



THE SENATE

Rt. Hon. Speaker
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J. M. Nyegenye, C.B.S.,
Clerk of the senate/ secretary, PSC
Date: 31/08/23

THIRTEENTH PARLIAMENT – SECOND SESSION

2023



SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

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

PAPERS LAID	
DATE	31/8/2023
TABLED BY	Chairperson
COMMITTEE	Land, Environmental and Natural Resources
CLERK AT THE TABLE	Mr. Polycarp

AUGUST, 2023

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

approved & forwarded for
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LIST OF ABBREVIATIONS AND ACRONYMS

USD	-	United States Dollar
NDC	-	Nationally Determined Contributions
BAU	-	Business As Usual
CO ₂	-	Carbon Dioxide
NGO	-	Non-Governmental Organisations
GHG	-	Greenhouse Gas
CDM	-	Clean Development Mechanisms
CER	-	Certified Emission Reduction
VCS	-	Verified Carbon Standard
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

LIST OF ANNEXURES

1. Minutes
2. Copy of the newspaper advertisement for public participation
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PREFACE

Establishment of the Committee

The Standing Committee on Land, Environment and Natural Resources is established under standing order 228(3) of the Senate Standing Orders. The mandate and the functions of the Committee are set out under the Fourth Schedule of the Senate Standing Orders which mandates the Committee to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Membership of the Committee

The Committee is comprised of the following members -

- | | |
|--|----------------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice - Chairperson |
| 3. Sen. William Cheptumo Kipkiror, CBS, MP | |
| 4. Sen. Johnes Mwashushe Mwaruma, MP | |
| 5. Sen. Issa Juma Boy, MP | |
| 6. Sen. Agnes Kavindu Muthama, MP | |
| 7. Sen. Wamatinga Wahome, MP | |
| 8. Sen. Mariam Sheikh Omar, MP | |
| 9. Sen. Beatrice Akinyi Ogola, MP | |

Mr. Speaker,

Article 42 of the Constitution guarantees every person the right to a clean and healthy environment, while Article 69 obligates the state to develop and implement policies and laws for environmental conservation and protection. Part 2 of the Fourth Schedule of the Constitution mandates county governments to implement specific national government policies on natural resources and environmental conservation.

The Climate Change Act, 2016 laid the groundwork for Kenya's climate change response by establishing the National Climate Change Council and mandating the development of the National Climate Change Action Plan. However, the Act did not address the

regulation of carbon markets, an essential instrument for achieving emissions reduction goals and fulfilling commitments under international agreements like the Paris Agreement. Kenya ratified the Paris Agreement on December 28, 2016, committing to among other things, to limiting global warming to well below two (2°) degrees Celsius and pursue efforts to limit it to 1.5 degrees Celsius. The Agreement also establishes a global carbon trading mechanism under Article 6, and thereby enabling countries to trade emissions reductions. Since the Act's enactment, there has been a surge in global momentum towards carbon trading, with increased participation from governments and private entities. Additionally, Kenya has submitted its National Determined Contributions (NDCs) to the United Nations Framework Convention on Climate Change (UNFCCC), delineating its commitments to reducing greenhouse gas emissions. There has also been heightened awareness and participation from various stakeholders, including county governments, non-governmental organizations, and the private sector, in efforts to combat climate change. These developments necessitate amendments to the Climate Change Act to—

- (a) regulate carbon markets;
- (b) align with international commitments;
- (c) engage a broader range of stakeholders; and
- (d) support Kenya's emissions reduction goals.

The Bill was published on 19th July, 2023, and read a First Time in the Senate on 29th August, 2023. Following the First Reading in the Senate, the Bill stood committed, pursuant to standing order 145(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation.

Subsequently, the Committee, pursuant to Article 118(1) (b) of the Constitution and standing order 145(5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and the Daily Nation Newspapers on Wednesday, 30th August, 2023.

Adoption of the Report of the Standing Committee on Land, Environment and Natural Resources on the Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023).

	Name	Designation	Signature
1	Sen. John Muhia Methu	Chairperson	
2	Sen. (Dr.) Steve Lelegwe Ltumbesi	Vice - Chairperson	
3	Sen. William Cheptumo Kipkiror, CBS	Member	
4	Sen. Johnes Mwashushe Mwaruma	Member	
5	Sen. Issa Juma Boy	Member	
6	Sen. Agnes Kavindu Muthama	Member	
7	Sen. Wamatinga Wahome	Member	
8	Sen. Mariam Sheikh Omar	Member	
9	Sen. Beatrice Akinyi Ogola	Member	

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Standing Committee on Land, Environment and Natural Resources 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 29th August, 2023 and was thereafter committed to the Land, Environment and Natural Resources Committee for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has seventeen (17) clauses and seeks to amend the Climate Change Act, 2016 to provide for the regulation of carbon markets. The Bill creates and enhances the mandate of several institutions responsible for regulation of the carbon markets.

Following placement of advertisements in the print media on Wednesday, 30th August 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Committee received twelve (12) memoranda from the following institutions and individuals-

- 1) Kenya Private Sector Alliance;
- 2) Kenya Association of Manufacturers;
- 3) Kenya Climate Change Working Group;
- 4) Kenya Wildlife Conservancy Association;
- 5) Nairobi Climate Network;
- 6) The Council of Governors;
- 7) BURN Manufacturing Company;
- 8) Imperative Global Solutions Pte. Ltd;
- 9) TAMUWA Limited;
- 10) Environment Institute of Kenya;
- 11) Mr. Shadrack Agaki – Climate Change and Food System Communication Consultant;
- 12) Conservation International; and
- 13) Ministry of Environment, Climate Change and Forestry

The Committee also invited the Ministry of Environment, Climate Change and Forestry concerned vide letter Ref: SEN/DSEC/LENR/2023/2 (7) dated 29th August, 2023 for a


physical meeting that was held on Wednesday, 30th August, 2023, for a stakeholders' engagement meeting on the Bill.

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further, the Committee wishes to thank members of the public and stakeholders who sent written submissions including the general public.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 148 of the Senate Standing Orders, to present the Report of the Standing Committee on Land, Environment and Natural Resources on the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*).

Signed:  _____

Date: 21/08/2023

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**

CHAPTER ONE

INTRODUCTION

1.0 Background

1. Article 42 of the Constitution guarantees every person the right to a clean and healthy environment, while Article 69 obligates the state to develop and implement policies and laws for environmental conservation and protection. Part 2 of the Fourth Schedule of the Constitution mandates county governments to implement specific national government policies on natural resources and environmental conservation.
2. The Climate Change Act, 2016 laid the groundwork for Kenya's climate change response by establishing the National Climate Change Council and mandating the development of the National Climate Change Action Plan. However, the Act did not address the regulation of carbon markets, an essential instrument for achieving emissions reduction goals and fulfilling commitments under international agreements like the Paris Agreement. Kenya ratified the Paris Agreement on December 28, 2016, committing to among other things, to limiting global warming to well below 2 degrees Celsius and pursue efforts to limit it to 1.5 degrees Celsius. The Agreement also establishes a global carbon trading mechanism under Article 6, and thereby enabling countries to trade emissions reductions. Since the Act's enactment, there has been a surge in global momentum towards carbon trading, with increased participation from governments and private entities. Additionally, Kenya has submitted its National Determined Contributions (NDCs) to the United Nations Framework Convention on Climate Change (UNFCCC), delineating its commitments to reducing greenhouse gas emissions. There has also been heightened awareness and participation from various stakeholders, including county governments, non-governmental organizations, and the private sector, in efforts to combat climate change. These developments necessitate amendments to the Climate Change Act to -
 - (a) regulate carbon markets;
 - (b) align with international commitments;
 - (c) engage a broader range of stakeholders; and
 - (d) support Kenya's emissions reduction goals.

3. Pursuant to Standing Order 46(3) & (5), the Speaker received a Message, while the Senate was on recess, from the Speaker of the National Assembly regarding the passage of the Climate Change (Amendment) Bill (National Assembly Bills No. 42 of 2023).

The Message which was dated Thursday, 24th August, 2023 was received on Friday, 25th August, 2023, in the Office of the Clerk of the Senate.

Pursuant to Standing Order 163 a Bill originating in the National Assembly is required to be proceeded with in the same manner as a Bill introduced in the Senate by way of First Reading. In accordance with Standing Order 144, the speaker directed that, the said Bill be read First Time.

The Bill was published on 19th July, 2023, and read a First Time in the Senate on 29th August, 2023. Following the First Reading in the Senate, the Bill stood committed, pursuant to standing order 145(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation.

Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 145 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Nation and Standard Newspapers on 30th August, 2023.)

(b) The purpose of the Bill

4. The principal purpose of the Climate Change (Amendment) Bill, 2023 is to amend the Climate Change Act of 2016 to provide for the regulation of carbon markets, which is not addressed in the current Act. The current Act does not provide a legal framework for carbon trading. The Bill therefore, aims to facilitate the effective implementation of carbon markets and trading in alignment with the overall objectives of the Climate Change Act, 2016.

(c) Overview of the Bill

5. This is a Government Bill introduced in the National Assembly. The Bill was passed by the National Assembly with amendments on August 23rd, 2023. It contains the following seventeen (17) clauses-
6. **Clause 2** of the Bill seeks to amend section 2 of the Climate Change Act, 2012 (the 'Act') by inserting definitions of new terms used in the amendments.

7. **Clause 3** of the Bill seeks to amend section 3 of the Act by broadening the objectives and purposes of the Act to include providing guidance for the development and implementation of both carbon and non-carbon markets.
8. **Clause 4** of the Bill seeks to amend section 6 of the Act by expanding the functions of the Climate Change Council to include the provision of guidance and policy direction on carbon markets to the national and county governments, the public and other stakeholders.
9. **Clause 5** of the Bill seeks to amend section 7 of the Act, which provides for the Members of the Council, by-
 - (a) removing the Cabinet Secretary responsible for economic planning;
 - (b) deleting the requirements for nominating representatives from the private sector, civil societies, and academia. Specifically, it removes the stipulation that the private sector representative should be nominated by the body representing the largest number of institutions in the private sector, the civil societies representative should be nominated by the most representative registered national umbrella association of civil societies working on climate change, and the academia representative should be nominated by the Commission for University Education;
 - (c) including a representative of the youth; and
 - (d) clarifying that the members of the Council shall serve for a term of three years, renewable once.
10. **Clause 6** of the Bill seeks to amend section 8 of the Act by-
 - (a) changing the frequency of the required reporting to Parliament by the relevant Cabinet Secretary from bi-annually to annually.
 - (b) increasing the powers and duties of the Cabinet Secretary concerning carbon trading, stipulating the appointment of the Designated National Authority by the Cabinet Secretary, and mandating that the Designated National Authority to maintain the National Carbon Registry established under section 23G.
11. **Clauses 7 and 8** of the Bill aim to amend sections 9 and 10 of the Act, respectively, by changing the title of 'Director' of the Climate Change Directorate to 'Secretary,' with Clause 7 additionally removing the requirement that the Directorate must report to the Cabinet Secretary.

12. **Clause 9** of the Bill aims to amend section 13 of the Act by incorporating components related to carbon markets into the Climate Change Action Plan and mandating that the Cabinet Secretary be guided by national and international laws and policies on climate change and carbon markets during the Plan's formulation.
13. **Clauses 10, 11, and 13** of the Bill aim to amend sections 15, 16, and 24 to assign the power to make regulations under the specified sections to the Cabinet Secretary instead of the Climate Change Council.
14. **Clause 12** of the Bill proposes the insertion of a new Part IVA into the Act, dedicated to the regulation of carbon markets. This part encompasses clauses related to carbon markets, trade and participation in these markets, the necessity for Environmental and Social Impact Assessments for each carbon trading project, and the need to specify the anticipated environmental, economic, and social benefits of carbon projects. Notably, new clause 23E mandates community development agreements, which must encompass the annual social contribution, calculated as a percentage of the previous year's aggregate earnings from a carbon trading project, to the local community. This contribution is set at 40% per annum for land-based projects and 25% per annum for non-land-based projects. Additionally, this part includes clauses detailing the sharing of proceeds and cancellation rates for overall global mitigation, the establishment of the National Carbon Registry, dispute resolution mechanisms for land-based project disputes, and the authority for the Designated National Authority to charge fees prescribed by the Cabinet Secretary for proper administration of the Act.
15. **Clause 14** of the Bill proposes an amendment to section 33 of the Act to incorporate offences and penalties associated with the regulation of carbon markets.
16. **Clause 15** of the Bill aims to amend section 35 of the Act, which addresses transitional provisions, by stipulating that certain sections of the Act will not apply to entities with ongoing carbon trading projects for a duration of one year.
17. **Clause 16** seeks to amend section 36 of the Act by broadening the Cabinet Secretary's authority to prescribe regulations, including the enactment of regulations for carbon trading, carbon markets, carbon registries, and the regulation of non-market approaches.
18. **Clause 17** seeks to amend section 1 (2)(e) of the Schedule to the Act by shortening the specified period for receiving comments or objections from the public, in response to a public participation call, from sixty days to twenty-eight days following the publication of the notice.

CHAPTER TWO

PUBLIC PARTICIPATION

2.1 Attendance by Stakeholders

19. The Committee, pursuant to Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and Daily Nation Newspapers on Wednesday, 30th August, 2023.

The Committee received submissions from the following stakeholders-

- 1) Kenya Private Sector Alliance;
- 2) Kenya Association of Manufacturers;
- 3) Kenya Climate Change Working Group;
- 4) Kenya Wildlife Conservancy Association;
- 5) Nairobi Climate Network;
- 6) The Council of Governors;
- 7) BURN Manufacturing Company;
- 8) Imperative Global Solutions Pte. Ltd;
- 9) TAMUWA Limited;
- 10) Environment Institute of Kenya;
- 11) Mr. Shadrack Agaki – Climate Change And Food System Communication Consultant;
- 12) Conservation International; and
- 13) Ministry of Environment, Climate Change and Forestry.

The Committee was able to meet the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry together with relevant Ministry officials on Wednesday, 30th August, 2023 with the main aim of enlightening the Committee further on the provisions as outlined in the Bill and a justification for each of the provisions as proposed in the Bill.

Submissions from Stakeholders and Committee Observations and Determinations on stakeholder proposals

20. The Committee received submissions on specific clauses of the Bill and made various observations and determinations on each proposal as follows-

A. KENYA CLIMATE CHANGE WORKING GROUP

In the memorandum, they proposed the following amendments to the Bill-

Clause 6(a) (iv)

21. Reject the amendment deleting the words “nominated by the most representative registered national umbrella). The provision of the Act to remain as it is.

Committee’s Observation/Recommendation

22. It is imperative that the Climate Change Council be operationalized; consequently, rejecting the proposed amendment could obstruct this essential process and impede the Council's functioning.

Clause 7

23. Amendment of section 8 No. 11 of 2016. 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.

Committee’s Observation/Recommendation

24. This has been provided for under clause 6(i) which provides as follows “authorize the establishment of the Reduced Emissions from Deforestation and Forest Degradation Registry and other sector registries to feed into the National Carbon Registry”.

Clause 8(a)

25. Reject the amendment deleting the words “and shall report to the Cabinet Secretary”
The directorate should be checked and held accountable by the ministry of Environment, Climate Change and Forestry.

Committee’s Observation/Recommendation

26. The Climate Change Directorate is established under the State Department of Environment, and therefore, from an administrative standpoint, it should report to the Principal Secretary rather than the Cabinet Secretary.

Clause 10

27. This section should remain as it is in the parent Act, that is, “The duties shall be imposed and may be varied or revoked through regulations made by the Council.” This is consistent with the role of the Council which is also consultative to ensure transparency and accountability within key Stakeholders on Climate change duties of public sector.

Committee’s Observation/Recommendation

28. Section 36 of the Act already empowers the Cabinet Secretary, in consultation with the Council, to make regulations. Therefore, the proposed amendment aims to harmonize section 15 with the existing provisions and spirit of the law. Moreover, the Act outlines the Council's role as providing overarching policy and a national coordination mechanism for climate change.

Clause 12 - Section 23C(a)

29. 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 or multilateral agreement with another State Party to trade carbon for emission reductions and removals;”

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.

Committee’s Observation/Recommendation

30. Bilateral and multilateral agreements involving another State Party fall under the purview of the Treaty Making and Ratification Act of 2012. This Act delineates the necessary procedures and approvals required before the execution of any bilateral or multilateral agreement.

Clause 23C(2)(b)

31. 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 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;” The AG’s office in charge of the country’s agreement hence should be involved in the process.

Committee’s Observation/Recommendation

32. Bilateral and multilateral agreements involving another State Party fall under the purview of the Treaty Making and Ratification Act of 2012. This Act delineates the necessary procedures and approvals required before the execution of any bilateral or multilateral agreement.

Clause 23C (4)

33. Section 23C (4) of the bill is amended by replacing “the Cabinet Secretary” with “the National Designated Authority.” The section will read; “The National Designated Authority shall, in the national reporting mechanism to the UNFCCC, include any emission reduction resulting from agreements entered into under this section.” 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

34. The proposed amendment tends to be based on a misunderstanding of the role of the Cabinet Secretary in the context of the new clause 23C (4). The clause does not specify that the Cabinet Secretary personally reports to the UNFCCC, only that the Cabinet Secretary is responsible for ensuring that emission reductions from the agreements are included in the national reporting to the UNFCCC.

Clause 23E (6)

35. 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 the County and National Carbon Registries.” Having county registries will make reporting efficient, at the national level. It will also promote accountability and transparency.

Committee's Observation/Recommendation

36. Clause 6(i) of the amendment Bill already provides for the establishment of other sector registries which feed into the National Carbon Registry.

Clause 23E (9)

37. 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.

Committee's Observation/Recommendation

38. The additional requirements prescribed by the Cabinet Secretary are intended to be provided for in regulations and are to be standard across all community development agreements.

New Clause

39. They 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.

Committee's Observation/Recommendation

40. The term ‘impacted community’ has not been used in the Act or in the amendment Bill and therefore there is no need to provide a definition.

New Clause

41. Amendment of section 7 of No. 11 of 2016 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;
- (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 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
- (g) A representative of the academia nominated in consultation with the Commission for University Education.”

Propose an additional section after section 7 as below-

- (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.

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 (Subsequent section)

(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
- (k) A representative of the youth nominated in consultation with youth organizations/networks working on 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

Note: Qualifications of appointees and conditions for appointment in Section 7 (3-6) of the Parent Act shall apply.

The proposed new structure will be more effective in facilitating the implementation of the Climate Change Act.

The functions proposed fit the technical role that the Committee should undertake.

Committee's Observation/Recommendation

42. The proposal to remove the Cabinet Secretary for Energy from the Climate Change Council raises concerns as their participation is pivotal for a comprehensive and effective strategy to combat climate change. Being a significant contributor to greenhouse gas emissions, the energy sector is integral to realizing national climate objectives and fulfilling international commitments, such as those under the Paris Agreement.
43. With regard to the suggestion of establishing a Climate Change Technical Committee, it is important to note that the responsibilities outlined for this proposed committee mirror those already delineated under sections 6 and 9 of the Act, which pertain to the functions of the Council and the Climate Change Directorate, respectively.

New Clause

44. Amendment of section 25 of No. 11 of 2016

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

This is consistent with the provisions of the PFM Act, 2012.

Committee's Observation/Recommendation

45. The Climate Change Fund as established under section 25 of the Climate Change Act is consistent with the provisions of section 24 of the Public Finance Management Act.

B. COUNCIL OF GOVERNORS

In the memorandum, they proposed the following amendments to the Bill:

Clause 12- Section 23C(a)

46. Amend the Section 23C (2) (a) to: (a) enter into bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals subject to approval by the Council. This provision does not provide for a means to check the decision of the Cabinet Secretary to enter into such agreements despite being an important function. The CS's key decisions to formulate and review the climate change policy, strategy and the National Climate Change Action Plan are submitted to the Climate Change Council for approval. This decision should also be subject to the Council's approval.

Committee's Observation/Recommendation

47. The authority of the Cabinet Secretary to engage in bilateral or multilateral agreements with another State Party is inherently linked to the realms of foreign affairs, foreign policy, and international trade. These domains are designated as functions of the National Government under paragraph 1 of Part 1 of the Fourth Schedule to the Constitution, thereby negating the necessity for approval from the Council of County Governors in this context.

Clause 12 - Section 23E

48. Amend the Section 23E (5) (b) (i) & (ii) to: (b) the annual social contribution of the aggregate earnings of the previous year to the county government and the community, to be managed and disbursed equally for the benefit of the county government and the community; Provided that:

- i) in 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 earnings.

