

KENYA WATER TOWERS BILL, 2019

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KENYA WATER TOWERS BILL, 2019

A Bill for

An ACT of Parliament to establish the Kenya Water Towers Authority; to provide for its functions, organization and administration; and for connected purposes

ENACTED by the Parliament of Kenya as follows –

PART I – PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Kenya Water Towers Act, 2019 and shall come into force upon the expiry of ninety days from the date of its publication.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Authority” means Kenya Water Towers Authority established by section 6;

“Board” means the Board of Directors of the Authority established under section 8;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to the coordination, protection, rehabilitation, conservation, and sustainable management of water towers in Kenya;

“co-ordination” in relation to the Authority means the establishment and implementation of an effective liaison mechanism for harnessing the constructive cooperation and collaboration of all stakeholders in the exploitation, conservation, restoration and sustainable management of water towers

“conservation” in relation to a water tower, refers to the protection, preservation, management, or restoration of the water tower and the ecological communities that inhabit it;

“community” means a group of people, living in a particular geographic area, who are identified on the

basis of ethnicity, culture, religion, livelihood, adjacency or other common interests in relation to the exploitation, conservation, restoration and sustainable management of water towers.

“customary use” means consistent and acquiesced access, use and enjoyment of the benefits accruing from a water tower, subject to conditions as prescribed under section 31;

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“Director General” means the Director General of the Authority appointed under section 12;

“ecosystem” has the meaning assigned to it by section 2 of the Environmental Management and Coordination Act;

“ecosystem services” means the direct and indirect benefits acquired from an interaction with the natural ecosystem and are either provisioning, supporting, regulatory and cultural services;

“lead agency” means any government ministry, state corporation or state department under the national or county government in which any law vests functions of management, control or conservation or any element the exercise of which affects a water tower.

“protection” in relation to a water tower, means the framework and actions based on policies and procedures aimed at securing, conserving, rehabilitating and restoring any form of destruction that may have occurred to a water tower.

“restoration” in relation to a water tower, means the process of supporting accelerated rehabilitation of ecosystems that have been destroyed, damaged or degraded with respect to their services, integrity, health and sustainability;

“rehabilitation” in relation to a water tower, refers to the actions taken to restore a degraded or damaged water tower to some degree of its former state;

“sustainable management” means present use of the environment or natural resources which deliberately

preserves it for use by future generations or enhances the carrying capacity of the supporting ecosystem;

“traditional knowledge” means information that may be acquired, preserved and passed on through cultural and social processes unique to certain communities;

“water tower” means an upland geographical area that is gazetted or to be gazetted as such under section 20 of this Act, that receives rainfall, whose topographical characteristics and composition respectively, allow retention on the surface and infiltration into the soil of such rainfall, and whose geology supports percolation and storage of groundwater that naturally supports biodiversity and ecosystem services, and that can be exploited for supply.

“water body” means any significant accumulation of water that forms on the land such as ponds, puddles, swamps, lakes and streams or rivers;

“watershed” means the land trough that receives precipitation which flows on its way to a water body;

“wetlands” means areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water to the depth of which at low tide does not exceed six meters.

Application of
the Act.

3. (1) The Act shall apply to all water towers. within the Republic of Kenya.

(2) This Act shall prevail in case of any inconsistency

between this Act and any other legislation in matters relating to the protection, rehabilitation, conservation, and sustainable management of water towers.

Objects of the Act.

4. The objects of this Act are to-

- (a) provide a legal framework for effective coordination, protection, rehabilitation, conservation, and sustainable management of water towers for purposes of fulfilling Articles 26 (1), 42, 43 (1) (c) and (d), 69 and 70 of the Constitution of Kenya;
- (b) Establish an institutional framework for effective coordination of all interventions aimed at the protection, rehabilitation, conservation, and sustainable management of water towers;
- (c) promote public awareness and community engagement in the protection, rehabilitation, conservation, and sustainable management of water towers.

Guiding principles.

