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The Principal Secretary
State Department for Wildlife
Ministry of Tourism and Wildlife
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E-mail: wcma2013review@tourism.go.ke

Dear Sir/Madam,

RE: SUBMISSIONS ON THE REVIEW OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT NO. 47 OF 2013

We write in response to your call for public comments on the review of the Wildlife Conservation and Management Act No. 47 of 2013.

Below are our detailed comments and suggestions which we hope will provide valuable insights to your deliberations.

Yours Sincerely,



Maryama Farah
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THE REVIEW OF WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

No.	Section	Provision(s)	Proposed Amendment(s)	Justification
1.	Section 4(a)	<p>The principles that will guide the implementation of the Act.</p> <p>“The implementation of this Act shall be guided by the following principles—”</p>	<p>A human-rights approach to conservation has not been highlighted in the key principles guiding the implementation of the Act. As a result, other sections of this Act continue to be silent on key pertinent issues with regards to a ‘human rights or people-centric’ issues.</p> <p>We, therefore, propose an additional principle (as h):</p> <ul style="list-style-type: none"> - (i.e.) The conservation and management of wildlife shall be encouraged, planned and implemented by adopting human-rights approaches to conservation. 	<p>Human rights issues arising from the models and dynamics of conservation are on the rise, as reported both in literature and media. The Wildlife Policy (2020) also cites issues arising from ‘Human-Wildlife Conflicts’ and related pressures (that lead to rights violations) as the main issues driving the review of Policy and legislation.</p> <p>It is therefore important that these issues (being pertinent), reflect in the principles that guide the Act.</p>
2.	Section 4(b)	<p>The implementation of this Act shall be guided by the following principles—</p> <p>(b) Conservation and management of wildlife shall entail effective public participation;</p>	<p>The implementation of this Act shall be guided by the following principles—</p> <p>(b) Conservation and management of wildlife shall entail access to information, effective public</p>	<p>Provisions on access to information and access to justice are key constitutional principles that are important for ensuring effective public participation.</p>

			participation and access to justice ;	
3.	Section 5 (5)	Subsection (5): Formulation and publication of the National Wildlife Conservation and Management Strategy at least once every five years.	We suggest the addition of an additional requirement for periodic and participatory monitoring and evaluation of the Strategy, to ensure that it addresses and reflects the changing dynamics and the emerging issues.	The Strategy is key in protecting, conserving, managing and regulation of wildlife and conservation areas, hence a key document. The indicators provided should be continuously monitored and evaluated.
4.	Section 5(2) Section 5(2)(c)	The prescriptions under the National Wildlife Conservation and Management Strategy. “...community based natural resource management...”	The requisite contents of the strategy is silent on conservation plans, the increasing development witnessed in conservation areas and intensified resource use that is affecting them; yet the new Policy document already refers to these issues as of great concern to development. Sub section 2(c) should include language that recognizes community rights to this use and management of natural resources These issues should be included given the importance of Strategy in influencing the	Revise Section 5(2) to include the suggested. Globally, more and more conservation policies are recognising the role of community conservators as owners and managers of natural resources through their sustainable use, this should be reflected.

			conservation and management plans over a 5-year period.	
5.	Section 5(3)	The Cabinet Secretary shall periodically review the Strategy and may, by notice in the Gazette, publish a revised national wildlife conservation and management strategy.	<p>There is need for specificity in terms of period, or what potential issues should direct the CS to review the Strategy and re-publish.</p> <p>The review process further needs to be 'participatory/ collaborative' giving access to the communities living on and near the conservation areas to the review and decision making process. The CS should work alongside a technical team with all the various stakeholders to review the document when it is deemed necessary. The process should also be subjected to public consultation.</p>	The vagueness of Section 5(3) leads to ambiguity which can lead to an abuse of human and nature-based rights. Ad hoc reviews without explicit cause can lead to the adoption of changes which were not initially agreed to by the general public and the relevant stakeholders.
6.	Section 7 and 8	The Function of the Service.	7(r) having the service as both the licensing body as well as the body monitoring compliance with licensing can lead to an abuse. We suggest instituting an external auditing authority comprising of the community, civil society, academia and any other relevant stakeholder for increased transparency.	While community representation in the Board of Trustees is taken care of, there is need to clarify other ways in which the Service will proactively engage/work with communities in wildlife areas.

			<p>This section is generally not clear on the place of local communities (participating in conservation) under the function of the Service. There are no express provisions on direct involvement with these communities by the Service other than Subsection 8 which states that “the Service shall be managed by a Board of Trustees appointed under subsection (2), including two community of opposite gender.”</p>	<p>Including an external auditing team will also lend more credibility to the service and create trust among them and the community they serve.</p>
7.	Section 18	<p>Composition of the County Wildlife Conservation and Compensation Committee.</p> <p>It shall consist of:</p> <p>Part (g)- four persons not being public officers knowledgeable in wildlife matters and nominated by the community wildlife associations within the area through an elective process.</p>	<p>We suggest a provision that guides inclusion (of socially excluded groups in conservation and related decision-making issues) e.g., women, youth, indigenous and marginalized communities and persons living with disabilities etc.</p>	<p>It is important that this suggestion is considered given the decision-making and voting powers of the Committee as highlighted in Section 19 and 20.</p>

