

SPECIAL ISSUE

Kakamega County Gazette Supplement No 1 (Bills No 1)



REPUBLIC OF KENYA

**KAKAMEGA COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2015

NAIROBI, 24th February, 2015

CONTENT

Bill for Introduction into the County Assembly of Kakamega—

PAGE

7 The Kakamega County Administrative Units and Boundaries Bill,
2014

1

THE COUNTY ADMINISTRATIVE UNITS AND BOUNDARIES BILL, 2014

ARRANGEMENT OF CLAUSES

Clause

PART I–PRELIMINARIES

- 1 Short title
- 2 Interpretation
- 3 Commencement
- 4 Guiding Principle
- 5 Objects and purpose of the Act

PART II–ESTABLISHMENT AND FUNCTIONS OF THE COUNTY ADMINISTRATIVE BOUNDARIES COMMITTEE

- 6 Establishment and Membership of Committee
- 7 Committee Secretary
- 8 Records of the Committee
- 9 Secondment of Persons to the Committee
- 10 Funds of the Committee
- 11 Terms of Service of the Members of the Committee
- 12 Functions of the Committee
- 13 Criteria for Determination of Administrative Units

PART III–PROCEDURES OF THE COMMITTEE

- 14 Meetings of the Committee
- 15 Independence of the Committee
- 16 Establishing Administrative Units
- 17 Review of decision of the committee
- 18 Application for review

PART IV–GENERAL

- 19 Dissolution of Committee
- 20 Protection from Personal Liability

THE COUNTY ADMINISTRATIVE UNITS AND BOUNDARIES BILL, 2014

A Bill for

AN ACT of the County Assembly of Kakamega pursuant to sections 48 article 176(2) and section 54(1) of the County Governments Act and section 17 of the decentralised units Act to provide for the determination and review of the County Administrative Units and boundaries as well as their respective headquarters for economical, efficient, participatory and effective, delivery of services in the County and for connected purposes

ENACTED by the County Assembly of Kakamega, as follows—

PART I—PRELIMINARIES

Short title

1 This Act may be cited as the Kakamega County Administrative Units and Boundaries Act, 2014

Interpretation

2 In this Act, unless the context otherwise requires—

“Accounting Officer” means the accounting officer for the time being responsible for public service and administration in the County Government of Kakamega,

“Administrative units” means decentralised level of service delivery in the County and constituted as villages

“Chairperson” means person holding the office of the chairperson of the Committee and includes the member discharging the duties of the chairperson,

“Committee” means the County Administrative Boundaries Committee as established in accordance with the provisions of this Act,

“County” means the County of Kakamega as established under the Constitution of Kenya, 2010,

“County Assembly” means the County Assembly of the County of Kakamega,

“County Assembly Committee” means the committee of the County Assembly responsible for Administration and Justice

“County Gazette” means a gazette published by the authority of the County Government or a supplement of such gazette,

“Executive Committee” means a County Executive Committee established in accordance with Article 176 of the Constitution,

“Executive Committee Member” means the Executive Committee Member for the time being in charge of matters relating to Public Service and Administration,

“Gazette” means the Kenya Gazette or the County Gazette,

“The Technical Committee Report” means a report prepared by a Technical Committee appointed by the Governor on establishment of villages in Kakamega County,

“Governor” means the person holding the office of the Governor of the County of Kakamega,

“Member” means the person holding office of member of the Committee and includes the person holding the office of the chairperson of the Committee

“Population quota” means the number obtained by dividing the last official gazetted population of the County by the number of Villages as established under section 5 of the County Decentralised Units Act 2014

Commencement

3 This Act shall come into operation on a date as shall be published by the Executive Committee Member in the County Gazette and or Kenya Gazette

Guiding Principle

4 The guiding principle in the determination of the County Administrative Units and Boundaries shall be to promote cost - effective, efficient, participatory and timely delivery of services in all parts of the County for equitable development

Objects and purpose of the Act

5 The object and purpose of this Act is to—

- (a) provide for the operations, powers, responsibilities and functions of the Committee to determine the village administrative units, names, boundaries and their respective headquarters,
- (b) provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Committee,
- (c) provide for the manner of the exercise of the powers, responsibilities and functions of the Committee,
- (d) establish mechanisms for the Committee to facilitate consultations with interested parties, and

- (e) establish mechanisms for the Committee to address the issues arising out of the review