5. In the performance of its functions and exercise of its powers conferred by this Act, the Authority shall be guided by the following principles—

- (a) the right to life set out in Article 26 of the Constitution;
- (b) the right to a clean and healthy environment set out in Article 42 of the Constitution;
- (c) obligations of the State and every individual to protect and conserve the environment set out in Article 69 of the Constitution;
- (d) good governance as set out in Article 10 of the Constitution;
- (e) gender equality and involving of the youth in the coordination and conservation of water towers;
- (f) public participation and community involvement in coordination and conservation of water towers;

- (g) consultation and cooperation by both the national and county governments and their lead agencies in the coordination and conservation of water towers;
- (h) values and principles of public service set out in Article 232 of the Constitution;
- (i) ecosystem-based management approach in coordination and conservation of water towers.;
- (j) recognition and protection of customary access and use of water towers;
- (k) recognition and utilization of traditional knowledge in coordination and conservation of water towers, in so far as they are consistent with the Constitution and not repugnant to justice and morality;
- (l) the polluter pays principle;
- (m) the precautionary principle;
- (n) international cooperation;
- (o) the no-net loss principle; and
- (p) access and benefit sharing.

PART II- ADMINISTRATION

Establishment
of the
Authority.

6. (1) There is established a Kenya Water Towers Authority.

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

- (a) suing and being sued;
- (b) purchasing, charging and disposing of movable and immovable property;
- (c) borrowing money;

- (d) mobilising resources;
- (e) entering into contracts;
- (f) doing or performing all such other acts necessary for the proper performance of its functions under this Act.

(3) The headquarters of the Authority shall be in Nairobi; the Authority shall ensure its services are accessible in all parts of the Republic.

Functions of
the Authority.

7. The functions of the Authority shall be to-

- (a) coordinate and oversee the protection, rehabilitation, conservation and sustainable management of water towers;
- (b) coordinate and oversee the recovery and restoration of water tower lands;
- (c) support and promote the implementation of sustainable nature based enterprises and community livelihood improvement programs to ease pressure on water tower resources in accordance with natural resource conservation;
- (d) mobilize resources from the Government, development partners and other stakeholders as well as through payment for ecosystem services including carbon reservoirs and sequestration;
- (e) in consultation with relevant stakeholders identify water towers;
- (f) assess and monitor rehabilitation, conservation and management activities in the water towers;
- (g) establish ecosystem health standards, guidelines and regulations for the subscription of all activities and processes affecting water towers.;

- (h) develop and implement a water tower strategy to guide the conservation of water towers;
- (i) coordinate and oversee an integrated water tower monitoring system;
- (j) develop and implement a payment for ecosystem services framework in consultation with lead agencies;
- (k) undertake Total Economic Valuation (TEV) of all water tower ecosystems in the country to support implementation of an effective Payment for Ecosystem Services (PES) framework;
- (l) in collaboration with lead agencies develop and from time to time, review a mechanism for tax and fiscal incentives in relation to water tower conservation;
- (m) periodically undertake a Water Tower Ecosystem Audit and make relevant recommendations for sustainability;
- (n) prepare an annual Water Towers Status Report for the Cabinet Secretary and Parliament;
- (o) develop, maintain and regularly update a geo-database of all water towers in Kenya;
- (p) monitor the health of water towers. by reference to the standards established under paragraph (g);
- (q) conduct, promote and coordinate research towards the sustainable conservation and exploitation of water towers.;
- (r) undertake, in co-operation with lead agencies and other actors, awareness on the importance of and the need for conservation of water towers.;

- (s) devise a stakeholder engagement mechanism to facilitate the conservation, rehabilitation, restoration and sustainable exploitation of water towers. in the country;
- (t) make policy recommendations to the Cabinet Secretary on coordination, protection, rehabilitation, conservation and sustainable management of water towers including recommendations on the joining or implementation of any international treaty, convention or agreement it deems necessary for the health of water towers;
- (u) support, promote and coordinate climate change adaptation interventions for climate change resilience in communities around and within water towers;
- (v) establish strategic partnerships and linkages with relevant stakeholders to facilitate the rehabilitation, conservation, sustainable management of the water towers and all other activities of the Authority; and
- (w) perform such other functions as the Cabinet Secretary may, from time to time, assign to the Authority.

Board of
Directors.

8. (1) The management of the Authority shall vest in a Board of Directors which shall consist of –

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary of the ministry for the time being responsible for environment and natural resources or a representative designated in writing by that Principal Secretary;
- (c) the Principal Secretary, of the ministry for the time being responsible for water or a representative designated in writing by that Principal Secretary;

- (d) the Principal Secretary, of the ministry for the time being responsible for energy or a representative designated in writing by that Principal Secretary;
- (e) the Principal Secretary responsible for the National Treasury or a representative designated in writing by that Principal Secretary;
- (f) a representative of the Council of Governors
- (g) three other members appointed in an open and competitive process by the Cabinet Secretary in accordance with subsection (2) to represent organisations and groups of persons working within or adjacent to water towers;
- (h) a representative of the Attorney-General who shall be an ex-officio member;
- (i) the Director General of the Authority who shall be an ex-officio member;

Qualification
and
appointment of
the Board.

