



ADAPTATION FUND



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CLIMATE FINANCE ANTI-CORRUPTION POLICY FOR NIE/AE PROCESSES IN KENYA

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Preface

Executive Summary

Acronyms

ACECA	Anti-Corruption and Economic Crimes Act
AE	Accredited Entity
AF	Adaptation Fund
AFB	Adaptation Fund Board
CAJ	Commission on Administrative Justice
DCI	Directorate of Criminal Investigations
CPC	Corruption Prevention Committee
EACC	Ethics and Anti-Corruption Commission
EE	Executing Entity
EMCA	Environmental Management and Coordination Act
FIC	Field Implementation Committee
GCF	Green Climate Fund
GRM	Grievance Redress Mechanism
KNCHR	Kenya National Commission on Human Rights
NEMA	National Environment Management Authority
NPSC	National Programme Steering Committee
OAG	Office of the Auditor General
OECD	Organisation for Economic Co-operation and Development
PBO	Public Benefit Organization
PFMA	Public Finance Management Act
POEA	Public Officers Ethics Act
PWD	Persons with Disabilities
SUB-EE	Sub –Executing Entity
UNCAC	United Nations Convention against Corruption
UNFCCC	United Nations Framework Convention on Climate Change

INTRODUCTION

Background

Established under the Environmental Management and Co-ordination Act, CAP 387 (EMCA)¹, The National Environment Management Authority (NEMA) is the principle Government organ mandated with implementation of all policies relating to the Environment and to exercise general supervision and co-ordination over all matters relating to the environment. It is also the principal instrument of government in the implementation of all the policies relating to the environment.

NEMA was nominated by the Ministry of Environment and Natural Resources to seek accreditation from the Adaptation Fund. The AF accreditation process is a rigorous assessment of an entity's capacity to manage and administer Funds, implement effective social and environmental safeguards and identify any project risks in advance. It assesses 5 fundamental pillars including:

- Legal status: Status to contract with the Adaptation Fund Board (AFB)
- Financial and management integrity: Accurate recording of transactions, disbursing funds on a timely basis, and audited periodically by an independent firm or organization
- Institutional capacity: Ability to manage procurement procedures, ability to identify, formulate and appraise projects/programmes, competency to manage or oversee the execution of the project/programme, competency to undertake monitoring and evaluation, including monitoring of measures for the management of environmental and social risks
- Transparency, self-investigation, & anti-corruption: Mechanism to monitor and address complaints about environmental or social harms caused by projects
- Compliance with Adaptation Fund's Gender Policy

After being assessed against the above criteria, a decision to grant accreditation to NEMA was reached during the 16th AFB Meeting held on 17th March 2012 in Bonn, Germany. NEMA became the twelfth NIE to be accredited by the AF globally.

In May 2015, NEMA submitted her application for accreditation from the Green Climate Fund (GCF). Since NEMA had already been assessed and accredited by the AF using similar criteria as the GCFs, NEMA's application was only subjected to the missing pillars that had not been assessed by the AF through what is termed the Fast-Track accreditation². A decision was reached in 9th March 2016 in Songdo, Korea at the 12th GCF Board Meeting to accord accreditation to NEMA.

¹http://kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/E/Environmental%20Management%20and%20Co-ordination%20Act%20Cap.%20387%20-%20No.%208%20of%201999/subsidiary%20legislation/docs/EnvironmentalManagementandCo-ordinationAct8of1999_subsidary.pdf

Following its accreditation, NEMA became the National Implementing Entity (NIE) of the AF and the Accredited Entity of the Green Climate Fund (GCF) in Kenya. Accreditation to these funds bestows an overall project management, supervision and financial management role on the institution over all Executing Entities that will implement projects/programmes with finances drawn from the two funds.

