

SPECIAL ISSUE

Kenya Gazette Supplement No. 11 (Tana River County Acts No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TANA RIVER COUNTY ACTS, 2024

NAIROBI, 18th July, 2025

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**TANA RIVER COUNTY WATER AND SEWERAGE SERVICES
ACT, 2024**

No. 3 of 2024

Date of Assent: 12th September, 2025

Commencement Date: See Section 1

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**THE TANA RIVER COUNTY WATER AND SEWERAGE
SERVICES ACT, 2024**

AN ACT of the County Assembly of Tana River to provide for the legal and institutional framework for provision of Water, Sanitation and Sewerage Services in the County and connected purposes

ENACTED by the County Assembly of Tana River as follows —

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Tana River County Water and Sewerage Services Act, 2024.

Interpretation

2. In this Act unless the context otherwise requires —

“Chief Officer” means the Chief Officer responsible for matters relating to water;

“County” means the Tana River County;

“County Assembly” means the County Assembly of Tana River;

“County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to water;

“Community water service” means water services provided by a community association on a self-help basis;

“County water services provider” means a water services provider established by the County Government as a County Government entity for the provision of water services within the County;

“Effluent” means water that has been used and is not yet treated;

“Gazette” means the *Kenya Gazette* or County Gazette;

“Governor” means the Tana River County Governor elected in accordance with the provisions of Article 180 of the Constitution of Kenya, 2010;

“Illegal connection” means a water system connected to a water network that has not been duly authorized and/or connected by a County Water Service Provider or its authorized agent;

“*lagga*” means seasonal rivers within the jurisdiction of this Act;

“licensee” means any person who has been issued with a license under this Act;

“limits of supply” in relation to a water services provider means the limits within which a County

“*Malka*” means a watering corridor to river Tana used by the pastoral communities to access water;

“Person” includes an individual, a company, association or other body of persons whether incorporated or unincorporated;

“Pollution” in relation to a water resource, means any direct, or indirect alteration of physical, thermal, chemical or biological properties of the water resource so as to make it-

- (a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or
- (b) harmful or potentially harmful to—
 - (i) the welfare, health or safety of human beings;
 - (ii) any aquatic or non-aquatic life - or property; or
 - (iii) the environment.

“Public officer” means a person serving as a public officer in the County Government of Tana River or any of its agencies;

“Riparian land” is defined as a minimum of six meters or equal to the full width of water course up to a maximum of thirty meters on either side of the bank;

“Rural” means an area that may be designated by the County Government as rural under the Urban Areas and Cities Act, 2019;

“Rural Water Service Provider”, means service providers in rural areas as defined by this Act;

“Sanitation” means treatment and or final disposal of wastewater on site through latrines, septic tanks, conservancy tanks, soak away pits, exhauster services and similar systems but does not include sewerage services;

“Sewerage services” means the provision of a piped network for the transport and or movement of wastewater for treatment and or final disposal off site;

“Tana River Rural Water Board” means the Tana River Rural Water Board established under the Tana River County Water and Sanitation Act, 2016;

“Urban Areas” has the same meaning as assigned to it under the Urban Areas and Cities Act, 2011;

“vandalism” means willful or malicious destruction of infrastructure of a facility of water, sanitation and sewerage;

“Water catchment” means an area of land that water can drain across, over, or under to a common point on a stream, river, lake or wetland;

“water course” means any natural channel or depression in which water flows regularly or intermittently;

“Water Resource Authority” means the authority established under this act;

“Water Resources User Association” means a community-based organization for collaborative management of water resources and resolution of conflict concerning use of water resources;

“Water services” means the provision of water and or sewerage services for domestic, commercial, industrial, agricultural or other purpose and includes the supply of water for multiple uses;

“water services provider” means a company, non-governmental organization or other person or body licensed to provide water services under and in accordance with an agreement;

“water service regulatory board” means the water service regulatory board established by section 70 of the Water Act, 2016;

“water works” means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilization of water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed under this Act.

Objects and purposes of this Act

3. (1) This Act shall apply to the development and sustainable management of water and sewerage services in Tana River County.

(2) The Act gives effect to the Constitution, national laws as regard to provision of water and sewerage services in Tana River County.

(3) To provide for institutional framework for water and sewerage services in Tana River County.

(4) The rights conferred and duties imposed by this Act are in addition to those conferred and imposed by any other law.

Guiding Principles and Values

4. The County Executive Committee Member and any person administering or applying this Act shall be guided by the principles and values of the Constitution set out herein—

- (a) National values and principles of governance in Articles 10;
- (b) The right of every person to clean and safe water in adequate quantities in Article 43 (1) (d); and
- (c) The values and principles of public service in Article 232.

PART II—ADMINISTRATION OF WATER AND SEWERAGE SERVICES

Ownership of water resources

5. Every water resource is vested in and held by the National Government in trust of the County Government for the people of Kenya.

Powers and Duties of County Executive Committee Member

6. (1) Subject to the provisions of this Act, the County Executive Committee Member shall exercise control and oversight over the development and provision of water and sewerage services within the County.

(2) Without prejudice to the generality of the foregoing, the County Executive Committee Member shall have responsibility to—

- (a) formulate and periodically review County policies, strategies and plans for the development and provision of water services;
- (b) formulate and review periodically strategies and plans for implementation of water resource standards and catchment protection in Tana River County;
- (c) on behalf of the County Government put in place and maintain measures and arrangements to implement and give effect to the Constitution and national laws on the provision of water and sewerage services;
- (d) co-ordinate and oversee the development and provision of water and sewerage services within the County in accordance with the County Water Master Plan, long term Strategic Plan aligned to the County Integrated Development plan (CIDP) and the County Investment Plan aligned to the County Annual Development Plan; mobilize financial and other resources for the provision of water, sanitation and sewerage services; and

- (e) prepare and submit a report to the County Assembly annually, and from time to time as may be necessary, on the state of water and sewerage services in the County.

(3) In the performance of these functions and duties under this Act the County Executive Committee Member shall—

- (a) consult and coordinate with departments, agencies and entities of the National and other County Government whose functions affect the development and provision of water and sewerage services in the County; and
- (b) consult with relevant stakeholders including non-governmental organizations, Community Based Organizations, Civil Society Organizations, the private sector and consumer groups.

(4) In the discharge of duties and functions under this Act, the County Executive Committee Member shall be responsible for co-ordination of the Department of Water and Sewerage Services.

County Water and Sewerage Services Strategy

7. (1) The County Executive Committee Member shall, within one year (1) of commencement of this Act, following public participation, formulate County water and sewerage services strategy.

(2) The County Water and Sewerage Services Strategy shall provide—

- (a) information on areas within the County in which access to basic water and sewerage services is inadequate;
- (b) plans and measures for the development and continuous improvement of water and sewerage services within the County;
- (c) an investment program and timeframe for the development, expansion and improvement of water and sewerage services in the County;
- (d) improvement of access to basic water services within the rural areas and underserved urban areas;
- (e) measures to facilitate the provision of water and sewerage services by private sector County Water Service Providers and community County Water Service Providers; and
- (f) criteria and procedures for the provision by the County Government of financial, technical and other assistance to private sector County Water Service Providers and community County Water Service Providers.