(2) The appointment of Board members by the Cabinet Secretary under 1 (g) above shall be by gazette notice and in such manner as prescribed in Article 27 of the constitution of Kenya.

9. (1) A person shall be qualified for appointment as a Chairperson of the Board if such a person—

- (a) is a citizen of Kenya;
- (b) possesses at least a post-graduate degree from a recognized university in a relevant discipline or field;
- (c) has at least ten years' experience in senior management, five or more of which shall be in a relevant discipline or field
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Board under section 8 (1) (g) if such a person—

- (a) is a citizen of Kenya;
- (b) has at least five years' experience in a relevant discipline or field;
- (c) meets the requirements of Chapter Six of the Constitution.

(3) A person shall be qualified for appointment as the Director General if the person-

- (a) holds at least a post-graduate degree from a recognized university in a relevant discipline or field;
- (b) possesses at least ten years' experience in management, five of which shall be in a relevant discipline or field;
- (c) satisfies the requirements of chapter six of the Constitution.

(4) A relevant discipline or field for purposes of this section shall include environmental science, environmental conservation, natural resource management, environmental law or other relevant social science;

(5) A person shall not be qualified for appointment as a Chairperson or a member of the Board if such a person—

- (a) is a member of a governing body of a political party or an employee of a political party;
- (b) is an un-discharged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(d) has been removed from office for contravening the provisions of the Constitution or any other written law.

(e) has been employed by the Authority in an executive capacity within the last five years.

(6) The Chairperson and the Board members appointed under subsection (l) (g) shall, serve for a term of three years, and shall be eligible for re-appointment for one further term of three years.

(7) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office fall at different times.

(8) The procedure for the conduct of business and affairs of the Board are as set out in the Schedule.

Powers and
Functions of
the Board.

10. (1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

(2) Without prejudice to the generality of the foregoing, the Board shall have power to –

(a) oversight the Authority in the execution of its mandate; specifically, to control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;

(b) advise the Cabinet Secretaries in charge of ministries that have a bearing on water towers, as may be necessary and appropriate

(c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;

(d) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;

- (e) levy fees for services rendered by the Authority as may be determined from time to time by the Board;
- (f) open such banking accounts for the funds of the Authority as may be necessary;
- (g) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 46;
- (h) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance or for the performance of its functions under this Act;
- (i) mobilize resources for the fulfilment of its functions;
- (j) perform or undertake any other activity that may be necessary for the fulfilment of any of the functions of the Authority under this Act.

Remuneration
of Board
members.

11. The Authority shall pay the Board members such remuneration, fees or allowances as the State Corporations Advisory Committee may advise.

Director
General.

12. (1) There shall be a Director General of the Authority who shall be competitively recruited and appointed by the Board and whose terms and conditions of service shall be determined by the Public Service Commission and whose salary shall be advised by the State Corporations Advisory Committee;

(2) The Director General shall-

- (a) be an *ex-officio* member of the Board with no right to vote;
- (b) subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Authority;
- (c) be responsible for the execution and

communication of the Board's strategies, decisions and policies;

- (d) be the head of the Secretariat and serve as the link between the Board and the management;
- (e) develop and recommend to the Board the annual plans for the organization;
- (f) be responsible for the achievements of the objectives of the organization and
- (g) perform such other duties the Board may from time to time, determine.

Ad hoc
sectoral
committees.

13. (1) The Director General shall with the approval of the Board, establish ad hoc sectoral committees where appropriate to deliberate, resolve, make recommendations and champion sustainable solutions to pressing concerns affecting the coordination, protection, rehabilitation, conservation, and sustainable management of specific water towers.

(2) The ad hoc sectoral committees shall draw membership from ministries, county governments, state agencies, non-state organisations, and community groups whose role is critical to the protection, rehabilitation, conservation, and sustainable management of the specified water towers.

(3) The membership of such committees shall not exceed ten persons; and the life of the ad hoc committee shall not exceed one year

(4) The ad hoc sectoral committees shall be chaired by a person from the Secretariat designated by the Director General and may where appropriate, be co-chaired by another member of the respective ad hoc sectoral committee.

