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23rd May, 2023

**Principal Secretary,
State Department of Environment and Climate Change
The Ministry of Environment, Climate Change and Forestry
NHIF Building, 12th floor,
P.O. Box 30126-00100,
Nairobi, Kenya.**

**RE: MEMORANDUM ON THE DRAFT CLIMATE CHANGE (AMENDMENT)
BILL, 2023 BY KENYA WILDLIFE CONSERVANCIES ASSOCIATION
(KWCA)**

Pursuant to the call for submission of comments, inputs or memoranda from interested members of the public on the Draft Climate Change (Amendment) Bill 2023, KWCA, on behalf of 184 community and private wildlife conservancies spread across 30 counties submits this memorandum.

The Draft Bill whose aim is to incorporate carbon markets, among others, and provide provisions for engagement/participation in carbon markets to enhance climate change resilience and determine benefit sharing mechanisms is of greater significance to wildlife conservancies in Kenya. Section 39 of the Wildlife Conservation and Management Act promotes conservancies for purposes of wildlife conservation, enhancing climate change resilience and low carbon development. The Conservancies today cover 9 million hectares contributing to both climate change mitigation and adaptation and developing interventions to sequester carbon and participate carbon credits programs.

This submission is informed by the contribution of our members and partners who held a meeting on May 10th 2023.

KWCA HEREBY SUBMITS AS FOLLOWS:

1. The Scope of the Bill, including its principles, is *largely silent on non-carbon markets*, whereas a new object of the Act is to provide guidance in development and implementation of carbon markets and non-markets. The Bill presents an opportunity to promote and incentivize non-market approaches to enhance carbon reservoirs and sinks and enable co-benefits such as biodiversity conservation, in instances of limited potential for high-quality carbon offsets; and further application of taxes to discourage emissions. This is in consideration that Kenya is focused on advancing its offset capacity.
2. The *Bill does not define carbon credit rights*, which can be defined as intangible assets and or ownership or beneficial interest created by legislation or contractual

- arrangements, arising from carbon sequestered and carbon stored in forests, soil, grasslands or other approved means.
3. The Bill *does not provide for ownership or management of carbon reduction rights* especially for *land-based projects* developed on community and private lands. KWCA recommends that the Bill provides a framework on how such rights are to be established by the legislation and or on contractual basis with the landowners on community and private lands.
 4. *Minimal bureaucratic procedures and processes for carbon projects* are recommended, considering that there are a number of institutions -Designated National Authority, Climate Directorate and the Cabinet Secretary with various mandates in the regulation of carbon market.
 5. *Review of some unclear definitions* in the Amendment Bill is recommended, including: carbon market, nature-based solutions, and share of proceeds
 6. *Inclusion of definitions of some significant terms used in the scope* of the amendment Bill including: Carbon credit, Community, Impacted Community, market mechanisms, white list, Nationally Determined Contributions (NDCs), Corresponding Adjustments, Jurisdictional Projects, Nesting Framework, Cancellation Rates
 7. *Inclusion of new term in the definition and scope* of the amendment Bill -Carbon right holders
 8. Consideration should be made on the land ownership on which a carbon project is developed, benefit sharing on projects developed on public land should allocate a minimum of 25% of the gross revenue from credit sales to the local communities. Carbon Projects developed on community land to allocate a minimum of 60% of the benefit to the local community to support interventions that sequester carbon and incentivize communities while improving livelihoods

Below are our specific recommendations for consideration;

