KENYA CLIMATE CHANGE ACT, 2016

A Summary and Status Report

The Kenya Climate Change Act, 2016 of Parliament is a regulatory framework for an enhanced response to climate change that provides mechanism and measures to achieve to improve resilience to climate change and promote low carbon development.

It adopts a mainstreaming approach that provides lawful grounds for activities in climate change through the National Climate Change Action Plan (NCCAP) and places obligation and measures to the national and county governments to mainstream climate change mechanisms, responses and low carbon development in decision making, development planning and implementation for the sustainable development of Kenya.



The Making of the Act

For effective climate responses and actions in Kenya, a long-term coordinated framework is required to provide direction and clarity to policy makers, public, private sector and civil society. In 2010, Kenya passed the National Climate Change Response Strategy (NCCRS) which established long-term goals to mainstream climate mitigation and adaptation into national planning and budgeting and outlined priority projects in key sectors, including agriculture, tourism, energy, infrastructure, health, water, and urban development.

The Strategy is a planning instrument that defines a long-term vision while guiding the national policy through a path that sets the national priorities of attention and defines criteria to identify regional priorities. To ensure that the strategy is realized, the Government of Kenya, led by the Ministry of Environment and Forestry, worked with stakeholders from civil society, the private sector, and national and county governments to develop this climate change legislation. Subsequently, parliament was engaged in vetting of the Members of the Climate Change Council, and views from these stakeholders were sought before the appointment of the Council members.

The Act's objectives and purposes are:

- Mainstream climate change responses into development planning, decision making and implementation;
- Build resilience and enhance adaptive capacity to the impact of climate change;
- Formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change;
- Mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities
- Mainstream intergenerational and gender equity in all aspects of climate change responses
- Provide incentives and obligation for private sector contribution in achieving low carbon climate resilient development;
- Promote low carbon technologies, improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;
- Facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information;
- Mobilize and transparently manage public and other financial resources for climate change response
- Provide mechanisms for, facilitate climate change research and development, training and capacity building
- Mainstream the principle of sustainable development into the planning for and decision making on climate change responses and
- Integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between the national government and county governments.



Who is responsible for implementing the Act?

The National Climate Change Act, 2016 was signed into law in 2016 and established a policy, coordination and oversight which are:

a. The National Climate Change Council which provides an overarching national climate change coordination mechanism and ensure mainstreaming of the climate change function by the national and county governments among other responsibilities. The council comprises of not more than nine members and is chaired by the President.

b. The Cabinet Secretary responsible for environment and climate change affairs, who provides guidance over climate change governance and implementation which includes formulating and periodically reviewing the climate change policy,strategy and the National Climate Change Action Plan (NCCAP) and submit to the council for approval.

c. The Climate Change Directorate as a Directorate in the state department for the time being responsible for climate change. The Directorate is the lead agency of the government on national climate change plans and actions to deliver operational coordination and reports to the Cabinet Secretary. It performs duty on behalf of the council by providing analytical support on climate change to various sector ministries, agencies and county governments, manage a national registry for appropriate mitigation actions by public and private entities and serve as the national knowledge and information management center.

d. The National Environmental Management Authority (NEMA) which monitors, investigate and reports on whether public and private entities are in compliance with the assigned climate change duties. NEMA are also tasked to integrate climate risk and vulnerability assessment into all forms of assessment.

e. County Governments in performance of its functions, integrates and mainstream climate change actions, interventions and duties set out in the Act and NCCAP into their County Integrated Development Plan (CIDP) and Count Sectoral Plans taking into account national and county priorities. A county may enact legislation that further defines implementation of its obligations under the Act. They are required to submit a report every financial year on progress of implementation of climate change actions to the county assembly for review and debate.

f. The Kenya Institute of Curriculum Development (KICD) on advice of the council to integrate climate change into various disciplines and subjects of the national education curricula at all levels

g. Climate Change Fund as the financing mechanism for priority climate change actions and interventions approved by the council. It is under the the National Treasury which is responsible for developing the climate finance strategy and regulations. The funds present a valuable source of co-financing and partnership for project development.



