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REPUBLIC OF KENYA

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# **KENYA GAZETTE SUPPLEMENT**

## **NAROK COUNTY ACTS, 2021**

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**NAIROBI, 31st May, 2021**

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# **THE NAROK COUNTY CLIMATE CHANGE FUND ACT, 2021**

**No. 2 of 2021**

*Date of Assent: 26th May, 2021*

*Date of Commencement: See Section 1*

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**THE NAROK COUNTY CLIMATE CHANGE FUND ACT, 2021**

**AN ACT of the County Assembly of Narok for the establishment of a Climate Change Fund to facilitate and coordinate financing of Climate Change Adaptation and Mitigation activities; to establish a county climate change framework and structures and for connected purposes**

**ENACTED** by the County Assembly of Narok, as follows—

**PART I—PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Narok County Climate Change Fund Act, 2021 and shall come into upon publication in the *Kenya Gazette*.

**Interpretation**

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

**No. 11 of 2016**

“adaptation” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“administrator” means the County climate change fund administrator appointed in accordance with section 11 of this Act;

“Steering Committee” means the County climate change fund management Steering Committee established under section 7 of this Act;

**No. 11 of 2016**

“climate change” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“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;

**No. 11 of 2016**

“climate finance” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

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“climate finance framework” means a context specific policy items established under section 16 of this Act to guide in the application of the Fund;

“community projects” means projects that are initiated and implemented within a Ward by the Ward Planning Committees;

**No. 15 of 2013**

“contract node” has the meaning assigned to it under section 2 of the Public Private Partnerships Act 2013;

“contracting authority” has the meaning assigned to it under section 2 of the Public Private Partnerships Act, 2013;

“County” means Narok County;

“County Assembly” means the County Assembly of Narok;

“County Executive Committee” means the County Executive Committee established in Narok County in accordance with Article 179 the Constitution;

**No. 17 of 2012**

“County Executive Member” means the County Executive Committee Member for the time being responsible for Environment in the County and appointed in accordance with section 35 of the County Governments Act 2012;

“County government” means the County Government of Narok;

“County climate change fund planning committee” means the County climate change planning committee established under section 17 of this Act;

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

**No. 17 of 2012**

“County Public Service Board” has the meaning assigned to it under section 57 of the County Government Act, 2012;

**No. 18 of 2012**

“County Treasury” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“County wide projects” are projects implemented for the benefit of more than one Ward and directly supervised by the Steering Committee;

**No. 15 of 2015**

“environmental impact assessment” has the meaning assigned to it under section 58 of the Environmental Management and Co-ordination (Amendment) Act, 2015;

**No. 18 of 2012**

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

“Fund” means the climate change fund established under section 5 of this Act;

“Governor” means the Governor of Narok County;

**No. 11 of 2016**

“Greenhouse gases” means the gaseous substances defined under section 2 of The Climate Change Act, 2016;

**No. 11 of 2016**

“mitigation” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“national government agencies” means any National Government institution that deals with climate change related activities which have 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;

“panel” means the conciliation panel established under section 31 of this Act;

“Participating institutions” means national or international institutions that have made contributions to the Fund;

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

“ward climate change fund planning committee” means the ward climate change fund Committee established under section 16 of this Act.

**Object and Purpose of the Act**

3. The object and purpose of this Act is to establish a Climate Change Fund to facilitate and coordinate financing of Climate Change Adaptation

and Mitigation activities and to establish a county climate change framework and structures to—

- (a) mainstream climate change programs into development planning, decision making and advisory on climate change in the county;
- (b) co-ordinate, collate and disseminate information on climate change to the public to create awareness and preparedness;
- (c) establish a climate change fund, financial mechanism and governance framework for climate change response and risk mitigation.
- (d) co-ordinate support from National Government climate change policy and legislative framework; and
- (e) co-ordinate the collection and dissemination of climate change information to the public to create awareness and preparedness.

### **Guiding Principles and Values**

4. (1) The guiding values and principles of climate resilient and low carbon development in this section shall bind the County Government and all persons when—

- (a) enacting, applying or interpreting any provisions of this Act; and
- (b) making or implementing public policy decisions on climate change adaptation and mitigation.

(2) In discharging their functions under this Act, the Steering Committee, Ward Planning Committee, Fund Administrator or any organ of the County Government shall be guided by the following—

- (a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;
- (b) provisions of Article 42 and 69 of the Constitution;
- (c) promote sustainable development in a changing climate;
- (d) promote equity and social inclusion in allocation effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;
- (e) transparency and accountability; and
- (f) public participation.

**PART II—ESTABLISHMENT OF THE FUND****Establishment of the Fund**

5. (1) There is established a fund to be known as the Narok County Climate Change Fund.

