

SPECIAL ISSUE

NATIONAL COUNCIL
LAW REPORTING
LIBRARY

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Busia County Gazette Supplement No. 5 (Bills No. 3)



REPUBLIC OF KENYA

BUSIA COUNTY GAZETTE SUPPLEMENT

BILLS, 2016

NAIROBI, 18th May, 2016

CONTENT

Bill for Introduction into the County Assembly of Busia —

PAGE

The *Busia* County Decentralized Units Bill, 2016 1

THE BUSIA COUNTY DECENTRALIZED UNITS BILL, 2016

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects and purposes of the Act.

**PART II—ESTABLISHMENT AND ADMINISTRATION OF
DECENTRALIZED UNITS**

- 4—Decentralization of functions and services.
- 5—Decentralized units.
- 6—Roles and functions of decentralized units.
- 7—Public participation forum.
- 8—Functions of sub county and ward administrators.
- 9—Management of urban areas as decentralized units.
- 10—Exercise of functions to conform with the Constitution.

PART III —VILLAGE ADMINISTRATION

- 11—Village administration units in the County.
- 12—Matters to be considered in determining number of villages.
- 13—Current number of villages subject to review.
- 14—Qualifications for appointment as village administrator.
- 15—Functions and roles of village administrator.
- 16—Village Councils.
- 17—Criteria for appointment and terms of service.
- 18—Roles of a village Council.

PART IV—MISCELLANEOUS PROVISIONS

- 19—Executive Member to make regulations.
- 20—Prior approval of regulations by the County Assembly.
- 21—Act to be complimentary.

SCHEDULE ONE – Sub counties of the County.

SCHEDULE TWO – Wards of the County.

SCHEDULE THREE – Village Units of the County.

THE BUSIA COUNTY DECENTRALIZED UNITS BILL, 2016

A Bill for

AN ACT of the County Assembly of Busia to give effect to Article 176 (2) of the Constitution and Section 48 of the County Governments Act for the establishment, delineation and administration of decentralized units in the County; the roles and functions thereof and for connected purposes

ENACTED by the County Assembly of Busia as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Busia County Decentralized Units Act, 2016 and shall come into operation upon the expiry of fourteen days from the day of its publication. Citation

2. In this Act, unless a contrary meaning is imported— Interpretation

“Constitution” means the Constitution of Kenya, 2010,

“County” means Busia County;

“County Assembly” means Busia County Assembly established in accordance with Article 176 of the Constitution;

“County Government” means Busia County Government;

“Decentralized unit” or “decentralized units” mean decentralized unit or units of County administration referred to at Section 5;

“Executive Member” means the Member of the County Executive Committee for the time being in charge of public services;

“Sub- County” means a decentralized unit as defined under section 48 (1) (b) of the County Government Act, 2012;

“ward” means a decentralized unit as established under Article 89 of the Constitution and section 26 of the County Governments Act, 2012;

“village administrator” means the holder of the office established under section 52 (1) of the County Government Act, 2012;

“village units” or “village administration unit” means village units specified in the third schedule to this Act;

“village elders” mean the members of the Village Council appointed by the Village Administrator.

3. The objective and purpose of this Act is to—

Objectives and
purpose of the Act.

- (a) provide for the further decentralization of the functions and provision of services by the County Government in accordance with Article 176 (2) of the Constitution;
- (b) establish and delineate boundaries of decentralized units within the County;
- (c) decentralize functions and give responsibilities to decentralized units;
- (d) establish a functional county community and create a sustainable system of self-governance in the County; and
- (e) establish a decentralized administration structure in the County for efficient and effective public service delivery.

PART II—ESTABLISHMENT AND ADMINISTRATION OF DECENTRALIZED UNITS

4. Pursuant to Article 176 (2) of the Constitution and in order to promote social and economic development and provide proximate, effective and easily accessible services to its people, the County Governments shall—

Decentralization of
functions and
services

- (a) establish decentralized units in accordance with section 48 of the County Government Act; and
- (b) decentralize its functions and services to the decentralized units.

5. Subject to Article 89 of the Constitution, section 26 of the County Government Act and other national laws for the time being governing electoral boundaries in Kenya, the decentralized units of the County shall consist of—

Decentralized
units.

- (a) urban areas and or cities as may be established in the County in accordance with the Urban Areas and Cities Act;
- (b) sub-counties as set out in the First Schedule of this Act established in the County in accordance with Article 89 of the Constitution and Section 26 of the

The Busia County Decentralized Units Bill, 2016

County Government Act;

- (c) wards as set out in the Second Schedule of this Act established in the County in accordance with Article 89 of the Constitution and Section 26 of the County Government Act;
- (d) the villages established under this Act; and
- (e) any other or further units as the County Government may determine.

