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**ACTS, 2023**

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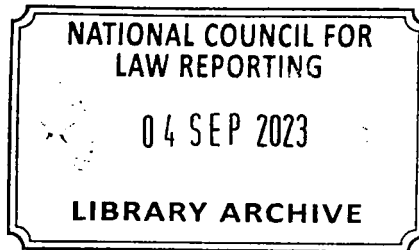
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**THE CLIMATE CHANGE (AMENDMENT) ACT, 2023****No. 9 of 2023***Date of Assent: 1st September, 2023**Date of Commencement: 15th September, 2023***AN ACT of Parliament to amend the Climate Change Act, 2016, and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Climate Change (Amendment) Act, 2023.

Short title.

2. The Climate Change Act, 2016, in this Act referred to as the “principal Act”, is amended in section 2 by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of No. 11 of 2016.

“aggregate earnings” means the total of all income in a carbon project without adjustment for inflation, taxation or types of double counting;

“carbon budget” means the approved quantity of greenhouse gas emission that is acceptable over a specified time and shall be informed by the National Greenhouse Gas Inventory and guide on emission reduction allocation for Nationally Determined Contributions or any other use consistent with the Conference of the Parties serving at the meeting of the Parties to the Paris Agreement guidance, rules, modalities and procedures;

“carbon credits” means a credit created when the equivalent of one metric tonne of carbon dioxide is prevented from entering the atmosphere and is equal to one tonne of carbon dioxide or the equivalent amount of a different greenhouse gas reduced, sequestered, or avoided;

“carbon market” means a mechanism that enables and allows public and private entities to transfer and transact emission reduction units, mitigation outcomes or offsets generated through carbon initiatives, products, programmes and projects subject to compliance of national and international laws;

“carbon projects” means interventions including programs, projects, and products designed to remove, reduce, sequester or avoid carbon emissions;

“carbon offset” means a reduction or removal of emissions of carbon dioxide or other greenhouse gases made in order to compensate with equivalent number of emissions for emissions made elsewhere;

“carbon standards” means a complete set of established rules, procedures, and methodologies that guide on the generation and issuance of certified carbon credits;

“community” means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.

“corresponding adjustment” means the deduction of verified emission reductions by the Host Party and addition of the corresponding amount of verified emission reductions by the Receiving Party, whereas such reductions will not count against the Host Party’s Nationally Determined Contributions and shall count towards the acquiring Party’s Nationally Determined Contributions;

“Designated National Authority” means the entity or organization granted the responsibility to authorize and approve participation in projects under the Paris Agreement on Climate Change;

“Internationally Transferred Mitigation Outcomes” means real, additional and verified reduction in greenhouse gas emissions or removal of greenhouse gases from the atmosphere, measured in tCO<sub>2</sub>eq and representing one tCO<sub>2</sub>eq per methodologies approved under the Paris Agreement Rules and generated by a specific mitigation activity from 2021 onwards;

“internationally recognized entity” means any entity that is accredited under an established set of rules as properly constituted to oversee a carbon market;

“mitigation outcomes” means reductions in greenhouse gas emissions with global warming potential equivalent to one tonne of carbon dioxide that has been measured and verified in accordance with the Standards;

“National Carbon Registry” means the Carbon Registry established under section 23G;

“nature-based solutions” means actions that protect, sustainably manage, or restore natural ecosystems, that address societal challenges such as climate change, human health, food and water security, and disaster risk reduction effectively and adaptively, simultaneously providing human well-being and biodiversity benefits;

“non-market approaches” means approaches that aim at promoting mitigation and adaptation ambition, enhancing public and private sector participation in the implementation of nationally determined contributions; and enabling opportunities for coordination across instruments and relevant institutional arrangements;

“Paris Agreement” means the Paris Agreement on Climate Change adopted by the Conference of the Parties at its 21<sup>st</sup> session in Paris in 2015;

“project proponent” means an entity legally responsible for carrying out a specific project;

“recognized credible international body” means any entity that is tasked with accreditation of an internationally recognized entity;

“Reduced Emissions from Deforestation and Forest Degradation” means activities in the forest sector that reduce greenhouse gas emissions from deforestation and forest degradation, as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks at national and sub national levels;

“share of proceeds” means levies from activities under the Paris Agreement that are used to cover administrative expenses as well as assisting developing country Parties that are vulnerable to the adverse effects of climate change to meet the costs of adaptation;

“stakeholder” means a person, business, community or organization that has an interest in or is affected by the activities of carbon projects and the results those actions produce;

“State Party” means a Country that has ratified the Paris Agreement on Climate Change;

“technology” means technologies used to reduce greenhouse gases and to adapt to the adverse impacts of climate change;