(5) The ad hoc sectoral committees shall recommend appropriate measures to be implemented concerning the protection, rehabilitation, conservation, and sustainable management of specified water towers

(6) Upon adoption of such recommendation by the Board,

all concerned stakeholders shall implement and file periodic reports with the Authority

Corporation Secretary.

14. (1) There shall be a Corporation Secretary who shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Corporation Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and performing such other duties as the Board may direct.

(3) In the performance of his or her duties under this Act, the Corporation Secretary shall be responsible to the Board under supervision of the Director General.

(4) The Board may in the absence of the Corporation Secretary appoint any other officer of the Authority to temporarily perform the functions of the Corporation Secretary under subsection (2).

(5) Any functions delegated under subsection (4) may be so delegated subject to such conditions or restrictions as the Board may either generally or specifically determine.

Staff of the Authority.

15. The Board may appoint for the Authority such staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as may be determined by the Public Service Commission, and whose salary shall be advised by the Salaries and Remuneration Commission.

Common seal.

16. (1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Director General and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Director General;

(3) Notwithstanding the provisions of subsection (2) the Board shall, in the absence of either the Chairperson

or the Director General in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Director General.

(4) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially noticed and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

Protection from personal liability.

17. (1) Nothing done by any director of the Authority or by officer, employee, agent or servant thereof shall, if the act or omission was done bona fide for the purpose of executing a function, power or duty under the Act, render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board 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 by the failure, whether wholly or partially, or any work.

Delegation by the Board.

18. (1) The Board may, by resolution either generally or in any particular case, delegate in writing to any committee or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

Committees of the Board.

19. (1) The Board may from time to time establish oversight committees for the better carrying out of its functions.

(2) The Board shall appoint the chairperson of a committee established under subsection (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees for a specified amount of time not exceeding three months provided that the number of such persons shall not exceed two at any particular time and that a person shall not be co-opted more than once in any

financial year.

(4) The Board may temporarily co-opt for a particular agenda into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Authority.

(5) A person co-opted under subsection (4) shall be co-opted for a specified amount of time not exceeding three months and the number of such persons shall not exceed two at any particular time and such a person shall not be co-opted more than once in any financial year.

PART III – COORDINATION AND CONSERVATION OF WATER TOWERS.

Criteria for identification and process for gazettelement.

20. (1) The Cabinet Secretary may in accordance with this Act, gazette any geographic area within the Republic to be a water tower.

(2) An area may be gazetted as a water tower, under subsection (1) only upon recommendation by the Authority.

(3) Despite subsection (2), the Authority shall, before making its recommendation satisfy itself that the geographical area proposed for gazettelement meets the definition of a water tower, as defined under this Act.

(4) The Authority may recommend the compulsory acquisition of private or community land in accordance with the Constitution and relevant statutes where such measure is deemed critical to the protection, rehabilitation, conservation, and sustainable management of water towers.

Coordination and Conservation strategy.

21. (1) The Authority shall, after public participation and upon undertaking of a strategic ecosystem assessment, prepare a national water towers coordination and conservation strategy at least once every five years for approval by the Cabinet Secretary.

(2) The plan shall—

(a) include a statement of the short and medium

term operational and management objectives of the Authority for at least five years;

(b) outline the strategies and policies that the Authority intends to adopt in order to achieve its objectives; and

(c) include, among other things, an operational plan, a financial plan, a human resources plan and performance indicators.

Coordination
and
conservation
principles.

22. The Authority shall-

(a) promote research as the foundation for decision making and planning in the coordination and conservation of water towers.;

(b) undertake ecosystem valuation of all water towers to provide a basis for ecosystem planning and for sustainable investment towards achieving socio-economic development;

(c) foster exchange of data and information on the state of water towers across lead agencies for conservation, planning and management of water towers.;

(d) integrate traditional knowledge with mainstream scientific knowledge in the coordination and conservation of water towers.;

(e) maintain a database of all information relevant to the management of water towers containing data and information submitted by lead agencies;

(f) identify and recommend to the Cabinet Secretary appropriate measures necessary for the national implementation of any treaty, convention or agreement for the coordination and conservation of water towers.

Guidelines on water tower, standards.

23. (1) The Authority shall prescribe guidelines on standards to be maintained within water towers. for purposes of their coordination and conservation.

