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KITUI COUNTY BILLS, 2023

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THE KITUI COUNTY RIVER BASINS SAND UTILIZATION AND CONSERVATION BILL 2023

A Bill for

AN ACT of Kitui County Assembly to regulate sand Utilization and Conservation in the county while ensuring sustainable exploitation of sand resources, environmental conservation, equitable sharing of accruing benefits and for connected purposes

ENACTED by the County Assembly of Kitui, as follows—

PART I—PRELIMINARY

Citation

1. This Act may be cited as the Kitui County River Basins Sand Utilization and Conservation Act, 2023, and shall come into operation on such date as the County Executive Committee Member may by notice in the *Kenya Gazette* appoint.

Definition of terms

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

“Authorized officer” includes the Environment Officer or any person acting under the authority of the Licensing Officer;

“Basin” A collection of rivers draining into the same direction within the county

“Caretaker Committee” An interim committee, precursor to River Basin Based Cooperative Society

“Chief Officer” (C.O) means county chief officer appointed under the County Governments Act of 2012, section 45 serving in the County Ministry in charge of Natural and Mineral Resources;

“Committee” means the Kitui County River Basins Sand Utilization and Conservation Committee established under section 4 of this Act;

“Co-operative Society” refers to River Basin Based Co-operative Society

“County Government” refers to the County Government of Kitui established in Article 176 of the Constitution of Kenya, 2010;

“Dealer” means the person who either transports, buys and / or sells sand for commercial gain;

“County Executive Committee Member” (CECM) means the County Executive Committee Member serving in the ministry in charge of Natural

and Mineral Resources appointed by the County Governor as cited under Article 179(2) (b) of the Constitution of Kenya 2010;

“County Public Service Board” (CPSB) means a board established under County Government Act No. 17 of 2012 as per the Constitution of Kenya Article 235

“Critical Infrastructure” refers to the systems, networks, and assets that are essential for the functioning of a society, economy, or organization.

“Directorate” a County Government Department responsible for Natural and Mineral Resources.

“Environmental Management Plans” (EMPs) is one of the outputs of an Environmental Impact Assessment. It establishes how impact mitigation measures are to be implemented and monitored.

“Environment” includes the physical features of the surroundings of human being including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both natural and built environment as defined in Environmental Management and Coordination Act, 1999.

“Environmental Impact Assessment (EIA)” means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment as defined in Environmental Management and Coordination Act, (EMCA), 1999.

“Enforcement Team” means any persons who collectively have the responsibility of enforcing the provisions of this Act;

“Gazetted area” means any area gazetted as a sand harvesting area by the County Executive Committee Member for the time being in – charge of Natural and Mineral Resources;

“Kitui County River Basins Sand Utilization and Conservation Committee” A Committee established by this Act to regulate sand harvesting and management in the county while ensuring sustainable utilization of sand resources, to provide for environmental conservation and equitable sharing of the accruing benefits

“License” means a permit issued by the CECM responsible for Natural and Mineral Resources to engage in trade, occupation or business of sand harvesting and transportation of sand from any of its gazetted areas;

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

“Local Commercial Use” any sand extracted within designated area for commercial development within the county

“Local Domestic Use” any sand extracted within designated area for domestic use, excluding sand stockpiling

“Non-Local Commercial Use” any sand extracted within the county and exported from the county

“RBBCS Committee” mean a governing committee for River Basin Based Cooperative Societies.

“Riparian zone” means transition zone or the area of land between the water and the land 30m from the riverbank

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

“Sand Harvesting and Management” means the sustainable utilization and value addition of sand. It includes sand generation, sand harvesting, value addition in its various forms including packaging and transportation, utilization for water storage and other various purposes, use in innovation, marketing and use for economic purposes.

“Sand Harvesting” means the removal, extraction or scooping of sand from gazetted areas;

“Sand Harvesting Site” means an area designated by the Committee in consultation with RBBCSs as identified by the SBCSGs for extraction of sand

“Sand Aggregation Yard” means an area designated by the Committee for stockpiling sand for sale

“Sand Value Chain” refers to overall activities within the sand industry including and not limited to harvesting, aggregation, transportation, value addition

“Site Based Community (Sand) Groups” (SBCSGs) are group dealing with sand that are site specific and formed by the local community

Objects & Purpose

3. The objects and purpose of this Act is to provide for a legislative framework for regulating sand utilization and conservation of river basins and streamlining sand management practices, in particular to—

- (a) facilitate protection, conservation and restoration of the degraded sites and vulnerable ecosystems from harmful effects of sand harvesting and related activities.

