

**THE EAST AFRICAN COMMUNITY PROHIBITION OF
MANUFACTURING, IMPORTATION, USE AND SALE OF
SINGLE USE PLASTICS BILL, 2021**

An initiative of the Flipflop in collaboration with Anjarwalla and Khanna

THE EAST AFRICAN COMMUNITY

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MEMORANDUM

The Treaty for the Establishment of the East African Community sets out one of the objections of the Community as the promotion of sustainable utilisation of the natural resources of the Partner States and the taking of measures that would effectively protect the natural environment of the Partner States. Further, Chapter 19 of the Treaty provides for the co-operation of the Partner States on environment and natural resources management which includes undertaking, through environmental management strategies, to co-operate and co-ordinate their policies and actions for the protection and conservation of natural resources and environment against all forms of degradation and pollution arising from developmental activities.

The Partner States of the East African Community have individually and jointly made great strides towards addressing plastic bags pollution in their respective jurisdictions. A great step was made through the passing of the East African Community Polythene Materials Control Bill which focuses on polythene materials and specifically provides for the elimination of polythene bags in all the Partner States. However, there remains a pressing need for further legislative action with respect to addressing the impact that the manufacture, importation, use and sale of single-use plastics has had in each Partner State and to the East African Community as a whole.

Significant steps are being taken globally to address the pollution caused by single-use plastics through the implementation of legislation on both a national and regional level. The tide continues to swell with discarded single-use plastics in East Africa, part as a result of shifting consumer habits in the region, part as a result of the ocean tides bringing pollutants from Asia and part as a result of the increased use of personal protective equipment in response to the global COVID-19 pandemic. There is a pressing need for further affirmative action to be taken by East African policymakers in order to preserve the health of its economy, environment and persons.

The object of this Bill, therefore, is to provide a legal framework for the preservation of a clean and healthy environment, through the prohibition of the manufacturing, importation, use and sale of certain specified single-use plastic products.

[Insert name of the EALA Member sponsoring/proposing the bill]

Member, East African Legislative Assembly

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A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY PROHIBITION OF MANUFACTURING, IMPORTATION, USE AND
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An Act of the Community to provide for the ban, control and regulation of the manufacturing, importation, use and sale of single-use plastic products and for other related matters.

ENACTED by the East African Community and assented to by the Heads of State.

PART 1 – PRELIMINARY PROVISIONS

Short Title

1. This Act may be cited as the East African Community Prohibition of Manufacturing, Importation, Use and Sale of Single-Use Plastics Bill, 2021.

Commencement

2. (1) This Act shall come into force on such date as the Council may, by notice published in the Gazette, appoint.

(2) For avoidance of any doubt, the elimination of the single-use plastics shall be complete in all the Partner States within one year from the coming into force of this Act.

Interpretation

3. In this Act, unless the context otherwise requires –

“**Assembly**” means the East African Legislative Assembly established by Article 9 of the Treaty;

“**bio-degradable**” means a material or item that has the ability to break down or which can decompose back into the natural environment without causing harm;

“**Community**” means the East African Community established under Article 2 of the Treaty;

“**East African Community Development Fund**” means the East African Community Development Fund to be established under the East African Community Development Fund Bill;

“**Council**” means the Council of Ministers of the East African Community established by Article 9 of the Treaty;

“**Gazette**” means the Official Gazette of the Community;

“**import**” means to bring or cause to be brought into the territories of the Partner States, any single-use plastic products from a foreign country;

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“manufacture” means the transformation of raw material into finished goods for sale, or other use, including the intermediate processes involving production or finishing of semi-manufactured goods;

“medical purposes” means the purposes of preventative medicine, medical diagnosis, medical research and the provision of medical care and treatment;

“Partner State” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of Uganda, the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

“person” an individual, a group of individuals, a company, an organisation or a cooperative with legal personality;

“plastic drink stirrer” means an implement made partly or wholly of plastic designed and intended for stirring drinks;

“recidivism” means a habitual relapse into a similar offence;

“recycling” the process of collecting and processing plastic materials that would otherwise be thrown away as trash and turning them into new products;

“relevant environment authority” means a government body designated by a Partner State to deal with environmental protection, management and compliance;

“relevant enforcement officer” means staff of the government body designated by a Partner State to deal with environmental protection, management and compliance or any other office authorised by any other law;

“scientific purposes” means diagnostic, educational or research purposes;

‘single-use plastic product’ means a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived;

“plastic stemmed cotton bud” means an item that consists of a rod made wholly or partly of plastic with cotton wrapped around one or both ends and that is not designed or intended to be re-used;

“plastic straw” means a straw that is made wholly or partly from plastic and that is not designed or intended to be re-used;

“compliance notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice;

“Treaty” means the Treaty for the establishment of the East African Community; and

“undertaking” means any business activity intended to be carried on, or carried on, for gain or reward by a person, a partnership or a trust.

