



ADAPTATION FUND

30 May 2019

Adaptation Fund Board

Accreditation Panel Recommendation on Fast Track Re-accreditation of the National Environment Management Authority (NEMA) of Kenya as National Implementing Entity

Having reviewed the re-accreditation application of ***National Environment Management Authority (NEMA) of Kenya***, the Accreditation Panel recommended that NEMA be re-accredited as a National Implementing Entity (NIE) of the Adaptation Fund.

A summary of the review can be found in Annex I

Re-accreditation Decision:

Having considered the recommendation of the Accreditation Panel, and following the fast-track re-accreditation process approved by Decision B.28/38, the Adaptation Fund Board decided to re-accredit the National Environment Management Authority (NEMA) of Kenya as a National Implementing Entity (NIE) of the Adaptation Fund for five years, as per paragraph 38 of the operational policies and guidelines for Parties to access resources from the Adaptation Fund. The re-accreditation expiration date is 29 May 2024.

Decision B.33-34/8

ANNEX I: REPORT OF THE ACCREDITATION PANEL ON AN ASSESSMENT OF THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) OF KENYA FOR FAST-TRACK RE-ACCREDITATION AS A NATIONAL IMPLEMENTING ENTITY (NIE) OF THE ADAPTATION FUND.

Background

Kenya is a country with 47 semiautonomous counties governed by elected governors and is the world's 48th largest country by total area with a population of more than 52.2 million people. The current constitution was adopted in 2010 to replace the constitution of 1993 when it gained independence. Kenya is a presidential representative democratic republic, with the president being the head of state and government. Kenya is a member of the United Nations, World Bank, International Monetary Fund, COMESA, and other international organizations.

It is a lower-middle-income economy and is the second largest economy in the East African region, accounting for 19% of regional output (African Development Bank 2018) and the fourth largest economy in sub-Saharan Africa (Ernst & Young 2017). The principal sectors driving economic activity in Kenya are agriculture, services (including finance and real estate) and manufacturing.

The Corruption Perception Index for Kenya in 2018 is 27/100 and it ranks 144th out of 180 countries by Transparency International, 29/100 by the African Development Bank, 35/100 by the World Bank, 34/100 by the World Economic Forum, and 21/100 by the World Justice Project Rule of Law Index. In 2018, Kenya ranked 142 of 189 countries on the United Nations Development Programme (UNDP) Human Development Index (UNDP 2018).

Transparency International also indicates that Kenya showed tangible signs of measurable progress in anti-money laundering and countering the financing of terrorism (AML/CFT) regimes and Kenya's efforts have resulted in its removal from the Financial Action Task Force (FATF) global AML/CFT monitoring process (Global Center on Cooperative Security 2015).¹

Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional body consisting of 18 African countries and a number of regional and international observers. ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.²

The National Environment Management Authority (NEMA)

The National Environment Management Authority (NEMA) is the national implementing entity (NIE) for Kenya accredited by the Adaptation Fund in March 2012. It was established under the Environmental Management and Co-ordination Act (EMCA) No. 8 of 1999, which was repealed in 2015 with the enactment of the Environmental Management Act of 2015, which is now the

¹ <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Money-laundering-and-asset-recovery-success-stories.pdf>

² <https://www.esaamlg.org/index.php/about>

governing legislation under which NEMA operates. NEMA is the principal instrument of Government for the implementation of all policies relating to environment.

NEMA is a Semi-Autonomous Government Agency (SAGA) in the Ministry of Environment and Forestry (MEF) with the mandate of exercising general supervision and coordination over all matters relating to the environment and to be the principal instrument of the Government of Kenya (GoK) in the implementation of all policies relating therein.³

NEMA is managed by a Board of Management and a Director-General who acts as the Secretary of the Board and is the chief executive of the Authority. NEMA has a Board Charter that guides the operation of the Board as well as defining the roles and responsibilities of the Directors and Management. Three committees support the Board by providing advice:

- Finance and Human Resources – on financial and human resource management, performance and their financial implications.
- Audit, Governance and Risk Management – on audits, governance, risk management and compliance with regulatory requirements. It oversees NEMA’s standards of integrity and behaviour, reporting financial information and internal control systems.
- Environmental Management and Conservation Technical Committee – on determining NEMA’s vision, mission and values. It provides strategic direction to NEMA; recommends approval of the strategic plan as well as reviewing annual work plan, corporate strategy; and advises on policies, priorities and planning for the protection, management and conservation of the environment.⁴

Since its establishment, NEMA has implemented three strategic plans and has been on performance contracting against which it has been periodically evaluated, as required by the State Corporation (performance contracting) Regulations, 2004 legal notice No. 93. The Strategic Plan for 2013-2018 indicates NEMA’s Vision as “To be a world class environment management Authority” and its Mission is “Ensure a clean, healthy and sustainable environment in Kenya through supervision and coordination of all matters relating to the environment.”

