

**SPECIAL ISSUE**

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**REPUBLIC OF KENYA**

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***KENYA GAZETTE SUPPLEMENT***

**ELGEYO/MARAKWET COUNTY ACTS, 2021**

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**NAIROBI, 27th May, 2021**

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# **THE ELGEYO/MARAKWET COUNTY CLIMATE CHANGE FUND ACT, 2021**

**No. 1 of 2021**

*Date of Assent: 11th May, 2021*

*Date of Commencement: See Section 1*

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## THE ELGEYO/MARAKWET COUNTY CLIMATE CHANGE FUND ACT, 2021

**AN ACT of the County Assembly of Elgeyo/Marakwet to put in place the framework and mechanisms for mobilization and facilitation of the county government, communities and other stakeholders to mainstream all development projects and to respond effectively to climate change through appropriate adaptation and mitigation measures and actions and for connected purposes**

**ENACTED** by the County Assembly of Elgeyo/Marakwet, as follows—

### PART I—PRELIMINARY

#### **Short title and Commencement**

1. This Act may be cited as the Elgeyo/Marakwet County Climate Change Fund Act, 2021 and shall come into operation on the date of publication in the *Gazette*.

#### **Interpretation**

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

“adaptation” means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects in order to moderate harm or exploit beneficial opportunities;

“adaptive capacity” means the ability of a system to adapt to the impacts, cope with the consequences, minimise potential damages, or take advantage of opportunities offered by climate change or climate variability;

“administrator” means the County climate change fund administrator appointed in accordance with section 44 of this Act;

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

“climate change adaptation” means adjustment in natural or human systems in response to actual or anticipated adverse effects of climate change or stimuli or their effects to moderate or exploit beneficial opportunities;

“climate change awareness” means publicity and capacity activities aimed at creating an awareness about Climate Change in the County;

“climate change mitigation” means measures undertaken to prevent or reduce the emission of greenhouse gases;

“climate finance” means monies or financing available for or mobilized by the National Government, County Government, international agencies, or non-government entities to finance climate change adaptation, mitigation and interventions;

“climate finance framework” means a context specific policy items established under this Act and any other law to guide in the application of the Fund;

“county” means Elgeyo/Marakwet County;

“county assembly” means the County Assembly of Elgeyo/Marakwet County;

“county government” means the Elgeyo/Marakwet County Government;

“county planning committee” means the Elgeyo/Marakwet county climate change fund planning committee established under section 7 of this Act;

“county planning framework” means a county planning framework established by the County Government of Elgeyo/Marakwet and includes the County Integrated Development Plan as defined in the County Governments Act 2012 and the Public Finance Management Act, 2012;

“county treasury” has the meaning assigned to it under section 103 of the Public Finance Management Act, 2012;

“executive member” means the County Executive Committee member in charge of matters relating to Climate Change in Elgeyo/Marakwet County;

“financial year” means a period of twelve months ending on 30th June each year which is in conformity with the timelines for the County budget outlines in sections 125 and 131 of the Public Finance Management Act;

“fund” means the climate change fund established under this Act;

“indigenous minority community” means people who are the first inhabitants of a geographical region, and whose identities and cultures are inextricably linked to the land on which they live and the natural resources on which they depend;

“greenhouse gases” means the gaseous substances defined under section 2 of The Climate Change Act;

“national government agencies” means any National Government Institution that deals with climate change related activities which has

operations in the County, including the National Climate Change Council and the Directorate established under section 5 of The Climate Change Act, National Environment Management Authority and the National Climate Change Secretariat;

“fund participating institutions” means national, regional and international institutions that have made contributions to the Fund or have climate change related activities in the county;

“Public Benefit Organization” has the meaning assigned to it under the Public Benefits Organizations Act, 2014;

“steering committee” means the County Climate Change Fund Steering Committee established under section 5 of this Act;

“village administrator” has the meaning assigned to it under section 52 of the County Governments Act, 2012;

“ward” has the meaning assigned to it under Article 89 of the Constitution;

“ward planning committee” means the ward climate change fund committee established under section 19 of this Act.

### **Objects and Purposes of the Act**

3. The object of this Act is to create a Fund in the County for the purpose of facilitating establishment of a mechanism to finance climate change activities, programs and projects in the County through —

- (a) initiating and coordinating financing of Climate Change Adaptation and Mitigation activities at the community level in the County;
- (b) enhancing Climate Finance mechanisms in the County;
- (c) facilitating community initiated Climate Change Adaptation and Mitigation activities in the County;
- (d) facilitating planning for Climate Change Adaptation and Mitigation in the County planning and budgetary framework;
- (e) seeking and receiving grants from national and international entities, the National Government, the County Government and other relevant organizations;
- (f) providing support from the national Climate Change Policy and legislative framework; and
- (g) coordinating collection and dissemination of climate change information to the public to create awareness and preparedness.



**Guiding Value and Principles**

4. The application and interpretation of this Act and the making or implementation by the county government of any policy on climate change shall be guided by the following values and principles —

- (a) community driven and bottom-up planning of response to climate change;
- (b) commitment to informed participation of communities in planning and implementation of climate change response interventions;
- (c) recognition, respect and integration of knowledge, perspectives and experiences of communities in climate change response;
- (d) planning and implementation of climate change response to be anchored in and supportive of devolution;
- (e) flexible learning approach to addressing challenges of climate change;
- (f) investments focused on achieving equitable benefits;
- (g) inclusion of all major actors in planning and implementation of climate change response;
- (h) protection of the climate system for the benefit of present and future generations;
- (i) ensuring a just transition for all towards an environmentally sustainable economy and society in the light of county circumstances and developmental goals;
- (j) national values and principles of governance spelt out in Article 10 of the Constitution;
- (k) values and principles of public service spelt out in Article 232 of the Constitution;
- (l) promotion and protection of the right to a clean and healthy environment in accordance with Article 42 of the Constitution;
- (m) commitment to fulfilment of the state obligations in respect of the environment as stipulated under Article 69 of the Constitution.
- (n) County Integrated Development Plan, National and County Climate Change policies and other affiliated climate change and environmental policies and programmes.