“tonnes of carbon dioxide equivalent (tCO<sub>2</sub>eq)” means an amount of carbon dioxide emission measured in metric tonnes would cause the same integrated radiative forcing or temperature change, over a given time horizon, as an emitted amount of a greenhouse gas or a mixture of greenhouse gases;

“voluntary carbon market” means a market where private investors, governments, non-governmental organizations, and businesses voluntarily buy and sell carbon credits that represent certified emissions removals or reductions of greenhouse gases in the atmosphere; and

“whitelist” means a non-binding, non-exhaustive periodic list of activities or technologies that can deliver mitigation outcomes as provided for in the Nationally Determined Contributions and that are preferred by the Government of Kenya for Article 6.2 bilateral cooperation.

3. Section 3 of the principal Act is amended in subsection (2) by—

Amendment of section 3 of No. 11 of 2016.

(a) inserting the following new paragraph immediately after paragraph (g)—

(ga) provide guidance in the development and implementation of carbon markets and non-market approaches in compliance with international obligations;

(b) inserting the words “including carbon market and non-market approaches” immediately after the words “climate change responses” appearing in paragraph (h).

4. Section 6 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (f)—

Amendment of section 6 of No. 11 of 2016.

(fa) provide guidance and policy direction on carbon markets to the national and county governments, the public and other stakeholders;

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*Climate Change (Amendment)***No. 9****5. Section 7 of the principal Act is amended—**Amendment of  
section 7 of No.  
11 of 2016.**(a) in subsection (2) by—**

- (i) deleting paragraph (c);
- (ii) deleting the words “nominated by the body representing the largest number of institutions in the private sector” appearing in paragraph (f);
- (iii) deleting the words “nominated by the most representative registered national umbrella association of civil societies working on climate change” appearing in paragraph (g);
- (iv) inserting the following new paragraph immediately after paragraph (g)—
  - (ga) a representative of the youth;
- (v) deleting the words “nominated by the Commission for University Education” appearing in paragraph (i);

**(b) by deleting subsection (7);****(c) in subsection (12) by deleting the words “Except as provided in subsection (7)”.****6. Section 8 of the principal Act is amended in subsection (2) by—**Amendment of  
section 8 of No.  
11 of 2016.**(a) deleting the word “biannually” appearing in paragraph (e) and substituting therefor the word “annually”;****(b) inserting the following new paragraphs immediately after paragraph (e)—**

- (f) advise the Council on the carbon budget for trading, based on Kenya’s international obligations;
- (g) approve international transfers of mitigation outcomes and emission reduction based on advice from the Climate Change Directorate;
- (h) approve measurement, reporting and verification of greenhouse gas emissions;
- (i) authorize the establishment of the Reduced Emissions from Deforestation and Forest

Degradation Registry and other sector registries to feed into the National Carbon Registry;

- (c) inserting the following new subsections immediately after subsection (2)—

(2A) The Cabinet Secretary shall appoint the Designated National Authority for market mechanisms and any other mechanisms deriving from Article 6 of the Paris Agreement.

(2B) The Designated National Authority appointed under subsection (2A) shall, in addition to international obligations, maintain the National Carbon Registry established under section 23G.

7. Section 9 of the principal Act is amended—

Amendment of section 9 of No. 11 of 2016.

- (a) in subsection (2) by deleting the words “and shall report to the Cabinet Secretary”
- (b) in subsection (3) by deleting the word “Director” and substituting therefor the word “Secretary”;
- (c) in subsection (4) by deleting the word “Director” and substituting therefor the word “Secretary”;
- (d) in subsection (5) by deleting the word “Director” and substituting therefor the word “Secretary”;
- (e) in subsection (6) by deleting the word “Director” and substituting therefor the word “Secretary”.

8. Section 10 of the principal Act is amended—

Amendment of section 10 of No. 11 of 2016.

- (a) in subsection (1) by deleting the word “Director” and substituting therefor the word “Secretary”;
- (b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Secretary”.

9. Section 13 of the principal Act is amended—

Amendment of section 13 of No. 11 of 2016.

- (a) in subsection (3) by—
- (i) deleting the word “county” appearing in paragraph (a) and substituting therefor the word “country”;
- (ii) inserting the following new paragraphs immediately after paragraph (n)—

- (o) to guide on the description of annual carbon budget for each of the years that make up the five-year cycle;
  - (p) to identify past, current and projected sector-based greenhouse gases emission profile;
  - (q) to set out proposed carbon credit project pipeline based on the white list;
  - (r) to review and recommend the level of compliance with international climate commitments;
  - (s) to specifically identify, where appropriate, priority actions to explore carbon trading;
- (b) in subsection (5) by deleting paragraph (f) and substituting therefor the following new paragraph—
- (f) national and international laws and policies relating to climate change and carbon markets.

