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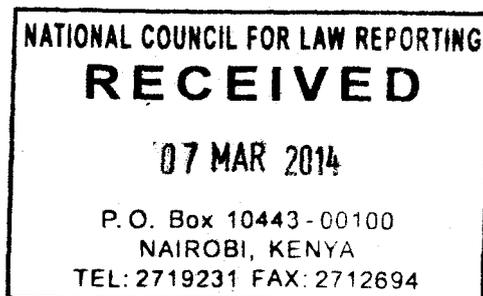
NATIONAL ASSEMBLY BILLS, 2014

NAIROBI, 20th January, 2014

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THE CLIMATE CHANGE BILL, 2014

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THE CLIMATE CHANGE BILL, 2013

A Bill for

AN ACT of Parliament to provide for the legal and institutional framework for the mitigation and adaption to the effects of climate change; to facilitate and enhance response to climate change; to provide for the guidance and measures to achieve low carbon climate resilient development and for connected purposes

ENACTED by the Parliament of Kenya. as follows-

PART I—PRELIMINARY

1. This Act may be cited as the Climate Change Act, 2014. Short title.

2. In this Act, unless the context otherwise requires- Interpretation.

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

“Board” means the Board of the Council appointed under section 8;

“Cabinet Secretary” means the Cabinet Secretary of the Ministry for the time being responsible for Cabinet affairs;

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

“coordinating Ministry” means the Office of the President;

“Council” means the National Climate Change Council established under section 5;

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

“energy efficiency” includes the use of-

- (a) technologies other than those used for the production of heat that is reliant on renewable sources of energy;
- (b) materials and equipment the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials and equipment; and
- (c) surplus heat from electricity generation or other industrial processes for heating or other purposes;

“Fund” means the Climate Change Fund established under section 26;

“greenhouse gas” includes but is not limited to-

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

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

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

“private entity” means a body or person with functions of a private nature;

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

“waste” has the meaning assigned to it in section 2 of the Environmental Management and Co-ordination Act, 1999.

No. 8 of 1999.

3. (1) The objects and purposes of this Act are to provide-

Objects and purposes.

- (a) a framework for mitigating and adapting to the effects of climate change on all sectors of the economy and levels of governance;
- (b) a mechanism for coordination and governance of matters relating to climate change;
- (c) coordination mechanism for formulation of programmes and plans to enhance the resilience of human and ecological systems against the impacts of climate change;
- (d) for mainstreaming of the principle of sustainable development in the planning for and on climate change response strategies and actions;
- (e) for promotion of social and economic measures in climate change responses to support sustainable human development; and
- (f) a mechanism for coordination of measuring , verification and reporting of climate interventions.

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

PART II — ESTABLISHMENT, POWERS AND FUNCTIONS OF THE NATIONAL CLIMATE CHANGE COUNCIL

Establishment of
the Climate
Change Council.

4. (1) There is established a body to be known as the National Climate Change Council.

(2) The Council is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The headquarters of the Council shall be in Nairobi, but the Council may establish offices in the counties.

Functions of the
Council

5. The functions of the Council shall be to -

- (a) advise the national and county governments on legislative and other measures necessary for mitigating and adapting to the effects of climate change;
- (b) provide coordination between and amongst various governmental and non-governmental stakeholders dealing with matters related to climate change;
- (c) advise the national and county governments on regional and international conventions, treaties and agreements on climate change to which Kenya is a party or should be a party to and follow up the implementation of the conventions, treaties and agreements to which Kenya is a party;