**PART II—CO-ORDINATION AND OVERSIGHT****Steering Committee**

5. (1) There is established Elgeyo/Marakwet County Climate Change Fund Steering Committee which shall be composed of—

- (a) the County Executive Committee Member in charge of matters relating to Climate Change as the Chairperson;
- (b) the County Executive Committee Member in charge of matters relating to Agriculture and Irrigation as the Secretary;
- (c) the County Executive Committee Member in charge of matters relating to Finance;
- (d) the County Executive Committee Member in charge of matters relating to Health and Sanitation;
- (e) one person to represent Fund Participating Institutions;
- (f) one person to represent Public Benefit Organizations and or Civil Society Organizations involved in climate change activities in the County;
- (g) one person, resident of the County, appointed by the Executive Member to represent persons with disabilities;
- (h) one person, a resident of the County, appointed by the County Executive Member to represent indigenous minority group.

(2) The members appointed under paragraph (e), (f), (g) and (h) shall be eligible for appointment as the deputy chairperson.

(3) A person shall only qualify to be nominated for appointment under subsections (1) (e), (f), (g) and (h) if the person has demonstrable experience, expertise and interest in issues of climate change, natural resource management and/or environmental conservation and has actively and publicly engaged with these issues in the county.

(4) The appointing authority shall ensure compliance with the two thirds gender principle in the appointment of Members of the Steering Committee.

(5) The representatives appointed under paragraph (e), (f), (g) and (h) shall be done with the approval of the County Assembly.

**Functions of the Steering Committee**

6. The Functions of the County Climate Fund Steering Committee Shall include to—

- (a) oversee implementation of county climate change activities financed by the Fund;
- (b) support the Executive Member climate change to mobilize resources for Climate Change financing consistent with the approved county Framework;
- (c) develop necessary linkages for the Fund with the other county climate change activities;
- (d) coordinate with other relevant stakeholders, monitor compliance of the Fund administration to ensure compliance with the public finance management principles under article 201 of the Constitution of Kenya, the Procurement and Asset Disposals Act and the Public Finance Management Act;
- (e) ensure that projects financed by the Fund are approved by the County Planning Committee in conformity with the agreed criteria and the County Climate Change Finance Framework;
- (f) manage the administrative costs of the fund including the costs of the meetings and sitting of the Steering Committee and the Ward Planning Committee;
- (g) oversee the execution of the County Climate Finance Budget;
- (h) mobilize funding for projects, programs and activities listed in the Climate Finance Framework;
- (i) facilitate coordination of Climate Finance projects and programs with other programs in the County;
- (j) prepare Climate Change Awareness and advocacy strategy for the County based on Fund activities;
- (k) Review and make recommendations on the biennial report on implementation of the County Climate Change Action Plan and any other reports on climate change response interventions in the County;
- (l) regularly review operations of the Fund to ensure consistency with the County Climate Change Finance Framework; and
- (m) any other matter relevant to Climate Change Finance in the County.

### **Conduct of affairs of the Steering Committee**

7.(1) The Fund Steering Committee shall meet at least once in a quarter during the financial year.

(2) The quorum for the meetings of the Steering Committee shall be at least one half of the membership.

(3) A resolution of the Steering Committee shall require a majority vote of the membership present at a meeting.

(4) In absence of the Chairperson, the Vice-chair shall chair the meeting.

(5) The Steering Committee may invite to its meetings any technical staff of the national or County Government who it considers will contribute to its deliberations, and the attendance and participation of such person shall be recorded in the Minutes of the Steering Committee.

### **Allowances for Members of the Steering Committee**

8. Members of the Steering Committee shall be paid such allowances as are stipulated by guidelines from the Salaries and Remuneration Commission.

### **Delegation of powers by the Steering Committee**

9. Subject to the provisions of this Act, the Steering Committee may, either generally or in a particular case, delegate the exercise of any of its functions under this Act to any sub-committee or to any member of the Steering Committee or Officer.

### **Term of the Steering Committee**

10. Members of the Steering Committee appointed under section 5(1) (e), (f), (g) and (h) shall serve for one non-renewable term of five years.

### **Removal of Member of the Steering Committee**

11. (1) A member of the Steering Committee may resign from the Committee by issuing one month's notice in writing to the Governor.

(2) A member of the Steering Committee may be removed from the Committee by the Governor on any one or a combination of the following grounds —

- (a) failure to attend two consecutive meetings of the Steering Committee without reasonable cause duly communicated to the chairperson of the Committee;
- (b) serious violation of the Constitution or any other written law;
- (c) gross misconduct;
- (d) physical or mental incapacity;
- (e) bankruptcy.

(3) A person who is a member of the Steering Committee by virtue of his or her office under section 5 (1) (e), (f), (g) or (h) shall cease to be a member of the Committee upon being transferred from the county or ceasing to hold that office.

(4) A person who is a member of the Steering Committee under section 5(1) (f), (g), or (h) shall cease to be a member of the Committee upon ceasing to be a member of the interest group or upon being recalled by the interest group for good cause and through a written communication from an authorized official of the interest group to the chairperson of the Committee.

(5) Whenever a member of the Steering Committee is removed or otherwise ceases to be a member of the Committee, the Executive Committee Member shall propose a replacement within 30 days of the vacancy.