(2) Without prejudice to the generality of subsection (1) the Authority shall—

- (a) In collaboration with the Water Resources Authority and other relevant authorities prescribe the manner of water access and the different types of water use within and around areas affecting water towers.;
- (b) In collaboration with the Kenya Forestry Research Institute prescribe the appropriate types of tree species for planting in water towers and their different production modes.

Obligation to adhere to standards published by Authority

24 (1) Pursuant to the provisions of subsection (2), all state and non-state actors involved in the coordination, protection, rehabilitation, conservation, and sustainable management of water towers shall maintain the standards approved by the Authority

(2) Without prejudice to the generality of subsection (1), the standards shall relate to —

- (a) Policy and programme interventions by lead agencies, county governments, and regional development authorities
- (b) mining and the licensing of mining activities;
- (c) entry or the granting of entry permits into water towers.;
- (d) the extraction of medicine and licensing of medicine extraction;
- (e) water abstraction licensing;
- (f) erection of dams within water towers;
- (g) approval of Plantation Establishment and

Livelihood Improvement Schemes;

- (h) undertaking of Environmental Impact Assessment for projects; and
- (i) such other activities as may be prescribed by the Authority.

Monitoring of
water tower
health

25. (1) The Authority shall coordinate and oversee the periodic and systematic monitoring of water towers for determination of their status.

(2) The Authority shall promote the use of technology in the monitoring and assessment of water towers and in particular shall—

- (a) Work collaboratively with the relevant lead agencies to ensure the installation of automatic weather stations and river flow gauges in individual water towers.;
- (b) Work collaboratively with the relevant authorities for the delineation and mapping of water towers.;
- (c) Work collaboratively with the relevant authorities to utilize any form of technology as is deemed appropriate while keeping up with global trends in technology in monitoring of water towers.

(3) The Authority shall, in the performance of its functions under this section, work with communities to ensure effective monitoring of water tower health.

Community
involvement.

26. (1) The Authority shall undertake coordination and conservation activities in collaboration with communities.

(2) The Authority shall initiate voluntary conservation programmes including tree planting activities and tree nursery management programmes targeted at involving communities in the coordination, protection, rehabilitation, conservation, and sustainable

management of water towers.

Public participation.

(3) The Authority shall observe the use of free, prior, and informed consent where applicable.

27. (1) The Authority shall conduct public participation and engage the relevant stakeholders in decision making

(2) Without prejudice to the generality of subsection (1), the Authority shall conduct public participation and engage the lead agencies in the—

- (a) preparation of the water towers coordination and conservation strategy;
- (b) identification of water towers.;
- (c) variation of boundaries of water towers.;
- (d) such other activities as may be provided for in this Act.

Public awareness

28. (1) The Authority shall, in collaboration with the national and county governments and in partnership with registered non-governmental organisations and civil society groups promote public awareness on the need for the protection, rehabilitation, conservation, and sustainable management of water towers through comprehensive nationwide educational and information campaigns.

Environmental Education

(2) The Authority shall, in collaboration with the Ministry responsible for education at the national and county level, integrate instruction on the sustainable management of water towers. into the basic education curriculum for both informal and non-formal learning systems.

Trans-boundary conservation of water towers.

29. (1) The Authority shall cooperate and collaborate with county governments in the coordinating sustainable conservation of water towers. that spread across county boundaries.

(2) The State shall cooperate with neighbouring States in the coordination and conservation of transboundary water towers. by facilitating joint

conservation programmes.

Investment and
Benefits
sharing.

30. (1) The Authority shall prescribe the manner in which investors may engage in water tower coordination, protection, rehabilitation, conservation, and sustainable management of water towers

(2) Benefits accruing from the coordination and conservation of water towers shall be enjoyed and shared by the people of Kenya at the national, county and sub-county levels in accordance with this Act or any other applicable written law.

(3) Communities shall:

(a) be entitled to such benefits as may be prescribed in the regulations;

(b) register such associations as may be prescribed for purposes of accessing the benefits under paragraph (2)

(3) Subject to Article 66 of the Constitution investors in water towers shall put into place such benefit sharing mechanisms as may be negotiated at the county government level for the benefit of local communities; which may include the provision of infrastructure, education, employment collaborative projects or other social amenities.

Customary
access and
use.

31. (1) A person may, subject to subsection (2), access, use and enjoy any whole or part of a water tower ecosystem services as established by custom.