- (d) prepare reports on Kenya's adherence to its international obligations relating to climate change;
- (e) coordinate negotiations on climate change related issues at the local, regional and international levels;
- (f) coordinate gender-responsive public education and awareness programmes on climate change and facilitate gender-balanced public participation in climate change programmes at the national and county governments;
- (g) coordinate the conduct of research on climate change including the collation and dissemination of information relating to climate change to the national and county governments, the public and stakeholders;
- (h) establish and manage a national registry for appropriate mitigation actions by public and private entities;
- (i) serve as the national information and management centre for collating, verifying and disseminating information on greenhouse gases and managing Kenya's quantity of greenhouse gases emitted and absorbed;
- (j) in relation to a public or private entity,-
 - (i) monitor and assess activities being undertaken by the public or private entity in order to ensure that such activities comply with legislation and policy on issues of climate change; and
 - (ii) where necessary, require a public or private entity, within a specified time, to comply with such directions as the Council may issue;
- (k) in collaboration with relevant government and non-governmental agencies, and after the conduct of relevant research and studies,-
 - (i) set targets and coordinate actions for the reduction of greenhouse gas emissions;

- (ii) identify and coordinate the implementation of low carbon and green growth strategies; and
- (iii) set targets relating to and promote the development of carbon markets;
- (l) coordinate the design of programmes to provide for incentives relating to matters of climate change including incentives for reduced emissions from deforestation and degradation;
- (m) publish, regularly update and disseminate national and county climate change strategies, action plans and other information;
- (n) perform any other function that may be assigned by this Act or by any other legislation or which is necessary for the achievement of the objects and purposes of this Act.

Powers of the Council.

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

(2) Without prejudice to the generality of subsection (1), the Council shall have power to-

- (a) manage, control and administer the assets of the Council in such manner and for such purposes as best to promote the purpose for which the Council is established;
- (b) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate to aid in furtherance of the purposes for which the Council is established;
- (c) open and maintain a bank account or accounts for the funds of the Council; and
- (d) offer its services to any person upon such terms as the Council may from time to time determine.

Guiding principles.

7. The Council shall, in discharging its mandate -

- (a) be guided by the provisions of Articles 42 and 69 of the Constitution;

- (b) be guided by the national values and principles of governance in Article 10 of Constitution and the values and principles of public service in Article 232 of the Constitution;
- (c) ensure public participation and consultation with stakeholders in accordance with the First Schedule; and
- (d) promote sustainable development under the changing climatic conditions.

8.(1) There shall be a Board of the Council which shall consist of-

Board of the Council.

- (a) a chairperson;
- (b) five persons, one each nominated by each of the following bodies –
 - (i) a civil society organization responsible for coordinating matters relating to gender at national level;
 - (ii) Institute of Climate Change, The University of Nairobi;
 - (iii) Association of Professional Societies of East Africa;
 - (iv) a civil society responsible for coordination of climate change at national level; and
 - (v) Kenya Private Sector Alliance.
- (c) two persons appointed by the Cabinet Secretary;
- (d) the Principal Secretary of the coordinating Ministry or a person designated by the Principal Secretary;
- (e) the Principal Secretary in the Ministry for the time being responsible for environment water and natural resources or a person designated by the Principal Secretary;
- (f) the Principal Secretary in the Ministry for the time being responsible for finance or a person designated by the Principal Secretary;

- (g) the Principal Secretary in the Ministry for the time being responsible for devolution and planning or a person designated by the Principal Secretary;
- (h) the Principal Secretary in the Ministry for the time being responsible for agriculture or a person designated by the Principal Secretary;
- (i) the Principal Secretary in the Ministry for the time being responsible for energy or a person designated by the Principal Secretary;
- (j) the Chief Executive Officer who shall be an *ex officio* member and secretary to the Board; and

(2) The chairperson and members of the Board under paragraphs (b) and (c) of sub-section (1) shall, subject to Articles 10 and 232 of the Constitution, be appointed through a transparent and competitive process by the Cabinet Secretary and with the approval of Parliament.