Under its supervisory and coordination role, NEMA carries out a number of activities to ensure sustainable environment management in Kenya. These activities include, inter alia, carrying out Environmental Impact Assessments (EIAs), Strategic Environmental Assessments (SEAs), conducting environmental awareness and education programmes, preparation and documentation of state of environment reports, and development of national and county environmental action plans. On the basis of these assessments, NEMA issues environmental impact assessment licenses on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management. The Cabinet Secretary responsible for Finance may, on the recommendation of the Council, propose to Government tax and other fiscal incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources or the prevention or abatement of environmental degradation.⁵

³ Environment Management and Co-ordination of 1999 (rev. in 2015), Part III – Administration, paragraph 10, Board of the Authority, E12-19 to 20.

⁴ Environment Management and Co-ordination of 1999 (rev. in 2015), Part V – Protection and Conservation of the Environment, paragraph 57, E12-39

⁵ https://www.nema.go.ke/index.php?option=com_content&view=article&id=118&Itemid=357

The Authority has been in operation since 1st July 2002. The Authority works closely with lead agencies and development partners such as UNEP, UNDP, UNFCCC, World Bank, DANIDA (Danish Development Cooperation Agency), the Adaptation Fund, and the Green Climate Fund.⁶ It also has public private partnerships.

Interaction with the AF since Initial Accreditation

When NEMA was accredited by the Adaptation Fund, the Authority was given the mandate to execute and/or vet, approve and supervise projects financed by the Adaptation Fund. After its accreditation, NEMA's proposed programme entitled, "Integrated Programme to Build Resilience to Climate Change & Adaptive Capacity of Vulnerable Communities in Kenya" (KCCAP) was approved by the AF Board for US\$9,998,302 for a three-year period that started in 2016 and is scheduled to be completed by 30 April 2019. However, the Secretariat received a request for extension of project completion date of one year to 30 April 2020.

In implementing this project, NEMA has engaged three executing entities and, through them, five sub-executing entities namely: (1) Coast Development Authority (CDA), (2) Kenya Forestry Research Institute (KEFRI) with two sub-entities NASARU Community Based Organization (CBO) and Victoria Research and Development (ViRED), and (3) Tana and Athi River Development (TARDA) with three sub-entities (Kenya Red Cross Society, Horn Aid, and Caritas Nyeri).

The KCCAP programme addresses the following five objectives:

- Enhancing climate resilient agricultural, agro-forestry, pastoral and agropastoral production systems to improve food security in selected Counties in Kenya
- Improving climate resilient water management systems to enhance food security in selected Counties in Kenya
- Increasing resilience to the effects of rise in sea level and shoreline changes through Integrated Shoreline and Mangrove Ecosystem Management at Vanga and Gazi in the Coastal region of Kenya]
- Disaster risk reduction among targeted vulnerable communities for climate related risks in Kenya
- Strengthening institutional capacity, knowledge management, awareness raising and promotion of adaptation mechanisms to improve resilience on climate change to selected vulnerable communities in Kenya.

Under the Readiness Programme, NEMA supports and assists other entities applying for accreditation with the AF and had received US\$100,000 from the Fund for providing assistance to Malawi and Zimbabwe. NEMA also received, from the Fund, a US\$25,000 technical assistance grant for Environmental and Social Policy and Gender assessments. Part of this grant was used to finance an on-going consultancy to develop a framework that will strengthen the capacity of NEMA to identify, mitigate and manage project and programme risks associated with environmental and social issues.

⁶ https://www.nema.go.ke/index.php?option=com_content&view=article&id=118&Itemid=357

Interaction with the GCF since Accreditation with the AF

In March 2016, NEMA was accredited as an Implementing Entity (IE) under Direct Access by the Green Climate Fund (GCF) on a fast-track accreditation process by being an accredited entity of the Adaptation Fund (GCF/B.10/17). The Accreditation Master Agreement between GCF and NEMA was signed on 20 June 2016. To date no NEMA project has been approved by GCF. However, in September 2018, the GCF Board approved readiness support for \$431,060 to strengthen institutional capacities of NEMA as a direct access accredited entity.⁷

In reviewing NEMA'S application for AF fast-track re-accreditation and related documentation they submitted; the Panel also took into consideration information obtained from the published documents of GCF.