- (b) encourage community participation in sand utilization and management activities;
- (c) to provide a framework for enforcement of matters pertaining to sand utilization and management in the County
- (d) provide for the designation of sand harvesting sites, aggregation yards, harvesting and transportation hours
- (e) develop institutional framework for sustainable management and regulation for the sand value chain;
- (f) ensure equitable sharing of accruing benefits amongst the key players;
- (g) develop sand resource value addition initiatives;
- (h) ensure Gender Equity and Social Inclusion; and
- (i) facilitate revenue generation for the County Government of Kitui;

PART II—ADMINISTRATION

Establishment of Kitui County River Basins Sand Utilization and Conservation Committee

4. There is established a Committee to be known as the Kitui County River Basins Sand Utilization and Conservation Committee which shall be under a Directorate in the Ministry responsible for Natural and Mineral Resources. The Committee shall report directly to the CECM through the Directorate.

Composition of the Kitui County River Basins Sand Utilization and Conservation Committee

5. (1) The membership of the committee shall be as follows—
- (a) A Non- Executive Chairperson appointed by the Governor, who shall be a member of the communities within the five (5) River Basins in Kitui County;
 - (b) A representative of the Director General of the National Environment Management Authority;
 - (c) Chief Officers for each of the Ministries responsible for Finance, Natural and Mineral Resources and Water;
 - (d) A representative of the special interest groups within the County;
 - (e) Five (5) representatives, one per River Basin Based Cooperative Society, nominated by their respective Co-operative;

(f) The Director for Natural and Mineral Resources who shall be the secretary to the committee and ex-officio.

(2) The committee members listed in section (2) (b)-(f) shall be appointed by the County Executive Committee Member responsible for Natural and Mineral Resources in consultation with the Governor.

(3) The committee shall ensure Gender Equity and Social Inclusion in its formation and programs.

(4) The quorum for the Committee meetings shall be two thirds (2/3) of the members.

(5) The Chairperson shall convene and preside over all Committee meetings. In his or her absence, members present shall appoint one of their own as the interim Chair for that meeting.

Functions of the Committee

6. (1) The committee shall—

- (a) Oversee, regulate and promote the sand value chain;
- (b) Vet, approve and give recommendations for consideration, in writing, to the licensing authority on granting, rejection, renewal, revocation and transfer of licenses.
- (c) Co-ordinate the activities of individuals and organizations within the sand value chain; and
- (d) In consultation with CECM through the Directorate, facilitate equitable access to the benefits and resources of the industry by all interested and affected parties.

(2) Without prejudice to the generality of subsection (1), the Committee shall undertake the following functions;

- (a) Act as a link between the County Government and the River Basins Based Cooperative Societies.
- (b) The committee shall prepare and submit, to the Directorate, comprehensive reports on all matters pertaining to sand value chain and performance of institutions under its jurisdiction on a quarterly basis.
- (c) Vet and approve for licensing and registration of all person(s)/ institutions/ vessels/ premises to engage in the sand value chain and maintaining such registers as may be necessary
- (d) In consultation with the River Basin Based Cooperative Societies, identify sand harvesting sites and aggregation yards.