#### **Secretariat of the Steering Committee**

12. The Climate Change Directorate shall serve as the Secretariat of the Steering Committee.

### **PART III- INSTITUTIONAL FRAMEWORK FOR PLANNING AND IMPLEMENTATION**

#### **A. COUNTY CLIMATE CHANGE PLANNING COMMITTEE**

##### **Establishment of the County Planning Committee**

13. (1) There is established the Elgeyo/Marakwet County Climate Change Fund Planning Committee and which shall comprise the following persons—

- (a) one person, not being a public officer, appointed by the Executive Member, who shall be the chairperson;
- (b) the Chief Officer in charge of matters relating to Climate Change;
- (c) the Chief Officer in charge of matters relating to Agriculture and Irrigation;
- (d) the Chief Officer in charge of matters relating to Finance and Economic Planning;
- (e) the Chief Officer in charge of matters relating to Health and Sanitation;
- (f) the County Drought Coordinator;
- (g) the County Director of the National Environment Management Authority in the County;

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- (h) the County Director of the Meteorological Department in the County;
- (i) one person from a Fund Participating Institutions;
- (j) one person representing of Public Benefit Organizations and or Civil Society Organizations operating in the County;
- (k) a representative of Ward Planning Committees nominated by all the Ward Planning Committees on rotational basis;
- (l) one representative to represent women, youth and persons with disabilities;
- (m) a representative of faith based organization; and
- (n) a representative of indigenous minority persons and minority community.

(2) A person shall be qualified for appointment as chairperson or a member appointed under subsection (1) if the person—

- (a) is a resident of Elgeyo/Marakwet County;
- (b) holds at least a Masters degree qualification from a reputable academic institution;
- (c) has relevant experience in any aspect of environment management or Climate Finance;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has had a distinguished career in their respective fields.

(3) The representatives nominated and appointed under paragraph (i), (j), (k), (l), (m) and (n) shall be appointed with the approval of the County Assembly taking into consideration the representatives of youth, women and persons with disabilities.

(4) The County Public Service Board in consultation with the Salaries and Remuneration Commission shall determine the remuneration for the members appointed under paragraph (i), (j), (k), (l), (m) and (n)

**Functions of the County Planning Committee**

**14.** The functions of the County Planning Committee shall be—

- (a) to develop projects eligibility criteria under this act;
- (b) to receive, compile, evaluate and approve the projects submitted by the Ward Planning Committee based on the agreed criteria, and prepare the County Climate Finance Budget;

- (c) based on criteria, ensure equitable allocation of the moneys available in the Fund with regard to the projects received from the Ward Planning Committee;
- (d) provide monitoring and evaluation for projects financed by the Fund;
- (e) provide the essential linkages between the Steering Committee and the County Assembly with regard to management of the Fund;
- (f) co-ordinate capacity building for Climate Change Awareness and Climate Finance in the County;
- (g) co-ordinate research and development for Climate Change Finance in the County;
- (h) mobilize funds for Climate Change Finance in the County;
- (i) design a climate change awareness strategy for the county;
- (j) develop a climate finance research priority needs list for the county;
- (k) assign and coordinate technical assistance from County departments to projects funded under this Act; and
- (l) assist the Steering Committee in developing the Climate Finance Framework;
- (m) any other matter relevant to the execution of the County Planning Committee's mandate.

### **Conduct of the affairs of the County Planning Committee**

15. The conduct of the affairs of the County Planning Committee shall be as set out in the schedules.

### **Removal of member of Planning Committee**

16. (1) A member of the Planning Committee may at any time resign from the Committee by giving one month's notice to the Executive Member.

(2) A member of the Planning Committee may be removed from the Committee by the Executive Member for the time being in charge of Finance on any one or a combination of the following grounds —

- (a) failure to attend two consecutive meetings of the Planning Committee without reasonable cause duly communicated to the chairperson of the Committee;
- (b) serious violation of the Constitution or any other written law;

- (c) gross misconduct;
- (d) physical or mental incapacity;
- (e) bankruptcy.

(3) A person who is a member of the Planning Committee by virtue of his or her office under section (13) (1) (f), (g) or (h) shall cease to be a member of the Committee upon being transferred from the county or ceasing to hold that office.

(4) A person who is a member of the Planning Committee under section 13(1) (i), (j), (k), (l), (m) or (n) shall cease to be a member of the Committee upon ceasing to be a member of the interest group or upon being recalled by the interest group for good cause and through a written communication from an authorized official of the interest group to the Executive Committee Member.

(5) Whenever a member of the Planning Committee is removed or otherwise ceases to be a member of the Committee, the Executive Committee Member shall ensure that a replacement is appointed within 30 days of the vacancy.

### **Secretariat of Planning Committee**

17. The County Climate Change Directorate shall serve as the Secretariat of the Planning Committee.

### **Allowances for members of Planning Committee**

18. Members of the Planning Committee shall be paid such allowances as are stipulated by Guidelines from the Salaries and Remuneration Commission.

## **B. WARD CLIMATE CHANGE PLANNING COMMITTEE**

### **Ward Planning Committee**

19. (1) There is established Ward Planning Committee in each Ward in Elgeyo/Marakwet County.

(2) The Ward Planning Committee shall comprise the following persons—

- (a) community representatives appointed as follows —
  - (i) one person nominated by youth in the ward;
  - (ii) one person nominated by women in the ward;
  - (iii) one person nominated by persons with disability in the ward;



- (b) one person representing Ward based Public Benefit Organizations/CBOs;
- (c) one person representing faith based organisations in the ward
- (d) the Ward Administrator, shall be an ex official of the committee to provide advisory services, establish interlinkages and provide necessary co-ordination;
- (e) four representatives nominated by communities representing various locations in the ward;
- (f) a Secretary elected by the ward planning committee members for the respective Ward;
- (g) one person, elected by the Ward Planning Committee members who shall be chairperson and who shall meet following minimum qualifications—
  - (i) must be a resident of the respective ward;
  - (ii) must at least be able to read and write in English;
  - (iii) good leadership and trusted by the ward community;
  - (iv) proven track record of community services engagement in ward development initiatives;
  - (v) be a member of a Ward Planning Committee.
- (h) one person, elected by the Ward Planning Committee members who shall be treasurer and who shall meet following minimum qualifications —
  - (i) must be a resident of the respective ward;
  - (ii) must at least be able to read and write in English;
  - (iii) good leadership and trusted by the ward community;
  - (iv) proven track record of community services engagement in ward development initiatives;
  - (v) be a member of a Ward Planning Committee.

