

SPECIAL ISSUE

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REPUBLIC OF KENYA

**WEST POKOT COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2015

NAIROBI, 24th April, 2015

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**THE WEST POKOT COUNTY SAND HARVESTING
BILL, 2015**

A Bill for

AN ACT of West Pokot County Assembly to regulate sand harvesting and quarrying activities in the county and to ensure sustainable exploitation and utilization of land and to provide for equitable sharing of the accruing benefits and for connected purposes

ENACTED by the West Pokot County Assembly as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the West Pokot County Sand Harvesting Act, 2015 and shall come into operation on such date as the County Executive Committee Member, may by notice in the county gazette appoint.

Interpretation

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

“authorized officer” includes the Medical Officer or any person acting under the authority of the Licensing Officer;

“Committee” means the Sand Harvesting Management Committee established under section 3 of this Act

“county medical officer” means the medical officer of Health;

“dealer” means the person who buys and sells common minerals;

“executive committee member” means the County Executive Committee Member in charge of finance;

“gazetted area” means any area gazetted as a sand harvesting area pursuant to section ;

“harvester” means a person or his agent who gathers or collects sand from any of gazetted area of for the purpose of sale or own use;

“license” means a permit issued by the county government of West Pokot or authorized officer to engage in trade, occupation or business of sand harvesting and transportation of sand from its any gazetted area;

“license holder” means a person to whom a permit has been granted under this Act;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“sand” means sedimentary material finer than gravel and coarser than silt with grains between 0.06mm and 2mm in diameter and includes stones, coral, earth and turf but does not include silica sand;

“sand harvesting” means the removal, extraction, harvesting or scooping of sand from a gazetted areas;

“quarry” means a place from which building demission stone, rock, construction aggregate, murram, riprap, gravel, lime, sand, slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium and potassium compounds and surface stone is excavated from the ground;

Object and Purpose of the Act

3. The object and purpose of this Act is to provide for a legislative framework for regulating sand harvesting and in particular to—

- (a) require the registration of sand dealers;
- (b) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (e) provide for benefit-sharing and ploughing back to the community part of the revenue collected from sand harvesting; and
- (f) enable communities to participate in the management of sand harvesting.

PART II—ADMINISTRATION

County Sand Harvesting and Management Committee

4. (1) There is established a County Sand Harvesting and Management Committee consisting of—

- (a) the chief officer responsible for matters relating to finance who shall be the chairperson;
- (b) the chief officer responsible for matters relating to environment;
- (c) a representative of sand dealers appointed by the Executive Committee member;
- (d) a representative of quarry operators appointed by the Executive Committee member;
- (e) two representatives of the riparian resource management associations being one man and one woman, appointed by the Executive Committee member;

(2) The Committee shall be under the supervision and direction of the Executive Committee member responsible for matters relating to finance.



(3) In the absence of the chief officer responsible for matters relating to finance, the Committee, shall elect a chair from its quorum.

(4) The quorum of the Committee for purposes of the meeting shall be four members.

(5) The members of the Committee shall elect from within their composition the Secretary.

(6) The members under subsections 1 (a) and (b) may designate alternate members in writing and who shall be senior public officers.

Functions of the Committee

5. The Committee shall—

- (a) maintain a register of all sand dealers;
- (b) advise Executive Committee member on the structure and operations of sand harvesting and quarrying;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;
- (d) ensure sustainable exploitation and utilization of sand resource and other excavated material;
- (e) collaborate with other environmental agencies in management of environment;
- (f) formulate environmental conservancy programmes for the residents of the county;
- (g) recommend to the Executive Committee member designated sand harvesting areas for gazettelement;
- (h) recommend designated roads for transportation of sand and other excavated material in accordance with this Act; and
- (i) perform any other functions assigned by the Executive Committee member.

Riparian Resource Management Associations

6. (1) The Committee shall approve the establishment of such number of Riparian Resource Management Associations as is necessary which shall be registered by the pursuant the law relating to registration of community based organizations.

(2) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors—



- (a) drainage network of the river and the designated sand harvesting sites;
 - (b) the need to ensure full inclusion of the community including all interest groups; and
 - (c) viability and sustainability of the association.
- (3) An association shall be composed of the following members elected by interested community—
- (a) four representatives of the riparian landowners;
 - (b) two women representatives who are not riparian land owners;
 - (c) two youth representatives who are not riparian land owners;
 - (d) two elders who are not riparian land owners; and
 - (e) two religious leaders.
- (4) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—
- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act;
 - (b) ensure that annual Environmental Audits are conducted for closed and active sites; and
 - (c) ensure sustainable management of sand harvesting along riverbeds;
 - (d) undertake the rehabilitation of the closed sites; and
 - (e) perform any other function assigned to it under this Act.