(3) Strategy shall be published in the *Kenya Gazette*.

(4) The County Water Services Strategy shall be reviewed periodically and, in any case, not later than every three years.

(5) Every County public officer shall give effect to the gazette County water and sewerage services strategy in the discharge of duties under this Act.

(6) Every water service provider and any other relevant stakeholders shall take into account the County water and sewerage services strategy in their plans and programmes.

PART III—ESTABLISHMENT AND OPERATIONIZATION OF WATER SERVICES PROVIDERS

Establishment of County Water Services Provider(s)

8. (1) There shall be County water and sewerage services providers, which shall be registered as limited companies by share capital or be formed by notice in Gazette following a resolution of the County Assembly as the case maybe.

(2) The corporation(s) shall be a successor to the Tana River Water and Sanitation Services Company (TAWASCO).

Powers of the County Water Service Provider(s)

9. (1) A County water services provider established under this Act shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of;

(2) suing and being sued;

(3) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;

(4) borrowing money with consultation from the relevant County Executive Committee Member and approval from the County Executive Committee Member in charge of financial services;

(5) entering into contracts; and

(6) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(7) The County Executive Committee Member shall assign to each County water services provider established under this Act a water supply area which may cover the whole or a portion of the area of geographical

jurisdiction of the County Government, and which supply area will ensure the County Water Service Provider is commercially viable.

(8) In determining the area of supply of a County water services provider the County Executive Committee member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers.

(9) On the establishment of a County water services provider the assets, facilities and other infrastructure used for the provision of water and sewerage services within the water services provider's water supply area which belong to the County government shall be transferred to the water services provider.

(10) Where the assets for the provision of water services in the supply area belong to a community water services provider the county water services provider may enter into an agreement with the community water services provider for the use and or acquisition of the assets the terms of which may provide that the community water services provider continues to provide water services as an agent of the county water services provider.

Functions of a County Water Services Provider

10. (1) A County Water Services Provider established under this Act shall be responsible for the economic and efficient provision of water, sanitation and sewerage services, and for development and management of the related infrastructure and facilities, within its water supply area.

(2) A County Water Services Provider shall have the exclusive right to provide water services within its area of supply.

(3) The performance by a County Water Services provider of the functions set out in this Act shall be subject to the requirement to obtain and maintain a license issued by the Water Services Regulatory Board under the Water Act, 2016.

(4) A County Water Services provider established under the Act may, with the approval of the County Executive Committee Member, contract out the whole or aspects of its functions to a private water services provider, a community water services provider or another County entity which has the requisite capacity to provide water services.

Establishment of the Board of Directors

11. (1) There shall be a Board of Directors which will be responsible for governance of a County Water Service Provider.

(2) The management of a County water services provider shall vest in the Board of Directors and it shall adhere to the governance standards set by the Regulator in performance of its function.

(3) The Board of Directors shall carry out its function on such terms and conditions as shall be set by the Tana River County Public Service Board in consultation with the management of the Regional Water Works Development Agency.

(4) The Board of the Corporation shall consist of—

(5) a non-executive Chairperson appointed by the Governor with the approval of the County Assembly—

- (a) the Chief Officer for the time being responsible for water;
- (b) the Chief Officer for the time being responsible for finance;
- (c) five persons nominated by water user associations one from each Sub-County and appointed by the County Executive Committee Member through a competitive process; and
- (d) three persons recruited by the County Executive Committee Member through a competitive process by virtue of their knowledge, expertise and experience in water and sewerage management matters with the approval of the County Assembly.

(6) membership of the board shall be in compliance with the two thirds gender rule.

The Governance of County Urban Water Service Providers

12. The rules and procedures of the County Government on the appointment, composition and qualifications of members of the Board of Directors of a County water services provider shall be in conformity with the standards and guidelines prescribed by the Water Services Regulatory Board.

Removal from office

13. A member of the Board of Directors may—

- (a) at any time resign from office by issuing a notice in writing to the Managing Director;
- (b) be removed from office for—
 - (a) serious violation of the Constitution or any other written law;
 - (b) gross misconduct, whether in the performance of the functions of the office or otherwise;

- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

Term of office

14. Any member of the Board, other than an *ex-officio* member shall hold office for a term of three (3) years, and shall be eligible for re-appointment for a further and final term of three (3) years.

Managing Director and other employees of County Water Services Providers

15. (1) A County Water Services Provider shall have a Managing Director who shall be competitively recruited by the County Public Service Board.

(2) The Managing Director shall hold office for a period of three (3) years, on such terms and conditions of employment as the County Public Service Board may determine, and shall be eligible for re-appointment for a further and final term of three (3) years.

(3) The Managing Director shall, in accordance with this Act, and under the general direction of the County Public Service Board, be responsible for the daily management and performance of the functions and duties of the County Water Services Provider(s).

(4) The Managing Director shall be an *ex officio* member of the board of directors.

(5) To qualify for appointment as a Managing Director, a person must—

- (i) possess a relevant degree from a recognized university;
- (ii) have experience in management of public/private entities for a period of not less than seven years; and
- (iii) meet the requirements of Chapter six of the Constitution of Kenya, 2010.

(6) A County Water Services Provider through its Board of Directors may engage such employees as it may consider sufficient for the performance of its functions under this Act on such terms and conditions of service as the Board may approve.

(7) A person employed by a County Water Services Provider shall be a public officer and subject to the laws governing the conduct of public officers.

Performance Agreement

16. (1) A County Water Service Provider shall enter into a performance agreement with the County Government for purposes of exercise and performance of all its powers and functions under the license.

(2) The performance agreement shall specify the targets to be achieved under the license issued to the County Water Service Provider.

(3) The performance agreement may also make provisions with respect to—

- (i) the indemnity by the County Water Service Provider of any liability to the County Government arising from performance or non-performance of functions conferred by the license; and
- (ii) the maintenance, rehabilitation and development by the County Water Service Provider of water, sanitation and sewerage infrastructure and facilities in the county.

Application for a license

17. (1) An application for grant of a license shall—

- (a) be done in consultation with the County Executive Committee Member in charge of water in the county;
- (b) be lodged with the Water Services Regulatory Board;
- (c) be in the prescribed form;
- (d) contain such information and be accompanied by such documents as are required by the prescribed form;
- (e) be signed in a manner specified in the prescribed form; and
- (f) be accompanied by the prescribed application fee.

Grant of license

18. An application shall not be granted unless the Water Services Regulatory Board is satisfied that—

- (a) the applicant has the requisite technical and financial competence to provide the services to which the license relates;
- (b) the applicant has demonstrated that the water services to be provided will be commercially viable;
- (c) the applicant has presented a sound plan for the provision of an efficient, affordable and sustainable water services;

- (d) the applicant has proposed satisfactory performance targets and planned the applicant or any water services provider by whom the functions authorized by the license are to be performed, will provide the water services authorized by the license on a commercial basis and in accordance with sound business principles and practices;
- (e) water services authorized by the license are to be provided by a water services provider which conducts some other business or performs other functions not authorized by the license, the supply of those services will be undertaken, managed and accounted for as a separate business enterprise; and
- (f) the applicant has met any other requirements which the Water Services Regulatory Board and the County Government may consider necessary for the efficient provision of the services to be provided under the license.