6. (1) Notwithstanding any other roles and or functions that may be bestowed upon them by any other law, the decentralized units of the County shall—

Roles and functions
of decentralized
units.

- (a) act as structures within which the County Government shall promote democratic exercise of power and create a coherent community in the County;
- (b) help to develop a community based development strategy for the County;
- (c) coordinate civic education in the respective units pursuant to and in accordance with the Constitution and the County Governments Act, 2012;
- (d) facilitate the exercise, by the people, of the power of self governance;
- (e) ensure and enhance the participation of the people in the exercise of the powers of state and making decisions affecting them;
- (f) enable the people to exercise the right to manage their own affairs and further their development;
- (g) promote social and economic development and provide proximate, efficient, effective and easily accessible service to its people.

(2) Every decentralized unit shall, through its institutions and public officers as far as appropriate and practicable, be responsible for the initiation of development and project proposals, their implementation, monitoring and evaluation.

7. (1) At least once every thirty days, there shall be conducted in each decentralized unit of the County a public

Public participation
forums.

participation forum in which the public may present their views and concerns in accordance with Part eight of the County Governments Act.

(2) An administrator of a decentralized unit in which a public participation forum is to be conducted shall ensure that the forum, together with its agenda, are sufficiently publicized and all those who intend to attend do attend.

8. (1) A sub-county administrator shall—

- (a) co-ordinate county government functions in the sub-county;
- (b) collaborate with other heads of county departments, national government officers, civil society, development partners and the public in the implementation, monitoring and evaluation of developmental activities in the sub-county; and
- (c) be responsible and answerable to the Chief Officer in the County Executive Department responsible for public service;

Functions of sub
county and ward
administrator

(2) A ward administrator shall—

- (a) co-ordinate county government functions in the wards, departments, national government officers, civil society, development partners and the public in the implementation, monitoring and evaluation of developmental activities in the ward; and
- (b) be responsible and answerable to the sub-county administrator of the respective sub-county.

(3) Without prejudice to sections 50 and 51 of the County Government Act, a sub-county administrator or ward administrator shall be a county public service officer and may serve in any part of the County.

9. An urban area or city established in the county shall be administered and managed in accordance with the provisions of the Urban Areas and Cities Act.

Management of
urban areas as
decentralized units

10. Any persons and institutions exercising roles and performing functions of the decentralized units shall do so in accordance to and in conformity with the Constitution, the County Governments Act and this Act.

Exercise of
functions to
conform with the
Constitution.

PART III— VILLAGE ADMINISTRATION

11. There shall be established in the County, such Village

number of villages or village units with the names and boundaries thereof determined by the County Assembly and administered by a village administrator in accordance with section 52 of the County Governments Act, 2012.

administration
units in the County.

12. (1) In determining the number and boundaries of villages or village units in the County, the County Assembly shall be guided by—

Matters to be
considered in
determining the
number of villages.

- (a) national values and principles as set out in article 10 of the Constitution;
- (b) the objectives of devolution under Article 174 of the Constitution;
- (c) the need to ensure that public services are proximate and easily accessible to the people at the lowest possible level;
- (d) need to ensure equality of representation by considering population equality; and
- (e) the need to ensure that people participate in making decisions in matters affecting them.

(2) In establishing villages or village units, the County Assembly shall ensure that—

- (a) a village or village unit shall not fall in more than one ward unit; and
- (b) no ward unit in the county shall have less than two villages.

13. (1) For avoidance of doubt, there are established in the County the villages or village administration units set out in the Third Schedule to this Act.

Current number of
villages subject to
review.

(2) No change shall be made to a village unit without an express resolution of the County Assembly to that effect.

(3) The County Assembly shall make a review of the number, names and boundaries of villages or village administration units every ten years or not more than a year after the last review of the wards of the County made by the Independent Electoral and Boundaries Commission.

14. In addition to the qualifications set out at section 52(2) of the County Government Act, no person shall be

Qualifications for
appointment as
village
administrator.

appointed as a village Administrator unless such person—

- (a) is a resident and has been so resident in the village unit to which the appointment is made, for a period of not less than three years immediately before the appointment;
- (b) has attained a post secondary education with proof of certification ; and
- (c) meets the requirements of chapter six of the Constitution.

15. The village administrator shall perform the functions and exercise powers conferred upon him or her under section 52 (3) of the County Governments Act and shall—

Functions and roles
of village
administrator

- (a) under the general direction of the relevant ward administrator, coordinate delivery of services in the devolved functions in the village unit;
- (b) in collaboration and co-operation with other County and national public officers and civil societies facilitate developmental activities in the village unit;
- (c) facilitate civic education and public participation in decision making in the village unit;
- (d) chair the village council.

