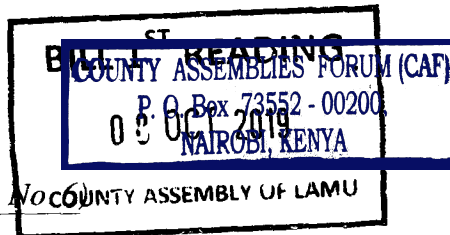
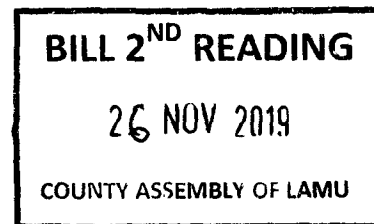


SPECIAL ISSUE

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REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

COMMITTEE OF THE WHOLE

LAMU COUNTY BILLS, 2019

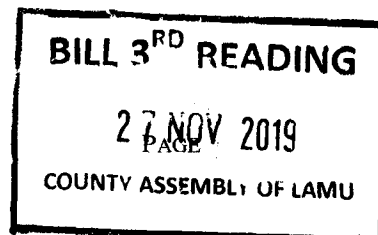
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NAIROBI, 16th September, 2019

COUNTY ASSEMBLY OF LAMU

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THE LAMU COUNTY CHARCOAL CONTROL BILL, 2019**A Bill for**

AN ACT of the County Assembly of Lamu to ensure effective forest conservation, protection and sustainable charcoal production to enhance economic, social and environmental wellbeing; and for connected purposes

ENACTED by the County Assembly of Lamu, as follows—

PART 1— PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Lamu County Charcoal Control Act, 2019 and shall come into operation upon publication in the County Gazette or the Kenya Gazette.

Interpretation

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

County Executive Committee Member means the County Executive Committee Member in charge of Environment.

“Deforestation” means the negative reduction of forest cover from the original status;

“Environmental Impact Assessment” shall have the meaning assigned to it under the Environmental Management and Coordination Act (EMCA 1999);

“Forest Area” means any land declared to be a forestland under this Act;

“County Charcoal Control Board” Refers to a board established under this Act, by the County Government to advise the county executive committee on all matters relating to the management of charcoal business and conservation of county forests;

“Forest officer” includes the Director, a forester, a disciplined officer of the service, or an honorary forester;

“Forest owner” means—

- (a) in the case of state forests; the Kenya Forest Service;
- (b) in the case of a county forests; the County Government;
- (c) In the case of private forests; an individual, association, institution or corporate body.

“Forest produce” includes bark, animal droppings, charcoal, creepers, earth, fiber, firewood, frankincense, fruit, grass, honey, leaves, flowers, limestone, moss, murram, myrrh, peat, plants, reeds, resin, rushes, rubber, sap, seeds, spices, stones, timber, trees, water, wax, and such other things as may be declared by the county executive committee to be forest produce for the purpose of this Act.

“License” means a permit or other written authorization issued under any of the provisions of this Act.

“County forest” means;

- (a) Any forest situated on a land which has been set aside by the county Government;
- (b) Any arboretum, recreational park or mini forest created under section 37 of the Forest Conservation and Management Act of 2016.
- (c) Any forest established as community forest in accordance with the provisions of section 32 of the Forest Conservation and Management Act.

“Private forest” refers to any forest owned privately by an individual, institution or body corporate.

“Protected tree” means any tree or tree species which have been declared under section 40 of the Forest Conservation and Management Act to be protected.

“Sustainable use” in relation to a forest, means the use of a forest and any of its natural resources in manner and to an extent which does not compromise the capacity of the forest and its use by future generations, and does not degrade the carrying capacity of supporting ecosystems.

“Woodlands” means an open stand of trees less than 10 meters tall, which has come about by natural regeneration.

“Woodlots” means an open stand of trees less than 10 meters tall, which has come about by human planting.

“Tree” means any plant, shrub, bush of any kind and includes a seedling sapling or reshoot of any age or any part thereof.

