

COUNTY GOVERNMENT OF KITUI



COUNTY ASSEMBLY
THIRD ASSEMBLY – (THIRD SESSION)

COMMITTEE ON DELEGATED COUNTY LEGISLATION

REPORT ON THE KITUI COUNTY RIVER BASINS SAND UTILIZATION AND
CONSERVATION POLICY, 2023

CLERK'S CHAMBERS
COUNTY ASSEMBLY BUILDINGS,
KITUI.

FEBRUARY, 2024

A handwritten signature in black ink, appearing to be 'L. M. M. M.', located at the bottom center of the page.

Table of Contents

1.1. THE COMMITTEE'S MANDATE.....	5
1.2. COMMITTEE MEMBERSHIP	7
1.3. TERMS OF REFERENCE	8
1.4. ACKNOWLEDGEMENT	9
2.1. INTRODUCTION.....	11
2.2. POLICY OBJECTIVE AND STRATEGIES	12
2.3. SITUATION ANALYSIS	12
2.4. CHALLENGES/ISSUES TO BE ADDRESSED BY THE POLICY	13
2.5. AN ANALYSIS OF THE EXISTING LEGAL FRAMEWORK.....	14
2.6. GUIDING PRINCIPLES FOR THE IMPLEMENTATION OF THE POLICY.....	18
2.7. ACTORS OR STAKEHOLDERS AND RESPONSIBILITIES.....	18
2.8. TARGET AUDIENCE	19
2.10. THE REVIEW MEASURES.....	19
2.11. PROVISION OF A LEGAL INSTRUMENT FOR ITS OPERATIONALIZATION	19
2.12. OBSERVATIONS FROM THE PUBLIC HEARING AND THE SUBMITTED STATEMENT OF MEMORANDA.....	20
3.0 COMMITTEE OBSERVATIONS.....	23
4.0. COMMITTEE'S RECOMMENDATIONS	25
5.0. COMMITTEE CONCLUSION.....	27

ABBREVIATIONS

BBCS	Basin Based Cooperative Societies
C.O.	Chief Officer responsible for Natural and Mineral Resources
Cap	Chapter of law
CECM	County Executive Committee Member responsible for Natural and Mineral Resources
CSR	Corporate Social Responsibility
E.A	Environmental Audit
E.I.A	Environmental Impact Assessment
eKLR	Electronic Kenya Law Report
EMCA	Environmental Management and Coordination Act
SBCSGs	Site Based Community (Sand) Groups
UNEP	United Nations Environment Programme
NEMA	National Environmental Management Authority

ANNEXURES

- i. The signed adoption list **(Annex I)**.
- ii. Analysis of the views of the members of the public with the attendance list **(Annex II)**.
- iii. The Implementation Plan **(Annex III)**
- iv. Committee minutes adopting the report **(Annex IV)**.



1.0. PREFACE

Mr. Speaker Sir, the Kitui County River Basins Sand Utilization and Conservation policy, 2023 is critical and of much importance since it intends to facilitate the progressive realization of the right to a clean and healthy environment as provided for under Article 42 of the Constitution.

Further the policy aims to ensure sustainable conservation, exploitation, utilization, and management of the environment and natural resources, and equitable sharing of the accruing benefits as provided in Article 69 of the Constitution of Kenya, 2010.

Mr. Speaker Sir, we are all aware that the issue of harvesting and sale of sand within the county has been quite emotive and contentious. The controversy has been fueled by the fact that we do not have any existing county legislation to regulate sand utilization and conservation in our rivers thereby creating an opportunity for unscrupulous cartels to take advantage of the situation and control the sale of sand to the detriment of our environment and the local communities neighboring the sand harvesting sites.

The county government has also been greatly affected with the uncontrolled harvesting and sale of sand since they have lost millions of shillings in revenue that could have been generated had there been legislation governing the same.

The main goal and objective of this Policy is to ensure that sand utilization and conservation is properly regulated as well as the value for money is being felt by the local people who are mostly affected by sand dealings along the rivers within our County.

