

SPECIAL ISSUE

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MANDERA COUNTY ACTS, 2019

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**THE MANDERA COUNTY FRONTIER COUNTIES
DEVELOPMENT COUNCIL ACT, 2019**

No. 5 of 2019

Date of Assent: 9th December, 2019

Date of Commencement: 10th January, 2020

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2019 *Mandera County Frontier Counties Development Council*

THE MANDERA COUNTY FRONTIER COUNTIES DEVELOPMENT COUNCIL ACT, 2019

AN ACT of the County Assembly of Mandera to provide for the establishment, powers and functions of the Frontier Counties Development Council, and for connected purposes

ENACTED by the County Assembly of Mandera as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Mandera County Frontier Counties Development Council Act, 2019.

Interpretation

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

“council” means the Frontiers Counties Development Council (herein referred to as FCDC) established under section 3;

“FCDC General Assembly” means the forum comprising of the member county governors, the FCDC Majority Leader Chairperson, the FCDC Minority Leader Chairperson, the FCDC Speakers Chairperson, and the FCDC MCA Women Caucus Chairperson;

“FCDC Governors Summit” mean the governors of the member counties;

“member counties” means the counties of Tana River, Lamu, Garissa, Wajir, Mandera, Marsabit, Isiolo, Samburu, West Pokot and Turkana;

“FCDC Secretariat” means the implementing organ running the day to day activities of the organisation;

“FCDC MCA Women Caucus” mean the elected officials of the Women MCAs from the 10 member counties;

“respective County Assembly” means a County Assembly of the member counties;

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“sector forums” mean the sector forums established under section 5.

PART II—ESTABLISHMENT OF THE FRONTIER COUNTIES DEVELOPMENT COUNCIL

Established and Membership Council

3. (1) There is established a Council to be known as the Frontier Counties Development Council which shall consist of—

- (a) the FCDC General Assembly;
- (b) the Governors’ Summit;
- (c) the FCDC Secretariat; and
- (d) and any other organ established by the General Assembly.

(2) The FCDC General Assembly comprises of—

- (i) Chairperson and Vice Chairperson elected for a renewable term of two and half years and on rotational basis from Governors of member counties;
- (ii) Secretary who is the Chief Executive Officer;
- (iii) the Chairperson of the FCDC County Assembly Speakers Forum;
- (iv) the Chairperson of the FCDC County Assembly Majority Leaders Forum;
- (v) the Chairperson of the FCDC County Assembly Minority Leaders Forum;
- (vii) the Chairperson of the FCDC County Assembly Women Caucus;

(3) the FCDC Governors’ Summit – shall comprise of—

- (i) The Governors of the member Counties;
- (ii) The Secretary;
- (iii) the Summit shall have a chairperson and Vice chairperson. The Chairperson of the Summit will be the chair of the General Assembly.

(4) The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;

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- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(3) The conduct and regulation of the business and affairs of the Council shall be as provided for in the First Schedule.

Headquarters

4. The Headquarters of the Council shall be in Nairobi or as maybe advised by member counties in future.

Sector Forums

5. (1) The Council shall in the better carrying out of its functions constitute within the secretariat 'sector forums' to coordinate joint programs in the functions of health; livestock and agriculture; water, environment and natural resources; and peace and cohesion.

(2) The council shall constitute any other sector forum to achieve the objects and purposes under section 6.

Objects and Functions of the Council

6. (1) The object and purpose for which the Council is established is to act as a platform for cooperation, coordination, and information sharing among the member counties in view of enhancing socio economic development and promoting peaceful co-existence among the member counties.

(2) Without prejudice to the generality of the foregoing, the Council shall—

- (a) address common development challenges and opportunities for member counties;
- (b) share common partnership framework for enhancement of revenue generation mechanisms, resource mobilization and mapping;
- (c) provide standard policy, strategy advisory services, capacity building, and results coaching in the implementation of the Vision 2030 and other development blueprints;

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- (d) establish investment platforms for enhanced revenue generation mechanisms, access to credit and productivity inputs.

Areas of Collaboration

- 7. The Council shall ensure collaboration of member counties in—
 - (a) policy formulation, standards, regulatory frameworks, strategy and development programs harmonization;
 - (b) cohesion and integration of communities, dispute management and resolution, disaster and emergency response;
 - (c) research, resource mapping, innovation, knowledge and databank management, marketing and branding strategies, peer review mechanism and benchmarking;
 - (d) renewable energy, water, infrastructure development and natural resources management;
 - (e) strategies for building resilience, food security and emergency response;
 - (f) developing investment platforms and partnership strategies, and access to credit for increased investment;
 - (g) agriculture and livestock marketing and valuation addition strategies;
 - (h) women, youth and persons with disability empowerment;
 - (i) establishing and managing of one stop shop to access information and licensing of investors; and
 - (j) rebranding village polytechnics and establishing digital villages to enhance digital connectivity.

