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

**THE ISIOLO COUNTY CUSTOMARY NATURAL RESOURCE
MANAGEMENT BILL, 2016**

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**THE ISIOLO COUNTY CUSTOMARY NATURAL RESOURCE
MANAGEMENT BILL, 2016**

A Bill for

**AN ACT of the County Assembly of Isiolo to provide for customary
management of natural resources and for connected purposes**

ENACTED by the County Assembly of Isiolo, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Isiolo County Customary Natural Resource Management Act, 2016.

Interpretation

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

“aaba erega” means regulator of wells and dams;

“artha” means a specific location or geographic unit that multiple olla(s) occupy;

“authorised officer” means any person appointed by the County Government to act on its behalf;

“county” means Isiolo County;

“county government” means the Isiolo County Government;

“community” means Boran community and other pastoral communities within Isiolo County;

“council of elders” means such groups of elders recognised by members of the community as their council of elders at olla, artha and dedha levels;

“constitution” means the Constitution of Kenya, 2010;

“dedha” means a grazing area community comprised of several arthas.

“elder” means a person of either gender accorded such status owing to knowledge, wisdom and experience regardless of their age;

“natural resources” means water, pasture and forest resources;

“governor” means the Governor of Isiolo County Government;

“olla” means a village or a group of homesteads that may be set up temporarily or remain in the same place over several years.

Purpose and Objectives

3. The purpose and objectives of this Act shall be—

- (a) to provide for recognition, and use of indigenous knowledge systems in management of natural resources;
- (b) to provide for establishment of a Council of Elders to coordinate the management of water and pastures within Isiolo County;
- (c) to ensure that all natural resources occurring within the county are adequately conserved, protected and sustainably used;
- (d) to ensure that all members of the community have access to water and forest resources available within the county; and
- (e) to provide for penalties for the commission of any prohibited activity that may negatively affect the sustainability of the resources is halted.

PART II—ADMINISTRATION

Council of Elders

4. There shall be established a Council of Elders who shall assist the county government in managing its functions at the olla, artha and dedha levels.

Composition of the Council

5. (1) The Council of Elders shall consist of such number of community elders as determined by custom, necessary for the efficient and effective discharge of its functions.

(2) The Council of Elders shall be composed of recognised community elders from various olla, dhedha and artha, appointed in accordance with community Customary Law.

(3) The Council of Elders may co-opt into their membership, to invite, permit or require the following categories of persons to be present during their sittings—

- (a) elected community representatives;
- (b) representatives of the County Government;
- (c) representatives of Government Ministry or Agency in charge of Land, Livestock, water, forestry, environment, security and the provincial administration;
- (d) representatives of the Judiciary; and
- (e) any other person as may be deemed fit.

Functions of the Council

6. The functions of the Council of Elders shall be to—
- (a) oversee the management the utilisation of community water resources and pastures;
 - (b) make recommendations for consideration by the council and the government over the utilisation of natural resources within Isiolo county;
 - (c) hear, determine and settle disputes relating to community water resources and pastures through traditional dispute resolution mechanisms;
 - (d) facilitate the negotiation over the access and use of communal water resources and pastures on behalf of the community; and
 - (e) regulation of approved water sources for every season and period;
 - (f) in the exercise of its functions, the council shall ensure that its approach is at all times in the public interest, while ensuring that the resources are managed sustainably.

Guiding Principles

7. In fulfilling its mandate, a Council of Elders shall act in accordance with the provisions of the Constitution and the laws of Kenya, and shall observe and respect—

- (a) the diversity of the people in Isiolo;
- (b) impartiality and gender equity;
- (c) the rules of natural justice; and
- (d) consider the existing administrative and geographical boundaries.

Terms of Office

8. The Elders shall serve at the pleasure of the Community provided that they comply with the Constitution and the laws of Kenya, including community customary law.

PART III—WATER RESOURCES

Authority of Aaba Erega

9. Each dam and well shall have an Aaba Erega who shall oversee and regulate watering of livestock at each of the wells and dams.

Management of dams and Wells

10. (1) The Aaba Erega shall determine a schedule for the access to water for the various households.

(2) A person may by request made in advance to the Aaba Erega seek a change of date assigned for access to water.

(3) The Aaba Erega may not arbitrarily deny such requests.

Permitted Activities

11. The following activities are permitted at the water sources—

- (a) access by households of approved dams and wells;
- (b) fetching of water and the watering of livestock from wells and dams; and
- (c) access of dams and wells by persons and livestock from other communities where the consent of the Council of Elders has been obtained.

PART IV—PASTURES AREAS

Regulation by Council

12. The Council of Elders shall be responsible for—

- (a) the determination of the grazing patterns for every season as specified in community resource map; and
- (b) the identification of the approved pastures for every season or as determined in the community resource map.