(3) A person shall be qualified for appointment as chairperson of the Board or as a member under paragraphs (b) and (c) of sub-section (1) if the person-

- (a) holds a degree from a recognized university;
- (b) has knowledge and experience of not less than fifteen years in the case of the chairperson, and ten years in the case of a member, in any of the following fields-
 - (i) environmental science;
 - (ii) environmental studies;
 - (iii) agriculture;
 - (iv) climatology;
 - (v) economics;
 - (vi) natural resource management; environmental law; or
 - (vii) social sciences.
- (c) has a distinguished career in the respective field of service; and

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

(4) A person shall not be qualified for appointment as chairperson or as a member of the Board under paragraphs (b) and (c) of sub-section (1) if the person-

- (a) is a State officer or a public officer;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt; or
- (d) has been removed from public office for contravening the provisions of the Constitution or any other law.

(5) The appointment of the chairperson and the members of the Board under paragraphs (b) and (c) of subsection (1) shall be by name and shall be notified in the Gazette.

(6) The Board shall, at the first meeting of the Board and whenever need arises, elect a vice-chairperson from amongst the members provided for under paragraphs (b) and (c) of sub-section (1).

(7) The chairperson and members of the Board appointed under paragraphs (a), (b) and (c) of subsection (1) shall hold office for a period of four years but may, if still qualified, be eligible for re-appointment for one further term of four years.

(8) The members of the Board shall serve on a part-time basis.

(9) The Board shall be properly constituted notwithstanding a vacancy in its membership.

9. (1) The office of the chairperson or a member of the Board appointed under sub-section (1)(a), (b) and (c) of section 8 shall become vacant if the holder-

Vacancy in the Board.

- (a) dies;
- (b) by a notice in writing addressed to the Cabinet Secretary resigns from office;

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

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

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

Functions of the Board.

10. The Board shall-

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

Conduct of business affairs of the Board.

11. The conduct and regulation of the business and affairs of the Board shall be as provided for in the Second Schedule but subject thereto, the Board may regulate its own procedure.

Committees of the Board.

12. (1) The Board may from time to time establish committees for the better carrying out of its functions and in the exercise of its powers.

(2) The Board may co-opt into the membership of the committees established under subsection (1) persons whose knowledge and skills are necessary for the better carrying out of the functions of the Board.

(3) A person co-opted under subsection (2) may not vote on any matter before the Committee

13. (1) The Board may create such directorates, divisions or units of the Council and appoint such staff as it may consider necessary.

Units of the Council.

(2) Every directorate, division or unit created by the Board shall act in accordance with the mandate approved by the Board and with the directives given, in writing, by the Chief Executive Officer.

14. (1) The Board shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Chief Executive Officer of the Council.

Chief Executive Officer of the Council.

(2) A person shall be qualified for appointment as the Chief Executive Officer if the person-

- (a) is a citizen of Kenya;
- (b) possesses a degree from a recognized university;
- (c) has knowledge and experience of not less than ten years in any of the following fields-
 - (i) environmental science;
 - (ii) environmental studies;
 - (iii) agriculture;
 - (iv) climatology;
 - (v) natural resource management; or
 - (vi) environmental law.
- (d) has at least five years senior level management experience either in the public or private sector; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

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

(5) The Chief Executive Officer shall be-

- (a) the accounting officer of the Council;

- (b) the custodian of the Council's records;
- (c) responsible for-
 - (i) executing decisions of the Board;
 - (ii) facilitating, coordinating and ensuring execution of the Council's mandate;
 - (iii) preparing and submitting for approval by the Board, programmes of work for the achievement of the Council's mandate;
 - (iv) ensuring staff compliance with public ethics and values; and
 - (v) the performance of such other duties as may be assigned by the Board, this Act or any other written law.

(6) The Chief Executive Officer may be removed from office by the Board on grounds of-

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

(7) Before removal under subsection (6), the Chief Executive Officer shall be-

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

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

Staff.

15. (1) The Board may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Council under this Act, upon such terms and conditions of service as the Board may determine upon the advice of the Salaries and Remuneration Commission.

(2) The Board shall ensure that, in the appointment of the staff of the Council -

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

16. (1) The seal of the Council shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer.

Seal of the Council

(2) The affixing of the seal shall be authenticated by the chairperson and the Chief Executive Officer.

(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.

