skilled capacity development.

Five-Year Phasing Strategy for Strengthening Kenya's Carbon Credit Registry System:

To ensure the successful implementation and continuous improvement of Kenya's carbon credit registry system, a comprehensive five-year phasing strategy is recommended. This strategy focuses on enhancing the quality, accuracy, and effectiveness of carbon credits issued through systematic scientific data collection, verification, and capacity-building initiatives.

Phase 1: Establishing Foundational Framework (Year 1):

- Develop and publish comprehensive regulations and guidelines for the carbon credit registry system, incorporating environmental credit constraints and verification protocols.
- Establish a dedicated national carbon credit registry agency responsible for oversight, accreditation, and audit functions.
- Initiate collaborations with domestic and international experts to design methodologies for environmental credit constraint calculations.

Phase 2: Strengthening Data Collection and Verification (Years 2-3):

- Launch a nationwide campaign to encourage data sharing and collection across sectors, leveraging existing research institutions, government agencies, and private sector partners.
- Invest in the establishment of monitoring networks, remote sensing technologies, and advanced data analysis tools to enhance the accuracy of emissions data.
- Collaborate with research institutions to conduct regular independent audits of emissions data and project reports to verify emissions reductions and adherence to constraint guidelines.

Phase 3: SME Training and Capacity Building (Years 3-4):

- Develop tailored training programs for Small and Medium Enterprises (SMEs) to enhance their understanding of emissions reduction opportunities and their capacity to implement projects.
- Provide workshops, webinars, and mentorship to guide SMEs through the process of project design, implementation, emissions measurement, and reporting.
- Establish partnerships with financial institutions to offer accessible financing options for SMEs interested in participating in emission reduction projects.

Phase 4: Public Awareness and Stakeholder Engagement (Years 4-5):

- Launch a nationwide public awareness campaign to educate citizens about the importance of carbon credit markets, emission reduction efforts, and their role in climate action.

- Organize workshops, seminars, and community engagement events to promote transparency and disclose carbon credit project details to local communities.
- Establish a platform for public feedback and input on carbon credit projects to ensure that community concerns are addressed.

Phase 5: Continuous Improvement and Global Integration (Year 5 and beyond):

- Regularly review and update the carbon credit registry system based on lessons learned, technological advancements, and international best practices.
- Strengthen international collaboration and alignment by participating in global carbon credit initiatives, sharing experiences, and adopting best-in-class standards.
- Publish annual reports detailing the progress, achievements, and challenges of the carbon credit registry system to maintain transparency and accountability.

By implementing this five-year phasing strategy, Kenya can progressively enhance the quality and credibility of its carbon credit registry system. Emphasizing scientific data collection, verification processes, SME training, and public awareness workshops will not only drive tangible emissions reductions but also build a culture of climate-consciousness and sustainable development. As Kenya navigates the complex terrain of carbon credit markets, this phased approach will position the country as a leader in climate action while reaping the economic, social, and environmental benefits of a low-carbon future.

CSTI stands ready to assist in the coordination of scientific data collection, verification processes, SME training, and public awareness workshops.

Respectfully Submitted,


 Ms. Cecilia Wandiga
 Executive Director/Trustee
Cecilia.Wandiga@csti.or.ke
 +254 714 938215



Mr. Samuel Njoroge
Clerk of The National Assembly
P.O Box 41842-00100
Nairobi

22 August, 2023

Dear Sir,

**RE: SUBMISSION ON THE CLIMATE CHANGE (AMENDMENT) BILL,
2023**

We refer to the above matter and your public notice inviting the public to submit their comments on the Revised Climate Change Amendment Bill.

We appreciate the Government of Kenya's efforts to address climate change issues through the Climate Change (Amendment) Bill, 2023. This legislation is crucial for developing a robust regulatory framework for carbon markets, enabling us to further contribute to national and global climate change mitigation efforts .

Please see annexed to this letter a schedule setting out our comments and proposals relating to the Revised Climate Change Amendment Bill

Should you require any clarifications, please do not hesitate to contact myself (Maxwell@amcham.co.ke).

Yours faithfully,

A handwritten signature in black ink, appearing to read "Maxwell", followed by a long horizontal line that ends in a small flourish.

Maxwell Okello

Chief Executive Officer
American Chamber of Commerce, Kenya

Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Justification & Rationale
Part II, Section 3	Amendment of Section 3 of No. 11 of 2016	<p>Objects and purpose</p> <p>(1) This Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.</p>	The bill should emphasize supporting local clean energy businesses in the carbon market.	Supporting local businesses can help create jobs, stimulate the economy, and improve public health through reduced air pollution.
Part II, Section 5/6	Amendment of Section 6 of No. 11 of 2016	<p>Functions of the Council</p> <p>The Council shall provide an overarching national climate change coordination mechanism</p> <p>provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate</p>	Include representation from clean energy and carbon offset businesses in the Council.	To ensure that the Council is well-informed about the challenges and opportunities faced by clean energy businesses It is important to have representation from these sectors. This can lead to better policy guidance and direction for the carbon market.

Part IVA – Regulation of Carbon Markets	Carbon markets – 23A	change to the national and county governments, the public and other stakeholders;		
		Pursuant to section 6(fa), the policy direction on carbon markets shall cover all carbon markets and prescribe -	Pursuant to section 6(fa), the policy direction on carbon markets shall cover all carbon markets (carbon reduction, carbon capture/removal, carbon avoidance) and prescribe – (e) the standards used to determine the carbon credits (f) carbon pricing mechanisms and carbon border adjustment mechanisms (CBAMs) guidelines for different types of carbon projects	<p>There are different types of carbon available. The market should be defined to make clear the various carbons within the market.</p> <p>With the uprise of standards used to generate credits there's need for guidance on which types of standards to be adopted for the different carbon projects. The guidance could also be sector agnostic to provide further clarity.</p> <p>Cross border carbon pricing policies ensure domestic industries are not adversely impacted by asymmetrical carbon prices, countries are increasingly considering trade policy measures.</p>