“Enforcement Team” mean all law enforcers as defined by this act.

Application

3. This Act shall apply to all forests and woodlands on the county and private land in Lamu county.

Objects and purposes

4. The objectives of this Act are to—

- (a) Contribute to poverty reduction, employment creation and improved livelihoods through sustainable use, conservation and management of forests and trees.
- (b) Contribute to sustainable land use through soil, water and biodiversity conservation, and tree planting through the sustainable management of forests and trees.
- (c) Promote the participation of the communities, private sector and other stakeholders in forest management to conserve water catchment areas, create employment, reduce poverty and ensure sustainability of the forest sector.
- (d) Promote dry land forestry to produce wood fuel, charcoal and non-wood forest products.
- (e) Promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches and technologies;
- (f) Promote forest research, training and education to ensure sustainable charcoal production, and;
- (g) Promote adaptation and mitigation efforts in Climate Change.

PART II – COUNTY CHARCOAL CONTROL BOARD

Establishment of the County Charcoal Control Board

5. (1) There is established the County Charcoal Control Board.

(2) The County Executive Committee Member shall establish this board through appointment of members while ensuring gender representation.

Composition of the Board

6. The County Charcoal Control Board shall comprise of—

- (a) The Chief Officer for Environment, who will be the Chairperson of the Board;
- (b) County Director of Environment;
- (c) A representative of NEMA;
- (d) A representative Kenya Wildlife Service;
- (e) A representative of a civil society organization dealing with environment;
- (f) A representative of the Kenya Forest Service;
- (g) Three community representatives from the youth, women, and persons with disabilities; and

- (h) A representative from Private Sector.

Functions of the board

7. The functions of the County Charcoal Control Board shall be to—

- (a) Vet and approve applications recommended by the County Executive Committee Member from charcoal producer associations, transporters and individual farmers for the purpose of regulation;
- (b) Review and recommend licensing of charcoal producer associations;
- (c) Review of charcoal producers' associations restoration plans; and
- (d) Monitoring of tree plantings and reforestation event by the charcoal producer associations.

Powers of the Board

8. The Board shall have all the powers necessary for the performance of its functions under this Act and, in particular but without prejudice to the generality of the foregoing, the board shall have power to—

- (a) Approve and ratify all policies and restoration plans of the charcoal producer associations;
- (b) Revoke or suspend a license issued under this Act; and
- (c) Partner with other organizations in environmental conservation.

PART III — CHARCOAL PRODUCER ASSOCIATIONS

Charcoal Producer Associations

9. All commercial charcoal producers are required to organize themselves and form charcoal producer associations under the county department of co-operative development.

Roles of a Charcoal Producer Association

10. The roles of a Charcoal Producer Association are—

- (a) Facilitate sustainable production of charcoal by members;
- (b) Ensure that members implement the restoration and conservation plans;
- (c) Develop and implement a code of conduct for its members for self-regulation; and

- (d) Assist the county Government and the Kenya Forest Service (KFS) in enforcing the provisions of this Act relating to sustainable charcoal production, transportation and marketing.

Charcoal Producer Association Formation and Licensing

11. (1) The charcoal producer association formation shall include—

- (a) List of all members and their addresses;
- (b) Prepare their constitution and regulations;
- (c) Register as an association with the county department of co-operative development;
- (d) List operational areas of the group and their scope of work;
- (e) List the group's record of activities relating to charcoal production and transportation;
- (f) Give information relating to land ownership;
- (g) Give a record of the present activities on the land;
- (h) Provide list of intended technology to be used in charcoal production;
- (i) Provide information on the quantity of charcoal they produces;
- (j) Provide information of charcoal collection points in their area of application;
- (k) Label their charcoal and any other value addition strategies;
- (l) Forward their application to the County Executive Committee Member for submission to the board for licensing.

(2) A Charcoal Producer Association that meets all the requirements provided under sub-section 1 shall be issued with a license within four (3) weeks.