Mr. Speaker Sir, it is on the above basis that the Committee on Delegated County Legislation reviewed the *Kitui County River Basins Sand Utilization*

and Conservation Policy, 2023 and came up with this report for adoption by the Assembly.

1.1. THE COMMITTEE'S MANDATE

Mr. Speaker Sir,

The select Committee on Delegated County Legislation is constituted pursuant to the provisions of Standing Order No. 189 of the County Assembly of Kitui and executes its mandate in accordance with the provisions of the said Standing Orders.

The Committee is mandated to consider in respect of any statutory instrument whether it-

- (a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
- (b) infringes on fundamental rights and freedoms of the public;
- (c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of the County Assembly;
- (d) contains imposition of taxation;
- (e) directly or indirectly bars the jurisdiction of the Courts;
- (f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- (g) involves expenditure from the County Revenue Fund or other public revenues;
- (h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
- (i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (j) appears to have had unjustifiable delay in its publication or laying before County Assembly;



- (k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (m) inappropriately delegates legislative powers;
- (n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (o) appears for any reason to infringe on the rule of law;
- (p) inadequately subjects the exercise of legislative power to County Assembly scrutiny; and,
- (q) accords to any other reason that the Committee considers fit to examine.

Mr. Speaker sir, If the Committee-

- i. resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant county department or the authority that published the statutory instrument.
- ii. does not accede to the statutory instrument, the Committee may recommend to the Assembly to resolve that all or any part of the statutory instrument be annulled.
- iii. If a resolution is passed by the House within twenty-eight days on which it next sits after the instrument laid before it under paragraph (2), that all or part of the statutory instrument be annulled, the instrument or part thereof shall henceforth stand annulled.

Mr. Speaker Sir, in the context of legislation, a policy is a document which outlines what a government aims to achieve for the society as a whole. All policies start off as an idea. It may be the idea of a member of the executive wing of the Government, a bureaucrat, legislator, a stakeholder group or an individual citizen. The provisions of Article 185 of the Constitution of Kenya

2010 on legislative authority of County Assemblies are very clear and the same state that;

1. The Legislative Authority of a County Assembly is vested in, and exercised by, its County Assembly.
2. A County Assembly may make any Laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the County Government under the fourth schedule.
3. A County Assembly, while respecting the principles of separation of powers, may exercise oversight over the County Executive Committee and any other County Executive Organs.
4. **A County Assembly may receive and approve plans and policies for:**
 - a. **The management and exploitation of the county's resources; and**
 - b. **The development and management of its infrastructure and institutions.**

1.2. COMMITTEE MEMBERSHIP

The Committee is composed of the following members:

- | | |
|-----------------------------------|--------------------|
| 1. Hon. Cornelius Ngumbao Muthami | – Chairperson |
| 2. Hon. Mary Mbithe Musili | – Vice-chairperson |
| 3. Hon. Sammy Musili Munyithya | – Member |
| 4. Hon. Dr. Erastus Musyoka Mbuno | – Member |
| 5. Hon. Charity Syomiti Mwangangi | – Member |
| 6. Hon. Ciambutra Karigi | – Member |
| 7. Hon. Nzavu Mwanzia | – Member |
| 8. Hon. Daniel Ngoima Kimanzi | – Member |
| 9. Hon. Grace Syoindo Mulandi | – Member |
| 10. Hon. Cyrus Kisavi Musyoka | – Member |
| 11. Hon. Boniface Kyalo Kimuli | – Member |



1.3. TERMS OF REFERENCE

Mr. Speaker Sir,

The County Executive Committee Member for Energy, Environment, Climate Change, Forestry, Natural and Mineral Resources submitted the Policy to the County Assembly on 17th July, 2023. The Honorable Speaker in his communication to the House committed the policy to the Committee on 25th October, 2023 pursuant to Standing Order 189 for scrutiny and reporting to the House.