Part IVA – Regulation of Carbon Markets	Carbon markets – 23A (C)	Technologies and projects on the white list;	Offer guidance and support for businesses to build a strong carbon credit project pipeline based on the white list.	Providing support and guidance for building a robust carbon credit project pipeline can help businesses to maximize their potential in the carbon market. A strong pipeline can increase investment, and job creation, and significantly impact climate change mitigation.
Part IVA – Regulation of Carbon Markets	Carbon markets – 23A (C)	Technologies and projects on the white list;	The current draft legislation is silent on letters of corresponding adjustment. The drafting should consider including a “white list” of technology types that will be automatically approved for letters of corresponding adjustments, provided they comply with some basic requirements and are otherwise consistent with Kenyan law. Improved cookstoves should be among the technologies included in the “white list.”	By providing a pre-approved list of technologies and sectors that automatically receive corresponding adjustments the Kenya government is sending a strong signal to the private sector internationally that there is no policy risk in investing in clean energy projects in Kenya.
Part IVA – Regulation of Carbon Markets	Trade in carbon markets – 23B (d)	emission reductions shall be carefully recorded and documented for every off-	Emission reductions shall be carefully recorded, and documented, disclosed, reported and verified for	Reporting & Assurance

Part IVA – Regulation of Carbon Markets	Participation in carbon markets – 23C (1) (B)	The participation in an initiative authorizing trade in carbon credits shall be –	set scheme, utilizing appropriate accounting terms, corresponding adjustments, and location of offset as required by the UNFCCC and other standard bodies.	every offset scheme, utilizing appropriate accounting terms (using the accounting policy developed and agreed by the Cabinet Secretary), corresponding adjustments, and location of offset as required by the UNFCCC and other standard bodies.	<p>This allows for Monitoring, reporting, and verification (MRV) systems that plays an important role at the sub-national and national levels in data collection and consolidation on climate change milestones and impacts in a way that demonstrates progress towards the Paris Agreement.</p> <p>Independent verification, certification and assurance will enhance reputation and build trust with customers, investors and stakeholders.</p> <p>Accounting Standard</p> <p>There is currently no accounting standard on carbon/emissions trading. An accounting policy would have to be developed and adhered to when reporting on the credits (applied to emissions reductions).</p> <p>Companies may not know in advance who the end buyer of carbon credits will be. Requiring an agreement to be signed in advance with the buyer may create unnecessary</p>
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Part IVA – Regulation of Carbon Markets	Participation in carbon markets – 23C (2)	“The Cabinet Secretary may—”	(b) as a result of trading with a private entity;	of LoA issuance by not requiring the naming of a buyer in advance for the agreement.	obstacles and delays in the carbon credit trading process. Allowing for flexibility in this process will enable to participate more efficiently in carbon markets and support the company's sustainable growth.
Part IVA – Regulation of Carbon Markets	Environmental impact assessment - 23D (1)	Carbon trading projects authorized under this Act shall be required to undergo an environmental and social impacts assessment in accordance with	Carbon trading projects which were not included in the second schedule of the EMCA 1999 should not be required to complete an EIA assessment	Cabinet Secretary should have the authority to grant preliminary Letters of Authorization (LoAs) to trade ITMOs with Corresponding Adjustments to certain companies until such a time as the guiding Framework is published to protect local manufacturers and local carbon project developers and their international partners from business interruptions.	Strategic stakeholders, particularly those manufacturing locally in Kenya, will benefit from the knowledge that the work they will be doing until such a time that the Framework is approved and the applications are processed will have the option to generate ITMOs. This will allow business continuity through risk mitigation.
Part IVA – Regulation of Carbon Markets					To reduce the burden on project developers when establishing a project

Part IVA – Regulation of Carbon Markets	Provision of social and environmental benefits – 23E (5) (b)	the Environmental Management and Coordination Act.	<p>The annual social contribution of project to the community, to be tracked and monitored by Kenya's national carbon registry.</p> <p>The Cabinet Secretary to establish benefit sharing rules for land and non-land based projects in consultation with the sector</p>	<p>Benefits Sharing Mechanism Credibility</p> <p>We recommend not including specific percentages for community benefit sharing in the legislation. As currently presented, this will be interpreted as a tax by foreign investors.</p> <p>Instead, a benefit sharing mechanism should be developed in future regulations, in consultation with the sector. Any revenue sharing needs to balance the needs of carbon businesses and investors with communities, local, and central government.</p> <p>Note that the carbon sector already disburses revenue and benefits to communities across Kenya. There is need for better tracking of existing contributions disbursed to the community, considering financial and non-financial benefits.</p>
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				<p>If there is no option to omit the community benefit component, the following changes should be considered:</p> <ul style="list-style-type: none"> - It should be reduced from 25% / 40% to not deter investors - It should only apply as a percentage of net revenues (after costs are subtracted) not gross revenues - Existing forms of community benefit should be counted towards the percentage – for example, end user subsidies for cookstove projects - Project developers should report their existing financial and non-financial community benefits to the government to show compliance, but the actual revenue sharing should be disbursed through the project or local stakeholder groups – and not by central or county government.
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Part IVA – Regulation of Carbon Markets	Provision of social and environmental benefits – 23E (5) (d)	sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities;	Recognise and track existing community benefits provided by carbon projects.	<p>Please note that Kenyan carbon projects are already using carbon revenues to generate community benefits at scale.</p> <p>For example, since 2013, BURN has distributed 800,000 clean cookstoves in Kenya, impacting 3 million lives, saving 4 million tons of wood, and averting 7 million tons of CO₂e. In their latest projects, stoves are subsidized by up to 4500 KES using carbon investment (a ~90% discount). In the last two years alone, BURN has raised \$10M in international carbon finance to support stove subsidies for low-income families in Kenya</p>
Part IVA – Regulation of Carbon Markets	Provision of social and environmental benefits – 23E (5) (d)	Not considered in the current draft	The proposed legislation should clarify when any clauses that impact investor returns (such as the community impact fund) take effect and should not impact existing projects that are registered, funded by investors and operational. New taxes or revenue share clauses should only take effect on projects registered on or	<p>Making any such clauses retroactive will create great market uncertainty and will deter future foreign direct investment in Kenya since it could mean significant capital loss among investors.</p>