Permitted Activities in Pasture

13. The following activities are permitted—

- (a) the grazing of either young, weak, sick, calving or lactating livestock near settlements;
- (b) the grazing of gues (mature head) near settlements during the dry season solely to access water-points; and
- (c) the grazing of gues in the mata dhetha (furthest pasture) during the wet season.

Offences

14. The following activities are prohibited—

- (a) grazing of livestock in the chaafa (flood plain grazing area) without consent of the elders;

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- (b) grazing of gues (mature herds) near the olla (settlements) or maar gaae (homesteads);
- (c) grazing of herds on transit near the olla (settlements);
- (d) setting of fire within the pastures or forested areas; and
- (e) any illegal activity prohibited under national law.

Any person who engages in any activity stated above commits an offence, and shall be liable to such fines as may be determined by the council of elders.

PART V—FORESTED AREAS

Conservation

15. Trees shall be conserved, protected and preserved to ensure continuous supply of shade, food, beauty, medicine, and other beneficial uses.

Permitted Activities

16. The following activities are permitted—

- (a) the cutting of a reasonable number of tree branches for construction;
- (b) the cutting of a reasonable number of tree branches for fodder during the dry season or drought;
- (c) the collection of medicinal herbs; and
- (d) the planting, conservation and protection of trees and other plants.

The consent of elders is required for (a), (b) and (c).

Offences

17. The following activities are prohibited—

- (a) felling of trees, whether young or mature;
- (b) cutting down of any tree branches;

Any person who engages in any activity stated above commits an offence, and shall be liable to such fines as may be determined by the council of elders.

PART VI—DISPUTE RESOLUTION

Penalties

18. (1) A person who commits an offence, and shall be liable to such penalties as shall be determined by the Council of Elders of the area.

(2) Where an offence has been committed, and depending on the nature and the seriousness of the offence the Council of Elders, may—

- (a) pardon the offender;
- (b) issue a warning to the offender;
- (c) detain the livestock or part of the livestock thereof belonging to the offender for a specified period, not exceeding seven calendar days;
- (d) impose fines payable through either livestock or small stock, provided that the number of the stock fined shall not exceed five in total; or
- (e) refer the case to the Police, Judiciary or other government agency where it certifies the matter as either, serious, requiring further action or where the parties so request the same to be transferred.

Referrals

19. (1) Where a case is referred as stipulated under section 21 (2) (e) above, a summary of the details of the case, evidence and the findings of the Council of Elders in respect of the matter shall be presented to the Police, Judiciary or other government agency.

(2) Any arrested persons not already within police custody shall be submitted to police custody, and if not in custody, their details, if known shall be submitted.

Appeals

20. (1) All disputes emanating from the enforcement of these Act shall be brought before the Council of Elders responsible for the area (Olla) for determination at the first instance.

(2) A person aggrieved by the decision at the Olla level, may appeal to the Artha Council, and finally to the Dedha Council.

Councils to be guided by Constitution

21. (1) In exercising quasi-judicial functions the council shall be guided by the laws of Kenya as set out in Article 2 of the Constitution and the principles of judicial authority as established under Art. 159 of the Constitution and having regard to Art. 159 (3) thereof which requires that traditional dispute resolution mechanisms are not used in a way that—

- (a) contravenes the Bill of Rights;
- (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
- (c) is inconsistent with the Constitution or any written law.

Responsibility of Society

22. All members of the community shall have a duty to ensure that the natural resources of the area are conserved and to ensure that the by-laws are respected.

Arrests

23. A person who commits an offence may be arrested and taken before the council of elders or the police or other relevant authority to face prosecution under national law.

Issuance of Permits

24. (1) The council responsible for a particular area shall have the responsibility of issuing permits, where their consent is required for activities such as: firewood collection, grazing, access to water.

(2) A person seeking to engage in any of the specified activities shall make a formal request in either orally or writing to the council responsible for that area.

(3) The council shall consider all requests and where permissible, issue permits for the conduct of the specified activities, provided that the council shall not unreasonably deny requests for permits.

MEMORANDUM OF OBJECTS AND REASONS

This Bill is prepared pursuant to section 201 of the County Government Act and the provisions of Articles 11, 44, 63 of the Constitution and other relevant law.

Part I of the Act provides for the short title Act, the interpretation of various terminologies used in the Act and the objects and purpose of the Act.

Part II of the Act stipulates the administrative aspect by providing for establishment of council of elders, composition of the council, functions of the council, the guiding principles and functions of the council.

Part III of the Act provides for management of water resources by Aaba Erega, and the activities permitted at the dams and wells.

Part IV of the Act provides for management of pasture areas by the council and offence which can be committed with regard to pasture.

Part V provides for conservation of forested areas, permitted activities in the forested areas and offences which can be committed in forest area.

Part VI provides for dispute resolution.

PETER LOSU,
Chairman,
Committee on Water, Environmental and Natural Resources.

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