CLIMATE LAW FOR THE PEOPLE

A Simplified Version of the Climate Change Act, 2016
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This Simplified version of the National Climate Change Act, 2016 was produced as part of the policy advocacy engagement of the Pan African Climate Justice Alliance (PACJA), and more specifically, in the contribution in the formulation of the national climate change policies, plans and programmes. It contributes profoundly to the Alliance strategic Plan 2016 – 2020, which seeks to deepen engagement of civil society and other non-state actors in the implementation of the Paris Agreement and the Nationally Determined Contributions (NDCs) in African countries.

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Special thanks go to the coordinating committee of the Angaza Platform who immensely contributed to the draft, and the final version of the document. We extend profound gratitude to Robert Muthami, Olivia Odhiambo and Hausner Wendo who coordinated the production of this publication.

It is our conviction that this publication will be useful to both State and Non-State Actors at the National and County levels in understanding their roles and also taking relevant climate responsive actions as provided in other policy frameworks linked to the National Climate Change Act.

This publication is useful not only to Kenyan stakeholders, but also all African countries that wish to replicate this unique best practice in policy formulation and effective implementation rooted into solid legal foundation.
LIST OF ABBREVIATIONS

CCA  Climate Change Act
CIDP  County Integrated Development Plan
GHG  Greenhouse Gas
MTP II  Second Medium-Term Plan to Vision 2030
NAP  National Adaptation Plan
NCCAP  National Climate Change Action Plan
NCCRS  National Climate Change Response Strategy
NDC  Nationally Determined Contribution
NDMA  National Drought and Management Authority
NEMA  National Environment and Management Authority
PANARECC  Parliamentary Network on Renewable Energy and Climate Change
UNFCCC  United Nations Framework Convention on Climate Change

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1.0 BACKGROUND AND CONTEXT


Kenya is one of the very few countries in the world with an enabling policy environment for climate change response. What makes the country stand tall among the community of nations is its Law to govern climate change, which has gained accolades globally. The Climate Change Act, 2016 was a product of broad participation of stakeholders – and catalyzed by civil society and parliamentarians in the 10th Parliament. The development process of the National Climate Change Legislation was an initiative that was kick started by the Civil Society and Parliamentarians in 2009 – underscoring the importance of non-state actors in policy formulation processes.

A climate change bill which evolved into the Act was first introduced as a private Member’s Bill in 2010 by Hon. Franklin Bett, who was later appointed a Minister. This appointment effectively robs the advocates of a stand-alone climate law a champion in Parliament. The mantle was handed over to Hon. Margaret Kamar, who was also appointed a Minister months later. Hon. Wilbur Ottichillo picked the baton, and, within time, generated a critical mass of Parliamentarians under the auspices of the Parliamentary Network on Renewable Energy and Climate Change (PANARECC), which brought together members beyond the Departmental Committee of Environment.

By the time the Ministry of Environment was taking over the Bill, the election fever was gripping the country. It was a major setback for the Law when former President Mwai Kibaki declined to sign the Act once it was passed by parliament in 2012, citing lack of adequate consultations among stakeholders. This happened at the tail-end of 10th Parliament, and when the 2013 elections were held, almost all the PANARECC champions, except Hon Ottichillo and Hon Chachu Ganya, were ousted.

The two provided the institutional memory to new members in 11th Parliament, who worked with other stakeholders to address the concerns raised by a section of stakeholders, notably the Private Sector. The bill was passed by the National Assembly and the Senate, and signed into Law by the President on May 16, 2016, and therefore becoming the first comprehensive Law on Climate Change in Kenya.

1.2. THE SIMPLIFIED BRIEF OF THE NATIONAL CLIMATE CHANGE ACT, 2016

This publication is developed as a simplified reference document for the public through which citizens can visualize, see and understand climate change governance and administration in the Kenyan context. The document includes a brief overview of climate change impacts in Kenya, and background of legal and policy actions taken by Kenya so far, in response to climate change. Most of the guide is dedicated to explaining the provisions of 2016 Climate Change Act (CCA) in a manner that will allow members of the public to understand the legal position, and what they can do to support national actions, and in holding government institutions accountable.