(3) The Ward Planning Committee shall not have more than 11 members.

### **Functions of the Ward Planning Committee**

**20.** (1) The roles of the Ward Planning Committee Shall be to—

- (a) consult with the community on the relevant climate finance activities;

- (b) facilitate public participation at the ward level;
- (c) receive project proposals from the community at the ward level;
- (d) develop technical components of project proposals;
- (e) procure goods and services for projects, including development of procurement plans for each project at ward level;
- (f) monitor implementation of projects at the ward level;
- (g) prepare the budget at the ward level;
- (h) preparing the ward level project reports; and
- (i) any other duty assigned by the County Planning Committee.

(2) The Ward Planning Committee shall have access to other County departments through the Fund Administrator for technical assistance as they may require.

#### **Officers of the Ward Planning Committee**

21. (1) The first activity of the Ward Planning Committee at its first sitting shall be the election of a chairperson and a vice-chairperson from among the members.

(2) The chairperson and the vice-chairperson shall not be members of the same gender.

#### **Qualifications for appointment to Ward Planning Committees**

22. (1) A person shall not qualify for appointment to serve on the Ward Planning Committee, unless he or she —

- (a) is a resident of the ward;
- (b) fulfils the requirements of Chapter Six of the Constitution on leadership and integrity;
- (c) demonstrates basic knowledge of climate change and environmental issues and has engaged in activities aimed at addressing the said challenges in the county;
- (d) indicates willingness to serve the community.

(2) Without prejudice to the provisions of subsection (1), persons nominated under section 19(1)(a), (b), (c), (e), (f) and (h) shall have a minimum of form four level of education, provided that where this requirement may impose inordinate constraints, the Executive Committee Member shall determine the appropriate educational qualification.

**Term of Ward Planning Committees**

23. (1) Save for the Ward Administrator, and subject to subsection (2) hereof, members of the Ward Planning Committee shall serve for one non-renewable term of five years.

(2) Without prejudice to the provisions of subsection (1), and in order to ensure continuity, the members of the Ward Planning Committee shall at their first meeting decide by lot which five of them will retire at the end of three years.

**Removal of Member of Ward Planning Committee**

24. (1) A member of the Ward Planning Committee may at any time resign from the Committee by giving one month's notice to the Sub-county Administrator.

(2) A member of the Ward Planning Committee may be removed from the Committee by the Sub-county Administrator on the recommendation of the Ward Administrator on any one or a combination of the following grounds —

- (a) failure to attend two consecutive meetings of the Ward Planning Committee without reasonable cause duly communicated to the chairperson of the Committee;
- (b) serious violation of the Constitution or any other written law;
- (c) gross misconduct;
- (d) physical or mental incapacity;
- (e) bankruptcy.

(3) A person who is a member of the Ward Planning Committee by virtue of his or her office under section 19(1)(c) shall cease to be a member of the Committee upon being transferred from the county or ceasing to hold that office.

(4) A person who is a member of the Ward Planning Committee under section 19(1)(b) shall cease to be a member of the Committee upon ceasing to be a member of the Community-Based Organization or upon being recalled by the umbrella organization for good cause and through a written communication from an authorized official of the umbrella organization the Sub-county Administrator.

(5) Whenever a member of the Ward Planning Committee is removed or otherwise ceases to be a member of the Committee, the Sub-county Administrator shall ensure that a replacement is appointed within 30 days of the vacancy.

**Reimbursement of members of Ward Planning Committees**

**25.** Members of the Ward Planning Committee shall serve on a voluntary basis, but may be reimbursed reasonable transport costs at a rate to be determined by the County Treasury and the Fund Administrator.

**Conduct of the affairs of the Ward Planning Committee**

**26.** (1) The Ward Planning Committee shall meet at least once every quarter in every financial year and—

- (a) shall prioritize development of eligibility criteria for the Ward before the financial year starts; and
- (b) can meet any other time on a need basis provided the limit on administrative costs per quarter is not exceeded.

(2) The quorum for the meetings of the Ward Planning Committee shall be two thirds of the membership.

(3) A resolution of the Ward Planning Committee shall require a majority vote of the members present at a meeting.

**PART IV—MEASURES AND ACTIONS FOR RESPONDING TO  
CLIMATE CHANGE**

**County Climate Change Action Plan**

**27.** (1) The Executive Committee Member shall in consultation with the Steering Committee and relevant sectors and through a participatory process involving relevant stakeholders formulate a County Climate Change Action Plan.

(2) The County Climate Change Action Plan shall be for a period of five years and shall run concurrently with the current National Climate Change Action Plan and County Integrated Development Plan.

(3) Without prejudice to the provisions of subsection (1), the Executive Committee Member shall within one year of the coming into force of this Act co-ordinate development of an interim County Climate Change Action Plan for the remainder of the period of the current National Climate Change Action Plan.

(4) The County Climate Change Action Plan shall be reviewed and updated every five years through the same participatory process as the one followed in its formulation.

