

International Comparative Legal Guides



Environment & Climate Change Law 2020

A practical cross-border insight into environment and climate change law

17th Edition

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Clarice Wambua

1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

Environmental policy is founded on the Constitution which guarantees every person in Kenya the right to a clean and healthy environment. The Constitution also recognises the fundamental principles of environmental law such as sustainable development and equity and places an obligation on the state to, among others, ensure the protection of indigenous knowledge and genetic resources and sustainable exploitation of the environment and natural resources. The Constitution further places a duty on all persons to co-operate with state organs and other persons to protect and conserve the environment. The Environmental Management and Coordination Act, 1999 (EMCA), which is the primary Act governing matters relating to the environment, is underpinned by principles such as: international co-operation in the management of environmental resources shared with other states; inter-generational and intra-generational equity; the polluter-pays principle; and the precautionary principle.

The National Government, through the Cabinet Secretary responsible for environmental matters, is responsible for setting environmental policy. County governments play a role in the implementation of policy and can enact county legislation on environmental protection. In the event of a conflict between national and county legislation, the former will prevail. The National Environment Management Agency (NEMA) is the primary implementing and enforcement agency for environmental law and policy. The National Environment Tribunal, which has original jurisdiction in respect of certain disputes, including decisions of NEMA, plays a key role alongside civil (including a designated Environmental and Land Court of similar stature as the High Court) and criminal courts in setting, interpreting and enforcing environmental law.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

Compliance monitoring and enforcement is undertaken primarily by NEMA which can issue administrative sanctions and institute criminal proceedings against offenders. In addition to undertaking inspections, NEMA has the power to suspend or revoke licences, to issue closure and/or improvement

orders as well as environmental restorative orders. NEMA coordinates the environmental management activities of other government agencies responsible for the management of natural resources and physical planning, and often works in tandem with these agencies and county governments in enforcement activities. Further to this, enforcement is aided by Kenya's Constitution promulgated in 2010, which improved the approach to litigation on environmental matters in Kenya by firstly, expanding the scope of persons capable of instituting suits to enforce the Bill of Rights (including environmental rights) to include third parties and public interest litigants. Secondly, constitutionally there is no requirement to demonstrate actual harm or personal loss. The threat of harm is sufficient to warrant intervention by the courts and the courts have been proactive in enforcing these principles.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

The Constitution recognises the right of access to information held by the state and by private parties necessary for the protection of rights. The Access to Information Act, 2016 (AtIA) provides the mechanics to actualise this right by requiring public bodies, subject to the payment of reasonable fees, to disclose and make information available upon request to citizens. This right may be limited on account of, among other considerations, national security and defence matters and the need to protect legal proceedings and commercially sensitive information.

Under EMCA, there is a right of access to information held by NEMA and other public bodies, relating to the implementation of EMCA, and more broadly any information held by NEMA. Further, certain information, such as Environmental Impact Assessment (EIA) study reports, Environment Action Plans and registers of licensees and experts, is to be published and made available for inspection automatically without the need to make an access to information request.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Environmental permits are required for most activities and are to be taken out before the commencement of the activity. For example, different permits are required for effluent discharge, air emissions, waste management, manufacture, importation and export of controlled substances and access permits for access

to genetic resources. The statute, under which the licence or permit is issued, makes provisions for whether or not the licence or permit is transferable.

For example, an EIA licence is required before the financing, commencement, execution or carrying out of the projects set out in Schedule 2 of EMCA. These include urban development projects, mining, processing and manufacturing, changes in land use and agricultural projects. In this case, the statute provides that EIA licences may be transferred by the holder to another person only in respect of the project in relation to which such licence was issued. Where an EIA licence is transferred, the person to whom it is transferred and the person transferring are to jointly notify the Director-General of NEMA in writing of the transfer, not later than 30 days after the transfer.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

Any person aggrieved by a decision or a refusal to grant a permit or licence may lodge an appeal with the National Environment Tribunal within 60 days of the decision. Appeals from decisions of the Tribunal lie with the Environment and Land Court. Aggrieved parties can also institute judicial review proceedings under the Fair Administration Act, 2015; however, this is subject to the exhaustion of other appeal or review mechanisms.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

EIAs are required for projects listed in Schedule 2 of EMCA. The assessment process depends on the project risk categorisation. Low and medium risk projects are subject to a two-stage process in which a summary project report is first submitted to NEMA for review. If the project is deemed not to have significant adverse environmental impact, an approval to proceed with the project is issued. If approval is not issued, a further comprehensive project report is to be prepared. If the comprehensive project report is approved, an EIA Licence is issued. If not approved, an EIA study is to be undertaken. For all projects categorised as high risk, EIA studies are a prerequisite to the issuance of an EIA Licence.