Mr. Speaker Sir,

The Committee retreated from 20th to 26th November, 2023 at Pride Inn Hotels and conferencing in Nairobi to deliberate on the policy and compile a report for submission to this Honourable House. However, due to the sensitivity of the issues raised in the policy, Committee Members could not ventilate on it into finality as there was a need for further consultation between the Drafters (Taskforce), the County Executive and the Assembly.

Upon having a consultative meeting between the honorable members, the County Executive and the Taskforce on 6th to 8th February, 2024 to address on the grey areas on the Policy, the committee retreated to Mwingi in order to finalize on the policy from 15th to 18th February, 2024.

1.4. ACKNOWLEDGEMENT

Mr. Speaker Sir,

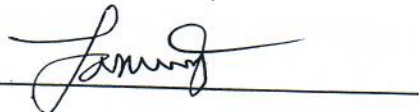
The Committee is thankful to the Offices of the Speaker and the Clerk of the County Assembly for the logistical support accorded to it during the report writing as it executed its mandate.

I wish to express my appreciation to the Honorable Members of the Committee for their resourceful input that informed the content of this report. My sincere gratitude also goes to the Secretariat for their dedication towards compiling this report.

It is therefore my pleasant duty and privilege, on behalf of the Select Committee on Delegated County Legislation to table this report on the **Kitui County River Basins Sand Utilization and Conservation Policy, 2023** and its recommendations to the Assembly for deliberation and adoption.

Thank you.

Signed



Dated

18/02/2024

HON. SAMMY MUSILI MUNYITHYA,
ACTING CHAIRPERSON, COMMITTEE ON DELEGATED COUNTY
LEGISLATION
COUNTY ASSEMBLY OF KITUI.

This Report was compiled by:

1. David Manzi- Clerk Assistant
2. Esther Mwele- Clerk Assistant



2.0. SCRUTINY OF THE KITUI COUNTY RIVER BASINS, SAND UTILIZATION AND CONSERVATION POLICY, 2023.

Mr. Speaker sir,

A guide to the legislative process in Kenya by Kenya Law Reform Commission first edition of 2015 provides for salient features of a policy framework. The guide provides that a policy framework should amongst others reflect the following features.

- i. Be forward looking that is, it must have a long-term view of the problem and offer a long-term solution.
- ii. Benefit from the experience of others who have resolved similar situations.
- iii. Seek new solutions to old problems by being clear on objectives and outcomes.
- iv. Be based on a study or current analysis of the problem at hand.
- v. Offer an inclusive solution to all the segments of the community in which it would be implemented.
- vi. Fit into the current policies being implemented by other agencies.
- vii. Borrow from best practices and learn from implementation mistakes and successes elsewhere.
- viii. Must have an inbuilt communication strategy for dissemination to the public and all stakeholders.
- ix. Should have evaluation and review mechanisms as one of its features.
- x. Provide a pre-legislation impact assessment statement.

Mr. Speaker Sir, the committee scrutinized the Kitui County River Basins Sand Utilization and Conservation Policy based on the framework stated hereunder:

- i. Introduction

- ii. Situation analysis
- iii. Challenges or problem/issues to be addressed
- iv. An analysis of the existing legal framework
- v. Strategies for its implementation
- vi. Actors/stakeholders including the roles and responsibilities
- vii. Targeted audience and their role and obligations
- viii. Monitoring and evaluation mechanism
- ix. Review measures
- x. Provision of legal instrument for its operationalization

2.1. INTRODUCTION

Mr. Speaker Sir,

Kitui County lies in the Arid and Semi-Arid zones of South Eastern Kenya. The topography of the region contributes to the formation of many rivers and streams endowed with large quantities of sand. For administrative convenience, the County Government of Kitui has grouped the rivers into five river Basins as follows:

- i. Nziitu River Basin; made up of rivers; Nziitu, Konyu, Katse and all other rivers and streams draining in the same direction.
- ii. Enziu River Basin; is made up of rivers; Enziu, Mwanja, Mui and all other rivers and streams draining in the same direction
- iii. Tyaa River Basin; made up of rivers; Tyaa, Kamuwongo, Nguutani and all other rivers and streams draining in the same direction.
- iv. Thua River Basin; made up of rivers; Thua, Ikoo, Ngunga and all other rivers and streams draining in the same direction
- v. Tiva River Basin; made up of rivers; Tiva, Nzeeu, Mwitasyano and all other rivers and streams draining in the same direction.