- (e) Ensure that before sand harvesting activities are commenced, Environmental Impact Assessments (EIAs) is undertaken and the subsequent Environmental Audits (EAs) in accordance with the provisions of EMCA, 1999
 - (f) Oversee and supervise the River Basin Based Sand Cooperative Societies to ensure that the activities they undertake and/ or allow to be undertaken in sand value chain conforms to the conservation objectives of the committee.
 - (g) Provide technical guidance to the River Basin Based Cooperative Societies as and when necessary to ensure effective management of sand harvesting, conservation and progressive rehabilitation of sites;
 - (h) Recommend to the CECM designated sand harvesting sites for gazetteement subject to public participation, including suspension of sand harvesting from depleted and/or degraded sites
 - (i) Facilitate the arbitration of disputes among the sand value chain actors;
 - (j) Monitor sand harvesting activities to ensure that the environment is not degraded by issuing early warning and proposing mitigation on impending sand related environmental emergencies;
 - (k) Establishment of capacity building and training programmes for the River Basin Based Cooperative Societies and the community members in general
 - (l) Act as an intermediary between the sand value chain actors and the County Government of Kitui;
 - (m) Ensure timely submission of monthly, quarterly and annual reports by RBBCSs as provided for in the 'RBBCSs Guidelines'
 - (n) Prepare and submit quarterly, semi-annually and annual status reports to the CECM
 - (o) Perform any other functions necessary for carrying out of their mandate under this act.
- (3) A member of the Committee appointed under sections (1) (a), (d), and (e) above shall hold office for a period of three years, but shall be eligible for re-appointment or re-election, as the case may be, for one further term.
- (4) The Committee may co-opt such other persons on an ad-hoc basis as may be relevant and necessary in running its functions and to meet its mandate.

Sustainable sand Utilization and Conservation

7. The Committee shall, in consultation with the relevant lead agencies, promote the sustainable use of sand utilization resource in the County River Basins; Ensure that in rehabilitation of degraded river ecosystems through construction of sand dams and gabions, tree growing, cover grass among other interventions. The CECM shall make regulations for the interventions stated above.

Powers of the Committee

8. The Committee shall have all the powers necessary for the proper performance of its functions under this Act. Including the power to—

- (a) approve and ratify all policies and restoration plans, EMPs and monitor the RBBCS activities in accordance with the provisions of this Act.;
- (b) recommend for revocation or suspension of a license issued under this Act;
- (c) vet and recommend for licensing and registration of all person(s)/ institutions/ vessels/ premises to engage in the sand value chain and maintaining such registers as may be necessary;
- (d) control, supervise and administer the assets of the Committee in such manner and for such purpose as best promotes the purpose for which the Committee is established;
- (e) receive any grants, gifts, donations or endowments and submit the same to CECM through the CO for disbursements in line with established regulations therefrom;
- (f) put in place policy guidelines for the operations and management of all funds collected by the RBBCSs;
- (g) access all such relevant information as may be necessary for the efficient administration of the sand value chain.

Remuneration of Committee members

9. The Committee members shall be paid, such remuneration, fees or allowances for expenses as determined by the CECM responsible for Natural and Mineral Resources on the advice of the Salaries and Remuneration Commission (SRC).

Staff of the Committee

10. The CECM may in consultation with County Governor, from time to time request the County Public Service Board to second such number of staff to assist the Committee perform its functions under this Act.

Protection from Personal Liability

11. A member, officer, employee or agent of the Committee shall not be held personally liable to any action, claim or demand for a matter or thing done bona fide for the purpose of executing the functions, powers or duties of the Committee.

Establishment of River Basin Based Cooperative Societies (RBBCSs)

12. (1) The River Basin Based Cooperative Societies (RBBCSs) shall be constituted, registered and regulated in accordance with Article 185 (2) and 186 (2) of the Constitution of Kenya, 2010 read together with the Fourth Schedule Part II Function 7(e).

(2) The River Basin Based Cooperative Societies membership shall be derived from the members of Site Based Community (Sand) Groups within a specific River Basin.

General Meetings

13. (1) The supreme authority of a co-operative society shall be vested in the general meeting at which members shall have the right to attend, participate and vote on all matters

(2) In the first year after registration of a co-operative society, the General meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall—

- (a) elect the co-operative society's office bearers for the ensuing year;
- (b) determine the maximum borrowing powers of the co-operative society;
- (c) consider and approve estimates of income and expenditure for the ensuing financial year or part thereof
- (d) appoint the co-operative society's bankers and auditors; and receive reports and decide upon such other matters as may be necessary for the conduct of the co-operative society's business.

(3) Subject to subsection (2), a co-operative society shall hold an annual general meeting within four months after the end of each financial year.

(4) A general meeting of a co-operative society shall be convened by giving at least fifteen days written notice to the members.