**10.** Section 15 of the principal Act is amended in subsection (3) by deleting the word “Council” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 15 of No. 11 of 2016.

**11.** Section 16 of the principal Act is amended in subsection (2) by deleting the word “Council” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 16 of No. 11 of 2016.

**12.** The principal Act is amended by inserting the following new Part immediately after Part IV—

Insertion of new Part to No. 11 of 2016.

#### **PART IVA—REGULATION OF CARBON MARKETS**

Carbon markets.

**23A.** The policy direction on carbon markets provided pursuant to section 6(fa), shall apply to all carbon markets and prescribe—

- (a) carbon reduction credits that aim to reduce emissions from current sources through projects;
- (b) removal or sequestration credits that take carbon dioxide out of the atmosphere and either use or store it via afforestation, reforestation,



nature-based solutions or technology-based removal; and

- (c) technologies and projects on the whitelist;
- (d) emission credits not taken into account, including—
  - (i) previously used emission credits;
  - (ii) emission reductions that have been achieved in violation of human rights and without free prior informed consent;
  - (iii) emission reductions that have had significant negative social or environmental impact;
  - (iv) emission reductions that were achieved before the 1<sup>st</sup> January, 2013; and
  - (v) emission reductions that were registered before the 1st January, 2013.

(2). The Cabinet Secretary shall prescribe additional requirements on the regulation of carbon markets.

Trade in carbon markets.

**23B.** The trade in carbon market shall ensure that—

- (a) transactions in carbon trading as carried out under this Act aim towards a reduction of greenhouse gas emissions as per the prescribed carbon standards;
- (b) mitigation outcomes reported under the requirements of this Act shall be accounted for in tonnes of carbon dioxide equivalent;
- (c) carbon offset projects emissions are kept out of the atmosphere for a reasonable length of time in

accordance with the relevant carbon standards; and

- (d) emission reductions are carefully recorded and documented for every offset scheme, utilizing appropriate accounting terms, corresponding adjustments, and location of offset as required by the United Nations Framework Convention on Climate Change and other standard bodies.

Participation  
in carbon  
markets.

**23C.** (1) The participation in an initiative authorizing trade in carbon credits shall be—

- (a) as a result of a bilateral or multilateral trading agreement;
- (b) as a result of trading with a private entity; or
- (c) in a voluntary carbon market.

(2) The Cabinet Secretary may—

- (a) enter into a bilateral or multilateral agreement with another State Party to trade carbon for emission reductions and removals;
- (b) with the approval of the Cabinet, enter into an agreement with a private entity to offset carbon emissions;
- (c) with the approval of the Cabinet, enter into any agreement to trade in a carbon market established or overseen by an internationally recognized entity that is approved by a recognized credible international body.

(3) An agreement entered into under this Part shall aim to —

- (a) promote the mitigation of greenhouse gas emissions while fostering sustainable development; and

- (b) incentivise and facilitate participation in the mitigation of greenhouse gas emissions by authorized public and private entities.

(4) The Cabinet Secretary shall, in the national reporting mechanism to the United Nations Framework Convention on Climate Change, include any emission reduction resulting from agreements entered into under this section.

Environmental  
impact  
assessment.  
No. 8 of 1999.

**23D.** (1) Every carbon trading project authorized under this Act shall be required to undergo an environmental and social impact assessment in accordance with the Environmental Management and Coordination Act, 1999.

(2) Notwithstanding subsection (1), reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries projects shall be required to undergo a Reduced Emissions from Deforestation and Forest Degradation safeguard standards assessment.

Provision of  
social and  
environmental  
benefits.

**23E.** (1) A project undertaken pursuant to this Act shall specify the anticipated environmental, economic or social benefits of the project.

(2) For purposes of subsection (1), the benefits shall include—

- (a) removal of greenhouse gases from the atmosphere and avoidance of emission of greenhouse gases in order to meet Kenya's international obligations;
- (b) incentives that promote offset projects;
- (c) increase of carbon abatement in a manner that is consistent with

protection of Kenya's natural environment;

- (d) improved resilience to the effects of climate change; or
- (e) achievement of Kenya's greenhouse gases emissions targets.

(3) Every land-based project undertaken pursuant to this Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the project in public and community land where the project is under development.

(4) The National Government and the respective county government where the project is situated shall oversee and monitor the negotiation of the community development agreement with project proponents and the stakeholders.