(2) Any claim for access by custom shall be assessed-

(a) conforms to the Constitution or any other written law;

(b) is not repugnant to justice and morality;

(c) is for non-commercial purposes.

Annual Water
Towers Health
Status report.

32. (1) The Authority shall prepare a water towers health status report for each financial year.

(2) The Authority shall submit the water tower status report to the Cabinet Secretary and Parliament within three months after the end of the year to which it relates and cause it to be published in the Kenya gazette.

(3) The water tower status report shall contain, in respect of the year to which it relates—

(a) a description of the activities with respect to the coordination and conservation of select water towers.;

(b) land cover and land use trends within select water towers.;

(c) hydrology within select water towers.;

(d) rivers and springs within select water towers.;

(e) ecosystem products, services and values within select water towers.;

(f) socio-economic aspects affecting select water towers.;

(g) threats, challenges and proposed interventions affecting select water towers.;

(h) such other statistical information as the Board considers appropriate relating to the implementation of the functions of the Authority.

Maintenance
of registers

33. The Authority shall maintain a register of all water towers., which shall be open for inspection to the public at a prescribed fee at the offices of the Authority and through its website.

PART IV –PENAL PROVISIONS

Cooperation by
all persons.

34. (1) All persons shall —

- (a) cooperate with and provide all reasonable assistance to the Authority to enable it carry out its functions and duties under this Act;
- (b) furnish the Authority with such information as the Authority may reasonably require for the purpose of the performance of its functions under this Act.

(2) Any person who-

- (a) obstructs or hinders the Authority from carrying out its duties under this Act;
- (b) knowingly makes a false or misleading statement to the Authority;
- (c) refuses or declines to disclose to the Authority any information that the Authority may require for the proper performance of its functions under this Act;

commits an offence and shall be liable to a fine not less than two hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

Prohibited activities.

35. (1) A person shall not, except under authority of any written law, within a water tower—

- (a) fell, cut, take, burn, injure or remove any produce;
- (b) enter or remain in the water tower between the hours of 7 p.m. and 6 a.m. or such other hours as may be prescribed unless the entry is for prescribed purposes;
- (c) erect any unauthorised building or livestock enclosure;
- (d) smoke, where smoking is by notice prohibited, or kindle, carry or throw down any fire, match or other lighted material;
- (e) de-pasture or allow any livestock to be

therein;

- (f) clear, cultivate or break up land for cultivation or for any other purpose;
- (g) enter any part thereof which may be closed to any person;
- (h) collect any honey or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax, or enter therein for the purpose of collecting honey and beeswax, or be therein with any equipment designed for the purpose of collecting honey or beeswax;
- (i) introduce any exotic genetic material or invasive plants;
- (j) dump any solid, liquid, toxic or other wastes;
- (k) grow any plant from which narcotic drugs can be extracted;
- (l) extract, remove, or cause to be removed, any tree, shrub or part thereof for export;
- (m) construct any road or path;
- (n) make or possesses charcoal;
- (o) set fire to, or assist any person to set fire to, any grass or undergrowth or any water tower produce;
- (p) possess, bring or introduce any chain saw or logging tools or equipment;
- (q) damage, alter, shift, remove or interfere in any way whatsoever with any beacon, boundary mark, fence notice or notice board.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not less than five hundred thousand shillings or to imprisonment for a term not exceeding

twelve months, or to both such fine and imprisonment.

(3) In addition to the punishment stipulated in subsection (2) above the Court may further issue an order requiring that a convicted person restores at his own cost, the water tower to as near as it may be to its original state prior to the commission of the offence.

(4) The Cabinet Secretary may, on recommendation of the Authority, make rules or regulations for or with respect to:

- a) prescribing measures on permissible activities that can be carried out within water towers located in private land;
- b) prescribing measures on permissible activities that can be carried out within the buffer zone of water towers;
- c) prescribing measures on prohibited and permissible activities that can be carried out within the water towers.

Offences by
bodies
corporate.

36. (1) When an offence under this Act, is committed by a body corporate, the body corporate and every director or officer of the body corporate who failed to exercise due diligence, efficiency and economy to ensure compliance with this Act, commits the offence.

(2) Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who failed to exercise due diligence, efficiency and economy to ensure compliance with this Act, commits the offence.