(5) A special general meeting of a co-operative society may be convened—

- (a) by the RBBCS Committee for the purpose of approving annual estimates or discussing any urgent matter which in the Committee's opinion is in the interest of the co-operative society; or
- (b) on receipt of a written notice for such meeting signed by such number of the members of the co-operative society as may be prescribed in the rules and stating the objects and reasons for calling the meeting.

Membership, Powers and Functions of the RBBCS Committee

14. (1) Every co-operative society shall have a Committee consisting of not less than five (5) and not more than nine (9) members observing gender equity and intergenerational representation for sustainability.

(2) The members of the RBBCS Committee shall elect a chairperson and a vice-chair from among them. The Committee shall be the governing body of the society and shall, subject to any direction from a general meeting or the by-laws of the co-operative society, direct the affairs of the co-operative society with powers to—

- (a) Enter into contracts
 - (b) Institute and defend suits and other legal proceedings brought in the name of or against the co-operative society; and
 - (c) Do all other things necessary to achieve the objects of the co-operative society in accordance with its by-laws.
- (3) No person shall be a member of a RBBCS Committee if—
- (a) Is not a member of the River Basin Based Co-operative Society;
 - (b) Is under eighteen years of age;
 - (c) Is unable to read and write;
 - (d) Receives any remuneration, salary or other payment from the co-operative society save in accordance with this Act;
 - (e) Is a committee member in another River Basin Based Cooperative Society;
 - (f) Being a member of a co-operative society that lends money to its members, lends money on his own account;
 - (g) Is an undischarged bankrupt;
 - (h) Is of unsound mind;
 - (i) Has been convicted of any offence under this Act or rules made thereunder;

(4) The RBBCS Committee may delegate any of its duties under this Act to an officer or officers of the co-operative society but, nothing in this subsection shall absolve the RBBCS Committee from its responsibility to run the affairs of the co-operative society in a proper and business-like manner.

(5) The functions of the RBBCS Committee shall include the following in consultation with the Kitui County River Basins Sand Utilization and Conservation Committee—

- (a) Identify and recommend to the Kitui County River Basins Sand Utilization and Conservation Committee the designated sand harvesting sites and aggregation yards and formulation of environmental protection, conservation and restoration programs for the same
- (b) Ensure that all sand dealers and transporters within the Basin comply with the Act
- (c) Facilitate and coordinate Environmental Impact Assessments (EIAs) and Environmental Audits (EAs) of sand harvesting sites and aggregation yards in collaboration with established Site Based Community (Sand) Groups as per the EMCA Act 1999.
- (d) Collaborate with other environmental agencies and organizations in the management of the environment and ensure compliance with national norms and standards for sustainable utilization of sand resources.
- (e) Facilitate progressive rehabilitation of degraded sand harvesting sites and other fragile ecosystems within the basins.
- (f) Prepare and submit quarterly, semi-annually and annual status reports to the Committee
- (g) Promote networking and collaboration with other partners and mobilize resources for sustainable sand value chain activities and
- (h) Perform any other functions assigned by the Kitui County River Basins Sand Utilization and Conservation Committee for the furtherance of this Act

Establishment of Site Based Community (Sand) Groups (SBCSGs)

15. (1) There is established Site Based Community (Sand) Groups (SBCSGs) comprising of community members involved in the sand value chain at the local level.

(2) Community members involved in sand harvesting at designated sites must be registered in a group and must—

- (a) have a valid certificate of registration issued by the Directorate of Natural and Mineral resources.
- (b) have sand harvesting as one of the principal objectives of formation;
- (c) ensure Gender Equity and Social Inclusion in formation and programs
- (3) The SBCSGs may be activity based e.g. land owners, loaders, transporters among others or all-inclusive as per the groups` rules of operation.
- (4) Group membership will range between a minimum of 20 and a maximum of 100 members
- (5) The SBCSG leadership shall be through a democratic and all inclusive process as guided by this Act Social Protection Regulation.
- (6) The SBCSG shall be responsible for—
 - (a) Acquire the required registration certificates and ensure renewals
 - (b) Ensure sustainable sand harvesting and environmental protection
 - (c) Comply with the Standard Operating Procedures determined by the Basin-based Cooperative Societies
 - (d) Report on progress to the Basin Based Cooperatives as required
 - (e) Have in place conflict resolution mechanism for Group members
 - (f) Coordinate all site activities with the Basin Based Cooperatives
 - (g) Open and operate group bank account(s)
 - (h) Ascertain destinations of the sand harvested from their sites and report offenders