SPECIFIC RECOMMENDATIONS BY KWCA

Part in the Amendment Bill	Title and Clause in the Amendment Bill	Current Provision in the Amendment Bill	Proposed Recommendations	Justification and Rationale
Amendment of section 7 of No. 11 of 2016	Members of the Council- Clause 6	Section 7 of the principal Act is amended– a (v)by deleting the words “within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge” appearing in paragraph (h)	Substitute Section 7 a(v) of the principal Act with the following new paragraph- a representative of the marginalized community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge	The appointment of the representative of the marginalized community need to be aligned with Article 260 of the Constitution which describes who constitutes the group.
Amendment of section 8 of No. 11 of 2016	Powers and Duties of the Cabinet Secretary - Clause 7	- (bc)approve measurement, reporting and verification of greenhouse gas emissions	Section 8 of the principal Act is amended in subsection (2) by– deleting (bc) and substituting with- examine verification report of eligible mitigation projects developed using eligible methodologies formally recognized and adopted by Kenya on measurement, reporting and verification of greenhouse gas emissions.	The UNFCCC, to which Kenya is a signatory, and standards bodies such as VERRA already provide regulation and procedures for measurements, reporting a verification of carbon credit generation and sales. Requirement for approvals presents risks of over-regulation of the voluntary market. Maintenance of a comprehensive register is recommended to enable oversight
Amendment of section 8	Powers and Duties of the	(bd) authorize the establishment of	Section 8 of the principal Act is amended in subsection (2) by–	The UNFCCC, to which Kenya is a signatory, and standards bodies such as VERRA already

of No. 11 of 2016	Cabinet Secretary - Clause 7	the REDD+ Registry and other sector	substituting with -oversee the establishment of the REDD+ Registry and other sector	provide for establishment of REDD+ registry; It is recommended the Cabinet Secretary role is to oversees the establishment of the registry instead of to ‘authorize’
Part IVA- Regulation of Carbon Markets	Carbon Markets- 23A(d)(ii)	The policy direction on carbon markets shall cover all carbon markets and prescribe— (d) emission credits not taken into account, including— (ii)emission reductions that have been achieved in violation of human rights;	Substitute 23A (d)(ii) with - emission reductions that have been achieved in violation of human rights, indigenous and local community rights ; and without free prior and informed consent (FPIC).	Kenya’s ability to achieve high integrity and value carbon is embedded in aligning with other environmental multilateral agreements to which Kenya is a signatory, including the to the Convention on Biological Diversity (CBD) and UN Declaration on the Rights of Indigenous Peoples
Part IVA- Regulation of Carbon Markets	Principles governing trade in carbon markets- 23B	The trade in carbon market shall be guided by the following principles–	Insert the following new principles 23 B – (a) Eligible mitigation projects for international transfer shall demonstrate environmental integrity, transparency and promote sustainable development (b) Carbon credit market that is of high integrity and high quality (c) Leverage carbon credits to meet the Country’s national determined contribution mitigation commitments	The principles are largely clearly structured as objective rather than guiding standards for Kenya's carbon market.

			<p>(d) Respect and safeguard of social and economic rights of local communities, while promoting access to equitable benefits</p> <p>(e) Mitigate against greenwashing</p> <p>(f) Promoting development of national and local skills and capacities across the carbon market value chain</p> <p>(g) Advance the conservation of the Country’s biodiversity and environment agenda towards enhancing adaptation capacities</p>	
Part IVA- Regulation of Carbon Markets	Environmental Impact Assessment- 23D	23D-1 Requires authorized Carbon trading projects to undergo environmental and social impacts assessment in accordance with the Environmental Management and Coordination Act	Delete 23D-1 (a) The Cabinet secretary shall develop protocols on Environmental and Social impacts assessment for carbon projects	Conducting of Environmental and social impact assessments under EMCA require a new methodology and set of skills to ensure the provision does not disincentivize
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(1) Project anticipated environmental, economic or social benefits - the environmental benefits shall include— (b)	Insert the following new paragraph (1) (ba) tax rebates to promote development of carbon projects,	Clarity on the nature of incentives to be provided to promote development of carbon sinks in the different sectors and to attract project development is recommended. Among incentives include tax incentives for development of carbon projects,