Determination of an application

19. (1) An application for a license shall be, subject of public consultation.

(2) Any person opposed to the grant of license may object in writing to the Water Services Regulatory Board and the County Executive Committee Member in charge.

(3) The County Executive Committee Member, in consultation with the Water Services Regulatory Board shall notify the applicant and any objector of its decision and, in the event of the rejection of an application or objection, as the case may be, of the reasons thereof, and an applicant or objector may, if aggrieved by the decision within thirty days after the date of the notification, appeal to the national Water Tribunal as per the provisions of the Water Act, 2016.

Duty of a County Water Service Provider

20. (1) A water services provider shall, as a licensee, have a duty to provide efficient and economical water services.

(2) For the purpose of the provision of water services, a water services provider, may

- (b) purchase, lease or otherwise acquire premises, plant, equipment and facilities;
- (c) purchase, lease or otherwise acquire land, or request for its compulsory acquisition in consultation with County Government.

(3) As part of its duty, a water services provider shall establish a mechanism for handling consumer complaints, which meets the standard set by the Water Services Regulatory Board.

Easements and access rights

21. (1) The acquisition of easements for purposes of water services infrastructure shall follow the procedure set out in this Act, Water Act 2016 and any other relevant law.

(2) The County Executive Committee Member shall ensure that if a water services provider acquires easements, access rights and or property rights over land on or over which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and it has in its custody the relevant title documents.

(3) The water services provider shall take steps to obtain and maintain in its records “as built” drawings of its facilities and infrastructure, reference maps and plans and other relevant documents which show the location and layout of the water infrastructure.

(4) The County Executive Committee Member shall prescribe rules for protecting access rights to point water sources enjoyed by community members on traditional or other non-statutory basis.

Raw water abstraction permits and access rights

22. (1) The County water services provider(s) shall ensure the availability and development of sources of water for abstraction as necessary to supply adequate quantities and quality of water to its consumers.

(2) A water services provider shall apply for and secure an abstraction permit from the relevant national Regulatory authority and the County Government, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions.

(3) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the support of the County Executive Committee Member, make arrangements for the purchase of water in bulk.

(4) Where the pastoral communities, in the event of severe drought doesn't have water in the hinterland, the County Executive Committee Member shall designate possibly the existing *malkas* as watering corridors to promote resilience for the communities

Special provision with respect to unviable commercial areas

23. (1) It shall be the responsibility of the County Government to put in place measures for the provision of water services to rural areas which are unviable for the provision of water services on a commercial basis.

(5) The measures taken by the County Government shall include developing point sources, small scale piped systems and stand pipes which meet the standard set by the national Water Services Regulatory Board and which may be managed by the community associations, nongovernmental organizations or by a private person under a contract with the County government.

(6) In order to implement its obligation under this section the County Government shall formulate a periodical development plan to be determined by the Board incorporating an investment and financing plan for the provision of water services in unviable rural areas within its area of jurisdiction.

Establishment of the Tana River Rural Water Services Board

24. (1) The County Executive Committee Member shall establish the Tana River Rural Water Services Board and forward to the County Assembly for approval.

(2) The Board shall be under the Department responsible for Water and Sewerage services.

Constitution of the Board

25. (1) The Tana River Rural Water Services Board shall consist of the following members—

- (a) the Chairperson appointed by the County Executive Committee Member and forward to the County Assembly for approval;
- (b) the Chief Officer responsible for water;
- (c) the Chief Officer responsible for finance;
- (d) six Sub County Stakeholder representatives elected from Rural Water Supply Schemes with a minimum qualification of a diploma;
- (e) two persons with relevant skills and experience in water to represent People with disabilities and the youth.

(7) The County Executive Committee Member shall ensure that not more than two thirds of the members of the board are of the same gender.

Terms of Office

26. (1) The chairperson and members of the Board shall be appointed for a term of three years.

(2) The chairperson and members of shall serve on part time basis.

(3) The Board members shall be eligible for re-appointment only once.

(4) qualifications of the Chairperson shall be as follows—

(a) possess a degree from a recognized university;

(b) have experience in management of public/private entities for a period of not less than five (5) years; and

(c) meet the requirements of Chapter Six of the Constitution of Kenya, 2010.

Powers of the Board

27. The Board shall have the powers and functions necessary for the performance of its functions under this Act, and in particular, the Board shall have powers to—

(a) oversee the running and management of all rural water services providers;

(b) enter into service agreements with rural water services providers on behalf of the County Government;

(c) evaluate, monitor and report to County Executive Committee Member on matters relating to rural water services provision;

(d) shall set up a criteria for engagement with the rural Water services Providers which includes: standards, quality, technical and financial capability as set by the Regulatory Board;

(e) harness community water services providers within the County towards a harmonized goal of water service provision; and

(f) the Board may, on behalf of County Executive Committee Member serve as a County Water Service Provider in circumstance prevailing and necessitating such actions as may be needed for the attainment of water services to the community.

Remuneration of the board

28. The remuneration of the members of the Services Board shall be as determined by the County Public Service Board on the advice of the Salaries and Remuneration Commission.

Officers of the services board

29. The County Executive Committee member may designate such officers as are necessary for proper discharge of the functions of the Services Board.

Protection from personal responsibility

30. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Services Board under this Act, render the member, officer, staff or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done bona fide be paid out of the funds of the Board.

Functions of Tana River Rural Water Board

31. (1) The Board on behalf of the County Government shall enter into a legal framework with Rural Water Services Provider(s) in the County.

(2) The functions of the Board are—

- (a) facilitate development of point sources, small scale piped systems and stand pipes which meet the standards;
- (b) formulate and submit to the County Executive Committee Member, a three-year development plan incorporating an investment and financing plan for the provision of water services in the rural areas;
- (c) facilitate Development, maintenance and update an inventory of all existing rural water schemes assets;
- (d) co-ordinate rural water supply investments and identify gaps;
- (e) facilitate capacity building of the rural water supply operators and human resource;
- (f) Co-ordinate Non-Governmental organization or other person or body providing water services in the rural areas;
- (g) The Board shall provide technical, financial and other assistance to Rural County Water Service Providers;

- (h) Oversee and manage elections of the various community water schemes in consultations with the County Executive Committee Member;
- (i) Organize stakeholder forums for rural water supply actors and providers;
- (j) The Board shall prepare budgets for water conservation activities rehabilitation, construction, water quality assessment and extension within the rural sector each financial year in line with community needs and County Development Plans; and
- (k) Source for funds for their operations and water infrastructure development.

Managing Director

32. (1) There shall be a Managing Director of the Rural Water Service(s) Board.

(2) The Managing Director shall be recruited through a competitive process by the County Public Service Board.

(3) To be eligible for appointment as a Managing Director, a person must—

- (a) possess a degree in the relevant field from a recognized university;
- (b) have experience in management of public or private entities for a period of not less than five (5) years; and
- (c) meet the requirements of chapter six of the constitution of Kenya 2010.

(4) The Managing Director shall be an *ex-officio* member and the secretary of the Board and shall have no right to vote at any meeting of the Board.