49. The provision should provide an explicit benefit sharing ratio between the national government, county government and the communities where the projects undertaken pursuant to the Act are based. The proposal is that the percentage meant to go to the community be split equally between the county government and the community. This

is in line with the mandate of county governments to coordinate the participation of communities in governance at the local level, develop their administrative capacity and their participation in governance at the local level.

Committee's Observation/Recommendation

50. Clause 23E (4) already mandates the involvement of the county government in overseeing and monitoring the negotiation of the community development agreement with project proponents and stakeholders. This ensures that the county government has an active role in the process and can influence the outcomes to ensure they are favourable for the community.

C. MR. SHADRACK AGAKI – CLIMATE CHANGE AND FOOD SYSTEM COMMUNICATION CONSULTANT

In the memorandum, they proposed the following amendments to the Bill:

Clause 12- Section 23E

51. New section immediately after section 7 of the Principal Act to be labelled 7A. ~~÷7A.~~
There is established in each County, County Climate Change Committee which shall consist of The Deputy Governor, The County Executive Officer in charge of Environment and Climate Change. The County Executive Officer in Charge of Trade, County Executive Officer in charge of Agriculture, County Executive Officer in charge of Education, Competent Representative of the Youth, Competent Representative from Civil society. The provision of social and environmental benefits in section 23E (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.

Committee's Observation/Recommendation

52. Section 19 of the Climate Change Act addresses the integration of climate change actions into the functions of County Governments. More specifically, subsection (4) allows a county government to enact legislation that further delineates the implementation of its obligations under the Act, or other climate change functions relevant to the county, or for other related purposes. Therefore, the suggested amendment might be more appropriately situated within county legislation.

New Clause

53. Include a mechanism that will address carbon market and trade issues at the county level.

Committee's Observation/Recommendation

54. There is no specific proposed amendment that has been provided.

D. ENVIRONMENT INSTITUTE OF KENYA

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

Clause 2

55. 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

56. The term 'professional body' is not referenced or utilized anywhere in either the Bill or the parent Act as such there is no need to define the term.

Clause 5(a) (iv)

57. Amend section 6(a) (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

58. The parent Act, in Section 7(1), stipulates that the Council shall comprise no more than nine members. The proposed amendment, which seeks to expand the membership of the Council, would contravene this existing provision of the Act. Further, the composition of the Council, as provided has already factored in players from the private sector.

New Clause

59. 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

60. The Act already prescribes comprehensive qualifications for the Director of the Climate Change Directorate, including the requirement of a postgraduate degree in environmental studies or other related fields as outlined in section 9(4) of the Act. The qualifications as currently prescribed are sufficiently robust to ensure that the Director has the requisite knowledge and expertise to effectively fulfil their role.

E. KENYA PRIVATE SECTOR ALLIANCE

In the memorandum, from KEPISA, they proposed the following amendments to the Bill-

Clause 2

61. Insertion of the following definition: Carbon offset- reduction or removal of carbon dioxide or other green gas houses in order to compensate for equivalent number of emissions made outside the host party jurisdiction. It is important to clearly define the boundaries and application of the parties involved in offset measures. Further, elsewhere can be anywhere and is subject to varied interpretations.

Committee's Observation/Recommendation

62. Carbon offset projects can be developed and implemented within the same jurisdiction where the emissions are generated. The term "elsewhere" in the definition is broad and flexible enough to include any location, whether it is within or outside the host party jurisdiction.

Clause 6 (a) (ii)

63. Proposing an amendment providing for 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 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.

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.

Committee's Observation/Recommendation

64. Section 7(3) and (5) of the Act already delineates the necessary qualifications for representatives from various sectors, including a requirement for expertise and experience in climate change, economy, finance, law, environment, and public administration. These sections mandate that such representatives possess a minimum of ten years' experience in their relevant field and fulfil the requirements of Chapter Six of the Constitution.

Clause 6 (a) (iii) - that proposes to amend Section 7(2)(g) of the Act

65. Proposing an amendment providing for a representative of civil society well versed with climate change affairs, nominated by the most representative Civil Society organization working on climate change. In the same justification as above, 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.

Committee's Observation/Recommendation

66. Section 7(3) and (5) of the Act already delineates the necessary qualifications for representatives from various sectors, including a requirement for expertise and experience in climate change, economy, finance, law, environment, and public administration. These sections mandate that such representatives possess a minimum of ten years' experience in their relevant field and fulfil the requirements of Chapter Six of the Constitution.

Clause 6 (a) (iii) - that proposes to amend Section 7(2)(h) of the Act

67. Proposing a new addition providing for the inclusion of the youth to be 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.

Committee's Observation/Recommendation

68. This has been provided for in the amendment Bill.

Clause 7

69. Proposal for an addition that 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.

Committee's Observation/Recommendation

70. Section 36(1) of the Act states that 'The Cabinet Secretary shall, in consultation with the Council, make regulations for the better carrying into effect of the provisions of this Act.' This section grants the Cabinet Secretary the overarching authority to create regulations for implementing any provisions of the Act. Therefore, this authority may also extend to any regulations concerning the Designated National Authority, once they are enacted.

Clause 12 – 23(C)(1)(d)

71. Proposal for the Insertion of (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.

Committee's Observation/Recommendation

72. This is already provided for in Clause 16 of the Bill, which proposes an amendment to Section 36 of the principal Act, by incorporating the regulation of carbon markets into the aspects for which the Cabinet Secretary may prescribe regulations.

Clause 12 – Section 23C(a)

73. Proposal for the provision that the cabinet secretary may (a) enter into bilateral or multilateral agreement with another state party to trade carbon for public land-based emission reductions and removals on public land and (b) with approval of the parliament, enter into agreement with private entity to offset carbon emissions (c) with the approval of approval of parliament enter into agreement to trade in an international carbon market established or overseen by an international carbon trading verification body.
74. The higher value carbon credits are those linked to the countries nationally determined contribution and internationally transferred mitigation outcomes, by having the cabinet secretary enter into bilateral or multilateral arrangements without national oversight such as approval of parliament and stakeholders' engagement, the cabinet secretary can easily mop out all the higher value credits thus locking out non state actors, private sector and communities from the carbon market. This is open to only having state led carbon markets in the country. The provision assigns approval of such country-to-country agreement to an unknown international entity. The provision to enter into ANY agreement to trade in a carbon market is also problematic. The government should limit itself to public land related carbon and not just ANY agreement. The proposal is that, at best, this provision is deleted all together.

Committee's Observation/Recommendation

75. The authority of the Cabinet Secretary to engage in bilateral or multilateral agreements with another State Party is inherently linked to the realms of foreign affairs, foreign policy, and international trade. These domains are designated as functions of the National Government under paragraph 1 of Part 1 of the Fourth Schedule to the Constitution, thereby negating the necessity for approval from the Council of County Governors in this context.

Clause 12 – Section 23E (3)

76. Proposal to Amend the Clause to read: Every community land-based project undertaken pursuant to this Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the projects and the public and community land where the project is under development. The cabinet secretary shall develop guidelines for development of community development agreement. Add the word "community land-based project" in order to make reference to projects implemented through community land. There

are land-based carbon projects undertaken on private land and it is important not to limit land-based project to community land only. The Natural Resources Benefit Sharing Bill establishes a word committee led by the Commission of revenue allocation to support develop the community development agreement.

77. It is important to protect the community with clear guidelines on who is responsible for development of these agreements and also require clear accountability to avoid exploitation or being taken advantage of seeing carbon trading is a complex for ordinary citizens.

Committee's Observation/Recommendation

78. Additionally, the newly proposed Clause 23E (9) empowers the Cabinet Secretary to prescribe additional requirements relating to the formulation of the community development agreement.

Clause 12 – Section 23E(4)

79. Proposal to amend the Clause to read “The Commission of Revenue Allocation and the county government”. The amendment should state the respective national government agency to be responsible to oversee the negotiation and development of the community agreement. Under The Natural Resources Benefit Sharing Bill, the Commission of Revenue Allocation is the national government entity responsible for preparation of benefit sharing agreement. The natural resources benefit sharing bill, also assigns this responsibility to county establishes a county committee to support this process, this bill can use such a committee or establish one for clarity of signatories.

Committee's Observation/Recommendation

80. The principal function of the Commission on Revenue Allocation as stipulated under Article 216(1) of the Constitution 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 among the county governments.

Clause 12 – Section 23E

81. Proposal to Option 1: 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). The allocation of benefit sharing percentages based on aggregates (gross income) as opposed to gains or profits means the communities are

elevated to be shareholders who own 40% or over 25% of the investments. This will also mean that the entities will account for overheads, project costs and taxes after forwarding a percentage of the aggregate earnings to the communities. This is unsustainable for any investment. Every carbon project has different financial structures and for this amendment, they propose removal of specific percentages from legislation. Further, they 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 commission or revenue allocation as is precedence under the natural resource's benefit sharing bill to ensure that communities get their proceeds in a timely manner and not be subject to government budgeting and procurement processes.

(i) In land-based projects, the contribution shall be 40% of net earnings or gains which shall be administered through the commission of revenue allocation as follows:

- 25% to local community
- 10% to the local community projects
- 5% to ploughed back for research, education and awareness on carbon markets and product development.

(ii) In non-land-based projects, the contribution shall at least be 25% of the net earnings or gains which shall be administered through the Commission of Revenue Allocation as follows:

- 15 % to the local community projects
- 5% to ploughed back for research, education and awareness on carbon markets technologies development.
- 5% Climate Change Fund

82. Globally best practice and as per the benefit sharing provisions under the Petroleum Act, the mining Act, the energy (geothermal) act and for natural resources benefit sharing bill, the benefit sharing is on the profits or gains and not the aggregate earnings. Secondly the percentages of the profits or gains are allocated to national government at 75%, the county government at (20%) and the community at 5% under the Petroleum Act, Mining Act is 70% and 20% and 10% to the community, Energy Act- Geothermal the percentages are 75%, 20% and 5% to the county. The natural resources benefit sharing bill, allocates 20% to sovereign fund, of the remaining 80% - 60 % is allocated to national government and 40% to county government. The

county government allocation is further allocated as 40% to local community and 60% to the whole county. To align with natural resources benefit sharing bill for nature based and land-based percentages. To ensure product development especially of carbon designed products, it is important that proceeds support research and awareness of carbon markets and further enhance technological development for emission reduction measures.

Committee's Observation/Recommendation

83. The principal function of the Commission on Revenue Allocation as stipulated under Article 216(1) of the Constitution 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 among the county governments. Moreover, it is important to note that the Natural Resources Benefit Sharing Bill is still a proposed piece of legislation that has not yet been enacted into law and therefore cannot be relied upon.

New Clause

84. The Principal Act, 2016 be amended in section 5 (2) by replacing with: (2) The Council shall be chaired by the Cabinet Secretary for the time being responsible for environment and climate change affairs. Due to practical considerations, the President's should receive reports of the council through the Cabinet Secretary and the Cabinet which he chairs. A more feasible approach is to have the Cabinet Secretary assuming the role of chairperson. The council should be answerable to the President through the Cabinet Secretary. The functions of the council are pretty operational in relation to the national duties such provide policy direction on climate change, administration of the climate fund, coordination of national and county governments in climate change among others. This function such as harmonization of sectorial laws, are best undertaken through the Minister and the cabinet and status reported to the President. It is the provision for President to chair a non -cabinet meeting that has drawn the court cases since 2016 and the council has never functioned since. It's important to correct this arrangement so the council can operate.

Committee's Observation/Recommendation

85. The President chairs the Climate Change Council, because climate change is a high-priority issue that affects all aspects of a nation's wellbeing – from its economy to its security, health, and environment.

New Clause

86. Delete sub-sections 5 (2), (3), (4), (5) Due to practical considerations, the limitations of the functions of the national council duties to very sector-based functions, as such the President's schedule may the operationalization of the council. A more feasible approach could involve the Cabinet Secretary assuming the role of Chairperson.

Committee's Observation/Recommendation

87. Having the President as the chair underscores the importance of climate change at the highest level of government and ensures that the Council's decisions are made with the full authority and support of the nation's leader. Having the Presidency chair the Climate Change Council signals the highest level of commitment of the government to address climate change which can be particularly important for international credibility.

New Clause

88. Insert new amendment to section 7 (13) The Council can discharge its duties if more than three quarters of the members are duly appointed. This is to enable the Council to proceed to undertake its operations with three quarter of its membership and not to forestall its operationalization as has been witnessed in the last seven years. It beats purpose to vet and approve for appointment persons to the Council and not have them discharge any function of the council due to issues or course case arising from nomination and appointment of a single one member.

Committee's Observation/Recommendation

89. Section 36 of the Act authorizes the Cabinet Secretary to establish regulations governing the Council's operations, which can include specifying the quorum required for Council meetings.

New Clause

90. Proposed amendment of section 25(8) of the Act to insert (d) Promotion of awareness and education on carbon markets and enhancement of data tracking capabilities of carbon market actors. Incorporating provisions to increase awareness among businesses about carbon markets, with a particular emphasis on enhancing investments in this sector, especially for SMEs, holds significant importance. This goes beyond mere research, aiming to encourage businesses to actively engage in

carbon trading. Moreover, the integration of data tracking mechanisms is essential for ensuring efficient monitoring and management.

Committee's Observation/Recommendation

91. The fostering of public awareness, not only concerning carbon trading but also regarding all aspects of climate change, is addressed in multiple sections of the Climate Change Act. These include section 3(2)(h) [objectives of the Act], section 6(d) [functions of the Council], section 13(3)(g) [National Climate Change Action Plan], and section 24(1) [public participation], among others.

F. BURN MANUFACTURING COMPANY

In the memorandum, they proposed the following amendments to the Bill:

Clause 5(a)(iv)

92. Include representation from local carbon project developers like BURN manufacturing in the Council. To ensure that the Council is well-informed about the challenges and opportunities faced by local carbon project developers, it is important to have representation from these sectors. This can lead to better policy guidance and direction for the carbon market. Environment Institute of Kenya boast of a membership from diverse environmental profession and serving in all stated Ministries.

Committee's Observation/Recommendation

93. The composition of the Council, as provided has already factored in players from the private sector.

Clause 12 - 23B(a)

94. Here it would be useful to know what the prescribed carbon standards are, or what the standard eligibility will be. They would recommend those standards which are most prevalent in Kenya – for instance Verra and Gold Standard. This would take advantage of the opportunity provided by Kenya's existing projects and avoid the costs associated with creating new standards.

Committee's Observation/Recommendation

95. This proposal does not provide a specific amendment. Further the term 'carbon standards' has been provided for under clause 2 of the amendment Bill.

Clause 12 – 23C(2)

96. The 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. This will protect local manufacturers from business interruptions. Strategic stakeholders, particularly those operating at scale and manufacturing locally in Kenya, need reassurance that their projects will be able to secure Corresponding Adjustments in future. Lack of clarity and a potentially long wait until a framework is in place, is making it harder to attract investment, ensure business continuity, and mitigate risk.

Committee's Observation/Recommendation

97. There is no specific proposed amendment that has been provided.

Clause 12 – 23D(1)

98. Clarify that projects which were not included in the second schedule of the EMCA 1999 should not be required to complete an EIA assessment. To reduce the burden on project developers when establishing a project.

Committee's Observation/Recommendation

99. This proposal does not provide a specific amendment.

Clause 12 – 23E(1)

100. Review (or remove) the annual social contribution percentage to the community. Clarify the definition of “aggregate earnings” and include other financial benefits to the community over the lifetime of the project. Ensure disbursement of community benefit funds is managed by the project developer and local community representatives, and not by central or county government. While the proposed 25% - 40% annual social contribution to the community is a positive step, it may be necessary to review this percentage to ensure Kenya remains competitive and continues to attract international investment. Balancing community benefits with business viability is crucial. We are concerned that the proposed percentages may be perceived by foreign investors as an imposition of taxes, potentially stifling investment in Kenya. It may help to apply community benefit provisions differently to different project types. For example, cook stove projects have high operating costs - of manufacture, distribution, and ongoing project monitoring. Unlike forestry and

land use projects, there is no clearly defined geographic “community.” Considering this, we propose two potential pathways forward:

- i. **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 cook stove 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.
- ii. **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 cook stove, 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.

Committee’s Observation/Recommendation

101. Removing the specified percentages from the amendment Bill and adopting a data-driven approach may lead to uncertainties and create an unpredictable regulatory environment. Article 69 of the Constitution bestows upon the State the responsibility to ensure the sustainable exploitation, utilisation, management, and conservation of the environment, to ensure the equitable sharing of the accruing benefits, and to utilise the environment and natural resources for the benefit of the people of Kenya. This constitutional mandate underscores the importance of having a clear and predictable framework for sharing benefits with the community, which the current amendment Bill provides.

Clause 12 – Section 23E (2a &e)

102. Clarity – how does Kenya intend on using the VCM towards achieving national climate targets. Will there be limits on corresponding adjustments for instance? Will there be fees associated with corresponding adjustments? This decision could impact international demand for credits generated by projects in Kenya if companies’

purchased credits cannot be used to make their own claims. The uncertainty may also dissuade carbon market project developers from instigating projects.

Committee's Observation/Recommendation

103. The concern raised does not align with the proposed amendment. The proposed amendment appears to contradict itself by seeking to restrict land-based projects to community land only, while the justification provided acknowledges the existence of land-based carbon projects on private land and emphasizes the importance of not limiting such projects to community land only. The current draft of the Clause does not restrict the community benefits from carbon trading projects to community land, thus addressing the concern raised in the justification.

Clause 12 – Section 23E (5)(d)

104. Recognise and track existing community benefits provided by carbon projects. Please note that Kenyan carbon projects like BURN are already using carbon revenues to generate community benefits at scale. Since 2013, we have distributed 800,000 clean cook stoves 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). In the last two years alone, we have raised \$10M in international carbon finance to support stove subsidies for low-income families in Kenya.

Committee's Observation/Recommendation

105. This proposal/concern raised does not provide a specific amendment and has been addressed under the proposal to amend Clause 12 – 23E(1).

Clause 12 – Section 23G

106. Align the National Carbon Registry to existing carbon registries (e.g., Gold Standard/Verra) to facilitate cross-comparison. Implement transparent and user-friendly mechanisms for businesses like BURN Manufacturing to access the National Carbon Registry. Easy access to a well-structured National Carbon Registry that is comparable to existing registries can help businesses track their carbon credit projects and keep up to date with relevant information. A transparent and user-friendly registry promotes a better understanding of the carbon market and encourages more active business participation.

Committee's Observation/Recommendation



107. This proposal does not provide a specific amendment.

G. CONSERVATION INTERNATIONAL

Clause 2

108. Define “aggregate earnings” to exclude “taxes, royalties, and fees, or payments to government.” The definition would thus read: “aggregate earnings means the total of all income in a carbon project after deductions for taxes, fees, royalties, and payments to government, but without adjustment for inflation or types of double counting.” In the alternative, revert the minimum annual social contribution to twenty-five percent (25%) for land-based projects, as originally drafted. Clause 23(E)(5) states that land-based projects should provide an annual social contribution of at least forty percent (40%) of the “aggregate earnings of the previous year to the community.” This is an increase of fifteen (15%) from the prior draft, which represents an arbitrary distinction between land-based and other projects. In principle, CI is supportive that a majority of net revenue goes to local communities. In fact, CI requires this for all CI-supported carbon projects. As drafted however, “aggregate earnings” means “the total of all income in a carbon project without adjustment for inflation, taxation or types of double counting.” See Clause 2. This is problematic, because it fails to account for certain fixed costs, such as taxes, royalties, fees, or payments to government. For example, carbon credit registries (e.g. Verra) which issue and hold carbon credits, can charge various fees to operate a project, including a US\$0.27 issuance fee for each carbon credit sold. Most carbon projects are marginally “profitable” at best or rely on donor or charitable funding. If a project proponent was unable to deduct these taxes, royalties, or fees from the definition of “aggregate earnings,” a project could become financially unviable and interest in investing in projects could drop. This is particularly true if Kenya enacts a future tax on carbon revenue. In such a scenario, a project proponent might pay 20% in taxes, 5% in fees, and 40% to communities, leaving only 35% of revenue to cover project start-up and operational costs, legal expenses, marketing costs, salaries, among other costs. Faced with this prospect, many projects may cease to exist, and investors would likely move to other jurisdictions.

Committee’s Observation/Recommendation

109. The proposed definition of ‘aggregate earnings’ in the amendment Bill is firmly grounded in the State’s constitutional obligations under Article 69 of the Constitution to ensure the sustainable exploitation, utilization, management, and conservation of

the environment and natural resources, and to ensure the equitable sharing of accruing benefits. This includes the obligation to protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities, and most importantly, to utilize the environment and natural resources for the benefit of the people of Kenya. Given this foundation, the definition provided in the Bill guarantees that the community receives maximum and un-manipulated benefits. It also offers a transparent method for calculating the community's share without delving into the intricacies of financial accounting, which can vary significantly from one project to another.