8.	Section 19.	The functions of the County Wildlife Conservation and Compensation Committee.	It is not clear how the County Committee in its roles would support community conservation initiatives' which are used to manage 75% of wildlife in Kenya that are found outside protected areas and on community lands. In this case, how do these committees at local level link community to national processes.	The functions of the Committee seem to advance a bottom-up reporting for a top-down decision-making process. This need to be reviewed accordingly.
9.	Section 22.	Bioprospecting (b) export from Kenya any wildlife resources for the purpose of bioprospecting or any other kind of research.	This section should provide clear guidelines on the steps local and international research actors should follow, and how these are different (or similar) with those of other bodies like the National Commission of Science, Technology, and Innovation. Offenses and penalties under this section should also be stated (separately) in case of the breach of the code of conduct.	Addressing the suggestions, reduces overlap of roles, confusion and the incidences of research-related bioprospecting.
10.	Section 31	Subsection (1) on Declaration of protected area	Part (e, sub part c) states that.. “no challenge by any person is active.”	Revision of a sentence.

			<p>We presume that this should read: “Challenge by any person is active.”</p> <p>We suggest that this section is revised.</p>	
11.	Section 31	<p>Declaration of a protected area Section 31 (2).</p> <p>Notwithstanding subsection (1), a notice under subsection (1)(a), (b) and (e) shall only be declared by the Cabinet Secretary with the approval of the National Assembly.</p>	<p>We suggest that other key Authorities (for instance NEMA) be included in the approval processes given their key role as a principle environmental regulatory body.</p> <p>Besides the government authorities, is also necessary to broaden scope of list of approvers to incorporate local community traditional knowledge holders who understand historical dynamics like migratory corridors, breeding sites of key species in their territories.</p> <p>Consider human-rights issues that might arise from such decisions, and provide guidelines on remedies (referring to other legislative provisions e.g., the CoK)</p>	<p>This decision to declare a protected area should be informed by a wide range of institutions as opposed to what is provided for in this section.</p> <p>Communities should also be engaged, given their key traditional knowledge around conservation in their areas, and also the fact that they are mostly affected by ‘exclusionary’ forms of conservation.</p>

12.	Section 32 and 33 And, Section 35 and 36	<p>Declaring a protected Area and Conservation and Management of wetlands</p> <p>“The Cabinet Secretary shall, on recommendation of the Service after consultation with the relevant lead agencies, by notice in the Gazette, prescribe measures, rules, guidelines, procedures and regulations for effective conservation and management of the protected wetland.”</p> <p>Declaration of a national reserve and the declaration of a marine conservation area</p>	<p>Consider involve the public/ communities’ networks in making this decision.</p>	<p>Local communities have been termed as ‘adversaries’ of conservation projects and plans when they are not involved in decision-making.</p>
13.	Section 34	<p>Variation of boundaries or revocation of a national park or a marine protected area.</p>	<p>Add Section 34 (a) “.... they are satisfied that such variation of boundary or cessation of national park proposed by the notice— (v) shall not expose surrounding communities and their livelihoods to any form of harm.</p>	<p>The provisions under 34 (a) did not consider the fact that such alterations can have direct or indirect effects to communities living nearby.</p>
14.	Section 45	<p>Consent for mining and quarrying</p>	<p>Subsection 5 indicates that “No person shall undertake oil or gas exploration and extraction without the consent of the Cabinet Secretary, and with the prior</p>	<p>Clarification of roles and approval processes is key in effective mining and quarrying, and for accountability purposes in conservation areas.</p>

			<p>approval of the National Assembly.</p> <p>Yet (2) indicate that the Service, shall only approve and give consent for mining or quarrying.</p> <p>There is need to clarify this.</p>	
15.	<p>Section 47. Endangered and threatened species</p> <p>Section 49</p>	<p>(2) The Service shall amend the Sixth Schedule from time to time as necessary.</p> <p>Subsection 2: Species Recovery Plan</p>	<p>Include that informs the amendments; for instance, research, assessment reports, evaluations which should be conducted after a specific period of time.</p> <p>Priority is given to rare, endangered and threatened species, there is need to add the indigenous species to the list although some of them may fall under the list.</p>	<p>This is to avoid cases where the Sixth Schedule is amended for subjective reasons, which can strategically expose endangered and threatened species to harm (e.g., poaching and logging)</p>
16.	Section 52.	<p>Functions of the Institute (1)</p>	<p>The Research Institute should embed local knowledge and cultural contexts in their research given that most conservation areas exist in rural areas and are governed through such systems.</p>	

			This consideration should further inform Section 53; the Board of the Institute; to ensure representation of local (knowledge holders) communities representative.	
17.	Section 74.	Migration of wildlife (1) Landowners shall facilitate the ease of movement of wildlife from one area to the other considering their migratory nature that attaches to the resource.	Besides land-owners, physical development plans and development projects should also leave migratory corridors open and accessible. “...government agencies, officers and parastals, private developers, and government contractors...”	Research shows that development projects (including the state-led) are closing-up wildlife corridors at an unprecedented rate, hence human-wildlife conflicts. Being explicit and inclusive in the language will do a lot more to safeguard wildlife corridors effectively.
18.	Part XI	Offenses and Penalties	It is not clear how the activities, offenses and penalties under private conservation systems are monitored and executed. This needs to be clarified.	Concerns have been raised in various discourses on how private ranches with airstrips could provide opportunities for illegal logging and poaching). NB: (if one uses a private jet, into a private ranch and access other conservation territories and leaves through the same route), how are these activities, given

				that they do not go through 'public' airports for scrutiny.
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