16. For every village unit established in the County in accordance with this Act there shall be a village council with its composition and responsibilities as out in section 53 of the County Governments Act.

Village councils.

17. (1) In appointing elders to the village council pursuant to and in accordance with section 53 of the County Government Act, the village administrator shall consider and take into account all relevant factors including—

Criteria for
appointment and
term of service.

- (a) education which shall be a minimum of 'O' level;
- (b) ethnic, clan, racial, religious, social composition and balance of the village;
- (c) gender ; and
- (d) age.

(2) A village elder shall serve for a term of three years renewable once and no person may be appointed to serve as a village elder for more than two terms.

18. A village council shall have such roles and responsibilities as are conferred on it by this Act or written law and, in particular, shall ensure that—

Roles of a village council

- (a) the county government and its agencies deliver services within the village.
- (b) the county Government and its agencies in delivering services in the village, observe the principles of equity, efficiency, transparency, accountability, non-discrimination and accessibility; and
- (c) the public participates in making decisions affecting them.

PART IV—MISCELLANEOUS PROVISIONS

19. For the better carrying out of the provisions of this Act generally, the Executive Member may make regulations, in particular, to provide for the boundaries of the village units in line with the requirements of the constitution, the County Governments Act, 2012 and this Act.

Executive Member to make regulations

20. The regulations made under section 19 shall not take effect nor become operational unless approved by the County Assembly and Gazetted.

Prior approval of regulations by the County Assembly.

21. This Act shall be complimentary to the County Governments Act in relation to the establishment and administration of the decentralized units within the county.

Act to be complimentary (Act No. 17 of 2012)

FIRST SCHEDULE*Section 5(b)***SUB-COUNTY UNITS OF BUSIA COUNTY**

Name Of Sub-County	Constituency Population (KNSB, 2009)	Area In Sq. Km
Teso North	117,947	257.1
Teso South	137,924	293.6
Nambale	94,637	237.9
Matayos	111,345	196.2
Butula	121,870	247.1
Funyula	93,500	265.1
Budalangi	66,723	188.3

SECOND SCHEDULE*Section 5(c)***WARD UNITS OF BUSIA COUNTY**

Constituency Ward Name	Ward Population	Ward Area In Sq. Km
Malaba Central	25,912	25.4
Malaba North	13,765	37.8
Angurai South	20,791	49.7
Angurai North	23,400	56.3
Angurai East	15,549	36.9
Malaba South	19,250	51.0
Angorom	26,162	22.1
Chakol South	31,571	69.1
Chakol North	18,655	49.5
Amukura west	17,423	35.6
Amukura East	23,357	66.1
Amukura Central	20,756	51.2
Nambale Township	32,293	68.7
Bukhayo North/Walatsi	22,459	62.6
Bukhayo East	21,696	58.6
Bukhayo Central	18,189	48.0
Bukhayo West	33,480	72.8
Mayenje	9,170	14.6
Matayos South	30,874	68.6
Busibwabo	11,328	32.5
Burumba	26,493	7.7
Mariachi West	20,211	36.2
Kingandole	18,270	35.8
Mariachi Central	19,816	38.9
Mariachi East	20,865	43.5
Mariachi North	24,054	50.7
Elugulu	18,654	42.0
Namboboto – Nambuku	28,143	70.0
Nangina	20,193	50.0
Ageng'a – Nanguba	25,378	80.8
Bwiri	19,786	64.3

The Busia County Decentralized Units Bill, 2016

Bunyala Central	10,381	47.7
Bunyala North	20,948	57.2
Bunyala West	21,237	26.5
Bunyala South	14,157	56.9