**Contents of County Climate Change Action Plan**

**28.** The County Climate Change Action Plan shall —

- (a) be aligned to the current National Climate Change Action Plan and respond to the specific needs and circumstances of the county;
- (b) contain a climate change needs and response assessment for the county;
- (c) articulate a climate change response implementation plan informed by the climate change needs and response assessment, and specifying measures and mechanisms for—
  - (i) guiding the county toward the achievement of low carbon climate resilient sustainable development;
  - (ii) mainstreaming climate change into county development plans, programmes, strategies and projects;
  - (iii) adaptation to and mitigation of climate change;
  - (iv) enhancing research, capacity building and knowledge management on climate change, and climate change response;
  - (v) enhancing public awareness for effective participation in climate change response;
  - (vi) monitoring, evaluation and periodic review to integrate learning and best practice in the implementation of the County Climate Change Action Plan; and
  - (vii) Research, document and promote indigenous knowledge to enhance climate mitigation.

### **Approval of County Climate Change Action Plan**

**29.** The County Climate Change Action Plan shall be approved by the Steering Committee and laid before the County Assembly for adoption.

### **Biennial review of County Climate Change Action Plan**

**30.** The Planning Committee shall undertake a biennial review of the implementation of the County Climate Change Action Plan and report to the Steering Committee.

## **PART V—DUTIES RELATING TO CLIMATE CHANGE**

### **Climate change duties of public entities**

**31.** (1) The Steering Committee may, on recommendation of the Executive Committee Member and in consultation with relevant Executive Committee Members, impose duties relating to climate change on any public entity operating within the county.

(2) The imposition of climate change duties under subsection (1) shall be effected through regulations and preceded by public sensitization and consultations.

(3) Any public entity on which a climate change duty has been imposed shall in performing the said duty act in a manner best suited to the successful implementation of this Act and the County Climate Change Action Plan.

(4) Without prejudice to the provisions of subsection (1), every public entity operating in the county shall have the duty to—

- (a) mainstream climate change into sectoral strategies, plans and other frameworks for implementing its statutory functions;
- (b) perform its statutory functions in a manner that contributes to the implementation of the County Climate Change Action Plan;
- (c) support the Steering Committee and the County Government in its planning, programming, implementation and monitoring of climate change response in the county; and
- (d) report annually to the Steering Committee on the status and progress of performance and implementation of all assigned climate change duties and functions.

### **Climate change duties of private entities**

32. (1) The Steering Committee may, on recommendation of the Executive Committee Member for the time being in charge of climate change matters and in consultation with relevant Executive Committee Members, impose duties relating to climate change on any private entity operating within the county.

(2) The Steering Committee shall make regulations governing the nature and procedure for reporting on performance of climate change duties by private entities, including monitoring and evaluation of compliance.

### **Monitoring and reporting on compliance**

33. (1) The County Director of Environment shall with the assistance of the representative of the National Environment Management Authority and on behalf of the Steering Committee, monitor, investigate and report on whether public and private entities are in compliance with the assigned climate change duties, and in performance of this function she or he shall—

- (a) have all powers necessary for purposes of monitoring and investigation including the power to enter premises of any private entity and make an enquiry; and
- (b) at a reasonable hour, for the purposes of monitoring and investigation, enter any private land or premises to make an inspection or other task related to this function.

(2) The County Director of Environment shall report to the Steering Committee on the performance of functions under subsection (1) on annual basis, and such report shall form part of the report by the Steering Committee to the County Assembly.

**Steering Committee may require private entity to report on performance**

34. Notwithstanding the provisions of section 33, the Steering Committee may—

- (a) by notice in the *Gazette*, require a private entity that is subject to climate change obligations to prepare reports on the status of its performance thereof and prescribe the period for reporting; and
- (b) require any private entity that fails to perform its climate change duties to prepare a report within a specified time, on the actions it has taken, is taking or intends to take to ensure future performance of those duties.

**Annual County Climate Change Response Report**

35. (1) The Steering Committee shall, within three months after the end of every financial year, publish publicly and submit a report on implementation of the County Climate Change Action Plan and other climate change response actions and impacts to the County Assembly for review, discussion and debate.

(2) The County Assembly shall, within three months of receiving the report, provide recommendations and proposed actions to the Steering Committee.

(3) A copy of the report issued under subsection (1) shall be forwarded to the Directorate for information purposes.

## **PART VI—PUBLIC PARTICIPATION AND ACCESS TO INFORMATION**

### **Values and principles to apply to planning and implementation**

**36.** The planning and implementation of climate response in the county shall be informed by the values and principles specified in section 4 of this Act.

### **County strategy for climate change education and public awareness**

**37. (1)** Within one year of this Act coming into force, the Planning Committee shall develop a comprehensive county strategy for public education and awareness creation on climate change.

(2) The strategy shall be developed through a participatory process involving all stakeholders in the county, and validated at public meetings organised by Ward Planning Committees in every ward.

(3) The strategy shall be approved by the Steering Committee and its implementation mainstreamed into the County Climate Change Action Plan.

### **Public sensitization to precede formulation of climate change response plans**

**38. (1)** Notwithstanding the provisions of section 38(3) the Planning Committee and Ward Planning Committees shall ensure that the development of any climate change response programme, plan, project or activity in the county is preceded by comprehensive campaign of public sensitization and awareness creation to facilitate informed public participation.

(2) The Planning Committee and the Ward Planning Committees shall report to the Steering Committee on public sensitization campaigns undertaken with reference to every climate change response programme, plan, project or activity in the county and demonstrate how the sensitization has made impact on the threshold of decision making.

(3) The report on public sensitization and awareness creation on climate change programmes, plans, projects and activities shall be included in the reports of the Steering Committee under sections 31 and 36 of this Act.

### **Capacity building for effective public participation**

**39. (1)** The Steering Committee shall ensure that the Planning Committee and Ward Planning Committees implement comprehensive programmes of capacity building to equip individual citizens and



communities in the county for effective participation in climate change governance and response.

(2) The Planning Committee and Ward Planning Committees shall support and facilitate communities to establish Community-Based Organizations and other frameworks for mobilization and engagement with climate governance and response issues in the county.

### **Access to information**

40. The Steering Committee, the Planning Committee, the Ward Planning Committee shall publish, publicise and ensure access to all important climate change information in their possession.