Establishment of interim River Basin Based Caretaker Committees (RBBCCs)

- 16.** (1) There shall be established interim River Basin Based Caretaker Committees (RBBCCs) which shall be precursor to the River Basin Based Cooperative Societies
- (2) The criteria for nomination of River Basin Based Caretaker Members shall be as follows—
- (a) The Directorate shall, in liaison with the Ward Administrators, convene and facilitate the initial meetings in each River Basin to identify and nominate members of River Basin Based Cooperative Caretaker Members (RBBCCMs)

- (b) The identification of the above shall be done through public participation meetings at Ward level
 - (c) The RBBCCMs shall be composed of three (3) persons from each Ward (1 youth, 1 male and 1 female).
 - (d) The RBBCCMs shall be residents who have lived continuously within the Wards in a River Basin for not less than six years prior to nomination date
- (3) In consultation with the Directorate, the functions of the RBBCCCs shall be—
- (a) Sensitize the community on the formation of Site-Based Community (Sand) Groups
 - (b) Prepare interim by laws for purposes of registration of the River Basin Based Cooperative Societies
 - (c) Apply for registration of River Basin Based Cooperatives with the County ministry responsible for Cooperatives
 - (d) Facilitate the formation and registration of the Site Based Community (Sand) Groups
 - (e) Facilitate election of office bearers of the Site-Based Community (Sand) Groups; who shall comprise of; Chairperson ,Vice chairperson, Secretary, Vice-secretary, Treasurer, Trustee/ Patron and three committee members elected by the group members observing the two -third gender rule
 - (f) Formulation of Site-Based Community (Sand) Groups; by-laws and facilitate registration through County department responsible for Cooperatives
 - (g) The members of Site Based Community (Sand) Groups formed in section (iv) above within a specific River Basin shall form membership of the River Basin Based Cooperative Societies

PART III—ENFORCEMENT AND COMPLIANCE

Enforcement team

17. (1) The CECM, responsible for Natural and Mineral Resources, in consultation with the County Governor, shall recruit, through County Public Service Board, a duly qualified person(s), to be Natural and Mineral resources Inspector(s) for the County as shall be specified in the Gazette notice appointing them. The Inspector(s) shall report to the C.O through the Director responsible for Natural and Mineral Resources.

- (2) The Inspector(s) shall—

- (a) Monitor compliance and take enforcement action and perform such other functions as may be required under this Act or specified in the notice of appointment.
 - (b) Institute Criminal charges against accused person(s) for ratification and adoption by the Office of the Directorate of Public Prosecutions.
 - (c) Ensure compliance with the environmental standards established under this Act or any other relevant Laws;
- (3) For the purposes of this Act, the Inspector(s) shall collaborate with—
- (a) The relevant County Administrative Staff.
 - (b) Police officers working in the County pursuant to their duties under the National Police Service Act, 2011;
 - (c) A representative of the Director General of National Environment Management Authority
- (4) The CECM in consultation with the Governor shall, through the CPSB, recruit duly qualified persons as Enforcement officers who shall report to the Inspector(s) and perform enforcement duties as may be assigned by the Inspector(s) from time to time

Powers of the enforcement team

18. The Enforcement Team may—

- (a) Demand from any person the production of an authority or license for any act done or committed by that person in the County or in relation to any sand harvesting for which a license is required under this Act or under any rules made hereunder;
 - (b) Require any person found within or without the County who has in his possession any sand suspected to have been taken from any river Basin within the County, 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 magistrate;
 - (c) Search any person suspected of having committed an offence under this Act or of being in possession of any sand in respect of which an offence has been committed, and arrest the person, seize conveyance, yard, sand products or building under the control of that person or his agent or servant;
- (a) Search any vehicle and seize and detain any sand in respect of which there is reason to believe that an offence has been

committed, together with any tools, equipment, vessels, vehicles or livestock used in the commission of the offence.