Powers of the Council

8. The Council shall have all the powers necessary or expedient the performance of its functions under this Act and in particular, the Council shall have power to—

- (a) control, supervise, and administer the assets of the Council in such manner and for such purposes as best promote the purpose for which the Council is established;
- (b) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

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- (c) to establish any organ or office in order to achieve the objects and purpose of the council;
- (d) enter into association with other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which the Council is established; and
- (e) open a banking account or banking accounts for the funds of the Council.

Delegation by the Council

9. The Council may, by resolution, either generally or in any particular case, delegate to any Secretariat of the Council or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

The common seal of the Council

10. (1) The common seal of the Council shall be kept in such custody as the Council directs and shall not be used except on the order of the Council.

(2) The common seal of the Council when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization of the Council under this section shall be presumed to have been duly given.

Protection from personal liability

11. No matter or thing done by a member of the Council or any officer, employee or agent of the Council shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Council, render the member, officer, employee or agent or any person acting by his directions personally liable to any action, claim or demand whatsoever.

Liability of the Council for damages

12. The provisions of this Act shall not relieve the Council of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works. (question)

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Appointment of Secretary

13. (1) The secretary shall be competitively recruited and appointed by the Council.

(2) A person shall qualify for appointment under subsection (1) if such person has at least—

- (a) a masters degree from a university recognized in Kenya;
- (b) fifteen years experience in a senior management position; and
- (c) satisfies the requirements of Chapter six of the Constitution.

(3) (a) The secretary appointed under subsection (1) shall be the Chief Executive Officer and Accounting Officer of the Council;

(b) the secretary shall be responsible for the day to day administration of the functions of the Council;

(c) the Secretary shall serve for a three-year term, renewable once.

(4) Despite the generality of subsection (3), the secretary shall be responsible to the Council for—

- (a) the implementation of the decisions of the Council;
- (b) the formation and development of an efficient secretariat;
- (c) the organization, control and management of staff;
- (d) maintaining accurate records on financial matters and resource use;
- (e) ensuring the drawing up and approval of the required budget; and
- (f) performing any other duties as may from time to time be assigned by the Council.

Secretariat of the Council

14. (1) There shall be established the FCDC Secretariat comprising of—

- (a) Chief Executive Officer who is the secretary of the Governors' Summit and General Assembly and any other such officers or servants as are necessary for the proper discharge of its functions under this Act upon such terms and conditions of service as the Council may determine;
- (b) the staff of the Secretariat shall reflect the diversity of the member counties.

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- (2) Functions, powers, and immunity of the FCDC Secretariat—
 - (a) shall implement decisions of the council under the guidance of the summit;
 - (b) council shall develop a Human Resource Manual, Procurement Manual, 5 year Strategic Plan, 10 year Socio-economic Blueprint and any other documents that shall aid the organisation in meeting its objectives.
- (3) The Functions of the General Assembly are as follows—
 - (a) oversight of the functions of the executive;
 - (b) collaboration, coordination, and partnership with partners;
 - (c) advocate for the development of FCDC Counties;
 - (d) identify common challenges and opportunities;
 - (e) promote shared values and principals;
 - (f) a platform for dialogue and dispute resolution among the member communities in FCDC region.
- (4) the Summit as the executive organs of FCDC—
 - (a) the implementation of the decisions of the General Assembly;
 - (b) the executive organ of the Council;
 - (c) formulate policies based on General Assembly resolutions;
 - (d) mobilise resources for the point projects and programmes within FCDC;
 - (e) supervise, provide overall guidance to the secretariat;
 - (f) appoint the CEO of the secretariat;
 - (g) approve work plans and other strategic documents of the secretariat; and
 - (h) any other necessary or incidental duties that are important to the effective running of the Council.

Guiding Principles

15. In the performance of its functions or the exercise of the powers conferred by this Act, the council shall—

- (a) perform its functions subject to the Constitution;
- (b) be accountable to the people of member counties and ensure their participation in the development process;

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- (c) promote and sustain fair procedures in its operations;
- (d) ensure technical and administrative competence for the better carrying out of its functions;
- (e) be non-partisan and non-political in its operations;
- (f) apply and promote national values and principles provided under the Constitution; and
- (g) apply and promote principles of devolution provided under the Constitution; and
- (h) be equitable in the distribution and sharing of resources and benefits that accrue among the member counties.

Regulations

16. The Council, with the approval of the respective county assemblies, may make regulations for the purposes of giving effect to the provisions of this Act, and in particular, the regulations may—

- (a) provide for the settlement of the terms and conditions of service, including the appointment, dismissal, remuneration and retiring benefits of the members of staff of the Council; and
- (b) prescribe anything which may be prescribed under this Act.

PART III—FINANCIAL PROVISIONS

Accounts of the council

17. (1) The council may authorize the establishment of bank accounts of the council.

(2) There shall be paid into the accounts—

- (a) money contributed by the member counties annually as determined by the Council and considered in the member counties annual budgetary estimates as guided by the Public Finance Management Act, 2012;
- (b) such sums as may be payable to the Council pursuant to this Act or any other written law, or pursuant to any gift or trust; and
- (c) all moneys from any other source provided for or donated or lent to the Council.

