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Reference to existing legislations such as Water Act, RAMSAR convention, National water master plan, Lake Naivasha catchment area protection 2012 legal notice No.8 2013, Wildlife Conservation protected wetlands 2015 among others

1. The Convention on Wetlands of International Importance especially as Habitats for Waterfowls, 1971

The mission of the Ramsar Convention is “the conservation and wise use of all wetlands through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”. Article 1.1 of the Ramsar Convention (RC, 1971), defines a wetland as: "Areas of marsh, fen, peatland 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, the depth of which at low tide does not exceed six metres. These areas may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands". This definition has considered in defining wetlands in the Regulations.

Kenya ratified the Ramsar Convention on the 5th of October 1990. Has 7 International Ramsar sites, the Tana Delta being the latest one listed on the 7th of September 2012.

2. Constitution of Kenya (CoK), 2010

Article 2 (5) and (6) of the CoK, provides that international law shall form part of the laws of Kenya and that any treaty or convention that Kenya has ratified shall be part of the laws of Kenya. Kenya having ratified the Ramsar Convention has to ensure that there is wise use of wetlands within her boundaries. Under Article 10 (2) (d) the concept of sustainable development is one of the national values and principles of governance. Article 42 gives the right to have a clean and healthy environment and this right enforceable under Article 70. Under Article 69 (2) each person has a duty to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and the use of natural resources. These are key Constitutional provisions considered in the draft Wetlands Regulations.

3. National Wetlands Conservation and Management Policy, 2015

Launched in October 2014, the Wetlands Policy lays the framework for planning, co-ordination and management of wetlands. It aims at providing a framework for mitigating the diverse challenges that affect wetlands conservation and wise use in Kenya. The policy addresses the issue of participatory wetlands management in Section 4, by providing for involvement of concerned non-state actors and local communities in planning and implementation of wetland conservation activities. This approach will be used to plan and implement wetland management plans among other strategies to bring on board other stakeholders in wetland management.

This has been considered under Regulations 5 and 6 on consultation with relevant lead agencies and stakeholders in preparing wetlands inventory and development of Integrated Wetlands Management Plans to prevent and control further degradation of such wetlands.

4. National Land Policy, 2009

This National Land Policy guides the country towards efficient, sustainable and equitable use of land for prosperity and posterity. One of the policy principles is that of conservation and management of land based natural resources, the principle of protection and management of fragile and critical ecosystems including wetlands and arid lands. The Regulations therefore have a strong foundation the National Land Policy.

5. Draft National Environment Policy, 2014

The goal of the said policy is to better the quality of life for the current generation without compromising the quality of life for future generations through sustainable management of the environment and natural resources. The guiding principles of the policy are amongst other the right to a clean and healthy environment and this is also a right enshrined in EMCA and the Constitution of Kenya 2010, the principle of inter and intra-generational equity, ecosystem approach, right to development, sustainable use just to name a few. The policy recognises the need of freshwater and wetland ecosystems as providers of environmental goods and services. Some of these services are soil formation, flood control, diluting or removing pollutants from the water, habitat for species and recreation just to state a few of the uses. The policy recommends that the Government seek to harmonize the roles of the various regulatory agencies charged with the mandate of management of these resources as well as those that interact with them. The same also recommends the development of a wetlands policy and management plans for these areas and the rehabilitation of degraded wetlands. This also applies for the coastal and marine ecosystems.

6. Draft National Lands Reclamation Policy, 2015

This Policy's goal is integrating national interests and stakeholders' participation, including those whose actions affect and or are affected by land and water degradation, and consolidate and coordinate all reclamation initiatives. The policy looks at interlink between water cycle and land management. The policy highlights the fact that every land use decision is also a water management decision and that water management directly relates to mitigating or preventing land degradation. The policy recognises that there is the challenge of dealing with various stakeholders in the wake of sectoral management of these areas such as wetlands. Further the recognition of wetland as land that is wet is noted to be an area that the policy seeks to address in collaborating with NEMA.