- (b) The confiscated vessel and or materials shall be detained to any authorised premises within the County
- (c) Confiscate any equipment or receptacle placed without authority in a County river Basin
- (d) The provisions in (a) to (e) above shall comply with the provisions of Article 24 of the Constitution which provides that any limitation of a fundamental freedom or right must be explained as to its extent and be justified.

PART IV—SAND HARVESTING REQUIREMENTS

Sand harvesting sites

19. (1) The Kitui County River Basins Sand Utilization and Conservation Committee shall, designate and document sand harvesting sites and aggregation yards on the recommendation by the Basin Based Cooperative Societies;

(2) Every sand harvesting site shall be gazetted by the CECM responsible for Mineral and Natural Resources after successfully obtaining an EIA license.

(3) Each designated sand harvesting site shall have an Environmental Management Plan to guide in the rehabilitation of the site.

On-farm and sand-dam sand exploitation

20. On-farm, riverbed and dam site sand harvesting shall be carried out subject to fulfilling the following conditions—

- (a) Harvesting of sand shall not exceed one metre in depth on on-farm sand extraction
- (b) Harvesting of sand from a dam shall not exceed half metre (in case of de-silting) subject to advice by technical officers dealing with environmental quality control;
- (c) Designated sand harvesting sites shall be at least fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;
- (d) Sand harvesting or scooping of sand shall not be undertaken concurrently with rehabilitation of the sites;
- (e) On-farm sand harvesting shall only be undertaken by open-cast harvesting method and no underground tunnelling or extraction

of sand shall be undertaken unless some approved extraction technology is applied to safeguard human lives.

Riverbed sand harvesting

21. (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 and no mechanization shall be employed for loading and extraction purposes.

(4) No sand harvesting shall take place within one hundred metres of either side of any physical infrastructure including sand dams, earth dams, sump wells, scooped wells, bridges, roads, railway lines, dykes, Power way leaves among others.

Hours of sand harvesting and transportation

22. (1) No person shall—

(a) harvest or extract sand between the hours of 6 p.m. to 6 a.m.; and

(b) Transport sand between the hours of 6 pm to 6 a.m.

(2) The transport of sand within the county shall only be done through designated roads for such transportation, as may be specified in the licensing document.

(3) Any person who contravenes this section commits an offence and is liable upon conviction to a fine not less than five hundred thousand Kenya shillings (KSh. 500,000.00) or to an imprisonment term not less than three years or to both.

Sale of sand and cess collection

23. (1) The Kitui River Basins Sand Utilization and Conservation Committee in consultation with the River Basin Based Cooperative societies shall provide guidelines for the sale of sand within the county and shall cover the following;

(a) Non Local Commercial (NLC) use

(b) Local Commercial (LC) use

(c) Local Domestic (LD) use

(2) The River Basin Based Cooperative Society shall keep all records of sand sales for periodic inspection by the relevant authorities.

(3) No person shall operate a sand harvesting site, or yard in the county without authority/licence of the Kitui County River Basins Sand Utilization and Conservation Committee.

(4) Any person who contravenes this section commits an offence and is liable upon conviction to a fine not less than five hundred thousand Kenya shillings (KSh. 500,000.00) or to an imprisonment term not less than three years or to both.

PART V—LICENSING PROVISIONS

Registration and licensing of sand harvesting activities

24. Licensing provisions—

- (a) No person shall use, cause or permit to harvest sand from any river, farm, dam or other land for the purposes of sale unless in possession of valid—
 - (i) Applicable registration certificate pursuant to this Act
 - (ii) Environmental Impact Assessment license issued under EMCA, 1999,
 - (iii) Operational licenses issued in line with this Act
- (b) The Committee may recommend for suspension, cancellation or revocation of a license in accordance with this Act
- (c) Registrations, Licenses or Permits issued to any Actors before this Act comes into force shall be considered invalid.
- (d) A person who contravenes this section commits an offence and shall be liable upon conviction to a fine not less than two hundred thousand Kenya shillings (KSh. 200,000.00) or to an imprisonment not less than two years to both such fine and imprisonment

Licensing of sand dealers

25. (1) No person or agent shall transport sand from any part of the county, unless a valid license for such business has been issued under this Act.

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

(3) No license shall be issued in relation to the following sites; Critical infrastructure, River banks, ecologically fragile areas, way leaves, cultural sites and other areas prohibited by law.

