

NATIONAL CLIMATE CHANGE ACTION PLAN



REPUBLIC OF KENYA

An Issues Paper
on
Justification and Proposals to Undertake
Enabling Sectoral Legislative Amendments to
Enhance the Legal and Institutional Framework
for Kenya's Climate Change Response

October 2012



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Enabling Legislative and Institutional Framework for Climate Change Response in Kenya
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1 Introduction

The analysis and proposal of a legislative and institutional framework for climate change responses in Kenya was undertaken by Sub-Component 2 (SC2), through the Kenya Climate Change Action Plan (KCCAP) programme. The process commenced with a thorough and extensive assessment of Kenya's existing policies, laws and institutional framework related to climate change responses. This resulted in a set of 22 Legal Working Papers that were drafted through desk review and consultations with key stakeholders and government representatives. These legal working papers were consolidated in a Legal Preparedness Awareness Report (LPAAR). The LPAAR was further verified through an iterative process of review by Government of Kenya (GoK) representatives involved in the KCCAP process as well as international experts. The LPAAR focused on the identification and analysis of key areas of law, policy and institutional capacity considered crucial to an enabling framework for KCCAP implementation. Although the LPAAR established that laudable efforts have been taken to commence Kenya's response to climate change, there was also evidence that additional challenges remain. In particular, the fragmented and uncoordinated nature of the existing framework challenges the coherence of Kenya's actions to address climate change and, ultimately, its effectiveness in implementation. In addition, sectoral laws and policies that incorporate environmental considerations rarely factor in potential adverse impacts on greenhouse gas (GHG) emissions. Moreover, in many instances, sectoral laws have been silent on the impact of climate change on planning and implementation of sectoral activities, how mitigation efforts can be scaled-up, or how sectoral laws affect the capacity of human and ecological systems to adapt to climate change.

This inadequacy facing sectoral laws is highlighted in the Action Plan Chapter on the Enabling Legislative and Institutional Framework, which includes a key recommendation to undertake amendments to sectoral laws to ensure mainstreaming of climate change responses. The amendments to sectoral laws can be undertaken in two steps, with priority for changes requiring urgent legislative action and a further iterative process that could be implemented over several years. The sectoral amendments, upon stakeholder consultations and concurrence, may be incorporated into a Statute (Miscellaneous Amendments) Bill, and taken to Parliament for debate and enactment. Alternatively, sectoral amendments could take place on a case-by-case basis to individual legal instruments. This issues paper does not seek to develop a Statute (Miscellaneous Amendments) Bill, but rather seeks to provide analysis and recommendations to inform this potentially complex reform process.

This issues paper therefore addresses the utility and efficacy of undertaking sectoral amendment as a mechanism for implementing legal reform to enhance climate change responses in Kenya. The paper also proposes rational prioritization criteria that will allow the GoK to determine the significance and sequencing of sectoral law amendments for incorporating climate change responses. In the Annex, the issues paper provides brief indicative proposals for reform to guide the technical staff that may eventually identify and undertake sectoral legal reforms. These proposals for reform are derived from (i) Sub-Component recommendations from the Kenya Climate Change Action Plan, where these are sufficiently specific for translation into legislative proposals; (ii) Sub-Component 2 LPAAR

findings on sectoral areas of law that require amendment to enhance coherence and efficacy of mitigation and adaptation actions.

2 Justification for the Amendment of Sectoral Laws

In its analytical report on the Enabling Legislative and Institutional Framework, SC2, proposed that it is necessary to introduce changes to the Kenyan legal and institutional framework to achieve effective climate change responses and to enhance the sustainable development of Kenya. Two key proposals were made: (1) Standalone climate change legislation should be enacted; and (2) Specific amendments to sectoral laws should be enacted through a Statute (Miscellaneous) Amendments Bill. As highlighted in the introductory section, the latter is the focus of this issues paper.