Part IVA – Regulation of Carbon Markets	Carbon registry – 23G	<p>There is established a registry to be known as the National Carbon Registry.</p> <p>(2) The Designated National Authority appointed under section 8(2A) shall be the custodian of the Registry</p>	<p>after the enactment of new legislation.</p> <p>Align the National Carbon Registry to existing carbon registries (e.g., Gold Standard / Verra) to facilitate cross-comparison.</p> <p>Implement transparent and user-friendly mechanisms for businesses to access the National Carbon Registry.</p>	<p>Easy access to the National Carbon Registry can help businesses track their carbon credit projects and keep up to date with relevant information.</p> <p>A transparent and user-friendly registry promotes a better understanding of the carbon market and encourages more active participation from businesses.</p>
Part IVA – Regulation of Carbon Markets	Carbon registry – 23G 3 (a)	Carbon credit projects and programmes implemented to reduce greenhouse gas emissions in Kenya;	Carbon credit projects markets (carbon reduction, carbon capture/removal, carbon avoidance) and programmes implemented to reduce greenhouse gas emissions in Kenya;	<p>There are different types of carbon available. The market should be defined to make clear the various carbons within the market.</p>

**MEMORANDUM ON THE CLIMATE CHANGE (AMENDMENT) BILL (National Assembly Bill
No. 24 of 2023)**

**PRESENTED TO
CLERK OF THE NATIONAL ASSEMBLY
P.O BOX 41842-00100
NAIROBI, KENYA**

DATE: 22ND AUGUST 2023

SUBMITTED BY:



**Kiptinness & Odhiambo Associates LLP
(KO Associates)
4th Avenue Towers, 4th Ngong' Avenue
P.O. Box 42713-00100
Telephone: +254 -020 – 22713977; +254 722 856662
Email: info@koassociates.co.ke
Nairobi, Kenya**

A. INTRODUCTION

Having reviewed and interrogated the Climate Change (Amendment) Bill 2023, we hereby submit this Memorandum in response to the invitation for public participation and submission of memoranda by the National Assembly dated 16 August 2023. This Memorandum highlights a number of our clients' views and recommendations on the proposals included in the Bill.

B. BACKGROUND

Energy Attributes Certificates (EACs)

Globally, various instruments have been developed to enable organizations and governments to track and substantiate reductions in Greenhouse Gas (GHG) emissions. The common ones are carbon credits and carbon offsets but there is a growing trend in the use of Energy Attributes Certificates (EACs) to manage GHG emissions.

EACs evolved on the premise that an underlying positive environmental attribute is attached to every one-megawatt hour (1MWh) of renewable energy generated and used. In essence, EACs recognize that two commodities are created when renewable energy is generated – first, the electricity generated from a renewable energy source i.e., a solar installation, and the second, the environmental attributes. Simply put, EACs are tradeable, market-based instruments that represent the legal property rights to the "renewable-ness" or non-power (i.e., environmental) attributes of renewable electricity generation.

There are various EAC schemes around the world including:

- i) Renewable Energy Certificates (RECS) in North America;
- ii) Guarantee of Origin or the European Energy Certificate System Guarantee of Origin (EECS-GO) in Europe; and
- iii) International Renewable Energy Certificates (I-RECS) for countries outside of Europe and North America. I-RECS were conceptualized by the I-REC Standard Foundation, a non-profit organization that provides a robust attribute tracking standard for use around the world. This global standard is a recognized tool to report GHG emissions reduction in a growing number of countries in Africa, Asia and Latin America.

Despite there being different schemes EAC schemes around the world, their underlying principles of operation are the same, which is the issuance, trade and cancellation of certificates that allow end-users to claim the use of a given unit of renewable energy.

In a growing number of African countries, I-RECs are being used by organizations to track their carbon footprints. These include Zambia, Chad, Democratic Republic of the Congo, Somalia, South Sudan, Ethiopia, Burkina Faso, Egypt, Ghana, Nigeria, South Africa, Uganda and Morocco (Western Sahara). In these countries, the I-REC Standard Foundation has approved local issuers of the I-RECs including Energy Peace Partners, Ecostar Energy Solutions and the Green Certificate Company. Notably, in countries where local I-REC issuers have not been designated, the Green Certificate Company is the default issuer. I-REC issuers are independent entities responsible for the registration and issuance of I-RECs.

Why EACs?

Creation of an enabling legal and regulatory environment for EACs in Kenya will present a host of benefits for various stakeholders including:

- For the Kenyan Government, EACs will bolster the renewable energy sector and support the country's goal of transitioning to 100% clean energy by 2030. Revenue generated from trade in EACs will also be recorded in project developers' balance sheets and therefore constitute taxable income.
- For energy developers, EACs will present an additional revenue stream and hence incentivize renewable energy generation in the country.
- For private entities EACs will provide an avenue to enable them meet mandatory or voluntary sustainability goals.

C. PROPOSED AMENDMENTS

Item	Clause	Proposed Amendment	Rationale/Justification
1.	Clause 2- Interpretation	<p>Insert definition of "Energy Attributes Certificate" after the definition of "Designated National Authority" as follows:</p> <p>"Energy Attributes Certificate" means a transferable record or guarantee that provides information about the environmental attributes of one megawatt of electricity generated from a renewable energy source"</p>	To anchor the definition of an Energy Attributes Certificate in law.
2.	Clause 7- Powers and Duties of the Cabinet Secretary	Delete sub-section (2B)	This Clause should be deleted and instead inserted as a new Clause 23A in order to allow for an expansion of the mandate of the Designated National Authority as set forth below
3.	Part IVA- Regulation of Carbon Markets	<p>Insert a new Clause 23A and renumber the other clauses accordingly.</p> <p>23A-Designated National Authority The Designated National Authority appointed under section 8, (subsection 2A) shall:</p> <p>(a) fulfill international obligations set forth in the Paris Agreement on Climate Change;</p> <p>(b) maintain the Carbon Registry established under section 23H</p>	To bestow powers upon the Designated National Authority to publish guidelines on the administration of the Energy Attributes Certificate Markets in Kenya.