(2) The moneys in the Fund shall be disbursed according to criteria set out in the regulations.

**Sources of funds**

6. The fund shall be financed through—

- (a) monies appropriated by the County Assembly annually, not being less than three per cent of the county development budget;
- (b) monies received by the county from the national government specifically for climate change activities pursuant to the Public Finance Management Act;
- (c) climate finance received by the county from the national Climate Change Fund;
- (d) international climate finance received by the county directly from the National Designated Authority, National Implementing Authority or any other agency;
- (e) donations, endowments, bequests, grants and gifts from local or foreign individuals, public and private entities;
- (f) charges, fees, levies or fines accruing to the county government in connection with activities that adversely impact on climate change in the county;
- (g) interest and any other monies that may lawfully accrue to the Fund in any form.

**PART III—ADMINISTRATION OF THE FUND****Establishment of the Steering Committee**

7. (1) There is established a Narok County Climate Change Fund Steering Committee which shall comprise of the County Executive Committee Member and the following technical officers appointed by the Governor from the following departments and institutions—

- (a) Agriculture, livestock and fisheries;
- (b) Disaster Management;
- (c) Water, Sanitation and irrigation;
- (d) County Meteorological department;

- (e) Kenya Forest Service;
- (f) Finance and Economic Planning;
- (g) National Environmental Management Authority; and
- (h) National Drought Management Authority.

(2) The Chief Officer of the County department for the time being responsible for matters relating to climate change shall be the Secretary of the Steering Committee.

(3) The Director for the time being responsible for matters relating to climate change shall be the administrator of the Fund as designated by the County Executive Committee Member in charge of County Treasury and an *ex-officio* member of the Steering Committee.

(4) The Steering Committee shall determine its own procedure and conduct of its meetings.

#### **Functions of the Steering Committee**

8. The functions of the Steering Committee shall be to—
  - (a) exercise oversight over activities of the Fund;
  - (b) develop a Climate Finance Framework for the County;
  - (c) facilitate and monitor the implementation of the Climate Finance Framework at the ward level;
  - (d) to compile the list of approved projects and prepare the County Climate Finance Budget;
  - (e) develop a Climate Finance research priority needs list for the county;
  - (f) co-ordinate research and development for Climate Finance in the County;
  - (g) pre-qualify research consultants for Climate Finance research in the County in accordance to the PPOA Act;
  - (h) assign and coordinate technical assistance from County departments to projects funded under this Regulations;
  - (i) ensure appropriate need based allocation of the moneys available in the Fund with regard to the projects received from the Ward Planning Committee;
  - (j) co-ordinate and implement curriculum for capacity building for Climate Change Awareness and Climate Finance in the County;

- (k) ensure compliance of the Fund administration to the Public Finance Management principles under article 201 of the Constitution of Kenya;
- (l) ensure that projects approved for funding conform to the Climate Finance Framework;
- (m) mobilize funding for projects, programs and activities listed in the Climate Finance Framework;
- (n) facilitate coordination of climate finance projects and programs with other programs in the county;
- (o) develop eligibility criteria for climate finance projects;
- (p) facilitate capacity building of ward planning committees; and
- (q) facilitate the coordination of Climate Finance projects and programs with other programs in the County.

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

9. (1) The Steering Committee shall meet at least once every month; and any other intermittent meeting when necessary.

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

(3) The committee in their first sitting a Vice-chairperson shall be of opposite gender from the chairperson.

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

10. (1) There is established a climate change secretariat in the county department responsible for climate change which shall be the secretariat for the climate change steering committee.

(2) The secretariat shall be headed by the Chief Officer of the County department for the time being responsible for matters relating to climate change.

(3) The executive committee member shall ensure appropriate staffing levels for the climate change secretariat to effectively perform its functions under this Act.

### **Functions of the secretariat**

11. The secretariat shall perform the following duties and functions—

- (a) implement climate change legislation and policy;
- (b) implement climate change plans and actions and report to the county climate change steering committee;

- (c) advise the county climate change steering committee on matters relating to legislation, policy, coordination, and monitoring climate change governance;
- (d) be responsible for coordination and monitoring of climate change governance;
- (e) provide technical support on climate change matters to county departments and agencies;
- (f) establish and manage a county climate change database and registry for dissemination of information and knowledge on climate change;
- (g) develop and implement low carbon emission strategies;
- (h) prepare and submit operational and statutory reports to the relevant authorities with the approval of the steering committee;
- (i) develop, coordinate and implement climate change related research and innovations;
- (j) develop guidelines for climate change projects eligibility criteria with the approval of the steering committee;
- (k) ensure need based allocation of the monies available in the climate change fund with regard to the projects received from the ward planning committee;
- (l) formulate monitoring and evaluation tools for projects financed by the County Climate Change Fund;
- (m) facilitate public participation at ward level in formulation of climate change programs and plans;
- (n) receive project proposals from the ward and develop technical components of the proposals, budgets and work plans for consideration by the steering committee;
- (o) perform any other function related to climate change as may be assigned by the county climate change steering committee; and
- (p) ensure that all county plans and programmes are climate proofed.