Assessment for Fast Track Re-accreditation

The assessment for fast-track re-accreditation of the National Environment Management Authority (NEMA) of the Government of Kenya (GoK) was conducted in accordance with AF Board Decisions B.28/38 (AFB/B.28/9),⁸ B.31/11 (AFB/B.31/7),⁹ Decision B.32/36 (AFB/B.32/11)¹⁰, AFB/EFC.19/7/Rev.1¹¹ and the Secretariat's advice to NEMA, and was focused on the following criteria:

- ***The Fiduciary Standard related to the legal status - There has been no change since the initial accreditation.***

The basis of the legal status was revisited and there was no change to the legal status of the National Environment and Management Authority (NEMA). The law known as "The Environmental Management and Co-ordination Act (EMCA) of 1999" that established the Authority in 1999 was repealed in 2015. The previous law was then referred to as the "Principal Act" and the new law as the Environmental Management and Co-ordination Act of 2015, which is now the governing legislation under which NEMA operates. This law enhanced the appropriate legal and institutional framework for the management of the environment of Kenya. It also strengthened the role and responsibilities of NEMA as the principal instrument of government charged with the implementation of all policies, and to exercise general supervision and coordination over all matters relating to the environment.

Under its governing legislation the Authority has powers to— (a) control, supervise and administer its assets; (b) provide for capital and recurrent expenditure and for its reserves; (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; (d) enter into association with other bodies or organizations within or outside Kenya as considered appropriate and in furtherance of the purpose for which it was established; (e) open a banking

⁷ GCF/B.21/17 dated 26 Sept 2018, Annex II: Readiness support for direct access entities. Table 4, p. 35

⁸ Board Decision B.31/1 contained in AFB/B.31/7 and AFB/B.31/8 and detailed in its Annex I and AFB/B.31/4, paragraphs 21 and 22

⁹ https://www.adaptation-fund.org/wp-content/uploads/2018/10/AFB.B.32.11_Decisions_of_the_thirty-second_meeting_of_the_Adaptation_Fund_Board.pdf

¹⁰ AFB/EFC.19/7/Rev.1, Effectiveness and Efficiency of the Accreditation Process – Assessment, including a Gap Analysis, of the Green Climate Fund's (GCF) Fiduciary and Environmental and Social Standards dated 18 September 2016

¹¹ AFB/EFC.19/7/Rev.1, Effectiveness and Efficiency of the Accreditation Process – Assessment, including a Gap Analysis, of the Green Climate Fund's (GCF) Fiduciary and Environmental and Social Standards dated 18 September 2016

account or banking accounts for its funds and invest those not immediately required for its purposes.

The Panel concludes that the legal status of the National Environmental Management Authority of Kenya has not changed by the 2015 legislative changes and continues to fully meet this fiduciary criterion.

- ***Policies and Framework to deal with financial mismanagement and other forms of malpractice*** – *Policies, frameworks and processes have been improved since the initial accreditation.*

NEMA's policies and framework in dealing with fraud, financial mismanagement and other forms of malpractices are based on the principles embedded in the Constitution of 2010, as well as in various Acts of Parliament such as Kenya's Leadership and Integrity Act of 2012; Public Officer Ethics Act, Revised Edition of 2016; Anti-Corruption and Economic Crimes Act, Revised Edition of 2016; and the Independent Ethics and Anti-Corruption Commission Act of 2011.

These laws required every government institution to formulate their own policies relating to these and accordingly NEMA has developed its own policies such as: Corruption Prevention Policy of 2014; Leadership and Integrity Code of 2017; and Whistle Blowing Policy of 2016. Through these instruments, NEMA demonstrated its zero tolerance for fraud and corruption, developed mechanisms to implement these by establishing several committees such as: the Corruption Prevention Committee, the Integrity Assurance Committee and Ethics and Corruption Anti-Corruption Committee. Other measures undertaken were: developing an integrity action plan; designating Integrity Assurance Officers; opening up a wide variety of avenues for whistle blowers to lodge complaints and protecting them; developing a corruption risk and mitigation plan; incorporating a system of performance contract on corruption prevention included in the work plans of staff; instituting a reporting mechanism to the Director General on the status of complaints and actions being taken to address them; developing and assessing the Authority's corruption perception index; issuing detailed guidance on grievances and complaints handling procedures; enhancing disciplinary procedures, issuing code of conduct; and introducing corruption prevention measures including providing training and sensitization to staff and other stakeholders..

Once a suspected fraud or malpractice is established or determined, then NEMA works closely with the Commission of Administrative Justice, the Criminal Investigation Department, the Department of Public Prosecution, the Office of the Auditor General, the Efficiency Monitoring Unit, and the Ethics and Anti-Corruption Commission for the appropriate disposition of these cases. In recognition of these efforts, Kenya was removed from the Financial Action Task Force (FATF) monitoring process in 2014 and is also exploring membership of the Egmont Group.¹² The Egmont Group is a united body of 159 Financial Intelligence Units (FIUs) that provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing.¹³

In dealing with issues on anti-money laundering and anti-terrorism financing, NEMA is subject to Kenya's Proceeds of Crime and Anti-Money Laundering Act of 2009. This law established the

¹² <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Money-laundering-and-asset-recovery-success-stories.pdf>

¹³ <https://egmontgroup.org/content/about>

Financial Report Center which is an entity responsible for assisting in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism; introduction of measures for combating the relevant offences; identification, tracing, freezing, seizure and confiscation of the proceeds of crime and for connected purposes; and referring cases to the concerned law enforcement authorities, intelligence agency or any other appropriate supervisory body.