Clause 2

110. Modify the definition of “Reduced Emissions from Deforestation and Forest Degradation” to include “nested projects in line with Kenya’s REDD+ nesting framework.” The definition would read: “Reduced Emissions from Deforestation and Forest Degradation 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, including nested projects in line with Kenya’s REDD+ nesting framework.” At present, the vast majority of REDD+ projects in Kenya are site level projects without affiliation to national or subnational programs. Kenya has been working to adopt a nested REDD+ framework incorporating these projects into its national REDD+ program in line with evolving international market requirements and CI has been supporting the development of this framework. However, as drafted, the definition of “Reduced Emissions from Deforestation and Forest Degradation” (REDD+) does not make clear that nested REDD+ projects will be included under the amended Climate Change Bill. By not specifying that nested projects will be part of REDD+, the Bill would exclude many of Kenya’s current projects and potential future projects that will be developed under the new nesting framework. We recommend specifying that nested projects are part of the REDD+ definition and investing in supporting the transition of current projects to a nesting framework.

Committee’s Observation/Recommendation

111. The definition of REDD+ as provided in the amendment Bill is broad and inclusive, encompassing all activities at the national and subnational levels that contribute to the reduction of greenhouse gas emissions from deforestation and forest

degradation. This implicitly includes all nested projects developed under Kenya's REDD+ nesting framework.

Clause 12-23E (4)

112. Modify Clause 23(E)(4) to delete “oversee” to avoid confusion suggesting government control over the contracting process. It would thus read: “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. They recognize and support the need to protect local communities’ rights through the legal system. These needs also should be balanced with the need to give project proponents and stakeholders clarity in what they can expect when negotiating a contract and executing a project. Unfortunately, the current Bill increases regulation and presents an opportunity for interference by county and national government with respect to contracts between private parties and project operations. Clause 23(E)(4) provides that “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. The language is very broad, creating uncertainty about the role of the government in contract negotiation and execution. These provisions taken together could give the impression that (a) County and National Governments could intervene in private negotiations, (b) that they may unjustifiably insert themselves as parties to agreements themselves, and (c) that they bring enforcement actions with or without cause. These interventions could disincentivise project proponents. It has already occurred that county governments have sought to invalidate existing carbon contracts between private parties, where they have no legal authority to do so. Such efforts undermine the confidence of carbon credit buyers, the value of carbon credits, create unnecessary confusion, and ultimately deprive local communities of revenue. We respectfully suggest that a single government entity could act as an ombudsman looking out for and advocating for a communities’ best interest to ensure they are not taken advantage of.

Committee’s Observation/Recommendation

113. The role of the National Government and the respective County Government to oversee and monitor the negotiation of the community development agreements is anchored on Article 69 of the Constitution and paragraph 14 of Part 2 of the Fourth Schedule to the Constitution.

Clause 12-23E (5)(a)

114. Modify 23(E)(5)(a) to read: “a list of stakeholders of the project: including project proponents, the impacted communities, and to the extent the project is on public land, the National Government and the county government where the project is being undertaken, respectively.” Clause 23(E)(5)(a) requires community development agreements to provide “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.” The language is very broad, creating uncertainty about the role of the government in contract negotiation and execution. These provisions taken together could give the impression that (a) County and National Governments could intervene in private negotiations, (b) that they may unjustifiably insert themselves as parties to agreements themselves, and (c) that they bring enforcement actions with or without cause. These interventions could disincentivise project proponents. It has already occurred that county governments have sought to invalidate existing carbon contracts between private parties, where they have no legal authority to do so. Such efforts undermine the confidence of carbon credit buyers, the value of carbon credits, create unnecessary confusion, and ultimately deprive local communities of revenue. We respectfully suggest that a single government entity could act as an ombudsman looking out for and advocating for a communities’ best interest to ensure they are not taken advantage of. Further, to avoid this undue interference, governments should only be considered “stakeholders” if the project occurs on public land, as opposed to private land.

Committee’s Observation/Recommendation

115. This proposal aims to restrict the necessity of a community development project to outline the stakeholders involved - including the project proponents, affected communities, National Government, and County Government where the project is located - solely to instances where the project is on public land, thereby excluding non-land-based projects.

Clause 23E(8)

116. "The national government and the respective county government where the project is situated may enforce the community rights negotiated under a community development agreement negotiated under section 23E, in the event local communities are unable to do so on their own and where there is probable cause of a material breach to the detriment of local communities." Modify 23(E)(8) to clarify the reasons

for government enforcement action, making clear such intervention is permissive and to support communities incapable of protecting their own interests:

Committee's Observation/Recommendation

117. The State has a constitutional duty under Article 69 of the Constitution to ensure the utilization of the environment and natural resources for the benefit of the people of Kenya, and this responsibility cannot be made conditional or contingent on other factors.

Clause 12 – 23H

118. Modify 23(H)(1) to delete “and be resolved within thirty days from the date the dispute is lodged.” Modify 23(H)(3) to provide “Where the dispute resolution proceedings under subsections (1) and (2) have not commenced within 60 days of filing, the dispute shall be referred to the National Environmental Tribunal.” We find the dispute resolution clauses in Clause 23H to provide insufficient time (only 30 days) to resolve disputes, nonetheless give accused parties notice and an opportunity to respond to any allegations. Parties should be able to take full advantage of existing dispute resolution procedures before they are automatically referred to the National Environmental Tribunal.

Committee's Observation/Recommendation

119. The stipulation for disputes to be resolved within thirty days of being lodged encourages prompt resolution by parties using the dispute resolution mechanism outlined in the community development agreement. Although the current 30-day window may be limiting, extending this period to 60 days could inadvertently delay dispute resolution, subsequently impacting all parties negatively.

Clause 15

120. The Bill contains no language with respect to existing projects. It should define a reasonable period of time (e.g., two years from the date implementing regulations are enacted) by which existing carbon projects are expected to comply with the law.

Committee's Observation/Recommendation

121. The clause indicates that several sections of the Act will not be applicable to entities with ongoing carbon projects for a period of one year. The commencement date of the amendment Bill, if enacted into law, is dictated by Article 116 of the Constitution, meaning the one-year period would commence from that date.

H. NAIROBI CLIMATE NETWORK

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

Clause 2

122. Definitions need streamlining and discussion. E.g. the definition of an ITMO should not be restricted to UNFCCC methodologies, as many countries are already planning to make ITMOs based on projects using the Gold Standard. If we are not careful the legislation will rule out opportunities unintentionally.

Committee's Observation/Recommendation

123. There is no specific proposal for the amendment.

Clause 23A(c)

124. Replace "Whitelist" with "Kenya Carbon Standards List". This means that Kenya can adopt the best standards that have been developed internationally over the last 20 years and allow them to "qualify" to work in Kenya, rather than try to reinvent the wheel. The current "white list" is prescriptive and could prevent certain mitigation activities from occurring.

Committee's Observation/Recommendation

125. The definition as provided in the Bill is sufficient.

Clause 23B(c)

126. Add to end of clause '...as prescribed by the relevant carbon standards; and...' 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.

Committee's Observation/Recommendation

127. This has already been provided for in the Bill.

Clause 12- Section 23E

128. The annual social contribution of the previous year to the community. Delete (5) (b) (i) and (ii). 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 disincentive 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.

Committee's Observation/Recommendation

129. The provisions of the Bill regarding community development agreements and the proposed revenue formula are designed to ensure transparency and protect local communities from exploitation, while also ensuring they benefit from carbon projects.

Clause 23F

130. Proposed deletion. The justification was that direct involvement of National and county governments with regards to proceeds will discourage and stifle foreign investment into carbon credit projects in Kenya.

Committee's Observation/Recommendation

131. It is essential for national and county governments to be actively involved in the carbon credit projects to ensure compliance with international obligations. This is not just about financial proceeds but also about maintaining a global standard for environmental conservation. Having the government involved in the share of proceeds and cancellation rates ensures that there is an additional level of oversight and accountability.

I. TAMUWA LIMITED

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

Clause 23A(c)

132. 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

133. The definition provided in the Bill is sufficient and it is important for the country to uphold international standards on carbon trading in line with the Paris Agreement.

Clause 23A(2)

134. Add to end of clause ‘...from time to time.’ 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.

Committee’s Observation/Recommendation

135. This has already been catered for under the definition of ‘carbon standards’.

Clause 23B(c)

136. add to end of clause ‘...as prescribed by the relevant carbon standards; and...’ 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

137. This has already been provided for in the Bill.

Clause 12 – 23E(3)

138. 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.’ 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.

Committee’s Observation/Recommendation

139. The provisions of the Bill regarding community development agreements and the proposed revenue formula are designed to ensure transparency and protect local communities from exploitation, while also ensuring they benefit from carbon projects.

Clause 12 - 23E (4)

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

Committee's Observation/Recommendation

141. The provisions of the Bill regarding community development agreements and the proposed revenue formula are designed to ensure transparency and protect local communities from exploitation, while also ensuring they benefit from carbon projects.

Clause 23E (5)

142. rewrite to read as follows: 'Projects shall report on the following:' As per the above point , 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.

Committee's Observation/Recommendation

143. The provisions of the Bill are sufficient.

Clause 12- Section 23E ; (5) (f); 8; 9; 23F

144. 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; Clause 23E (5)(f): DELETE; Clause 23E (8): DELETE; Clause 23E (9): DELETE; Clause 23F: DELETE

145. 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 exist in several jurisdictions in SSA.

Committee's Observation/Recommendation

146. The provisions of the Bill regarding community development agreements and the proposed revenue formula are designed to ensure transparency and protect local communities from exploitation, while also ensuring they benefit from carbon projects.

J. KENYA WILDLIFE CONSERVANCY ASSOCIATION

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

Clause 23B

147. Insert the following new principles –

- (a) Eligible mitigation projects for international transfer shall demonstrate 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
- (g) Advance the conservation of the Country's biodiversity and environment agenda towards enhancing adaptation capacities.

The Senate Bill changed the topic of Section 23 from “principles governing trade in carbon markets” to just “trade in carbon markets” There is however need for the Bill to stipulate the principles that will be guiding standards for Kenya's carbon market.

Committee's Observation/Recommendation

148. The principles have already been provided for in the proposed new section 23B and the same would further be provided for in the regulations to be made by the Cabinet Secretary.

Clause 23E(2)(b)

149. tax incentives for development of carbon 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.

Committee's Observation/Recommendation

150. The term ‘incentives’ may include tax incentives and is therefore sufficient.

Clause 12 - 23E (4)

151. 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. 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.

Committee's Observation/Recommendation

152. The provisions of the Bill regarding community development agreements and the proposed revenue formula are designed to ensure transparency and protect local communities from exploitation, while also ensuring they benefit from carbon projects.

K. IMPERATIVE GLOBAL SOLUTIONS PTE. LTD

In their memorandum, they proposed the following amendment to the Bill:

Clause 12- Section 23E

153. "Provided that - (i) for land-based projects, the contribution shall constitute no less than forty percent of the cumulative earnings; and (ii) for non-land-based projects, the contribution shall constitute no less than twenty-five percent."

These cumulative earnings encapsulate the entire income within a carbon project. It is my belief that a more precise definition of "income" is necessary to obviate ambiguity. The distinction between the value of carbon credit sales and net profit requires clarification. Moreover, I suggest that this definition should encompass the direct advantages of projects (such as provision of free cookstoves or trees, and direct employment opportunities) and the due share for initial capital providers, who bear substantial investment risks. While the proposed provision may harmonize with REDD+ projects, my apprehension is that it might render numerous other project categories, including Afforestation, Reforestation, Revegetation (ARR), cookstove, water distribution, and mangrove endeavors, economically inviable due to the various stakeholders that should be rewarded, and the already long term returns on investment. I know that for Imperative, imposition of a flat forty percent top-line "cumulative earnings" share will render our project in Kenya economically unviable.

We are not alone, and our fear is that, as proposed, the Bill is likely to stifle foreign direct investment and prompt capital providers to explore more affordable markets abroad. Therefore, I would humbly suggest a differential percentage allotment based on project type, grounded in net profit calculations and taking into account a wholistic assessment of the various benefits (monetary and non-monetary) that flow from these projects. Recognizing that this might necessitate further assessment of diverse business models, I advocate for mandatory disclosures encompassing all projects. These disclosures would elucidate the composition of stakeholders and delineate the contours of benefit sharing, encompassing non-monetary advantages that frequently carry augmented value for communities. With greater transparency, I believe local communities will also highly benefit from carbon projects..

Committee's Observation/Recommendation

154. There is no specific amendment that has been proposed.

L. KENYA ASSOCIATION OF MANUFACTURERS (KAM)

In the memorandum, they proposed the following amendments to the Bill:

New Clause

155. Amendment of section 24(3) of the Climate Change Act to include a timeline of one year requirement for the development of the Regulations on design and procedure to read as follows: Section 24 (3) 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.” The Climate Change Act came into force on 27th May 2016. To date the regulations have not been enacted. 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.

Committee's Observation/Recommendation

156. Clause 13 of the Bill seeks to amend this section by deleting subsection (3).

157. Further, on the remainder of Memoranda from the Kenya Association of Manufacturers (KAM) is addressed to the Clerk of the National Assembly and part of the memoranda (No. 1 -5) is referring to the version of the Bill before passage by the National Assembly and not the Bill as passed by the National Assembly and transmitted to the Senate.

CHAPTER THREE

3.1 COMMITTEE OBSERVATIONS

The Committee made the following observations in line with its consideration of the Bill and that enacting the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) into law will bring several benefits to the country, including-

1. Providing an effective legal framework for carbon trading in the country;
2. Providing an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;
3. Realisation that once enacted the Bill will-
 - a. regulate carbon markets;
 - b. align the country with international commitments;
 - c. enable the country engage with a broader range of stakeholders; and
 - d. support Kenya's emissions reduction goals.

CHAPTER FOUR

COMMITTEE RECOMMENDATIONS

The Committee having reviewed the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) and conducted Public Participation recommends that the House approves the Bill without amendments and in its current form.

APPENDICES

- Annex I:** Minutes of the meetings
- Annex II:** Newspaper Advert
- Annex III:** Stakeholder Submissions/ Public Views



MINUTES OF THE THIRTY FIFTH (35TH) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 31ST AUGUST, 2023 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 9:00 AM

PRESENT

- | | |
|--|---------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 4. Sen. Wamatinga Wahome, MP | - Member |
| 5. Sen. Agnes Kavindu Muthama, MP | - Member |
| 6. Sen. Mariam Sheikh Omar, MP | - Member |
| 7. Sen. Beatrice Akinyi Ogola, MP | - Member |
| 8. Sen. Issa Juma Boy, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|--------------------|
| 1. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice Chairperson |
|--|--------------------|

SECRETARIAT

- | | |
|-----------------------|-------------------------------|
| 1. Mr. Victor Bett | - Clerk Assistant II |
| 2. Ms. Ivy Nyambura | - Clerk Assistant III |
| 3. Ms. Angela Kagunyi | - Legal Counsel I |
| 4. Mr. Jack Lemeteki | - Media Relations Officer III |
| 5. Ms. Shirley Milimu | - Audio Officer III |

MINUTE SEN/LENR/204/2023:

PRELIMINARIES

The Chair called the meeting to order at 9.00 am. This was followed by a word of prayer.

MINUTE SEN/LENR/205/2023:**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Beatrice Ogola, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the following sittings;
 - a) *Minutes of the 32nd sitting held on 30th August, 2023;*
 - b) *Minutes of the 33rd sitting held on 30th August, 2023; and*
 - c) *Minutes of the 34rd sitting held on 31st August, 2023.*
4. Matters arising;
5. **Adoption of the Committee Report on the Climate Change (Amendment) Bill, 2023 (National Assembly Bill No.42 of 2023);**
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/206/2023:**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

1. The Committee confirmed the Minutes of the Thirty Second (32nd) meeting held on 30th August, 2023 after having been proposed by Sen. Johnes Mwaruma, MP and seconded and Sen. Beatrice Ogola, MP respectively.
2. The Committee confirmed the Minutes of the Thirty third (33rd) meeting held on 30th August, 2023 after having been proposed and seconded by Sen. Beatrice Ogola, MP and Sen. Johnes Mwaruma, MP respectively.
3. The Committee confirmed the Minutes of the Thirty fourth (34th) meeting held on 31st August, 2023 after having been proposed and seconded by Sen. Wamatinga Wahome, MP and Sen. Mariam Sheikh Omar, MP respectively.

MINUTE SEN/LENR/207/2023:**MATTERS ARISING**

There were no matters arising.

MINUTE SEN/LENR/208/2023:**ADOPTION OF THE COMMITTEE REPORT ON THE CLIMATE CHANGE (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO.42 OF 2023)**

The Committee made the following observations in line with its consideration of the Bill and that enacting the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) into law would bring several benefits to the country, including:

- i. Providing an effective legal framework for carbon trading in the country;
- ii. Providing an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;
- iii. Realization that once enacted the Bill will;
 - a. regulate carbon markets;
 - b. align the country with international commitments;
 - c. enable the country engage with a broader range of stakeholders; and
 - d. support Kenya's emissions reduction goals.

The Committee having reviewed the Climate Change (Amendment) Bill (*National Assembly Bill No. 42 of 2023*) and conducted Public Participation thus recommended that the House approves the Bill without amendments and in its current form.

The Committee adopted the report having been proposed and seconded by Sen. Wahome Wamatinga, MP and Sen. Maria Sheikh, MP respectively.

MINUTE SEN/LENR/209/2023

ANY OTHER BUSINESS

There was no other Business.

MINUTE SEN/LENR/210/2023

**ADJOURNMENT AND DATE OF
NEXT MEETING**

The meeting was adjourned at 9:24 am. The date of the next meeting was to be called on notice.

Signed  _____

Date 21/08/2023 .

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES



MINUTES OF THE THIRTY FOURTH (34TH) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 31ST AUGUST, 2023 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 8:30 AM

PRESENT

- | | |
|--|---------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 4. Sen. Wamatinga Wahome, MP | - Member |
| 5. Sen. Issa Juma Boy, MP | - Member |
| 6. Sen. Agnes Kavindu Muthama, MP | - Member |
| 7. Sen. Mariam Sheikh Omar, MP | - Member |
| 8. Sen. Beatrice Akinyi Ogola, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|--------------------|
| 1. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice Chairperson |
|--|--------------------|

SECRETARIAT

- | | |
|-----------------------|-------------------------------|
| 1. Mr. Victor Bett | - Clerk Assistant II |
| 2. Ms. Ivy Nyambura | - Clerk Assistant III |
| 3. Ms. Angela Kagunyi | - Legal Counsel I |
| 4. Mr. Jack Lemeteki | - Media Relations Officer III |
| 5. Ms. Shirley Milimu | - Audio Officer III |

MINUTE SEN/LENR/199/2023

PRELIMINARIES

The Chair called the meeting to order at 8:30 am. This was followed by a word of prayer.

MINUTE SEN/LENR/200/2023**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Beatrice Ogola, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. **Consideration of the Public Participation Matrix on the Climate Change (Amendment) Bill, 2023 (National Assembly Bill No.42 of 2023);**
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/201/2023:**CONSIDERATION OF THE PUBLIC PARTICIPATION MATRIX ON THE CLIMATE CHANGE (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO.42 OF 2023)**

The Secretariat took the Committee through the draft committee report highlighting submissions on proposed amendments and proposals 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. Nairobi Climate Network;
- vi. The Council of Governors;
- vii. BURN Manufacturing Company;
- viii. Imperative Global Solutions Pte. Ltd;
- ix. TAMUWA Limited;
- x. Environment Institute of Kenya;
- xi. Mr. Shadrack Agaki – Climate Change And Food System Communication Consultant;
- xii. Conservation International; and
- xiii. Ministry of Environment, Climate Change and Forestry.

MINUTE SEN/LENR/202/2023**ANY OTHER BUSINESS**

There was no other business discussed.

MINUTE SEN/LENR/203/2023

**ADJOURNMENT AND DATE OF
NEXT MEETING**

The meeting was adjourned at 9:00 am. The date of the next meeting was to be called on notice.