Support for concrete climate change initiatives in developing nations has been made possible by multilateral financial mechanisms such as the AF and the GCF both set up under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC). The big question that remains therefore is not whether developing nations should receive funds to address climate change but whether these nations can guarantee that proposed initiatives will be implemented effectively, efficiently and concretely in order to merit receiving these funds. Accordingly, the importance of policies, guidelines and measures which demonstrate the soundness of internal infrastructure and the ethical transparency and accountability of an implementing entity is paramount to indicate country readiness to receive climate finance.

Since accreditation for the AF was accorded, NEMA has been undergoing continuous capacity enhancement to help it effectively manage and supervise climate finance in Kenya from different sources including the GCF. During a forum organized by Transparency International Kenya to assess the effectiveness of anti-corruption mechanisms in place for climate finance in Kenya, NEMA deemed it fit to develop an anti-corruption policy specific to climate finance in Kenya, hence this policy was conceived. As the NIE/AE, NEMA bears full responsibility for the overall management of the projects and programmes financed by the Adaptation Fund and the Green Climate Fund, and will bear all financial, monitoring and reporting responsibilities.

While NEMA has an anti-corruption policy, the collective anti-corruption strategy between NEMA as the National Implementing Entity/Accredited Entity (NIE/AE) and the Executing Entities (EEs) which it will coordinate require the ethical guidelines specifically designed to govern entities administering climate finance. Since all corruption issues emanating from the EEs and Sub-EEs will backstop at NEMA, it is necessary to ensure a strong anti-corruption framework for the implementation of climate finance projects.

Policy Statement

The purpose of this policy is to ensure compliance by all employees, service providers and any other stakeholders associated with the AF and the GCF in Kenya in deterrence and eradication of any form of corruption, fraud, theft, misappropriation of funds, misadministration and other forms of dishonest activities. It is intended to provide a framework for conformity with legal requirements within institution handling climate finance.

1. NEMA as the NIE/AE and all related EEs and Sub-EEs shall commit to zero tolerance to corruption.

2. NEMA and all related EEs and Sub-EEs shall commit to operate in accordance with the Anti-Corruption and Economic Crimes Act (ACECA) of 2003, the Leadership and Integrity Act (LIA) of 2012, the Public Officers and Ethics Act (POEA) of 2003 and all other applicable legislation.
3. NEMA and all related EEs shall endeavor to develop necessary capacities and institutional structures to execute provisions in 1 and 2 above.
4. All officers from NEMA and all related EEs and Sub-EEs engaged in executing climate finance related programmes at all levels shall act transparently, honestly, fairly and ethically while carrying out their mandate.
5. NEMA and all related EEs shall promote and uphold the principles of good governance while executing their mandates.
6. NEMA and all related EEs and Sub-EEs shall establish internal and external mechanisms for reporting corruption.
7. NEMA and all related EEs shall endeavor to create institutional awareness of their commitment to prevent fraud and corrupt practices in climate finance.
8. All corruption related complaints shall receive due attention and expended as per the Anti-Corruption and Economic Crimes Act, 2003.
9. NEMA and all related EEs shall establish formal mechanisms and procedures to investigate allegations of fraud and corruption.
10. NEMA and all related EEs and Sub-EEs shall be required to endorse this policy and adhere to its provisions.

Legislative and administrative context

The following policies, laws and institutions shall be applicable to guide and inform the creation and implementation of this policy:

Policies

- NEMA Corruption Prevention Policy;
- NEMA Financial Management Policy;
- NEMA Human Resource Management manual;
- NEMA Service Charter;
- NEMA Risk Management Framework;
- NEMA Leadership and integrity code;
- NEMA NIE Grievance Redress Mechanism

Laws

- The Constitution of Kenya (2010);
- Anti-Corruption and Economics Crimes Act (ACECA) of 2003;
- Leadership and Integrity Act, 2012;
- Environment Management and Coordination Act, CAP 387 of the laws of Kenya.