Climate Change Response Measures and Actions in the Act

The Climate Change Act, 2016 states that the Cabinet Secretary will coordinate the preparation of climate change action plans, strategies and policies.

a. The Act identifies **The National Climate Change Action Plan (NCCAP)** as a measure and mechanism that guides the country towards the achievement of low carbon climate resilient sustainable development, and set out actions for mainstreaming climate change responses into sector functions for adaptation to and mitigation against climate change. The act states that NCCAP shall be informed by scientific knowledge on climate change, technology and technological innovations relevant to climate change, the country economy, fiscal and social circumstances, international law and policy and indigenous knowledge related to climate change adaptation and mitigation. The Directorate is required to do a biennial review of the implementation of NCCAP and the cabinet secretary shall in every five-year period, review and update it. A notice shall be published in the Kenya Gazette and national newspapers to notify the public on approval NCCAP by the council.

b. The act also states that **Government policies or action plans formulated on climate change should be tabled before parliament** by the council in consultation with Cabinet Secretary setting out the objectives and proposals, timeline, public participation and stakeholder engagement and measures for addressing the risks identified in the policies

c. Duties relating to climate change by public entity shall be **carried out by state departments and national government public entity** which includes integrating climate change action plan into sectoral strategies, action plans and other implementation projections for the assigned legislative and policy functions. They are required to designate a unit with adequate staff and financial resources to coordinate the mainstreaming of climate change.

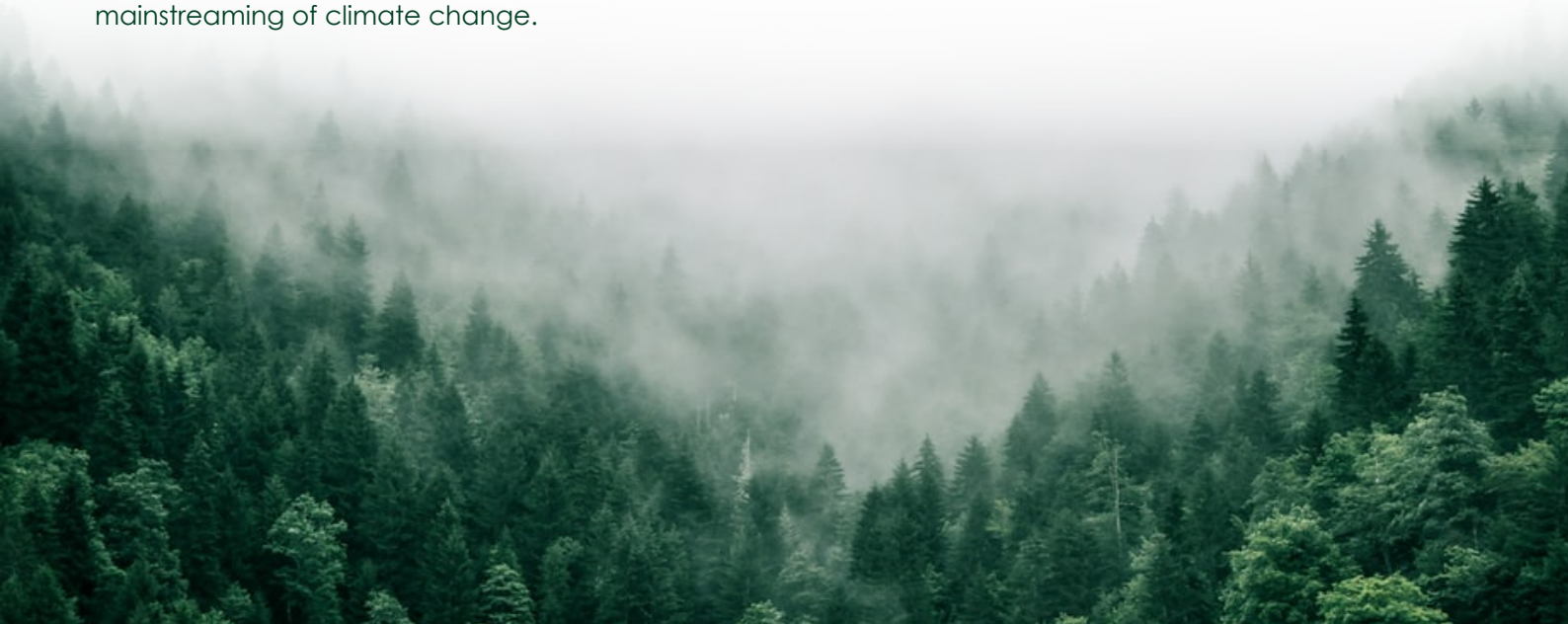
d. The Council in consultation with Cabinet Secretary and relevant state departments may impose climate change obligations on **private entities**

e. The council on recommendation of the cabinet secretary **identifies priority strategies and actions of disaster risk reduction(DRR)** related to climate change each year and advices the president, county governments on priority strategies and actions that should be integrated into functions and budgets. They also develop a specific public safety component DRR for incorporation by all levels of government.

f. The act states that **public consultation and participation** should be undertaken in a manner that ensures the public contribution makes the impact on the threshold of decision making.

g. Section 23 of the Climate Change Act allows any person to apply to the **Environmental and Land Court (ELC)** alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change. and the court may 'order a discontinuance or prevention of these actions' or 'provide compensation to a victim of a violation relating to climate change duties'. ELC has jurisdiction to hear disputes relating to the environment and land.

h. The Act also **provides for incentives** through the cabinet secretary to persons who put in place measures for the elimination of climate change, GHG emissions, measures to mitigate climate change and accredited training in programmes that are aimed at eliminating climate change.



