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THE ENVIRONMENTAL MANAGEMENT ACT,

(CAP. 191)

REGULATIONS

(Made under sections 228 and 230(2)(j))

THE ENVIRONMENTAL MANAGEMENT (RIGHT TO
COMPENSATION) REGULATIONS, 2024

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THE ENVIRONMENTAL MANAGEMENT (RIGHT TO
COMPENSATION) REGULATIONS, 2024

PART I
PRELIMINARY PROVISIONS

Citation 1. These Regulations may be cited as the
Environmental Management (Right to Compensation)
Regulations, 2024.

Interpretation 2. In these Regulations, unless the context otherwise
requires-
“Council” shall have the meaning ascribed to it under the Act;
“compensation” means payment of damages or any other act
that a court or other authority orders to be paid or done
by owner or operator whose act or omission has
caused-
(a) loss of life or personal injury;
(b) loss of or damage to property other than to the
installation itself or property held under the control
of the operator, at the site of the hazardous
activity;
(c) loss or damage to the environment which is not
considered to be damage within the meaning of
paragraphs (a) or (b) and shall be limited to the
costs of measures of reinstatement undertaken or
to be undertaken; or
(d) any person to incur cost of preventive measures
against injury or damage;

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- “environment” shall have the meaning ascribed to it under the Act;
- “public authority” means a Government ministry, department, authority or institution which has information relating to the environment;
- “Director of Environment” shall have the meaning ascribed to it under the Act;
- “owner” means a person who possesses an area, premises, machinery or equipment used in a hazardous activity;
- “operator” means a person who exercises the control of a hazardous activity;
- “person” shall have the meaning ascribed to it under the Act;
- “Act” means the Environmental Management Act;
- “hazardous activity” means an activity capable of causing direct, indirect, immediate or delayed adverse impacts to human health, environment or property;
- “environmental damage” means undesirable change, impairment or disturbance to the environment as a result of discharge, emission, escape or migration of hazardous substances and hazardous wastes above threshold limits, that has potential adverse effects to human health, property and environmental integrity;
- “Minister” means the Minister responsible for environment.

PART II OBJECTIVES

- Objective
3. The objective of these Regulations is to provide for liability and compensation regime and the right to compensation to-
- (a) a person who suffers damage while protecting the environment or as a result of environmental damage;
 - (b) environmental damage resulting from violation of environmental protection standards; and
 - (c) property damage as a result of environmental damage.

PART III
ADMINISTRATION AND INSTITUTIONAL FRAMEWORK

- | | |
|--------------------------------------|--|
| Functions
of
Council | 4. In matters pertaining to implementation of the provisions of these Regulations, the Council shall- |
| | <ul style="list-style-type: none">(a) ensure enforcement and compliance with these Regulations;(b) promote best environmental practices to ensure sound environmental management;(c) bring an action for compensation on environmental damage;(d) coordinate and promote public participation on activities entailing risk of environmental damage;(e) prepare and conduct awareness on right to compensation;(f) facilitate mediation between the complainant and respondent;(g) in collaboration with relevant regulatory authorities, conduct a detailed assessment to determine the extent of environmental damage and establish linkage of causation and damage suffered;(h) keep record of incidences of environmental damage; and(i) perform such other functions as the Minister may assign. |
| Functions
of
Director | 5. For purposes of implementation of the provisions of these Regulations, the Director shall- |
| | <ul style="list-style-type: none">(a) promote sound environmental management;(b) enhance sectoral coordination and mobilisation of stakeholders for effective control and management of activities entailing risk of environmental damage;(c) facilitate policy-oriented research on activities entailing risk of environmental damage; and(d) perform such other functions as the Minister may assign. |
| Functions
of sector
ministries | 6. Sector ministries shall- |
| | <ul style="list-style-type: none">(a) provide sectoral technical, administrative and legal |

- advice on right to compensation;
- (b) promote public awareness on right to compensation; and
- (c) perform such other functions as the Minister may direct, upon consultation with a sector minister.

Functions
of
regional
secretariat

7. Regional secretariat shall, within their area of jurisdiction-

- (a) coordinate and advice the regional administration and local government authorities on issues pertaining to right to compensation;
- (b) coordinate capacity building programs at regional administration and local authorities on issues pertaining to right to compensation; and
- (c) perform such other functions as the Minister may direct, upon consultation with the minister responsible for local government.