To arrive at those recommendations, SC2 conducted a SWOT analysis on the various ways in which legal reforms can be undertaken in Kenya. SC2 recommended comprehensive and standalone legislation for horizontal and vertical integration of climate change responses through national coordination, and mainstreaming of functions across national and county government levels. However, such standalone climate change legislation could greatly impact sectoral legislation insofar as it could conflict with or go beyond existing legal and institutional frameworks in any given sector. Examples include: (a) where existing sectoral institutions do not have the legislative jurisdiction to implement national climate change priorities set in standalone legislation; (b) where the determination of sectoral budgetary allocations must be altered to take into account the necessity for increased human and financial capacity for climate change responses within existing institutions; and (c) where the priority action areas set in sectoral legislation actually conflict with those of the standalone climate change legislation. Therefore, sectoral amendments are justified as a means to implement vertical and horizontal integration by explicitly incorporating climate change into the activities and functions of sectoral departments.

As highlighted in the introduction, where the necessity arises, the amendments to sectoral laws can be undertaken in two steps, with the first step including priority changes requiring urgent legislative action and the second step including a further iterative process that could be implemented over several years. The sectoral amendments, upon stakeholder consultations and concurrence, may be incorporated into a miscellaneous amendments Bill, and submitted to Parliament for debate and enactment.

3 A Rational Prioritization Criteria for Sectoral Amendments

Based on the foregoing arguments, sectoral amendments through a miscellaneous amendments Bill would be desirable to enhance utility and efficacy of sectoral climate change responses, and ensure overall coherence of the legal and institutional architecture. However, it may be politically difficult and potentially inefficient for the Government of Kenya to attempt to introduce all sectoral amendments for climate change reform in one instance. Therefore, the GoK may wish to prioritize those amendments that are pressing and undertake other reforms on an incremental basis as needed. To that end, this section proposes key principles and rational prioritization criteria, which can be applied as a benchmark by all institutions in the government, to identify the sectoral law areas that

should be granted priority for legislative amendment. Similarly, any accompanying policy would be likewise subject to review.

3.1 Key Principles for Rational Prioritization Criteria

The rational prioritization criteria, proposed below, are predicated upon the three tenets of the climate change response in Kenya:

- (i) to achieve people-centred sustainable development;
- (ii) to attain climate resilience; and
- (iii) to ensure low carbon growth.

3.2 Rational Prioritization Criteria

Each proposal for sectoral reforms should be accompanied by robust analysis and justification. That analysis and justification can be drawn from the rational prioritization criteria set out below.

3.2.1 Catalyzing and enabling capacity

These include sectoral legislative reforms that will play a catalyzing role in enabling effective climate change responses. Such reforms will consciously target those sectors, which greatly impact or act as drivers to other socio-economic and environmental sectors.

3.2.2 Avoidance of high costs

These would include legislative reforms that are necessary and critical to avoid the high economic costs and losses to be borne from inaction or business as usual. An example can be drawn from the utility of disaster risk reduction or energy sector reforms. Additionally, the process of implementing the proposed legislative reforms should be cost effective insofar as, in selecting the most appropriate legislative amendments, consideration will be given to the potential costs of implementation vis-à-vis the expected benefits.

3.2.3 Vulnerability minimization

These include reforms to sectoral areas that face high and/or acute vulnerability to the adverse impacts of climate change. Therefore, if no reforms are implemented to minimize this vulnerability, the adverse impacts from climate change to such sectors would be extensive. An example can be drawn from the vulnerability of strategic infrastructure such as highways, seaports, hydroelectric dams and plants, among others. Climate proofing of such infrastructure through budgetary and other legislative means would contribute to minimizing vulnerability.

3.2.4 Feasibility

The sectoral legislative reforms in question should be assessed based on the likelihood of being adopted and implemented by government, in the short to medium term periods.

3.2.5 Specificity of action

Finally, it is necessary for the proposed reforms to provide specific action or be detailed enough to enable their translation into legislative amendments.