More specifically, the guide examines the following provisions of the CCA: functions and roles of public institutions; public participation provisions; climate finance approaches; reporting requirements. The guide flags off a number of challenges that may impact implementation of the CCA.

In addition to setting down the various public institutions, including at county government level, that have mandates under the CCA, the guide further explains how implementation of climate change actions will be undertaken through the concept of mainstreaming. Sufficient illustrations are provided on how climate change mainstreaming through sector functions would be undertaken.

The brief further provides an assessment of the provisions of the CCA regarding public participation, climate finance, and the reporting responsibilities of various institutions under the Climate Law.

It is expected that the brief, together with further reading materials provided, will become a sufficient starting point for a conversation among citizens regarding effective implementation of the Climate Change Act, citizen-level actions for adaptation and mitigation, and possibilities on how to hold public institutions accountable to their mandates under the CCA. Policy formulation is one thing, and implementation is another. The Act is an important tool for the implementation of various policies so far formulated to in the government’s effort to combat climate change.
2.0 CLIMATE CHANGE IMPACTS IN KENYA & RESPONSE STRATEGIES

Kenya is a developing country that faces significant challenges from the negative impacts of climate change, which if not addressed, could slow down, stop or reverse any gains made towards realization of its most ambitious sustainable development blueprint, Vision 2030. Figure 1 below is an illustration of some of the negative impacts of climate change facing Kenya.

It is important to note that Kenya’s responses to climate change are guided by the need for adaptation to the impacts of climate change, and the reduction of GHG emissions through mitigation actions.

**ADAPTATION**

- Adaptation, which is a priority and focus for Kenya as a developing country, requires that legal, policy, economic planning, technical, and financing choices are made with the objective to build the resilience of society, economy and environment to continue to function in circumstances that are deteriorating because of climate change.

- Adaptation requires that society, economy and environment must modify how they behave or act, through choices and actions that reduce or eliminate the vulnerability caused by climate change, such as through climate-proofing actions.

- Kenya has developed the 2015-2030 National Adaptation Plan (NAP) that prioritizes adaptation actions, and is part of the NCCAP implementation.

**MITIGATION**

- Mitigation actions, such as increasing the national tree cover, or adopting low-emissions industrial processes or transportation systems, should also support adaptation.

- In July 2015, Kenya submitted its Nationally Determined Contributions (NDC) to the UNFCCC, which are now required by Article 6 of the Paris Agreement. Through this NDC, Kenya has prioritized to reduce Greenhouse Gas (GHG) emissions by 2030 from current (Business-as-usual) levels by 30% through climate actions in six mitigation sectors: agriculture; energy; forestry; industry; transport; and waste.
3.0 LEGAL, POLICY AND INSTITUTIONAL ACTIONS TAKEN BY KENYA ON CLIMATE CHANGE

The Kenyan Constitution, 2010 has set out a legal commitment to attain ecologically sustainable development; hence providing a firm basis to address the challenge of climate change while striving to attain the development goals set out in the Vision 2030.

Kenya Constitution, 2010

<table>
<thead>
<tr>
<th>Legal Commitment to attain ecologically Sustainable Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 10 sets out values and principles of national governance, which include sustainable development, devolution of power, and public participation. These values are mandatory on the State and all persons, when implementing the Constitution, making and implementing any law or public policy.</td>
</tr>
<tr>
<td>Article 69(2) of the Constitution provides that every person (individual and companies) has a duty to work together with government organs to conserve the environment, and ensure realization of ecologically sustainable development in Kenya</td>
</tr>
</tbody>
</table>

Kenya has taken key steps to implement measures to identify and guide appropriate actions to respond to climate change. From a law and policy perspective, Kenya has been active at the international level, and:

a). At the East African Community (EAC), is part of the EAC Climate Change Policy, Master Plan, and Strategy, and the EAC regional Climate Change Master Plan (2011-2031), which guides regional climate change response measures over the long term.

a). Globally, Kenya is a party of, and has ratified the 1992 United Nations Framework Convention on Climate Change (UNFCCC), as part of Kenyan law; and on 28 December 2016, the Parliament of Kenya ratified the 2015 Paris Agreement on Climate Change, which became applicable to Kenya from 27 January 2017.