Projects are required to undertake regular environmental audits. The first audit is to be done within 12 months after the commencement of operations and in not more than 24 months after completion of the project by an environmental auditor. In addition to this, project proponents are required to conduct self-audits at regular intervals. NEMA is also authorised to carry out control audits whenever the Authority deems it necessary to check compliance with the environmental parameters set for the project or to verify self-auditing reports.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

NEMA has the power to suspend, revoke or cancel a licence for a violation of its conditions. It can also issue restorative orders requiring violators to take or cease certain actions, or to restore an area or pay compensation for damage. Under most environmental statutes, violations of the conditions of a permit or licence are criminal offences attracting either custodial sentences or fines or a combination of both.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

EMCA defines waste as including any matter whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, composition or manner likely to cause an alteration of the environment and any matter prescribed to be waste. The Waste Management Regulations of 2006 break down this definition by further segregating waste into biodegradable, domestic, industrial and radioactive waste. The person whose activities result in the production of waste, or who is in possession or control of the waste, bears the obligation to dispose of the waste in accordance with the provisions of law. Additional controls are imposed of the treatment of hazardous and biomedical waste.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

As a general principle, the production of waste is to be minimised by the adoption of cleaner production methods, treatment, reclamation and recycling. Producers of industrial waste are required to treat waste in a waste treatment facility prior to disposal. Generators of hazardous and biomedical waste are also required to treat hazardous or biomedical waste in accordance with prescribed standards before disposal. The storage of biomedical waste above temperatures of 0° for more than seven days requires authorisation. A permit would be required for the operation of a waste disposal facility or site.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

It is possible for waste generators to outsource waste disposal to third party waste disposal facilities. In such instances, the obligation to comply with environmental standards lies with the operators of waste disposal sites.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

There is currently no law in place governing the mandatory take-back and recovery of waste by producers. The draft Sustainable Waste Management Bill 2019 introduces take back obligations in respect of products and packaging which would have negative impacts on the environment. The Bill proposes the making of regulations by the CS to define the affected products and packaging and to operationalise the scheme. The Bill is yet to be enacted. In practice, however, following the ban on plastic bags effected in Kenya in 2017, manufacturers and importers of primary industrial packaging and garbage bin liners which were exempted from the ban are required to apply for clearance certificates from NEMA to continue operating. Prior to receiving a clearance certificate, the applicants need to confirm that they have put measures in place for take back schemes/extended producer responsibility schemes.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Breaches of environmental laws and/or permits can attract both criminal and civil sanctions. Criminal sanctions take the form of custodial sentences or fines or a combination of both. The length of the sentence and the size of the fine vary for different breaches. Indicatively, the fine for pollution is a minimum of KShs 2 million and a maximum of KShs 5 million. Equipment and other plant and machinery used in the commission of the offence may also be forfeited to the state.

In a civil suit, the range of possible orders that can be made include orders for compensation to affected parties as well as the payment of the cost of the loss of beneficial use to affected parties. The court can also issue orders requiring restoration of the affected area. Claims for breaches of constitutional rights and under tort law can give rise to additional awards of damages. Courts will typically apply common law principles including those on nuisance in determining tortious claims. The rule in *Rylands v Fletcher* establishing strict liability for damage caused by the escape of a substance into another party's land is well established in Kenyan jurisprudence.

Possible defences include *force majeure* or contributing actions of the affected party. The Supreme Court in *Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited* [2018] eKLR found the lack of insurance to cover damage by wildlife to be contributory negligence apportioned to the complainant and reducing the loss recoverable for the damage to crops. The Supreme Court further made recommendation that the legislature considers the need for parties, likely to be similarly affected, to take out insurance.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

EMCA specifically provides that an EIA licence is no defence to civil and criminal action arising from the execution, management or operation of a project.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Directors and officers can be found criminally liable for acts of the corporation where it is shown that they had knowledge of the commission of the offence and did not exercise due diligence, efficiency and economy to ensure compliance with provisions of law. Employers and principals can also be held criminally liable for the acts of their employees unless the employer or principal proves that the offence was committed against express or standing directions.