PART IV — ENFORCEMENT

Enforcement Team

12. For the purposes of this Act, the Enforcement team shall comprise but not limited to—

- (a) Officers of the National Police Service;
- (b) Officers of the Kenya Forest service;
- (c) Officers of the Kenya Wildlife Service;
- (d) Officers of the County enforcement department;

- (e) Any other persons as the County Government may deem necessary for carrying out enforcement activities within the County.

Powers of the Enforcement Team

13. The enforcement officers may —

- (a) Demand from any person the production of an authority or license for any act done or committed by that person in a county or private forest, or in relation to any forest produce for which a license required under this Act or under any regulations made hereunder;
- (b) Require any person found in his possession any forest produce suspected to have been taken from such forest, to give an account of the manner in which he became possessed thereof, and, where the account given is not satisfactory, arrest and take such person before a court of law.
- (c) Search any person suspected of having committed an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and arrest the person, seize conveyance, tent, hut or building under the control of that person or his agent or servant, Provided that no person shall be arrested under this section unless the enforcement officer has reasonable cause to believe that that person may fail to appear to answer summons, or unless that Person refuses to give his name and address or gives a name and address which there is reasonable cause to believe is false;
- (d) Search any vehicle or any vessel seize and detain any forest produce in respect of which there is reason to believe that an offence has been committed, together with any tools, equipment's, vessels, vehicles or livestock used in the commission of the offence.
- (e) Confiscate any equipment or receptacle placed without authority in a county forest.

Offences and Penalty

14. Any person who, without lawful authority —

- (a) Marks any forest produce, or affixes upon any forest produce, a mark ordinarily used by a forest officer to indicate that the forest produce is the property of the County Government, or that it may or has been lawfully cut or removed;

- (b) Alters, obliterates, removes or defaces any stamp, mark, sign, license, permit or other document lawfully issued under authority of this Act, or removes or destroys any part or a tree bearing the stamp or other mark used by any forest officer;
- (c) Covers any tree stump in any county forest or any county alienated land with brushwood or earth, or by any other means whatsoever conceals, destroys, or removes or attempts to conceal, destroy or remove such tree stump or any part thereof;
- (d) Wears any uniform or part of a uniform, or any badge or other mark issued under the regulations of the disciplined forces, or who in any other way holds himself out to an employee of a disciplined force; or
- (e) Counterfeits or issues without lawful authority any license or document purporting it to be a license or document issued under this Act or regulations made hereunder, Commits an offence and shall be liable on conviction to a fine of not exceeding two hundred thousand Kenya shillings, or to imprisonment for a term of not exceeding one year, or to both.

Other Offences

15. (1) Any person who—

- (a) Commits a breach of, or fails to comply with the provisions of this Act;
- (b) Commits a breach of, or fails to comply with any of, the terms or conditions of a license issued to him under this Act;
- (c) Fails to comply with a lawful requirement or demand made or given by a law enforcement officer;
- (d) Obstructs a person in the execution of his powers or duties under this Act;
- (e) Makes or is found in possession of charcoal in a county and/or private farmland without a license or permit of the owner as the case may be;
- (f) Commits an offence and is liable on conviction to a fine of not exceeding fifty thousand Kenya shillings or to imprisonment for a term of not exceeding six months, or to both.

(2) Any person who, in any forest area —

- (a) Introduces any exotic genetic material or invasive plants without authority from the County Government;
- (b) Dumps any solid, liquid, toxic or other wastes;
- (c) Grows any plant from which narcotic drugs can be extracted; or

- (d) Extracts, removes or causes to be removed, any tree, shrub or part thereof for export,
- (e) Destroys or cuts down an endangered species of tree, shrub or other plant thereof;
- (f) Commits an offence and is liable on conviction to a fine of not exceeding three million or to imprisonment for a term of not more than eight years, or to both.

Use Of Firearms

16. (1) The County Government may, through the Inspector General of Police, make available to the county enforcement officers such firearms as may be necessary for the department to carry out its functions under this Act.