7. Draft Wildlife Policy, 2011.

The proposed goal for the policy is to provide a framework for conserving in perpetuity, Kenya's rich diversity of species, habitats and ecosystems for the well-being and benefits of the people of Kenya and the global community. The policy calls for ecosystem based management plans for wildlife conservation within and outside protected wildlife areas. As the focal point of the Ramsar Convention in Kenya, the Kenya Wildlife Service is charged with the mandate of ensuring that these areas are protected. The policy calls for harmonization of all policies which manage coastal and marine ecosystems to remove overlaps

as well as dealing with wetlands within protected and those outside the protected zones of the parks. The policy also calls for the mapping and the inventorying of wetlands and supports for the conservation and management of the same. The same supports the need for implementation of a National wetlands conservation and management policy as well support the restoration of degraded wetlands.

8. Draft National Policy on groundwater resources development and management, 2016

The purpose of the policy is to contribute to the national framework for the sustainable development and management of the groundwater resources. The policy notes that there inadequate policies, strategies and legislation relating to groundwater resources and their management or if the same is there, there is ineffective application of the said policies, legislation and strategies and also overlaps. The policy is proposed as a guide to other ministries that deal with groundwater. It seeks partnerships with all sectors for sustainable resource use and management. It advocates for collaboration in land use management for groundwater protection. Last but not least it proposes the review of legal, environmental and regulatory frameworks for sustainable development and management of these resources.

9. The Environmental Management and Coordination (Amendment) Act, 2015

The Wetlands Regulations are aimed at operationalising EMCA which is the framework environmental law governing the management of the environment in Kenya. EMCA establishes the National Environment Management Authority (NEMA) whose mandate is to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of government in the implementation of all policies relating to the environment. Part V of EMCA deals with legal tools for the sustainable management of the environment and covers the protection of various components of the environment including wetlands. Section 42 specifically contains provisions governing protection of wetlands including prohibition in carrying out of several listed activities on a wetland without prior approval of the Director General of NEMA. The Act mandates the Cabinet Secretary to declare a wetland to be a protected area and impose such restrictions as he considers necessary to protect the wetland from environmental degradation. Most important is that the powers given to the Cabinet Secretary to issue, through a Gazette notice general and specific orders, regulations or standards for the management of wetlands.

10. Water Act, 2016

The Water Act 2016 provides for the management, conservation, use and control of water resources and for acquisition and regulation of rights to use water; and provides for the regulation and management of water supply and sewerage services. The Water Resources Authority is mandated to serve as an agent of the national government and regulate the management and use of water resources including wetlands.

11. The Wildlife Conservation and Management Act, 2013

The Act defines Wetlands under Section 2 which is borrowed from the Ramsar Convention and also used in the Regulations. It mandate the Cabinet Secretary under Section 33 to declare through a Gazette Notice a wetland that is important for habitat or ecosystem for wildlife conservation a protected wetland and further in consultation with the community and relevant stakeholders to prepare an Integrated Wetland Management Plan for the protected wetland. These are important provisions incorporated in the draft Regulations.

12. Agriculture, Fisheries and Food Authority (Amendment) Act, Act no. 37 of 2013

Agriculture at Section 2 of the Act is defined as cultivation of land and the use of land (whether or not covered by water) for any purpose of husbandry, aquaculture and food production.

13. National Water Master Plan (2030)

The National Water Master Plan 2030 was launched on 26th March 2014. It seeks to have improved water and sanitation services available and accessible to all by 2030. A clean, secure and sustainable environment will depend on the protection of our water towers and our ecosystems including wetlands. The plan notes that the water deficits would require promotion of water resources development to the maximum in order to meet future water demand. One of the objectives of the draft Regulations is to promote the integration of wise-use of resources in wetlands into local, county, and national planning for, ecological, aesthetic, cultural and socio-economic development. This is in line with the objectives of the National Water Master Plan

14. The Lake Naivasha Groundwater Conservation Area Order, 2012

This Order was issued by the Water Resources Management Authority (now Water Resources Authority) and serves to declare Lake Naivasha as a groundwater conservation area under the Water Act 2002, (now repealed). It provides for conditions for abstraction of ground water including ensuring that the wellhead protection area within a radius of ten meters is reserved where land use activities not associated with the water supply from a borehole and its management are prohibited. The draft Wetlands Regulations provides for the procedure for declaration of a protected wetland and activities that may be permitted such as research, eco-tourism, restoration or enhancement of the wetland, cultural uses, or any activities identified in the integrated wetland management plan.

15. National Wetlands Management Strategy, 2015

The National Wetlands Management Strategy provides the implementation framework for the Wetlands Policy with strategic objectives and activities including for protection of wetlands.