(5) A community development agreement shall include provisions on the following—

- (a) the stakeholders of the project including the project proponents, the impacted communities, the National Government and the county government where the project is being undertaken;
- (b) the annual social contribution of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community;

Provided that—

- (i) in land-based projects, the contribution shall be at least forty per centum of the aggregate earnings; and

- (ii) in non-land-based projects, the contribution shall be at least twenty-five per centum of the aggregate earnings;
  - (c) the manner of engagement with local stakeholders, especially the impacted communities;
  - (d) the sharing of the benefits from the carbon markets and carbon credits between the project proponents and the impacted communities;
  - (e) the proposed socio-economic development around community priorities; and
  - (f) the manner of the review or amendment of the agreement, which shall be at least every five years.
- (6) A community development agreement entered into pursuant to this section shall be recorded in the National Carbon Registry.
- (7) Every carbon project undertaken pursuant to this Act shall take into consideration and aim to improve the environmental, economic, social and cultural wellbeing of the community around the project.
- (8) The national government and the respective county government where the project is situated shall enforce the community rights negotiated under a community development agreement negotiated under section 23E.
- (9) The Cabinet Secretary may prescribe additional requirements relating to the formulation of the community development agreement.

Share of proceeds  
and cancellation  
rates.

**23F.** The national and county governments shall, in compliance with international obligation, undertake best practices regarding the share of proceeds and cancellation rates for overall global mitigation.

Carbon Registry.

**23G.** (1) There is established a registry to be known as the National Carbon Registry.

(2) The Designated National Authority appointed under section 8(2A) shall be the custodian of the Registry.

(3) The Registry established under this section shall include registers on the following—

- (a) the carbon credit projects and programmes implemented to reduce greenhouse gas emissions in Kenya;
- (b) the Reduced Emissions from Deforestation and Forest Degradation Carbon;
- (c) authorisations granted for participation in any initiative, project or programme under this Act;
- (d) the carbon budget and the greenhouse gas reduction units;
- (e) the amount of carbon credits issued or transferred by Kenya;
- (f) the amount of carbon credits issued to emission reduction projects and programs recognized by Kenya from a national greenhouse gas registry account;
- (g) the transfer of carbon credits and any carbon credits issued or recognized by Kenya from a national greenhouse gas registry account;

- (h) a record of corresponding adjustments where applicable, with respect to carbon credits;
- (i) the cancellation of carbon credits and any other carbon credits issued or recognized by Kenya from a national greenhouse gases registry account; and
- (j) any other carbon credits issued or recognized by the Kenya from a national greenhouse gases registry account.

(4) The National Carbon Registry shall be accessible to the public.

Dispute  
resolution.

**23H.** (1) Any dispute arising under a land-based project shall be subjected to the dispute resolution mechanism set out in the Community Development Agreement in the first instance and be resolved within thirty days from the date the dispute is lodged.

(2) Any dispute that is not land based and is not subjected to a community development agreement shall be resolved through Alternative Dispute Resolution in the first instance.

(3) Where the dispute under subsections (1) and (2) is not resolved within thirty days of submission, the dispute shall be referred to the National Environmental Tribunal.

Fees.

**23I.** The Designated National Authority shall charge such fees as may be prescribed by the Cabinet Secretary in regulations for the proper administration of the Act.

**13.** Section 24 of the principal Act is amended by deleting subsection (3).

Amendment of  
section 24 of No.  
11 of 2016.

**14.** Section 33 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of  
section 33 of No.  
11 of 2016.

(1A) A person who—

- (a) willingly conducts unauthorized trade in carbon credit;
- (b) knowingly gives false or misleading information with respect to environmental or financial gains from the carbon market investment;
- (c) manipulates carbon credit measurements in order to claim addition measurements;
- (d) engages in money laundering through carbon trading;
- (e) knowingly sells carbon credits to unauthorized entities; or
- (f) fails to maintain carbon records,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred million shillings or to imprisonment for a period not exceeding ten years or to both.

**15.** Section 35 of the principal Act is amended by—

- (a) renumbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1)—

(2) Sections 2, 3, 5 7, 10 and 15 of this Act, shall not apply, to entities that have existing carbon projects for a period of one year.

**16.** Section 36 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

- (ba) the regulation of carbon markets;
- (bb) the regulation of carbon trading;
- (bc) the regulation of carbon registries; and
- (bd) the regulation of non-market approaches;

**17.** The Schedule to the principal Act is amended by deleting the word “sixty” appearing in paragraph 1 (2) (e) and substituting therefor the words “twenty-eight”.

Amendment of  
section 35 of No.  
11 of 2016.

Amendment of  
section 36 of No.  
11 of 2016.

Amendment of  
Schedule to No.  
11 of 2016.





