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SIAYA COUNTY ACTS, 2021

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CONTENT

Act—	PAGE
The Siaya County Climate Change Act, 2021	1



THE SIAYA COUNTY CLIMATE CHANGE ACT, 2021

No. 3 of 2021

Date of Assent: 12th May, 2021

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ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title and Commencement.
- 2—Interpretation.
- 3—Objects and Purposes.

PART II—GUIDING PRINCIPLES

- 4—Guiding Values and Principles.

PART III—ADMINISTRATION AND OVERSIGHT

- 5—Establishment of the County Climate Change Directorate.
- 6—Functions of the County Climate Change Directorate.
- 7—Establishment of the County Climate Change Steering Committee.
- 8—Functions of the County Climate Change Steering Committee.
- 9—Meetings of the County Climate Change Steering Committee.
- 10—Allowances for members of County Climate Change Steering Committee.
- 11—Establishment of the County Climate Change Planning Committee.
- 12—Functions of the County Climate Change Planning Committee.
- 13—Meetings of the County Climate Change Planning Committee.
- 14—Allowances for members of County Climate Change Planning Committee.
- 15—Establishment and composition of Ward Climate Change Planning Committees.
- 16—Functions of the Ward Climate Change Planning Committee.
- 17—Meetings of the Ward Climate Change Planning Committee.
- 18—Allowances for members of Ward Planning Committee.

PART IV—CLIMATE CHANGE RESPONSE MEASURES AND ACTIONS

- 19—Duties under the Climate Change Act, 2016 and National Climate Change Action Plan.

- 20—County Climate Change Action Plan.
- 21—Contents of County Climate Change Action Plan
- 22—Annual County Climate Change Response Report.

PART V—COUNTY CLIMATE CHANGE FUND

- 23—Establishment of the County Climate Change Fund.
- 24—Object of the County Climate Change Fund.
- 25—Sources of the County Climate Change Fund.
- 26—Administration and Management of the County Climate Change Fund.
- 27—Investment of the County Climate Change Fund in interest earning schemes.

PART VI—FINANCIAL PROVISIONS

- 28—Funding operations of Steering and Planning Committees.
- 29—Financial Year and Annual Estimates.
- 30—Accounts and Audit.

PART VII—REGULATIONS

- 31—Power to make Regulations.

PART VIII—MISCELLANEOUS PROVISIONS

- 32—Conflict of Interest.
- 33—Protection from Personal Liability.

THE SIAYA COUNTY CLIMATE CHANGE ACT, 2021

AN ACT of the County Assembly of Siaya to provide for the establishment of an appropriate legal and institutional framework for integrating and mainstreaming Climate Change responses, measures and actions into County development planning and decision-making processes, Climate Change finance mechanisms and for connected purposes

ENACTED by the County Assembly of Siaya, as follows—

PART I—PRELIMINARY**Short title and Commencement**

1. This Act may be cited as the Siaya County Climate Change Act, 2021 and shall come into force on the fourteenth day after its publication in the *Kenya Gazette*.

Interpretation

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

“adaptation” means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects in order to moderate harm or exploit beneficial opportunities;

“climate change” means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period of time;

“constitution” means the Constitution of Kenya, 2010

“county” means Siaya County;

“county assembly” means the County Assembly of Siaya County;

“County of Siaya” means the Siaya County;

“directorate” means the county climate change directorate established under clause 5 of this Act;

“county executive committee member” means the County Executive Committee Member for the time being in charge of climate change matters in Siaya County;

“fund” means the County Climate Change Fund established under clause 23 of this Act;

“mitigation” means preventing, reducing or slowing down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases;

- (j) enhance research and use of evidence, including indigenous knowledge in climate action planning.

PART II—GUIDING VALUES AND PRINCIPLES

Guiding Values and Principles

4. The following guiding values and principles shall be applied by all persons and institutions in interpreting, implementing and/or discharging any functions under this Act—

- (a) the national values and principles of governance spelt out in article 10 of the constitution of Kenya;
- (b) the values and principles of public service spelt out in article 232 of the constitution of Kenya;
- (c) the provisions of articles 42 and 69 of the constitution of Kenya;
- (d) common but differentiated responsibility;
- (e) right to sustainable development;
- (f) polluter pays principle;
- (g) ecosystem-based approach;
- (h) partnerships;
- (i) inter-Governmental cooperation;
- (j) equity and social inclusion;
- (k) public participation and access to information;
- (l) integrity and transparency; and
- (m) cost effectiveness.