17. Subject to the provisions of this Act, the Board may, either generally or in a particular case, delegate to any committee or to any member of the Board or officer or agent of the Council, the exercise of any of the functions of the Council under this Act.

Delegation of powers by the Board.

18. The Board shall, by Regulations, prescribe a Code of Conduct for members of the Board and staff of the Council.

Code of conduct.

PART III – CLIMATE CHANGE RESPONSE MEASURES AND ACTIONS

19. (1) The Council shall coordinate the formulation of national and county climate change action plans, strategies and policies and shall make the action plans, strategies and policies available to the public in the prescribed form.

Council to coordinate the preparation of climate change action plans, strategies and policies.

(2) The action plans, strategies and policies referred to under subsection (1) shall include but shall not be limited to measures relating to-

- (a) adaptation;
- (b) mitigation;
- (c) emission levels and trends;
- (d) education and creation of awareness, including integration in the educational curricula;
- (e) assessment of climate change vulnerability and climate change threats;
- (f) capacity building in strategic climate change sectors;
- (g) research, development and technology transfer;
- (h) identification of climate change opportunities;
- (i) national and county action plans and strategies;
- (j) measurement, verification, reporting; and
- (k) statutory obligation with respect to public and private entities in climate change mainstreaming.

(3) Notwithstanding the generality of subsections (1) and (2) the action plans, strategies and policies may address the health, energy, water, transport, agriculture, livestock, forestry, tourism, infrastructure, industry, waste management sectors or any other relevant sectors.

(4) The action plans, strategies and policies under subsection (1) shall be informed by-

- (a) scientific knowledge about climate change;
- (b) technology relevant to climate change;
- (c) economic circumstances, in particular, the likely impact of the action plans, strategies and policies on-
 - (i) the economy;
 - (ii) the competitiveness of particular sectors of the economy;

- (iii) small and medium-size enterprises;
 - (iv) employment opportunities; and
 - (v) the socio-economic well being of any segment or part of the population.
- (d) fiscal circumstances, in particular, the likely impact of the action plans, strategies and policies on taxation, public spending and public borrowing;
 - (e) social circumstances, in particular, the likely impact of the action plans, strategies and policies on the marginalized and disadvantaged communities;
 - (f) energy policies, in particular, the likely impact of the action plans, strategies and policies on energy supplies and energy consumption;
 - (g) environmental considerations, in particular, the likely impact of the action plans, strategies and policies on biodiversity and the ecosystem;
 - (h) international law and policy relating to climate change; and
 - (i) indigenous knowledge related to climate change adaptation and mitigation.
- (6) The Council shall ensure that the action plans, strategies and policies adopted for purposes of mitigation of, and adaptation to climate change are measureable, reportable and verifiable.

(7) The Council may, for purposes of sub-section (1), coordinate the preparation of action plans, strategies and policies for mitigation of climate change in consultation with other relevant agencies and stakeholders.

(8) The Council may, where it considers it appropriate so to do, make recommendations on climate change action plans, strategies and policies and provide a framework for monitoring.

20. (1) Without prejudice to section 19, where the Government formulates a policy or an action plan on climate change, the Council, in consultation with the Cabinet Secretary, shall, as soon as reasonably

Policies
formulated by the
Government.

practicable, prepare and cause to be tabled before Parliament a programme setting out-

- (a) the objectives of the policy in relation to adaptation to climate change;
- (b) the proposals for meeting those objectives;
- (c) the arrangements for involving stakeholders and engaging the public in the course of meeting the objectives; and
- (d) the period within which the proposals and policies will be implemented; and
- (e) measures for addressing the risks identified in the policies.

(2) Sub-Section (1) shall, with necessary modifications, apply to reports on policies or action plans formulated by the government under this section.

PART IV— DUTIES RELATING TO CLIMATE CHANGE

Climate change duties.

21. (1) A person shall, in exercising any function under this Act, act in a manner best suited to achieve the successful implementation of climate change action plans, strategies and policies prepared under Part III

(2) The Council may, in consultation with the relevant Principal Secretary by Regulations, make further provisions with respect to the imposition of duties relating to climate change on any public or private body.