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Scope

4. This Act applies to all types of single-use plastic materials and products.

Objectives

5. The objectives of this Act are to –
 - (a) establish a legal framework for the control of the manufacture, importation, use and sale of single-use plastic products in the Community;
 - (b) promote the use of sustainable and non-toxic re-usable products and re-use systems in place of single-use plastic products, aiming first and foremost to reduce the quantity of waste generated in the Community;
 - (c) preserve and promote a clean and healthy environment and land use management for sustainable development;
 - (d) prevent any type of pollution, waste or litter caused by single-use plastic products in lakes, rivers and oceans;
 - (e) protect infrastructure including drainage systems, biodiversity and livestock;
 - (f) promote recycling; and
 - (g) brand the East African Community as green and clean standard setter.

PART 2 – REGULATION OF SINGLE-USE PLASTICS AND EXEMPTIONS

Prohibition of manufacture, import, sale or use

6. (1) No person shall manufacture, import, sell, use or offer to manufacture, import or sell any single-use plastic product set out under the First Schedule, in any Partner State.

(2) No person shall pile or dispose of any single-use plastic products set out under the First Schedule, in any public place in any Partner State.

Exemptions

7. Section 6(1) shall not apply to the manufacture, import, sale or use of any single-use plastic listed under the First Schedule for any of the purposes set out under the Second Schedule.
8. The list of exempted uses of the prohibited single-use plastics may be updated at such time as the Assembly deems necessary.

Collection of single-use plastics

9. Every relevant environment authority shall put in place mechanisms for the collection, segregation and recycling of any single-use plastic products

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10. Each Partner State shall ensure that the manufacturers, wholesalers and retailers of the single use plastic products listed in the First Schedule cover the following costs pursuant to the mechanisms referred to in paragraph 9:
- (a) the costs of the awareness raising measures referred to in Part 4 of this Act;
 - (b) the costs of waste collection for the single use plastic products that are discarded in public collection systems, including the infrastructure and its operation, and the subsequent transport and treatment of that waste;
 - (c) the costs of cleaning up litter resulting from the single use plastic products listed in the First Schedule and the subsequent transport and treatment of that litter; and
 - (d) the costs of data gathering and reporting in accordance with Part 3 of this Act.
11. Each Partner State shall ensure that the manufacturers, wholesalers and retailers of any single-use plastic products comply with the requirements of section 9 of this Act.

Restrictions and Conditions

12. Each Partner State shall ensure that the single-use plastics set out under the Third Schedule bear a clearly visible and legible marking on its packaging or on the product itself informing consumers of the following:
- (a) appropriate waste management options for the product or waste disposal means to be avoided for that product; and
 - (b) the presence of plastics in the product and the resulting negative impact of littering or other inappropriate means of waste disposal of the product on the environment.

Transitional provision: existing stock

13. (1) The sale, use or offer to sell of any single-use plastic product set out under the First Schedule, is not an offence under section 6(1) if –
- (a) the sale, use or offer to sell is made within the period of six months after the coming into force of this Act; and
 - (b) the person selling or offering to sell the product obtained the product on or before the coming into force of this Act.

Authorisation

14. (1) Any person who wishes to manufacture, import, sell or use any single-use plastic listed under the First Schedule for any purpose set out under the Second Schedule shall apply for a written authorisation from the relevant environment authority and shall provide the following information –
- (a) the reasons for the application;
 - (b) the quantities required and estimated period of use; and

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- (c) how the applicant intends to manage or dispose of the single-use plastic waste arising from their use.
- (2) the relevant environment authority shall, within a period not exceeding thirty working days determine the application under subsection (1) and inform the applicant accordingly.
- (3) In the event that the applicant is not satisfied with the decision of the relevant environment authority, such applicant may seek redress from the Minister.

PART 3 – CONSUMPTION REDUCTION

15. (1) Each Partner States shall take the necessary measures to ensure a sustained reduction in the consumption of the single-use plastic products listed under the First Schedule in its territory. Those measures shall achieve a measurable quantitative reduction, to be determined by the Council.
- (2) The Assembly and the Council shall adopt regulations laying down the methodology for the calculation and verification of the measurable quantitative reduction measures taken.
- (3) Every fiscal year, each Partner State shall prepare a description of the measures which they have adopted pursuant to section 14(1), notify the description to the Council and make it publicly available.
- (4) The measures may include –
- (a) national consumption reduction targets that could include using economic instruments to ensure that the single use plastics are not obtained free of charge by the public;
 - (b) measures ensuring that re-usable alternatives to the single-use plastic products listed in the First Schedule are made available at the point of sale to the final consumer; and
 - (c) marketing restrictions.