4 Thematic Areas for Sectoral Amendments arising from the KCCAP

The Kenya Climate Change Action Plan Process has resulted in various recommendations advanced by each of the eight (8) substantive Sub-Components –

- (i) Sub component 1: Long-term National Low Carbon Development Pathway
- (ii) Sub component 2: Enabling Policy and Regulatory Framework
- (iii) Sub component 3: National Adaptation Plan (NAP)
- (iv) Sub component 4: Nationally Appropriate Mitigations Actions (NAMAs)
- (v) Sub component 5: National Technology Action Plan
- (vi) Sub component 6: National Performance and Benefit Measurement
- (vii) Sub component 7: Knowledge Management and Capacity Development
- (viii) Sub component 8: Finance

Each of the Sub-Components has developed recommendations that will form the foundation for implementation of the Action Plan. Those recommendations in the Action Plan can be translated into draft legislative provisions for Parliamentary approval through a miscellaneous amendment Bill, after analysis through the prioritization criteria set out in section 3 of this Issues Paper.

In Annex 1, several proposals for legislative amendment have been set out, focusing on climate resilience, low carbon growth and finance provisions that would catalyze action, reduce vulnerability, and be identified as quick-wins due to the deemed possibility of enactment.

5 Annex 1 - Proposed Amendments for Enhancing Utility and Efficacy of Climate Change Response through Legislation

5.1 Proposals for Prioritized Actions for Mitigation

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
<p>1. Restoration of forests on degraded lands</p>	<p>Environmental Management and Co-ordination Act, 1999 (EMCA)</p> <p>Gaps:</p> <ul style="list-style-type: none"> • Inconsistencies between the EMCA provisions and the 2010 Constitution with respect to institutions that play a key role in restoring forests on degraded lands. • Non-application National Environment Restoration Fund 	<p>Amend the EMCA to introduce the role of County Governments in the management of the environment within their respective jurisdictions and define the role of the County Governments to include:</p> <ul style="list-style-type: none"> • Identifying and recording all degraded community lands, in their respective Counties; and • Developing a programme and implementing measures to restore degraded lands through activities such as afforestation, reforestation or planting other suitable vegetation, in consultation with relevant lead agencies, communities and/or owners of degraded lands. 	<ul style="list-style-type: none"> • Article 6 (1) of the Constitution of Kenya, 2010 has divided the country into 47 counties. • Art 6(3) further requires national state organs to ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate. • Clause 10, Part II of the Fourth Schedule empowers County Governments to implement specific national policies on environment, soil and water conservation; and forestry • In view of the above, the EMCA has to be amended so as to take into consideration the devolution of Government, the roles played by each level of government and restructuring the PECs and DEC.
	Water Act, 2002	Amend section 17 of the Water Act, 2002	<ul style="list-style-type: none"> • Section 17 of the Water Act,

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
	<p>Gaps:</p> <ul style="list-style-type: none"> The Water Act is not specific as to what measures the Water Resources Management Authority (WRMA) may undertake for the protection of degraded catchment areas 	<p>to provide for powers of the WRMA to take specific measures that the authority should set out through regulations for the protection of a degraded catchment area</p>	<p>2002 deals with protection of water catchment areas, which can be declared through the publication of a notice in the Gazette</p> <ul style="list-style-type: none"> However, the section is not specific on the actual measures that can be taken to restore a degraded water catchment area. The proposed amendment is meant to bring in clarity and single out the restoration of degraded catchment areas through protection to allow natural regeneration of vegetation, including trees in these areas or through tree planting.

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
<p>2. Restoration of degraded forests</p>	<p>Forest Act, 2005 and Forest Policy, 2007</p> <p>Gaps:</p> <ul style="list-style-type: none"> • The Forest Act, 2005 does not contain important provisions from the Forest Policy, 2007, including where the latter: <ul style="list-style-type: none"> • Commits the Government to promote tree planting and land rehabilitation for carbon sequestration (actions that are relevant to REDD+) • Commits the Government to carry out inventories and valuation of forest resources and their utilization to generate accurate information for decision making 	<p>Amend the Forest Act, 2005 to include additional functions for the Kenya Forest Service to coordinate REDD+ activities, generate information for an inventory and valuation of forests, and undertake the restoration of degraded forests. This would include specific roles to:</p> <ul style="list-style-type: none"> • Coordinate the planning, designing and implementation of activities relating to reducing emissions from deforestation and forest degradation, sustainable management of forests and conservation and enhancement of forest carbon stocks (REDD+); • Develop an inventory of forests on public land and carry out a comprehensive valuation of all forest resources and their utilization; • Collect, compile and disseminate information on forest resources in the country and advise on areas requiring reforestation or afforestation in public, community or private lands; and • Undertake to restore degraded forests on public lands and protect forests on public lands that are at the risk of being degraded or deforested, including through liaising with other relevant public and private entities. 	<ul style="list-style-type: none"> • The Forest Policy recognizes the positive role played by natural forests and plantations as carbon sinks. • The Forest Policy commits the Government to promote tree planting and land rehabilitation for carbon sequestration, and to explore carbon trading opportunities related to the conservation and management of forests. • It is imperative for these policy statements to be translated into law through amendment of the Forest Act. • Including REDD+ related activities in the Forest Act, 2005 will help in meeting two priority mitigation actions: the restoration of forests on degraded lands and restoring degraded forests (by reducing deforestation and forest degradation). • This is an important interim measures as the country prepares to develop a comprehensive national REDD+ Strategy/Policy with more details which may be included in the Forest Act at a later stage.