## **PART VII—ESTABLISHMENT AND ADMINISTRATION OF THE FUND**

### **Establishment of the Fund**

41. (1) There shall be established fund to be known as the Elgeyo/Marakwet Climate Change Fund which shall be disbursed in accordance with this Act.

(2) The Fund shall be used in climate change projects, programs and activities, including those required under the Climate Change Act (Act No. 11 of 2016), provided for in the Climate Finance Framework established under this Act.

(3) The moneys in the Fund shall be disbursed according to criteria set out in the Second Schedule to this Act.

### **Sources of funds**

42. The Fund shall be financed through —

- (a) moneys appropriated by the County Assembly not less than two percent, or such other limit as the Assembly may determine, of the development expenditure in a financial year;
- (b) moneys from the National Government;
- (c) grants and loans from the National Climate Fund;
- (d) climate finance from international entities;
- (e) moneys received from Public Benefit Organizations;
- (f) fees and charges from climate finance activities; and
- (g) other grants and donations.

**Climate Finance Framework**

43. (1) The Executive Member, with approval of the Steering Committee, shall publish a Climate Finance Framework for the County every three years.

(2) The Climate Finance Frameworks shall be developed through a consultative process spear headed by the Steering Committee.

(3) The Climate Finance Framework shall address the following issues —

- (a) the status of Climate Change Awareness in the County;
- (b) context specific items in the National Climate Change Act and Policy that are applicable to the County;
- (c) the impact of climate change in the County;
- (d) human activities in the County that may facilitate Climate Change;
- (e) Climate Change Adaptation and Mitigation activities and projects;
- (f) projects that are relevant in the County with regard to Climate Change Adaptation and Mitigation and the anticipated impact; and
- (g) any other relevant issues.

(4) The Climate Finance Framework shall be aligned to the County Planning Framework.

**Fund Administrator**

44. (1) The County Executive Committee Member responsible for matters relating to Finance shall, in accordance with section 116(2) of the Public Finance Management Act, 2012, designate the Fund Administrator.

(2) To qualify for appointment as a Fund Administrator, a person must —

- (a) have relevant experience in any aspect of —
  - (i) economics, business, finance or accounting;
  - (ii) environment management or climate change;
- (b) have management experience for a period of not less than five years;
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Fund Administrator shall hold office for a period of three years, on such terms and conditions as the County Planning Committee may decide, and shall be eligible for second and final term of three years.

### **Functions of the Fund Administrator**

**45.** The functions of the Fund Administrator shall include to—

- (a) prepare a framework for receiving and evaluating project proposals;
- (b) prepare and publish a yearly projects and program evaluation and implementation schedule stating —
  - (i) the key activities in a financial year;
  - (ii) the persons responsible for each task; and
  - (iii) the time frame for each process;
- (c) organize access to the services of the County Planning Committee at the ward level;
- (d) implement the decisions of the Committee Planning Committee;
- (e) publish the eligibility criteria for selection of projects developed by the County Planning Committee;
- (f) organize and coordinate the disbursement of moneys allocated to projects approved by the County Planning Committee;
- (g) coordinate capacity building for the Ward Planning Committees;
- (h) coordinate the technical capacity requirements at the Ward Planning Committees in executing their roles;
- (i) keep custody of the accounts of the Fund;
- (j) coordinate the implementation of the monitoring and evaluation framework established by the County Planning Committee;
- (k) develop a complaints mechanism;
- (l) facilitate the functions of the institutions created under this Act where appropriate;
- (m) prepare a budget for the administrative costs per quarter for each institution under this Act; and
- (n) any other duty assigned by the County Planning Committee.

### **Removal of the Fund Administrator**

**46.** The Fund Administrator may—

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- (a) at any time resign from office by issuing at least one month notice in writing to the chairperson of the County Planning Committee;
- (b) be removed from office by the Executive Member on recommendation of the County Planning Committee on either of the following grounds—
  - (i) serious violation of the Constitution or any other written law;
  - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
  - (iii) physical or mental incapacity to perform the functions of office;
  - (iv) incompetence; or
  - (v) bankruptcy.

### **Secretariat of the Fund**

47. The Fund Administrator with the approval of the Executive Member may recruit staff on a need basis subject to the limitation on the administrative costs of the Fund.

## **PART VIII—DISBURSEMENT OF FUNDS**

### **Allocation of Fund to the program**

48. (1) The Fund Administrator shall develop, publish and circulate information on the disbursements of funds available to each Ward which shall be approved by the Steering Committee.

(2) Disbursement of funds shall be based on cash flow projections submitted by implementers of the activities financed by the Fund and approved by the Steering Committee.

(3) The Fund Administrator shall be guided by the Climate Fund Sharing Criteria detailed in the schedule to this Act.

### **Eligibility Criteria**

49. (1) The County Planning Committee shall develop and publish an eligibility criteria for Climate Finance projects that will be eligible for funding under this Act.

(2) The eligibility criteria in subsection (1) above shall be based on the following parameters —

- (a) must be a project that promotes climate resilience in the locality through Climate Mitigation or Adaptation;
- (b) must be a project that supports economic growth through Climate Adaptation;
- (c) must benefit a large number of people including vulnerable groups and have clear considerations for gender representation; must contain detailed situation analysis with clear problem statement to facilitate clarity on level and urgency of vulnerability, and risks arising from delayed intervention;
- (d) must have a properly conducted environmental impact assessment;
- (e) must have a clearly defined monitoring and evaluation plan with measurable indicators;
- (f) must have a sustainability plan;
- (g) must provide a platform for stakeholder engagement;
- (h) must enhance use of in-built skills and technology transfer; and
- (i) any other consideration that may be deemed relevant.

### **Community Consultation Forums**

**50.** (1) Each Ward Planning Committee shall convene community consultation forums in at least three different locations in the Ward before the Financial Year starts.