(2) A member of the county enforcement department, after acquiring the requisite training, and when authorized, may use firearms for the following purposes—

(a) In the course of law enforcement against—

- (i) Any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape from lawful custody.
- (ii) Any person who, by force, attempts to prevent the lawful arrest of himself or any other person
- (iii) Any person who, by force, removes or attempts to remove any other person from lawful custody.

(b) Notwithstanding the foregoing, an officer of the county enforcement department shall not resort to the use of firearms under paragraph (a)(i), (ii) and (iii) unless—

- (i) The officer has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he/she is about to use a firearm against him/her, and the warning is unheeded; or
- (ii) The officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm.

PART V — MISCELLANEOUS

Compensation For Loss Or Damages

17. (1) Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the court may in addition to any other ruling order—

- (a) that such person pays to the forest owner, by way of compensation, a sum equal to the determined value of the forest

produce so damaged, injured or removed and where the value cannot be estimated, twenty thousand Kenya shillings for each offence;

- (b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;
- (c) the forest produce be removed, and any vessels, vehicles, tools or implements used in the commission of the offence, be forfeited to the county:

Provided that the value of the forest produce shall be either the commercial value of the forest produce or the cost of repairing the damage caused to biodiversity as a result of the activities complained of.

(2) Where a person is convicted of an offence of occupying or cultivating land in a forest area without a license, the court may, in addition to any other penalty imposed under this Act, order such person to remove any buildings, enclosures, huts or crops within a period to be specified in the order, and if the person so convicted fails to comply with an order within the period so specified, the buildings, enclosures, huts or crops shall be deemed to be the property of the State, local authority or forest owner, as the case may be, and may be disposed of as the State, local authority or forest owner may think fit:

Provided, however, that expenses incurred as a result of keeping in custody anything seized or detained under this section shall be borne by the person whose property is seized or detained.

Regulations

18. (1) The County Charcoal Control Board may, or on the recommendation of the county executive committee make regulations for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the foregoing, regulations may be made under this section for—

- (a) Controlling the harvesting, collection, sale of and disposal of forest produce;
- (b) Prescribing and reviewing the amount of fees payable under this Act generally or in particular cases;

- (c) The circumstances in which licenses, permits, leases, and agreement may be applied for, and the manner in which a person to whom a license is granted may exercise a right or privilege conferred upon him by the license;
- (d) Regulating the felling, working and removal of forest produce in areas where trees may be felled or removed;
- (e) Providing for compulsory use of property marks by the County Government and owners of private forests for the purpose of identification;
- (f) Regulating the establishment of charcoal based industries;
- (g) Providing for measures that enhance community participation in the conservation and management of forest at the local level; and
- (h) Regulating the production, transportation and marketing of charcoal.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to contribute to poverty reduction, employment creation and improved livelihoods through sustainable use, conservation and management of forests and trees and to ensure enhanced and effective forest conservation, protection and sustainable charcoal production in the provision of economic, social and environmental goods and services and contribute towards the overall growth of the county economy.

This Bill seeks to give effect to section 10 of the Fourth Schedule to the Constitution of Kenya, 2010

Part I of the Bill (Preliminary) provides for short title and commencement; interpretation; application and object and purpose of the Act.

Part II of the Bill (County Charcoal Control Board) provides for Establishment of County Charcoal Control Board; composition of the board; functions of the board and powers of the board.

Part III of the Bill (Charcoal Producer Associations) provides for Charcoal Producer Associations; Roles of a Charcoal Producer Association and Charcoal Producer Association Formation and Licensing.

Part IV of the Bill (Enforcement) provides for the enforcement team; powers of the enforcement team; offences and penalties; other offences and use of firearms.

Part V of the Bill (Miscellaneous) provides for compensation for loss or damage and regulations.

Dated the 9th September, 2019.

JANE WANJIKU NDUNGU,
Chairperson, Departmental Committee on Environment and Water.

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