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
<p>3. Expanding geothermal electricity generation</p>	<p>The Feed-in-Tariffs Policy on Wind, Biomass, Small-Hydro, Geothermal, Biogas and Solar Resource Generated Electricity (Revised January 2010)</p> <p>Gaps:</p> <ul style="list-style-type: none"> The current Feed-in-Tariffs Policy for geothermal does not encourage private investments in this sector as high upfront investment costs act as a disincentive to potential investors in geothermal energy production, conversion and distribution. 	<p>The National Government should give financial incentives to encourage public-private partnerships in geothermal energy development, for instance:</p> <ul style="list-style-type: none"> Loan guarantees to financiers of geothermal development that will insure against borrower defaults; Lower interest rates to borrowers for geothermal investment; and A fund for assisting project developers in securing low interest loans due to the high capital investment in developing geothermal energy. 	<p>The Government of Kenya has made the expansion of geothermal power production its top priority in order to meet the country's energy demand for economic development of the country. This is stated explicitly in several strategic planning documents, such as the Vision 2030 and the Scaling-Up Renewable Energy Program Investment Plan for Kenya 2011-2031(SREP).</p>

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
<p>4. Use of improved cook-stoves and liquefied petroleum gas (LPG) for cooking</p>	<p>Energy Act, 2006 (Act No. 12 of 2006)</p> <p>Gaps:</p> <ul style="list-style-type: none"> Lack of legal provisions to promote the production and uptake of efficient cook stoves particularly by poor households. 	<p>Introduce Regulations to:</p> <ul style="list-style-type: none"> Facilitate the introduction of programmes for the distribution of efficient cook stoves to urban and rural poor households; Give financial or other specified incentives to small-scale industries or entrepreneurs to manufacture efficient cook-stoves that will be distributed at affordable prices. 	<p>The proposed amendments will contribute towards mitigation GHGs emanating from use of fuel wood because improved cook-stoves use less charcoal and firewood, hence increased use of these stoves will reduce pressure on forests.</p> <p>Improved cook stoves also reduce indoor air pollution with corresponding reduction on related respiratory problems especially for women and children, due to improved combustion of the feedstock which reduces the amount of black carbon (sooty particles) produced during combustion.</p>
<p>5. Renewable Energy</p>	<p>The Geothermal Resources Act, 1982</p> <p>Gaps:</p> <ul style="list-style-type: none"> Lack of up-to-date provisions that take into account GoK's priorities in the development of geothermal energy as a source of clean energy. 	<p>Review the Geothermal Resources Act with a view to bringing it up to speed with current developments in the Geothermal sector and in particular, amend the Act to introduce:</p> <ul style="list-style-type: none"> Grants, loans, loan guarantees, drilling and/or reservoir risk insurance, tax incentives, attractive feed-in tariffs for geothermal projects, and even requirements that a certain percentage of power sold by utilities must be purchased from renewable resource projects such as geothermal; 	<ul style="list-style-type: none"> The Geothermal Resources Act is outdated and should be reformed so as to take into account recent developments, such as GoK's exploration of geothermal energy in Kenya. The amendment of the Act should recognize geothermal as clean energy, and facilitate attraction of investment into the sector through incentives, both fiscal and non-fiscal. Risk mitigation insurance provides insurance against loss