		<p>(c) publish guidelines for the administration of the Energy Attributes Certificate Market in Kenya; and</p> <p>(d) perform any other duties conferred upon it by the Cabinet Secretary or by law.</p>	
4.	Clause 23A- Carbon Markets	<p>Insert a new clause 3 to provide:</p> <p>"The Cabinet Secretary shall publish regulations for the administration of the Energy Attributes Certificate Markets in Kenya."</p>	To provide for the Cabinet Secretary's power to set forth standards and procedures for the regulation of the Energy Attributes Certificate Markets in Kenya
5.	Clause 23G- Carbon Registry	<p>Amend Clause (3) to insert a new paragraph (k) as follows:</p> <p>(k) Energy Attributable Certificates issued or transferred in Kenya</p>	Provides for the creation of an Energy Attributable Certificates Register to facilitate the issuance and trade in Energy Attributable Certificates in the country.

D. CONCLUSION & RECOMMENDATIONS

As highlighted above, there is a growing trend in the use of EAC's to track and substantiate reductions in GHG emissions and hence the fulfillment of climate change obligations. In light of the above, we recommend the amendment of the Climate Change (Amendment) Bill 2023 to provide an anchoring for the regulation and administration of the EACs market in Kenya.

SIGNED BY:



.....
Crispine Odhiambo
Senior Partner



M2, Mirage Towers,
Westlands, Chiromo Road
Nairobi, Kenya
P.O Box 1730- 00606

OUR REF: 9BNGCC7132654
Tuesday, 22nd August, 2023.

Clerk to the National Assembly,
P.O. Box 41842 - 00100,
Nairobi.
cna@parliament.go.ke

Dear Sir / Madam,

**RE: SUBMISSION OF KENYA CLIMATE CHANGE CONSORTIUM COMMENTS TO THE
CLIMATE CHANGE (AMENDMENT) BILL, 2023 - KENYA GAZETTE SUPPLEMENT No. 127
(NATIONAL ASSEMBLY BILLS No. 42**

World Leaders of Today (WLT) is the NGO and Stand up Shout out (SUSO) is now the main program of the International NGO. In May 2018, we became an International Non-Governmental Organisation whose Headquarters are based in Nairobi, Kenya, but operate globally.

WLT as an NGO deals with Good Governance and Advocacy, Poverty Reduction, Conservation, Youth Inclusion, Empowerment and Engagement (as well as contributing to achieve the Sustainable Development Goals). We are strategic in our approach on issues facing society and believe that the youth are the biggest asset the world currently has; they are not the leaders of tomorrow, rather, the leaders of today and should be treated as so. We aim to tackle issues on all levels - from the grassroots to governments, urban and rural communities, educational institutions etc. Our directing three-word motto: Mobilise | Organise | Implement sees us at the forefront of change in our society.

World Leaders of Today through our Bingwa Leadership Camp and Bonga Na Gava Policy Tool helped convene 60 organisations from 7 regions and 30 counties to review the Climate Change (Amendment) Bill, 2023.

During the 23rd May - 26th May 2023, these youth serving organisations that do climate change work formed The Kenya Youth Climate Change Consortium a consortium of Kenyan Youth in Climate space. Its membership comprises of the Youth-Led NGOs, CBOs and Associations that have a focus on Climate Change advocacy, Mitigation, Adaptation and/or implementing climate-related programmes. KYCCC is formed with intent of building strong, cohesive and lasting partnerships between member organisations,

with Government, Regional and international organisations. KYCCC is formed with a principle to support members to implement climate related programmes in line with the existing government Coordination mechanisms for climate change mitigation and adaptation. KYCCC will be a linking Organization between the National Climate Department and all the Youth-led organisations working within and around the climate space.

As a consortium we have examined the initial version of the Climate Change (Amendment) Bill. We provided our official statement on May 26th, 2023. For the subsequent version of the Bill, a smaller team within our consortium carefully reviewed it and passed it on to the larger team for their ideas to make sure we include all perspectives. In light of this, it's important to note:

As Stand Up Shout Out & the Kenya Youth Climate Change Consortium we hereby submit our comments on the Climate Change (Amendment) Bill, 2023 and are open to make a virtual / physical presentation of our views

We look forward to hearing back from the Department and to further engagement on this critical piece of legislation.

Kind regards,



Peter Fredrick Moll
Chairman, CEO and Founder
WORLD LEADERS OF TODAY
(STAND UP SHOUT OUT)

Annex of the Names of Participants and review process

	NAME	COUNTY	ORGANISATION
1	Aquila Alwy.	Nairobi	Rise Up Movement
2	Benson Mwaura	Meru	Green Earth Climate Action
3	Bryan Kyalo	Nairobi	Asili Generation Kenya
4	Carren Muhonja.	Nairobi	CommonWealth Youth Climate network
5	Christopher Mutuku	Nairobi	Simama na mtoto/Kenya Institute of mass communication
6	Clemence Mnyika	Taita Taveta	Taita Taveta, Stand Up Shout Out
7	Clifford Okoth	Bungoma	UNICEF
8	Cliph Osea.	Nairobi	Kisumu Environmental Champions