Signed 

Date 31/08/2023

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES



MINUTES OF THE THIRTY THIRD (33RD) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 30TH AUGUST, 2023 AT THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | |
|--|---------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 4. Sen. Agnes Kavindu Muthama, MP | - Member |
| 5. Sen. Wamatinga Wahome, MP | - Member |
| 6. Sen. Issa Juma Boy, MP | - Member |
| 7. Sen. Mariam Sheikh Omar, MP | - Member |
| 8. Sen. Beatrice Akinyi Ogola, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|--------------------|
| 1. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice Chairperson |
|--|--------------------|

STAKEHOLDERS

- | | |
|---|--|
| 1. Hon. Soipan Tuyu, MP
and Forestry | - Cabinet Secretary, Ministry of Environment, Climate Change |
| 2. Eng. Festus Ng'eno
Climate Change | - Principal Secretary, State Department of Environment and |

SECRETARIAT

- | | |
|-----------------------|--------------------------|
| 1. Mr. Victor Bett | -Clerk Assistant I |
| 2. Ms. Ivy Nyambura | -Clerk Assistant III |
| 3. Ms. Angela Kagunyi | -Legal Counsel |
| 4. Mr. Jack Lemeteki | -Media Relations Officer |
| 5. Mr. Shirley Milimu | -Audio Officer |
| 6. Mr. Ibrahim Odindo | -Sergeant-At-Arms |

MINUTE SEN/LENR/194/2023

PRELIMINARIES

The meeting was called to order at 10.00 am followed by a word of prayer.

MINUTE SEN/LENR/195/2023

ADOPTION OF AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Beatrice Akinyi Ogola, MP and seconded by Sen. Wamatinga Wahome, MP as follows-

1. Prayer;
2. Adoption of the Agenda;

3. **Meeting with the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry on the receipt of memoranda on the Climate Change (Amendment) Bill, 2023 (National Assembly Bills No. 42 of 2023);**
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/196/2023 MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY ON THE RECEIPT OF MEMORANDA ON THE CLIMATE CHANGE (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 42 OF 2023)

The Cabinet Secretary, Ministry of Environment, Climate Change and Forestry gave a presentation on why there is need to amend the Climate Change Act and the various gaps the proposed Bill was going to fill once enacted including inclusion of Carbon Trading.

Further, she went on to inform the Committee of the nexus between the proposed law and the upcoming Africa Climate Summit to be held between 4th to 8th August, 2023 whose aim is to address the increasing exposure to climate change and its associated costs, both globally and locally.

Additionally, the Cabinet Secretary assured the Committee that the Ministry had undertaken rigorous public participation to ensure they captured views from all the key stakeholders before embarking on their proposed amendments which would ideally form the framework. The regulations and guidelines would be looked into after.

The Committee resolved to continuously engage the Ministry on matters Carbon Trading and to enlighten members and enable them to organize civic education sessions on demystifying the matter of carbon credits to the general public.

MINUTE SEN/LENR/197/2023 ANY OTHER BUSINESS

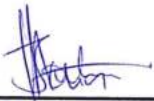
1. On concluding the meeting the Committee resolved to have a retreat with the Ministry of Environment, Climate Change and Forestry after the Africa Climate Summit in order to deliberate further on matters climate change and the environment including a session on Carbon Trading; and
2. The Cabinet Secretary, Ministry of Environment, Climate Change and Forestry informed the Committee that due to the Africa Climate Summit week that would be happening from 4th - 8th August, 2023, she would be unavailable to attend the meeting scheduled by the Committee on 7th August, 2023 and thus requested for a later date. The Committee acceded to the request and requested the Ministry to submit written submissions on the Petitions, Messages and Statements requested and should they be satisfactory the Committee will consider the submissions and prepare its Report. Should they be unsatisfactory then the Committee will proceed and invite the Cabinet Secretary to appear in person and respond.

The Committee acceded to the request and requested the Ministry to submit written submissions on the Petitions, Messages and Statements requested and should they be satisfactory the Committee will consider the submissions and prepare its Report. Should they be unsatisfactory then the Committee will proceed and invite the Cabinet Secretary to appear in person and respond.

MINUTE SEN/LENR/198/2023

ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 11.15 am. The next meeting was to be called on notice.

Signed 

Date 31/08/2023

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES



MINUTES OF THE THIRTY SECOND (32ND) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 30TH AUGUST, 2023 AT THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS AT 9:00 AM

PRESENT

- | | |
|--|---------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 4. Sen. Agnes Kavindu Muthama, MP | - Member |
| 5. Sen. Wamatinga Wahome, MP | - Member |
| 6. Sen. Issa Juma Boy, MP | - Member |
| 7. Sen. Mariam Sheikh Omar, MP | - Member |
| 8. Sen. Beatrice Akinyi Ogola, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|--------------------|
| 1. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice Chairperson |
|--|--------------------|

SECRETARIAT

- | | |
|-----------------------|--------------------------|
| 1. Mr. Victor Bett | -Clerk Assistant I |
| 2. Ms. Ivy Nyambura | -Clerk Assistant III |
| 3. Ms. Angela Kagunyi | -Legal Counsel |
| 4. Mr. Jack Lemeteki | -Media Relations Officer |
| 5. Mr. Shirley Milimu | -Audio Officer |
| 6. Mr. Ibrahim Odindo | -Sergeant-At-Arms |

MINUTE SEN/LENR/189/2023

PRELIMINARIES

The meeting was called to order at 9.00 am followed by a word of prayer.

MINUTE SEN/LENR/190/2023

ADOPTION OF AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Johnes Mwashushe Mwaruma, MP and seconded by Sen. Agnes Kavindu Muthama, MP as follows -

1. Prayer;
2. Adoption of the Agenda;

3. **Consideration of the Climate Change (Amendment) Bill, 2023 (National Assembly Bills No. 42 of 2023) (Committee Paper No.40);**
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/191/2023

**CONSIDERATION OF THE CLIMATE
CHANGE (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILLS NO. 42
OF 2023) (COMMITTEE PAPER NO. 40)**

The Secretariat presented Committee Paper No. 40 before the Committee which highlights the standing orders provisions in regards to Bills. Thereafter, the Legal Counsel took members through the Bill digest entailing the purpose, background and an overview of the Bill.

The Committee then considered the submissions received following placement of an advertisement in the print media on Wednesday, 30th August 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) on proposed amendments and proposals. The Committee by the time of the meeting had received thirteen (13) memoranda from the following institutions and individuals:

- i. Kenya Climate Change Working Group
- ii. The Council of Governors
- iii. Environment Institute of Kenya
- iv. Ministry of Environment, Climate Change and Forestry
- v. Mr. Shadrack Agaki

On further deliberations the Members resolved to await further submissions from various stakeholders before the preparation and adoption of the Committees final report.

MINUTE SEN/LENR/192/2023

ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/LENR/193/2023

**ADJOURNMENT AND DATE OF NEXT
MEETING**

The meeting was adjourned at 9.45 am. The next meeting was to be communicated on notice.

Signed



Date

31/08/2023

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**

ANNEX I - MINUTES

ANNEX II – PUBLIC ADVERT

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION
THE SENATETHE CLIMATE CHANGE (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILL NO. 42 OF 2023)

INVITATION FOR SUBMISSION OF MEMORANDA

The Climate Change (Amendment) Bill, 2023 (National Assembly Bill No. 42 of 2023) was read a First Time in the Senate on Tuesday, 29th August, 2023, and was thereafter committed to the Senate Standing Committee on Land, Environment and Natural Resources for consideration.

Pursuant to the provisions of Article 118 and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Land, Environment and Natural Resources now invites interested members of the public to submit any representations that they may have on the Climate Change (Amendment) Bill, 2023 (National Assembly Bill No. 42 of 2023), by way of written memoranda.

The representations may be submitted on email to the Clerk of the Senate on the address clerk.senate@parliament.go.ke and landenvironcommittee.senate@parliament.go.ke, to be received on or before Wednesday, 30th August, 2023 at 5.00 p.m.

The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.



THE NAIROBI HOSPITAL

NOTICE OF THE ANNUAL GENERAL MEETING

NOTICE IS HEREBY GIVEN pursuant to Articles 19 and 22 (b) of the Articles of Association of Kenya Hospital Association, that the Kenya Hospital Association shall hold a Virtual Annual General Meeting on 21st September 2023 at 2:00 P.M. to conduct the following business:

AGENDA

ORDINARY BUSINESS

- To table the proxies, apologies and note the presence of a quorum.
- To read the notice convening the meeting.
- To approve the minutes of the Annual General Meeting held on 29th September 2022 and the Extra-Ordinary General Meeting held on 21st December, 2022.
- To receive, consider and, if thought fit, adopt the Report of the Board for the year ended 31st December, 2022.
- To receive, consider and, if thought fit, adopt the Audited Financial Statements of the Company for the year ended 31st December, 2022 together with the Auditors' Report thereon.
- To Approve the Board Remuneration report in accordance with Article 41 of the Company's Articles of Association.
- Retirement by Rotation and Election of Directors:
 - To note that Mr. Philomen Mwalaka, EBS, SS retires by rotation in accordance with Articles 42 and 43 of the Articles of Association of the Company and being eligible, offers himself for re-election as a Director of the Company.
 - To note that Dr. Louis Litwa retires by rotation in accordance with Articles 42 and 43 of the Articles of Association of the Company and being eligible, offers himself for re-election as a Director of the Company.
 - To fill the position of Mrs. Agnes Odhiambo who retired on 5th April 2023.
- To authorize the Board of Management to appoint the External Auditors for the Financial Year 2023 in accordance with Section 719 (2) of the Companies Act, 2015 and to fix the External Auditors' remuneration for the Financial Year 2023

By order of the Board

CPS Gilbert Mwangi
Company Secretary
Dated 30th August, 2023

Notes:

- Notice of a Special Business should be delivered in the form of a resolution to the Company Secretary's office by 7th September 2023 at 5:00 P.M. or emailed to info@nhkha.org on or before 19th September 2023 at 2:00 P.M. in line with Article 34 of the Articles of Association.
- Members are encouraged to continuously monitor the Company's website for further details on how to register for the Virtual Annual General Meeting.

Keep off Amboseli,
Maa governors warn

► Leaders laud president's directive to hand Amboseli to Kajiado county.

► They vow to ban conservation groups that will try to slow down process.

PETERSON GITHAIGA, KAJIADO

Wildlife conservation groups in Maasai land have been warned against slowing down implementation of President William Ruto's directive that Amboseli National Park management reverts to Kajiado county government. Speaking during an inter-

denomination thanksgiving, various leaders vowed to defend the president's directive. Kajiado Governor Joseph Lenku convened the meeting attended by his Narok and Samburu counterparts Patrick Ntutu and Jonathan Lelelit.

Ten MPs, three senators and more than 50 MCAs also attended the prayer meeting conducted by Archbishop Jackson Saito of the Anglican Church. The leaders declared war on anyone who would sabotage the Amboseli take over. "We know the conservation groups went to court seeking to overturn former President Mwai Kibaki's similar directive in 2005. We shall ban them from operating our counties," said Governor Lelelit.

He said Maasai Mara and Samburu game reserves were doing well and that Kajiado would be supported to manage their park.

Governor Lenku said President Ruto's directive was a correction of one of the most discriminatory historical injustices meted on the Maasai community.

"It is the best gift a president could give us. We shall not drop the ball and we shall ensure this directive is fast-tracked. We have no time for busy bodies," he said.

Governor Ntutu said they would take it offensively if anyone, including government bureaucrats, try to slow down the process.

newsdesk@standardmedia.co.ke



ICT
Authority

ACWICT
Advancing Community Welfare
Through Information Technology



CALL FOR SERVICE PROVIDERS THROUGH MUTUAL PARTNERSHIP

1. GENERAL INFORMATION

Project/ Programme Title:	Digital Services for Enhanced Agricultural Productivity, Improved Livelihoods, and Social Inclusion of Farmers in rural Kenya (Digital Services for Agriculture Project III)
Counties of Implementation:	Open to all rural counties in Kenya
Expected Start - Date:	September, 2023
Expected End - Date:	March, 2024
Duration:	Seven (7) Months
Funding Partner:	UK Government Digital Access Programme (UK DAP)

2. PROJECT BACKGROUND

The African Centre for Women, Information and Communication Technology (ACWICT) in collaboration with the ICT Authority, is implementing the Digital Services for Agriculture Project III (DSA III). The project aims to enhance Agricultural Productivity, Improve Livelihoods, and Social Inclusion of Farmers in rural Kenya in line with Kenya Government's agenda to impart Digital skills for the 20 million Kenyans delivered by the Ministry of ICT and Digital Economy through the ICT Authority. The project is funded by the Digital Access Programme (DAP) which is a UK Government flagship initiative delivered by the Foreign & Commonwealth Development Office (FCDO). The programme operates in five countries: Kenya, Nigeria, South Africa, Brazil and Indonesia. The overall objective of the Programme is to catalyse affordable, inclusive, safe and secure digital access for underserved or excluded populations; and to use this as a basis for a more thriving digital ecosystem.

3. DIGITAL SERVICES IN AGRICULTURE (DSA) SERVICE PROVIDERS

The project now seeks innovative partners to provide and / or support digital services in agriculture by providing scalable, customizable, and user-friendly digital services in agriculture. We invite firms and individuals to collaborate with ACWICT in the delivery of the project within 10 km radius from the nearest ICTA Public Wi-Fi Hotspot. 2) Provide DSA Platforms with accessible local, relevant content - preferably in text, video, and audio. 3. Provide local relevant DSA content on farming practices, crop disease management, animal diseases management, weather, digital markets etc. 4. Create local public awareness on the benefits of DSA to farmers. 5. Champion farmers with ability for demonstrations and trainings of agricultural

practices. 6. Digital Skills training for farmers on Foundation Digital Skills and Basic Digital Skills levels of the ICTA digital skills Curriculum. 7. Alternative Energy Providers. Among the Mutual benefits to partners include but not limited to: (a) Use or access of partners' respective services by between 10,000, to more than 100,000 farmers and rural communities, (b) Increased demand and access and/or consumption of partners' services from the empowered farmers and rural communities, (c) Offshoot on demand business products and services for example e-commerce website demands for some farmers, increased demand and access and/or consumption of partners' services from the empowered farmers and rural communities, Device repairs, content subscriptions among many other services. (d) demand for training, coaching on Foundation Digital skills and Basic Digital skills.

4. LOCATION OF THE PROJECT

The project will be implemented in any part of Kenya where there will be demand for the relevant services.

5. CATEGORIES OF SERVICE PROVIDER/ PARTNERS REQUIRED

- Providers of Last mile Internet connectivity within 10 km radius from the nearest ICTA Public Wi-Fi Hotspot. (Provide list of locations of hotspot)
- Providers of DSA Platforms with local, relevant content - preferably in text, video, and audio.
- Providers of local relevant DSA digital content on farming practices, crop disease management, animal diseases management, weather, digital markets etc.
- Awareness campaigners of local public DSA benefits to farmers.
- Community Digital Champions include farmers with ability for demonstrations and trainings of agricultural practices.
- Community Digital Champions and Trainers Foundation Digital Skills and Basic Digital Skills to farmers using the ICTA Digital Skills Curriculum.
- Alternative Energy Providers.

- Interested applicants should visit our website www.acwict.org/opportunities to select and apply the category of their interest.
- The application process includes:
 - Filling in a link that provides basic information of applicant on the relevant service selected.
 - Submission of written proposals (not more than 10 pages) to reach the undersigned on or before Tuesday 5th September, 2023 through the address provided on the link.
- Proposals should be accompanied by evidence of the criteria set out above (as attachments/appendix)

Police seek views on new uniform

Current Persian blue uniform, which was introduced in 2018, did not receive wide acceptance from officers

BY MARY WAMBUI

The government has begun the process of replacing the current controversial police uniform with a new design for all general duty officers. The new sky-blue shirts will be paired with navy blue trousers and sweaters for both male and female officers. The shirt will be embroidered with the Kenyan flag and police logo on both sides of the shoulders.

It has four shirt designs that police officers and civilians will be able to choose from during a week-long public participation exercise that began yesterday.

The first design, which appears to be a favourite among officers, is short-sleeved with unique silver buttons and the officer's name and service number permanently stitched above the right and left front pockets. The second is long-sleeved with ordinary buttons and the officer's name permanently sewn



above the right front pocket while the final design is long sleeved with unique silver buttons only.

The public's and officers' views will be consolidated and submitted to the Inspector-General of Police by September 7 for onward submission to retired Chief Justice David Maraga's task force on

police and prison reforms.

While presenting their recommendations to the task force in January, the officers said they wanted the current Persian blue uniform scrapped and replaced with one similar to that worn by their counterparts in Ethiopia or Japan.

National Police Service Head of Logistics Peter Ndung'u with two of the proposed uniforms at the Kenya Police Pavilion in South C, Nairobi yesterday. BONFACE BOGITA/NATION

We are now holding public participation for both police officers and members of the public where our only concern is the design ...

Mr Peter Ndung'u



Speaking at the start of the public participation exercise yesterday, National Police Service Director of Logistics and Senior Assistant Inspector-General Peter Ndung'u said the new uniform was part of the government's promises during last year's campaigns.

"We are now holding public participation for both police officers and members of the public where our only concern is the design, not the texture, not the standards that are being handled by other agencies," he said.

He added that officers were not

given room to air the force the current uniform introduced. "It did not these processes, the owned it."

The new uniform come with a new be with gun holsters and es. But the time fr which they will be in mains unclear.

The Persian blue u introduced by the Ju ment in 2018 to incr bility of police offe uniformity across all ing the merger of the tive Police and the Service.

However, during la tion campaign, the i za coalition rejected and promised to abo power.

"Even the new bl which you do not i withdrawn and we v the old one. The blu kept for the PCEA ch uniform of the Wor Deputy President Ri gua said at the time.

At the moment, p are free to wear bot blue and old uniform

KCB Investment Bank

KCB INVESTMENT BANK LIMITED UNAUDITED FINANCIAL STATEMENTS AND OTHER DISCLOSURES FOR THE PERIOD ENDED 30 JUNE 2023

STATEMENT OF COMPREHENSIVE INCOME	30-Jun-23 (Un-Audited) (Kshs '000')	30-Jun-22 (Un-Audited) (Kshs '000')	Share Capital and Reserves	30-Jun-23 (Un-Audited) (Kshs '000')	30-Jun-22 (Un-Audited) (Kshs '000')
Income			Shareholder's Funds		
Brokerage Commissions	5,824	7,947	Called Up Ordinary Share Capital	600,000	670,000
Advisory/Consultancy Fees	5,000	2,336	Reserves	170,480	103,361
Interest Income	34,280	22,877	Reserves	114,327	114,523
Wealth Management Fees	7,323		Total Shareholder's Funds	884,807	887,884
Realised profits/(Loss) on Investments	41,416	14,142	Current Liabilities		
Total Income	93,843	47,292	Client's Creditors	48,544	32,234
Expenses			Amount due to Related Parties	9,458	584
Employee Costs	21,144	22,198	Trade payables	543	3,101
Director's emoluments	1,107	2,397	Accrued expenses	3,325	614
Operational and Administrative Expenses	6,823	7,929	Bank overdrafts	258,341	200,379
Depreciation Expenses	101	101	Total Current Liabilities	271,268	254,528
Amortisation Expenses		408	TOTAL EQUITY AND LIABILITIES	613,539	733,356
Total Expenses	29,175	33,134	OTHER DISCLOSURES		
Operating Profit	64,668	14,158	CAPITAL STRUCTURE		
Finance Costs	5,014	6,711	a. Paid Up Capital	600,000	670,000
Profit/(Loss) Before Tax	59,654	7,447	b. Minimum Capital Required	250,000	250,000
Tax	3,619	704	(a-b) Excess/(Deficiency)	350,000	420,000
Profit/(Loss) After Tax	56,035	6,743	SHAREHOLDER FUNDS		
			a. Total Shareholder Funds	884,807	887,884
STATEMENT OF FINANCIAL POSITION			b. Minimum Shareholder Funds Required	250,000	250,000
Non-Current Assets			(a-b) Excess/(Deficiency)	634,807	637,884
Property Plant and Equipment	423	618	LIQUID CAPITAL		
Deferred Tax Asset	82,718	44,254	a. Liquid Capital	271,268	254,528
Investments or deposits in COSOPSE	16,188	10,188	b. Minimum Liquid Capital (Higher of Kshs. 20 million and 8% of Liabilities)	30,000	30,000
Investments in Government securities	482,232	490,724	(a-b) Excess/(Deficiency)	241,268	224,528
Intangible Assets	38,000	28,000	CLIENTS FUNDS		
Total Non-Current Assets	779,551	673,784	a. Total client's creditors	48,544	32,234
Current Assets			b. Total Client's Cash and Bank balances	48,544	32,234
Other trade receivables	24,267	14,142	c. Excess/(Deficiency)		
Total clients Cash and Bank balances	48,544	32,234			
Office Cash and Bank balances	9,121	1,341			
Total Current Assets	101,932	47,717			
TOTAL ASSETS	881,483	721,501			

The financial statements are extracts from the books of the institution for the period ended 30 June 2023.

FOR KCB INVESTMENT BANK: BUNCE NYALA CHAIRMAN; PAUL RUSBO DIRECTOR

Reported by the Capital Markets Authority

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REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION
THE SENATE

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

INVITATION FOR SUBMISSION OF MEMORANDUM

The Climate Change (Amendment) Bill, 2023 (National Assembly Bill No. 42 of 2023) was read a First Time in the Senate on Tuesday, 29th August 2023 and was thereafter committed to the Senate Standing Committee on Environment and Natural Resources for consideration.