PART II—ESTABLISHMENT AND FUNCTIONS OF THE COUNTY ADMINISTRATIVE BOUNDARIES COMMITTEE

Establishment and Membership of Committee

6 (1) The Governor may, as provided for hereinafter, and upon the advice of the Executive Committee Member and approval by the County Assembly, establish an ad hoc committee to be known as the County Administrative Boundaries Committee

(2) The Governor shall appoint members to the Committee comprising of persons of high moral standing and integrity from the following groups

- (a) The Institution of Surveyors of Kenya,
- (b) The County Planning Department,
- (c) The Law Society of Kenya,
- (d) National Government Coordination,
- (e) County Population Department, and
- (f) A Representative of the Kakamega Council of Elders

(3) The Committee shall consist of a Chairman and six members nominated from the bodies above and appointed by the Governor after approval by the County Assembly

(4) The nominating bodies shall forward three names of persons nominated which should meet the 1/3 gender rule

(5) Not more than two thirds of the membership of the committee shall be of the same gender

(6) A person shall not be eligible for nomination and or appointment to the committee unless such person satisfies the provisions of Article 10, Chapter Six and Article 232 of the Constitution of Kenya, 2010

(7) Any member of the Committee may be withdrawn and or be disqualified from membership by the Governor on the resolution of the committee approved by at least five members of the committee for lack of commitment to the Committee, failure to discharge the duties assigned, apparent and or questionable integrity and gross misconduct

Committee Secretary

7 The Committee shall have two joint Secretaries nominated and appointed by the Governor after approval by the County Assembly

Records of the Committee

8 (1) The Committee shall maintain such records and shall have the powers to access all other records from any public institution or body as shall be deemed necessary to discharge its functions,

(2) The records of the Committee shall vest in and be kept under the custody of its secretariat

Seconded Persons to the Committee

9 (1) For the effective discharge of the Committee's functions, the County Government may second any public officer(s) or such other person(s) to the committee to facilitate and assist in carrying out its functions and or mandate,

(2) Such seconded public officer(s) and or person(s) shall not be treated as employee(s) of the Committee,

(3) Any public officer(s) seconded to the committee shall be considered to be on official duty, and

(4) A public officer(s) or person(s) performing a duty assigned by or on behalf of the Committee shall take directives from and be held accountable to the Committee and shall not be subject to direction by any other person or authority

Funds of the Committee

10 (1) The functions, mandate and activities of the Committee shall be fully funded by the County Government from funds appropriated by the County Assembly,

(2) The Accounting Officer shall fully account for any such funds as shall be set aside and or provided for the functions and mandate of Committee,

(3) The funds of the Committee shall be managed, governed and subject to the laws and policies for the time being applicable to public financial management, accounting and auditing, and

(4) Any grants, gifts, donations, monies or financial benefits from third parties to the committee shall be declared and deemed to be the property of the County Government

Terms of Service of the Members of the Committee

11 The members of the committee shall serve under such terms as shall be determined by the Executive Committee Member upon approval by the Executive Committee

Functions of the Committee

12 (1) The functions of the Committee when established shall include

- (a) review and determination of the boundaries, names and headquarters of the administrative units,
- (b) collection, collation and dissemination of current and readily available maps and data of the county, by use of appropriate technology showing the boundaries, names, and headquarters of the administrative units and related matters,
- (c) advise the County Government on harmonious inter-play between administrative and electoral boundaries and units in the County,
- (d) review of its determinations upon petition by members of the public following its report to the public
- (e) carry out any other function related to the foregoing functions as may be assigned by the Governor or by the County Assembly

Criteria for Determination of Administrative Units

13 (1) The Committee shall take the following factors into consideration in the determination of the boundaries, names and headquarters of the administrative units in the county

- (a) respect for both inter-county and intra-county boundaries namely sub-county and ward,
 - (b) the need for cost - effective, efficient, effective and equitable service delivery,
 - (c) promotion of harmonious discharge of the functions of both National and County Governments,
 - (d) promotion of sustainable use of human and natural resources in the proposed units,
 - (e) population density and demographic trends,
 - (f) historical, cultural and economic ties of the communities in the proposed administrative units,
 - (g) the views of the communities affected,
 - (h) geographical features, and
 - (i) establishment of sustainable and equitable administrative units in terms of levels, sizes and resource allocation or utilisation
- (2) The boundaries of each Village shall be such that the number of

inhabitants in the Village is, as nearly as possible, equal to the population quota, but the number of inhabitants of a Village may be greater or lesser than the population quota in the manner specified in clause (3) to take account of—

- (a) geographical features and urban centres,
- (b) community of interest, historical, economic and cultural ties, and
- (c) means of communication