9	Cynthia Murugi Kinyua	Kiambu	ISEC-KE
10	Daniel Chege	Nairobi	Stand Up Shout Out
11	Daniel Mwakisachi.	Taita Taveta	Stand Up Shout Out
12	David Kosket	Nakuru	Save Mau Forest CBO
13	Dennis Kamau Mwangi.	Mombasa	Stand Up Shout Out
14	Derrick Loti	Taita Taveta	Taita Taveta,Taita Taveta Youth Alliance
15	Ekadeli Philemon.	Turkana	Friends Of Lake Turkana (FOLT) and Kenya Fisheries Service
16	Emmaculate Wanja	Isiolo	Isiolo Youth Inter-Faith
17	Erick Mainga	Laikipia	Activista Laikipia Chapter
18	Erustus Muriki	Isiolo	Activista
19	Esther Otieno	Nairobi	Stand Up Shout Out
20	Felix Juma	Nairobi	Stand Up Shout Out
21	Felix Odhiambo	Nairobi	ICRAF-CIFOR
22	Fridah McBeth	Kiambu	Kiambu,Stand Up Shout Out
23	Gloria Elizabeth	Mombasa	Mombasa,Youth Empowerment and Development Foundation
24	Godwin Ayata	Homabay	Community Green Mindset
25	Golda Awino.	Homabay	Rural Oasis
26	Ivan Otieno	Kisumu	Collarosta Technologies and Crafts
27	Jacob Makosi	Narok	Stand Up Shout Out
28	Joan Urangi	Nairobi	Individual
29	John Eden Omondi	Siaya	International Youth Fellowship
30	John Eyien	Laikipia	Pathways Policy Institute
31	Johnson Mboya	Homabay	Global Climate Change and Health Association of Kenya
32	Johnson Ong'any	Kiambu	Kenya Inter University Environmental Student Association (KIUESA)
33	Joseph Njoroge	Kajiado	Stand Up Shout Out/Kenya Scouts
34	Joy Kabui	Kajiado	Multi Media University of Kenya
35	Joy Mogeni.	Nairobi	Stand Up Shout Out
36	Judy Kkipkenda	Baringo	Koibatek Ogiek Women and Youth Network(KOWYN)

37	Kamau Githinji	Laikipia	Ecovista
38	Keith May	Kakamega	Evamor Africa
39	Kenedy Ngadi	Nairobi	Kenyatta University
40	Kennedy Mulinge	Makueni	Makueni Activista
41	Kennedy Onyango	Nakuru	Wetlands Conservation Organisation, Green Generation Initiative
42	KiruiChebet	Trans Nzoia	Trans Nzoia, Chelyn 254
43	Kushindi Annette	Kiambu	Jkuat
44	Larry Lenox.	Kisumu	The climate Initiative
45	Lydia Chege	Nakuru	The tree O'clock
46	Margaret Luvuze.	Nakuru	Goldstar Kenya
47	Mariam Noor	Taita Taveta	Stand Up Shout Out
48	Mark Lobuin	Laikipia	Mukutan Conservancy
49	Martin Mugo	Nairobi	Stand Up Shout Out
50	Martha Nangami.	Bungoma	Stand Up Shout Out
51	Mercy John	Machakos	Machakos,Blue Economy Youth International
52	Moses Ngugi	Kiambu	Youth Initiative for Land Africa
53	Moses Okoyo	Nairobi	Stand Up Shout Out
54	Nana Kisha.	Nakuru	Nia Green
55	Nasibo Wario	Isiolo	Activista
56	Ngina Lilian	Sabaki	Kabarak University
57	Nickson Seleon	Kajiado	Stand Up Shout Out
58	Njeri Nderangu.	Nyeri	Stand Up Shout Out
59	Norriel Chepkorir Letting	Nairobi	Mount Kenya University
60	Nuru S. Ahmed	Kajiado	Independent Science Journalist
61	Nyakundi Dancan	Nakuru	I Can Help Foundation
62	Odiwuor Byrone	Kisii	Stand Up Shout Out Kisii
63	Paul Wambugu	Nakuru	Stand Up Shout Out Nakuru
64	Peter Moll	Kajiado	Stand Up Shout Out
65	Peter Mwangi	Nyandarua	Fadhili Africa Limited
66	Phoebe Matunda Mzee	Nairobi	Stand Up Shout Out

67	Philip Mureithi	Laikipia North	Activista Laikipia
68	Rianamuto Dickson	Laikipia	Laikipia Nature Conservancy
69	Robert Mumba.	Kilifi	Kilifi Youth Assembly/ Kilifi Wood
70	Rogers Ngoo	Taita Taveta	Taita Taveta, Stand Up Shout Out
71	Ruth Mugo	Narok	Youth For Green Action Kenya
72	Scovida Adhiambo	Busia	Kisii University
73	Silcah Cherop	Nairobi	Stand Up Shout Out
74	Shem Ayiera	Kakamega	St.Hemingways CBO
75	Thomas Ekitala.	Isiolo	Isiolo Activista
76	Tony Ochieng	Siaya	Stand Up Shout Out Siaya Division/Organization of Environmental Conservationist
77	Tony Valid	Taita Taveta	Taita Taveta, Stand Up Shout Out
78	Uno Caleb Ikenye	Nairobi	Nakuru County Students Caucus
79	Yvonne Akinyi	Siaya	Stand Up Shout Out
80	Zindizi Kwavaji	Nairobi	Ocean Youths Innovators

The process took place as follows:

1. An open online application for youth interested in the Climate Change Amendment Act, 2023, review was sent out for interested parties to apply:
 - a. We received 380 applications from youth across Kenya
 - b. The 380 applications went through a rigorous vetting process
 - c. 80 youth applicants were selected for the process and for 4 days while camping dissected the Climate Change Amendment Act, 2023.
2. We packaged the policy document for the participants to understand:
 - a. We made content to allow our youth to know: The importance of the document to us as a demographic | What we should focus on as we review the document | What do we want from the document | through the use of:
 - i. Written documents
3. Breakdown of the Climate Change Amendment Act, 2023, by the 80 youth as follows:
 - a. Breakaway sessions in 4 groups over 4 days discussing:
 - i. Contents of the Climate Change Amendment Act, 2023 and the Climate Change Act, 2016

- b. Recovering and consolidation of comments and recommendations to the Climate Change Amendment Act
 - c. Core youth team drafting of the memorandum
- 4. Compiling the memorandum
 - a. We created a structure of the document which we filled out as we continued with the engagement and drafting
 - b. Compilation and finalisation of the document
- 5. The creation of the Kenya Youth Climate Change Consortium:

A consortium of Kenyan Youth in Climate space. Its membership comprises of the Youth-Led NGOs, CBOs and Associations that have a focus on Climate Change advocacy, Mitigation, Adaptation and/or implementing climate-related programmes
- 6. Drafting of the memorandum for the Initial Climate Change (Amendment) Bill, 2023 by the Kenya Youth Climate Change Consortium.