Mr. Speaker Sir,



Owing to the proximity of the county to big cities, urban centres coupled with good road network connectivity, Kitui County has in the recent past experienced high demand for its naturally occurring sand.

Sand harvesting within the County is unregulated and is majorly controlled by cartels and other un-organized groups. Consequently, this has led to wanton destruction of some rivers through uncontrolled sand harvesting activities resulting to negative effects on the environment and socio-economic development.

2.2. POLICY OBJECTIVE AND STRATEGIES

Mr. Speaker Sir,

The objectives of the policy are to; -

- (a) provide a legal and institutional framework for sustainable management of the sand value chain;
- (b) Provide a mechanism for community involvement in environmental protection, conservation and restoration;
- (c) Establish mechanisms for sustainable sand harvesting, utilization and management of sand resource;
- (d) provide a framework for equitable sharing of sand value chain benefits between the county government and the communities in the sand River Basins;
- (e) Mainstream gender equity and social inclusion in the sand value chain activities.

2.3. SITUATION ANALYSIS

Mr. Speaker Sir

The situational analysis in this policy seeks to identify prevailing gaps, opportunities, and challenges in policy implementation. This will help in developing realistic and effective strategies to address community concerns

and lay out strategies for ensuring sand harvesting does not cause unnecessary degradation of the environment.

2.4. CHALLENGES/ISSUES TO BE ADDRESSED BY THE POLICY

Mr. Speaker,

According to UNEP report on sand and sustainability (2019), sand and gravel are the most extracted group of materials globally, exceeding fossil fuels and biomass. The report estimates that 40-50 billion tons of sand and gravel are extracted every year worldwide, and this number is increasing as demand for construction materials grows. In view of this, there is need for governments to put in place policies that regulate sustainable utilization

of river-based resources including sand.

In Kenya, sand harvesting and utilization legislation are fragmented, outdated and not aligned to the Constitution of Kenya 2010. The County Government of Kitui doesn't have own legislation to govern sustainable sand harvesting either. This makes it difficult to enforce such laws for sustainable sand harvesting and utilization. This is despite the potential sand has to generate enough revenue to undertake conservation and management of the degraded ecosystems. For example, the National Sand Harvesting Guidelines, 2007 are secondary legislation that apply to all sand harvesting activities in Kenya and is aimed at ensuring sustainable utilization of sand resources and proper management of the environment; however, its administrative structures are not aligned to the Constitution of Kenya, 2010.

Article 69 of the Constitution of Kenya, 2010 mandates the State to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits. Further, the fourth schedule of the Constitution of Kenya,



2010 Part II, and Function 10 mandates County Governments to implement specific National Government policies on natural resources and environmental conservation, including soil and water conservation and forestry.

With the increase in demand for sand resource triggered by ballooning urban and infrastructure development aligned to Kenya Vision 2030 and the national housing policies, there is need for County Governments to put in place a policy framework to ensure environmental conservation through appropriate legislation for sustainable utilization of sand resource and the equitable sharing of accruing benefits.

2.5. AN ANALYSIS OF THE EXISTING LEGAL FRAMEWORK

Mr. Speaker Sir,

Kenya has passed various laws and regulations that affect the conservation, harvesting and sustainable utilization of sand being a naturally occurring resource.

2.5.1 The Constitution of Kenya, 2010

The Constitution is the supreme law in the Republic of Kenya that binds all persons and all State organs at both levels of government. Article 42 of the Constitution of Kenya, 2010 (the Bill of Rights) stipulates that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative framework and other measures, particularly those contemplated in Article 69.

