

# **The making of regulations**

## **By Dr. Ken Nyaundi**

### **I. Role of the consultants**

The role of consultants in the formulation of these draft regulations has, basically, been to offer legislative advice and drafting expertise.

The drafting process is designed to allow the drafter to perform the primary role of ensuring that the proposed regulations achieve the policy and statutory objective in a legally effective way.

The drafting of these regulations has been done in plain English and takes into account various statutes of general application. In so doing the drafter has observed fundamental legislative principles and complied with process designed for quality assurance.

### **II. Defining regulations**

- Regulations are rules and standards adopted by administrative agencies that govern how statutes will be enforced.
- Regulations put statutes to work, fleshing out the details.
- A regulation deals with topics related to the statute under which it is made; the purpose of a regulation therefore is to provide details to give effect to the policy established by the statute.

In this way, regulations serve as the backbone of a statute. They are meant to 'carry out the intent' of the statute. To do this, regulations are designed to 'guide the activities' of all those affected by the statute to ensure uniform application of the law. This is because statutes do not include all the details needed to explain how an individual, business, state or local government, or others might follow the law.

In principle therefore, regulations should not be inconsistent with the statute. They may not contradict a statute. Regulations may not limit or expand the application of any definition or statutory provision. To do so would be in violation of the statute.

Ultimately, regulations cannot negate the provisions of a statute. If a regulation is in conflict with a statute, the statute will prevail. The regulation will be set aside as being void to the extent it is in disagreement with the enabling statute.

### **III. Trajectory of events**

#### **i. February 2015**

KWS advertised the start of public participation events covering most of the conservation areas in the country. 14 sites were chosen and visits made to those areas.

This was done to accord with the constitutional requirement for public participation and section 4 and the 4<sup>th</sup> schedule 4 of the Act.

The public events were conducted through the use of booklets developed to assist the participants tease out the important issues in each set of regulations. The views and comments obtained from these public forums produced a verbatim and an Issues report. These formed the basis of the First Draft set of regulations.

In drafting the regulations, the drafting team sought to ensure that the regulations translate policy to law and abide with the constitution and the statute.

#### **ii. On 20<sup>th</sup> and 21<sup>st</sup> April 2015**

The drafting team met with experts drawn from KWS at Lake Naivasha Sawela Lodge. The meeting subjected the First Draft to intensive discussions and recommended several amendments. The observations which were made from this meeting were incorporated into the First Draft. The meeting produced the 2<sup>nd</sup> Drafts of the regulations.

#### **iii. Stakeholders consultation forum, KWS Safari Walk- 20<sup>th</sup> – 21<sup>st</sup> January 2016.**

This forum brought together the new KWS Board members together with various stakeholders who held a dialogue on the different sets of the second Draft Regulations.

#### **iv. Stakeholders consultation forum, Sopa Lodge Naivasha- 21<sup>st</sup> to 22<sup>nd</sup> April 2016**

This Forum sought to build on the comments and views gains made during the stakeholders' forum of 20<sup>th</sup> to 21<sup>st</sup> January 2016 held in Safari Walk, Nairobi. This was basically a meeting of experts that resulted in the **Third Drafts** of the different sets of regulations. The meeting also agreed on a report to the KWS Board of Trustees.

In short the drafts in your hands have received comprehensive and detailed reviews from several stakeholders a number of whom are with us today. These drafts are not the thoughts of the consultants but a collection of stakeholder opinions put together for our final assessment.

This workshop constitutes the tail end of the consultative process. We are here today to validate these regulations. Until we do so the Act shall remain only partially applied. We hope that by the end of today we shall have discharged our obligation.

Thanks you.