Annex of Names

	NAME	POSITION WITHIN THE KENYA CLIMATE CHANGE CONSORTIUM (KYCC)
1.	Peter Moll	Patron.
2.	Ekadeli Phelimon	Acting Director.
3.	Phoebe Matunda Mzee	Acting deputy director.
4.	Mercy John	Finance officer.
5.	Rodgers Ngoo	Information officer.
6.	Norreill Letting	Project officer.
7.	Judy Kipkenda	Public Relations .
8.	Zindzi Kwavayi	Loss and damage officer.
9.	Benson Mwaura	Carbon Marketing Officer .
10.	Martin Mugo Mungai	Mitigation and adaptation officer.
11.	Kennedy Ngadi	Climate Fund Officer.
12.	Aqlila Alwy	Advocacy officer.

7. Submission of memorandum for the initial version of the Climate Change (Amendment) Bill, 2023 to the State Department of Climate Change

8. Review of the subsequent version of the Climate Change (Amendment) Bill 2023 by a smaller team within our consortium

Annex of names:

	NAME	POSITION WITHIN THE KENYA CLIMATE CHANGE CONSORTIUM (KYCC)
1.	Peter Fredrick Moll	Patron
2.	Phoebe Matunda Mzee	Assistant Director
3.	Martin Mugo	Mitigation & Adaptation Officer
4.	Norreill Letting	Project Officer

9. Review of memorandum by the larger team for their ideas to make sure we include all perspectives and edits

10. Submission for the Memorandum to the Clerk to the National Assembly & the State Department of Climate Change

**SUBMISSION OF COMMENTS & TO THE CLIMATE CHANGE
(AMENDMENT) BILL, 2023 - KENYA GAZETTE SUPPLEMENT No. 127
(NATIONAL ASSEMBLY BILLS No. 42**

	AMENDMENT	CURRENT ACT	PROPOSED RECOMMENDATIONS	JUSTIFICATION & RATIONALE
Amendment of section 4 of No 11 of 2016	Section 4 of the principal Act is amended in subsection (2) by deleting the words "in accordance with the Schedule" appearing in paragraph (f).	Previously the Act provided participation in consultation with stakeholders in accordance with the schedule: Section 4(2) of the	We recommend to keep the schedule and under the schedule that gives provisions on public participation section 1 to states as follows: (1) Where this Act imposes a requirement	Clause 4 of the Bill seeks to delete the Schedule to the Act as section 24 already provides for making regulations on public participation. Although Section 24 of the Climate Change

		<p>Principal Act provides that in discharging their functions and duties under this Act the Council, the Cabinet Secretary, county government, any state officer and state organ shall be guided by the following—</p> <p>(f) ensure participation and consultation with stakeholders in accordance with the Schedule.</p>	<p>for public consultation in matters relating to climate change policy, strategy, programme, plan or action, the Council or respective public or private entity shall publish a notice—</p> <p>(a) in the Gazette;</p> <p>(b) in at least two newspapers with national circulation;</p> <p>(c) in at least one newspaper circulating in the locality to which the climate change policy, strategy, programme, plan or action relates; and</p> <p>(d) in at least one Kenyan radio station broadcasting in that locality.</p> <p>e)Through Digital platforms</p>	<p>Act 2016 provides for Public Participation, it does not provide the design and procedure to ensure efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.</p> <p>The Schedule provided the manner & modes in which public participation would be conducted succinctly hence the need for Regulations to do the same.</p> <p>Although Section 24(3) provides for the development of Regulations, the requirement is not given a time frame within which the Regulations should be affected.</p>
Amendment of Section 7 of No. 11 of 2016	<p>Section 7 of the principal Act is amended— (a) in sub section (2) by—</p> <p>(i) deleting paragraph (c);</p> <p>(ii) inserting the following new paragraph immediately after</p>		<p>The proposed recommendation is that the Bill reverts to the provisions that were previously in the Act and the youth representative to be added to the list with the definition of a youth and criteria of the youth to be as follows.</p>	<p>It is paramount for a youth representative to be within the council with the mentioned qualification to ensure an actual youth is within the Council ensuring that the youth fully participate within the Climate Change Action Plan and also ensure youth involvement in the</p>

	<p>paragraph (c)– (ea) a representative of the youth;</p> <p>(iii) deleting the words “nominated by the body representing the largest number of institutions in the private sector” appearing in paragraph (f);</p> <p>(iv) deleting the words “nominated by the most representative registered national umbrella association of civil societies working on climate change” appearing in paragraph (g);</p> <p>(v) deleting the words “within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge” appearing in paragraph (h);</p> <p>(vi) deleting the words “nominated by the Commission for University</p>		<p>7. A representative of the youth;</p> <ul style="list-style-type: none"> • 18 - 35 years • Experience working with youth both locally and internationally • Appointed by a youth consortium • Meets the requirements stated in Chapter 6 of the Constitution • Is actively involved in the mitigation of climate change or adaptation • Education background 	<p>National and County levels and within the public and private sectors.</p>
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	<p>Education” appearing in paragraph (i);</p> <p>(b) by deleting subsection (7);</p> <p>(c) in subsection (12) by deleting the words “Except as provided in subsection (7)”.</p>			
<p>Amendment of section 8 of No. 11 of 2016</p>	<p>Section 8 of the principal Act is amended in subsection (2) by—</p> <p>(a) inserting the following new paragraphs immediately after paragraph (b)—</p> <p>(ba) advise the Council on the carbon budget for trading based on Kenya’s international obligations;</p> <p>(bb) approve international transfers of mitigation outcomes and emission reduction based on advice from the Directorate of Climate Change;</p> <p>(bc) approve measurement, reporting and</p>	<p>Section 8(2) of the Principal Act provides that: - The Cabinet Secretary shall—</p> <p>Section 8(2) (e) provides that: - report biannually to Parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development</p>	<p>Section 8 (2) (e) to read as follows:</p> <p>(c) Report quarterly to Parliament on the status of implementation of international and national obligations to respond to Climate Change, and progress towards attainment of low carbon climate resilient development</p>	<p>The Bill seeks to amend section 8 of the Act to provide for specific mandates of the Cabinet Secretary in relation to carbon markets, including designating a National Authority in compliance with international obligations, although as Climate Change is an urgent matter, it is fit that the Cabinet Secretary should report quarterly to Parliament.</p>