- Public Officers and Ethics Act, 2003;
- Public Procurement and Asset Disposal Act, 2015;
- Ethics and Anticorruption Commission Act, 2011;
- Commission on Administrative Justice Act, 2011;
- The Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2012;
- Public Audit Act, 2015;
- Public Finance and Management Act (PFMA) of 2012; and the
- United Nations Convention Against Corruption (UNCAC);

Institutions

- Ethics and Anti-Corruption Commission (EACC);
- Commission on Administrative Justice (CAJ);
- Ministry for the time being in charge of climate change affairs
- The National Treasury;
- Ministry in charge of Devolution and Planning;
- County Governments;
- Adaptation Fund Board and Secretariat;
- Green Climate Fund Board and Secretariat
- The Witness Protection Agency;
- The Environment and Land Court and other courts;
- National Environment Complaints Committee;
- Public Benefit Organizations (PBOs);
- Office of the Auditor General

Scope and applicability

This policy shall apply to NEMA as the NIE/AE, all relevant EEs, Sub-EEs and project beneficiaries.

Definition of corruption

For the purposes of these guidelines and all persons bound by these guidelines, “corruption” constitutes but is not limited to:

- The abuse of entrusted power for private gain. (Transparency International)
- The “offering, giving, soliciting or acceptance of an inducement or reward which may influence a person to act against the interests of the organization” (NEMA)
- The offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party (World Bank)

- Misuse of office or authority for the benefit of an individual or a group through coercion, undue influence, misrepresentation, falsification, dishonesty or any other improper act or means in breach of laws, regulations and the rules in force.
- An offence under any of the provisions of sections 39 to 44, 46 to 47 of the Anti-Corruption and Economic Crimes Act, 2003; bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust or an offence involving dishonesty in connection with any tax, rate or impost levied under any Act or under any written law relating to elections of persons to public office (ACEC Act 2003)
- Bribery, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions, elicited enrichment, laundering of proceeds of crime, obstruction of justice and concealment (UNCAC Chapter 3, Article 15-24)
- The solicitation or acceptance directly or indirectly by a public official or any other person of any goods of monetary value or other benefits such as a gift, favour or advantage for himself or herself or for another person or entity in exchange for any act or omission in the performance of his / her functions. (African Union Convention on Preventing and Combating Corruption)
- Behavior on the part of officials in the public and private sector in which improperly and unlawfully enrich themselves and / or those close to them or induce others to do so by misusing the position in which they are placed. (Asian Development Bank)
- The bribery of foreign public officials in connection with international business transactions. (Organization of Economic Countries and Development (OECD) Convention)

Corruption risk areas and potential corrupt practices

All functional areas within NEMA as the NIE/AE and those of the EEs and sub-EEs constitute potential corruption risk areas and they include:

- Finance
- Procurement and supplies
- Audit
- ICT
- Human Resource
- Field Implementing Committees
- Grievance Redress Mechanism committee
- Asset management and disposal
- Registries

Potential corrupt practices within these functional areas which should be protected against include:

- Bribery during the tendering process
- Inflation of costs of goods and services
- Unfair distribution of request for quotations
- Receiving substandard goods or services
- Personal use of goods meant for project implementation
- Unclear specification tailored to suit a particular goods/service provider
- Abuse of office
- Nepotism, Tribalism and Favoritism
- Fraud
- Recruitment of project officers
- Appointment of committee members
- Rewarding undeserving individuals
- Manipulation of records/forgery/creative accounting
- Theft of files, destruction of files, tampering with restricted records, authorized access, deliberate destruction, unlawful destruction of useful information,
- Misappropriation of funds
- Conflict of interest.
- Asset management and transfer to beneficiaries after project completion.
- Use of equipment and resources- Motor vehicles, phones, computers. Private hire of organizational resources and personnel.
- Unwritten/ ambiguous policies and authority e.g. orders from above, verbal instructions not based on policy; ambiguous national outlook requirement
- Political interference
- Undue influence e.g. on project location