Considerations by the Committee and Associations

7. The Committee and the Associations shall be guided by the following considerations in discharging their mandate—
- (a) sand dams and gabions shall be constructed in designated sand harvesting sites and that there shall be at least two hundred metres between each;
 - (b) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
 - (c) upon closure of every designated sand harvesting area, the site shall be rehabilitated appropriately by the Association,

county government and approved dealer under the supervision of the Committee;

- (d) sand harvesting or scooping shall be restricted to the riverbeds and no such harvesting or scooping shall be allowed on riverbanks;
- (e) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
- (f) approved sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage fixed by the County Executive Committee member;
- (g) sand loaders shall organize themselves into organized groups with a chairperson and shall be under the direction and control of the Association; and
- (h) every approved sand dealers shall support local community projects in consultation with the Association.

PART III—SAND HARVESTING REQUIREMENTS

Sand Harvesting Sites

8. (1) The Committee shall, on the advice of the Associations, designate and document sand harvesting sites from time to time.

(2) Every sand harvesting area shall be clearly demarcated and documented by the Committee in consultation with Association.

(3) A person shall not harvest sand from any area not designated as a sand harvesting site by Committee.

(4) Each designated sand harvesting site shall have an environmental management plan to guide in the rehabilitation of the sites.

On-farm and Lakeshore Sand Harvesting

9. On-farm and lakeshore sand shall be carried out subject to fulfilling the following conditions—

- (a) sand harvesting or scooping of sand shall not exceed six feet in depth;
- (b) a designated sand harvesting sites shall be at least fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;



- (c) sand harvesting or scooping of sand shall not be undertaken concurrently with rehabilitation of the sites;
- (d) sand harvesting on-farm shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken unless some approved extraction technology is applied to safeguard human safety.

Riverbed Sand Harvesting

10. (1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention.

(2) Sand harvesting shall not be undertaken on any riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one-hundred metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

Hours of Sand Harvesting and Transportation

11. (1) A person shall not—

(a) harvest, extract or scoop sand between the hours of 6pm to 9am; and

(b) transport sand between the hours of 8pm to 9am.

(2) The transport of sand or other minerals within the county shall only through designated roads for such transportation.

(3) A person who contravenes this section commits an offence is liable upon conviction to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

Sale of Sand

12. (1) The Committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces of the day.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

PART IV—LICENSING PROVISIONS

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

Licensing of Sand Harvesters

13. (1) No person shall use, cause or permit to remove sand from any river, farm, co-operative society, ranch or other land for the purposes of sale unless valid license issued under this Act for such trade or business.

(2) A person who contravenes this section commits an offence.

Licensing of Sand Dealers

14. (1) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued by the government the license shall be deemed to be 'monthly' unless otherwise authorized by the Executive Committee member or any other authorized officer.

(2) No person shall carry on or engage in any trade occupation or business of sand harvesting unless the person is licensed to carry on such trade, occupation or business by the government.

(3) A person who contravenes this section commits an offence.

Licensing Officer

15. (1) The Executive Committee member shall be the licensing officer responsible for the issuing of licenses under this Act.

(2) The Executive Committee member may, in writing, delegate any or all of his powers under this Act to any one or more authorized officers.

Application for License

16. An application for license under this Act shall be in the prescribed form provided that the Executive Committee member may, in any particular case require an applicant to submit or supply such further information as the Executive Committee member may deem fit.

Discretion of a Licensing Officer

17. (1) The licensing officer shall consider each application made under section 16 and determine whether to issue a licence to the applicant or not within thirty days.

(2) If a licensing officer refuses to issue a license, they shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the refusal and refer to the relevant provision in this Act on which the refusal is based.

License Conditions

18. A licence shall be issued —

- (a) subject to an obligation to rehabilitate the site and surrounding areas upon closure;
- (b) for the category or categories of business activity specified in the licence; and
- (c) subject to the regulations and any other conditions provided in the licence.

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

License Fees

19. (1) There shall be payable to the government, for every application for a license, the appropriate prescribed fees.

(2) The Executive Committee member may, waive the whole or part of any prescribed fee under subsection (1)

Form of Licence

20. (1) A license shall be in such form as the Executive Committee member may from time to time determine and shall be signed by the Executive Committee member or a person authorized in that behalf.