At the National level, Kenya has taken important legal, policy and institutional steps to lay the foundation for, and to commence climate change actions, as summarised in the diagram below:
4.0 WHAT IS THE PURPOSE AND OBJECTIVE OF THE CLIMATE CHANGE ACT, 2016?

The Climate Change Act was enacted by Parliament to provide Kenya with a legal framework that will trigger and support coordinated actions taken in response to climate change. This law provides the overall governance structure for climate change in Kenya, and to support development and implementation of measures and mechanisms that will enhance climate change resilience (through adaptation) and low carbon actions (through mitigation) for the sustainable development of Kenya.

Parliament specified that the climate change Law was to be applied to all sectors of the economy, by the national, and county governments. These two levels of government will apply this Law supported by various objectives including:-

1. Taking into account climate change considerations (otherwise referred to as mainstreaming climate change), during all development planning, decision making and implementation in Kenya.

2. Formulating adaptation programmes and plans to support and enhance reduction of vulnerability, and strengthen capacity of human and ecological systems.

3. Taking into account the needs for climate change disaster risk reduction in public policy decisions.

4. Supporting and facilitating development of capacity for public participation in climate change actions through awareness creation, public consultations, public representation, and access to information.

5. Taking into account the sustainable development requirements when making plans and decisions on climate change responses.

5.0 MAINSTREAMING OF CLIMATE CHANGE ACTIONS UNDER THE ACT

The realization of these objectives is supported by various institutions, including by institutions that are not established by the climate change Law, but which are required to take climate change considerations into account when implementing their functions. This is through the concept of mainstreaming climate change that is discussed in section 6 below. The National Climate Change Action Plan (NCCAP) is the main mechanism through which mainstreaming of climate change actions is undertaken.

The 2013-2017 NCCAP concluded that climate change actions in Kenya, in order to support sustainable development, need to focus on attainment of low-carbon climate resilient development. This means that climate actions should focus on mitigation through reduction of GHG emissions levels, such as the Nationally Determined Contribution (NDC), which, as stated above aims to reduce emissions levels by 30% from current levels through to the year 2030. In implementing the NDC GHG emission reduction targets, a number of sectoral analyses have been undertaken across six mitigation sectors: agriculture; energy; forestry; industry; transport; and waste, in order to determine how Kenya will manage to fulfil the pledge to reduce GHG emissions by 30% through to the year 2030. An NDC Implementation Plan will be prepared by the Ministry of Environment and Natural Resources, to provide further guidance. In addition to low carbon (mitigation) targets, Kenya would also pursue adaptation actions to reduce and eliminate vulnerability of the economy, people and environment to the negative impacts of climate change by building resilience.

5.1 WHAT DOES “MAINSTREAMING” CLIMATE CHANGE MEAN IN PRACTICE?

The implication of the focus on low-carbon climate resilient development is that much of the specific actions, activities and priorities necessary will be undertaken by governmental entities at national and county levels, through implementation of their sector specific functions. The CCA has applied mainstreaming, as the legal approach, and defined it as:

• The integration of climate change actions into decision-making and implementation of functions by the sector ministries, state corporations and county governments.

In practical terms, mainstreaming adaptation and mitigation actions in the agriculture sector would involve identification of climate impacts on agriculture sector priorities (policy, plan or project activities) in Kenya, with collaboration between the Climate Change Directorate (CCD), and concerned agriculture sector entities such as the Ministry responsible for Agriculture, or the Agriculture, and Food Authority (AFA), and county governments.

In the Climate Change Act, s.21(1) requires the Council to work with the Kenya Institute of Curriculum Development to undertake mainstreaming of climate change into the various disciplines of the national curriculum at all levels of basic education in Kenya.

5.2 ROLE OF THE NATIONAL CLIMATE CHANGE ACTION PLAN IN MAINSTREAMING CLIMATE CHANGE

Kenya first developed a National Climate Change Action Plan (NCCAP) in 2013 for the period through to 2017. The 2013-2017 NCCAP, in setting the scene for climate change in Kenya, noted that:

• Climate change is considered a cross-cutting issue that has to be mainstreamed in all the sectors of the economy through the planning process. The Medium-Term Plan (2013-2017), has provided an opportunity to incorporate climate change programmes into the national development plans, and build on both the National Climate Change Response Strategy and its Action Plan.
The figure below is an illustration of a mainstreaming exercise in the agriculture sector:

**STEP 1**
Identification and mapping of the specific impact of the land degradation - in this case, soil erosion on farmlands.