General penalty

37. A person who commits an offence under this Act for which the penalty is not provided shall be liable upon conviction to a fine of not less than five hundred thousand shillings, or to imprisonment for a term not exceeding two years or both such fine and imprisonment.

Dispute
resolution

38. (1) Any dispute that may arise in respect of the

coordination and conservation of water towers. shall in the first instance be referred to alternative dispute resolution.

(2) Any matter that may remain un-resolved under subsection (1), shall be referred to the National Environment Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act, 2011 (No. 19 of 2011).

(3) Any dispute that may arise between lead agencies in the coordination and conservation of water towers. shall in the first instance be referred to the National Environmental Tribunal for determination, pursuant to which an appeal subsequent thereto shall, where applicable, lie in the Environment and Land Court as established under the Environment and Land Court Act, 2011

PART V – PROVISIONS ON DELEGATED LEGISLATION

Purpose of delegation.

39.(1) 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 Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make rules under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section and under section 4;
- (c) the principles and standards applicable to the delegated power referred to under section 40 are those found in-
 - (i) this Act;

- (ii) the Statutory Instruments Act, 2013;
- (iii) the Interpretation and General Provisions Act;
- (iv) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (v) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

Regulations.

40. (1) The Cabinet Secretary may, on recommendation of the Authority, make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may-

- (a) prescribe anything required by this act to be prescribed or prohibit anything required by this act to be prohibited;
- (b) provide for the manner in which the Authority may facilitate the national and county governments in adopting appropriate systems for the conservation of water towers;
- (c) provide for the manner in which the Authority shall collect and disseminate data relating to protection, rehabilitation, conservation, and sustainable management of water towers;
- (d) provide for the manner in which communities shall register associations for the purpose of accessing benefits under section 30 and the criteria to be met by the associations for accessing such benefits;
- (e) provide for the manner of identification and gazette of water towers;
- (f) provide for the payment for ecosystem services.

- (g) provide for the process for the identification, gazette, variation, of boundaries and degazette of water towers.
- (h) provide for the creation and maintenance of buffer zones around water towers
- (i) regulate on the permitted, restricted and prohibited activities within water towers
- (j) stipulate the modalities for periodic Total Economic Valuation of water towers
- (k) provide for an effective payment for ecosystem services framework
- (l) regulate on periodic sustainability assessments.
- (m) provide for community engagement in the coordination, protection, rehabilitation, conservation, and sustainable management of water towers
- (n) Provide for the operation of transboundary management of water towers
- (o) Stipulate the benefits to be shared by communities engaging in coordination, protection, rehabilitation, conservation, and sustainable management of water towers

Funds of the Authority.

PART VI- FINANCIAL PROVISIONS

41. (1) The funds of the Authority shall comprise of –

- (a) A Water Towers Trust Fund to be operationalized by moneys appropriated by Parliament for the purpose of the Authority;
- (b) such fees, monies or assets as may accrue to or vest in the Authority in the course of the

exercise of its powers or the performance of its functions under this Act or under any written law; and

- (c) such amounts, as may be paid to the Authority from any public fund, created by law for the purposes of promotion of any or all the objects and functions of the Authority.
- (d) any gift, grants and other donations as may be made to the Authority;

(2) The balance of the funds at the close of the financial year shall be retained for the purpose of which the Fund is established.

(3) All funds raised shall be used in accordance with the values and principles of public finance management, including prudence, efficiency and value for money.

Utilization of funds of the Authority.

42. The Authority may utilize its funds to—

- (a) mobilize resources for the coordination, protection, rehabilitation, conservation, and sustainable management of water towers
- (b) raise awareness on the development and conservation of water towers. for those benefiting from water towers or involved in activities that have direct impact on them;
- (c) increase water towers owners' capacity and efficiency in water tower conservation, use and management;
- (d) facilitate research intended to further the conservation of water towers;
- (e) finance programs, projects or non-project activities in which the Government has not invested or which fail to meet investment requirement;
- (f) finance the operations of the Authority.

Financial year.

Annual

estimates.

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

44. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for –

- (g) the programmes of the Authority;
- (h) the payment of the salaries, allowances and other charges in respect of directors and staff of the Authority;
- (i) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
- (j) the proper maintenance of the buildings and grounds of the Authority;
- (k) the maintenance, repair and replacement of the equipment and other property of the Authority; and
- (l) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate.

Accounts and
audit.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not increase the annual estimates of the Authority without the consent of the Cabinet Secretary.