Functions
of local
government
authorities

8. Local government authorities shall, within their area of jurisdiction-

- (a) ensure compliance and enforcement of these Regulations;
- (b) receive complaints on matters pertaining to right to compensation;
- (c) promote capacity building to local communities and village leaders on issues pertaining to right to compensation;
- (d) provide technical, administrative and legal advice to local communities on matters pertaining to right to compensation; and
- (e) perform such other functions as the Minister may direct, upon consultation with the minister responsible for local government.

PART IV

LIABILITY FOR COMPENSATION

Liability
for
compens

9.-(1) The owner or operator whose act or omission directly, indirectly, immediately or delayed causes, while

ation protecting the environment, damage to a person or property, shall be liable to compensate for the damages and cost of remedying the consequences.

(2) Notwithstanding sub-regulation (1), where an incident consists of a continuous occurrence, owners or operators successively exercising control of the hazardous activity that results into damage in question shall be jointly and severally liable.

(3) Where an accident consists of series of occurrence having the same origin emanating from the hazardous activity, the owner or operator at the time of such occurrence shall be jointly and severally liable:

Provided that, where the owner or operator proves that the occurrence of the damage in question was partly contributed, he shall be liable for that part of the damage.

(4) Notwithstanding sub regulation (2) and (3), these Regulation shall not prejudice any right of recourse of the owner or operator against any third party.

(5) For avoidance of doubt, forms of liability for damage may be determined based on the nature, motive, manner and gravity of injury suffered by a person or damaged property or environment as follows:

- (a) administrative liability;
- (b) civil liability; and
- (c) criminal liability.

(6) Without prejudice to the preceding provisions of this regulation, the standard of liability in proceedings before the court of law in matters pertaining to compensation shall be strict liability.

Burden of proof 10. The burden of proof of non-occurrence of damage alleged under regulation 9 shall lie on the owner or operator.

Exempti on from liability 11. The owner or operator shall not be held liable for compensation for the damage which-

- (a) was caused by an act of war, hostilities, terrorism, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;

- (b) resulted from compliance with a specific order or compulsory measure of a public authority;
- (c) was caused by pollution at tolerable levels under relevant circumstances; or
- (d) was caused by a hazardous activity taken lawfully in the interests or consent of the person who suffered the damage.

Fault of
person
suffered
damage

12. Where a person suffers damage as a result of his own fault or contribution, the compensation shall be denied or reduced having regard to all relevant circumstances.

PART V ACCESS TO INFORMATION

Access to
informatio
n held by
public
authority

13.-(1) A person may, at his request have access to information relating to the environment held by a public authority.

(2) The right of access may be restricted under any written law where it affects the confidentiality of-

- (a) the public authority;
- (b) international relations;
- (c) national security;
- (d) public security;
- (e) public interest;
- (f) matters which are subjudice, or under inquiry, including disciplinary enquiries or which are the subject of preliminary investigation proceedings;
- (g) commercial or industrial rights, including intellectual property rights;
- (h) personal data or files; or
- (i) information held or given by a third party who is not under legal obligation to do so.

(3) Without prejudice the provisions of subregulation (2), the information held by a public authority may be supplied in part where it is possible to separate out information on items concerning the interests referred.

(4) Request for information may be refused where -

- (a) it involves the supply of unfinished documents,

internal data or communications; or

(b) it is manifestly unreasonable.

(5) A public authority shall respond in writing to a person requesting information within thirty days from the date of receipt of the request.

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(6) A person who wants to access environmental information held by a public authority shall pay charges as prescribed in the Environmental Management (Fees and Charges) Regulations.

Access to
specific
informatio
n held by
owner or
operator

14.-(1) The court may, at any time, for dispensation of justice, order the owner or operator to provide specific information relating to claims for compensation under these Regulations.

(2) The owner or operator shall be required to provide information regarding the particular equipment or machinery used, type and concentration of substances used in the activity which caused adverse impact to human health or environment.

(3) Access of information under these Regulations shall not affect any measure of investigation which may be legally ordered under any written law.

Restrictio
n on use
of
informatio
n

15. A person who has obtained access to information under the provisions of these Regulations shall not-

(a) use information for reasons other than the reason for which the information was obtained;

(b) use information in circumstances contravening the conditions stated in regulation 13(2);

(c) distort in any manner the information obtained; or

(d) without a written authority of the information provider, transfer, duplicate, edit, transmit or otherwise use the information obtained through any other means.

PART VI

ACTIONS FOR COMPENSATION AND OTHER CLAIMS

Limitation
period

16. The limitation of period for a person to bring an action for compensation arising from environmental damage

under these Regulation shall be three years from the date on which the claimant knew or reasonably ought to have known the damage.