		incentives that promote offset projects;		
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(3) Project undertaken pursuant to this Act be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the project with impacted communities	Substitute 23E 3 with the following- Every project undertaken pursuant to this Act shall be implemented through a community development agreement which shall outline the relationships and obligations of the proponents of the project <i>with the community whose land the project is under development and or community that has an impact or impacted by the existence of the project.</i>	<p>The term ‘impacted community’ is wide and could be interpreted widely and vaguely.</p> <p>It is recommended that the community development agreement is developed with the community who owns the land within which the project is developed.</p> <p>In the instance that project is not within a community land but is within an area to which it has direct impact to communities or communities affect the existence or continuity of project, then the agreement is entered with such community</p>
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	(4) The National Government and the respective county government where the project is situated shall oversee and monitor the negotiation of the community development agreements with	Substitute 23E(4) with the following- The respective county government where the project is situated shall oversee and monitor the negotiation of the community development agreements between the community and with project proponents and stakeholders.	<ul style="list-style-type: none"> • The Bill is unclear on the specific institution at which the national and county governments are responsible to oversee and monitor negotiation of community development agreements. • Vesting these roles on the two levels of government presents a risk of overlap in implementation of the mandate. <p>Separation of the roles, where the national government provides the policy framework and guidelines for the agreement as provided in 23(9), while the County governments oversee</p>

		project proponents and the stakeholders.		and monitor the agreements development and implementation.
Part IVA- Regulation of Carbon Markets	Provision of Social and Environmental benefits- 23E	<p>(5) A community development agreement shall provide—</p> <p>(b)provision of an annual social contribution of at least twenty five percent (25%) of the aggregate earnings of the previous year to the community, to be managed and disbursed for the benefit of the community</p>	<p>I. Substitute 23E 5 (b) with the following -</p> <p>(b) Provision of annual social contribution of at least twenty five (25%) of the gross revenue from credit sales of a given credit issuance, to be disbursed to the community for implementation of identified community development initiatives</p> <p>II. Insert the following new paragraph immediately after 23 E5(b)</p> <p>ba- A further forty five percent (45%) of gross revenue of a given credit issuance to be disbursed for community payment. and reinvested in interventions that sequester Carbon and improve ecosystem health.</p> <p>III. Insert the following new paragraph immediately after 23 E 10-</p> <p>The Cabinet Secretary may develop model community</p>	<ul style="list-style-type: none"> • There is no guide as to a minimum on economic benefits accruing to a community which has rights to land and the carbon related rights which are subject of the carbon project. The benefit provided of at least 25% is a social benefit, alone will not incentivize interventions to sequester carbon • KWCA recommends that minimum monetary benefit of 45% of gross revenue for the community which will enhance livelihoods and promote conservation of environment and biodiversity in the long-term. • Further, benefit sharing should be determined based on credit issuance, and not previous years' revenue. A previous year approach fails to take into consideration carbon credit vintage years, vesting systems, and other complexities of carbon markets • A gross revenue share formula is recommended to promote equity and transparency in the carbon market while mitigating against manipulation by project developers, through the net formula and other complexities of carbon markets.

			agreements model to guide communities on basic terms for negotiations in development of the agreements	<ul style="list-style-type: none"> It is recommended that a community development agreement model is developed to inform communities on the bare minimum terms of agreement.
Part IVA- Regulation of Carbon Markets	Dispute Resolution-23	I. Any dispute arising under this part shall be referred to the Principal Secretary responsible for climate change matters	<p>1. Substitute 23 I (1)with the new paragraph- Parties to dispute, shall make provision for determination of dispute through mediation and arbitration at first instance.</p> <p>IV. Substitute 23 I (2)with the following new paragraph- The Environment and Land Court shall have original and appellate jurisdiction over all matters arising under this Part.</p>	The scope of carbon disputes are technical and complex. Referring the disputes to the Principal secretary may delay justice and cause time consuming work to the office of the Principal secretary.

Yours Sincerely,



Dickson Ole Kaelo
Chief Executive Officer