**STEP 2**
Identification of technically and economically viable mitigation and adaptation interventions:
- Technical research, economic analysis (if no such details exist)
- Public consultations to draw on local and traditional knowledge regarding the impacts, and possible intervention actions

**STEP 3**
Concerned agencies take the identified mitigation and adaptation actions into account, and a choice is made. The choice of actions could include policy options, or direct actions such as intensive extension service to farmers on sustainable land management, and provision of inputs.

**STEP 4**
Concerned agencies to include the chosen policy or direct actions in policy document, sector strategies, performance contracts, development plans, and budgetary allocation.

**STEP 5**
Implementation of the selected climate actions by the concerned agriculture sector agencies e.g. county governments delivering the extension support or inputs to the farmers and land owners to execute sustainable land management actions.

Against this background, the CCA opted to build up on the now established role of the NCCAP in mainstreaming climate change actions, and through s.13, firmly establishes the role of the NCCAP as the main legal tool through which climate change actions will be identified, and mainstreamed into sector functions, in the manner explained in section 5.1 above.

The basis of the NCCAP can be traced to section 13 of the CCA which underlines the following issues:

- Preparation of the NCCAP is the responsibility of the Cabinet Secretary, including ensuring that there is public participation.
- Review and updating of the NCCAP, every five years, is the role of the Cabinet Secretary, including ensuring there is public participation.
- The Directorate is required to undertake a review of the implementation of the NCCAP in every two-year period.
- Every new, or updated NCCAP must be presented by the Cabinet Secretary to the National Climate Change Council (NCCC) established under the CCA for approval.
- Once the Council has approved a new or updated NCCAP (every five years), the Cabinet Secretary will publish it in the Kenya Gazette, and disseminate to the public through national newspapers.

### 5.3. LEGAL BASIS OF THE NCCAP AS THE MAINSTREAMING TOOL

The legal basis of the NCCAP in mainstreaming climate change actions is found in s.13(4) of the CCA, which provides that an approved NCCAP must address all sectors of the economy and provide mechanisms for mainstreaming of the National Climate Change Action Plan into those sectors.

S.13(9) provides that once it is approved by the Council, the NCCAP shall be binding on the Cabinet Secretary, all public bodies, and any person or entity when they are discharging any function or duty under any Law.
The Climate Change Act has established several public institutions to perform specific duties and responsibilities. It is important to emphasize that while some institutions are created under this law, many other public institutions are required through the concept of mainstreaming to perform roles under the climate change law. For instance, section 15 requires Climate Change Council and Cabinet Secretary to establish climate change duties on any public entity at the national and county level of governments.

Below are public institutions established under the Climate Change Act, and a summary of their functions.

### 6.1 The National Climate Change Council

The National Climate Change Council (Council) is the highest authority on the governance of climate change in Kenya. It was created into order to provide a high-level climate change coordination and oversight mechanism throughout all public entities in Kenya. This is important because implementation of climate change actions depends on mainstreaming of climate change considerations by many public entities in their regular functions and decision making.

#### 6.1.1 Who are the members of the National Climate Change Council?

The Council is chaired by the President, with the Deputy President as Vice-Chairperson, and the Cabinet Secretary responsible for climate change affairs as the Secretary. The membership of the Council includes:

<table>
<thead>
<tr>
<th>Composition of the National Climate Change Council</th>
<th>Representative</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>The President</td>
<td>Chairperson</td>
<td></td>
</tr>
<tr>
<td>The Deputy President</td>
<td>Vice Chairperson</td>
<td></td>
</tr>
<tr>
<td>Cabinet Secretary responsible for Climate Change Affairs as Secretary to the Council</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>Cabinet Secretary responsible for the National Treasury</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>Cabinet Secretary responsible for economic planning</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>Cabinet Secretary responsible for energy</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>Chairperson of the Council of Governors</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>A representative of the private sector</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>A representative of the civil society</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>A representative of the marginalized community</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>A representative from academia nominated by the Commission for University Education</td>
<td>Member</td>
<td></td>
</tr>
</tbody>
</table>

For the members drawn from private sector, civil society, marginalized communities and academia, it is required that the President should first nominate them for vetting and approval by Parliament (National Assembly and Senate), before they are formally appointed through a notice in the Kenya Gazette. At all times during the appointment, the President is required to ensure that not more than two-thirds of all members of the Council are from one gender.