(5) The Managing Director shall—

- (a) be responsible for the day-to-day management and direction of the affairs and transactions of the Board;
- (b) carry out any other function as may be assigned by the Board from time to time.

Community Water projects

33. (1) All Rural Community Water Projects or rural water service providers shall be registered with the Board.

(2) Community Water projects shall prepare budgets for water conservation activities rehabilitation, construction and extension within their jurisdiction each financial year and submit to the Board.

(3) The County Executive Committee Member shall provide funding for the conservation activities, rehabilitation, construction and extension from funds allocated to the department by the County Government.

(4) The Community Water Projects shall be subject to Audit annually supervised by the Board.

Accounts and audit

34. The Tana River County Rural Water Services Board shall—

- (a) prepare accounts for each Financial Year;
- (b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor General;
- (c) present the financial statements to the County Assembly upon approval by the County Executive Committee Member; and
- (d) perform any other duty in fulfillment of the provisions of Section 116 of the Public Finance Management Act, 2012.

Clustering of areas of water services provider

35. (1) The County Government of Tana River may, in consultation with the Regulatory Board and the County Assembly or any other County Government—

- (a) permit the joint provision by two or more licensees of water services on such terms as it may approve; or
- (b) Permit the transfer of a water service, or part thereof, of one licensee to another licensee.

(5) A licensee aggrieved by the provisions of the order may appeal to the national water tribunal.

Variation of areas of service

36. The County Executive Committee Member upon the advice and recommendation of the Regulatory Board and the County Assembly may vary the areas of water service prescribed by one or more of service licenses in concurrence with the Regulatory Board.

Default by Licensee

37. (1) If, following a complaint made to or information received by the County Executive Committee Member, a licensee appears to the Board, and such a licensee—

- (a) has failed to discharge any duty imposed upon him by a license or otherwise under this Act; or
- (b) has failed to give adequate supply of water, in respect either quantity or quality to any area or any person which it is supplying, or has failed to give any supply which he is lawfully required to give; or
- (c) having been notified by the County Executive Committee Member to take such steps as are reasonably practicable in order to remedy any such failure as is mentioned in paragraph (a) or and has failed to do so, the County Executive Committee Member may inquire into the matter.

(2) If, after inquiry, the County Executive Committee Member is satisfied that there has been any such failure on the part of the licensee in question, it may impose a special Regulatory regime on the water services provider for the purpose of remedying the default.

(3) A licensee declared to be in default who is dissatisfied with an order of the County Executive Committee Member under this section may, within thirty days after receipt of the order, may appeal to the water appeal tribunal.

(4) A licensee declared to be in default by order under this section who fails to comply with any requirement of the order within the time specified for compliance with the requirement shall be guilty of an offence.

Transfer of functions by the licensee

38. (1) If the County Executive Committee Member in consultation with the Regulatory Board is satisfied that, notwithstanding the imposition of measures under a special Regulatory Board, the default has not been remedied and is not likely to be remedied by the licensee, it shall, by notice in the Gazette, order the transfer to another licensee of the water services in question.

(2) The order of transfer shall make such provision as appears to the County Executive Committee Member to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

Agreements to protect sources of water

39. (1) A County Water Service Provider may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the licensee considers necessary or as the conditions of his or her licence may require for the purpose of protecting the catchment areas, drainage of land, carrying out soil conservation measures or the control of vegetation or more effectively collecting, conveying or preserving the purity and quantity of water which the County Water Service Provider is for the time being authorized to take.

(2) An agreement under this section may be registered against any land of the person with whom it is made, and shall be binding upon and enforceable against such land or such person or his/her successor in title.

Power of County Water Service Provider to restrict use of water

40. (1) A County Water Service Provider who is of the opinion that there is a serious deficiency of water available for distribution or that such a deficiency is threatened may, with the consultation of the County Executive Committee Member, for such period as he thinks necessary prohibit or restrict as respects the whole or any part of its limits of supply, - the use for any specified purpose of water supplied by him/her.

(2) Before any such prohibition or restriction comes into force, public notice shall be given by the County Water Service Provider in the local media.

(3) Rules and Regulations made under this Act may provide that any person who while such prohibition or restriction is in force contravenes its provisions shall be guilty of an offence and liable on conviction to a penalty fixed by Regulation.

Execution of works for water protection

41. (1) A County Water Service Provider may, on any land belonging to it or in which it has acquired any necessary easement or protection right, construct and maintain drains, sewers and other works for intercepting, treating or disposing - of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the licensee, or which it is for time being authorized to take, from being polluted: Provided that before constructing any works the County Water Service Provider, if the proposed works will affect or be likely to affect any water resource, shall obtain the consent from the Water Resources Authority.

(2) Any County Water Service Provider proposing to construct any such drain, sewer or other works may, with the consent of the state organ concerned and subject to such conditions as the state organ may impose, carry, the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the area of water service of the County Water Service Provider.

(3) A consent required under subsection (2) shall not be unreasonably withheld, nor shall any unreasonable condition be attached to such consent, and any question arising from the operation of this subsection shall be decided by consultation between the state organs concerned.

Directorate of Water and Sewerage Services

42. There is established the Directorate of Water and Sewerage Services which shall be an office in the county public service.

Functions of the Directorate

43. The Directorate shall be responsible for—

- (a) developing water and sewerage services infrastructure, including water works and public works that may be used by the Corporation;
- (b) in collaboration with other national or county government(s) departments, initiating, developing, co-ordinating and managing policies, strategies and plans for water resources management and sewerage services;
- (c) developing and managing works for water conservation;
- (d) facilitating public awareness and participation on sustainable water resources, sewerage and storm water management;
- (e) promoting and facilitating adoption and use of water conservation systems and methods, including water harvesting;
- (f) in collaboration with other agencies, develop and manage public infrastructure for storm water management;
- (g) develop and co-ordinate implementation of water and sewerage services management information system;
- (h) mobilizing resources from water resources management and development and sewerage services;
- (i) developing performance management system and overseeing its implementation by the agencies established under this Act;

- (j) monitoring and evaluating the implementation of this Act and the water sector;
- (k) conducting and facilitating research and appropriate surveys for water resources management and facilitating dissemination and implementation of research findings;
- (l) acting as the repository of information and data on water sector; and
- (m) advising the County Executive Committee member on the necessary policy to be adopted for sustainable water resources management.

County Director

44. (1) The directorate shall be headed by a Director who shall be appointed by the County Public Service Board.

(2) To be eligible for appointment as a Director, a person shall—

- (a) be a citizen of Kenya;
- (b) possess a degree in water engineering, civil engineering, water resource management, geology, environment or any other related field from a recognized university;
- (c) have had experience in water resource management for a period of not less than five years; and
- (d) meet the requirements of Chapter Six of the Constitution.

Officers of the Directorate

45. The County Public Service Board shall appoint such number of officers to serve in the Directorate for effective carrying out its functions under this Act.

Reporting

46. (1) The Corporation((s), Services Board and Directorate shall prepare respective annual reports within two months after the end of the financial year in such a form as may be prescribed.

(2) The Directorate shall compile the reports into the county water sector report for submission to the County Executive Committee member for onward transmission to the County Executive Committee and the County Assembly.