PART III—ADMINISTRATION AND OVERSIGHT

Establishment of the County Climate Change Directorate

5. (1) There is established the County Climate Change Directorate, as a Directorate within the County Environment department for the time being responsible for Climate Change affairs.

(2) (a) The Directorate shall be headed by the County Director of Climate Change who shall be appointed by the County Public Service Board through a competitive process.

- (b) A person shall not be appointed as the director unless he/she—
 - (i) holds a degree in Environmental studies;
 - (ii) has at least 5 years' experience in the relevant field;

“county climate change steering committee” means the County Climate Change Steering Committee established under clause 7 of this Act;

“county climate change planning committee” means the County Climate Change Planning Committee established under clause 11 of this Act;

“ward climate change planning committee” means the Ward Climate Change Planning Committee established under section 15 of this Act.

“low carbon development” means limited carbon emission;

“resilience” means recover quickly from climate change effects;

Objects and Purposes

3. The object and purpose of this Act is to provide for the establishment of an appropriate legal and institutional framework for enhancing resilience of communities and natural systems to Climate Change while advancing low-carbon development pathways in Siaya County and in particular to—

- (a) set forth the guiding principles for Climate Change measures and actions;
- (b) establish an appropriate coordination and implementation mechanism for Climate Change measures and actions;
- (c) establish a transparent and accountable financing mechanism for Climate Change measures and actions;
- (d) strengthen climate resilience of communities in Siaya County and capacities for climate risks reduction & management;
- (e) catalyze transition towards low-carbon development and green economy anchored on resource-use efficient technologies and processes;
- (f) develop a framework to mainstream Climate Change considerations across sectors and into integrated planning and budgeting processes;
- (g) facilitate public participation to enhance ownership and budget oversight and accountability for the County Climate Change response;
- (h) develop a transparent and accountable monitoring and reporting platform to track progress in the implementation of climate actions;
- (i) establish a framework for promoting collaboration and cooperation with public entities, private sector, civil society organizations and development partners; and

- (j) enhance research and use of evidence, including indigenous knowledge in climate action planning.

PART II—GUIDING VALUES AND PRINCIPLES

Guiding Values and Principles

4. The following guiding values and principles shall be applied by all persons and institutions in interpreting, implementing and/or discharging any functions under this Act—

- (a) the national values and principles of governance spelt out in article 10 of the constitution of Kenya;
- (b) the values and principles of public service spelt out in article 232 of the constitution of Kenya;
- (c) the provisions of articles 42 and 69 of the constitution of Kenya;
- (d) common but differentiated responsibility;
- (e) right to sustainable development;
- (f) polluter pays principle;
- (g) ecosystem-based approach;
- (h) partnerships;
- (i) inter-Governmental cooperation;
- (j) equity and social inclusion;
- (k) public participation and access to information;
- (l) integrity and transparency; and
- (m) cost effectiveness.

PART III—ADMINISTRATION AND OVERSIGHT

Establishment of the County Climate Change Directorate

5. (1) There is established the County Climate Change Directorate, as a Directorate within the County Environment department for the time being responsible for Climate Change affairs.

(2) (a) The Directorate shall be headed by the County Director of Climate Change who shall be appointed by the County Public Service Board through a competitive process.

- (b) A person shall not be appointed as the director unless he/she—
- (i) holds a degree in Environmental studies;
 - (ii) has at least 5 years' experience in the relevant field;

- (iii) meets the requirements of chapter 6 of the Constitution; and
- (iv) meets any other qualification as the County Public Service Board shall stipulate.

(3) The County Director of Climate Change shall report to the County Chief Officer for the time being responsible for Climate Change affairs.

(4) The Directorate shall have such other staff as shall be appointed by the County Public Service Board for the efficient execution of the Directorate's functions.

Functions of the County Climate Change Directorate

6. (1) The County Climate Change Directorate shall be responsible for operational coordination and implementation of all Climate Change response measures and actions in the County.