Article 69 of the Constitution of Kenya, 2010 mandates the State to ensure sustainable conservation, exploitation, utilization, and management of the environment and natural resources, and ensure the equitable sharing of the

accruing benefits. In doing so, the State is obligated to ensure that it eliminates processes and activities that are likely to endanger the environment and utilizes the environment and natural resources for the benefit of the people of Kenya.

Article 174 of the Constitution of Kenya, 2010 gives powers of self-governance to the people and enhances the participation of the people in the exercise of the powers of the State and in making decisions affecting them. It also recognizes the right of communities to manage their own affairs and to further their development.

2.5.2 The Mining Act, 2016

This ACT of Parliament gives effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution of Kenya, 2010 in so far as they apply to minerals; provides for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes. The Mining Act establishes a licensing regime which confers mineral rights to large scale, small scale and artisanal miners. By virtue of Legal Notice No. 62 of 2017 and section 6 (1) of the Mining Act, sand is vested in the government like other natural resources such as fisheries, minerals, geothermal resources and renewable energy sources. In the Mining Act 2016, sand is classified as a construction mineral.

2.5.3 The Environmental Management and Co-ordination Act, 1999

The Environmental Management and Co-ordination Act (EMCA), 1999 is an Act of Parliament that provides for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected therewith and incidental. This Act was amended in 2015. Section 2 of the Environmental Management and Coordination Act No. 8 of



1999 (EMCA), categorises sand under “rubric of soil” which also includes rock, dust, earth and shale.

2.5.4 The National Sand Harvesting Guidelines, 2007

This is a secondary legislation that applies to all sand harvesting activities in Kenya and is aimed at ensuring sustainable utilization of sand resource and proper management of the environment.

2.5.5 Case laws

In the case of *Celestine John Aoko & others v Shem Owino Muga & 7 others; Amicus Curiae Kenya National Commission on Human Rights* [2019] eKLR, the Applicants claimed that sand harvesting had caused flooding in their farms, broken dykes and created pits which posed a safety risk amongst other hazards.

“The Court held that the National Environment Management Authority (NEMA) retains regulatory powers over sand harvesting activities through the National Sand Harvesting Guidelines, 2007, issued pursuant to Section 42 (4) of EMCA.”

In the case of *John Muthui & 19 others v County Government of Kitui & 7 others* [2020] eKLR, the petitioners claimed that River Tiva in Kitui had dried up because of sand harvesting. *The Court recognized that sand harvesting is necessary for economic development but upheld the principle of sustainable development and its auxiliary principles of intergenerational equity, precautionary principle, and sustainable, prudent, equitable and wise use. It granted conservatory orders against permitting sand harvesting as the activity constituted a threat to the Petitioner’s right to a clean and healthy environment.*

2.5.6 Other laws that have an impact in the mining sector (Sand harvesting)

County Government Act, 2012, the Water Act 2016, Survey Act Cap 299, Agriculture Act Cap 318, Water Resource Management Rules, 2007, the Environmental (Impact Assessment and Audit) Regulations, 2003, Environmental Management and Coordination (Water Quality Regulations) 2007; and the Environmental Management and Coordination (Wetlands, Riverbanks, Lakeshores and Seashores Management) Regulations, 2009.

Additionally, pursuant to Article 2 (5) and (6) of the Constitution of Kenya, 2010 the general rules of international law and any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution, 2010.

As discussed above, there are various laws at the National level that have a bearing on sand utilization and conservation of environment, however, the said laws are fragmented, outdated and not in accordance with the Constitution of Kenya, 2010 thus making it difficult to effectively administer. This has created a lacuna in enforcement, thus according the unregulated groups and cartels a chance to establish monopolies to illegally over-exploit sand resource.

The greatest losers in the prevailing circumstances are the environment through degradation and loss of ecosystem, the community through lack of water, destroyed infrastructure, social ills among others, and the County government in terms of revenue lost through pilferage.

Article 185 (4)(a) stipulates that County Assemblies may receive and approve plans and policies for the development and exploitation of the County's natural resources.



This policy thus endeavours to empower the community in decision making and playing an active role in matters sand utilization, environmental protection, conservation and rehabilitation.