#### 6.1.2 Functions of the National Climate Change Council

In addition to oversight and coordination of all climate change governance in Kenya, the functions of the National Climate Change Council include:

- Approving the revised and updated National Climate Change Action Plan (NCCAP)
- Advising the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low-carbon climate change resilient development
- Provide guidance on necessary review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of the CCA
- Administration of the Climate Change Fund, including determining rules and procedures, and making funding allocation decisions
- Setting the targets for the regulation of greenhouse gas emissions
- Imposing duties relating to climate change on any public entity at all levels of government, on the advise of the Cabinet Secretary
- Receiving and evaluating, annually, the performance of state departments and national government public entities in implementation of climate change duties imposed under the Climate Change Act
- Development and imposition of impose of climate change duties in private entities (including public benefit organizations, and to administer compliance with such duties
- Identify, on recommendation of the Cabinet Secretary, priority strategies and actions for disaster risk reduction (DRR) related to climate change, and advise the President, and county governments on appropriate actions.
- Provide advise on mainstreaming climate change into education sector and training by providing guidance to the Kenya Institute for Curriculum Development (KICD) on mandatory mainstreaming of climate change into the basic education curriculum; and advising the Commission for University Education, and regulatory bodies for tertiary education training on how to mainstream climate change into their curricula
- Facilitate access by the public, to information relating to the mandate of the Council
- Annual preparation and publication of a public engagement strategy reporting on steps the Council intends to take to inform the public on climate change plans, and encourage public contribution to the objectives of the CCA
- Annual reporting to the President, Parliament, and County Assemblies on its execution of mandate under the CCA, and public dissemination of the Annual Report
- Making the regulations that are necessary to implement the climate change law
- Preparation, formulation and regular review of the NCCAP
- Conducting the international negotiations on climate change, on behalf of Kenya
- Formulating a national gender responsive public awareness and education programme that addresses all generations of Kenyans
- Providing technical assistance, on climate change, to county governments

#### 6.1.3 The Cabinet Secretary responsible for Climate Change Affairs

The Cabinet Secretary responsible for climate change affairs, in addition to being Secretary to the Council, is responsible for the overall administration of the Climate Change Act, including the making of regulations. Table 11 below is a summary of other responsibilities of the Cabinet Secretary under the CCA. The responsibilities of the Cabinet Secretary include:

- Making the regulations that are necessary to implement the climate change law
- Preparation, formulation and regular review of the NCCAP
- Conducting the international negotiations on climate change, on behalf of Kenya
- Formulating a national gender responsive public awareness and education programme that addresses all generations of Kenyans
- Providing technical assistance, on climate change, to county governments
6.1.4 The Climate Change Directorate

The Climate Change Directorate is established as the lead (overall) agency of government responsible for coordinating technical aspects of climate change governance. The Directorate is the technical secretariat for the Council, and is responsible for supporting both the Council and the Cabinet Secretary in implementation of their functions under the Climate Change Act.

6.2. COUNTY GOVERNMENT FUNCTIONS

Since implementation of the Climate Change Act is through mainstreaming of climate actions by various public entities, the role of county governments is important. This is because, in accordance with Part II of the Fourth Schedule to the Constitution, county government functions such as agriculture, soil and water conservation, livestock, physical planning and development control, are important to implementation of adaptation and mitigation actions. Table 12 below summarizes the responsibilities of county governments under the Climate Change Act. The functions of the County Governments include:

- As with all other public entities, counties are required to integrate the NCCAP into their County Integrated Development Plans (CIDP), which are prepared every five years, as required by the County Governments Act.
- In addition, counties will be subject to implementation of any specific climate change duties that may be set out and prescribed by the Council, under powers given through section 15(1).
- The Climate Change Act further requires every Governor to designate a member of the County Executive Committee (CECM) that will be responsible for coordinating climate change affairs.
- County governments are required to ensure there is public awareness and consultations when developing strategies, laws and policies on climate change actions.