Subject to Sections 194, 195 and 196 of the Companies Act 2015, directors' and officers' insurance can be procured. However, the Companies Act deems void any third party indemnities that purport to cover: (i) fines imposed in criminal proceedings; (ii) penalties for non-compliance with regulatory requirements; and (iii) liabilities incurred in defending criminal proceedings in which the director is convicted or in civil proceedings brought by the company in which judgment is entered against the director.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

The buyer in a share sale generally acquires the liabilities of the seller in the target company. In an asset sale, the general rule is that the buyer will acquire only the assets of the target company without the liabilities. However, where the buyer is also acquiring the business of the target company, the liabilities of the target company may be deemed to have also been transferred to the buyer pursuant to the Transfer of Business Act notwithstanding any agreement to the contrary between the parties. It is possible to limit the acquisition of such liability by publication of a notice prescribed by that Act. In certain instances, the regulations made under EMCA provide that the buyer and the seller remain liable for all liabilities in respect of a transferred licence, but the seller is not liable for future liabilities after the licence transfer is approved.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Lenders are not liable for their debtor's environmental wrongdoing, though there may be instances where this arises, for example where lenders exercise their step-in rights and take on the project personally.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

The overarching principle on liability is the polluter-pays principle. EMCA, and the various regulations issued under it, prescribe mandatory reporting obligations for defined polluting discharges and emissions such as oil and water mixtures and air pollutants. There is an overarching obligation not to pollute the environment and to mitigate the impacts of activities that could result in pollution.

The owners and operators of undertakings likely to have adverse environmental effects when environmental laws are breached, may be required to deposit bonds with NEMA as security for compliance. Non-compliance could result in the confiscation of such bonds. The Environment Management and Co-Ordination Draft (Deposit Bonds) Regulations, 2014 intended to operationalise these provisions and have yet to be effected. Notably, the draft regulations contain a provision proposing to limit the liabilities of a transferor of a facility to matters occurring before the transfer.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Liability rests with the polluter. Common law principles on actions in tort with multiple tortfeasors are applied in respect of liability. Apportionment of liability would be subject to the discretion of the adjudicating body.

5.3 If a programme of environmental remediation is "agreed" with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

An environmental restoration order continues to apply to the

activity in respect of which it was served notwithstanding that it has been complied with. Thus, NEMA can require further works provided they concern the activity upon which the order was served.

As the constitutional right to a clean and healthy environment can be enforced by third parties, irrespective of whether the harm is actual or threatened, it is possible that third parties could institute a petition to challenge a restoration order by NEMA or to seek the issue of restoration orders by the Environment and Land Court.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

As observed above, a private party can apply to court for the issuance of restoration orders against a polluter and, in this sense, a purchaser could seek restitution from the previous owner. Notably, as a general principal of Kenyan land law, a buyer is deemed to have notice of patent defects in a property and the vendor is required to deliver the property as described in the contract for sale. A purchaser can, however, recover damages for misrepresentation or mis-description which would provide an additional avenue for the purchaser to seek restitution for contaminated land.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

NEMA can, under a restoration order, require the payment of compensation for the restoration of polluted land which may include the replanting of trees and other flora and fauna, and restoration of geological, archaeological or historical features. Penalties may be imposed for a failure to comply. Further, NEMA may confiscate a deposit bond where a depositor breaches environmental law.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

NEMA has broad powers to obtain information both in the licensing process and in enforcement activities. Environmental inspectors have the power, without a warrant to: (i) enter any premises and make examinations and enquiries; (ii) require the production of, inspect, examine and copy licences, registers, records and other documents; (iii) carry out periodic inspections of all establishments and undertakings engaged in activities that are likely to have significant impact on the environment; (iv) seize plant and equipment believed to have been used in the commission of an offence; and (v) install any equipment for purposes of monitoring compliance. With the authorisation of the NEMA Director General, inspectors may also: (i) issue orders requiring the closure of any manufacturing plant or other establishment or undertaking, which pollutes, or is likely to pollute, the environment and requiring the owner or operator to undertake specified remedial action; and (ii) issue

improvement orders which may include orders to cease defined activities and to undertake remedial action. A warrant would be required for the arrest of any person suspected of committing an offence. Inspectors are to be assisted by police officers to undertake arrests.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

EMCA, as well as the regulations issued under it, requires the reporting of prescribed pollution events which include the discharge of hazardous substances, chemicals, oils or mixtures containing oil and excess emissions into the air. Further, conditions of licences may impose obligations to report any pollution incidents or accidents. Such reporting is to the regulator and it is prudent to also notify adjoining land owners or occupiers if there are health risks or a risk of property damage.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Project owners/operators are required to undertake regular environmental audits, with the first audit to be done within 12 months after the commencement of operations and not more than 24 months of completion of the project by an environmental auditor. Prior to this, investigations are also required to be done while preparing comprehensive project reports and when undertaking environmental impact assessment studies. In addition, the criminalisation of pollution can be seen as creating an obligation to monitor the impact of any activities for their likelihood to result in pollution on an ongoing basis.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