(3) There shall be made to the Council, out of monies provided by the respective County Assembly for that purpose, grants towards the

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expenditure incurred by the Council in the exercise of its powers or the performance of its functions under this Act.

(4) There shall be paid out of the accounts any expenditure incurred by the Council in the exercise of its powers or the performance of its functions under this Act.

(5) Funds from donors that come in as conditional grants.

Investment of monies in the account

18. The Secretariat may, with the approval of the Council, place on deposit with such bank or banks as it may determine any moneys not immediately required for the purposes of the Council.

Financial year

19. The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates

20. (1) Before the commencement of every financial year, the Council shall cause to be prepared estimates of revenue and expenditure of the Council for that year by the Secretariat.

(2) The annual estimates shall make provision for all the estimated expenditure of the Council for the financial year and in particular, the estimates shall provide—

- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Council;
- (b) for the payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of the Council;
- (c) for the proper maintenance of the buildings and grounds of the Council;
- (d) for the maintenance, repair and replacement of the equipment and other property of the Council;
- (e) all expenditure incurred in relation to the establishment, equipment or management of any institution by the Council; and
- (f) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

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(3) No expenditure shall be incurred for the purposes of the Council except in accordance with the annual estimates approved under this section or in pursuance of an authorization of the Council given with the prior approval of the Member Counties respective Treasury.

Accounts and audit

21. (1) The Council shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Council.

(2) Within a period of four months from the end of each financial year, the Council shall submit to the Auditor-General (Corporations) or an auditor appointed under this section, the accounts of the Council together with—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Council on the last day of that year.

PART IV—MISCELLANEOUS PROVISIONS

Dissolution of the GA and Governors' Summit

22. (1) The FCDC Governors' Summit and the General Assembly shall stand dissolved after every general elections under the Constitution or upon the passing unanimous resolution by the Council and with the approval of the Member County Assemblies whichever earlier.

(2) A new GA and Governors' Summit shall be constituted fourteen days after the election of the Member Counties and officials are sworn into office.

(3) the organs constituted under subsection (2) above, shall take and subscribe to the Oath or affirmation as set out in the Second Schedule to this Act.

Transitional and saving provisions

23. Without prejudice to the generality of the application of section 2, the transitional and saving provisions set out in the Second Schedule shall come into effect upon the enactment of this Act.

Withdrawal

24. (1) A member county shall, by a resolution of two-thirds majority of the members of its County Assembly, withdraw its membership from the Council.

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(2) A member county shall, by written notification communicating the resolution in (1) above addressed to the Secretary of the Council, withdraw its membership from Council.

(3) A notification of withdrawal, in (2) above, shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

(4) A member shall not be discharged, by reason of its withdrawal, from the obligations arising from this Act while it was a member county, including any financial obligation which may have accrued.

FIRST SCHEDULE**s 3 (3)**

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE COUNCIL**

Meetings

1. (1) The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days written notice of every meeting of the Council shall be given to every member of the Council.

(4) The quorum for the conduct of the business of the Council shall be five and no meeting shall be held or continued, notwithstanding that there is a quorum, unless the Secretary or a person deputed by him is present.

(5) The chairperson shall preside at every meeting of the Council at which he is present but, in the absence of the chairperson, the vice chair shall assume the duties of the chairperson. In the absence of both the aforementioned, the members present shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote in addition to a deliberative vote.

(7) Subject to subparagraph (4), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

Disclosure of interest by Council Members

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof,

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disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter;

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Council may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Council who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one million shillings, or both.

Execution of instruments

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.

Minutes

4. The Council shall cause minutes of all resolutions and proceedings of meetings of the Council to be entered in books kept for that purpose.

SECOND SCHEDULE

s. 23

TRANSITIONAL AND SAVING PROVISIONS

1. The person who, immediately before the commencement of this Act was the Chief Executive officer to the Council then existing shall be deemed to be the secretary to the Council for the purposes of section 13 of this Act.

2. The person who, immediately before the commencement of this Act was the an employee, staff or servant of the Council then existing shall be deemed to be the employee, staff or servant to the Council for the purposes of section 14 of this Act.

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THIRD SCHEDULE

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/MEMBERS/SECRETARY

I.....have been appointed (Chairperson/Members/Secretary) to the Frontier Counties Development Council, do swear/solemnly affirm that, I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic of Kenya; that, I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection or prejudice, (SO HELP ME GOD).

Sworn/Declared by the said

Before me this Day.....of 20.....

FOURTH SCHEDULE

SYMBOLS—THE FCDC LOGO



FCDC FLAG

- A white background having FCDC logo on it.
- The inscription of the full name of the economic bloc in a straight line on it.

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FIFTH SCHEDULE

MEMBER COUNTIES OF THE FRONTIER COUNTIES DEVELOPMENT COUNCIL

The Frontier Counties Development Council is comprised of the following county governments—

1. Tana River County;
2. Lamu County;
3. Garissa County;
4. Wajir County;
5. Mandera County;
6. Marsabit County;
7. Isiolo County;
8. Samburu County;
9. West Pokot County; and
10. Turkana County.