



REGULATORY IMPACT STATEMENT
THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION
(CONSERVATION OF BIOLOGICAL DIVERSITY, ACCESS TO GENETIC
RESOURCES AND BENEFIT SHARING) REGULATIONS, 2023

INTRODUCTION

The Conservation of Biological Diversity, 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 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.

The Authority in accordance with its mandate and as provided for under Section 53 of EMCA has proposed to undertake a review of this Regulations through a Technical Committee. This has been 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 has also necessitated the review of the Regulations.

The committee shall comprise of experts with divergent background touching on conservation of biological diversity and resources and they will be tasked with reviewing and identifying the gaps in the current Regulations, coming up with remedies for such gaps, collecting views from members of the public and preparing a draft Regulation with the proposed changes.

A. OBJECTIVES OF THE PROPOSED REGULATIONS

- ❖ Provide mechanisms to protect and prevent exploitation of endangered and threatened plant and animal species.
- ❖ Provide for access to and the fair and equitable sharing of benefits arising from the utilization of genetic resources.
- ❖ Provide for the consultation of local communities and other stakeholders in the process of accessing genetic resources for research, commercial and other purposes.
- ❖ Regulate access to associated traditional knowledge with genetic resources held by local communities in conservation of biological resources.
- ❖ Domesticate relevant provisions of international conventions and protocols.

B. EFFECTS OF THE PROPOSED REGULATIONS

The effects of the proposed regulations can be categorised as follows;

i. Economic Effects

- ❖ It opens opportunity for economic development such as job creation and sustainable development.
- ❖ Increased development and operational costs

ii. Social Effects

- ❖ It fosters appreciation and propagation of traditional knowledge by present and future generations.
- ❖ By promoting stakeholder engagements, public participation, transparency and social acceptability (social licenses) it will mitigate against conflicts and social unrests.
- ❖ It promotes realization of social welfare in communities.

iii. Environmental Effects

- ❖ Promotes conservation and sustainable utilisation of biological resources.
- ❖ Promotes research, development and innovation.

C. STATEMENT OF OTHER PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES OF THE PROPOSED INSTRUMENT

i. Regulatory Options

- ❖ Streamlining and digitising the permitting system
- ❖ Enforcement by the relevant Ministries, Counties, Departments, and Agencies (MCDAs) on sectoral issues under their jurisdiction.

ii. Non Regulatory options

- ❖ Monitoring and tracking utilisation of our genetic resources.
- ❖ Enhance education and awareness on importance and utilisation of biological resources and associated traditional knowledge.
- ❖ Empower the communities on negotiation skills on prior informed consent and mutually agreed terms for access of genetic resources.
- ❖ Compliance promotion.
- ❖ Voluntary/self-regulation practices by members of communities through community protocols.

D. ASSESSMENT OF THE COSTS AND BENEFITS OF THE (CONSERVATION OF BIOLOGICAL DIVERSITY AND RESOURCES, ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING) REGULATIONS

i. Cost of the Regulations

- ❖ Need for increased personnel
- ❖ ICT enhancement on development of an online permitting system
- ❖ Need to inventorize and map biological resources in the country
- ❖ Mobility (vehicles, motorbikes and others vessels)
- ❖ Capacity building of personnel
- ❖ Education and awareness
- ❖ Enforcement and monitoring
- ❖ Research

ii. Benefits of the regulations

a. Economic Benefits

- ❖ It enhances the ease of doing business by reducing cost and increasing efficiency.
- ❖ It opens opportunity for economic development, job creation and sustainable development.
- ❖ Enhances good investor climate.
- ❖ Supports the government policy objectives

b. *Social Benefits*

- ❖ Promotes best practises in conservation and sustainable utilisation of biological resources.
- ❖ Promotes public participation, transparency and social acceptability.
- ❖ Promotes social equity in utilisation of natural resources

c. *Environmental Benefits*

- ❖ It ensures the right to a clean and healthy environment while promoting sustainable development.
- ❖ Fosters domestication of relevant International Environmental treaties, and Conventions.
- ❖ Creates incentives to conserve and sustainably use our genetic resources.
- ❖ Puts in place preventive measures against destruction of the environment through ensuring sustainable utilisation of biological resources.
- ❖ Offers alternatives through consideration of international best practices geared towards promoting sustainable development.

E. REASONS WHY OTHER MEASURES ARE NOT APPROPRIATE

- ❖ Existing gaps and inadequacies in the current regulations
- ❖ The compliance status among the regulated community is wanting and hence the need to enhance enforcement of the prescribed regulations and standards.
- ❖ Low self-regulation by the communities, industries, research institutions and government agencies.
- ❖ The Constitution squarely puts the mandate to the government on ensuring a clean and healthy environment to Kenyans.
- ❖ The substantive legislation (EMCA, 1999) provides for the development of regulations for its implementation.

F. ANY OTHER MATTERS SPECIFIED BY THE REGULATIONS

- ❖ Template for Prior Informed Consent
- ❖ Template for Mutually Agreed Terms

- ❖ Application form for access permit template
- ❖ Schedule for fees

G. CONCLUSION

The review of the regulations has been of high interest to all stakeholders including various industry players, Lead Agencies, development partners, citizens, professionals, academia, media and civil society. This Regulatory instrument is a critical tool for conservation, sustainable use and fair and equitable sharing of benefits arising from utilisation of genetic resources in Kenya.

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