(3) The report provided under subsection (2) shall contain among others—

- (a) performance of each institution and Directorate against the established performance targets;
- (b) progress on implementation of specific respective functions assigned under this Act;
- (c) level of public participation and outcome of such participation.

PART IV—SANITATION SERVICES AND POLLUTION CONTROL

Control of Effluent

47.(1) It shall be the duty of a County Water Service Provider receiving effluent into its sewerage system to ensure that it has measures in place for the receipt and handling of the effluent without causing pollution of the environment, harm to human health, damage to the sewerage system.

(2) No person shall discharge any effluent from any premises into the sewers of a County Water Service Provider without the consent of the County Water Service Provider.

(3) An application for consent shall be made to the County Water Service Provider and shall state—

- (a) the nature or composition of the effluent;
- (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge' the effluent; and
- (d) any other information required by the licensee.

(4) The County Water Service Provider's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the licensee of charges for the discharge.

(5) A person who contravenes the provisions of this section shall be guilty of an offence.

(6) the County Government may provide space for Decentralized Treatment Facility (DTF) for effluent disposal.

Water pollution control

48.(1) A person shall not throw or convey, or cause or license to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water

resource in such a manner as to cause, or likely to cause, pollution of the water resource.

(5) A person who contravenes subsection (1) above, commits an offence under this Act.

Sewerage Service Levy

49. (1) The County Executive Committee Member in consultation with the Regulatory Board may, impose a sewerage services levy on all water services providers within the area of water service of a licensee, to cover a reasonable part of the cost of disposing of the water supplied within those limits.

(2) A portion of the levy may, with the approval of the County Executive Committee Member, be set aside by the County Water Service Provider for use in the expansion of the sewerage system within the area of service by the County Water Service Provider.

Supervision Monitoring and Co-ordination of Water Provision

50. (1) The County Government shall in addition to the works done by the County Water Service Providers carry out public works audits within the County for the following purpose—

- (a) the supply, distribution or apportionment of water for use in the County;
- (b) protection of any water resource, its source or catchment in collaboration with relevant bodies for that particular purpose;
- (c) water resource development in form of boreholes, dams among others;
- (d) waste water management;
- (e) water for agriculture and related works in collaboration with the National Irrigation Authority and other relevant bodies;
- (f) construction of water harvesting and storage systems;
- (g) recycling treated effluent water;
- (h) rehabilitation and restoration of water service infrastructure; and
- (i) any other works done in exercise and performance of the mandate of the County Governments stipulated in the fourth Schedule of the Constitution.

(2) The County Executive Committee Member shall in consultation with water service providers develop guidelines to direct and guide water

vendors in the County on water quality management and mode of operations.

(3) The County Executive Committee Member shall in consultation with water service providers and Water Services Regulatory Board implement guidelines for setting water tariffs.

PART V—DEVELOPMENT AND MANAGEMENT OF WATERWORKS IN THE COUNTY

County Water Works Regulation and Management

51. (1) A person who undertakes construction, development and maintenance of waterworks within the County shall obtain requisite licenses and permits in accordance with the Water Act, 2016, this Act and other relevant regulatory provisions.

(2) The County Executive Committee Member shall approve all Water Works in the County in line with sub section 1 above.

(3) A person who undertakes waterworks construction, development and maintenance without approval commits an offence.

(4) The County Executive Committee Member shall take any appropriate action to restrain furtherance of the offence.

Development and Maintenance of County Water Works

52. (1) The County Executive Committee Member shall develop waterworks for water service provision in the County which shall include-

- (a) implementation of development and investment plans for waterworks proposed in the County Development Plans and policy documents;
- (b) designing, documentation, post contracting and project management of County water works;
- (c) providing technical assistance to community-initiated projects, Non- governmental organizations, National Government agencies and any other persons;
- (d) Rehabilitation and maintenance of County owned and operated water works;
- (e) construction of waterworks for domestic, industrial and agricultural purposes;
- (f) any other waterworks development undertaken by the County.

(2) The County Executive Committee Member shall undertake the above works in line with Water Resources Regulations, 2021.

(3) Where an entity not owned by the County Government develops waterworks, the County Executive Committee Member shall oversee such development.

(4) The County Executive Member may hand over completed County water works for water use to the County Water Service Provider or the Tana River Rural Water Board for management.

(5) In case of a damage or destruction from a natural calamity, the County Executive Committee Member shall with the consultation of the County Assembly devise modalities of compensation to affected persons within a reasonable time frame.

Water Works Priority Schedules

53. (1) The County Executive Committee Member shall develop a water works priority schedule for water works development in the County based on County development plans and policies.

(2) The waterworks priority schedule under subsection (1) shall be updated every financial year.

(3) The waterworks priority schedule developed under subsection (1) shall guide the activities of all other agencies undertaking waterworks development in the County.

Compulsory Acquisition of Land

54. (1) The County Government may compulsorily acquire land within its jurisdiction to develop waterworks for public purposes.

(2) The County Government shall abide by the provisions of the Land Act, 2012 in undertaking compulsory acquisition under this section.

(3) Where a person donates land for construction of County water works, the County Executive Committee Member shall ensure that requisite transfer documents are processed before the works commence.

Easement for Water Works

55. (1) The holder of a license under this part which authorizes the construction of water works that would, when constructed, be situated upon lands not held by the license holder shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works unless and until he has acquired such an easement.

(2) The County Executive Committee Member shall ensure that easements held under subsection (1) adhere to the requirements of the Land Act, 2012.

Borehole Site Identification

56. (1) The County Executive Committee Member and other stakeholders shall in consultation with Water Resource Authority undertake borehole site identification in the County.

(2) The County Executive Committee Member shall maintain borehole site identification reports annually and undertake necessary steps to make such reports available to the public.

(3) The borehole site identification report developed under subsection 2 above shall guide borehole drilling activities in the County.

(4) The County Executive Committee Member shall establish a technical committee to monitor compliance with set standards by Water Resource Authority.

Drilling of Boreholes

57.(1) The County Executive Committee Member in consultation with Water Resource Authority shall approve and monitor all borehole drilling activities in the County to ensure compliance with the Water Act, 2016.

(2) A person shall not undertake any borehole drilling activity without a certificate of authorization issued by the Water Resource Authority in accordance with this Act and the Water Act, 2016.

(3) The County Executive Committee Member shall publish borehole drilling data annually.

Monitoring Wells

58. The County Executive Committee Member shall construct wells for the purposes of monitoring ground water levels and water quality where necessary.

PART VI—WATER RESOURCE MANAGEMENT**Rain Water Harvesting and Storage**

59.(1) The County Executive Committee Member shall develop and implement a Rain Water Harvesting and Storage Strategy for the County.

(2) The County Government shall promote roof catchment and water storage systems at households, public Institutions and business premises within the County as it shall be prescribed in the strategy from time to time.

(3) The County Executive Committee Member shall make Regulations on the requirements for rain water harvesting and storage systems in rural and urban areas.

Conservation of Catchment Areas

60. The County Executive Committee Member shall in accordance with the designated catchment areas by the relevant agencies conserve wholly or partly an area from which rainwater flows into a watercourse.