Structures to fight corruption

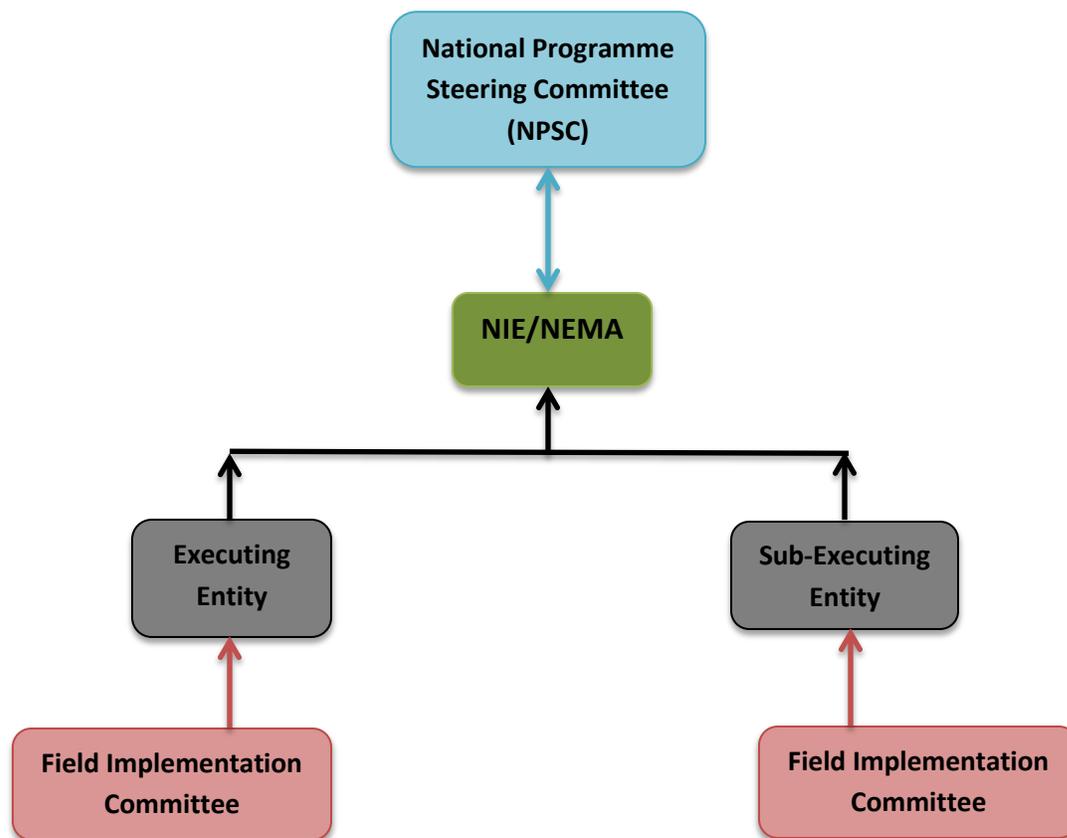
The structures to prevent, detect, investigate and punish corruption shall include existing structures for the internal mechanisms within the NIE/AE, EEs and Sub-EEs such as, inter alia, the Corruption Prevention Committees (CPCs) mandated with oversight of issues relating to prevention, detection and investigation of corruption, disciplinary committees including the National Programme Steering Committee (NPSC) which shall have the power to issue administrative sanctions to officers and staff members, and a Grievance Redress Mechanism (GRM). Structures in place for non-governmental institutions shall also apply.

The programme implementation structure as adopted by the National Programme Steering Committee shall apply as the structure to fight corruption. At the county level, the Field Implementation Committees at both the EE and Sub-EE levels will provide oversight on issues relating to prevention, detection and investigation of corruption and shall be the link to the communities and project beneficiaries. Any corruption issue raised at the FIC level under the

Sub-EEs and is not adequately resolved shall be escalated to the respective EE and further to the NIE if not adequately resolved. Similarly, any corruption issues raised at the FIC level under the EEs and is not adequately resolved shall be escalated to the NIE.

All corruption issues reported at all levels shall be reported to the NIE/AE with the actions taken to address them if any. The NIE/AE shall report to the NPSC on any corruption related matters at all levels and measures taken to address them.