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
		<ul style="list-style-type: none"> • Risk mitigation insurance to provide insurance against losses from the drilling of unsuccessful well(s) based upon geologic conditions, e.g. temperature, flow or chemistry; • Power purchasing agreements (PPA), which should, <i>inter alia</i>, raise equity or secure project financing; provide for price adjustments due to shifts in the economics of projects due to external factors, such as changes in environmental laws, tax structure, energy regulation, and property law. 	<p>from the drilling of unsuccessful wells based upon geologic conditions. The World Bank GeoFund and the ARGeo programs both have as their center piece risk mitigation insurance. The Government may use it as a means to attract public as well as private sector developers to accept the high risks of geothermal exploration and drilling. In some limited circumstances, risk mitigation insurance has also provided guarantee for the long term viability of reservoir productivity.</p>
5. Agroforestry	<p>Agriculture Act, Cap 318</p> <p>Gaps:</p> <ul style="list-style-type: none"> • The Agriculture Act is inconsistent with provisions of the 2010 Constitution. 	<p>Amend the Agriculture Act, to make provision for the functions of the County Agriculture Office</p>	<ul style="list-style-type: none"> • The Agriculture Act must be aligned with the provisions of the 2010 Constitution. • Clause 1, Part II in the Fourth Schedule to the Constitution classifies agricultural services as a function of County Governments.
	<p>The Agriculture (Farm Forestry) Rules, 2009 (Legal Notice No. 166 of 20 November, 2009)</p> <p>Gaps:</p>	<p>Amend the Rules to include a requirement for the provision of extension services and capacity building to farmers to extend the practice of agroforestry.</p>	<ul style="list-style-type: none"> • Several government policies and strategies such as the Vision 2030, the Medium Term Plan 2007-2012, the Agricultural Sector Development Strategy 2010-2020 and the National Climate

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
	<ul style="list-style-type: none"> The Rules do not have a requirement for extension services to be provided to farmers to encourage the uptake of agroforestry. 		<p>Change Response Strategy have articulated a dual role for agriculture to improve food security as well as enhance forest cover.</p> <ul style="list-style-type: none"> The extension of information and capacity building to farmers is crucial to scale up agroforestry. Perennial trees have the potential to sequester significant amounts of carbon during their lifespan, thereby increasing carbon stocks. In addition, agroforestry can act as a source of sustainable fuel wood, on-farm timber and livestock fodder, thereby reducing pressures on neighboring forests and contributing to improved livelihoods through the provision of fruits and nuts. Promoting agroforestry contributes to adaptation because trees can prevent soil erosion and increase soil fertility and water retention.

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
<p>6. Improved public transport systems based on bus rapid transit and light rail transit corridors</p>	<p>Sessional Paper on Integrated National Transport Policy, 2010</p> <p>Gaps:</p> <ul style="list-style-type: none"> The Policy does not provide for a direct linkage between the transport sector and climate change considerations. 	<p>Amend the National Transport Policy to include as one strategic objective the need to mitigate the emission of GHGs from this sector. The amendment could read:</p> <ul style="list-style-type: none"> Develop improved public transport systems and promote passenger modal shift from using private transport with high carbon intensity to lower-carbon modes of transport like public buses and light trains in order to mitigate greenhouse gas emissions from the transport sector. 	<ul style="list-style-type: none"> Climate change considerations should be mainstreamed into the transport sector as it contributes significantly to the emission of GHGs.