## **PART IV— CLIMATE CHANGE FRAMEWORK**

### **Climate Finance Framework**

- 12. (1) The County Executive Member shall publish a Climate Finance Framework for the County every three years.

(2) The Climate Finance Frameworks shall be developed through a consultative process.

(3) The Climate Finance Framework shall address *inter alia*—

- (a) the status of climate change awareness in the County;
- (b) context specific items in the national climate change policy, legislation and plans relevant to the County;
- (c) the impact of climate change in the County;
- (d) human activities in the county that may impact climate change;
- (e) compliance and enforcement of climate change related county laws and community bylaws;
- (f) climate change adaptation and mitigation activities relevant to the County and anticipated impact; and
- (g) any other relevant issues.

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

## **PART V—ESTABLISHMENT OF WARD CLIMATE CHANGE FUND PLANNING COMMITTEE**

### **Establishment of Ward Planning Committee**

13. (1) There is established a Ward Planning Committee in each Ward in Narok County appointed by the Executive Committee Member after a competitive election process in the ward overseen by the Sub-County Administrator.

(2) Not less than fourteen days to the election of ward planning committee members, the Secretariat to the Steering Committee shall ensure that they adopt a mode of communication to the public over vacancies for appointment of ward planning committee members that reaches out to the widest population possible within the wards.

(3) The election of ward planning committee members shall be conducted at the precincts of County Assembly Ward Offices.

(4) The Sub County Administrator shall forward the names of recruited members to the Executive Committee Member for appointment to constitute the Ward Planning Committee with the following qualifications—

- (a) must be a resident of the respective ward;

(b) must be a reliable and respectable community member who is development conscious.

(5) The Ward Planning Committee shall comprise of—

(a) one person, who shall be chairperson appointed by the Executive Committee Member from among the members;

(b) Community representatives comprising of—

- (i) two male persons representing elders in the Ward;
- (ii) two female persons representing women in the Ward;
- (iii) two persons of opposite gender representing the youth in the Ward;
- (iv) one person representing persons with disabilities in the Ward;
- (v) one person from a Ward based Public Benefit Organization, nominated by a Participating Institution;
- (vi) one person representing faith based institutions in the Ward;
- (vii) an officer of the environment department of the county government;
- (viii) Ward Administrator who shall be the secretary and *ex-officio* member.

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

**14. (1)** The Ward Planning Committee shall—

- (a) consult with the community on the relevant Climate Finance activities;
- (b) facilitating public participation at the Ward level;
- (c) receiving project proposals from the community at the ward level;
- (d) developing the technical components of project proposals;
- (e) procuring goods and services for projects, including the development of procurement plans for each project;
- (f) monitoring the implementation of projects at the ward level;
- (g) preparing the budget at the ward level;
- (h) preparing the Ward level project reports; and
- (i) any other duty assigned by the steering committee.

(2) The Ward Planning Committee shall consult other County departments for technical assistance as may be required.

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

**15.** (1) The Ward Planning Committee shall meet quarterly in every financial year and that—

- (a) the Ward Planning Committee shall prioritize the development of an eligibility criteria in the first quarter of the financial year; and
- (b) the Ward Planning Committee can meet any other time on a need basis with the approval of the secretary of the Steering Committee provided that the limit on administrative costs per quarter is not exceeded.

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

(3) A resolution of the Ward Planning Committee shall require an affirmative vote of more than one half of the membership present at a meeting, excluding the chairperson's vote which shall be a casting vote.

(4) The term of office of the members of the Ward Planning Committee shall be not more than two terms of three years.

(5) A person shall not qualify for appointment to the ward planning committee if the person contested in the immediate election preceding the formulation of ward committees.

(6) Irrespective of presence of quorum, no meeting of the ward planning committee shall be conducted in the absence of the member appointed in subsection (5) (b) (vii) above.

### **Staff of the Ward Planning Committee**

**16.** (1) The Narok County Public Service Board may recruit additional staff to support the Ward Planning Committee on a needs basis or as may be appropriate.

(2) The recruitment of staff in subsection (1) above shall be subject to the limitation on the administrative costs of the Fund.

### **Community Consultation Forums**

**17.** (1) Each Ward Climate Change Fund Planning Committee shall convene community consultation forums in at least three different locations in the Ward before commencement of every Financial Year.

