



STATUTORY INSTRUMENTS ACT, CAP 2A

CERTIFICATE OF COMPLIANCE

UNDER THE ENVIRONMENTAL MANAGEMENT AND

COORDINATION ACT, CAP 387

**THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (ACCESS TO
BIOLOGICAL RESOURCES AND BENEFIT SHARING) REGULATIONS, 2025**

In accordance with the powers conferred to a regulation-making authority by section 7(4) of the Statutory Instruments Act, Cap. 2A and pursuant to section 147 of the Environmental Management and Coordination Act, Cap. 387, I, the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry DO HEREBY CERTIFY that a Regulatory Impact Assessment has been undertaken on the proposed Environmental Management and Coordination (Access to Biological Resources and Benefit Sharing) Regulations, 2025 and that:

- a) The aforesaid Environmental Management and Coordination (Access to Biological Resources and Benefit Sharing) Regulations, 2025 meet the requirements relating to Regulatory Impact Statement in the Statutory Instruments Act, Cap. 2A and that the guidelines therein have been complied with; and
- b) In my opinion, the Regulatory Impact Statement adequately assesses the likely impact of the Environmental Management and Coordination (Access to Biological Resources and Benefit Sharing) Regulations, 2025.

Dated this 25th Day of February2025.

HON. ADEN BARE DUALE, EGH

CABINET SECRETARY

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE & FORESTRY

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION
(CONSERVATION OF BIOLOGICAL DIVERSITY AND RESOURCES, ACCESS
TO GENETIC RESOURCES AND BENEFIT SHARING) REGULATIONS, 2025

PART I

Name of the Statutory Instrument: The Environmental Management and Co-Ordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations 2025

Name of the Parent Act: The Environmental Management and Coordination Act, Cap 387

Enacted Pursuant to: Section 53 of the Environmental Management and Coordination Act.

Name of the Ministry: Ministry of Environment, Climate Change and Forestry

Gazetted on :

Tabled on :

PART II

1. Purpose of the statutory instrument

The Regulations objective is to provide for access to and the fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge and provide mechanisms to protect and prevent exploitation of endangered and threatened plant and animal species.

2. Legislative Context

In 2010, Kenya promulgated a new Constitution and resultantly, the Environmental Management and Coordination Act, being the substantive legislation on matters relating to the environment was amended in 2015 to align it with the Constitution.

The Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing Regulations are anchored in Section 53 of the Environmental Management and Co-ordination Act (EMCA) and came into effect through Legal Notice 160 of 2006.

The Authority in accordance with its mandate and as provided for under Section 53 of EMCA undertook a review of the Regulations through a Technical Committee. This was necessitated by the enactment of the Kenyan Constitution in 2010 and the domestication of the Nagoya Protocol on access and benefit sharing in 2010 hence a need to realign the regulation with the Constitution and the protocol. Emerging issues associated with climate change resulting in biodiversity loss in the country also necessitated the review of the Regulations.

3. Policy Background

The policy objective of the Environmental Management and Coordination Act, is to provide for the establishment of an appropriate legal and institutional framework for the management of the environment. The Regulation seeks to implement the provisions of the National Environment Policy of 2013.

The Regulation is anchored under EMCA and seeks to address the following objectives;

- i. Provide mechanisms to protect and prevent exploitation of endangered and threatened plant and animal species.
- ii. Provide for access to and the fair and equitable sharing of benefits arising from the utilization of genetic resources.
- iii. Provide for the consultation of local communities and other stakeholders

in the process of accessing genetic resources for research, commercial and other purposes.

- iv. Regulate access to associated traditional knowledge with genetic resources held by local communities in conservation of biological resources.
- v. Domesticate relevant provisions of international conventions and protocols.

4. Consultation Outcome

A Technical Committee was constituted with membership drawn from officers of varied expertise. The Committee was tasked with identifying the gaps in the Regulation, proposing remedial measures, collecting views from members of the public and preparing a draft Regulation with the proposed changes.

The review of the Regulation, was aimed at addressing emerging issues associated with climate change resulting in biodiversity loss in the country and realigning with the Nagoya Protocol which was domesticated in 2010. A Regulatory Impact Statement was published in the Daily Nation on 15th August 2024 seeking for views on the same from members of the public.

Comments from the public were received and addressed by the Technical Committee and incorporated in the review of the Regulation. The Technical Committee meeting reports are annexed to this document.

5. Guidance

The Committee reviewed the Regulation through the following processes;

- Desktop benchmarking.
- Stakeholder consultation.
- One on one consultation.
- Stakeholder consultation with relevant experts.
- Invitation for the Public to submit comments through newspaper adverts, National Environment Management Authority website and social media platforms.

6. Impact

6.1 *The impact on fundamental rights and freedoms*

The Regulations will enhance the enjoyment of fundamental rights and freedoms including principally the right to a clean and healthy environment, by promoting sustainable development.

6.2 *The impact on the public sector*

- a) The Regulation will enhance public participation in decision making for attainment of sustainable exploitation and utilisation of biological resources and protection of traditional knowledge.
- b) It will promote public participation, transparency and social acceptability.
- c) It will promote social equity in utilisation of natural resources

6.3 *The impact on the private sector*

- a) The private sector will be required to cooperate with state organs and other persons to protect and conserve the environment through ensuring sustainable utilisation of biological resources.
- b) It will provide an opportunity for job creation and partnerships with the Government by monetising traditional knowledge and opportunities in utilisation of genetic resources.
- c) Creates incentives to conserve and sustainably use our genetic resources.
- d) There will be minimal fees for acquiring access permits.

6.4 A Regulatory Impact Statement has been prepared for this statutory instrument.

7. Monitoring and review

NEMA shall monitor the implementation of the Regulation and shall from time to time advise the Cabinet Secretary on all aspects of implementation to inform a review of the Regulation.

8. Contact

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