(2) The agenda for the community consultation forums shall be—

- (a) Climate Change Awareness;
- (b) the nature of projects that are eligible for Climate Finance through the Fund; and
- (c) identify priority projects from the community members.

(3) The Ward Planning Committee Secretary shall prepare a report on the community consultation forums under this part, and submit it to the County Planning Committee.

### **Development of Projects Proposals**

**51.** (1) The Ward Planning Committee shall develop project proposals from the project priorities identified in section 22 (2) above, and include any necessary technical details, including the procurement plan for each project.

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(2) The Ward Planning Committee shall submit the list project proposals indicating the priority ranking to the County Planning Committee for approval.

(3) Upon receiving the project proposals from the Ward Planning Committee, the Committee shall within six weeks after receiving the project proposals—

- (a) approve the project proposals and communicate their decision to the respective Ward Planning Committee;
- (b) reject project proposals with reasons given in writing and communicate this decision to the respective Ward Planning Committee; or
- (c) instruct the respective Ward Planning Committee to make necessary amendments to a project proposal and approve the amended project proposal within a further three weeks from the date of resubmission.

(4) Financing of the project proposals developed by the Ward Planning Committee shall be subject to the amount of money allocated to the Ward.

**Validation of Project Proposals**

**52.** (1) The County Planning Committee shall undertake a project validation process within four weeks after receiving the project proposals from the Ward Planning Committee and either—

- (a) approve the project proposals and communicate their decision to the respective Ward Planning Committee; or
- (b) reject project proposals with reasons given in writing and communicate this decision to the respective Ward Planning Committee; or instruct the respective Ward Planning Committee to make necessary amendments to a project proposal and approve the amended project proposal within a further three weeks from the date of resubmission.

(2) The County Planning Committee may, in order to facilitate the approval of projects, constitute a Project Evaluation Team in every Ward comprising of—

- (a) county staff seconded by relevant County Departments;
- (b) consultants and technical personnel from participating institutions; and
- (c) consultants hired by the County Planning Committee.

**Disbursement of funds for projects**

**53.** (1) The Fund Administrator shall publish a list of approved and ranked climate change projects, including proposed procurement plans for each project. Only projects submitted and approved by the County Planning Committee shall be published on approval by the County Planning Committee, the Fund Administrator shall release moneys for the approved projects upon receiving the procurement plans together with cash flow projections from the Ward Planning Committee the Executive Member shall develop regulations for better administration of this part.

**Procurement**

**54.** (1) Based on the National and County Procurement Regulations the Fund Administrator shall facilitate the establishment of appropriate procurement processes for each Ward Planning Committee.

(2) The Fund Administrator shall ensure that all Ward Planning Committees adhere to the relevant procurement procedures under the Public Procurement and Asset Disposal Act.

(3) The Fund Administrator shall facilitate development of capacity building on procurement for the Ward Planning Committee.

**Complaints mechanism**

**55.** (1) Community members who are aggrieved by the decisions of the Ward Planning Committee shall submit the complaints to the Fund Administrator.

(2) The Fund Administrator shall forward the complaints to the County Planning Committee who shall make a final determination within a period of six weeks and submit a report to the Steering Committee with copy to the Fund Administrator.

(3) The Fund Administrator shall establish an independent complain mechanism which mechanism criteria is knowledgeable on aspects of environment and climate change.

**PART IX—FINANCIAL PROVISIONS****Bank Account of the Fund**

**56.** (1) The Executive Member of finance shall issue guidelines on the banking arrangements for the Fund under the provisions of the Public Finance Management Act.

(2) The bank account for the Fund shall be managed by the Fund Administrator under regulations developed by the Executive member finance in consultation with the Steering Committee.

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(4) The bank account for the Fund shall be subject to the national legislation for accounting, reporting and auditing.

### **Administrative Expenditure**

57. (1) The Fund Administrator shall prepare the annual budget for administrative costs which will be disaggregated for each quarter.

(2) The budget developed in subsection (1) above shall be submitted to the County Executive Member in charge of matters relating to Finance for approval and forwarding to the County Assembly as may be provided for in Public Finance Management Act Regulations.

(3) The Executive Member with Consultations with Salaries and Remuneration Commission shall develop regulations for the sitting allowances of the Steering Committee, County Planning Committee and the Ward Planning Committees.

### **Accounts of the Steering Committee**

58. (1) The Fund Administrator shall keep proper books of account of the funds of the fund and prepare quarterly financial reports.

(2) Within three months after the closure of the Financial Year, the Fund Administrator shall prepare accounts and annual report for the approval of the Steering Committee and submission to the County Assembly.

(3) The accounts of the fund shall be audited annually by the office of the Auditor General and the report submitted to the County Assembly.

## **PART X—MISCELLANEOUS**

### **Regulations**

59. The Executive Member shall make regulations for all matters necessary for the proper administration of this Act including issues on—

- (a) Sitting allowances for the Steering Committee, County Planning Committee and the Ward Planning Committees;
- (b) the banking arrangements for the Fund; and
- (c) the disbursement of funds to approved projects.

### **Protection from liability**

60. Nothing done by a person exercising authority or power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in his personal capacity to any action, suit, claim or demand whatsoever.



**SCHEDULES****FIRST SCHEDULE****CONDUCT OF THE AFFAIRS OF THE COUNTY PLANNING COMMITTEE****Meetings**

1. (1) The meetings of the County Planning Committee shall be convened at least once every quarter by the chairperson, but not more than twelve times in a financial year.

(2) The chairperson may at any time convene a special meeting of the County Planning Committee and shall do so within one month of the receipt by him of a written request signed by at least two members.

(3) In the absence of the chairperson from any County Planning Committee meeting, the members present shall elect one of the members to preside, and such member shall, as concerns that meeting, have all the powers and attributes of the chairperson under this Act.