(3) Regulations made under subsection (2) may-

- (a) impose different climate change duties on different public and private entities or specific categories of public or private entities; or
- (b) vary or revoke climate change duties imposed by earlier Regulations.

(4) Before publishing Regulations under this section, the Council shall consult with the public, including non-state actors.

22. (1) The Council shall, where necessary or on request, give guidance to public and private entities in relation to climate change duties.

Guidance to public and private entities.

(2) Before giving guidance under subsection (1), the Council shall consult with such persons, including non-state actors, as the Council may consider appropriate.

(3) The Council may vary or revoke the guidance given under this section and where the Council proposes to vary such guidance to a substantial extent, the provisions of subsection (2) shall apply.

(4) The Council shall publish any guidance given under this section in the *Gazette* and in such other manner as it considers appropriate.

23. (1) The Council may, by notice in the *Gazette*, make provisions-

Reporting, by public or private entities, on climate change duties.

- (a) requiring a public or a private entity to prepare reports on the status of the entity's compliance with climate change duties within a specified time;
- (b) requiring any public or private entity that fails to comply with its climate change duties, to prepare a report, within a specified time, on the actions it has taken, is taking or intends to take to secure future compliance with those duties;

(2) A report required by virtue of subsection (1) shall, in addition to the required information, contain information relating to the compliance of procurement policies and the activities undertaken by the public or private entity relating to its climate change duties.

(3) A notice under subsection (1) may require-

- (a) two or more public or private entities to prepare a joint report in relation to compliance with one or more climate change duties; and
- (b) such public or private entities to co-operate with each other for the purpose of preparing such report.

(4) All government entities responsible for climate change shall provide annual reports to the Council indicating progress in implementing their mandates and actions taken and progress made since the last monitoring report.

Monitoring
compliance.

24. (1) The Council may, by notice in the *Gazette*, designate one or more persons or bodies to monitor, investigate and prepare a report on whether public or private entities are-

- (a) complying with climate change duties; and
- (b) in conformity with the guidance given under section 22.

(2) A person designated under subsection (1)-

- (a) shall have all the powers necessary for purposes of monitoring and investigation, including the power to enter the premises of any public or private entity and make an enquiry; and
- (b) may, at a reasonable hour, for the purposes of monitoring and investigation, enter any public or private land or premises to make an inspection or to perform any function required under this Act or any other law.

(3) A person commits an offence if the person-

- (a) fails to give or refuses to give access to a person designated under subsection (1) who has requested access to any land;
- (b) hinders the execution, by the person designated under subsection (1), of the duties under this Act or any other law;
- (c) fails or refuses to give information that the person may lawfully be required to give to the person designated under subsection (1); or
- (d) gives false or misleading information to the person designated under subsection (1).

(4) A person who commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a period not exceeding five years, or to both.

25.(1) A person may, pursuant to Article 70 of the Constitution, apply to the Environment and Land Court alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change.

Enforcement of rights relating to climate change.

(2) Where an application is made under sub-section (1), the Court may make an order or give directions that it considers appropriate to-

- (a) prevent, stop or discontinue an act or omission that is harmful to the environment;
- (b) compel a public officer to take measures to prevent or discontinue an act or omission that is harmful to the environment; or
- (c) provide compensation to a victim of a violation relating to climate change duties.

(3) For the purposes of this section, an applicant does not have to demonstrate that a person has incurred loss or suffered injury.

PART V— FINANCIAL PROVISIONS

26. (1) There is established a fund to be known as the Climate Change Fund which shall be vested in the Council.

Climate Change Fund.

(2) There shall be paid into the Fund-

- (a) such monies as may be appropriated from the Consolidated Fund by an Act of Parliament;
- (b) such monies as may be received by the Council in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Fund;
- (c) such sums of money as may be raised by the Council for the execution of the programmes and projects of the Council; and
- (d) such monies as may, by or under any Act, be payable to the Fund.