Fig 1: Structures to fight corruption



Composition of the Corruption Prevention Committee (CPC)

The Field Implementation Committee which shall serve as the Corruption Prevention Committee at the project/community/county level shall be comprised of representatives from:

- I. The County Commissioners’ Office
- II. County Government
- III. NEMA county Offices
- IV. Members of the relevant line Ministry
- V. At least one representative from each of the following groups:
 - a. PBOs
 - b. Women Groups

- c. Vulnerable/marginalized group representatives (e.g., Persons with Disabilities (PWDs), Widows, the elderly, HIV infected, the Youth)
 - d. 2 community leaders.
- VI. EEs or Sub-EEs

The CPCs at the EE level shall be constituted as provided for in relevant laws and policies. The same shall apply to non-governmental EEs and Sub-EEs.

At the national level (NIE/AE), membership of the CPC is composed of the following:

1. Director of Environmental Education, Information and Public Participation;
2. A representative of the Directorate on Finance and Administration;
3. A representative of the Directorate on Environmental Planning and Research;
4. A representative of the Directorate on Compliance and Enforcement;
5. A representative of the Directorate on Legal Services;
6. Deputy Director of Coastal Marine and Fresh Water;
7. Deputy Director of Human Resources and Administration;
8. Chief Corporate Communications Manager;
9. Head of Information Communication and Technology (ICT);
10. The NIE Coordinator;
11. An Internal Audit Officer (who shall only be in attendance, not bound by committee rules and without the power to vote); and
12. Integrity Assurance Officer(s).

The composition of the National Programme Steering Committee (NPSC) shall:

1. The Principle Secretary in the Ministry for the time being responsible for climate change affairs,
2. The National Implementing Entity/Accredited Entity (NEMA)
3. All Directors of respective Executing Entities
4. A representative from the Sub-EEs on a rotational basis
5. Transparency International Kenya (Observer)

Mandate and operations of the CPCs

The mandate and operations of the Corruption Prevention Committees shall include, inter alia: setting priorities in the prevention of corruption in the relevant climate finance programme/project; planning and coordinating corruption prevention strategies; integrating all corruption prevention initiatives within the programme/project; receiving and reviewing reports on corruption and recommending appropriate action to the relevant disciplinary committees; receiving and taking action on corruption reports made by staff and other stakeholders, ensuring that evidence of concrete measures taken be made available and any referrals to other agencies well documented; spearheading, monitoring and evaluating the impact of corruption prevention initiatives corruption prevention campaigns; and preparing and submitting quarterly progress reports to the Performance Contract Steering Committee.

The CPCs shall meet at least quarterly. Special meetings may however be convened to deal with urgent matters.

Internal audit reviews

Internal Audits play a crucial role in the prevention and detection of corruption within institutions. NEMAs internal audit mechanism shall serve both the NIE/AE and the EEs. It shall monitor the operational systems and internal controls to determine their continual functionality and assess the nature and extent of any corruption risk. Internal auditing will also provide oversight support by making regularized visits, ensuring EEs are following predetermined and approved work plans, and by reviewing periodically-submitted reports. The EEs shall be required to submit to the NIE/AE periodic reports on a quarterly and annual basis. The internal auditing mechanism shall be guided by existing NEMA policies and guidelines such as, inter alia, the risk management framework and finance management policy and the NIE finance and procurement manual.

Corruption reporting internally and externally

The ability to fully disclose corrupt practices within an institution requires both internal and external mechanisms, with internal mechanisms being important to supplement traditional external processes such as reporting to the bureaucracies of Office of the Ombudsman and the Ethics and Anti-Corruption Commission which process a wide range of subject matter.

For both external and internal purposes at the NIE/AE, mechanisms shall include, inter alia, a corruption prevention reporting box, a general email address for NEMA (dgnema@nema.go.ke), an email for NEMA in its NIE/AE capacity (niekenya@nema.go.ke) and a web based portal on the NEMA website to report fraud and corruption. All EEs and Sub-EEs shall provide avenues for corruption reporting both internal and external including at the FIC.