Water Resources Management Strategies

61. (1) Upon the designation of catchment area, the Department shall formulate a County water resources management strategy, which shall be consistent with the National Water Resources Regulations, 2021, in accordance with this Act and the Water Act, 2016

(2) The strategy shall—

- (a) put in place measures to fulfil the water resource quality objectives for each class of water resource in the catchment area;
- (b) describe the measures to be put in place for the sustainable management of water resources of the catchment area;
- (c) Provide a Strategy for financing the water resources sub catchment management Plans.

(3) The County Executive Committee Member may enforce such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area.

Water Resource Users Associations

62. The County Executive Committee Member shall collaborate with Water Resource Authority and contract Water Resource Users Associations as agents to perform some functions in catchment protection and water resource management.

Soil Conservation within Water Catchment Areas

63. The County Executive Committee Member shall, in collaboration with other entities, develop and implement policies and strategies for soil conservation.

Sub Catchment Management Plans

64. (1) Each Sub Catchment, represented by the Water Resources Users Associations shall in consultation with the Water Resource Authority formulate and review a Sub Catchment Management plan which shall—

- (a) provide systems, facilities and incentives to enable users of water resource within the catchment;
- (b) participate in managing the water resources of the catchment area;
- (c) mobilize resources for implementation of the plans.

(2) Each sub catchment water resources management plan in force for the time being shall be published in the Gazette.

Monitoring Implementation of Sub Catchment Management Plan

65. The County Executive Committee Member shall collaborate with the National Water Resources Authority, and the Water Resource Users Association to monitor the implementation of sub-Catchment management plan.

Management of Wetlands

66. The County Executive Committee Member shall develop and gazette wetland management guidelines in consultation with other stakeholders for sustainable management of wetlands.

Demarcation and Pegging of Riparian Land

67. The County Executive Committee Member shall in consultation with Water Resource Authority and other stakeholders enforce the guidelines for demarcation and pegging of riparian lands.

Prohibited activities on riparian land

68. A person shall not carry out any of the following activities on riparian land—

- (a) tillage or cultivation;
- (b) clearing of indigenous trees or vegetation;
- (c) building of permanent structures;
- (d) disposal of any form of waste within the riparian land;
- (e) excavation of soil or development of quarries;
- (f) planting of exotic tree species that may have adverse effect to the water resource or any other activity that in the opinion of the Water Resource Authority or the County Government and any other relevant stakeholder may degrade the water resource; and

Distance for planting of exotic trees

69. The minimum distance for planting of exotic trees in subject is capped at a minimum of 30m from the river banks of the water body.

PART VII—STORM WATER MANAGEMENT**Storm Water Management and Land Use Practices**

70. The County Executive Committee Member shall in collaboration with relevant agencies, stakeholders and residents promote sound water and land use practices.

Provision of Storm Water Infrastructure

71. (1) The County Executive Committee Member may —

- (a) construct, expand, alter, maintain or lay any drains, pipes or other structures related to the storm water systems or under immovable property;
- (b) drain storm water or discharge water from any County public works into any natural water course; and
- (c) do any other thing necessary to give effect to this Act.

(2) Ownership of any drains, pipes or structures related to storm water shall be vested in the County.

Storm water management plan

72. (1) There shall be for each town or urban area, a watershed storm water management plan in accordance with the prescribed standards.

(1) The storm water management plan shall among others —

- (a) Identify, survey and make an inventory of existing conditions that affect storm water runoff; and
- (b) Address issues of peak flows, flooding, ground water recharge, stream erosion and water quality.

(2) A Municipality Manager or an officer responsible for managing an urban area shall ensure that the storm water management plan is developed and implemented through a consultative process.

(3) A person or entity engaged in land development activity, construction of a building or any physical infrastructure that is exposed to water precipitation or an owner of such constructed infrastructure shall develop and implement a storm water management plan on a sub catchment basis in accordance with the prescribed standards.

(4) A person designing or constructing a road shall ensure that there is a built-in storm water management plan and system for that road.

(5) Any construction of a building, physical infrastructure or a road shall not be approved unless the construction has a storm water management plan to be implemented.

(6) A person who contravenes this subsection (5) commits an offence.

Reduction of Surface Runoff

73. A proprietor of a building shall—

- (a) install rain barrels with sufficient capacity to store water from the building;
- (b) where applicable, not permit storm water to become runoff; and
- (c) reuse or recycle storm water collected for other purposes in the premises.

Storm Water Management Plan and Systems

74. (1) The County Executive Committee Member shall develop storm water management systems in urban areas including a storm water management physical plan for urban areas in the County.

(2) A person who unlawfully obstructs or damages a natural storm water course or a storm water management plan developed by the County Executive Committee Member commits an offence under this Act

- (a) is liable, on conviction, to penalties specified under PART X of this Act;
- (b) may be directed by the County Executive Committee Member to remedy such damage or obstruction by any suitable means including pulling down a building or other construction at the persons own cost.

PART VIII—PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships Policy

75. (1) The County Executive Committee Member shall develop a public private partnership policy for the County water sector.

(1) The public private partnership policy may provide for the following—

- (a) projects identified for public private partnerships;

- (b) citizen participation and community involvement in public-private partnerships;
- (c) engagement of the youth and women;
- (d) reporting on public private partnerships in the county; and
- (e) any other issue that is relevant to such public private partnership.

Public Private Partnerships for Water Services

76.(1) Subject to provisions of the Public Private Partnerships Act 2013 and requisite approval of the Water Services Regulatory Board—

(2) The County Water Service Providers may enter into a public private partnership agreement for the exercise and performance of any of its functions in consultation with the County Executive Committee Member.

(2) The County Water Service Providers shall serve as the contracting authority when instituting a public private partnership under this section.

(3) In establishing a public private partnership under this section, the managing Director shall be part of the contract node; subject to the approval of the Board of Directors.

Public Private Partnerships for Water Works

77. Subject to provisions of the Public Private partnerships Act, 2013—

- (a) the County Executive Committee Member may enter into a public private partnership agreement with any person for the development and maintenance of water works in the County;
- (b) the County Executive Committee Member shall serve as the contracting authority when instituting a public private partnership; and
- (c) in establishing a public private partnership under this section, the Chief Officer shall be part of the contract node.

Hire of County Plant and Equipment

78. The County Executive Committee Member in charge of water services may—

- (a) hire out county plant and equipment at prescribed rates for the development of community and household level water infrastructure in line with the Finance Act.
- (b) ensure proper maintenance of Water Department plant and equipment.
- (c) publicize the availability of the County plant and equipment through the multimedia platforms.

PART IX — FINANCIAL PROVISIONS

Financial Year

79. The financial year shall be the period of twelve months ending on the thirtieth June in each year.

Annual Estimates

80.(1) At least three months before the commencement of each financial year, the Corporation shall cause to be prepared annual estimates of the Corporation for that year.