THIRD SCHEDULE*Section 5 (d)***VILLAGE UNITS OF BUSIA COUNTY**

Ward Name	Ward Area In Sq. Km	Ward Population	No. Of Village Units	Name Of The Units
Malaba Central	25.4	25,912	3	Akadetewai, Amogoro, Amoni
Malaba North	37.8	13,765	2	Okuleu, Kamuriai,
Angurai South	49.7	20,791	3	Katakwa, kakapel, Aboloi
Angurai North	56.3	23,400	4	Angurai, kakurikit, Moding, Kolaït
Angurai East	36.9	15,549	2	Angurai A, Angurai B
Malaba South	51.0	19,250	3	Kamolo, Kokare, Kocholia
Angorom	22.1	26,162	3	Alupe/Angorom, Ojamii, Amerikwai
Chakol South	69.1	31,571	5	Amongura, Adungosi, Okame, Okiludu, Otimong
Chakol North	49.5	18,655	3	Atemor, Asinge, Akites
Amukura west	35.6	17,423	3	Machakus, Amaïro, Lukolis
Amukura East	66.1	23,357	4	Amukura, Kotur, Kwangamori, Amukura Township
Amukura Central	51.2	20,756	3	Simba Chai, Kaliwa North, Kaliwa South
Nambale Township	68.7	32,293	5	Ekondokhera / Emukhuyu, Kisoko, Nambale A, Nambale B, Siekunya
Bukhayo North-Walatsi	62.6	22,459	4	Lupida, Kapina, Khwirale, Musokoto
Bukhayo East	58.6	21,696	4	Sikinga, Madibo, Elwanikha/Buyofu, Madende
Bukhayo Central	48.0	18,189	3	Sidende, Lwanyange, Malanga
Bukhayo West	72.8	33,480	5	Bugengi A, Bugengi

				B, Esikulu A, Esikulu B, Mundika
Mayenje	14.6	9,170	2	Bulanda, Mayenje
Matayos South	68.6	30,874	5	Mabunge, Lung'a, Murende, Lwanya, Nangoma
Busibwabo	32.5	11,328	2	Nasira, Alungoli-Nakhakina
Burumba	7.7	26,493	3	Mjini, Lukonyi, Burumba
Marachi West	36.2	20,211	3	Mariachi West A, Marachi West B, Marachi West C
Kingandole	35.8	18,270	3	Kingandole East, Kingandole Central, Kingandole West
Marachi Central	38.9	19,816	3	Ibanda, Khunyangu, Bukhalalire
Marachi East	43.5	20,865	3	Bumula B, Buhuyi urban, Emauko
Marachi North	50.7	24,054	4	Tingolo, Bukati, Kanjala, Sikarira
Elugulu	42.0	18,654	3	Elugulu A, Elugulu B, Elugulu C
Namboboto/Nambuku	70.0	28,143	5	Buluanda, Namboboto, Namwefumbo, Lugala/Mango, Nadombo
Nangina	50.0	20,193	3	Wakhungu/Sigulu, Odiado, Nangosia
Ageng'a /Nanguba	80.8	25,378	5	Ageng'a, Sigalame, Bukiri/Ojibo, Nanderema/Rumbiye, Bujwang'a
Bwiri	64.3	19,786	4	Busembe, Busijo, Hakati, Namuduru
Bunyala Central	47.7	10,381	2	Magombe East, Magombe West
Bunyala North	57.2	20,948	4	Rwambwa, Budalangi, Mundere/Sisenye, Mudembi
Bunyala West	26.5	21,237	3	Keri, Bulemia/mwoyo, Sumba
Bunyala South	56.9	14,157	3	Khajula, Buofu, Obaro

MEMORANDUM OF OBJECTS AND REASONS

Article 176(2) of the constitution of Kenya, 2010 provides that every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so.

At clause 14 of part II of the Fourth Schedule to the constitution of Kenya, 2010, it is provided, as a devolved function, that county governments are responsible for ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

To perform this function effectively, section 48 of the County Government Act, 2012 confers on County Governments the mandate to establish such number of village units in each county as may be determined by the county assembly of the respective county; and such other or further units as a county government may determine.

The Busia County Decentralized Units Bill 2016 is a Bill for an Act of the County Assembly to give effect for mechanisms for further decentralized for more effective service delivery by the County Government.

Part I of the Bill carries preliminary provisions. Parts II and III provide for administration structures. Under these parts, the Bill seeks to establish the village Units and Village councils as well as the offices of village administrators.

This village administrative structure will basically be responsible to the County Government, through the ward administrators, for the performance of functions and the discharge of the Constitutional and statutory mandate of the County Government at a level closer to the people.

Pursuant to Standing Order No. 114 of the Busia County Assembly Standing Orders, it is provided at Section 19 of the Bill that the Executive Committee Member for the time being in charge of Public Service is given delegatory powers of making rules to effect the objectives of this Act but with proper consultation and recommendations from the relevant committee.

This Bill does not limit any fundamental rights and freedoms.

This Bill concerns the County Government and is under the ambit of County Assembly functions as earlier stated at paragraph 1 hereof.

The enactment of this Bill shall occasion expenditure of public funds to the extent of appointing village administrators and village elders which shall have an effect on the county wage bill.

VINCENT OBISA WANYAMA,

*Chairman,
Planning, Trade, Tourism, Cooperatives And Industrialization
Committee.*