(3) The number of inhabitants of a Village may be greater or lesser than the population quota by a margin of not more than—

- (a) forty per cent (40%) for urban areas,
- (b) thirty per cent (30%) for non-urban areas

(4) In determining all the administrative units and or their boundaries, the committee shall consult widely and ensure adequate public participation including making reference to the technical committee report

(5) The Committee may be established for the review of the administrative units and or their boundaries at intervals of not less than eight years and not more than 12 years

PART III-PROCEDURES OF THE COMMITTEE

Meetings of the Committee

14 (1) The Committee shall meet at such times and at such places as it shall determine and at such frequencies as shall be necessary to complete its mandate within the prescribed duration

(2) The quorum at every meeting of the Committee shall be at least the majority of all the members of the Committee

(3) The Chairperson or such other deputed member as agreed upon by the members shall preside over meetings of the Committee

(4) The decision of the Committee shall be by simple majority of the members present and voting and shall be implemented by the secretary or as decided by the Committee

(5) The secretaries shall, by way of minutes, maintain in safe custody the record of all the proceedings of the Committee

Independence of the Committee

15 The Committee shall be independent in its functions and decisions and shall have its chairperson as the spokesperson

Establishment of Administrative Units

16 (1) The Committee shall prepare and publish a preliminary report outlining—

- (a) the proposed delimitation of boundaries for villages, and
- (b) the specific geographical and demographical details relating to such delimitation

(2) The Committee shall ensure that the preliminary report is made available to the public for a period of fourteen days (14) and invite representations from the public on the proposals contained in the report during that period

(3) Upon the expiry of the period provided in subparagraph (2), the Committee shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that subparagraph and submit the revised preliminary report of proposed boundaries to the County Assembly committee

(4) The County Assembly Committee shall, within fourteen days of receipt of the revised preliminary report under subparagraph (3), table the revised preliminary report to the County Assembly together with its recommendations

(5) The County Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Committee

(6) Within fourteen days of the expiry of the period provided for in subparagraph (5), the Committee shall, taking into account the resolutions of the County Assembly under subparagraph (5), prepare and submit its final report to the printer, outlining the matters set out in subparagraph (1)(a), for publication in the Gazette specifying the names, headquarters and boundaries of each of the villages

(7) Where the County Assembly fails to make a resolution within the period specified in subparagraph (5), the Committee shall proceed to publish its report in accordance with subparagraph (6)

(8) Any person who, being responsible for the publication in the Gazette of the final report submitted under this paragraph fails to publish the report within the time required by the Committee after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year

(9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Committee shall, within seven (7) days of the submission of the said

report, cause the report to be published in the County Government website and/ or two (2) dailies of County circulation and such publication shall have effect as if it were done in the Gazette

Review of decision of Committee

17 A person may apply to the High Court for review of a decision of the Committee made under this Act

Application for review

18 An application for the review of the decision made under paragraph 17 shall be made within fourteen days (14) of the publication of the decision in the Gazette notice

PART IV—GENERAL

Dissolution of Committee

19 The Committee shall stand dissolved on expiry of fourteen (14) days after publication of its report

Protection from Personal Liability

20 Nothing done in good faith by a member of or seconded person to the Committee shall render such member or person personally liable for any action or claim or demand

MEMORANDUM OF OBJECTS AND REASONS

The County Administrative Units and Boundaries Bill 2014 is enacted pursuant to the provisions of article 76 (2) of the Constitution of Kenya 2010, section 48 and 54 (1) of the County Government Acts and section 17 of the decentralised units Act

The Bill seeks to establish an ad hoc committee to determine and review the boundaries, names and headquarters of the administrative units and for our case villages. The aforesaid committee shall stand dissolved upon delivery of its mandate. There are strict timelines set in the act for the delivery of its mandate.

The administrative structures of the committee, its functions, remuneration and other related functions have been provided for in the bill. The principles upon which the committee shall use in determining the boundaries of the administrative units have been clearly set out. There are also provisions relating to resolutions of disputes arising from the work of the said ad hoc committee.

In drafting this bill all efforts have been made to ensure that the bill is consistent with the Constitution and all relevant laws.

Public Participation has been taken into account in coming up with the boundaries, names and headquarters of the administrative units by the ad hoc committee established therein.

Therefore all the stake holders are called upon to consider the bill objectively and rally behind its enactment for purposes of achieving decentralized units that will ensure effective delivery of service and effective administration.

Dated the 1st March, 2014

MR. EDWARD INDIMULI INZOFU,
Chairman,
Justice and Constitutional Affairs Committee