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The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

ANEX III – STAKEHOLDER SUBMISSIONS



KEPSA MEMORANDUM ON THE CLIMATE CHANGE AMENDMENT BILL 2023

DATE SUBMITTED: 30TH 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 measurers 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

¹ <https://fsdafrica.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)

- 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.

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 for submission of memoranda reference SEN/DSEC/LENR/2023/2/9 on the Climate Change Amendment Bill (National Assembly Bill No 42 of 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
	Carbon offset- reduction or removal of carbon dioxide or other green gas houses in order	Carbon offset- reduction or removal of carbon dioxide or other green gas houses in order to compensate for equivalent number of emissions made	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
Clause 6(a)(ii) that proposes to amend Section 7(2)(f) of the Act	to compensate for emissions made elsewhere. 6(ii) deleting the word nominated by the largest number of institutions of the private sector appearing in paragraph (f)	outside the <i>host party jurisdiction</i> . 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 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. 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

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
			actors to the council rather than removing the representation requirement.
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;	In the same justification as above, 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.
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

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
			an entity to qualify, its operations and functionalities and accountabilities.
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(3)	Every land based project undertaken pursuant to this Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the projects and public and community land where the project is under development.	Every community land-based project undertaken pursuant to this Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the projects and the public and community land where the project is under development.	<p>Add the word community land-based project in order to make reference to projects implemented through community land. There are land-based carbon projects undertaken on private land and it is important not to limit land-based project to community land only.</p> <p>The natural resources benefit sharing bill establishes a word committee led by the Commission of revenue allocation to support develop the community development agreement.</p> <p>It is important to protect the community with clear guidelines on who is responsible for development of this agreements and also require clear accountability to avoid exploitation or being taken advantage of seeing carbon trading is a complex for ordinary citizens.</p>

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
Clause 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	The commission of revenue allocation and the county government	<p>The amendment should state the respective national government agency to be responsible to oversee the negotiation and development of the community agreement. Under the natural resources benefit sharing bill, the commission of revenue allocation is the national government entity responsible for preparation of benefit sharing agreement.</p> <p>The natural resources benefit sharing bill, also assigns this responsibility to county establishes a county committee to support this process, this bill can use such a committee or establish one for clarity of signatories</p>
Clause 23E(5(b))	<p>Provided that:</p> <p>In land-based projects, the contribution shall at least be 40% of the aggregate earnings</p> <p>In non-land-based projects, the contribution shall at least be 25% of the aggregate earnings</p>	Option 1: 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).	<p>The allocation of benefit sharing percentages based on aggregates (gross income) as opposed to gains or profits means the communities are elevated to be shareholders who own 40% or over 25% of the investments. This will also mean that the entities will account for overheads, project costs and taxes after forwarding a percentage of the aggregate earnings to the communities. this is unsustainable for any investment.</p> <p>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</p>

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
			<p>(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.</p> <p>The actual revenue sharing to the community should be through the commission or revenue allocation as is precedence under the natural resource's benefit sharing bill to ensure that communities get their proceeds in a timely manner and not be subject to government budgeting and procurement processes.</p>
Clause 23E(5)b	(i) In land-based projects, the contribution shall at least be 40% of the aggregate earnings	<p>(i) In land-based projects, the contribution shall be 40% of net earnings or gains which shall be administered through the commission of revenue allocation as follows:</p> <ul style="list-style-type: none"> • 25% to local community • 10% to the local community projects • 5% to ploughed back for research, education and awareness on carbon markets and product development. 	<p>Globally best practice and as per the benefit sharing provisions under the Petroleum Act, the mining Act, the energy (geothermal) act and for natural resources benefit sharing bill, the benefit sharing is on the profits or gains and not the aggregate earnings.</p> <p>Secondly the percentages of the profits or gains are allocated to national government at 75%, the county government at (20%) and the community at 5% under the Petroleum Act, Mining Act is 70% and 20% and 10% to the community, Energy Act- Geothermal the percentages are 75%, 20% and 5% to the county. The natural resources benefit sharing bill,</p>

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
	(ii) In non-land-based projects, the contribution shall at least be 25% of the aggregate earnings	<p>(ii) In non-land-based projects, the contribution shall at least be 25% of the net earnings or gains. which shall be administered through the commission of revenue allocation as follows:</p> <ul style="list-style-type: none"> • 15 % to the local community projects • 5% to ploughed back for research, education and awareness on carbon markets technologies development. • 5% Climate Change Fund 	<p>allocates 20% to sovereign fund, of the remaining 80% - 60 % is allocated to national government and 40% to county government. The county government allocation is further allocated as 40% to local community and 60% to the whole county.</p> <p>To align with natural resources benefit sharing bill for nature based and land-based percentages</p> <p>To ensure product development especially of carbon designed products, it is important that proceeds support research and awareness of carbon markets and further enhance technological development for emission reduction measures.</p>
Clause 23C(2)	The cabinet secretary may (a) enter into bilateral or multilateral agreement with another state party to trade carbon for emission reductions and removals. (b) with approval of the cabinet, enter into agreement with private entity to offset carbon emissions (c) with the approval of cabinet enter into any agreement to trade in a carbon	The cabinet secretary may (a) enter into bilateral or multilateral agreement with another state party to trade carbon for public land-based emission reductions and removals on public land. (b) with approval of the parliament , enter into agreement with private entity to offset carbon emissions (c) with the approval of approval of parliament enter into	<p>The higher value carbon credits are those linked to the countries nationally determined contribution and internationally transferred mitigation outcomes, by having the cabinet secretary enter into bilateral or multilateral arrangements without national oversight such as approval of parliament and stakeholders' engagement, the cabinet secretary can easily mop out all the higher value credits thus locking out non state actors, private sector and communities from the carbon market. This is</p>

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
	market established or overseen by an internationally recognized entity that is approved by a recognized credible international body.	agreement to trade in an international carbon market established or overseen by an international carbon trading verification body.	open to only having state led carbon markets in the country. The provision assigns approval of such country to country agreement to an unknown international entity. The provision to enter into ANY agreement to trade in a carbon market is also problematic. The government should limit itself to public land related carbon and not just ANY agreement. We suggest that, at best, this provision is deleted all together.
Section 25(8)	New addition	insert (d) Promotion of awareness and education on carbon markets and enhancement of data tracking capabilities of carbon market actors.	incorporating provisions to increase awareness and among businesses about carbon markets, with a particular emphasis on enhancing investments in this sector, especially for SMEs, holds significant importance. This goes beyond mere research, aiming to encourage businesses to actively engage in carbon trading. Moreover, the integration of data tracking mechanisms is essential for ensuring efficient monitoring and management.
Proposed additional amendment on Clause 5(2) of the Principal Act, Climate Change Act 2016.			
The Principle Climate Change Act, 2016 clause 5 (2)	(2) The Council shall be chaired by the President.	Replace with: (2) The Council shall be chaired by the Cabinet Secretary for the time being responsible for environment and	Due to practical considerations, the President's should receive reports of the council through the Cabinet Secretary and the Cabinet which he chairs. A more feasible approach is to have the

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
		climate change affairs	<p>Cabinet Secretary assuming the role of chairperson. The council should be answerable to the President through the Cabinet Secretary.</p> <p>The functions of the council are pretty operational in relation to the national duties such provide policy direction on climate change, administration of the climate fund, coordination of national and county governments in climate change among others. This functions such as harmonization of sectorial laws, are best undertaken through the Minister and the cabinet and status reported to the President.</p> <p>Needless to say, it is the provision for President to chair a non -cabinet meeting that has drawn the court cases since 2016 and the council has never functioned since. Its important to correct this arrangement so the council can operate.</p>
The Principal Climate change act 2016 clause 5 (2), (3), (4), (5)	<p>(3) The Deputy President who shall be the vice-chairperson to the Council.</p> <p>(4) The Cabinet Secretary for the time being responsible for environment and climate change affairs shall be the secretary to the Council.</p>	Delete	<p>Due to practical considerations, the limitations of the functions of the national council duties to very sector-based functions, as such the President's schedule may the operationalization of the council. A more feasible approach could involve the Cabinet Secretary assuming the role of chairperson.</p>

Section/ Clause Number	Wording of Current Clause	Proposed Amendment	Rationale and Justification
	(5) The Directorate established under this Act shall serve as the Secretariat		
	of the Council.		
Insert new amendment to the Climate Change Act 2016, Clause (8) 13	New addition	The council can discharge its duties if more than three quarters of the members are duly appointed.	This is to enable the council to proceed to undertake its operations with three quarter of its membership and not to forestall its operationalization as has been witnessed in the last seven years. It beats purpose to vet and approve for appointment persons to the council and not have them discharge any function of the council due to issues or course case arising from nomination and appointment of a single one member.

General comments

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

I.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 incentivizes 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</p> <p>Amendment of section 7 of the Act on the Members of the Climate Change Council.</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>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. 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

		<p>any, Internationally Transferred Mitigation Outcomes with recommendation from the Council and develop Rules guiding the same within one year.</p>	<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 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><i>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.”</i></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:

The Kenya Climate Change Working Group (KCCWG)

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. Role of the Climate Change Council

The Parent Act assigned administrative responsibilities to Council, which we believe was ill-advised. We believe the Council should be an advisory body providing overarching oversight. We have therefore proposed a new governance structure that introduces a technical committee chaired by the Cabinet Secretary responsible for Climate Change Affairs to perform administrative responsibilities and report to the Council. The Technical Committee is broad and accommodates all the key sectors through State Departments.

3. 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.

4. 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.

5. 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 for amendment recommendation
		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
	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.
Amendment of section 8 No. 11 of 2016.	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 of Environment, Climate Change and Forestry
OTHER PROPOSED AMENDMENTS IN THE PARENT ACT				

Amendment of section 7 of No. 11 of 2016	Members of the Council	<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>Section 7 of the principal Act is amended by deleting the section and replacing it with</p> <p>"(1) The Council shall comprise not more than eight 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>	The proposed new structure will be more effective in facilitating the implementation of the Climate Change Act
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		<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 relating to indigenous knowledge; and</p> <p>(i) A representative of the academia nominated by the Commission for University Education.</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> <p>g) A representative of the academia nominated in consultation with the Commission for University Education."</p>	
			<p>Note:</p> <p>tions of appointees and conditions for ment in Section 7 (3-6) of the Parent Act</p>	
			shall apply	

Section 7b			<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>	The functions proposed fit the technical role that the Committee should undertake
			<p>The Committee shall provide an overarching national climate change coordination mechanism and shall—</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) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;</p> <p>d) set the targets for the regulation of greenhouse gas emissions.</p> <p>e) Oversee the implementation of the carbon markets framework</p> <p>f) Approve proposals for funding through the Climate Change Fund.</p> <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</p>	

			<p>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>	
			<p>b) The Permanent Secretary/Secretaries responsible for the National Treasury and Economic Planning;</p> <p>c) The Permanent Secretary responsible for Energy;</p> <p>d) The Permanent Secretary responsible for Crop Development;</p> <p>e) The Permanent Secretary responsible for Industry</p> <p>f) The Permanent Secretary responsible for Blue Economy;</p> <p>g) The chairperson of the Committee responsible for Climate Change at the Council of Governors;</p> <p>h) A representative of the private sector nominated in consultation with the Private Sector;</p> <p>i) A representative of the Civil Society nominated in consultation with Civil Society Organizations;</p>	

			<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>	<p>This is consistent with the role of the Council which is also consultative to ensure transparency and accountability within key stakeholders on Climate change duties of public sector</p>
Amendment of Section 15 of No 11 of 2016		Section 15 of the Principal Act is amended in subsection (3) by deleting the word "Council" and substituting therefore the words "Cabinet Secretary"	<p>This section should remain as it is in the parent Act i.e "The duties shall be imposed and may be varied or revoked through regulations made by the Council."</p>	
Amendment of section 25	Climate Change Fund	(1) There is hereby established the Climate Change Fund which shall be a financing	The principal Act is amended in section 25 by:	This is consistent with the provisions of the PFM Act, 2012
of No. 11 of 2016		<p>mechanism for priority climate change actions and interventions approved by the Council.</p> <p>(2-9) Other financial provisions</p>	<p>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".</p> <p>b) deleting subsections 2-9</p>	
<p>PART IVA—REGULATION OF CARBON MARKETS Carbon Markets</p>				

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;	<p>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.</p> <p>"The Cabinet Secretary may, in consultation with the Attorney General, and with the approval of the cabinet, enter into a bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals;"</p>	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.
	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;	<p>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.</p> <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>	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.	Section 23C (4) of the bill is amended by replacing "the Cabinet Secretary" with "the National Designated Authority." The section will read as below.	The Cabinet Secretary does not report to UNFCCC in his/her capacity as a Cabinet Secretary. This

			"The National Designated Authority shall, in the national reporting mechanism to the UNFCCC, include any emission reduction resulting from agreements entered into under this section."	is the role of the National Designated Authority
	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 the County and National Carbon Registries."	Having county registries will make reporting efficient, at the national level. It will also promote accountability and transparency.

23 E (9)	<p>The cabinet secretary may prescribe additional requirements relating to the formulation of the community development agreement</p>	<p>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."</p>	<p>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.</p>
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30th August, 2023

OFFICE OF THE CLERK OF THE SENATE,
PARLIAMENT BUILDINGS,
P.O. BOX 41842-00100,
NAIROBI, KENYA.

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

Pursuant to the invitation dated 29th August 2023 to submit memoranda on the The Climate Change (Amendment) Bill (National Assembly Bill No. 42 of 2023), KWCA in consultation with and on behalf of 184 members, community and private wildlife conservancies spread across 31 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 Carbon credit ecosystem is business structured, complex, evolving and involving multiple principles and cross-cutting sectors ranging from energy, forestry and land use, agriculture, waste disposal, chemical industry and household level.

ISSUE: The multi-faceted nature of the business which also involves bi-lateral trade agreements, may be limited if centrally governed under the Ministry of Environment, Climate Change and Forestry

RECOMMENDATION: The *general governance of carbon credit trade be housed under a more inclusive Ministries including Finance.*

2. Despite carbon credits not creating the conventional property rights that can be directly defined, it is nevertheless important to define carbon rights to identify the nature of property rights in carbon credits, including ownership and the owners' rights, privileges and limitations, especially to inform equitable benefit sharing regimes.

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

RECOMMENDATION: a definition of carbon rights be provided in the Bill based on either of these two regimes:

- I. ***Focused on land ownership:*** Carbon rights are a form of property right that are based on the registration of a carbon right over a block of land, to the benefits and liabilities that arise from changes to the atmosphere that are caused by carbon sequestration and carbon release, on that block of land.
- II. ***Focused on contractual rights:***
 - a. Carbon credits are intangible rights that are created by people carrying out certain activities under relevant laws or contracts. The distinction here is the activity that needs to be carried out to create a carbon credit. Carbon rights are rather comparable to intellectual property rights that are intimately associated with an activity.
 - b. Carbon rights are a form of property right that ‘commoditize’ carbon and allow it to be traded. They separate the right to carbon from broader rights to forest and land, and include the right to **sequester carbon** into the future (‘carbon sequestration rights’). Carbon rights can be created through contract or by national legislation, the structure of which can be influenced by international law standards.

3. 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.

4. The Scope of the Bill, including its principles, is ***largely silent on non-carbon market approaches***, whereas a new object of the Bill (Clause 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.

5. 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.*

6. 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 Office of 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.*

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	Trade in carbon markets- 23B (Formally: Principles governing trade in carbon markets)	Trade in carbon market shall ensure that: - (Formally: The trade in carbon market shall be guided by the following principles)	<p>Insert the following new principles –</p> <p>(a) Eligible mitigation projects for international transfer shall demonstrate environmental integrity, transparency and promote sustainable development</p> <p>(b) Carbon credit market that is of high integrity and high quality</p> <p>(c) Leverage carbon credits to meet the Country's national determined contribution mitigation commitments</p> <p>(d) Respect and safeguard of social and economic rights of local communities, while promoting access to equitable benefits</p> <p>(e) Mitigate against greenwashing</p> <p>(f) Promoting development of national and local skills and capacities across the carbon market value chain</p> <p>(g) Advance the conservation of the Country's biodiversity and environment agenda towards enhancing adaptation capacities</p>	<p>The Senate Bill changed the topic of Section 23 from "principles governing trade in carbon markets" to just "trade in carbon markets"</p> <p>There is however need for the Bill to stipulate the principles that will be guiding standards for Kenya's carbon market.</p>
Part IVA- Regulation of Carbon Markets	Provision of Social Environmental benefits- 23E	<p>(1) Project anticipated environmental, economic or social benefits - the environmental benefits shall include—</p> <p>(2) (b) incentives that promote offset projects;</p>	<p>tax incentives for development of carbon projects</p>	<p>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,</p>

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.	<p>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.</p> <p>2. Delete 23 E(8)</p>	<ul style="list-style-type: none"> Under 23(4), the <i>benefit sharing administration is NOT placed within any specific national and county government entity, but generally on the two levels of government.</i> 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.
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(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 negotiated under section 23E.	<p>1. Substitute 23E(5)(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 23 E5(b) (ii)</p>	<ul style="list-style-type: none"> <i>23E(8) is unclear on which specific national government entity is responsible to enforce community development and benefit sharing agreements.</i> Aligned to earlier recommendation, a specific Authority 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 roles under reviewed 23 (4) Benefit sharing should be determined based on credit issuance, and not previous years' revenue. 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</i> to promote equity and transparency in the carbon market while mitigating against manipulation by project developers, through the net

		<p>Provided that –</p> <p>(i) in land-based projects, the contribution shall be at least forty per centum of the aggregate earnings; and</p> <p>(ii) in non-land-based projects, the contribution shall be at least twenty-five per centum of the aggregate earnings</p>	<p>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">• <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>• KWCA's recommendation is a minimum monetary income of 60% of gross revenue of the sales.	formula and other complexities of carbon markets.
Part IVA- Regulation of Carbon Markets	Provision of Social Environmental benefits- 23E	<p>(5) A community development agreement shall provide—</p>	<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,	<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">• 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.	

Part IVA- Regulation of Carbon Markets	Dispute Resolution-23H (3)	(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.	<p>process for obtaining free prior informed consent and approval by community</p> <p>Insert the following new paragraph immediately after 23 E 10- The Cabinet Secretary may develop model community agreements to guide communities on basic terms for negotiations in development of the agreements</p> <p>Substitute 23 H (3) with the new paragraphs-</p> <p>3) Any person who is dissatisfied with the outcome of an arbitration process may refer the dispute to the <i>Carbon Credit Trading Tribunal</i>.</p>	<p>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>
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Yours Sincerely,



DICKSON OLE KAELO
CHIEF EXECUTIVE OFFICER
EMAIL: ceo@kwakenya.com



Nairobi Climate Network
PO Box 50327-00800
Nairobi

The Clerk of the Senate
Parliament of Kenya
PO Box 41842-00100
Nairobi

Delivered Electronically
30th August 2023

Nairobi Climate Network's Fourth Response to the Proposed Climate Change (Amendment) Bill, 2023

Dear Members of the Committee,

The Nairobi Climate Network, formed in 2021, is a community of professionals propelling climate action in Kenya. We are a group of 900+ individual members from 500+ organisations. Our mission is to build connections and networks by curating events, improving access to information and building knowledge for the climate movement in Kenya and to help guide policy at a national and local level. This letter has been written by a core group of 70 professionals from the private sector, NGOs and government who have worked in Kenya's nascent carbon market over the last 16 years.

We appreciate the opportunity to provide our technical expertise to inform the Bill. We are open and available for discussion with you, the legislators, about the practicalities of carbon finance, carbon projects, benefit sharing and international perceptions.

As representatives of the carbon sector in Kenya, we express our concern that the latest version of the Bill does not reflect neither our comments from May nor the comments we submitted to the National Assembly earlier this month. If the Bill is passed in its current form, it would **likely result in immediate and significant decrease in investment and business activity** in the carbon sector in Kenya, with some areas of high innovation potential likely closing down entirely. The resulting **loss of business activity** and investment would **undermine job growth potential** in these sectors in Kenya, to say nothing of the impediment to tackling climate change. As the Bill stands, multiple members of the Nairobi Climate Network have indicated that they will have no choice but to withdraw investment into carbon markets, as well as planned projects, in Kenya. **We strongly urge consideration that if the Bill is announced as passed by Parliament in its current form at the Africa Climate Summit, it is likely to be rejected as unworkable by developers and investors visiting Nairobi.**

With better drafting, the Bill has the potential to build on the significant positive returns that many carbon projects already make for communities, 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 county's largest export earners to the benefit of the People and the Treasury.