(4) All licensed sand harvesting sites shall be subjected to Environmental Audit in accordance with the provisions of EMCA 1999.

(5) A person who contravenes this section commits an offence and shall pay a fine of not less than two hundred thousand Kenya shillings (KSh.200,000.00) or to an imprisonment of not less than one year, or both such fine and imprisonment.

Delegation of powers

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

Application for license

27.(1) The Committee shall vet and approve each application made under section 21 and 22 and recommend to the CECM whether to issue a license to the applicant or not within 14 days.

(2) If the CECM declines to issue a license, he/she shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the decline and refer to the relevant provision in this Act on which the decline is based on.

Discretion of a licensing officer

Powers of the licensing officer

28. A license shall be issued—

- (a) Subject to laid down condition for each license.
- (b) The River Basin Based Cooperative Societies have an obligation to rehabilitate the sand harvesting sites and surrounding areas upon closure.
- (c) For the category or categories of business activity specified in the license.
- (d) Subject to the regulations under this Act and any other conditions provided in the license.

License conditions

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

(2) The CECM may issue different classes of licenses for different purposes on advice from the Committee

License fees

30. The prescribed fees and rates shall be payable to the County Treasury account for every application for a license.

Transfer of license

31. A license issued under this Act shall not be transferable.

Alteration of a license

32. (1) Subject to this Act, a license may be altered upon written application to the CECM where applicable

(2) The licensee shall inform the Committee in writing of any changes for which the licence is granted within 14 days of the application.

(3) If a licensee fails to inform the Committee under subsection (2), he/she is deemed to have committed an offence and shall be liable upon conviction, to a penalty not less than One hundred thousand Kenya shillings (KSh. 100,000.00) or a term of imprisonment not less than six (6) months or to both such fine and imprisonment.

Suspension and Cancellation and revocation of licence

33.(1) A license once issued may be suspended or cancelled.

(2) The Committee may give recommendation to cancel or suspend a license if—

- (a) The application form contains any material misrepresentation or false statement or/and facts.
- (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 as provided for in the regulations in this ACT;
- (d) A condition imposed is breached; or
- (e) The licensee is convicted of an offence under this ACT.

(3) A suspended license shall be subjected to a Committee decision for reinstatement or cancellation.

(4) The Committee shall have the discretion to reinstate or cancel the license.

Appeals of license

34.(1) Any licensee aggrieved by the decision taken by the Committee and/or Directorate, shall be entitled to appeal against the decision to the CECM.

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

(3) The Committee shall review each appeal as per laid down rules and procedures as per this Act, the decision of the Committee shall be final.

Production of license

35. A County Enforcement Officer or any other Authorized officer who has reasonable cause to believe that a business person is required to hold a business license may demand from the said person to produce the license.

PART VI— MISCELLANEOUS PROVISIONS

Collection of revenue and benefits sharing

36.(1) The County Government shall collect revenue from sand value chain guided by the current County Finance Act at any time.

(2) The River Basin Based co-operatives shall aggregate sand and coordinate selling for Local Commercial and Non Local Commercial Use. The RBBCS shall allocate 50% for conservation, 30% dividends to the cooperative members and 20% of the net incomes realised for Corporate Social Responsibility.

(3) Protection, conservation and rehabilitation of closed sand harvesting sites and access roads within sand harvesting areas shall be undertaken by the SBCSGs in collaboration with the RBBCS and the County Government.

(4) The RBBCS shall put in place structures that pool resources to enable the SBCSGs manage their own affairs such as bank accounts, table banking facilities among others

(5) Only persons from the local community shall be allowed to collect, transport and sell sand meant for local commercial use upon payment of stipulated fees in the County Finance ACT.

Road barriers

37.(1) For purposes of section 28, the County Government may mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap. 403, Laws of Kenya and County Governments Act, 2012.

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

(3) A trader transporting sand shall stop at such barriers and upon production of the relevant sand transportation documents, pay the prescribed fees and charges to the authorized officer.