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

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- (a) climate change awareness;
- (b) the nature of projects that are eligible for financing from the Fund; and
- (c) identify and prioritize projects from 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 Steering Committee.

#### **Complaints mechanism**

18. (1) Any community member who is aggrieved by the decision of the Ward Planning Committee on projects forwarded to the Steering Committee for funding shall submit the complaint to the Fund Administrator.

(2) The Fund Administrator shall forward the complaint to the County Executive Committee Member responsible for climate change matters, for determination.

(3) County Executive Committee Member responsible for climate change matters shall make a determination on the complaint within a period of six weeks and submit a report to the Steering Committee with a copy to the Fund Administrator, who shall communicate the determination to the complainant in writing.

(4) The determination of the Steering Committee shall be final.

(5) The Steering Committee may develop guidelines for processing of complaints.

### **PART VI—FINANCIAL PROVISIONS**

#### **Financial Year**

19. The financial year of the Fund shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

#### **Annual Estimates**

20. (1) In every budget cycle, the Fund Administrator shall cause to be prepared estimates of the Fund's income and expenditure for the given fiscal year.

(2) The annual estimates shall make provisions for all estimates of expenditure relating to administration and management of the Fund for the given fiscal year.

(3) The estimates developed in subsection (1) above shall be submitted to the Executive Committee Member for the time being responsible for County Treasury for approval and forwarding to the County Assembly.

### **Accounts of the Committees**

**21.** (1) The Fund Administrator shall keep proper books of account of the funds of the Steering Committee and the Ward Planning Committees.

(2) Within three months after the closure of the Financial Year, the Fund Administrator shall prepare an audit report for the Steering Committee and the Ward Planning Committees.

(3) The County Executive Member shall prepare accounts and a report for the County Assembly annually.

### **Financial reporting**

**22.** (1) The Fund Administrator shall prepare and submit quarterly reports to the Steering Committee for approval and onward submission to the Executive Committee Member for the time being responsible for the County Treasury.

(2) The reports submitted under sub-regulation (1) shall provide details of—

- (a) programmes and projects funded by or in partnership with the Fund;
- (b) disbursements by each of the supporting financing and total amounts received;
- (c) funding status showing monies disbursed for each of the projects by ward and Sub-county; and
- (d) a summary of ongoing climate change activities in the county.

(3) At the end of each financial year, the Fund Administrator shall prepare annual performance report, which on approval by the Steering Committee shall be submitted to Executive Committee Member for the time being responsible for the County Treasury for onward transmission to the County Assembly.

### **Annual report of the Fund**

**23.** (1) Not later than three months after the end of each financial year, the Fund Administrator shall prepare the annual report on the Fund.

(2) The annual report shall include, *inter alia*—

- (a) the audited financial report of the Fund;

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- (b) description of the activities of the Fund;
- (c) such other statistical information as the Fund may consider appropriate relating to the Fund's functions;
- (d) the impact of the exercise of any of its mandate or function;
- (e) any impediments to the achievement of the objects and functions of the Fund;
- (f) such other information as the Executive Committee Member responsible for the Treasury may direct; and
- (g) any other information relating to its functions that the Steering Committee considers necessary.

(3) The annual report shall be approved by the Steering Committee and published and publicized in a manner that the Governor may determine.

#### **Audit**

24. (1) The Fund Administrator shall cause to be kept proper books and records of account of its income, expenditure, assets and liabilities.

(2) Within three months after the end of each financial year, the Fund Administrator shall submit to the Auditor-General the accounts of the Fund in respect of that year together with—

- (a) a statement of the income and expenditure of the Fund during that year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Finance Management Act, 2012.

### **PART VIII—MISCELLANEOUS PROVISIONS**

#### **Regulations**

25. The County Executive Member in consultation with the County Executive Committee Member for the time being responsible for County Treasury shall make regulations for all matters necessary for the proper administration of this Act

#### **Protection from liability**

26. Nothing done by a person exercising authority or a 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.

### **Public participation**

**27.** (1) Any procedures undertaken under this Act that directly affect community interests shall be subject to public participation.

(2) The Steering Committee shall take special measures to ensure that vulnerable groups are represented in public participation forums conducted under this Act.

### **General penalty**

**28.** Any person who contravenes any provision of these regulations, notice, or order made under any of them, which no penalty has been prescribed in any other law, commits an offence under these Regulations and shall upon conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

### **Public Private Partnership**

**29.** (1) Subject to provisions of the Public Private partnerships Act, 2013, the Steering Committee may enter into a public private partnership agreement with any person for the execution of climate change adaptation and mitigation activities in the County.

(2) The Fund Administrator shall serve as the contracting authority when instituting a public private partnership.

(3) In establishing a public private partnership under this section, the Fund Administrator shall be part of the contract node.