(2) Without prejudice to the generality of the foregoing sub-clause, the Directorate shall—

- (a) coordinate the implementation of the County Climate Change Action Plan, County Climate Change Finance Framework and other Climate Change related policies, plans, programmes and projects;
- (b) coordinate and provide technical support to relevant County of Siaya departments to integrate and mainstream Climate Change response measures and actions into all County of Siaya development policies, plans, programmes and projects;
- (c) provide capacity building and technical support to communities and other stakeholders in the County to formulate and implement low carbon development strategies and actions to build resilience and enhance adaptive capacity to Climate Change;
- (d) coordinate Climate Change related research activities, knowledge dissemination and public awareness in the County;
- (e) coordinate public participation and facilitate access to information pertaining to Climate Change with regard to all development plans, programmes and projects in the County;
- (f) coordinate measurement, reporting and verification of all Climate Change policies, plans, programmes and projects in the County;
- (g) mobilize resources for the County Climate Change Fund established by this Act; and

- (h) perform any other Climate Change related function as may be assigned by the County Climate Change Steering Committee established under this Act.

Establishment of the County Climate Change Steering Committee

7. (1) There is established the County Climate Change Steering Committee.

(2) The Steering Committee shall comprise of nine (9) members constituted as follows—

- (a) the County Executive Committee Member for the time being responsible for Climate Change affairs who shall be the chairperson;
- (b) the County Executive Committee Member for the time being responsible for planning and finance;
- (c) the County Executive Committee Member for the time being responsible for disaster preparedness and response;
- (d) the County Executive Committee Member for the time being responsible for health;
- (e) the Chief Officer of the County department responsible for Climate Change affairs who shall be the secretary;
- (f) one representatives of the County Climate Change Planning Committee, not being a public officer;
- (g) one representative of the Ward Climate Change Planning Committee, not being a public officer;
- (h) one representatives of the private sector duly nominated by the umbrella private sector organization in the County; and
- (i) one representative of the youth dully nominated by a body representing the youths in the County.

(3) The Steering Committee may co-opt experts in different fields, whenever necessary, to advice on specific issues.

(4) The County Governor shall in the appointment of members ensure compliance with the two thirds gender principle and persons living with disability shall be considered.

(5) While nominating members to the County Climate Change Steering Committee, the appointing authority shall consider regional balance.

(6) The members of the County Climate Change Steering Committee appointed under sub-clause 2(f) (g), (h) and (i) shall serve a term not exceeding three years.

(7) The list of nominees of the County Climate Change Steering Committee shall be brought before Siaya County Assembly for approval.

Functions of the County Climate Change Steering Committee

8. The County Climate Change Steering Committee shall provide overall policy and strategic direction for Climate Change response measures and actions in the County and in this connection shall—

- (a) oversee and supervise the implementation of this Act;
- (b) approve and oversee the implementation of the County Climate Change Action Plan, County Climate Change Finance Framework and other Climate Change related policies, plans, programmes and projects; and
- (c) advise the County of Siaya on any policy, legislative, administrative and other measures to encourage low carbon development and enhance resilience and adaptive capacity of communities to Climate Change.

Meetings of the County Climate Change Steering Committee

9. (1) (a) The County Climate Change Steering Committee shall meet at least twice every financial year but not more than four times to conduct its business; and

(b) The County Climate Change Steering Committee shall upon written request meet at any other time on a need basis provided the limit on administrative costs per quarter is not exceeded.

(2) Meetings of the County Climate Change Steering Committee shall be convened and held during working hours at the County of Siaya Headquarters or at such other places as may from time to time be determined and communicated by the secretariat.

(3) The quorum for meetings of the County Climate Change Steering Committee shall be two thirds of the members.

(4) In the absence of the chairperson at any meeting duly convened, the members present shall elect one among them to chair the meeting.

(5) A resolution of the County Climate Change Steering Committee shall require an affirmative vote of more than one half of the members present at a meeting, excluding the chairperson's vote which shall be a casting vote.

Allowances for members of County Climate Change Steering Committee

10. Members of the County Climate Change Steering Committee shall be paid such allowances as shall be determined by the Board in consultation with the Salaries and Remuneration Commission.

Establishment of the County Climate Change Planning Committee

11. (1) There is established the County Climate Change Planning Committee.