	<p>verification of greenhouse gas emissions;</p> <p>(bd) authorised the establishment of the REDD+ Registry and other sector registries to feed into the National Carbon Registry.</p> <p>(b) deleting the word “biannually” appearing in paragraph (e) and substituting therefor the word “annually”;</p> <p>(c) inserting the following new subsection immediately after subsection (2)—</p> <p>(2A) The Cabinet Secretary shall appoint the Designated National Authority for market mechanisms.</p> <p>(2B) The Designated National Authority appointed under subsection (2A) shall, in addition to international obligations, maintain the National Carbon Registry established under section 23H.</p>			
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TITLE AND CLAUSE IN THE AMENDMENT BILL	CURRENT PROVISION IN THE AMENDMENT BILL	PROPOSED RECOMMENDATION	JUSTIFICATION & RATIONALE
Clause 23 (E) (5): Provision of environmental and social benefits	<p>Clause 23 (E) (5) (d): A community development agreement shall Provide—</p> <p>(d) Sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted Communities</p> <p>5. Proposed development of communities around the project; and</p> <p>6. Manner of its review or amendment, which shall be at least every two years.</p>	<p>There is a need to ensure that communities are capacity built for;</p> <ul style="list-style-type: none"> • Self organising in groups / saccos and trained on how to negotiate and safeguard their land against exploitation • Sensitising the community on Climate Change and their role: there should be provisions for this as well in indigenous languages • Mass Civic Education on Carbon Trading and pointing out merits and demerits of Carbon Trading • Conducting massive Civic education on Carbon trading • Including funds from the Climate Change Fund to 	<p>Communities need to be Empowered and given a chance to thrive and have Carbon Trading in the long run as an alternative source of livelihoods for the communities, benefit sharing is key and we are proposing for both capacity building and benefit sharing to go hand and in the long run communities to be empowered to be project proponents.</p>

		<p>Finance for Capacity building on carbon trading</p> <ul style="list-style-type: none"> • Creation of portals for information that are user friendly and provide access to information on the Carbon Markets • Capacity building for communities in policy engagement as they are stakeholders and they need to provide their input on the development of carbon markets and frameworks • 	
<p>Clause 23 (4)</p>	<p>Clause 23(4): "The National Government and the respective county government where the project is situated shall oversee and monitor the negotiation of the community development agreements with project proponents and the stakeholders."</p> <p>Clause 23(8): "The National Government and</p>	<p>There is a need for the establishment of an Authority Regulating Carbon Markets and its mandates will be and not limited to:</p> <ul style="list-style-type: none"> • Granting Carbon Trade rights • Licensing • Enforcing compliance • Carbon taxing to regulate emissions 	<p>This is because the carbon markets issues cut across various sectors and therefore having a Carbon Markets Authority with distinguished roles makes it easier for the institution & also for the communities to know which entity they should target or hold accountable.</p>

	<p>the Respective county government where the project is situated shall enforce the community rights negotiated under a community development agreement."</p> <p>"Carbon trading projects authorised under this Act shall be required to undergo an Environmental management and Coordination Act.</p> <p>Notwithstanding subsection (1), reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and Enhancement of forest carbon stocks in developing countries projects are required to undergo REDD+ safeguard standards assessment</p>	<ul style="list-style-type: none"> • Accreditation and Verification • Market oversight and enforcement 	
<p>Clause 23F: Share of proceeds and cancellation rates</p>	<p>The Government of Kenya shall, in compliance with international obligation, undertake best practices regarding share of proceeds and cancellation rates for overall global mitigation</p>	<p>Inclusion of a provision that will provide for the practices that will be incorporated regarding the share of proceeds and cancellation rates for overall global mitigation.</p>	<p>The failure to refer to the specific best practices creates ambiguity, and it would therefore be important to cite the exact best practice provision that the provision is referring to.</p>

GAPS IN THE CLIMATE CHANGE ACT 2016 AND THE CLIMATE CHANGE AMENDMENT ACT, 2023

PART III CLIMATE CHANGE RESPONSE MEASURES AND ACTIONS

UNFCCC defines loss and damage as harm caused by anthropogenic climate change. By extension, loss refers to loss of life while damage refers to harm/loss in property.

During COP27, developed countries and philanthropies made pledges to contribute to the international climate fund to address loss and damage in developing countries.

Pledges to developing countries was at the 100 billion usd value to be used in mitigation and adaptation capacity. This is a follow up of the Warsaw International Mechanism that stipulated some climate disaster risks could be averted by installation of mitigation and adaptation strategies.

UNFCCC article 3.2 mentions that specific needs and considerations should be given to particularly vulnerable developing country parties.

Loss and damage in the Climate Change Act 2016 and the Climate Change Amendment Act, 2023.

Loss and damage has not been addressed in either the 2016 Climate Change Act or the Climate Change Amendment Act. It is our recommendation that a clause should be included in the National Climate Change Action Plan to address loss and damage related to climate change disasters. The clause on loss and damage within the action plan should include mitigation, adaptation and resilience strategies. Additionally, a criteria on damage assessment should be well established within the loss and damage clause of the National Climate Change Action Plan.

As a consequence of the clause on loss and damage in the National Climate Action Plan, a loss and damage fund should thereby be established to act as the primary financing mechanism for priority loss and damage actions and interventions as approved by the council.