While there is no express statutory requirement for such disclosure, a seller's failure to notify a purchaser of environmental problems that they are aware of could be deemed as a misrepresentation. Typically, in share or asset sales, extensive warranties, representations and indemnities will be required by the purchasers. The sellers would make disclosures to limit the possible liability under such warranties and representations.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

Parties can, through contractual arrangements, use indemnities to limit liability in respect of environment related liabilities, but this does not insulate a party from regulatory or criminal liability.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

A company will be expected to comply with generally accepted accounting principles and to disclose environmental liabilities or contingencies in its financial statements or related notes. The dissolution of a company may not necessarily eliminate environmental liability because criminal or other administrative proceedings could be taken against a person who had charge, management or control of the company, including its directors and officers.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

A shareholder is generally not liable for the breaches of environmental law by the company. The court can pierce the corporate veil in exceptional circumstances such as in cases of fraud or where corporate structures were used as a sham.

8.4 Are there any laws to protect “whistle-blowers” who report environmental violations/matters?

The Access to Information Act, 2016 (AtIA) protects individuals who make disclosures in the public interest from penalties, reprisals, discrimination or other adverse treatment in relation to their employment, profession or membership of any organisation. A disclosure made to a law enforcement agency or an appropriate public entity such as NEMA is deemed to be in the public interest. Disclosures envisaged under AtIA include information on violations of law and dangers to public health, safety and the environment. A witness protection programme run under the Witness Protection Act provides additional protection for witnesses in criminal proceedings in or outside Kenya.

8.5 Are group or “class” actions available for pursuing environmental claims, and are penal or exemplary damages available?

Constitutionally, a wide range of persons can institute suits to protect their right to a clean and healthy environment including persons acting as a member of, or in the interest of, a group or class of persons. The scope of redress available for breaches of constitutional rights has been interpreted by the courts quite broadly with some considerations being the appropriateness of the remedy and the pursuit of justice. Exemplary damages are available as a remedy. The award of exemplary damages is discretionary and may be made: (i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government; (ii) where the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff; and (iii) where exemplary damages are expressly authorised by statute.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

Costs are awarded at the discretion of the courts. The general rule is that costs are awarded to the successful litigant.

However, the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 require the court in exercising its discretion to take measures to protect access to courts. In public interest cases, the courts will often not award costs.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

There are no emission trading schemes set up in Kenya. However, as a party to the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, the country has been actively involved in the development of carbon credits for both mandatory and voluntary international schemes. Kenya’s National Climate Change Action Plan (NCCAP) (2018–2022) aims to enhance Kenya’s participation in the international carbon markets, the generation of carbon units and access to carbon finance, whilst the Climate Finance Policy, encourages the generation and sale of carbon credits, putting a price on carbon, and establishing an emissions trading system. However, the policy clarifies that a domestic cap and trade system is not likely in the foreseeable future.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

The Environmental Management and Co-ordination (Air Quality) Regulations, 2014 require the owners or operators of plants to install air pollution control technologies to mitigate greenhouse gases (GHG) and to also monitor emissions. Further, NEMA is mandated under the Climate Change Act, 2016 to monitor, regulate and enforce compliance on levels of GHG emissions as set by the Climate Change Council. Regulations under the Climate Change Act clarifying the exact responsibilities of private entities with regards to greenhouse gases as envisioned under the Climate Change Act are, however, not yet developed.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

The overall approach to climate change regulation in Kenya is based on the goal of pursuing low carbon climate resilient development. In the discharge of their obligations as concerns climate change regulation, public authorities are also bound by national values and principles set out in the Constitution, such as equity, equality and public participation.

The low carbon climate resilient approach is expounded upon in Kenya’s nationally determined contribution (NDC) which aims to reduce greenhouse gas emissions by 30% by 2030 relative to the BAU scenario of 143 MtCO₂eq, and the country is currently in the process of carrying out the first review of the NDC. The NDC, however, clarifies that adaptation is Kenya’s priority. The NCCAP is emphatic that while reducing GHG emissions is critical, mitigation actions that have adaptation and sustainable development benefits are the ones to prioritise. Kenya also operates a climate change mainstreaming approach where climate change is mainstreamed in all sectors and at all levels of government.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

The Environmental Management and Co-ordination, (Waste Management Regulations), 2006 designate waste containing asbestos in the form of dust or fibres to be hazardous waste. Such waste is thus subject to the handling and disposal regime set out in the Regulations. NEMA also published the National Guidelines on Safe Management and Disposal of Asbestos which provides additional guidance on practices to be adopted in the handling, transportation and disposal of asbestos. There are some suits in respect of asbestos pollution that have been filed and determined in Kenya, however, litigation in this area has not been high profile.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on-site?