(2) The County Climate Change Planning Committee shall comprise of nine (11) members constituted as follows—

- (a) the Chief Officer for the time being responsible for Climate Change affairs who shall be the chairperson;
- (b) the Chief Officer for the time being responsible for planning and finance;
- (c) the Chief Officer for the time being responsible for disaster preparedness and response;
- (d) the Chief Officer for the time being responsible for health;
- (e) one representative of the Ward Climate Change Planning Committee, not being a public officer;
- (f) the County Director of Climate Change who shall be the secretary;
- (g) two representatives of the youth duly nominated by a body representing the youth.;
- (h) a representative of the private sector duly nominated by the private sector organization in the County;
- (i) a representative of civil society organizations duly nominated by the civil society organization body in the County; and
- (j) a representative of persons living with disability duly nominated by the persons with disability body in the County.

(3) The County Executive Committee Member responsible for Climate Change affairs shall in the appointment of members ensure compliance with the two thirds gender principle.

(4) The members of the County Climate Change Planning Committee appointed under sub –clause 2 (e), (g), (h) (i) and (j) shall serve a term not exceeding three years.

(5) The list of nominees of the County Climate Change Planning Committee shall be brought before the Siaya County Assembly for approval.

(6) The County Executive Committee Member responsible for Climate Change affairs shall in the appointment of members ensure compliance with the two thirds gender rule.

(7) While nominating members to the County Climate Change Steering Committee, the appointing authority shall consider regional balance.

Functions of the County Climate Change Planning Committee

12. (1) The County Climate Change Planning Committee shall be responsible for strategic planning and coordination of Climate Change response measures and actions in the County.

(2) Without prejudice to the generality of the foregoing sub-clause, the County Climate Change Planning Committee shall—

- (a) coordinate the preparation of the County Climate Change Action Plan, County Climate Change Finance Framework and other Climate Change related plans, programmes and strategies;
- (b) oversee the mainstreaming of Climate Change actions into County development planning and budget processes;
- (c) coordinate planning of County of Siaya programmes, projects and activities for Climate Change response in the County;
- (d) advise the Steering Committee on strategies, priority programmes, projects and activities for Climate Change response in the County;
- (e) prepare guidelines and criteria for screening and approval of climate response projects for funding by the County Climate Change Fund;
- (f) consider and make decisions on applications for funding of Climate Change programmes, projects and activities under the County Climate Change Fund;
- (g) formulate and implement strategic actions to foster Climate Change education, awareness creation and capacity development in the County;
- (h) develop the County's Climate Change research agenda, training and dissemination of Climate Change knowledge and information in the County;

- (i) formulate and oversee the implementation of a County monitoring, evaluation, reporting and learning framework for Climate Change response; and,
- (j) perform any other Climate Change related function as may be assigned by the County Climate Change Steering Committee established under this Act.

Meetings of the County Climate Change Planning Committee

13. (1) The County Climate Change Planning Committee shall meet at least once in each quarter of the financial year but not exceeding three times to conduct its business.

(2) Meetings of the County Climate Change Planning Committee shall be convened and held during working hours at the County of Siaya Headquarters or at such other places as shall from time to time be determined and communicated by the secretariat;

(3) The quorum for meetings of the County Climate Change Planning Committee shall be two thirds of the members;

(4) In the absence of the chairperson at any meeting duly convened, the members present shall elect one among them to chair the meeting;

(5) A resolution of the County Climate Change Planning Committee shall require an affirmative vote of more than one half of the members present at a meeting, excluding the chairperson's vote which shall be a casting vote.

(6) The County Climate Change Steering Committee shall upon written request meet at any other time on a need basis provided the limit on administration cost per quarter is not exceeded.

Allowances for members of County Climate Change Planning Committee

14. Members of the County Climate Change Planning Committee shall be paid such allowances as shall be determined by the Public Service Board in consultation with the Salaries and Remuneration Commission.

Establishment and composition of Ward Climate Change Planning Committees

15. (1) There is established the Ward Climate Change Planning Committee in each Ward within Siaya County.