(3) There shall be paid from the Fund-

- (a) such sums as shall be required to defray the expenditure incurred by the Council in the exercise, discharge and performance of its functions; and
- (b) the operational and administration expenses incurred by the Council and the Fund in the performance of its functions.

Annual estimates.

27. At least three months before the commencement of each financial year, the Board of the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that year.

Financial year of the Council.

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

Accounts and audit.

29.(1) The Board of the Council shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Council and shall cause the accounts of the Council to be audited within a period of three months after the end of each financial year.

Cap 480.

(2) The Council shall be entitled, upon application by the Board of the Council to the Cabinet Secretary responsible for finance, to exemption from duty chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of, or in favour of the Council which, but for this section, the Council would be liable to pay.

(3) The Board of the Council may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of the members of the Board and staff of the Council and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Council or, as the case may be, to the dependants of any such officer upon such officer's death.

(4) The Board of the Council may invest any of the funds of the Council in securities in which for the time being, trustees may by law invest funds or in any securities which Treasury may from time to time, approve for that purpose.

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

PART VI— MISCELLANEOUS PROVISIONS

30. (1) The Council shall publish and publicize all important information within its mandate affecting the nation.

Management of information.

(2) Any person may request for information from the Council and such request for information-

- (a) shall be addressed to the Chief Executive Officer or such other person as the Council may for that purpose designate;
- (b) may be subject to the payment of the prescribed fee in instances where the Council incurs an expense in providing the information; and
- (c) may be subject to confidentiality requirements of the Council.

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

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

(4) Every member of the Board and member of staff of the Council shall sign a confidentiality agreement.

31. (1) The Council shall, every twelve months, prepare and publish a public engagement strategy setting out the steps that it intends to take to-

Public engagement strategy.

- (a) inform the public about climate change action plans specified under this Act; and
- (b) encourage the public to contribute to the achievement of the objectives of those action plans.

(2) The public engagement strategy shall, in particular, identify actions which the public may take to contribute to

the achievement of the objects and purposes set out in section 3.

(3) The Council shall, from time to time, review the public engagement strategy and where the Council varies the strategy, it shall, as soon as reasonably practicable, publish the strategy as so reviewed.

Conflict of interest.

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

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

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

(4) No member of the Board or staff of the Council shall transact any business or trade with the Council.

Protection from personal liability.

33. (1) No matter or thing done by a member of the Board or by any officer or agent of the Council shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Council under this Act, render the member, officer or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Offences and penalties.

34. (1) A person who-

(a) without lawful excuse ignores or fails to obey any instruction issued by any member of the Board or officer or agent of the Council in exercise of the

powers or the performance of the functions of the Council under this Act; or

- (b) willfully obstructs any member of the Board or officer or agent of the Council in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to any member of the Board or officer or agent of the Council in exercise of the powers or the performance of the functions of the Council under this Act,

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

(2) Where an offence under sub-section (1) is committed by a body corporate, every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence under sub-section (1).

(3) Where an offence under sub-section (1) is committed by a partnership, every partner or officer of the partnership who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence under sub-section (1).

35. (1) The Council shall, at least three months before the end of each financial year, prepare an annual report setting out-

Reports.

- (a) the financial statements of the Council;
- (b) a description of the activities of the Council;
- (c) the progress made towards implementation of the climate change action plans;
- (d) whether the objectives of the action plans for the year under review were met and the manner in which those objectives were or were not met;
- (e) the action taken by the national and county governments to address the impacts of climate change during that year;

- (f) any further efforts which may be necessary to achieve the objectives of the action plans;
- (g) recommendations on legal and administrative measures necessary for mitigating and adapting to the effects of climate change; and
- (h) any further information relating to the functions of the Council.

(2) The Council shall submit a report prepared under sub-section (1) to the President, Parliament and the county assemblies and shall publish the Report in the *Gazette* and in such other manner as it considers appropriate.