(2) The Executive Committee member may issue different classes of licenses for different purposes.

Transfer of License

21. (1) A license issued under this Act shall not be transferred from the holder thereof to another person without the consent of the Executive Committee member or a person authorized in that behalf.

(2) An application for the transfer of any license shall be in such form as may be prescribed by the Executive Committee member and shall be accompanied by the license to which it relates: Provided that the Executive Committee member may in any particular case require an applicant for the transfer of a license to submit or supply such further information as the Executive Committee member shall deem necessary.

(3) For each such transfer there shall be payable to the government such fee as may be prescribed by the Executive Committee member.

(4) A memorandum of the transfer of any licence shall be endorsed on the license by the Executive Committee member,

(5) A person who contravenes this section commits an offence.

Alteration of a License

22. (1) Subject to this Act, a licence may be altered on written application to the licensing officer.

(2) The licensee shall inform the licensing officer in writing of any changes within thirty days.

- (3) If a licensee fails to inform the licensing officer under subsection (2), the licensing officer may impose a penalty.

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

Cancellation of License

23. A licensing officer may cancel a licence if —

- (a) the application form contains any material misrepresentation or false statement;
- (b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;
- (c) the licensee carries on a prohibited activity;
- (d) a condition imposed is breached; or
- (e) the licensee is convicted of an offence under this Act.

Appeals

24. (1) Any aggrieved by the decision of a licensing officer shall be entitled to appeal against the decision before a magistrates court

(2) All appeals shall be filed within fourteen days of the decision.

(3) A person appealing under this section has the right to be heard by the County Executive Committee member

Production of License

25. The Licensing Officer, any Police Officer or an authorized officer who has reason to believe that a business person is required to hold a business licence may demand from the person carrying on the business activity the production of a licence.

Quarrying

26. The provisions of this Act applicable to sand harvesting shall apply with necessary modifications to any form of quarrying

PART V—GENERAL PROVISIONS

Collection of Revenue by the Government

27. The government shall facilitate the Committee shall to—

- (a) collect revenue from sand dealers in designated sand harvesting sites or along access roads;
- (b) allocate and transmission of at least ten per cent of the revenue collected to the Committee and the Associations to facilitate their operations;

- (c) allocate of part of the revenue collected for community projects;
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within sand harvesting area;
- (e) collect revenue from sand dealers along riverbeds and other designated sand harvesting sites;

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

Road Barriers

28. (1) For purposes of section 27, the government may mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap 403 Laws of Kenya.

(2) The barriers shall be manned by authorized officers and revenue collectors.

(3) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

(4) A person who contravenes this section commits an offence and the vehicle used to commit the offence may be impounded at a police station.

Power to Order Closure of Quarry

29. (1) The licensing officer or county medical officer may order a license holder to stop the quarrying activities or operations and close the quarry where it appears that the quarry is in a condition dangerous to human life or detrimental to public health or safety.

(2) The order provided in subsection (1) shall remain in force until the licensing officer is satisfied that the conditions have been satisfactorily improved.

Powers of Entry

30. (1) The licensing officer, authorized officer, police officer, or agents may at all reasonable times—

- (a) enter upon premises, farms, ranches or vehicles and carry out any inspection for the purpose of enforcement of this Act; or
- (b) execute work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a license is issued.

(2) Recover the expenses incurred in carrying out the work referred to in paragraph (b) of subsection 1.

(3) A person obstructing the persons referred to in subsection (1) from undertaking their functions commits an offence and is liable on

conviction, to a fine not exceeding two hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

(4) Any police officer or authorized officer shall detain vehicles and confiscate goods where it shown those goods have been obtained in contravention of this Act.

(5) The detained or impounded vehicles referred to in subsections 4 shall be released to the owner until where prosecution is preferred; the case is finalized or until the owner has paid prescribed penalty charges.

(6) Any authorized officer, police officer or agents before undertaking any inspection activities in this Act, shall produce to the relevant person proper identification documents.

Protection from Personal Liability

31. No matter or thing done by a licensing officer or officer, employee or agent shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render the officer, employee or agent personally liable for any action, claim or demand whatsoever.

Dispute Resolution

32. (1) In the event of any disagreement regarding access, ownership, benefit sharing, management approaches in sand harvesting the chairperson of the Committee shall convene a meeting between the complainant and the person complained against to deliberate on the grievances and make appropriate resolution.

(2) Any person, who is aggrieved by the resolution of Committee in Clause (1) above, may within fourteen days from the date of the resolution appeal to the District Environment Committee.