(2) The annual estimates shall make provisions for all estimated expenditure of the

Corporation for the financial year and in particular, the estimates shall provide for the—

- (a) allocations for investments related to the functions of the Corporation;
- (b) recurrent expenditure related to provision of water and sanitation services;
- (c) payment of the salaries, allowances and other charges in respect of the staff of the Corporation;
- (d) payment of allowances and other charges in respect of members of the Board of the Corporation;
- (e) payment of pensions gratuities and other charges in respect of members of the Board of the Corporation and staff of the Corporation;
- (f) proper maintenance of the buildings and grounds of the Corporation;
- (g) maintenance, repair and replacement of the equipment and other property of the Corporation; and

- (h) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board of the corporation may deem appropriate.

(2) The annual estimates shall be approved by the Board of the Corporation before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the County Executive Committee for final approval.

Financial Reports and Audit

81. (1) The County Water Service Provider(s) shall keep proper books of account of their respective income, expenditure, assets and liabilities.

(2) The annual accounts of a County Water Service Provider shall be prepared, reported and audited in accordance with the Public Audit Act 2015.

Funds of the County Water Service Provider(s)

82.(1) The funds and assets of a County Water Service Provider shall consist of—

- (a) such moneys as may be appropriated by the County assembly for the purpose of the Service Provider;
- (b) revenues realized from investments undertaken by the Service Provider (s);
- (c) such gifts, grants or monies received from any lawful source; and
- (d) all monies borrowed from securities market or received as loans to the Service Provider.

(2) A County Water Service Provider shall apply the money provided under this Section for the furtherance of its purpose and performance of the functions of the Service Provider and as prescribed under this Act.

Sustainability of Water Services

83.(1) The pricing of water supply and sewerage services by the County Water Service Providers shall be such as to facilitate the sustainable provision of water supply.

(2) The County Executive Committee Member will undertake a financial needs assessment for all County Water Service Providers and make necessary financial support.

(3) The financial support shall be performance based.

PART X—GENERAL OFFENCES

Staff Impersonation

84. Any person who impersonates as an employee of a water services provider commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding six months, or a fine not less than Thirty Thousand shillings, or both

Vandalism of Water, Sanitation and Sewerage Services Infrastructure

85. Any person who willfully vandalizes, damages, or destroys infrastructure or a facility of a water, sanitation and sewerage services provider commits an offence and shall upon conviction be liable to imprisonment for a term not more than twelve months, or a fine not more than one hundred Thousand Shillings, or both

Illegal Connection to Water Services

86. (1) Any person who illegally connects to, diverts, tampers with measuring devices, lays any pipe and utilizes for any purpose, water and or sewerage services provided by a water services provider shall be guilty of an offence and upon conviction shall be liable to imprisonment for a term not exceeding six months and a fine of not more than fifty thousand shillings or both.

Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider.

Contamination of Water Supply to Domestic Premises

87. (1) Any person who willfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into it or otherwise handles such water in such a manner as to contaminate it shall be guilty of an offence and upon conviction shall be liable to imprisonment for a period of not less than two years or to a fine of not more than five hundred thousand shillings or both.

(2) Any person who supplies or sells water for domestic use which he/she knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and must be treated prior to being consumed is guilty of an offence and liable on conviction to imprisonment of not less than two years or a fine of not less than Five hundred Thousand shillings or both.

(3) In addition to any sentence that the Court may impose upon a polluter under subsection (1) of this Section, the Court may direct that person to—

- (a) pay the full cost of cleaning up the polluted water resource and of removing the pollution;
- (b) clean up the polluted water resource and remove the effects of pollution to the satisfaction of the National Environment and Management Authority.

(3) Without prejudice to the provisions of subsections (1) and (2) of this section, the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution.

Septic Tank Sludge and Onsite Sanitation Management

88.(1) The County Executive Committee member shall as soon as reasonably practicable following coming into effect of this Act, make regulations governing the sustainable management of septic tank sludge, including the licensing of exhauster service providers, and disposal of sludge after collection from septic tanks by exhauster service providers.

(2) Operation and management of onsite sanitation is the responsibility of the owner of the premises.

Offences by Employees

89. (1) The employees of the County Water Service Providers shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties.

(2) Notwithstanding (1) above, any actions of employees of the water service provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under Public Officer Ethics Act, Penal Code, or the Anti-Corruption and Economic Crimes Act or their replacement or amendment.

(2) An employee of a water services provider who willingly fails to—

- (a) read a meter when it is supposed to;
- (b) disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider;
- (c) notify the water services provider of an illegal or unauthorized access and utilization of the water and or sewerage services;
- (d) Commits an offence and shall be upon conviction be liable to imprisonment for not less than six months or fine not less than One hundred thousand shillings or to both.

(3) An employee of a water services provider who colludes with other persons to allow or assist such persons to illegally access and use water services contrary to rules set by a water services provider commits an offence and shall upon conviction be liable to imprisonment for not less than six months or a fine not exceeding fifty thousand shillings, or both.

(4) For purposes of this section, an employee of a water services provider includes a person engaged on casual terms of service, as well as a contractor when performing duties falling within the scope of this section.

Enforcement of Environmental Management and Co-ordination Act

90. The County Executive Committee Member responsible for water shall—

- (a) enforce regulations through polluter pay principle under the Environmental Management and Co-ordination Act and other relevant law; and
- (b) direct treatment of effluent water, re-use or recycle it for irrigation and other purposes in the County;
- (c) and put in place any other lawful measure for control of pollution.

Storm water management

91. A person constructing a road without a built-in storm water management plan and system for that road shall be liable to a fine of not less than five hundred thousand shillings or imprisonment for a term not less than two years.

Reduction of Surface runoff

92. A person who fails to install barrels in buildings, reuse or recycle storm water commits an offence under section 71 and shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one month.

93. Any person who commits an offence against any provision of this Act where no penalty is specifically provided, is liable on upon conviction, to an imprisonment for a term of not more than eighteen months or to a fine of not more than one hundred and fifty thousand shillings or to both such fine and imprisonment.

PART XI—MISCELLANEOUS PROVISIONS

Rain Water Harvesting and Storage

94.(1) The County Executive Committee Member Shall Promote households and public institutions access of at least two 10,000 litres rain water harvesting tanks from certified manufacturers.

(2) The County Executive Committee Member shall undertake a financial needs assessment for the provision and make necessary financial support.

Transition Plan

95.(1) The County Executive Committee Member shall publish a transition plan for county water service provision in the *Gazette* within one year after this Act comes into force.

(2) The plan shall include the following information—

- (a) the criteria for identifying water service provision assets whose ownership belongs to the County and not to individual communities or persons;
- (b) water service provision assets owned by the County, whether utilized by the County or not;
- (c) information on urban and rural areas already being served by a County Water Service Provider;
- (d) procedures for taking over Water Service provision assets owned by the County Government but managed by County Water Service Providers; and
- (e) the dates for effecting management takeover of water service provision systems mentioned in (d) above.

(3) The County Executive Committee Member shall undertake public participation while implementing this provision.

The County Executive Committee Member shall establish and operationalize the Tana River Rural Water Board.

Protection from Liability

96. Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act shall not be subjected to any action, suit, claim or demand whatsoever.

Public Participation

97. Procedures undertaken under this Act that directly affect Community interests shall be subjected to public participation.

(2) The County Executive Committee Member shall put in place proper modalities to ensure adherence to Public Participation Principles as prescribed under section 87 of the County Government Act, (Cap. 265) and County legislation governing public participation.

