

**THE EWASO NG'IRO SOUTH RIVER BASIN
DEVELOPMENT AUTHORITY ACT, 1989**

No. 12 of 1989

Date of Assent: 27th November, 1989

Date of Commencement: 1st December, 1989

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An act of Parliament to provide for the establishment of an Authority to plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro South River Basin and catchment areas and for connected purposes

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Ewaso Ng'iro South River Basin Development Authority Act, 1989.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Area” means the Ewaso Ng'iro South River Basin and the catchment areas, situated within Narok, Kajiado, Nyandarua and Nakuru districts;

“Authority” means the Ewaso Ng'iro South River Basin Development Authority;

“chairman” means the person appointed as chairman of the Authority under paragraph (a) of subsection (1) of section 4;

“managing director” means the managing director appointed under section 9;

“non-official members” means the chairman and the members of the Authority appointed under paragraph (d) of section 4 (1).

PART II—ESTABLISHMENT AND POWERS OF THE AUTHORITY

Establishment
of the
Authority.

3. There is hereby established an authority which shall be a body corporate by the name of Ewaso Ng'iro South River Basin Development Authority, with perpetual succession and a common seal, and which shall be capable in its corporate name of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable property;

(c) borrowing and lending money;

(d) entering into contracts;

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

4. (1) The Authority shall consist of the following members—

Membership
of the
Authority.

- (a) a chairman appointed by the President;
- (b) the Permanent Secretary to the Ministry for the time being responsible for matters relating to the functions of the Authority or a person deputed by him for the purposes of this Act;
- (c) the Permanent Secretary to the Ministry for the time being responsible for agriculture or a person deputed by him for the purposes of this Act;
- (d) the Permanent Secretary to the Ministry for the time being responsible for finance or a person deputed by him for the purposes of this Act;
- (e) the Permanent Secretary to the Ministry for the time being responsible for health or a person deputed by him for the purposes of this Act;
- (f) the Permanent Secretary to the Ministry for the time being responsible for livestock development or a person deputed by him for the purposes of this Act;
- (g) the Permanent Secretary to the Ministry for the time being responsible for energy or a person deputed by him for the purposes of this Act;
- (h) the Permanent Secretary to the Ministry for the time being responsible for water development or a person deputed by him for the purposes of this Act;
- (i) the Permanent Secretary to the Ministry for the time being responsible for environment or a person deputed by him for the purposes of this Act;
- (j) the Provincial Commissioner, Rift Valley Province, or a person deputed by him for the purposes of this Act;
- (k) the Inspector of State Corporations or a person deputed by him for the purposes of this Act;
- (l) not more than twelve other members appointed by the Minister in consultation with the President, ten of whom shall be appointed from the area affected by the operations of the Authority;
- (m) the managing director.

(2) Every appointment under subsection (1) (a) and (d) shall be by name and by notice in the Gazette and shall be for a period of three years from the date of appointment.

(3) A retiring member shall be eligible for reappointment.

(4) If the Minister is satisfied that any of the non-official members—

(a) has been found guilty of improper conduct considered to be inconsistent with membership of the Authority; or

(b) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Authority; or

(c) is unable or unfit, for any other reason, to discharge the duties of his office,

and that it would be in the interest of the Authority so to do, he may terminate the appointment of that member.

(5) The office of a non-official member shall become vacant—

(a) upon the expiry of this term of appointment; or

(b) upon the termination of his appointment under subsection (4); or

(c) by resignation, upon the expiry of one month, or such shorter period as may be mutually agreed, after the date upon which the Minister receives a written notice signed by the member of his intention to resign; or

(d) if he is absent without the permission of the Authority from three consecutive meetings of the Authority of which he had reasonable notice.

(6) The non-official members shall be paid by the Authority such remuneration and allowances as the Minister may from time to time determine in concurrence with the State Corporations Advisory Committee.

5. (1) The Authority shall be convened by the chairman at least 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) The Authority shall elect a vice-chairman from among its members.

(3) The chairman or in his absence the vice-chairman acting in consultation with the managing director, may at any time convene a special meeting of the Authority, and shall do so within fourteen days of receipt by him of a written requisition signed by at least three members.

(4) The quorum for the conduct of business at a meeting of the Authority shall be not less than two-thirds of the total number of members of the Authority, inclusive of the person presiding and all acts, matters or things authorized or required to be done by the Authority shall be effected by a resolution passed by a majority of the members present and voting at a meeting at which a quorum is present.