(3) Any person who is aggrieved by the decision of District Environment Committee may further appeal to the National Environment Tribunal (NET).

Rehabilitation of Closed Sites

33. (1) The Committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including access roads, riverbanks, catchment areas among others to ensure environmental sustainability.

(2) The Committee shall require every licensee to prepare and submit to it a rehabilitation plan for every designated sand harvesting area.

Offences

34. A person who—

- (a) carries out sand harvesting or other quarrying activities or otherwise deals with sand without a valid license;

- (b) carries out sand harvesting outside designated sites;
- (c) overloads sand to a vehicle for transportation contrary to prescribed requirements;
- (d) collects fees or charges and is not authorized to do so under any law;
- (e) transports sand outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the county government, authorized officer or police officer;
- (g) obstructs any authorized person from conducting their functions under this Act; or
- (h) establishes a separate entity or purports to manage quarrying activities in a designated site without lawful authority under this Act;
- (i) commits an offence and shall, on conviction is liable to a fine not exceeding one million shillings or to an imprisonment term not exceeding five or to both.

General Penalty

35. A person who contravenes any provisions of this Act, for which no penalty is provided shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

Regulation

36. (1) The County Executive Committee member shall make regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) guidelines for sand harvesting and other quarrying activities;
- (b) criteria for determining the number of Associations approve under this Act;
- (c) variation of the terms and conditions of license issued under this Act;
- (d) requirements for different types of sand harvesting or other forms of quarrying;
- (e) forms required under this Act;
- (f) rehabilitation of closed sites;
- (g) other forms of quarrying generally;

- (h) resolution of disputes; and
- (i) such other matters as the as may be necessary for full implementation of this Act.

(3) Without prejudice to subsection (1) the nature and scope of the Regulations shall—

- (a) be for the objects and purpose and set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.

MEMORANDUM OF OBJECTS AND REASONS

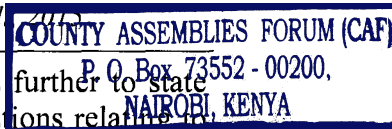
The principal object of this Bill is to regulate the privileges and powers of the members of the Assembly. The Act provides for a Code of Conduct regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber. It establishes the Privilege Committee whose function is to ensure the County Assembly members adhere to the code of conduct. It also establishes the institutional framework and provides for the offenses and penalties.

The structure of the Bill is as follows:

Part I (clauses 1–2) of the Bill contains preliminary provisions. These include the title of the Bill and interpretation of terms as used in the bill.

Part II (clauses 3–13) of the Bill provides for postponement of disqualification of any member becomes disqualified for election until the appeal is finalized. It also provides for immunity from legal proceedings, freedom from arrest for civil debt during session and service of civil process. It also states the right to enter the Assembly and give the speaker the power to give orders necessary to carry out the functions of this Act. It also establishes the Committee of Privileges comprised of the Speaker who will be the Chairman and ten other members of the Assembly together with the conduct of members of the Assembly and provision on their suspension. It states that suspended members will be deemed as strangers. This Part also provides for proceedings of the assembly not to be questioned in court and also the power of the Speaker, the Sergeant-at-Arms and any other officer to order withdrawal of strangers.

Part III (clauses 14–20) this part deals with production of evidence before the Assembly or any other standing committee. It provides for power to order attendance of witnesses and that their attendance should be notified by summons. The witnesses may be examined on oath. This part gives the speaker power to excuse a witness where the witness refuses to



answer questions or produce papers as evidence. It goes further to state the privileges of witness and also how to deal with Questions relating to evidence and production of documents before the Assembly or committee to be determined in accordance with usage of the National Assembly.

Part IV (clauses 21-24) give provisions on offences. It set out the offences and penalties relating to admittance to the Assembly or the Chamber among other offences. This part also provide that members should not receive reward for promotion of or opposition to Bills

PART V (clause 27-35) sets out the miscellaneous provisions. These include Journals printed by order of the Assembly to be admitted as evidence, penalty for printing false copy of Act, journal, and protection of persons responsible for publications authorized by the Assembly. It also gives provision on publication of proceedings without malice, prohibition that courts should not exercise jurisdiction in respect of acts of Speaker and officers of the Assembly. This part gives officers of the Assembly powers of police officer and the Director of Public Prosecutions to sanction prosecutions. It also provides that every offence under this Act shall be cognizable to the police.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

Dated, 2015

HON. JACKSON KORIKWANGAN,
Member of the County Assembly.