In this updated response, we share core comments for clarity of message and ease of understanding. All our technical input on the earlier draft remains.

1. Legislation vs Regulation

The Bill should be seen as providing a framework to integrate the Paris Agreement into Kenya's economy. It should focus on the legal architecture - such as the roles of the Cabinet Secretary, the Council and the DNA, setting up the carbon registry and dispute resolution. The Bill should not slip into areas that are better suited to *regulation* that would be defined as policy matters for the government of the day.

For example, the Bill proposes that 40% of "*project earnings*" from land-based projects are provided to the "*community*". However, the government may wish to vary this amount in future and so the Bill should instead provide that "*resources are demonstrated to be shared with the community*" without setting in stone what that amount is.¹ The Cabinet Secretary should have the ability to determine the requirements of communities, investors and developers through regulation as the Act is implemented over time.

We look forward to working with Cabinet Secretary's office in the future on such regulatory elements as:

- Regulation around tracking community benefit sharing, differentiated by project type
- Sensible value-share with government, which enables foreign investment
- A framework for deciding which projects should be able to generate ITMOs with corresponding adjustments to the National Registry.

2. Community benefits vs government benefits

At present, there seems to be some confusion as to whether the 25% and 40% of "*community benefits*" stipulated in the bill would go directly to communities or to local and central government. To avoid confusion we recommend treating them separately.

We agree that communities should benefit fairly from carbon revenues, but emphasise that this is already happening. The Government of Kenya should support existing initiatives by increasing monitoring and transparency, rather than stipulating percentages of community benefit share. This will improve carbon project integrity and send a positive signal to the business community which will in turn accelerate capital flows in the country, formal job creation, and amounts of corporate tax collected by the government.

For example: in the land use sector, Komaza provides high-quality tree seedlings, training and silviculture support to smallholder farmers in Kenya, so they can grow trees and get a good cash income at harvest,

¹ Notwithstanding that, another key point is that neither *project earnings* nor *community* are defined in the Bill in a meaningful way and if published in their current form are likely to cause disputes and the uncertainty will deter investors.

allowing them to make first-time investments into productive assets, children's education, or a house. In clean cooking, BURN manufacturing has distributed 800,000 clean stoves in Kenya, impacting 3 million lives. Stoves are discounted by up to 4,500 KES using carbon investment. A randomised control trial found that every stove distributed generated \$1,000 for society over three years in financial savings, health improvements and environmental benefits.

3. Types of Project

There are many different types of projects that reduce or remove carbon emissions. Afforestation, REDD+, renewable energy, energy efficiency, clean cooking, enhanced rock weathering, biomass fuels, Direct Air Capture, to name a few. These all have different business models and impacts on natural and community resources, and apply carbon finance to different activities at different times in the project cycle. This is not reflected in the proposed legislation.

As a minimum, the legislation should recognise that projects using Community or Government land have different responsibilities and requirements to those on private land or those that are energy/technology based and privately funded. These projects have different needs and make different contributions to local communities, to employment and to the economy as a whole.

4. Existing carbon standards and building on successful models

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. If a project is certified under the Gold Standard, the UNFCCC's A6.4 or Verra, it should qualify for the Kenya system ensuring 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. Once issued, credits from these projects should be deemed available for transfer under an ITMO by the government.

Moving forward, we collectively urge the Government of Kenya and the Parliament to make well-developed, informed and principled legislation that will be supported by project developers and investors. The Nairobi Climate Network remains committed to working with the Government of Kenya to develop successful carbon market policy that works for all stakeholders. We would be extremely willing to deliver training sessions, with presentations from different project types, to explain how the different business models work and to connect policymakers with real projects working with communities on the ground.

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 faithfully,

Nairobi Climate Network - Carbon Markets Working Group

Annex

This Annex includes the key suggestions that were overlooked from our response in May. Please refer to that response for a full list of concerns and drafting improvements and see that document for the full justifications.

Clause	Comment	Justification
Clause 23A (c)	Replace "Whitelist" with "Kenya Carbon Standards List"	Discussed in detail in previous submission. This means that Kenya can adopt the best standards that have been developed internationally over the last 20 years and allow them to "qualify" to work in Kenya, rather than try to reinvent the wheel. The current "white list" is prescriptive and could prevent certain mitigation activities from occurring.
Clause 23B (c)	Add to end of clause '...as prescribed by the relevant carbon standards; and...'	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.
Clause 23E (4)	'Projects shall report on the actual community engagement, community development and community relationships to the Designated National Authority on a regular basis.'	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 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
Clause 23E (5)(b)	The annual social contribution of the previous year to the community	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.
Clause 23E (5)(b)(i)	Delete	
Clause 23E (5)(b)(ii)	Delete	
Clause 23F	Delete	Direct involvement of National and county governments with regards to proceeds will discourage and stifle foreign investment into carbon credit projects in Kenya.
Definitions need streamlining and discussion. E.g. The definition of an ITMO should not be restricted to UNFCCC methodologies, as many countries are already planning to make ITMOs based on projects using the Gold Standard. If we are not careful the legislation will rule out opportunities unintentionally.		



Nairobi Climate Network
PO Box 50327-00800
Nairobi

26th May 2023

By email and physical delivery

Eng. Festus K. Ngeno
The Principal Secretary
State Department For Environment and Climate Change
P.O. Box 30126-00100
Nairobi

Consultation on The Draft Climate Change (Amendment) Bill, 2023

Dear Sir,

The Nairobi Climate Network, formed in 2022, is a community of professionals propelling climate action in Kenya. We are a group of 700+ individual members from 400+ organisations. Our mission is to build connections and networks by curating events, improving access to information and building knowledge for the climate movement in Kenya and to help guide policy at a national and local level.

We wish to thank The Principal Secretary and his team at the State Department For Environment and Climate Change for proposing to update the Climate Change Act to align it with the Paris Agreement and in particular with its Article 6.

We enclose our response to the Consultation, which has been written by a core group of 70 professionals from the private sector, NGOs and government who have worked in Kenya's nascent carbon market over the last 16 years.

We share the President's view that, designed well, the international carbon market has the opportunity to drive investment into the country at a time when, as a nation and a global community, we need to double-down on mitigating greenhouse gas emissions and adapting to changes in the climate. We congratulate you, with the drafting of this Bill, on seeking to make Kenya an attractive and competitive destination for carbon finance.

Our proposals are attached herewith. We would welcome the opportunity to discuss the contents of our submission.

Yours faithfully,

Héloïse Zimmermann,
Co-Founder, Nairobi Climate Network

A handwritten signature in black ink, appearing to read "Heloise", with a stylized flourish extending from the end.

Structure

We have structured our response in two sections:

- **Principal Messages**, which has a focus on what we see as the best general approach that the legislation should be taking.
- **Detailed Comments**, where we undertake a line by line analysis of the proposed amendments.

Appendix 1 is a list of the Members that worked on this response; Appendix 2 is Nairobi Climate Network's Certificate of Incorporation.

Principal Messages

1. We suggest the Act builds on the existing internationally recognised Carbon Standards, by creating "Kenya's Carbon Standards List" so that projects can use these recognised standards which can then qualify for the transfer of mitigation outcomes. Working in tandem with existing international standards will reduce replication of matters such as additionality, baselines, methodologies, community consultation, monitoring and reporting.
2. Projects should "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".
3. Carbon projects are varied in their design, whether technology-based or nature-based. The legislation should not prescribe the mechanism or fixed percentage for benefit sharing with "the community". We propose that projects report annually in a transparent manner to the Council on what benefits they have shared with their community - monetary or otherwise - as part of the application for Authorised Mitigation Outcomes. This will encourage investment in community activities, and those who are most engaged will achieve higher prices in the market. A percentage of aggregate earnings 'to the community' that is fixed by legislation and applicable to all projects may significantly constrain growth in investment and business activity in carbon mitigation and removal efforts in Kenya. It will deter some investors as it is not suitable for all project phases, types and scales. The impact will be a reduced potential for technology transfer and jobs.
4. Around the world governments are providing incentives to invest in green economies; let not Kenya do the reverse by setting up taxes on or barriers to green investment. In the climate space, the GOK's focus on raising revenue should be through taxing pollution, not raising levies, fees or taxes on green projects, given that they have so much to bring to the economy in terms of exchange rate support and employment.
5. There should be no extra taxes or levies on Kenyan-registered companies that are granted a transfer in mitigation outcomes - they should simply be taxed through existing corporation tax arrangements.

Comments on Specific Clauses

Part	Clause	Current Provision	Recommendation	Justification
1	2	“carbon budget” means the approved quantity of Greenhouse Gases emission that is acceptable over a specified time and shall be informed by the National Greenhouse Gas Inventory and guide on emission allocation for Nationally Determined Contributions and trading	Suggest changing “and guide on emission allocation for Nationally Determined Contributions and trading” to “and guide on emission <i>reduction</i> allocation for Nationally Determined Contributions and trading”	The 2nd part of the clause refers to the allocation of emission reductions between qualifying projects and so this captures it better.
		“carbon standards” means a complete set of rules, procedures, and methodologies that guide on the generation and issuance of certified carbon credits;	Suggest adding to the end “... that are recognised by international carbon markets”	Demonstrates that the intention is to refer to international carbon standards, such as A6.4, VERRA, Gold Standard etc. which are accredited by the International Carbon Reduction and Offset Alliance (ICROA - https://icroa.org/accreditation-programme/)
		“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; and enabling opportunities for coordination across instruments and relevant institutional arrangements;	“non-market approaches” means approaches that aim at promoting mitigation and adaptation ambition; enhancing public and private sector participation <i>and that of communities</i> in the implementation of nationally determined contributions; and enabling opportunities for coordination across instruments and relevant institutional arrangements;	Add “ <i>and that of communities</i> ” to highlight their important role.
		“whitelist” means	1) Drop the name, “whitelist”	1) It is important to use inclusive and

Part	Clause	Current Provision	Recommendation	Justification
			<p>2) The Positive List should contain the Standards (as defined above) used by projects that qualify them for the Transfer of their Mitigation Outcomes under the Act.</p> <p>3) The National Climate Change Action Plan should recommend to the PS which Standards should qualify for the positive list</p> <p>4) The name (whitelist) / positive list should be changed to "Kenya's Carbon Standards List"</p>	<p>unbiased language such as "positive list" because the word "whitelist" reinforces the notion that white = good, permitted, safe; and black = bad, dangerous, forbidden.</p> <p>2) The Standards have been working on technical / difficult issues such as methodologies, baselines and additionality for 20 years. Rather than "reinvent the wheel" the CS should review the Standards and state which ones qualify. Advising on which are suitable could be done in the National Climate Change Action Plan.</p> <p>3) This can be part of the remit of advice provided by the Action Plan and advise the PS on any changes to the Standards and any new ones that are being adopted by the market</p> <p>4) The proposed name reflects what the list is doing: it names the international carbon standards that allow projects to qualify for a transfer of mitigation outcomes in Kenya</p>

Part	Clause		Recommendation	Justification
1	2	"Authorised Mitigation Outcome" A Mitigation Outcome from an Authorised Project,	New definition	These units are produced by a project that has been through the qualification process, become an Authorised Project and then delivered the mitigation outcomes that have fulfilled the criteria which the owner then has the authority transfer overseas. It is similar to Verification and Issuance under the Clean Development Mechanism. See 23G for use
1	2	"Authorised Project" A climate mitigation project that has fulfilled all of the requirements of the Act and has been authorised to transfer mitigation outcomes, subject to those mitigation outcomes reaching any other criteria in the Act	New definition	This step is rather like "Validation" or "Registration" under the Clean Development Mechanism and says that, subject to the actual mitigation outcomes themselves meeting all the criteria, then they may be transferred. This project qualifies and is recognised by the GOK as having met the required criteria. The market will understand this concept and language.
1	2	"Corresponding Adjustment" Where Kenya sells Mitigation Outcomes to another country, its own emissions inventory shall be adjusted accordingly. It must "add back" the emissions into its greenhouse gas inventory to make up for the fact that it sold some Mitigation Outcomes to another country.	New definition	Corresponding Adjustments are referred to in Part IVA 23B (d). It is a very central and important concept and benefits from being defined formally.
		"Mitigation Outcome" A reduction in greenhouse gas emissions with	New definition	This term should be used consistently across the legislation because currently there are

Part	Clause		Recommendation	Justification
		global warming potential equivalent to one tonne of carbon dioxide that has been measured and verified in accordance with the Standards.		various terms used, such as mitigation outcome, carbon credit, emission reduction etc

Part	Clause	Current Provision	Recommendation	Justification
I	3. (ga)	provide guidance in the development and implementation of carbon markets and non-market approaches in compliance with international obligations	provide guidance in the development and implementation of <i>national and international</i> carbon markets and non-market approaches in compliance with <i>national and international</i> obligations	We believe that the addition of <i>national and international</i> markets better represents the aim of the Act. Furthermore, the Emission reduction initiatives are not just for international obligations but also for national obligations under the NDC's domestic commitments, alongside adaptation priorities.

Part	Clause	Current Provision	Recommendation	Justification
II	7 (2) c	Deletion of the Minister for Economic Planning	Do not delete.	It is critical to mainstream climate change in economic planning hence the CS in charge of planning could be considered for being a member of the Council.
II	7 (2) f,g,h,i	Proposed deletion of private sector, civil societies, people with indigenous knowledge & Commission for University Education	Retain these clauses	We feel that the sectors would be better represented if they were consulted on who is most suitable and qualified to represent their strata of civil society on the Council. Removing the input of the trade bodies etc. is an erosion

Part	Clause	Current Provision	Recommendation	Justification
				of consent and participation.
II	8 (ba)	The Cabinet Secretary shall: advise the Council on the carbon budget for trading based on Kenya's international obligations;	Add national obligations, so "advise the Council on the carbon budget for trading based on Kenya's national and international obligations"	For completeness.
	2B	The DNA appointed under 2A shall, in addition to international obligations, maintain the National Carbon Registry established under 23H	The DNA appointed under 2A shall, in addition to international obligations, maintain <i>and regularly update, a transparent, publicly available National Carbon Registry ensuring accuracy</i> established under 23H	This promotes the importance of quality, transparency and the registry being up to date.

Part	Clause	Current Provision	Recommendation	Justification
II	4	Section 4 of the principal Act is amended in subsection (2) by deleting the words "in accordance with the Schedule" appearing in paragraph (f).	The schedule of public participation should be retained.	This could be detrimental to the citizens' civic right to access to information as well as their ability to take part in the formulation of policies through public participation. Previously, the Act was clear on the roles of the public as an accountability measure for the government.

Part	Clause	Current Provision	Recommendation	Justification
III	13 (3) (1a)	to guide on the description of annual carbon budget for each of the years that make up the five-year cycle;	Add "and comply with the targets in the NDC", so: "to guide on the description of annual carbon budget for each of the years that make up the five-year cycle"	This links back to the NDC which is the international policy document.

Part	Clause	Current Provision	Recommendation	Justification
			<i>and comply with the targets in the NDC;</i>	
	(1c)	to set out proposed carbon credit project pipeline based on the white list;	Replace “carbon credit” with “mitigation outcome”	To improve consistency of language throughout the document
	(1e)	to specifically identify, where appropriate, priority actions to explore carbon trading;	Replace “carbon trading” with “sale of mitigation outcomes” This clause could make reference to opportunities for swelling mitigation outcomes as outlined in the Climate Change Action Plan.	To improve consistency of language throughout the document To make the link to the policy documents
	13 (5) (f)	national and international laws and policies relating to climate change and carbon markets		

Part	Clause	Current Provision	Recommendation	Justification
IVA	23A	(a) Carbon reduction credits that aim to reduce emissions from current sources through projects;	Revised statement: Mitigation outcomes that aim to reduce emissions from current sources through projects;	Consistency of language.
		(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	(b) Mitigation outcomes that aim to remove greenhouse gases from the atmosphere and sequester them via afforestation, reforestation, other nature-based solutions or technology-based projects; and	Consistency of language
		(c) technologies and projects on	To follow from the new proposed definition	“Standards” rather than “technologies and

Part	Clause	Current Provision	Recommendation	Justification
		the whitelist;	in Clause 1 Part 2 this should read: (c) standards on the Kenya Carbon Standards List	projects" because this deals with matters such as additionality, methodologies and baselines through the existing highly-developed international standards for climate emission projects; while also allowing for Kenya to develop its own standard in due course, should the need arise.
		(d) emission credits not taken into account, including—		
		(i) previously used emission credits;	Suggest, "mitigation outcomes that have been retired in a recognised registry"	This is a much tighter definition than "used"
		(ii) emission reductions that have been achieved in violation of human rights;	Remove	While we agreed with this in principle, implementing it and proving wrongdoing on behalf of the project developer will be very challenging If there are human rights violations they can and should be identified and proved, but this is true for any activity in Kenya and the environment act is not the correct place to be redefining what that is and when it is applicable.
		(iii) the emission reductions have had significant negative social or environmental impacts;	Suggest, "emissions reductions that have been achieved through community loss of property, assets, income, livelihoods and through projects developed without Free Prior Informed Consent (FPIC) of local communities and indigenous peoples."	Again, proving this could be a challenge but this language provides a safeguard
		(iv) emission reductions that	Suggest, "mitigation outcomes that were	This aligns with the Paris Agreement era. The

Part	Clause	Current Provision	Recommendation	Justification
		were achieved before 1st January, 2013 and	achieved before 1st January, 2020 and" Or, "mitigation outcomes that were achieved in periods where Kenya has already reconciled and reported her emissions inventory"	Article 6 Rulebook does not allow "grandparenting" of mitigation outcomes from previous Commitment Periods. In later years, once the inventory is "closed" older credits cannot be used.
		(iv) emission reductions that were registered before 1st January, 2013.	Suggest: Remove	There are projects in Kenya that were registered prior to 2013, which continue to issue credits currently. Early adopters should not be penalised, it sets a bad precedent and disincentive.
I/A	23B	(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;	Replace "carbon trading" with "mitigation outcomes"	
		(c) carbon offset projects shall ensure that emissions are kept out of the atmosphere for a reasonable length of time	Remove this clause	By only taking projects that are qualified to the Standards, those standards' mechanisms for ensuring permanence, such as a "buffer account" are already dealt with. Furthermore, the phrase "reasonable length of time" is very vague.
		(d) emission reductions shall be carefully recorded and documented for every offset scheme, utilizing appropriate accounting terms, corresponding adjustments, and location of offset	Change "emission reductions" to "mitigation outcomes" Recorded and documented where? In the national ghg registry? And can it be added that this will be done in a timely manner?	Consistency of language. It will be good for the legislation to clarify these points

Part	Clause	Current Provision	Recommendation	Justification
		as required by the UNFCCC and other standard bodies.		
IVA	23C (1)	The participation in an initiative authorising the trade in carbon credits shall be:	Change "carbon credits" to "mitigation outcomes" Replace "shall be" with "may be in any of the following circumstances"	Consistency of language This is a bit clearer that it can be in any of a), b) or c), the use of "shall" is less clear.
	(b)	as a result of trading with a private entity;	Add "agreement" as per (a) above	For consistency
IVA	23C (2)	The Cabinet Secretary may:		
	(a)	enter into a bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals	Replace "carbon for emission reductions and removals" with "mitigation outcomes"	Consistency of language
	(b)	with the approval of the Cabinet, enter into an agreement with a private entity to offset carbon emissions	Replace "offset carbon emissions" with "transfer mitigation outcomes"	Consistency of language
IVA	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.	Add at the start, "Subject to corresponding adjustment . . ." Change "emission reduction" to "mitigation outcome"	In a situation where there are ITMOs projects, Corresponding Adjustments will be applied to avoid double reporting to UNFCCC. Consistency of language
IVA	23D	Regarding EIAs		

Part	Clause	Current Provision	Recommendation	Justification
	(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.	Change "carbon trading" to "mitigation outcome" Add to the end, "... and also ensure that local communities have provided their Free, Prior and Informed Consent to the project activity."	Consistency of language Add this as a safeguard Please confirm that if a project is not required to carry out an EIA under the Environmental Management Act, it will not be required to simply by virtue of being a carbon project? If so, this would add significant cost to smaller projects.
	(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 undergo REDD+ safeguard standards assessment.	Delete the clause	We believe that this will be covered by the Standards on Kenya's Carbon Standards List
IVA	23E	Provision of Social and Environmental Benefits		
	(1)	A project undertaken pursuant to this Act shall specify the anticipated environmental, economic or social of benefits the project.	This could be required to be submitted as a report to the PS at the time a projects requests registration with the scheme and then updated annually	It will improve transparency and encourage positive developments within the project