Out of the loss and damage fund, a specific percentage should be set aside to address climate associated loss and damage. As part of the address for loss and damage, a valuation scheme for damage assessment should be set up. To be incorporated into the loss and damage fund is also risk assessment for the vulnerable areas.

In addition, Part VI section 25 of the principal act. A Climate change fund has been designated under the national treasury whose sources of finance to fund the climate change fund is as follows:-

- (a) monies appropriated from the Consolidated Fund by an Act of Parliament;
- (b) monies received by the Fund in the form of donations, endowments, grants and gifts; and
- (c) monies under an Act payable to the Fund.

The section further explains how the fund shall be administered and allocated in the following manner:

- (a) provide grants for climate change research and innovation, in the following fields—
 - (i) industrial research;
 - (ii) technological research;
 - (iii) policy formulation;
 - (iv) scientific research; and
 - (v) academic research;
- (b) provide grants and loans to business, industry, civil society, academia and other stakeholders for development of innovative actions that benefit climate change responses in Kenya;
- (c) finance, through grants and loans the implantation of climate change adaptation and mitigation actions; and
- (d) provide technical assistance to county governments.

However with all this, a gap can be identified whereby the fund can also be used to further the efforts of youth in the fight against climate change. It is unanimously agreed and proposed that 20% of this fund is to go towards Youth-led climate related programmes or interventions as this will give the youth a bargaining power when applying for these funds. This will greatly assist the youth to respond to the vast effects of climate change in an effective and efficient manner in the county levels within their respective youth led programs for climate change.

A major concern for the youth that we want to highlight in this section is the fact of the youth representation, in order for the said representative to represent the youth of Kenya there must be a governance structure of how that said person will represent the views of the youth. They can not just be a random appointment who youth of Kenya cannot access or support with ideas, capacity etc. We believe as the Kenya Youth Climate Change Consortium(KYCCC) we can work with the government to co create a National Youth Consortium for climate change or have the government embrace the already created consortium to have that governance structure for better youth inclusivity.

Shadrack Agaki
Climate Change and Food System Communications Consultant
E-mail: shadrackagaki@gmail.com
Mobile: +254711599493

22nd August 2023

The Clerk,
Kenya National Assembly
P.O Box 41482-00100
Nairobi.

Shadrack Agaki Memorandum on Climate Change (Amendment) Bill 2023.

1.0 Background.

I am a climate change and food system communication expert with a strong commitment to sustainable development. I hold a Master of Arts Degree in International Studies from the University of Nairobi, as well as a BA Degree from the same institution. Additionally, I have completed various courses, including International Climate Change Negotiations, Food System Thinking, and Public Policy Analysis. Currently, I am an alumna of the Climate Diplomacy Academy 2023. My professional background includes over 10 years of experience in legislative and policy research at the Parliament of Kenya.

Acknowledging the pressing global challenges such as food insecurity, poverty, climate change, and conflicts, which demand immediate attention, I am dedicated to contributing to the development and formulation of innovative and effective climate policy frameworks in Kenya and the broader region. This endeavor is both a valuable opportunity and a responsibility that I hold dear.

I would like to take this moment to commend the office of the Majority Leader of the National Assembly for proposing the Amendments to the Climate Change Act of 2016. These amendments, among other crucial matters, introduce the concept of a Carbon Market and Trading mechanism.

As stated in the entirety of Article 6 of the Paris Agreement, the establishment of institutional, technical, and policy frameworks is essential to guide the operations of the carbon market. This is particularly pertinent as countries strive to enhance their ambitions in alignment with the objectives outlined in Article 2 of the United Nations Framework Convention on Climate Change. These objectives revolve around stabilizing greenhouse gas concentrations in the atmosphere at levels that prevent harmful anthropogenic interference with the climate. The attainment of such levels should occur within a timeframe that allows ecosystems to naturally adapt to climate change, ensuring the protection of food production and fostering sustainable economic development.

As a Party to the UNFCCC and the Paris Agreement, Kenya is obligated to implement mechanisms that resonate with the ethos of these international frameworks, calling for increased efforts in addressing climate change.

Having thoroughly reviewed the proposed amendments and drawing from my extensive knowledge of climate change issues, I want to express my appreciation for the meticulous work that has gone into crafting this document. Furthermore, considering the governance structure outlined in the Constitution of Kenya, 2010, specifically the Fourth Schedule that delineates the roles of the National Government and County Governments, it is crucial to recognize their distinct yet interconnected nature. This relationship is defined by consultation and cooperation, as stated in Article 6 (2) of the Constitution.

Comment and Proposal:

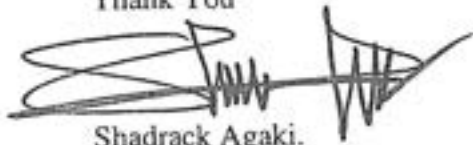
In light of the above, I propose the incorporation of the County framework into the amended Bill as outlined below:

Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Justification and Rationale.
Part II- Policy, Coordination and Oversight	Establishment of the County Climate Change Committee	New Section to Probably Immediately after section 7 of the Principal Act to be labeled 7A	<p>7A. There is established in each County , County Climate Change Committee which shall consist of</p> <ol style="list-style-type: none"> (1) The Deputy Governor (2) The County Executive Officer in charge of Environment and Climate Change (3) The County Executive Officer in Charge of Trade (4) County Executive Officer in charge of Agriculture (5) County Executive Officer in charge of Education (6) Competent Representative of the Youth (7) Competent Representative of Women (8) Competent Representative from Civil society 	The Provision of Social and environmental benefits in Section 23 E (3) (4) and (5) necessitate the establishment of local mechanism through which the issues will be addressed and the County Climate Change Committee could be the best platform to address the issues arising from the Community Development Agreement.

I believe this amendment is timely and must be supported by all for the impact of climate change knows no boundaries. However it would require critical cooperation and collaboration by all actors and sectors locally, nationally and globally.

Look forward to more interaction and passage of the amendments.

Thank You

A handwritten signature in black ink, consisting of a series of loops and a final sharp stroke.

Shadrack Agaki.