The Climate Change Act creates a unique role for every County Assembly. This is through a requirement for each county government through the climate change CECM, to submit an annual report to the County Assembly on the progress made by the county government in the implementation of climate change actions.

6.3. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

NEMA is established under s.7 of the Environmental Management and Coordination Act, Cap 387 Laws of Kenya. The main purpose of NEMA, under s.9 of Environmental Management Coordination Act (EMCA) is to exercise general supervision and coordination over all matters relating to the environment, including implementation of all policies relating to the environment in Kenya.

In addition to its extensive roles under EMCA, the role of the NEMA under the Climate Change Act is unique. This is because under the CCA, NEMA is mandated to, on behalf of the Council, undertake the enforcement and compliance role to ensure that public and private entities undertake their responsibilities. The roles of NEMA under s.17 of the CCA are indicated below:

Compliance and Enforcement functions, on behalf of the Council

Monitor, investigate and report to the Council, whether public and private entities are in compliance with prescribed climate change duties

- Specifically take steps to ascertain that private entities comply with, and implement any climate change duties prescribed by the Council
- Regulate, enforce and monitor the compliance with levels of GHG emissions as set by the Council
- In so doing, NEMA is given all powers of search and entry to undertake inspection in any premises
- NEMA is required to submit an annual report to the Council detailing its performance of the functions it is undertaking on behalf of the Council.
- NEMA is required to take measures to integrate climate risk and vulnerability assessment into all forms of assessment

It is important to note that the role of NEMA arises from the background that neither the Council, nor the Directorate are established as corporate entities (parastatals). For that reason, the compliance and enforcement are integrated into the already existing compliance and enforcement functions, and human resources of NEMA, under the Environmental Management and Coordination Act (EMCA).
7.0 HOW CAN THE PUBLIC PARTICIPATE IN CLIMATE CHANGE ISSUES UNDER THE CLIMATE CHANGE LAW?

Article 10 of the Constitution identifies public participation as a mandatory or binding value of national governance, in all instances where public institutions are implementing the Constitution, making or implementing any law, or public policy. In this spirit, the Climate Change Act has provided mechanisms to ensure that there is public participation, in various forms, when decisions are being made by public bodies on climate change matters. The modes of Public Participation include:

<table>
<thead>
<tr>
<th>Mode</th>
<th>Provisions and How</th>
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</table>
| Access to Court        | • Article 70 of the Constitution provides that any person who alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been violated, is or likely to be violated, that person can apply to a court for redress.  
  • This provision has been specifically interpreted by s.23 of the Climate Change Act (CCA) with an additional right for any person, who alleges that any other party has acted in a manner that has or is likely to adversely affect efforts towards mitigation, the affected person may apply to the Environment and Land Court for remedies. |
| Access to information  | • Access to information held by public bodies is a right protected by article 35 of the Constitution, for all Kenyan citizens.  
  • This same right includes access to information held by private entities, if such information is relevant for fulfilment of any human right under the Constitution  
  • The Access to Information Act (2016) was enacted to provide administrative procedures through which citizens can access information held by public bodies, and private bodies  
  • The Climate Change Act requires the Council and the Directorate to facilitate access to information by the public. These provisions are in addition to the Access to Information Act |
| Public consultations   | • The Climate Change Act requires public consultations by public bodies, at all levels of government, in every instance when developing strategies, laws and policies relating to climate change  
  • S.24(1) requires that such public consultations should be undertaken in a manner that the contribution of the public has an impact on the final decision  
  • Public consultations are mandatory during the formulation, review or updating of the NCCAP  
  • The Schedule to the CCA sets out provisions on minimum requirements for public consultations, which include:  
    • Publication of any proposed climate change related policy, strategy, programme, plan or action in: the Kenya Gazette; two national newspapers; one local radio station.  
    • Invitation of the public to submit comments  
    • Taking into account of the public comments submitted as a result of the notice |
| Public awareness        | • The Climate Change Act requires public awareness to be undertaken by public bodies, at all levels of government, in every instance when developing strategies, laws and policies relating to climate change  
  • The Council is required to approve a national gender and intergenerational responsive public education and awareness strategy, and a programme for implementation of the strategy. Preparation of these documents is the role of the Cabinet Secretary  
  • In addition, the Council is required to prepare and implement an annual public engagement strategy through which the Council will inform the public about national climate change actions that are planned and encourage the public to contribute to implementation of those actions. |