Part	Clause	Current Provision	Recommendation	Justification
	(2)	For purposes of subsection (1), the environmental benefits shall include—		
		(e) achievement of Kenya's greenhouse gases emissions targets.	Add "reduction" after the word "emissions"	The overall goal is emission reduction
	(3)	Every project undertaken pursuant to this Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the project with impacted communities.	Most of the Standards that are likely to be on Kenya's Carbon Standards List already require extensive and ongoing engagement with the local communities. We would like to understand more about what is contained in this Agreement. Furthermore, it is very important to note the range of project types and scales: from those that do industrial energy efficiency within a private factory to those that seek actively to alter practices on community rangelands. The definition of Community in each of these and the necessary levels of engagement vary widely.	We propose that the government tries to reduce duplications with what the Standards already require, wherever possible. "One size does not fit all" when it comes to an agreement with the local community.
	(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.	Should the government decide to continue with a Community Agreement, we believe it should be overseen at National level, with the County involved in monitoring, otherwise finding agreement could be extremely challenging.	High level mandates for national and county should be clear here, although the role in policy guidance is clarified in 6(c). If the separation of mandates is left entirely to regulation it will stall implementation by wrangles in developing regulations. Properly, the National should be responsible for policy (6(c)) to ensure broad consistency and the county should be responsible for

Part	Clause	Current Provision	Recommendation	Justification
				monitoring. Oversight in tiers, with routine oversight at county level and less frequent higher level oversight at national level (Council). This would be consistent with the provisions of the Act. Dedicating roles will allow for clarity and reduce delays for implementation.
		(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;	Remove this wording. Change to, <i>"The Community Development Agreement shall include an outline of project financing, the includes the financial contribution by the investor and the role of the Community and their responsibilities. The Agreement shall include a mechanism for sharing further financial resources with the Community, in the event that the sale of Mitigation Outcomes creates a financial surplus over time."</i>	All projects are different, particularly the broad categories of "technology-based solutions" and "nature based solutions projects" that can have very different varieties of community stakeholders (if any). As drafted, the proposal is ill-defined and does not make any reference to investments that the investor may make. Furthermore, it does not take account of other mechanisms through which the community may benefit such local employment, purchase of seedlings / materials, direct cash payments, community infrastructure development, improved tea bonus, livelihood improvement, product and service subsidies eg cheaper fuel and transport, and other co-benefits such as clean air and improved water quality. There is a real risk that putting a figure in legislation, such as 25%, will "scare-off" investors and they will spend their climate finance in other countries instead. A fixed /imposed benefit sharing model will also hinder innovation that is needed to develop new benefit sharing models and better align carbon payments with climate incentives, as

Part	Clause	Current Provision	Recommendation	Justification
				well as further democratise access to carbon markets in farming communities. The Community Development Agreements should be used as a tool to set out expectations where communities are actively involved, such as through the projects being based on community land.
		(c) manner of engagement with local stakeholders, especially the impacted communities;		This should be done as per Kenya's Carbon Standards List, to streamline the process
		(d) sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities;	This shall be done through the Community Agreement	Please see comments on b) above. Benefit sharing will be entirely dependent on the type of project - "one size does not fit all" and the key thing is to align expectations at the start.
		(f) manner of its review or amendment, which shall be at least every two years.	Five years	Mostly, carbon projects last for 15 years for energy projects and 20 years for nature-based projects. Frequent review may fail to capture relevant market trends that will inform the review of these community agreements.
	(7)	Every carbon projected 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.	Add "environment" to the things that shall be improved for communities: Every carbon project undertaken pursuant to this Act shall take into consideration and aim to improve the economic, social, <i>environmental</i> and cultural wellbeing of the community around the project.	Their local environment needs to be improved, not damaged.

Part	Clause	Current Provision	Recommendation	Justification
IVA	23F	Share of proceeds and cancellation rates	The Share of Proceeds, if raised at a Kenya level, rather than the UNFCCC, should not be seen as an opportunity to extract a levy or a tax from project developers.	We have seen examples in other countries, where this has led to divestment, or scaling-back of investment plans, which is the reverse of the outcome that the government actually wants to achieve for the economy.
IVA	23G	Carbon Registry		
	(1)	There is established a registry to be known as the National Carbon Registry.	Add to this section: “..which reflects updated and accurate record keeping, and is transparent and publicly available”	This is more precise and will ensure transparency.
	(2)	The Designated National Authority appointed under section 8(2A) shall be the custodian of the Registry.		
	(3)	The Register established under this section shall include:		
		(a) carbon credit projects and programmes implemented to reduce greenhouse gas emissions in Kenya;	Change to: Authorised Projects that qualify to produce Authorised Mitigation Outcomes (see <i>definitions at the start of our response</i>) by meeting the Standards required under the Act and that have been recognised as doing so by the Cabinet Secretary.	The Registry should include projects that have met the criteria to transfer mitigation outcomes internationally, and that are authorised to do so.
		b) a REDD+ Carbon registry;	Recommend: Deletion	These are included under 3(a) above and do not merit a separate clause
		(c) authorisations granted to	Delete	Only Authorised Projects should be on the

Part	Clause	Current Provision	Recommendation	Justification
		participate in an initiative/projects/ programmes under this Act;		registry
		(d) the carbon budget and the greenhouse gas reduction units;	Recommend: "The national carbon budget and the number of Authorised Mitigation Outcomes that could be transferred internationally in each year"	This adds clarity and give project developers an idea of how many mitigation outcomes might be available to transferred in a year, including whether there may be too many projects chasing too few transfers
		(e) the amount of carbon credits issued or transferred by Kenya;	Change carbon credits to mitigation outcomes	Consistency of language
		(f) the amount of carbon credits issued to emission reduction projects and programs recognized by Kenya from national greenhouse gas registry account;	Change carbon credits to mitigation outcomes	Consistency of language
		(g) the transfer of carbon credits and any carbon credits issued or recognized by Kenya from a national greenhouse gas registry account;	Change carbon credits to mitigation outcomes	Consistency of language
		(h) the cancellation of carbon credits and any other carbon credits issued or recognized by Kenya from a national greenhouse gases registry account; and	Change carbon credits to mitigation outcomes	Consistency of language

Part	Clause	Current Provision	Recommendation	Justification
		(i) any other carbon credits issued or recognized by the Kenya from a national greenhouse gases registry account.	Change carbon credits to mitigation outcomes	Consistency of language
IVA	23H	Additional requirements		
		The Cabinet Secretary shall prescribe additional requirements on the regulation of carbon markets.	<ol style="list-style-type: none"> 1) Change “shall” to “may” 2) Add to the end, “. . . with the aim of Kenya achieving her NDC in a cost efficient manner” 	<ol style="list-style-type: none"> 1) This is because the CS can make changes, but does not <i>have</i> to 2) The CS can have the mandate to regulate the carbon market but not, for example, to change climate policy unilaterally at an international level. The language needs an element of check / balance
	23I	Dispute Resolution		
(1)		Any dispute arising under this part shall be referred to the Principal Secretary responsible for climate change matters.	The aggrieved should be able to make a claim through the court	Accessing the PS for all carbon market disputes as the point of first reference may not be feasible or efficient in all cases, especially for marginalised segments of the population who may be unable to utilise this formal, national-level focused (i.e non decentralised) channel of dispute resolution. Further, carbon market disputes may arise in the context of claims of infringement of the right to a healthy environment, in which case the Constitution allows aggrieved parties to apply to a court for redress (Article 70 of the Constitution). To this extent, this provision does not align with the

Part	Clause	Current Provision	Recommendation	Justification
				Constitution, Section 23 (1) of the Climate Change Act, 2016, or the general circumstances of all Kenyans and their ability to quickly and easily reach the PS.
	(2)	Where the dispute referred to the Principal Secretary under subsection (1) is not resolved within thirty day of submission, the dispute shall be referred to the National Environmental Tribunal.	The legislation should explore alternative dispute resolution mechanisms i.e., Mediation, Arbitration, Traditional Dispute Resolution (TDR) etc. and not to solely rely on litigation. This would be more efficient in resolving community disputes that could be resolved without a formal process. Alternative dispute resolution mechanisms provide flexibility, cost effectiveness and faster decision making that come with them. A case by case analysis is recommended when identifying the appropriate dispute resolution mechanism.	The National Environmental Tribunal (NET) is a litigation route and generally court processes are time consuming and expensive. Communities may not have access to environmental justice through this mechanism. Historically, NET has not had the most efficient processes and does not have the capacity for the cases that are brought up which leads to a backlog of cases and delay.

Annex 1: Group Participants

Name	Organisation	Description
Aaron Leopold	EnerGrow	Project Developer
Aaron Munzaa	Soil-Carbon Certification Services	Project Developer
Ada Marmion	AECF	Project Developer
Alfred Osiko	GSMA	Industry Body
Amy Etiang	Downforce Technologies	MRV/Data Services
Anouk Boertien	Farm to Feed	Project Developer
Ash Burman	CAP-A	International NGO
Augustine Kenduiwo	Ministry of Environment and Forestry	Government
Avkash Mukhi	Circular Impact/Regen Organics	Project Developer
Baptiste Berges	Arbreen	Project Developer
Brian Otiende	USAID Kenya and East Africa	Donor Government
Caroline Kimani	Earthbanc	Project Developer
Christina Nduba	Bowmans	Law Firm
Cindy	Commonland	Project Developer
Clara Mundia	Dalberg Research	Consultant
Clarice Wambua	Cliffe Dekker Hofmeyr	Law Firm
Collins Otieno	Dorcas Aid International	NGO
Corey Pattison	Cella	Technology company
Diana Maranga	Octavia Carbon	Project Developer
Dorothy Maseke	FSD Africa	Nature Finance
Edwin Maingi	Ecosecurities	Project Developer
Esther Altorfer	Sistema.bio	Project Developer
Esther Baumann	Partnerships for Forests	Project Developer
Fardosa Mustafa	RegisTree	Law / Community
Fiona Napier	Climate Champions	International NGO
Flavia Howard	CAP-A	International NGO
Fridah Kiboori	Dalberg	Consultant
Geoffrey Wambugu	Wildlife Works	Project Developer
Gift Nyambura	Mercy Corps	International NGO
Harry Masters	Advancing Green	Consultant
Héloïse Zimmermann	Komaza	Project Developer
Holly Dublin	IUCN	International NGO
James	Akili Group & SAA Farm Ltd	Project Developer
Joshua Okumu	The Nature Conservancy	International NGO
Joy V. Kendi	FSD Africa	Nature Finance

Name	Organisation	Description
Julie Brown	C-Quest Capital	Project Developer
Juliet Munro	FSD Africa	Nature Finance
Kelvin Muli	Egerton University	Academia
Kevin Musila	Kenya Green Supply Limited	Project Developer
Lea Geron	South Pole	Project Developer
Tajiel Urioh	South Pole	Project Developer
Linda Wamune	Energy Peace Partners	International NGO
Lindsay Umalla	Clean Cooking Alliance	Industry Body
Lucy Nyoike	GEAPP / Africa Carbon Markets Init.	Industry Body
Madrin Maina	Sistema.bio	Project Developer
Malo Sauzet	hummingbirds	Project Developer
Marcus Watson	KawiSafi	Financier
Martin	SunCulture	Project Developer
Maureen Mwanu	Mpambe Organics	Project Developer
Mika Mitoko	Action Africa Help International	International NGO
Nils Razmilovic	Tamuwa Limited	Project Developer
Nyandire Reinhard	African Wildlife Economy Institute	Academia
Olivia Adhiambo	WWF Kenya	International NGO
Oscar	Nairobi Int. Financial Centre Authority	Finance
Paul Muthaura	EMRD Advisory	Consultant
Peninah Mwende	Burn Manufacturing	Project Developer
Prabhakar Vanam	KCIC Consulting Limited	Consultant
Purity Laird	NatCapAcct Ltd	Consultant
Ravi Sikand	Sikand consulting	Consultant
Raymond Maiyo	Peer Carbon	Technology Provider
Sam Moon	Planet Moja	Carbon Accounting and Offset Services
Sophie Odupoy	KOKO Networks	Project Developer
Teresia Kariuki	Climate Impact Partners	Project Developer
Thiongo Ndungu	Climate Lead Africa	Consultant
Tim Chambers	Offgrid.finance	Financier
Tom Morton	Individual	Financier
Victoria	Victoria Puxley Consulting	Consultant
Winfred	KPMG	Consultant
Fridah Kiboori	Dalberg Advisors	Consultant

Annex 2: Nairobi Climate Network Ltd. Certificate of Incorporation



No. PVT-JZUGXD2X

CERTIFICATE OF INCORPORATION

I hereby **CERTIFY** that,

NAIROBI CLIMATE NETWORK LIMITED

is on this date 10 Feb 2023 Incorporated under the Companies Act, 2015 and that the Company is a **PRIVATE LIMITED COMPANY**.



Registrar Of Companies

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COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE CLIMATE CHANGE (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 42 OF 2023)

TO

THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

FROM

THE COUNCIL OF GOVERNORS

29TH AUGUST, 2023

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

A) General Comments on the Climate Change (Amendment) Bill, 2023

The Council hereby notes as follows on the Climate Change (Amendment) Bill, 2023;

- i. The Council lauds the enactment of the Bill which seeks to establish a framework for domestic and international carbon trading/markets in Kenya and notes that this Bill is a positive effort by Kenya in contributing towards combating climate change.
- ii. However, the Council notes that the Bill is not compliant with Paragraph 14 of Part 2 of the Fourth Schedule of the Constitution of Kenya, 2010 that provides that county governments shall ensure and coordinate the participation of communities in governance at the local level and assist such communities to develop their administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.
- iii. Accordingly, the Bill does not provide an explicit benefit sharing ratio between the national, county government and the communities where the projects undertaken pursuant to the Act are based.
- iv. The Council also notes that the Bill is not compliant with the doctrine of checks and balances especially with respect to the decisions by the Cabinet Secretary in entering into bilateral and multilateral agreements to trade carbon for emission reductions and removals.

The Council presents its specific comments to the Bill as hereunder.

B) Specific Comments on the Climate Change (Amendment) Bill, 2023

CLAUSE/SECTION	PROVISION	COMMENTS	PROPOSAL
Clause 12- Section 23C	(2) The Cabinet Secretary may- (a) enter into bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals;	This provision does not provide for a means to check the decision of the Cabinet Secretary to enter into such agreements despite being an important function. The CS's key decisions to formulate and review the climate change policy, strategy and the National Climate Change Action Plan are submitted to the Climate Change Council for approval. This decision should also be subject to the Council's approval.	Amend the Section 23C (2) (a) to: (a) enter into bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals subject to approval by the Council;
Clause 12- Section 23E	(5) A community development agreement shall include provisions on the following- (a)... (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; Provided that: i)in 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 earnings.	The provision should provide an explicit benefit sharing ratio between the national government, county government and the communities where the projects undertaken pursuant to the Act are based. We propose that the percentage meant to go to community be split equally between the county government and the community. This is in line with the mandate of county governments to coordinate the participation of communities in governance at the local level, develop their administrative capacity and their	Amend the Section 23E (5) (b) (i) & (ii) to: (b)the annual social contribution of the aggregate earnings of the previous year to the county government and the community, to be managed and disbursed equally for the benefit of the county government and the community; Provided that: i)in 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 earnings.

	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 earnings.	participation in governance at the local level.	
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c) Conclusion

The Council concludes that there is need to align the Bill to accommodate international best practices on carbon trading/markets; the mandate of county governments to coordinate the participation of communities in governance at the local level; and the doctrine of checks and balances.

The Clerk of the Senate,
Senate Standing Committee on Land, Environment and Natural Resources
Kenyan Parliament

30th August 2023

Attn. The Clerk of the Senate,

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.

Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Justification and Rationale
Part 2, Section 5/6	Amendment of Section 6 of No. 11 of 2016	Composition of the Council	Include representation from local carbon project developers like BURN Manufacturing in the Council.	To ensure that the Council is well-informed about the challenges and opportunities faced by local carbon project developers, it is important to have representation from these sectors. This can lead to better policy guidance and direction for the carbon market.
Part 4A, Section 23B, (a)	Principles governing trade in carbon markets	"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"	Here it would be useful to know what the prescribed carbon standards are, or what the standard eligibility will be. We would recommend those standards which are most prevalent in Kenya – e.g., Verra, Gold Standard.	This would take advantage of the opportunity provided by Kenya's existing projects and avoid the costs associated with creating new standards.
Part 4A, Section 23 C (2)	Participation in carbon markets	"The Cabinet Secretary may—"	The 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.	Strategic stakeholders, particularly those operating at scale and manufacturing locally in Kenya, need reassurance that their projects will be able to secure Corresponding Adjustments in future. Lack of clarity, and a potentially long wait until a framework is in place, is making it harder to attract investment, ensure business continuity, and mitigate risk.

			This will protect local manufacturers from business interruptions.	
Part 4A, Section 23 D (1)	Environmental impact assessment	"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"	Clarify that projects which were not included in the second schedule of the EMCA 1999 should not be required to complete an EIA assessment.	To reduce the burden on project developers when establishing a project.
Part 4A, Section 23E (2a & e)	Environmental impact assessment	(2) "For purposes of subsection (1), the environmental benefits shall include— (a) removal of greenhouse gases from the atmosphere and avoidance of emission of greenhouse gases in order to meet Kenya's international obligations; (e) achievement of Kenya's greenhouse gases emissions targets."	Clarity – how does Kenya intend on using the VCM towards achieving national climate targets. Will there be limits on corresponding adjustments for instance? Will there be fees associated with corresponding adjustments?	This decision could impact international demand for credits generated by projects in Kenya if companies' purchased credits cannot be used to make their own claims. The uncertainty may also dissuade carbon market project developers from instigating projects.

Part 4A, Section 23 E (1)	Provision of social and environmental benefits	-New Clause Suggested-	The bill should prioritize supporting local businesses - especially projects that manufacture locally and/or create local jobs.	BURN Manufacturing is based in Kenya. All cookstoves are manufactured locally in Ruiru, Nairobi, supporting over 1,500 jobs. Government support for local businesses through the Bill can help stimulate the Kenyan economy.
Part 4A, Section 23E, (5b)	Provision of social and environmental benefits	<p>"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; Provided that –</p> <p>(i) in land-based projects, the contribution shall be at least forty per centum of the aggregate earnings; and</p> <p>(ii) in non-land-based projects, the contribution shall be at least twenty-five per centum of the aggregate earnings"</p>	<p>Review (or remove) the annual social contribution percentage to the community.</p> <p>Clarify the definition of "aggregate earnings" and include other financial benefits to the community over the lifetime of the project.</p> <p>Ensure disbursement of community benefit funds is managed by the project developer and local community representatives, and not by central or county government.</p>	<p>While the proposed 25% - 40% annual social contribution to the community is a positive step, it may be necessary to review this percentage to ensure Kenya remains competitive and continues to attract international investment. Balancing community benefits with business viability is crucial. We are concerned that the proposed percentages may be perceived by foreign investors as an imposition of taxes, potentially stifling investment in Kenya.</p> <p>It may help to apply community benefit provisions differently to different project types. For example, cookstove projects have high operating costs - of manufacture, distribution, and ongoing project monitoring. Unlike forestry and land use projects, there is no clearly defined geographic "community."</p> <p>Considering this, we propose two potential pathways forward:</p>

1.	<p>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.</p>			
2.	<p>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.</p>			

Part 4A, Section 23 E (5)(d)	Provision of social and environmental benefits	"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 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). In the last two years alone, we have raised \$10M in international carbon finance to support stove subsidies for low-income families in Kenya.</p>
Part 4A, Section 23 G	Carbon registry	"There is established a registry to be known as the National Carbon Registry"	Align the National Carbon Registry to existing carbon registries (e.g., Gold Standard / Verra) to facilitate cross-comparison. Implement transparent and user-friendly mechanisms for businesses like BURN Manufacturing to access the National Carbon Registry.	<p>Easy access to a well-structured National Carbon Registry that is comparable to existing registries can help businesses track their carbon credit projects and keep up to date with relevant information. A transparent and user-friendly registry promotes a better understanding of the carbon market and encourages more active business participation.</p>

Scobie Mackay
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scobie.mackay@imperativeinc.com

25 August 2023

Honorable Secretary - Kenya Senate

Greetings,

Deleted: Minister XXXXXX,

Imperative, a key participant in the Voluntary Carbon Market (VCM), warmly welcomes the endeavors of the Government of Kenya to establish enhanced regulations (the Climate Change Bill) for the effective oversight of VCM projects within the nation.

Commented [SM1]: We refer to the Bill down below - I think we need to specify which Bill it is.

The fundamental mission of Imperative is the delivery of very high-quality projects through the fusion of on-ground engagement and advanced technology. It is our strong belief that, within the ambit of Imperative's quality framework, local communities must be accorded tangible benefits from all carbon-related initiatives. This principle extends to ensuring equitable distribution of value amongst landowners (when applicable) and all stakeholders engaged in these projects.