5.2 Proposals for Prioritized Actions for Adaptation

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
<p>1. Increased resilience in the agriculture sector</p>	<p>Agriculture Act</p> <p>Gaps:</p> <ul style="list-style-type: none"> Insufficient funding for small-scale farmers to undertake change adaptation and mitigation activities. 	<p>Amend the Agriculture Act to include provisions on:</p> <ul style="list-style-type: none"> Establishment of Agriculture Development Trust Fund with traits that include: <ul style="list-style-type: none"> Finance from public funds / other sources A social equity mechanism with a key role to finance (through grants and soft loans) the adoption of climate change adaptation and mitigation activities for small scale-farmers, e.g. irrigation technology; development of resilient seeds; value addition & marketing. 	<ul style="list-style-type: none"> The adoption of irrigation technology as a key adaptation tool could increase ecosystem resilience Irrigation requires water harvesting and storage, and could provide a disaster reduction against floods and droughts Financing of value-addition and marketing systems is likely to promote local commerce, and enhance household socio-economic resilience The use of nitrate-free fertilizers, necessary to reduce emissions, is expensive and many small-scale farmers require welfare financing
<p>2. Reduction of adverse effects on road infrastructure</p>	<p>Section 34, Kenya Roads Act</p> <p>Gaps:</p> <ul style="list-style-type: none"> Insufficient provisions to mainstream climate change 	<p>Amend section 34 of the Kenya Roads Act in order to require:</p> <ul style="list-style-type: none"> The five-year Roads Investments Programme to include climate proofing as a priority for roads development and maintenance; 	<ul style="list-style-type: none"> Including climate proofing of road infrastructure as a priority in the ads Investments Programme will provide a predictable

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
	considerations into infrastructure resilience.	<ul style="list-style-type: none"> Climate proofing to be fully costed; The Roads Investments Programme to determine categories of road infrastructure for climate proofing based on strategic functions for the Kenyan economy; The Roads Investments Programme to be approved by the Minister for Finance; the Minister for the time being responsible for climate change; and by Parliament. 	and economically viable system of protecting roads from the damaging effects of climate change
3. Enhanced sustainability of the tourist trade	<p>Section 3, and 7 Tourism Act</p> <p>Gaps:</p> <ul style="list-style-type: none"> Insufficient provisions requiring actors in the tourist industry to develop effective planning for climate change adaptation and mitigation. 	<p>Amend section 3 of the Tourism Act, in order to insert a new purpose for the tourism strategy to prescribe:</p> <ul style="list-style-type: none"> Indicative adaptation and mitigation measures to guide the development of business-level plans by tourism operators in order to avert adverse impacts of climate change on tourism and tourism products and services <p>Amend section 7 of the Tourism Act in order to insert a new function for the Tourism Authority to:</p> <ul style="list-style-type: none"> Regulate, monitor and review the plans of tourism operators on specific adaptation/mitigation measures they will implement to ensure adequate responses to climate change, and enhance sustainable tourism <p>Insert a new Section in the Tourism Act to:</p> <ul style="list-style-type: none"> Require all tourism operators to develop and submit a plan on the 	<ul style="list-style-type: none"> It is necessary to create a framework to guide functional obligations for adaptation and mitigation in tourism investment decisions

Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
		adaptation and mitigation measures they plan to undertake within a fixed period of time	
4. Strategic Environmental Management	<p>Environmental Management and Co-ordination Act, 1999 (EMCA)</p> <p>Gaps:</p> <ul style="list-style-type: none"> • Substantive EMCA provisions do not require strategic environmental assessments that factor in climate change considerations. 	<p>Amend the EMCA to:</p> <ul style="list-style-type: none"> • Move regulations 42-45 of the Environmental (Impact Assessment) Regulations, 2003, into the substantive provisions of the EMCA • Create a mandatory requirement for public entities to subject all public policies and macro-level plans to a strategic environmental assessment • SEA objectives and indicators should include assessing: <ul style="list-style-type: none"> ○ Impacts of the policy proposal on climate change ○ Projections of the adverse effects of climate change without an adaptation plan Possible or key problems arising out of future climate change events ○ Mechanisms of mandatory consultations with relevant public agencies responsible for climate change/agencies that can offer best practices ○ All relevant discrepancies among the various alternatives (e.g. costs of climate change impacts), 	<ul style="list-style-type: none"> • Climate change vulnerability and the reduction of GHG emissions should be factored into policy decisions in the form of strategic environmental assessments • The SEA provisions should be enacted through the substantive legislation rather than regulations