8.0 CLIMATE FINANCE:

The CCA recognizes that climate change actions required to implement adaptation and mitigation measures require, and will continue to require financing. In practice, climate financing can be accessed through international sources such as the Green Climate Fund (CGF), the Adaptation Fund (AF), established under the UNFCCC or the Forest Carbon Partnership Facility of the World Bank. Climate financing can also be accessed from private sources and investors, such as funding available to businesses making investments in areas of renewable energy, green transportation, social enterprise, etc. In general, climate finance may include funds that come into the Kenyan economy through government mechanism, or bypass the government, such as through loans and grants available to the private sector. The 2016 Climate Finance Policy has addressed this element of climate finance.

The CCA addresses climate finance through establishment of the Climate Change Fund (CCF), whose composition is funding drawn from the Consolidated Fund; donations, grants, endowments, or gifts. The structure of the Fund is as illustrated below:

Climate Change Fund (section 25 of the National Climate Change Act)

How will the Fund be operated?

• The Fund is vested in the National Treasury, as the custodian of all public finances in Kenya  
• The Council exercises overall control, administration and oversight of the Fund  
• Day-to-day management of the Fund is exercised by the Principal Secretary (PS) responsible for climate change affairs.

Role of the Council in administering the Fund

• Determine the strategic priorities for applying monies from the Fund  
• Define criteria and rules to determine who, and what climate actions is eligible to access money from the Fund  
• Set out the procedure for the disbursement, recovery and repayment of loans including interest  
• Set out procedures, the criteria and eligibility to access the Fund for research institutions; public body, private bodies, or civil society, for climate change research, development or investment ventures  
• Define and set out procedures necessary for transparent administration of the Fund

The CCA defines the climate change areas where the Fund can be applied as:

• Providing grants for climate change research and innovation  
• Providing grants and loans to business, industry, civil society, academia and other stakeholders  
• Provide technical assistance to county governments

The day-to-day administration of the Fund is the responsibility of the Principal Secretary for the State Department responsible for climate change affairs. The administration includes undertaking daily operations of the Fund; processing financing applications approved by the Council; and resource mobilization.
## 9.0 REPORTING REQUIREMENTS UNDER THE CLIMATE CHANGE ACT

Reporting requirements, in the implementation of functions and mandates that are set out under an Act of Parliament, is important in order to ensure there is accountability. The provisions under the Climate Change Act are set out below:

### Summary of Reporting Obligations under the Climate Change Act

<table>
<thead>
<tr>
<th>Responsible Public Body</th>
<th>Reporting Obligation</th>
<th>Provision of CCA requiring reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council</td>
<td>Annual reporting to the President, Parliament, and County Assemblies (47No.) on its execution of mandate under the CCA, and public dissemination of the Annual Report.</td>
<td>section. 34</td>
</tr>
<tr>
<td>Cabinet Secretary</td>
<td>Reporting, twice a year, to Parliament on the status of implementation of international and national climate change obligations, and progress towards attainment of low carbon climate resilient development</td>
<td>section. 8(2-e)</td>
</tr>
<tr>
<td>Climate Change Directorate</td>
<td>Undertake a biennial review (every two years) of the implementation of the National Climate Change Action Plan and report to the Council.</td>
<td>Section. 13(7)</td>
</tr>
<tr>
<td>NEMA</td>
<td>Report, annually to the Council on the performance of functions assigned to NEMA, under the CCA</td>
<td>Section. 17(5)</td>
</tr>
<tr>
<td>County Governments</td>
<td>Report annually, at the end of every financial year, to the County Assembly on progress achieved on implementation of climate change actions; Forward a copy of this report to the Directorate.</td>
<td>Section.19(5)</td>
</tr>
</tbody>
</table>

### BIBLIOGRAPHY


2. Climate Change Act, No. 11 of 2016. Online:  
   [http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202016](http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202016)


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   [www.kccap.info](http://www.kccap.info)


    [http://commons.law.famu.edu/cgi/viewcontent.cgi?article=1087&context=famulawreview](http://commons.law.famu.edu/cgi/viewcontent.cgi?article=1087&context=famulawreview)
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