(3) The President, Parliament or a county assembly may at any time require the Council to submit a report on a particular issue.

PARTVII— DELEGATED LEGISLATION

Regulations.

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

(2) Without prejudice to the generality of subsection (1), regulations under this Act may provide for—

- (a) anything required by this Act to be prescribed;
- (b) the conduct of the business of the Board;
- (c) the terms and conditions of service, pension and other retirement benefits of employees;
- (d) the financial procedures of the Board;
- (e) the handling of the assets and other resources of the Council;
- (f) the delegation of the Board's functions or powers; and
- (g) any other matter required under the Constitution, this Act or any other written law.

(3) For the purposes of Article 94(6) of the Constitution-

- (a) the purpose and objective of the delegation under this section is to enable the Board to make regulations and give directions for the orderly conduct of business of the Council;
- (b) the regulations made and directions given under this section shall be of such nature, scope and within the limits as specified under this section;
- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act (Cap 2) and the Statutory Instruments Act, 2013.

FIRST SCHEDULE**(s. 4(c))****PROVISIONS ON PUBLIC CONSULTATION**

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

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

(2) The notice shall in each case –

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

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

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

- (a) written comments or objections received on or before the date specified under paragraph 1(2)(e); and
- (b) comments, whether in writing or not, received at a public meeting held in relation to the policy, strategy, programme,

plan or action at which the Council or respective public or private entity was represented, or by any other invitation, to comment.

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

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

SECOND SCHEDULE

[s.11]

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

1. The Board shall meet as often as may be necessary for the carrying out of its business but it shall meet at least four times in every year.
2. A meeting of the Board shall be held on such date and at such times as the chairperson shall appoint.
3. The chairperson shall, on the written application of at least one-third of the members, convene a special meeting of the Board.
4. Unless the majority of the total membership of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
5. The quorum for the conduct of business at a meeting of the Board shall be five members of the Board.
6. The chairperson shall preside at every meeting of the Board and in the absence of the chairperson at a meeting, the members present shall elect one of their number to preside and that member shall, with respect to that meeting and the business transacted at that meeting, have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members.
8. Subject to paragraph 5, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
9. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.
10. Except as provided by this Schedule, the Board may regulate its own procedure.

MEMORANDUM OF OBJECTS AND REASONS

Climate change has been universally identified as one of the greatest global challenge facing humanity requiring international attention and action. It is considered as one of the most serious threats to sustainable development globally. This impacts cut across diverse aspects of society including the economy and environment In Kenya, various actions have been taken to address the issue of climate change. Kenya ratified the United Nations Framework Convention on Climate Change in 1994 and the Kyoto Protocol in 2005. Kenya has also published a National Climate Change Response Strategy in 2010 and a National Climate Change Action Plan in 2013 and is in the process of formulating National Climate Change Policy.

The Bill principally seeks to provide a framework for mitigating and adapting to the effects of the changing climate on various sectors of the economy. In particular the Bill seeks to create a framework for coordination of mitigation and adaptation measures to the effects of climate change and the overall achievement of climate resilient and low – carbon development. It seeks to achieve this by establishing the National Climate Change Council and vesting in the Council functions and powers to coordinate national climate change issues including supporting the implementation of the national climate change strategies.

The Bill also establishes a Climate Change Fund, managed by a Council, into which monies appropriated from the consolidated fund and other donations received in the form of donations, endowments, grants or gifts or monies raised by the Council would be paid and subsequently utilized for the achievement of the mandate and objectives of the Council.

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution in that it contains provisions that affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution

The Bill has been developed with the support and participation of various governmental and non-governmental stakeholders in the climate change arena and broadly addresses the concerns of these stakeholders. The Bill also accords with international best practices and standards. It is noteworthy that by enacting this legislation, Kenya would be taking the lead regionally and would, in the international arena, join a few jurisdictions that have so far demonstrated their commitment to addressing climate change issues by enacting legislation specifically addressing climate change.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 10th July, 2013.

W. K. OTTICHILO,
Member of Parliament.