(5) The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Authority, except that in the case of the absence of both the chairman and the vice-chairman the members present shall elect one of their number to preside at the particular meeting.

(6) At every meeting of the Authority the member presiding shall have a casting as well as a deliberative vote.

(7) Subject to subsection (4), no act, decision or proceedings of the Authority shall be questioned on account of any vacancy in the membership thereof or on account of any defect in the appointment of any of its members.

(8) No meeting of the Authority shall be held at any place other than the registered or principal office of the Authority except with the prior written approval of the Minister.

(9) Subject to this Act, and to any general or specific directions of the Minister, the Authority shall regulate its own procedure.

6. (1) The common seal of the Authority shall be authenticated by the signature of the managing director and such other person as may be generally or specially authorized by the Authority.

Seal and
execution of
documents.

(2) All documents, other than those required by law to be under seal, made by, and decisions of, the Authority may be signified under the hand of the managing director, or an officer authorized in that behalf by the Authority.

Committees.

7. The Authority may from time to time appoint such committees, whether of its own members or otherwise, as it may think necessary but no decision of any committee shall be effective unless it has been confirmed by the Authority.

Functions of
the Authority.

8. The functions of the Authority shall be—

- (a) to plan for the development of the Area and initiate project activities identified from such planning in the Area through the Government generally;
- (b) to develop an up-to-date long-range development plan for the Area;
- (c) to initiate such studies, and carry out such surveys, of the Area as may be considered necessary by the Government or the Authority, and to assess alternative demands within the Area on the natural resources thereof, and to initiate, operate or implement such projects as may be necessary to exploit those natural resources including agriculture (both irrigated and rainfed), forestry, or wildlife and tourism industries, electric power generation, mining, and fishing, and to recommend economic priorities;
- (d) to co-ordinate the various studies of schemes within the Area such that human, water, animal, land and other resources are utilized to the best advantage and to monitor the design and execution of planned projects within the Area;
- (e) to effect a programme of both monitoring and evaluating the performance of projects within the Area so as to improve such performance and establish responsibility thereof, and to improve future planning;
- (f) to co-ordinate the present abstraction and use of natural resources, especially water, within the Area and to set up an affective monitoring of abstraction and usage;
- (g) to cause and effect the construction of any works deemed necessary for the protection and utilization of the water and soils of the Area;
- (h) to ensure that landowners in the Area undertake all the measures specified by the Authority to protect the water and soils of the Area;

- (i) to identify, collect, collate and correlate all such data related to the use of the water and other resources and also economic and related activities within the Area as may be necessary for the efficient forward planning of the Area;
- (j) to maintain a liaison between the Government, the private sector and other interested agencies in the matter of the development of the Area with a view to limiting the duplication of effort and to ensuring the best use of the available technical resources;
- (k) to examine the hydrological and ecological effects of the development programmes and evaluate how they affect the economic activities of the persons dependent on river environment;
- (l) to consider all aspects of the development of the Area and its effects on the river's inflow and outflow.

PART III—ADMINISTRATION

9. (1) There shall be an officer of the Authority, to be known as the managing director, who shall be appointed by the Minister and who shall be responsible for the execution of the policy of the Authority and for the control and management of its day-to-day business.

Managing
director.

(2) The Authority shall delegate to the managing director such of its functions under this Act as are necessary for the effective transaction of the day-to-day business of the Authority, and in particular the Authority shall delegate to the managing director the powers, subject to any instructions of a general nature as may be given by the Authority—

- (a) to control and supervise the acts of all officers and servants of the Authority in the matters of executive administration and in all matters concerning the accounts and records of the Authority;
- (b) to dispose of all questions relating to the service of the officers and servants of the Authority and their pay and privileges; and
- (c) to apply available funds on such items or projects and within such limits as may be approved by the Authority.

Appointment
of secretary
and
remuneration.

10. (1) The Authority shall appoint a secretary to the Authority who shall be responsible for its secretarial services including the recording of its decisions and the communication of those decisions to persons who are required to act on them and shall perform such other duties as may be assigned by the managing director, and the terms and conditions of service for the secretary shall be determined by the Authority.

(2) The Authority may appoint, upon such terms and conditions as it thinks proper, such other officers and servants as it considers necessary or desirable for the efficient conduct and operation of the Authority.

(3) Every member of staff shall, subject to this Act, exercise such powers and functions and perform the duties assigned to him from time to time by the managing director.