5.3 Proposals for Prioritized Actions for Climate Finance

Action Plan Recommendation / Action Plan Recommendation / Legislative Areas of Reform	Relevant Existing Legislation/Regulation/Policy	Proposed Legal/Regulatory/Policy Amendments	Justification for Proposed Reform
1. Establishment of a National Climate Change Fund	Section 24(4) of the Public Finance Management Act, 2012	Create a National Climate Change Fund that will centrally oversee the mobilization and disbursement of climate finance according to the priorities and criteria identified in the Action Plan.	<ul style="list-style-type: none"> The Climate Change Fund will provide a national mechanism for mobilizing and disbursing climate finance
2. Establishment of taxation pricing tools	Income Tax Act	Establish a new income tax credits for: <ul style="list-style-type: none"> Facilities engaged in the development of renewable and efficient energy. Credits would be available only for projects certified by the Minister of Finance, in consultation with the Minister of Energy, through a competitive bidding process; Individuals who undertake energy efficiency improvements to existing homes, including through solar-electric, solar water heating, fuel cells, small wind-energy, and geothermal heat pump systems. 	<ul style="list-style-type: none"> This proposal is meant to incentivize persons locally investing in the manufacture of renewable energy technology. Currently technology such as solar panels is imported and injecting this incentive into the local economy may boost local innovation. Tax credits for individuals would promote energy efficiency and conservation.
	Corporation (income) tax	Introduce a tax deduction for energy-efficient commercial buildings on the following terms: <ul style="list-style-type: none"> Intended for building owners (new or existing), although tenants who make construction expenditures may also qualify. Duration for two years as an allowable expense that can be deducted from rental income 	<ul style="list-style-type: none"> This proposal is an incentive to building owners, contractors or the construction industry, which is growing at a rapid rate. Any person putting up a building especially a commercial building and

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		<ul style="list-style-type: none"> • Would cover efficiency measures, such as equipment and building insulation, water heaters, lighting and controls, chillers, furnaces, boilers, heat pumps, central air conditioners, weather-stripping, duct/air sealing, windows, doors, siding, roofs, and comprehensive measures. 	<p>installs energy efficient measures should benefit from this incentive.</p>
	Value Added Tax Act	<p>Create new VAT provisions for:</p> <ul style="list-style-type: none"> • Exemptions to be given to persons selling self-manufactured products with no less than 30 percent of recycled material in raw materials; • Immediate rebates for selling of self manufactured recycled asphalt concrete produced from waste asphalt concrete. 	<ul style="list-style-type: none"> • This will help introduce fiscal systems to support cottage industries, and to facilitate waste recycling to minimize disposal in landfills
3. Other sectoral financial incentives	Agriculture Act or Banking Act	<p>Introduction of 0% interest loans to cover the costs of terrace construction, waterways, erosion control, and other practices in order to promote permanent soil conservation practices, with the support of the Minister for Finance.</p>	<ul style="list-style-type: none"> • A mechanism to facilitate sustainable land use practices for agriculture.
	Agriculture Act or EMCA	<p>Introduce provisions for landowners to receive annual land payments for up to 15 years and reimbursement for costs of establishing wetlands and buffers. Easements to maintain the wetlands and buffers would be required for at least 30 years</p>	<ul style="list-style-type: none"> • Wetlands are effective at removing nitrates and the herbicides in tile drainage water from upper-lying croplands. • Strategically located and designed to remove

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			agricultural runoff nitrate from cropland areas. Eligible sites must intercept significant tile flow without obstructing normal drainage.
	<ul style="list-style-type: none"> • EMCA • Local Government Act, Cap 265 • Urban Areas and Cities Act, 2012 • County Governments Act, 2012 	<p>Introduce a program that aims to decrease the amount of solid waste generated and landfill in cities and municipals with provisions such as:</p> <ul style="list-style-type: none"> • Eligible projects would include waste reduction equipment and installation; recycling, collection, processing, or hauling equipment (including installation); development, printing and distribution of educational materials; planning and implementation of educational forums, workshops, etc.; purchase and installation of recycled content products; • Extra consideration may be given to applications addressing large or hard-to-manage targeted waste streams. 	<ul style="list-style-type: none"> • To minimize the use of landfills, and to encourage the application of ecologically suitable waste reduction and recycling technologies