Inclusion of Special Interest Groups

98. The appointment of persons to serve in any body established under this Act shall take cognizance of regional, ethnic and gender balance including affording equal opportunities to persons with disabilities, youth, marginalized groups, ethnic and other minorities in the County.

The County Executive Committee Member shall take special measures to ensure that vulnerable groups are represented in public participation forums referred to in this Act.

Dispute Resolution Mechanism

99. (1) Any conflict arising from the performance of any function under this Act, shall be resolved through Mediation in the first instance.

(1) The Governor shall in the case of any conflict appoint a mediation Panel of at least three persons, who are not employed by the County Government, to hear and resolve the conflict.

(2) The Mediation Panel appointed in subsection (2) shall comprise of—

- (a) an advocate of the High Court of Kenya who is a certified mediator, who shall be the chairperson of the Mediation panel;
- (b) an official of an Institutional Stakeholder with experience in conflict resolution; and
- (c) a religious leader from the community with a diploma from a recognized Institution in Kenya.

(3) The County Executive Committee Member shall recruit a secretary for the Mediation Panel on a temporary basis.

(4) The Mediation Panel may seek the advice of experts and invite representations from interested parties.

(5) (1) the County Executive Committee Member shall appoint a mediation team at the Ward Level.

(ii) A ward mediation team shall comprise of—

- (a) Ward Administrator who shall be the Chairperson;
- (b) a religious leader;
- (c) the Ward Water Officer who shall be the secretary to the team;
- (d) a representative of the National government at the ward level; and
- (e) a representative of Water Resource User association.

(2) The mediation team shall meet on a need basis and shall be paid allowance for their sitting at rate determined by the County Executive Committee Member in consultation with Salaries and Remuneration Commission.

Procedure for Resolving Conflicts

100. (1) When a conflict arises, the representatives of the persons affected shall lodge the conflict with the County Secretary in writing, enlisting aggrieved persons accompanied with their signatures and national identification numbers.

(2) The County Secretary shall forward the conflict to the Governor who shall constitute a Mediation panel within 4 weeks.

(3) The County Secretary shall organize a sitting venue for the panel in place that is convenient for the persons making the complaint to appear with due regard to the security and facilities required by the Mediation Panel.

(4) The Mediation Panel shall convene its sitting and listen to the submissions of the person making the complaint, any expert opinions and interested parties in a period of four weeks

(5) The Mediation panel shall then prepare a report of its findings and recommendations and present it to the Governor for adoption.

(6) The decision of the Mediation panel shall be guided by the Constitution of Kenya, the provisions of this Act and any other relevant law.

Finances of the Mediation Panel

101. The County Executive Committee Member in charge of finance in consultation with Salaries and remuneration commission shall issue guidelines prescribing the allowances payable to members of the Mediation Panel.

Regulations

102. (1) The County Executive Committee Member may, within ninety days after the commencement of this Act, in consultation with the directorate and the institutions established under this Act, make regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may—

- (a) prescribe guidelines for sanitation systems and standards;
- (b) prescribe guidelines for administering the Fund;
- (c) prescribe the procedure of nominating persons representatives of water users to the boards;
- (d) prescribe guidelines for developing watershed storm management plans;
- (e) prescribe for the areas declared as water protected areas;
- (f) prescribe the rules for conflict resolution;
- (g) prescribe the list of water sector stakeholders;
- (h) issuance and cancellation of permits under this Act;
- (i) guidelines for county water service providers and rural water service providers;
- (j) community water projects;
- (k) institutional stakeholders
- (l) development and management of water supplies, sanitation and sewerage systems;
- (m) water works development;
- (n) water vendors;
- (o) wetlands; and
- (p) onsite sanitation.

Repeals, Savings and Transitional Provisions

103. (1) The Tana River County Water and Sanitation Act of 2016 is repealed.

(2) Notwithstanding the repeal effected by this section —

(a) the Tana River Water Services Board, the Tana River Water Services Corporation, a water services board or a water services provider and any other body established under an enactment repealed by this section shall be deemed to continue in being; and

(b) any person or body performing any functions under the Tana River County Water and Sanitation Act, 2016 shall continue to do so, and in so doing may exercise any power vested in that person or body with respect to the performance of those functions, until the County Executive Committee Member, by notice in the *Gazette* revokes this subsection in full or in part as may be necessary.

SCHEDULE**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF BOARD OF CORPORATIONS AND SERVICES
BOARD****Terms of Office**

1. Any member of a Board, other than an *ex officio* member shall, subject to the provisions of this Act, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for a further and final term of three years.

Vacation of Office

2. A member of a Board may—

- (a) at any time resign from office by notice in writing to the appointing authority;
- (b) be removed from office by the appointing authority if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board; or fails to comply with the provisions of this Act relating to disclosure.

Meetings

3. (1) A Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), a chairperson may, and upon requisition in writing by simple majority shall, convene a special meeting of a Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of a Board otherwise agree, at least fourteen days written notice of every meeting of a Board shall be given to every member of a Board.

(4) The quorum for the conduct of the business of a Board shall be five members including the chairperson or the person presiding.

(5) A chairperson shall preside at every meeting of a Board at which he or she is present but, in his or her absence, the members present shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before a Board shall be by a majority of votes, the chairperson or the person presiding shall have a casting vote.

Subject to subparagraph (4), no proceedings of a Board shall be invalid by reason only of a vacancy among the members thereof.

Conflict of interest

4. (1) If a member is directly or indirectly interested in a contract, proposal contract or other matter before a Board and is present at a meeting of a Board at which the contract, proposed contract or other matter is the subject of consideration, that the member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter: provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, a Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such a member shall not have the right to vote on the matter in question.

(2) A member of a Board shall be considered to have a conflict of interest for the purposes of this Act if he or she acquires any pecuniary or other interest that could conflict with the proper performance of his or her duties as a member or employee of the Board.

(3) Where a Board becomes aware that a member has conflict of interest in relation to any matter before the Board, the Board shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If a Chairperson has a conflict of interest he or she shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the County Executive Committee member in writing.

(5) Upon a Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board and the member with the conflict of interest shall not vote on this determination.

(6) Where a Board determines that the conflict of interest is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of a Board within thirty days.

(7) a Board shall report to the County Executive Committee member any determination by a Board that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board.

(8) The annual report of a Board shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

A member of a Board who contravenes subparagraph (1) commits an offence and, upon conviction, is liable to imprisonment for a term not exceeding six months, or a fine not exceeding one hundred thousand shillings, or both.

Code of Conduct

5. (1) Within twelve months of the commencement of this Act, a Board shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and staff of the Board in the performance of their duties.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to the existing code of conduct, a Board shall publish the proposed code or amendments in the *Gazette* and in a newspaper circulating within the county, inviting public comments.

(3) A Board shall, in its annual report, include a report on compliance with the code during the period covered by the annual report.

The code of conduct adopted or prescribed under this paragraph shall be binding on a Board and its staff.

Execution of interest

6. Any contract or instrument which if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally.

Minutes

7. A Board shall cause minutes of all resolutions and Minutes. proceedings of meetings of the Board to be entered in books kept for that purpose.