Commented [AD2R1]: added

Consequently, within each project's blueprint, Imperative dedicates a portion of its value to:

- Initial capital providers and our local entity, who provide sustained financing spanning 15 to 40 years, and sometimes beyond.
- Employees and contractors, nothing that we have a policy of hiring and training local talent for our projects.
- Landowners in cases of land-based initiatives.
- Communities involve in or in proximity to the project, facilitated through a benefit-sharing mechanism based on the net profits of our local entity. By employing net profits, we account for VCM market fluctuations, while ensuring local communities gain from market price escalations.
- The Government, which shall benefit from tax revenue from Imperative's local entity and from our collaborating local contractors.

Kenya occupies a pivotal role as a green hub, aligning climate-conscious projects with community development. In this context, I would like to offer my insights regarding the stipulations within the Bill, specifically:

"Provided that -

(i) for land-based projects, the contribution shall constitute no less than forty percent of the cumulative earnings; and

IMPERATIVE

(ii) for non-land-based projects, the contribution shall constitute no less than twenty-five percent."

These cumulative earnings encapsulate the entire income within a carbon project. It is my belief that a more precise definition of "income" is necessary to obviate ambiguity. The distinction between the value of carbon credit sales and net profit requires clarification. Moreover, I suggest that this definition should encompass the direct advantages of projects (such as provision of free cookstoves or trees, and direct employment opportunities) and the due share for initial capital providers, who bear substantial investment risks.

While the proposed provision may harmonize with REDD+ projects, my apprehension is that it might render numerous other project categories, including Afforestation, Reforestation, Revegetation (ARR), cookstove, water distribution, and mangrove endeavors, economically inviable due to the various stakeholders that should be rewarded, and the already long term returns on investment. I know that for Imperative, imposition of a flat forty percent top-line "cumulative earnings" share will render our project in Kenya economically unviable. We are not alone, and our fear is that, as proposed, the Bill is likely to stifle foreign direct investment and prompt capital providers to explore more affordable markets abroad..

Therefore, I would humbly suggest a differential percentage allotment based on project type, grounded in net profit calculations and taking into account a wholistic assessment of the various benefits (monetary and non-monetary) that flow from these projects. Recognizing that this might necessitate further assessment of diverse business models, I advocate for mandatory disclosures encompassing all projects. These disclosures would elucidate the composition of stakeholders and delineate the contours of benefit sharing, encompassing non-monetary advantages that frequently carry augmented value for communities. With greater transparency, I believe local communities will also highly benefit from carbon projects.

I thank you in advance for the time you will allocate to this letter and look forward to meeting you at the upcoming Africa Climate Summit to exchange more on this very important law.

With utmost respect,

Scobie Mackay
Imperative CEO

Deleted: [Signature]



TAMUWA

Registration No. PVT/2016/0131144

**To: THE KENYA SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT, AND
NATURAL RESOURCES**

Date: 30th 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.



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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.**



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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



TAMUWA

Registration No. PVT/2016/0131144

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.



TAMUWA

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



Shadrack Agaki
Climate Change and Food System Communication Consultant
E-mail: shadrackagaki@gmail.com
Mobile: +254711599493

23rd August 2023

The Clerk,

Senate.

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. I am an alumni 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:

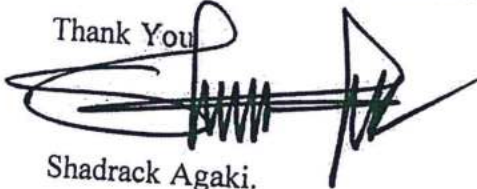
Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Justification and Rationale.
Part II- Policy, Coordination and Oversight	Establishment of the County Climate Change Committee	New Section to Probably Immediately after section 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 	<p>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.</p>

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.

However, I have learnt that the bill has not taken into consideration a county framework. For this reason, I appeal to the senate to consider moving a further amendment to the Climate Change amendment Bill 2023 to include a mechanism that will address carbon market and trade issues at the county level.

Look forward to more interaction and passage of the amendments.

Thank You

A handwritten signature in black ink, featuring a large, stylized 'S' followed by several vertical strokes and a final diagonal stroke.

Shadrack Agaki.



INVITATION TO PUBLIC PARTICIPATION ON THE CLIMATE CHANGE (AMENDMENT) BILL, 2023

To: Clerk of the Senate (clerk.senate@parliament.go.ke)
From: Shalom M. Ndiku, Policy Director, Africa Field Division (sndiku@conservation.org)
Date: Wednesday 30th August 2023
Subject: **Comments on the Climate Change (Amendment) Bill, 2023**

On behalf of Conservation International (CI), we appreciate the opportunity to provide additional feedback on the latest draft of the Climate Change (Amendment) Bill, 2023 (the "Bill"). CI is an international conservation organization whose mission is to build upon a strong foundation of science, partnerships, and field demonstration to empower societies to care for nature responsibly and sustainably, our global biodiversity, for the wellbeing of humanity. CI has worked in Africa since 1990 and has its Africa headquarters here in Nairobi. CI has worked extensively to pioneer, develop, and support community-centric projects delivering natural solutions to climate change and generating carbon revenue for local communities, including projects in Kenya.

We hereby would like to share our written submissions and comments to the Bill and **would request an opportunity for an audience to present our oral submissions before the Honourable Committee.**

Maintaining Kenya's Place as an Attractive Destination for Climate Finance, While Supporting Local Communities - We write to express our concerns regarding several provisions in the Bill, which if implemented, have the potential to severely discourage investment into natural climate solutions in Kenya. We share the Government's vision to encourage investment into Kenya, encourage green growth, and support local communities. Carbon markets can support this vision but to be successful they must balance realities of project costs with potential demand and revenue needs for both host governments and communities. Recently, other jurisdictions in Africa have announced or enacted laws with regulations or taxes intended to benefit the host country but have ultimately had a chilling effect on climate investment in their countries. We worry, if passed as is, the Act could have a similar effect on climate investment in Kenya. Drawing on our long experience in working with communities to sustainably manage nature, including through carbon projects, we suggest certain modifications to the Bill to ensure that Kenya remains an attractive destination for investment in carbon projects, while ensuring the maximum amount of carbon revenue flows to local communities.

In these submissions, we seek to highlight **five critical issues of concern:**

- 1) **Current Benefit Sharing Provisions Could Hinder Financial Viability of Projects** – Clause 23(E)(5) states that land-based projects should provide an annual social contribution of at least forty percent (40%) of the "aggregate earnings of the previous year to the community." This is an increase of fifteen (15%) from the prior draft, which represents an arbitrary distinction between land-based and other projects. In principle, CI is supportive that a majority of *net revenue* goes to local communities. In fact, CI requires this for all CI-supported carbon projects. As drafted however, "aggregate earnings" means "the total of all income in a carbon project without adjustment for inflation, taxation or types of double counting." See Clause 2. This is problematic, because it fails to account for certain fixed costs, such as taxes, royalties, fees, or payments to government. For example, carbon credit registries (e.g. Verra) which issue and hold carbon credits, can charge various fees to operate a project, including a US\$0.27 issuance fee for each carbon credit sold. Most carbon projects are marginally "profitable" at best or rely on donor or charitable funding. If a project proponent was unable to deduct these taxes, royalties, or fees from the definition of "aggregate earnings," a project could become financially unviable and interest in investing in projects could drop. This is particularly true if Kenya enacts a future tax on carbon revenue. In such a scenario, a project proponent might pay 20% in taxes, 5% in fees, and 40% to communities,

leaving only 35% of revenue to cover project start-up and operational costs, legal expenses, marketing costs, salaries, among other costs. Faced with this prospect, many projects may cease to exist, and investors would likely move to other jurisdictions.

Recommendation: Given the wide variation in project economics by different carbon project types, we propose the clause be revised to allow for development of a benefit sharing framework in subsidiary legislation. This would come in the form of a criteria that a project would apply to determine the share of revenue that the various stakeholders engaged would receive, while taking into account the peculiarities of projects in this sector.

If the National Assembly is set on defining a fixed percentage, it should define “aggregate earnings” to exclude “taxes, royalties, and fees, or payments to government.” The definition would thus read: “aggregate earnings means the total of all income in a carbon project after deductions for taxes, fees, royalties, and payments to government, but without adjustment for inflation or types of double counting.” In the alternative, the National Assembly could revert the minimum annual social contribution to twenty-five percent (25%) for land-based projects, as originally drafted.

- 2) **Managing an Appropriate Level of Government Oversight (without Undue Interference in Private Contracts and Project Operations)** – We recognize and support the need to protect local communities’ rights through the legal system. These needs also should be balanced with the need to give project proponents and stakeholders clarity in what they can expect when negotiating a contract and executing a project. Unfortunately, the current Bill increases regulation and presents an opportunity for interference by county and national government with respect to contracts between private parties and project operations. Clause 23(E)(4) provides that “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.” Clause 23(E)(5)(a) requires community development agreements to provide “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.” Finally, Clause 23(E)(8) gives the national and county governments unrestricted authority to enforce community rights negotiated under a community development agreement. The language is very broad, creating uncertainty about the role of the government in contract negotiation and execution. These provisions taken together could give the impression that (a) County and National Governments could intervene in private negotiations, (b) that they may unjustifiably insert themselves as parties to agreements themselves, and (c) that they bring enforcement actions with or without cause. These such interventions could disincentivize project proponents. It has already occurred that county governments have sought to invalidate existing carbon contracts between private parties, where they have no legal authority to do so. Such efforts undermine the confidence of carbon credit buyers, the value of carbon credits, create unnecessary confusion, and ultimately deprive local communities of revenue. We respectfully suggest that a single government entity could act as an ombudsman looking out for and advocating for a communities’ best interest to ensure they are not taken advantage of. Further, to avoid this undue interference, governments should only be considered “stakeholders” if the project occurs on public land, as opposed to private land.

Recommendation: Modify Clause 23(E)(4) to delete “oversee” to avoid confusion suggesting government control over the contracting process. It would thus read: “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.”

Modify 23(E)(5)(a) to read: “a list of stakeholders of the project: including project proponents, the impacted communities, and to the extent the project is on public land, the National Government and the county government where the project is being undertaken, respectively.”



Modify 23(E)(8) to clarify the reasons for government enforcement action, making clear such intervention is permissive and to support communities incapable of protecting their own interests: "The national government and the respective county government where the project is situated ~~shall~~ may enforce the community rights negotiated under a community development agreement negotiated under section 23E, in the event local communities are unable to do so on their own and where there is probable cause of a material breach to the detriment of local communities."

- 3) **Ensure the Participation of Site Scale Projects** – At present, the vast majority of REDD+ projects in Kenya are site level projects without affiliation to national or subnational programs. Kenya has been working to adopt a nested REDD+ framework incorporating these projects into its national REDD+ program in line with evolving international market requirements and CI has been supporting the development of this framework. However, as drafted, the definition of "Reduced Emissions from Deforestation and Forest Degradation" (REDD+) does not make clear that nested REDD+ projects will be included under the amended Climate Change Bill. By not specifying that nested projects will be part of REDD+, the Bill would exclude many of Kenya's current projects and potential future projects that will be developed under the new nesting framework. We recommend specifying that nested projects are part of the REDD+ definition and investing in supporting the transition of current projects to a nesting framework.

Recommendation: Modify the definition of "Reduced Emissions from Deforestation and Forest Degradation" to include "nested projects in line with Kenya's REDD+ nesting framework." The definition would read: "Reduced Emissions from Deforestation and Forest Degradation 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, including nested projects in line with Kenya's REDD+ nesting framework"

- 4) **Dispute Resolution Due Process Concerns** - We find the dispute resolution clauses in Clause 23H to provide insufficient time (only 30 days) to resolve disputes, nonetheless give accused parties notice and an opportunity to respond to any allegations. Parties should be able to take full advantage of existing dispute resolution procedures before they are automatically referred to the National Environmental Tribunal.

Recommendation: Modify 23(H)(1) to delete "and be resolved within thirty days from the date the dispute is lodged." Modify 23(H)(3) to provide "Where the dispute resolution proceedings under subsections (1) and (2) have not commenced within 60 days of filing, the dispute shall be referred to the National Environmental Tribunal."

- 5) **Transitional Clause** – The Bill contains no language with respect to existing projects. It should define a reasonable period of time (e.g., two years from the date implementing regulations are enacted) by which existing carbon projects are expected to comply with the law.

Thank you for your time and consideration. We look forward to working with you to develop a robust system that protects the interests of local communities, while maintaining Kenya's unique position as a leader in natural climate solutions.

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PROPOSED CLIMATE CHANGE (AMENDMENT) BILL, 2023

Introduction

The Bill was prepared through joint efforts of the Ministry and its SAGAs, Office of the Attorney General, the National Treasury and the Private Sector. The team reviewed existing policies on Climate Change and legislation; and undertook desktop research on international best practices to come up with the Bill. On 27th March 2023, the Ministry put up a public notice in the Daily Nation inviting members of the public to submit their comments on the Climate Change Bill (copy attached). The notice was for a period 60 days as required under Section 24 of the Climate Change Act as read together with the Schedule to the Act.

The Ministry received numerous comments on the Bill and the same were incorporated and a team drawn from Climate Change Directorate and the legal office went through the public comments and incorporated them into the Bill and gave reasons for those not incorporated (copy attached).

On 21st August 2023 the Ministry appeared before the National Assembly departmental committee on environment, mining and forestry to deliberate on the Bill. Thereafter the Bill was debated and passed by the national Assembly.

The Main objective of the Bill

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

Specific Objectives of the Bill

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.

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 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.
- e) **Clause 5** of the Bill seeks to amend section 7 of the Act to align the provisions on membership of the council, for better operations.
- f) **Clause 6** 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.
- g) **Clause 7 and 8** 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.

- h) **Clause 9** 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.
- i) **Clause 10 and 11** seek to amend sections 15 and 16 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.
- j) **Clause 12** of the Bill seeks to insert a new Part in the Act on regulation of carbon markets.
- k) **Clause 13** of the bill seeks to amend section 24 of the Act by deleting subsection (3) for a better regulation making process.
- l) **Clause 14** of the Bill seeks to amend section 33 of the Act to provide for carbon market related offences
- m) **Clause 15** of the Bill seeks to amend Section 35 of the Act to provide for the transition of on-going carbon market projects
- n) **Clause 16** of the Bill seeks to amend section 36 of the Act to provide for the list of regulations that may be made pursuant to the Act
- o) **Clause 17** of the Bill seeks to amend the schedule to the Act by reducing the period of public participation from 60 days to 28 days

Benefits of the Bill

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

- a) 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;
- b) 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;

- c) 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;
- d) It will accelerate investments in carbon projects as well as facilitate reduced costs for low-carbon investments and transition;
- e) It provides an additional revenue stream to support sustainable development, with several co-benefits to communities involved through social, economic and environmental benefits;
- f) In addition, the Bill provides an opportunity for:
- g) Global trading in sovereign forest carbon assets under the REDD+ process;
- h) Domestic legislature that will enable Kenya to establish the necessary national arrangements such as approval of project level activities;
- i) Coherence in approaches to climate investments in the country;
- j) Sustainable development in the delivery of climate actions on the ground;
- k) Equity in benefit sharing;
- l) Change of mindsets on living with harmony with nature; and
- m) Diversification of livelihood options at the local level and value addition.

PROPOSED CLIMATE CHANGE (AMENDMENT) BILL, 2023

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 units, mitigation outcomes or offsets generated through carbon initiatives, programmes and projects, subject to</p>	<p>To define new terms introduced in the Act.</p>

	<p>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 corresponding amount of verified emission reductions by the Receiving Party, whereas</p>	
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	<p>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>	
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		<p>“State Party” means a Country that has 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(tCO₂eq)” 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>“Whitelist” 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>	
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2.	<p>Section 3. Objects and purposes</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>To provide legal framework for the market and non-market approaches international market mechanisms</p>
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	<p>actions of public and private entities;</p> <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>(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>(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>	
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	<p>(j) provide mechanisms for, and facilitate climate change research and development, training and capacity building;</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>	<p>(i) provide mechanisms for, and facilitate climate change research and development, training and capacity building;</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 6. Functions of the Council</p> <p>The Council shall provide an overarching national climate change coordination mechanism and shall—</p> <p>(a) ensure the mainstreaming of the climate change function by the</p>	<p>Section 6. Functions of the Council</p> <p>The Council shall provide an overarching national climate change coordination mechanism and shall—</p> <p>(a) ensure the mainstreaming of the climate change function by the national and county governments;</p>	<p>The NCCC being the overarching policy organ on climate change, it should have an explicit role touching on carbon markets</p>

	<p>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</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>(fa) provide guidance and policy direction on carbon markets and non-market approaches to the national and county governments, the public and other stakeholders.</p>	
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	<p>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>(g) Set the targets for the regulation of greenhouse gas emissions.</p>	
4.	<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>(e) the chairperson of the Council of Governors;</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> <p>(iv) inserting the following new paragraph immediately after paragraph (g) –</p>	<p>To operationalize the Council</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 subsection (2)(a), (b), (c), (d) and (e) each person shall be qualified for</p>	<p>(ga) a representative of the youth;</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>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 (7) the</p>		
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	membership of the Council shall be for a term of three years and renewable once.		
5.	<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 (e) and substituting therefor the word “annually”</p> <p>(b) inserting the following new paragraphs immediately after paragraph (e)—</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>	
6.	<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 agency of the</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>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> <ul style="list-style-type: none"> (a) is a citizen of Kenya; (b) has a postgraduate degree, knowledge and experience in any of the following fields <ul style="list-style-type: none"> (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 	<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>	
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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>		
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	<p>(a)provide analytical support on climate change to the various sector ministries, 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</p>		
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	<p>to the county's international obligations including associated reporting requirements;</p> <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>		
7.	Section 10. Seal of the Council	Section 10. Seal of the Council	

	<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>(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>(a) in subsection (1) by deleting the word “Director” and substituting therefor the word “Secretary”;</p> <p>(b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Secretary”.</p>	
8.	<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>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>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</p>

	<p>(2) The National Climate Change Action Plan shall be presented for approval by the Council.</p> <p>(3) The National Climate Change Action Plan shall prescribe measures and mechanisms—</p> <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</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 profile;</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>global climate change decisions on response measures (mitigation actions and policies that promote social, economic and environmental benefits).</p>
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	<p>climate change response and disaster reduction;</p> <p>(h) to identify strategic areas of national infrastructure requiring climate proofing;</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>		
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	<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 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 		
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	<p>(v) the socio-economic well-being of any segment or part of the population;</p> <p>(d) fiscal circumstances, in 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</p>		
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	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.		
9.		Section 15 of the principal Act is amended in subsection (3) by deleting the word “council” and substituting therefor the words “Cabinet Secretary”	
10.		Section 16 of the Principal Act is amended in subsection (2) by deleting the word “council” and substituting therefor the words “Cabinet Secretary”	
11.		Section 24 of the principal Act is amended in subsection (3) by deleting the entire subsection	
12.	Insertion of new part on regulation of carbon markets	NEW PART IVA—REGULATION OF CARBON MARKETS Carbon markets	To cater for carbon markets and facilitate its operationalization

		<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 through projects;</p> <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>	
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	<p>23B. The trade in carbon markets shall be guided by the following principles—</p> <ul style="list-style-type: none">(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;(b) mitigation outcomes reported under the requirements of this Act shall be accounted for in tonnes of carbon dioxide equivalent;(c) carbon offset projects shall ensure that emissions are kept out of the atmosphere for a reasonable length of time; and(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>Participation in carbon markets</p> <p>23C. (1) The participation in an initiative authorizing trade in carbon credits shall be—</p> <ul style="list-style-type: none">(a) as a result of a bilateral or multilateral trading agreement;(b) as a result of trading with a private entity;(c) in a voluntary carbon market. <p>(2) The Cabinet Secretary may—</p>	
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	<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 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</p>	
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	<p>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 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>(e) 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</p>
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	<p>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 proponents and the stakeholders.</p> <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;</p> <p>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>	
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	<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 around community priorities; and</p> <p>(f) 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>	
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	<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, 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 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</p>
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		<p>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 submission, the dispute shall be referred to the National Environmental Tribunal.</p>	
14	Carbon market related offences	Section 33 of the Act amended to provide for carbon market offences and penalties	To provide for offences on carbon market
15	Transition for ongoing carbon projects	Section 35 of the Principal Act amended to provide for the transition. Projects have 1 year to comply with the Law	Orderly transition
16	Provision on making of Regulations	Section 36 of the Principal Act amended to provide for the list of Regulations that may be made	Cabinet Secretary given power to make regulations on carbon market
17	Amendment to the schedule to the Act	Schedule amended by removing 60 days and replacing with 28 days	To shorten the period for public participation