(2) The Ward Climate Change Planning Committee shall comprise of 11 members constituted as follows—

- (a) one community representative who shall be the chairperson;
 - (b) the Ward Administrator who shall be the secretary;
 - (c) one representative of the Village Administrators;
 - (d) two representatives of the Youth;
 - (e) One representative of the private sector duly nominated by the private sector organization in the Ward;
 - (f) One representative of civil society organizations duly nominated by the civil society organization body in the Ward;
 - (g) one representative of the area Member of County Assembly;
 - (h) an expert in the field of Climate Change;
 - (i) a representative of persons living with disability duly nominated by the persons with disability body in the County; and
 - (j) one representative from the area Chief.
- (3) The County Executive Committee Member responsible for Climate Change affairs shall in the appointment of members ensure compliance with the two thirds gender principle.
- (4) The members of the Ward Climate Change Planning Committee appointed under sub-clause 2 (a), (c), (d), (e), (f), (g) (h) and (i) shall serve a term not exceeding three years.
- (5) The list of nominees of the Ward Climate Change Planning Committee shall be brought before the Siaya County Assembly for approval.

Functions of the Ward Climate Change Planning Committee

16. The Ward Climate Change Planning Committee shall be responsible for coordination of Climate Change response measures and actions in the Ward and in this connection shall—

- (a) coordinate and mobilize the community and other stakeholders in the Ward to identify, design and implement Climate Change response activities in the Ward;
- (b) coordinate public education, awareness creation and capacity building on Climate Change in the Ward;
- (c) coordinate, facilitate and manage community consultations on priority Climate Change response activities;
- (d) facilitate public participation in Climate Change governance;

County Climate Change Action Plan

20. (1) The County Climate Change Planning Committee shall coordinate the preparation of the County Climate Change Action Plan as the basis for Climate Change interventions at the County.

(2) The County Climate Change Action Plan shall be approved by the Steering Committee and laid before the County Assembly for adoption.

(3) The County Climate Change Action Plan shall be for a period of five years and shall run concurrently with the National Climate Change Action Plan.

(4) Without prejudice to the provisions of sub- clause (3), the County Climate Change Planning Committee shall within one year of its constitution following the coming into force of this Act, coordinate development of an interim County Climate Change Action Plan for the remainder of the period of the current National Climate Change Action Plan.

(5) The County Climate Change Action Plan shall be reviewed and updated every five years.

Contents of County Climate Change Action Plan

21. The County Climate Change Action Plan shall—

- (a) be aligned to the National Climate Change Action Plan and respond to the specific needs and circumstances of the County;
- (b) contain a Climate Change situational and needs assessment for the County; and
- (c) articulate a Climate Change response plan informed by the County's situational and needs assessment, and specifying measures and mechanisms for—
 - (i) guiding the County towards the achievement of low carbon climate resilient sustainable development;
 - (ii) mainstreaming Climate Change into County development plans, programmes, strategies and projects;
 - (iii) adaptation to and mitigation against Climate Change;
 - (iv) enhancing research, capacity building and knowledge management on Climate Change and Climate Change response
 - (v) enhancing public awareness for effective participation in Climate Change response; and

- (vi) monitoring, evaluation and periodic review to integrate learning and best practice in the implementation of the County Climate Change Action Plan.

Annual County Climate Change Response Report

22. (1) The Steering Committee shall, within three months after the end of every financial year, publish publicly and submit a report on implementation of the County Climate Change Action Plan and other Climate Change response actions and impacts to the County Assembly for review, and adoption.

(2) The County Assembly shall, within three months of receiving the report, provide recommendations and proposed actions to the Steering Committee.

(3) A copy of the report issued under sub-clause (1) shall be forwarded to the Climate Change Directorate of the National Government for record purposes.

PART V—COUNTY CLIMATE CHANGE FUND

Establishment of the County Climate Change Fund

23. There is established a fund to be known as the County Climate Change Fund which shall be a fund vested in the County Treasury of the County of Siaya.

Object of the Fund

24. The object of the County Climate Change Fund is to provide a mechanism for coordinated mobilization and allocation of funds for priority Climate Change response measures and actions in Siaya County.