According to Transparency International, Kenya has demonstrated an increased political will to address AML with the passage of AML and terrorism prevention laws in 2012 and is now considered compliant with international AML standards.¹⁴

The Panel is satisfied that the National Environment Management Authority of Kenya has zero tolerance towards fraud, financial mismanagement and other forms of malpractice. The Authority has instituted adequate policies and other measures to strengthen internal capacity in addressing and preventing any forms of fraud and financial mismanagement including money laundering and financing terrorism and therefore meets the Adaptation Fund's requirements.

- **Commitment by the entity to apply the Fund's Environmental and Social Policy (ESP) and Gender Policy** - There have been enhancements since the initial accreditation

NEMA demonstrated its commitment to the environmental and social policies of the Adaptation Fund by developing and issuing the Kenya Climate Change Adaptation Programme (KCCAP) with the objective of enhancing resilience and adaptive capacity to climate change for selected communities in various Counties in Kenya in order to increase food security and environmental management. An evidence of this commitment is the development of an environmental and social management framework (ESMF) that is very much aligned with the policies of the Adaptation Fund and GCF and adopted the AF's fifteen safeguard principles. Other measures taken were the organization of a governance structure for KCCAP that shows how this relate to the Adaptation Fund; establishment of an Adaptation Fund and Green Climate Fund Committee to oversee the financial and project management by the Authority, close supervision of the Executing Entities and Sub-Executing Entities; development of a finance and procurement manual specifically designed to provide guidance in the financial management and procurement processes of projects funded by the Adaptation Fund; and designation of programme managers and officers responsible for preparing work and operation plans, reviewing progress reports, implementing project monitoring and tracking project performance and budgets and undertaking regular visits to projects to supervise implementation.

NEMA also provided evidence of its capacity, commitment and compliance with the E&S safeguards principles through environmental and social impact assessments undertaken that had positive results and therefore were issued EIA licenses as well as those assessments that had negative results and were issued rejection letters and reasons thereof. In addition, NEMA also illustrated its capacities to address issues by conducting control audits and indicating results and recommendations made to the concerned project managements. It provided samples of control audit reports. Initially, facilities are required to submit an initial audit undertaken by a NEMA authorized environmental expert. Thereafter, facilities may conduct self-audits. NEMA then

¹⁴ <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Money-laundering-and-asset-recovery-success-stories.pdf>

reviews annual environmental audit (EA) reports submitted by businesses and other listed facilities under the Environmental Impact Assessment/Audit regulations, 2003. Upon review of these reports, NEMA issues improvement orders to proponents who may not have met specific environmental requirements. However, when NEMA receives complaints, control audits are undertaken of the concerned facilities and they ensure that recommended improvements or problems reported are addressed. 15

NEMA continued to enhance the mainstreaming of gender related issues by formulating its own Gender Policy. The policy covers the gender concerns, issues and needs of NEMA as an organization and their partners/stakeholders towards ensuring gender-sensitive and responsive service delivery. NEMA receives on an annual basis a Certificate of Compliance with the cyclical performance contracting guidelines on gender and inclusion from the National Gender and Equality Commission.

The Panel is satisfied that the National Environmental Management Authority of Kenya continues to have and implement its robust policies and practices that fully demonstrate the Authority's commitment and capability in applying the environmental and social policy and the gender policy of the Adaptation Fund, particularly with the implementation of the Fund's E&S and gender policies in the project under implementation.

- **Mechanisms to deal with complaints on environmental and social harms and gender harms caused by projects/programs** - There have been enhancements since the initial accreditation.

NEMA developed a Grievance Redress Mechanism (GRM) manual specifically for the Integrated Programme to build resilience to climate change and adaptive capacity of vulnerable communities in Kenya that was funded by the AF. An actual case of a complaint against one of NEMA's Executing Entities was provided to demonstrate how the Authority receives complaints and how these are investigated, reported and addressed by the concerned project management, the intended beneficiaries, the affected communities' leaders, and by NEMA itself.

The Panel is satisfied that the National Environment Management Authority of Kenya has the commitment and the capability to receive, independently review and take remedial action where appropriate on complaints regarding environmental, social and gender harms caused by its programs and projects.

Recommendation

The Accreditation Panel recommends that the National Environment Management Authority of Kenya be re-accredited on fast track as a national implementing entity of the Adaptation Fund.

¹⁵ https://www.nema.go.ke/index.php?option=com_content&view=article&id=11&Itemid=147