Pathways to Building Resilience

Status of Climate Change Act in Kenya

Motions in Upper House and House of Representatives in Parliament

Since the passing of the Act, Kenya parliament has tabled motions on climate change referring to Paris Agreement and Kenya NDC to promote resilience to climate change. The committee on climate change has also sought additional legislation by passing a motion urging the government to give county government resources to have a minimum of 10% forest cover.

National Climate Change Action Plan (NCCAP)

The Act requires the cabinet secretary to develop a NCCAP which is reviewed every 5 years. The current NCCAP 2018-2022 builds on the strong foundation laid during the implementation of the first NCCAP 2013-2017, and the Climate Change Act. It sets out the path towards low carbon climate resilient development in a manner that prioritizes adaptation. It provides a framework for Kenya to deliver on its National Adaptation Plan (NAP) 2015-2030 and its Nationally Determined Contribution (NDC) under the Paris Agreement of the United Nations Framework Convention on Climate Change (UNFCCC.

County Government Implement NCCAP

The Act instruct the county governments to mainstream the implementation of the NCCAP into their CIDPs and sector plans, and to designate a County Executive Committee (CEC) member to coordinate climate change affairs. In 2013, all 47 CIDPs mentioned the impacts of climate change in their areas of jurisdiction, and many identified actions to address these impacts. Garissa, Kitui, Makueni and Wajir County Governments passed regulations to establish County Climate Change Funds (CCCFs). Legislation on the County Climate Change Fund (CCCF) was developed in Isiolo. Other Counties, such as Kisumu, established institutional structures to mainstream climate change in plans and programmes.

Climate Change Directorate (CCD)

The CCD was put in place as stated by the Act as the nationally designated boy to coordinate the climate change mitigation and adaptation activities in Kenya. Since then, CCD has developed

- **The Kenya Climate Change Knowledge Portal (KCCKP)** is a one stop repository of climate change information in Kenya.
- **National Climate Change Registry** which enable government and non-government actors to better understand climate change actions in Kenya, and assist the CCD to fulfil domestic and international reporting requirements on climate change.
- **The Climate Change Resource Centre** to serve as the national repository for general climate change information and also provides facilities and training rooms to support webinars, teleconferencing, capacity building and workshops, and other innovation/knowledge exchanges.
- **Inter-Sectoral Cooperation and Stakeholder Engagement** where stakeholders in all sectors have been involved through the county climate change plans and participatory planning under the CCD.
- **County-Level Climate Action** by engaging and empowering county governments in the climate budgeting and planning processes through the establishment of communication structures between national and sub-national levels of governance, the National Climate Change Act has created bottom-up channels for driving climate progress.



Financing Mechanism

» **Development of A Climate Change Financing Mechanism at The County Level**
The County Climate Change Fund (CCCF) mechanism is implemented by the National Drought Management Authority through the Adaptation Consortium. It facilitates the flow of climate finance to counties and integrates climate change considerations into planning and implementation. The CCCF mechanism has been piloted successfully in five counties, Isiolo, Garissa, Kitui, Makueni and Wajir. Drawing on the success of the pilot, the CCCF mechanism is currently being rolled out in Vihiga, Nandi, Bomet, Kisii, Kakamega, Kisumu, Narok, Siaya, Taita Taveta, Tharaka Nithi, Embu, Machakos, Kilifi and Kwale.

» In 2021, the Central Bank of Kenya (CBK) issued guidance on **climate-related risk management** licensed under the Banking Act, Cap 488 on climate – related financial risks. A risk-based approach under the guidance will also assist the institutions to effectively entrench climate-related financial risks in their risk management frameworks. Consequently, banks are expected to develop internal reporting structures and implementation plans and, ultimately, submit quarterly reports to CBK

Improved Accountability

This Act is the only national climate change law that provides mechanism for the public and communities to hold the government and private entities accountable for imparing climate progress. It has created a pathway for stakeholder engagement, monitoring and evaluation and ensures sustainability for impact. It also involved the actors in identifying local climate actions in different sectors.

Conclusion

Transitioning to a low-carbon economy is a key component of Kenya's Vision 2030 and remains a national priority. Ultimately, the implementation of the National Climate Change Action Plan and the regulations contemplated under the Climate Change Act 2016 will further provide greater certainty on the government's initiatives for achieving climate sustainability. It is expected that the regulations will further clarify the obligations of various parties, including those in the private sector in relation to climate action. As the momentum towards net zero accelerates with COP26, there is hope that Kenya, as well as other countries, will endeavor to honor and keep up with their pledged emission targets