PART 4 – AWARENESS RAISING MEASURES AND INCENTIVES

Awareness Raising Measures

16. Each Partner States shall, take measures to inform and incentivise consumers, producers, retailers, manufacturers, and suppliers about the following –
- (a) the availability of re-usable alternatives, re-use systems and waste management options
 - (b) the impact of littering and other inappropriate waste disposal of single-use plastic products on the environment, and in particular on the marine environment; and
 - (c) the impact of inappropriate means of waste disposal of those single-use plastic products on the sewer network.

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Incentives

17. Any activity aimed at controlling pollution caused by single-use plastics waste or any person investing in re-usable alternatives or bio-degradable materials may –
- (a) receive support from the East African Community Development Fund; or
 - (b) receive support from the government of a Partner State in the form of subsidies, grants or tax regimes as such Partner State may determine.

PART 5 – SANCTIONS AND ENFORCEMENT

Enforcement

18. The relevant environment authority in each Partner State shall be responsible for enforcing this Act.

Sanctions

19. In relation to an offence under this Act, the relevant environmental authority may, by notice, impose—
- (a) a requirement to pay a monetary penalty to the regulator of such amount as the regulator may determine (“an administrative fine”) in accordance with the provisions of this Act; and or
 - (b) a requirement to take such steps as the relevant environmental authority may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”).

Penal Provisions

20. (1) Any person who contravenes the provisions of section 6(1) commits an offence and shall be liable to an administrative fine not exceeding ten thousand United States dollars (USD 10,000) or to imprisonment for a term not exceeding twelve months, or both and in the case of an undertaking, up to ten percent of its annual turnover of the preceding financial year.
- (2) Any person who contravenes the provisions of section 6(2) commits an offence and shall be liable to an administrative fine not exceeding twenty thousand United States dollars (USD 20,000) or to imprisonment for a term not exceeding twelve months, or both and in the case of an undertaking, up to ten percent of its annual turnover of the preceding financial year and shall be ordered to remove such waste and repair the damages caused.
- (3) Any person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding five thousand United States Dollars (USD 5,000) or an imprisonment for a term not exceeding six months, or to both, and in the case of an undertaking, up to five percent of its annual turnover of the preceding financial year.
- (4) Where an offence under this Act is committed by a body corporate, and it is proved to have been committed with the consent, connivance of, or to be attributable to any act

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default on the part of the director, manager, secretary or other similar officer of the body corporate or any other purporting person as well as the body corporate, shall be deemed to have committed the offence and shall be liable accordingly.

- (5) Where recidivism is established on any person under this section, the penalty against such a person shall be doubled.

Compliance Notice

21. (1) The relevant environmental authority may serve a compliance notice on any person or body corporate in a case falling within section 6(1) or section 6(2) of this Act.

(2) A “compliance notice” is a notice prohibiting a person or body corporate from carrying on an activity specified in the notice until the person or body corporate has taken the steps specified in the notice.

(3) A case falling within this sub-section is a case where the relevant environmental authority reasonably believes that—

(a) the person or body corporate is carrying on the activity;

(b) the activity as carried on by that person or body corporate is causing, or presents a significant risk of causing, serious harm to the environment (including the health of animals); and

(c) the activity as carried on by that person or body corporate involves or is likely to involve the commission of an offence under Sections 6(1) or 6(2) of this Act.

(4) The steps referred to in sub-paragraph (2) shall be steps to remove or reduce the harm or risk of harm to the environment (including the health of animals).

Contents of a Compliance Notice

22. (1) A compliance notice shall include information as to—

(a) the grounds for serving the notice;

(b) the steps the person or body corporate must take to comply with the notice;

(c) rights of appeal; and

(d) the consequences of non-compliance.

Appeals against compliance notices

23. The person on whom a compliance notice is served may appeal against the decision to serve it to the courts or tribunals of the relevant Partner States and in accordance with the applicable laws.

24. The grounds for appeal may include:

- a. that the decision was based on an error of fact;

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- b. that the decision was wrong in law;
- c. that the decision was unreasonable;
- d. that any step specified in the notice is unreasonable;
- e. that the person has not committed the offence and would not have committed it had the compliance notice not been served;
- f. that the person would not, by reason of any defence, have been liable to be convicted of the offence had the compliance notice not been served;
- g. any other reasonable ground.

Completion Certificate

25. (1) Where, after service of a compliance notice, the relevant environmental authority is satisfied that the person has taken the steps specified in the notice, the relevant environmental authority shall issue a completion certificate.
- (2) The compliance notice ceases to have effect on the issue of a completion certificate.
- (3) The person on whom the compliance notice is served may at any time apply for a completion certificate.
- (4) The relevant environmental authority shall make a decision as to whether to issue a completion certificate and give written notice of the decision to the applicant, within 14 days of such an application.