Eligibility
for
compensa
tion

17. A person shall be eligible for compensation under these Regulations where-

- (a) he suffered damage while protecting the environment;
- (b) he suffered damage as result of environmental damage; or
- (c) his property was damaged due to environmental damage.

Applicatio
n for
compensa
tion

18.-(1) An injured or affected person, his advocate or appointed representative may lodge an application to the Council in writing for claim of compensation.

(2) The application shall be by way of a letter stating the following:

- (a) name and address of affected person;
- (b) name and address of the owner or operator against whom redress is sought;
- (c) locality where the environmental damage is alleged to have occurred;
- (d) particulars of facts constituting the cause of action;
- (e) mode of relief or redress sought; and
- (f) any other relevant information in relation to the damage suffered.

(3) The following documents shall be attached to the application, where required:

- (a) examination report from a medical doctor or public health officer;
- (b) expert opinion from the relevant regulatory authority;
- (c) report of environmental expert;
- (d) analysis report from a designated laboratory;
- (e) assessment report of the incident; or
- (f) any other document that the Council may deem necessary.

Mediation

19.-(1) The application filed before the Council under regulation 18 shall be determined by way of mediation.

(2) The Council shall, within seven days of receipt of the application, send a copy of the application to the owner or operator named in the application, together with a notice to appear for mediation on the date set thereto.

(3) Mediation shall be conducted within twenty-eight days from the date set in the notice to appear.

(4) The period for mediation may, upon application by both parties in the application, be extended for a period not exceeding twenty-eight days.

(5) Where mediation is successful, the Council shall record the terms agreed and all parties shall sign the mediation agreement, which shall be final, conclusive and binding between the parties.

(6) The mediation agreement under this regulation shall be enforceable as a decree of the court.

(7) A party may lodge an application for the execution of the mediation agreement at the High court.

(8) Where mediation fails, the Council shall record the same to that effect and any party may lodge a civil case for the claim for compensation in the court of competent jurisdiction.

(9) Any matter admitted by a party in mediation shall not be used as evidence of liability in a case before the court.

(10) Proceedings under these Regulations before the Council or the court shall not be charged any fees.

Appearance before Council

20.-(1) Parties to the matter shall appear in person or through their advocates or representatives.

(2) Persons appearing on behalf of parties to the mediation shall have power of attorney authorising them to appear and decide for and on behalf of the parties.

Procedure for filing claim for compensation

21. Claims for compensation for environmental damage before the court of competent jurisdiction shall be lodged and adjudicated in the manner stipulated in the Civil Procedure Code.

before the
court
Cap. 33

PART VII GENERAL PROVISIONS

Notificati
on on
ailments
or death

22.-(1) A registered medical practitioner or physician who has reason to believe, upon examination of a person, that such person has ailments or died because of exposure to an activity that caused adverse impact to the environment or human health, shall notify the Council or respective local government authority forthwith.

(2) A medical practitioner, physician, public health officer or environmental or natural resources expert who has reason to believe that, certain ailments or death of human being or animals occurs due to environmental damage shall notify the Council or respective local government authority forthwith.

Duty to
keep
records

23. -(1) A person who performs an activity which causes adverse impact to the environment or human health, shall keep records of all transactions of the activity.

(2) The records kept in accordance with subregulation (1) shall contain the name, description and address including email, post code if any, fax and telephone numbers of persons involved in such transactions and any other matter that may be prescribed or contained in the conditions of conducting the activity.

(3) The records kept pursuant to subregulation (1) and (2) shall be submitted to the Council at the end of each year in a format that may be prescribed by the Council.

Requirem
ents for
determina
tion by
designate
d
laboratory

24. For the purposes of compensation under these Regulations, determination of degree of damage from an activity causing adverse impact to human health or the environment shall be conducted by a designated laboratory.

Appeals

25.-(1) A person who is aggrieved by the decision made under these Regulations may appeal in accordance with the provisions of the Act.

(2) Where an appeal under subregulation (1) lies to the Minister, it shall be made within thirty days from the date of decision and shall be by way of a letter stating the grounds of appeal attached with the decision made under these Regulations and any necessary documents as the Minister may require.

(3) The Minister shall make decision on the appeal within fourteen days from the date of receipt of an appeal.

(4) The Minister shall, within seven days from the date of his decision, communicate his decision and the reasons for the decision to the appellant.

Powers to
issue
policy
guidelines
or
directives

26. The Minister may, after consultation with relevant sector ministries, issue policy guidelines or directives to facilitate effective implementation of these Regulations.

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SELEMANI SAIDI JAFO
Minister of State, Vice President's Office
vUnion and Environment