(4) At every meeting of the County Planning Committee the member presiding shall have a casting as well as a deliberative vote.

(5) The quorum for the meetings of the County Planning Committee shall be two thirds of the membership.

**Committees**

2. (1) The County Planning Committee may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The County Planning Committee shall appoint the chairperson for each committee established under sub section (1) from amongst its members.

(3) The County Planning Committee may, where it deems appropriate, invite any person to attend the deliberations of any of its committees.

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

**Declaration of Interest**

3. (1) A member who has an interest in any business before the County Planning Committee or other matter present at a meeting shall at the meeting and as soon as it is reasonably practicable, declare his/her interest and shall not take part in the consideration or discussion of, or vote on the subject matter, disclose the fact thereof and not shall question

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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 County Planning Committee who contravenes subparagraph (1) shall cease to be a member of the County Planning Committee upon direction of the Executive Member.

(4) The Executive Member shall make arrangements for the appropriate departmental representation with regard to subsection (3) above.

**Common Seal**

4. (1) The Common Seal of the County Planning Committee shall be kept in such custody as the County Planning Committee may direct and shall not be used except on the order of the County Planning Committee.

(2) The affixing of the common seal of the County Planning Committee shall be authenticated by the signature of the Chairperson, the Fund Administrator and one member nominated by the County Planning Committee and any document not required by law to be made under seal and all decisions of the County Planning Committee may be authenticated by the signatures of the Chairperson, the Fund Administrator and that member nominated by the County Planning Committee.

**Contracts and Instruments**

5. Any contractor 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 County Planning Committee by any person generally or specially authorized by the County Planning Committee for that purpose.

**SECOND SCHEDULE****FUNDS SHARING AND ALLOCATION CRITERIA****Funds sharing Criteria**

1. The funds available for the Fund will be shared according to the following criteria —

- (a) ten percent of the moneys available in the Fund shall be allocated for administrative costs as follows —
  - (i) Twenty percent of the administrative costs shall be assigned to the Steering Committee;
  - (ii) Twenty percent of the administrative costs shall be assigned to the County Planning Committee; and
  - (iii) Sixty percent of the administrative costs shall be assigned to the administrative costs of the Ward Planning Committee;
- (b) twenty percent of the money's available in the fund shall be allocated to County wide projects as follows —
  - (i) ten percent shall be assigned to Climate Change Awareness Activities;
  - (ii) twenty percent shall be assigned to County specific research and development;
  - (iii) Five percent shall be assigned to mitigate and manage environment and climate change disaster; and
  - (iv) Sixty-five percent of the fund shall be assigned to County wide development projects.
- (c) Sixty-Five percent of the available fund shall be allocated to projects received by the Ward Planning Committee and approved by the County Planning Committee; and
- (d) moneys not spent at the end of any financial year shall be retained in the Fund for uses that are allowable under this Act.

**Funds Allocation Criteria**

2. Allocation of funds to various projects shall be done by the County Planning Committee using agreed criteria such as —

- (a) **Relevance:** The intervention —
  - (i) will benefit many people including the most vulnerable groups with clear evidence of gender considerations;

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- (ii) supports the economy, livelihoods or important services on which many people depend, and has been identified, prioritized and included in ward, sub-county, county and cross- county plan or strategy for public good projects and promotes climate resilient growth and adaptive livelihoods.
  - (iii) Proof that it is relevant to building resilience to climate change and has been identified and prioritized through community participation, based on identifiable vulnerabilities, as captured in risk assessment and vulnerability mapping reports available for the county.
- (b) **Programme/Project description and risk analysis:** The target programme/project, is accompanied by detailed situation analysis with clear problem statement to facilitate clarity on level and urgency of vulnerability, and risks arising from delayed intervention e.g. impact on community livelihoods, environment, economy, etc.
- (c) **Gender and community cohesion considerations:** The Programme or project—
  - (i) Demonstrates evidence of expected improvement on the socio-economic status and resilience to the most vulnerable groups and incorporates gender considerations.
  - (ii) Encourages harmony; build relations and understanding among the beneficiaries.
- (d) **Intervention Benefits—**
  - (i) Contributes to adaptation or mitigation and improving community resilience and other community benefits including poverty reduction;
  - (ii) Supports livelihoods through income generation, and improved livelihoods.
- (e) **Non duplication of funding:** Avoids duplication, where similar projects have been undertaken or provide complementarily and value addition to other projects and has linkages with the existing projects with evidence of coordination.
- (f) **Learning and knowledge management —**
  - (i) provide platforms for effective stakeholder engagement and demonstrates sensitivity to diverse cultures and religions;

- (ii) provides opportunity for capacity building through training, awareness creation and sensitization, and capture, document and disseminate information and lessons learnt on climate change and its impacts.
- (g) **Sustainability:** Proof that the project is sustainable, beyond implementation with adequate arrangements to protect assets created after project completion and contributes to long-term beneficial impacts to the community.
- (h) **Innovative strategies:** Proof that the project has innovativeness, demonstrates use of indigenous knowledge (IK), innovations and technology.
- (i) **Efficiency and effectiveness/fiduciary management—**
  - (i) **Programme** or project is cost-effective and gives value for money.
  - (ii) **Administrative costs** of the project to be incurred at the County and Ward level (usually estimated but not to exceed 5% of total project cost).
  - (iii) **Contingency costs** (estimated administrative costs not to exceed 5%- 10% of the total project cost) or as may be provide in Public Finance Management Act Regulations.
  - (iv) have clear accountability and reporting procedures;
- (j) **Implementation arrangements:** have a clear budgeted monitoring and evaluation (M&E) plan with indicators and show organizational structure. The Board to finance only climate change projects and activities that are included in the CIDP;
- (k) Any balances of unspent money will be carried forward to finance the approved programme/project in subsequent financial period and no money may be used for unapproved projects or activities.



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