Internal mechanisms

Existing internal corruption reporting mechanisms within the NIE/AE shall continue to serve the purpose of this policy. These include; corruption prevention reporting boxes, various email avenues, web based portal and the GRM at community, county and national levels. Corruption prevention reporting boxes provide an effective method by which the Chair of the CPC may be written to directly in confidence and should be especially important at the NIE level. Access to the boxes shall be by multiple preselected personnel who shall open the boxes with other members of the CPC present. Best practice standards should also require at least two pad locks on any one box to involve joint access and a rotation of the keys to any one box amongst CPC members.

The Grievance Redress Mechanism at the community, county and national levels envisions corruption issues to be among the greater universe of problems to be reported. Use of this system for corruption reporting is designed to be dealt with in the first place at the community level with further recourse up the ladder subsequently to the county and eventually national level. At the community level, it is important to emphasize involvement of local leaders on a basis of cultural respect which typically will involve the local chief and three appointed community elder leaders. There shall be a designated officer of the EE to receive complaints along with these leaders. At whatever level, NEMA should be notified of any corruption issues reported through the GRM on the first instance.

All EEs will be required to set up internal mechanisms to facilitate corruption reporting.

External mechanisms

Traditional avenues for reporting corruption outside of NEMA such as recourse to the bureaucracies of The Commission on Administrative Justice, EACC, The Judiciary, and The Public Complaints Committee shall serve this policy. Other mechanisms include use of various civil society organization initiatives, for example, Transparency International Kenya as well as other institutions such as the Kenya National Commission on Human Rights (KNCHR).

Mechanisms for handling of corruption cases

Alleged cases of corruption shall be dealt with fairly, promptly, expeditiously and within the bounds of the law. After an instance of reporting of an alleged case of corruption, investigation and confirmation of allegations shall take place first which shall entail thorough documentation

and development of all necessary reports. Subsequently, the case shall be determined either for processing internally or externally, via the established pathways, for example, by reporting the situation as a police case to the DCI.

Protection of whistleblowers

The CPC shall institute the necessary safeguards to ensure the protection of persons making disclosures about instances of corruption which shall extend to all levels (community, county and national) and to persons who are staff members of the NIE/AE and EEs as well as external persons. Persons who are internal personnel and staff members of the aforementioned institutions involved in the implementation of the AF/GCF at all levels shall be protected against any and all reprisals and/or detrimental action related to job status for any disclosures made about instances of corruption within their knowledge. Persons external to related institutions in all regards shall enjoy protection of physical personal security and assistance by law enforcement to this effect, as provided for pursuant to the Witness Protection Act, 2006.

Disciplinary measures

All reports of alleged corruption will be acted upon promptly and fairly by investigating the matter in accordance to the law. Guided by the law and relevant policies, the Corruption Prevention Committees at all levels shall prescribe to the relevant disciplinary committees on the appropriate disciplinary measures to be applied in cases of successful conviction. In the event external institutions are involved such as the National Police Service or The Judiciary, the full judicial process will be followed and requisite disciplinary measures applied.

The NIE/AE, EEs and Sub-EEs may put in place mechanisms to incentivize and encourage reporting of corruption and corrupt practices.

Training

The CPC shall sensitize and train all staff members of public entities responsible for the implementation of the AF/GCF at all levels as well as implicated third party stakeholders, where necessary, on matters of ethics and integrity including, but not limited to, the proper methods of corruption, prevention, detection, reporting and handling. The training of all staff members shall be a continuous learning process, the frequency of which shall be designated according to the demands of the level of work and type of engagements. All EEs should endeavor to enhance their staff capacity on matters of ethics, transparency, accountability and integrity.

Management/implementation authority

The Corruption Prevention Committee shall be the authority responsible for duly implementing and monitoring all provisions of the policy guidelines stated herein.

Review

The review and amendment of these guidelines shall occur at such intervals as the CPC may determine but at least on a three year basis, upon which the CPC shall consider proper budgeting for the following fiscal year.

Effective date

The policy shall enter into force upon the date of approval of this policy guideline.