Sources of the Fund

25. (1) The County Climate Change Fund shall comprise of—

- (a) initial seed capital, being monies appropriated by the County Assembly and as shall be allocated from time to time subject to availability of funds and practice;
- (b) monies received from the Climate Change Fund of the National Government and/or other moneys payable pursuant to any written law;
- (c) monies from International Climate Finance Mechanisms received directly by the Fund or through the National Government or other agencies;
- (d) fees and charges levied on assets or goods or services which are linked to Climate Change pursuant to any written law;

- (e) monies received by the Fund in the form of donations, endowments, grants and gifts; and
- (f) any monies that accrue to the Fund in the form of interests or any other form.

(2) All monies received by the Fund, savings, accruals and any balances not spent at the end of the financial year shall be retained in the Fund to be used in subsequent years for purposes for which the fund is established.

Administration and management of the Fund

26. (1) The Fund shall be administered and managed by the Climate Change Fund Administrator who shall be appointed by County Executive Member responsible for Finance.

(2) The County Executive Committee Member for the time being responsible for Finance shall, in consultation with the County Treasury and other stakeholders, and with approval of the County Assembly, develop Regulations for the efficient administration and management of the Fund.

(3) The Regulations made under sub- clause (2) shall provide for the following, among other matters—

- (a) operation of the Fund
- (b) eligibility criteria and procedure for accessing moneys from the Fund;
- (c) procurement of goods and services;
- (d) complaints and appeals mechanism;
- (e) financial accounting, auditing and reporting; and
- (f) monitoring, evaluation, reporting and learning.

Investment of the Fund in interest earning schemes

27. The Climate Change Fund Administrator shall, with concurrence of the County Climate Change Steering Committee and approval of the County Treasury, invest any of the funds of the County Climate Change Fund, in interest earning schemes which for the time being, shall be lawful under the Public Finance Management Act.

PART VI—FINANCIAL PROVISIONS

Funding operations of Steering and Planning Committees

28. (1) The operations of the Directorate and the Committees established under this Act shall be financed through a budget vote in the annual estimates of revenue and expenditure of the relevant County Government Department responsible for Climate Change affairs.

(2) Finances and accounts of the Steering Committee, the Planning Committee and Ward Planning Committees shall be administered and managed in accordance with the provisions of the Public Finance Management Act and the Public Finance Management (County Governments) Regulations.

Financial Year and Annual Estimates

29. (1) At least three months before the commencement of each financial year, the County Director of Climate Change shall cause to be prepared estimates of the revenue and expenditure of the Directorate and the Committees established under this Act for that year.

(2) The financial year of the Directorate and the Committees shall be the period of twelve months ending on the thirtieth June in each year.

Accounts and Audit

30. (1) The County Director of Climate Change shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Directorate and the Committees established under this Act and shall cause the accounts of the Directorate and the Committees to be audited within a period of three months after the end of each financial year.

(2)(a) The Committees shall within a period of three months after the end financial year, submit to the County Executive Committee Member responsible for Climate Change a report of the operations of the Fund and the Committees during such year and yearly balance sheet and such other statement of accounts as the County Executive Committee Member responsible for Climate Change shall require; and

(b) The County Executive Member responsible for Climate Change shall lay before the County Assembly, the reports, balance sheets and statements submitted under sub section 30 (2)(a) within a period of 14 days of receipt of the reports and statements or if the County Assembly is not sitting, within 14 days of commencement of its next sitting.

PART VII—REGULATIONS

Power to make Regulations

31. (1) The County Executive Committee Member for the time being responsible for Climate Change affairs shall in consultation with the Steering Committee, and with approval of the County Assembly, make Regulations for the better carrying into effect any provisions of this Act.

(2) In making any Regulations, the Executive Committee Member shall be guided by values and principles set out in Clause 4 of this Act.

(3) The County Executive Member for the time being responsible for Climate Change shall make guidelines in the regulations for and not limited to—

- (a) terms on vacation of office for non-public officers;
- (b) for determination of members allowances; and
- (c) requirements for appointment for non-public members.

PART VIII—MISCELLANEOUS PROVISIONS

Conflict of Interest

32. (1) If a person is present at a meeting of the committee established under this Act at which a particular matter is the subject of consideration and in which matter that person or that persons spouse or other family member is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under sub-clause (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes the provisions of sub-clause (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(4) No member of any committee or staff of the County shall transact any business or trade with the Directorate.

Protection from Personal Liability

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

(2) The provisions of sub-clause (1) shall not relieve the County of Siaya of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.