The use of asbestos is not banned in Kenya and roofing materials often contain asbestos. Disputes relating to asbestos pollution would be adjudicated similarly to other environmental pollution disputes. As waste containing asbestos dust or fibres are designated as hazardous waste, under the Waste Management Regulations, the handling and disposal of any such waste would be subject to the Regulations as well as the NEMA Guidelines on Safe Management and Disposal of Asbestos. Obligations under the Regulations include a requirement that the generators of hazardous waste label the containers for storing or packaging such waste with warning and caution statements in both English and Kiswahili. NEMA may also require the generators of hazardous waste to procure insurance policies to cover the risks caused by the waste.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

Environmental insurance policies are more commonly seen in agriculture where there are a number of state and privately-run insurance programmes and policies aimed at providing buffers to farmers from changing climatic conditions and environmental damage. These include the Kenya Agricultural Insurance Program (KAIP) for crops and the Kenya Livestock Insurance Program (KLIP). All risk insurance policies often cover natural hazards. Some private insurance companies also offer environmental impairment policies covering third party harm and environmental damage as well as the clean-up costs for pollution. Further, NEMA may require the generators and exporters of hazardous waste to procure insurance to cover the risks caused by such waste.

11.2 What is the environmental insurance claims experience in your jurisdiction?

Environmental insurance claims would be settled in accordance with the terms of the policies. As a general principle, the court will not re-write the terms of a contract but may repudiate unconscionable bargains. Data in the Insurance Regulatory Authority's Annual Insurance Industry Report 2018 suggests that environmental impairment insurance accounts for a limited market segment.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in environment law in your jurisdiction.

Following the ban on plastic bags in Kenya in 2017, plastic waste management has been evolving rapidly in Kenya. Private sector initiatives have been launched to encourage voluntary extended producer responsibility through take-back schemes, with the launch of PETCO Kenya as a producer responsibility organisation for PET bottles and products. Progress has also been made in the law-making process with steps taken towards the finalisation of a National Sustainable Waste Management Policy and the draft Sustainable Waste Management Bill 2019. It is anticipated that the draft bill will begin the process to enactment soon.

Further, in 2019, a ban on plastic bottles, straws and related products within the protected areas in Kenya's national parks, national reserves, conservation areas and any other wildlife protected areas was declared, effective from 4th June 2020. Fiscal incentives such as a reduced corporate tax of 15% for the first five years and VAT exemption for the supply of machinery and equipment used in constructing plastic recycling plants as well as services offered to these plants, have also been introduced to incentivise the recycling of plastics.

Notably also, the Environment and Land Court and the National Environment Tribunal have been signalling a need for greater care in complying with the procedural and substantive requirements in licensing procedures and in undertaking environmental impact assessment studies. In 2019, The National Environment Tribunal in *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another* [2019] eKLR revoked an EIA Licence for what was to be Kenya's first coal plant for, among other reasons, a failure to undertake effective public participation as required by law.



Clarice Wambua is a partner at Kieti Advocates LLP and leads the firm's work on Environment and Climate Change. She has expertise in a broad range of areas in environmental law and a keen interest in research and regulatory compliance. She has recently been involved in a study on carbon pricing in Sub-Saharan Africa, advising on best practices for extended producer responsibility schemes to manage post-consumer plastic packaging waste in Kenya, and the development of a toolkit on gender integration in climate change projects, plans and policies within pastoral communities in Kenya's arid and semi-arid regions. Clarice is a Commonwealth, Lord Hope, John Fitzsimmons and Strathclyde International Scholar. She holds an LL.M. (Distinction) in Climate Change Law and Policy from the University of Strathclyde, an MSc (Distinction) in Africa and International Development from the University of Edinburgh, and an LL.B. (Honours) from the University of Nairobi.

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Kieti Advocates is a leading boutique law firm in Nairobi, Kenya with a dedicated environment and climate change practice. We provide the specialised and personalised legal services of a lean and agile team at the highest quality, and have advised both public and private sector entities on environmental law. Our environment and climate change department provides advice to diverse clients on a wide-range of subjects in the field of environment and climate change, and supports the firm's corporate and commercial department.

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