45. (1) The Board shall cause to be kept all proper books and records of accounts of the income,

expenditure and assets of the Authority.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Authority together with-

(a) a statement of financial performance of the Authority during that year; and

(b) a statement of financial position of the Authority on the last day of that year.

Investment of funds.

(c) A certificate that the values and principles of public financial management including prudence, efficiency and value for money have been observed.

Payment for ecosystem services.

(d) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2015.

Tax and fiscal incentives

46. The Board may invest any of the monies of the Authority in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

47. The Cabinet Secretary may, on recommendation of the Authority, make regulations for or with respect to the payment for ecosystem services.

48.(1) The Authority shall recommend to the Cabinet Secretary in charge of Treasury, tax and fiscal incentives for conservation of water towers;

(2) The incentives referred to in subsection (1) may be proposed in respect of-

(a) investors;

(b) private land owners who house whole or part of water towers.; and

(c) Communities around water towers., undertaking

conservation activities.

(3) Without prejudice to the generality of subsection (1), the tax and fiscal incentives may include—

- (a) customs and excise waiver in respect of imported capital goods or tax rebates to water tower industries and other establishments investing in plants, equipment and machinery for improved resource utilization and for using other energy resources as substitutes for hydrocarbons;
- (b) exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land in cases where a water tower is housed either wholly or partially in private land;
- (c) exemption from payment of charges for water use, and other ecosystem services as may be prescribed by the Authority for the community.
- (d) tax disincentives to deter bad environmental behaviour that leads to degradation of water towers.

PART VII –TRANSITIONAL AND SAVINGS

Revoke of L.N
27/2012

49. The Kenya Water Towers Authority Order, 2012 is revoked.

Consequential
amendment.
(No 47 of
2013)

50. Section 116 of the Wildlife Conservation and Management Act, 2013 is amended in subsection (2) by deleting paragraph (g).

Transitional.

51. (1) In this section-

“appointed day” means the day upon which this Act comes into operation;

L.N 27 of 2012.
Cap. 446

“Agency” means the Kenya Water Towers Agency established by the Kenya Water Towers Authority Order, 2012 made under the State Corporations Act.

(2) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the Agency, shall by virtue of this subsection, vest in the Authority.

(3) On the appointed day, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the Agency shall, by virtue of this subsection, be deemed to be vested in, imposed on or enforceable against the Authority.

(4) The Chairman and other members of the Board of the Agency, including the Chief Executive Officer of the Agency shall be deemed to be the Chairperson, members of the Board and the Director General respectively appointed under this Act for the remainder of their terms.

(5) On the appointed day, any person who, immediately before the commencement of this Act, was a member of staff of the Agency shall be deemed to be a member of staff of the Authority for the unexpired period of his or her service.

(6) Any reference in any written law or in any document or instrument to the Agency shall on and after the appointed day, be construed to be a reference to the Authority.

(7) (1) The annual estimates of the Agency for the financial year in which the appointed day occurs shall be deemed to be annual estimates of the Authority for the remainder of that financial year;

(2) Provided that such estimates may be varied by the Board in such manner as the Cabinet Secretary may approve.

(8) The administrative directions made by the Agency or by the Cabinet Secretary that are in force immediately before the appointed day shall, on and after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act.

(9) On the appointed day any legal proceedings against the Agency shall continue by or against the Authority.

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

Vacation of
office.

1. (1) A member other than an ex-officio member may-

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member –

(i) has been absent from three consecutive meetings of the Board without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the Laws of Kenya;

(iii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(iv) is found to have acted in a manner prejudicial to the aims and objectives of this Act;

(v) fails to comply with the provisions of this Act relating to disclosure;

(vi) is incapacitated by prolonged physical or mental illness for a period exceeding six months;

(vii) contravenes chapter six of the Constitution;

(viii) is otherwise unable or unfit to

discharge their functions.

(2) Prior to a removal under paragraph (1) (b), the person shall be informed in writing of the reasons for the removal and shall be accorded the right to be heard.

(3) Where a member of the Board dies or resigns or otherwise vacates office before the expiry of the term of office, the appointing authority shall appoint another person in the place of such member.

Meetings.

2. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members 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.

(4) The quorum for the conduct of the business of the Board shall be half of the total members including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Board but the members present shall elect one of their numbers to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

Disclosure of interest.

3. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

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

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not less than two hundred thousand shillings.

Contracts and instruments.

4. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