- (4) A person who contravenes this section commits an offence and shall;
- (a) Be accorded 12 hours to produce the sand transportation documents failure to which;
 - (b) Forfeit the vessel and materials therein used in such activity to the County Government of Kitui if found guilty of the offence under this section.
 - (c) Pay a fine not less than KSh. 500,000.00 (five hundred thousand shillings only) or imprisonment of not less than one (1) year or both such fine and imprisonment for the owner of the vessel
 - (d) Pay a fine not less than 10,000.00 (ten thousand shillings only) or imprisonment of not less than two (2) months in jail or to such fine and imprisonment for the person handling the seized vessel.

Inspection

38. (1) The authorized officer (s), may at all reasonable times —

- (a) Enter upon premises, farms, ranches or vehicles accompanied by a warrant or witness 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) A person obstructing the officers referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not less than one hundred thousand Kenya shillings (Kshs. 100,000.00) or to an imprisonment term not less than six months or to both such fine and imprisonment.

(3) A County Enforcement Officer or any other authorized officer shall detain vehicles and confiscate sand where it is shown that the material has been obtained in contravention of this Act.

(4) The detained or impounded vehicle(s) referred to in subsection 3 shall not be released to the owner until where prosecution is preferred; the case is finalized or until the owner has paid prescribed penalty charges.

(5) A police officer or any other authorized officer before undertaking any inspection activities in this Act, shall produce to the relevant person proper identification documents and warrants of search or arrest from the relevant authorities.

Indemnity

39. No matter or anything done by a Licensing Officer, employee or agent shall, if the matter or anything 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.

Conflict resolution

40. (1) In the event of any disagreement regarding access, ownership, benefit sharing, management approaches in sand harvesting, the River Basin Based Cooperative Societies shall convene a meeting between the complainant and the respondent to deliberate on the grievances and make appropriate resolutions.

(2) Any person, who is aggrieved by the resolution of the Basin Based Cooperative societies in clause (1) above, may within fourteen days from the date of the resolution appeal to the Committee.

(3) In resolving dispute matters, all parties shall employ Alternative Dispute Resolution (ADR) mechanisms

Rehabilitation of degraded sites

41. In rehabilitation of a closed sand harvesting site, the River Basin Based Co-operative societies shall—

- (a) Facilitate and monitor the rehabilitation of the specific sand harvesting sites and their adjacent environment including access roads, riverbanks, catchment areas among others to ensure environmental sustainability;
- (b) Require every licensee to prepare and submit a rehabilitation plan for designated sand harvesting area where applicable.

Irregularities

42. A person who contravenes any provisions of this Act, for which no penalty is provided for, shall on conviction be liable to a fine not less than two hundred thousand Kenya shillings (Kshs. 200,000.00) or to an imprisonment term not less than three years or to both such fine and imprisonment

Regulations

43. (1) The Committee shall make regulations, which meet the standards set in accordance with the Statutory Instruments Act, 2013 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) Sand harvesting activities;
 - (b) Criteria for determining the number of community groups approved under this Act;
 - (c) Variation of the terms and conditions of license issued under this Act;
 - (d) Requirements for different types of sand harvesting methods.
 - (e) Forms and schedules required under this Act;
 - (f) Rehabilitation of closed sites;
 - (g) Resolution of disputes; and
 - (h) Such other matters as the as may be necessary for full implementation of this Act.
- (3) Without prejudice to sub-section (1) the nature and scope of the regulations shall—
- (a) Be for the objects and purpose as 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 objects of this Act is to comply and implement the Constitution of Kenya, Article 183 (2) which states that “*a county executive committee may prepare proposed legislation for consideration by the county assembly*” and the County Governments Act of 2012, section 102 (d), which advocates that County Governments shall “*protect and develop natural resources in a manner that aligns to national and county governments policies*”; and section 103 (b) that mandates County Governments to “*facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county.*”

The principal object of this Bill is to regulate sand harvesting and management activities in Kitui County and to ensure sustainable utilization of land resources and to provide for equitable sharing of the accruing benefits to communities. The Act requires that sand dealers be registered and licensed in accordance with the Act. It establishes the institutional and legal framework and provides for the involvement of communities in regulating sand value chain.

To provide a framework for enforcement of matters pertaining to sand harvesting and management in Kitui County.

DANIEL KIMANZI,
*Chairperson, Committee on Environment, Energy and Mineral
Investment Development.*