Appeals against decision not to issue a completion certificate

26. The person on whom the compliance notice was served may appeal against a decision not to issue a completion certificate on the grounds that the decision—
- a. was based on an error of fact;
 - b. was wrong in law;
 - c. was unfair or unreasonable;
 - d. was wrong for any other reason.

Failure to comply with a compliance notice

27. (1) Where a person or body corporate on whom a compliance notice is served does not comply with it, the person or body corporate is guilty of an offence and liable to a fine not exceeding five thousand United States dollars (USD 5,000), or imprisonment for a term not exceeding twelve months, or both, and in the case of an undertaking, up to five percent of its annual turnover of the preceding financial year.

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Power of seizure

28. Subject to the exemption set out under section 7, any single-use plastic product listed under the First Schedule found in the possession of any person or body corporate in contravention of this Act shall be seized and taken to the appropriate stores established by the relevant environment authority for disposal.

Powers of entry and examination

29. (1) The relevant enforcement officer may, at any reasonable time, inspect any premises or vehicles suspected to be in possession of the single-use plastic products listed under the First Schedule in contravention with this Act and may –

(a) inspect and check the operation of any industry or factory and any associated premises or vehicle which he or she has reasonable cause to suspect is in possession of any prohibited single-use plastic products;

(b) examine and inspect any premises (other than premises used wholly or mainly as a dwelling) or vehicle which he or she has reasonable cause to suspect is in possession of any single-use plastic products;

(c) take such measurements and photographs and make such recordings as the relevant enforcement officer considers necessary for the purpose of any such examination or investigation;

(d) require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any documents which it is necessary for the relevant enforcement officer to see for the purposes of any such examination or investigation;

(e) direct that any premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of examination or investigation;

(f) take any samples, or cause samples to be taken, of any articles or substances found in or on any premises which a relevant enforcement officer has power to enter and to cause any such articles or substances to be analysed or tested; and

(g) seize any material, equipment or machine or information, where such seizure is necessary for an examination or investigation.

(2) Nothing in paragraph (1) compels the production by a person of any documents of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure.

30. (1) Any person who obstructs, impedes, assaults or interferes with a relevant enforcement officer in the performance of his or her functions under this Act commits an offence and shall be liable to an administrative fine not exceeding five thousand United States dollars (USD 5,000) or imprisonment for a term not exceeding twelve months, or both, and in the case of an undertaking, up to five percent of its annual turnover of the preceding financial year.

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(2) In exercising any of the powers of enforcement under this Act, a relevant enforcement officer shall on demand produce to the person against whom he or she is acting, evidence of identity as well as authority issued by the relevant environment authority to the relevant enforcement officer.

Time limit for the prosecution of offences

31. (1) An offence under this Act may be tried if it is laid within twelve months after the date on which evidence sufficient in the opinion of the relevant enforcement officer to justify the proceedings comes to the knowledge of the prosecutor.

32. (2) No proceedings are to be brought more than three years after the commission of the offence.

PART 6 – MISCELLANEOUS

33. This Act shall take precedence over other laws in the Partner States to which its provisions relate.

34. The Assembly and/or the Council may make regulations generally for giving effect to the provisions of this Act.

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FIRST SCHEDULE

LIST OF PROHIBITED SINGLE-USE PLASTIC PRODUCTS

- (1) Polythene bags
- (2) Cutlery (forks, knives, spoons, chopsticks);
- (3) Plates and bowls;
- (4) Plastic straws;
- (5) Beverage stirrers;
- (6) Balloons and sticks to be attached to and to support balloons;
- (7) Food containers made of expanded polystyrene;
- (8) Cups for beverages, including their covers and lids;
- (9) Beverage containers used for beer, wine, water, liquid refreshments, juices and nectars, instant beverages or milk, made of expanded polystyrene, including their caps and lids;
- (10) Polystyrene packaging materials;
- (11) Crisp packets, sweet and chocolate wrappers, bread bags and confectionary wrappers;
- (12) Sanitary items such as dental floss and plastic cotton bud sticks;

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SECOND SCHEDULE

**EXEMPTIONS TO THE PROHIBITION ON MANUFACTURE, IMPORT, SALE AND OF PROHIBITED SINGLE-
USE PLASTICS**

The prohibited single-use plastics listed under the First Schedule may be used for any of the following purposes where relevant:

- (1) Medical purposes;
- (2) Forensic purposes;
- (3) Scientific purposes;
- (4) elderly care homes purposes;
- (5) In premises used for early years provision;
- (6) A school;
- (7) a prison or other place of detention;

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THIRD SCHEDULE

LIST OF SINGLE USE PLASTICS WITH MARKING REQUIREMENTS

The following single-use plastics set out under this schedule shall bear a visible and legible marking on its packaging or on the product itself informing consumers of the information specified in section 11:

- (1) Tobacco products with filters and filters marketed for use in combination with tobacco products;
- (2) Wet wipes; i.e pre-wetted personal care and domestic wipes;