(4) The members of staff appointed under subsection (2) shall be paid out of the funds of the Authority such salaries as the managing director, with the approval of the Authority, may from time to time determine and such travelling and other expenses as they may incur in the performance of their duties.

Code of
regulations.

11. (1) The Authority shall, with the approval of the Minister, compile and publish a code of regulations which shall apply to all persons employed by the Authority.

(2) The Authority may, with the approval of the Minister, from time to time modify or amend the code of regulations in such manner as it thinks proper.

PART IV—FINANCIAL RESOURCES AND CONTROL

Funds of the
Authority.

12. (1) The funds of the Authority shall consist of—

- (a) such moneys as may from time to time be provided by Parliament;
- (b) moneys borrowed by the Authority on such terms and for such purposes as the Minister, in consultation with the Minister for the time being responsible for finance, may approve; and
- (c) any moneys accruing to the Authority from any other source.

(2) Subject to the written approval of the Minister and the Treasury, funds of the Authority shall be invested in such a manner as the Authority may deem proper.

13. (1) The Authority shall cause to be prepared and shall, not later than the end of February in every year, submit to the Minister and to the Treasury for approval, estimates of the Authority's revenue and expenditure for the following financial year accompanied by proposals for funding of projects to be undertaken by the Authority or the implementation of which will continue during the financial year to which those estimates relate.

Annual estimates.

(2) No annual estimates and proposals for funding projects shall be implemented until they have been approved by the Minister with the concurrence of the Treasury.

14. The Authority shall not, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in annual estimates prepared and approved in accordance with section 12.

Expenditure not included in the annual estimates.

15. The assets of the Authority shall be disposed of in accordance with the provisions of section 13 of the State Corporations Act.

Dealing with assets.
Cap. 446.

16. (1) The Authority shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority and shall prepare such other accounts as the Minister may require and, in addition, shall prepare yearly balance sheets made up to the end of each financial year.

Books of accounts, records and audit.

(2) The accounts of the Authority shall be audited and reported on annually by the Auditor-General (Corporations) in accordance with Part VII of the Exchequer and Audit Act.

Cap. 412.

(3) The Authority shall produce and lay before the Auditor-General (Corporations) all accounts of the Authority with all vouchers in support thereof, and all books, papers and writing in its possession or control relating thereto, and the Auditor-General (Corporations) shall be entitled to require from all members, officers and servants of the Authority such information and explanations as may be necessary for the proper performance of his duties.

(4) At the completion of an audit under this section, the Auditor-General (Corporations) shall make a report thereon to the Authority and shall at the same time furnish a copy of the report to the Minister.

(5) The expenses incidental to the auditing of the accounts shall be borne by the Authority.

Annual report.

17. (1) The Authority shall within a period of six months after the end of each financial year or within such longer period as the Minister may approve, submit to the Minister a report of its operations and activities during that year, together with the yearly balance sheet and such other statements of accounts as the Minister shall require, and the Authority shall publish the annual report and the yearly balance sheet in such manner as the Minister may specify.

(2) The Minister shall lay both the Authority's report and the report of the Auditor-General (Corporations) together with the yearly balance sheet and such other statements of accounts as the Minister may deem appropriate before the National Assembly as soon as reasonably practicable.

PART V—MISCELLANEOUS PROVISIONS**Secrecy.**

18. (1) No member, officer or servant of the Authority shall disclose any information which he has acquired in the performance of his functions as such member, officer or servant to any person except in so far as may be necessary for the performance of such functions or for due compliance with the order of any court.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a period not exceeding six months or to both.

Protection of members and staff.

19. No act or thing done by any member of the Authority or by any officer or servant of the Authority shall, if the Act or thing was done bone fide for the purpose of carrying this Act into effect, subject him personally to any liability, action, claim or demand whatsoever.

**Exemption from stamp duty.
Cap. 480.**

20. No duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of or in favour of the Authority in cases where, but for this section, the Authority would be liable to pay such duty.

21. (1) Where land is required by the Authority for purposes of the Authority it may either—

Acquisition of
land for the
purposes of
the Authority.

(a) if the land is not public land, acquire the land through negotiation and agreement with the registered owner thereof, provided that, notwithstanding the provisions of section 6 of the Land Control Act, the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or

Cap. 302.

(b) if the land is public land, or if the Authority is unable to acquire through negotiation and agreement in accordance with paragraph (a) notify the Minister responsible for public lands that the land specified in the notice is required for the purpose of the Authority.

22. The Minister may make regulations generally for the better carrying out the provisions of this Act.

Regulations.