2.6. GUIDING PRINCIPLES FOR THE IMPLEMENTATION OF THE POLICY

Mr. Speaker Sir,

The guiding principle for a successful implementation of this policy are as enlisted herein below:

- (a) Environmental protection, conservation and restoration
- (b) Sustainable utilization and Value addition of sand resource
- (c) Equitable sharing of accruing benefits
- (d) Effective enforcement and compliance
- (e) Inclusive community participation
- (f) Mainstreaming Gender Equity and Social Inclusion;

2.7. ACTORS OR STAKEHOLDERS AND RESPONSIBILITIES

Mr. Speaker Sir,

This section highlights the key actors/stakeholders and their responsibilities in the implementation of the policy.

1. National Government

- i. Policy support
- ii. Ensure Environmental Assessment Reports are issued accordingly by NEMA
- iii. Provide technical support to the River Basins Sand Utilization and Conservation Committee.

2. County Government of Kitui

- i. Financing support for the registration of the Cooperatives.
- ii. Provide technical support to the various committee as enshrined in the policy.

- iii. Provision of staff.

3. Community

- i. Beneficiaries of the cooperative
- ii. Public participation

2.8. TARGET AUDIENCE

Mr. Speaker Sir,

The policy targets the following

- i. County Government of Kitui
- ii. Government Agencies
- iii. Community/public

2.9. MONITORING AND EVALUATION MECHANISMS

The policy shall ensure mainstreaming of constant Monitoring, Evaluation and Learning (MEL). These are essential processes to measure the progress, and impacts of the policy implementation; involving routine data collection and use of insights and lessons learned to improve the programme design and implementation. The Implementation Plan for this policy is attached as Appendix III.

2.10. THE REVIEW MEASURES.

This policy shall undergo regular reviews to ensure they are up-to-date and still relevant to the goals of the sector. Reviews will be done as and when necessary, in response to emerging needs and demands.

2.11. PROVISION OF A LEGAL INSTRUMENT FOR ITS OPERATIONALIZATION

The policy proposes for calls for an enactment of an Act and a regulation to foresee its implementation.

2.12. OBSERVATIONS FROM THE PUBLIC HEARING AND THE SUBMITTED STATEMENT OF MEMORANDA

Mr. Speaker,

The main observations and cross cutting issues arising out of the public hearing and submitted memoranda from various stake holders are as summarized below: -

i. On formation of the Kitui County River Basins Sand Utilization Committee.

The members of the public stated that they did not see the need for this committee. To them, this committee played the role of a broker for the sale of sand. They preferred to sell sand themselves in their organized sand groups. They therefore recommend that the idea of establishing a committee be abolished and the County ministry of Trade or Environment to take up the proposed functions of the committee.

Some members of the public were however of the opinion that the committee would be better suited to oversee the overall sand vale chain since it would consist of professionals, marginalized groups and the community.

ii. On formation of River Basins Cooperative Societies

A majority of the members of the public stated that they did not support the formation of co-operative societies. They claimed that they already had established groups at the sand harvesting sites and would therefore prefer to continue operating with them. They recommended the formation of Community-Based Organizations (CBO'S) instead of the co-operatives since the members of the CBO's will be members of their respective communities whereas anybody can buy shares and be a member of the co-operatives. They further stated that co-operatives tend to be corrupt and mismanaged resulting in the loss of their hard-earned shares.

Others were however supportive of the cooperatives idea and recommended that the policy proceeds as it is.

iii. On collection of Cess by the County

The members of the public stated that the County Government should only focus on the collection of Cess at the revenue barrier points rather than dictating how the sand is sold at the grassroots level. Therefore, the County Government should not concern itself with the formation of co-operatives and unnecessary committees.

Sale of sand should be controlled by the people while the County Government controls collection of cess at the barrier points.

Some section of the public however supported the idea of cooperatives controlling the sale of sand at the aggregation yards since they will prevent sand from being sold illegally.

iv. Price of sand

A section of the members of the public stated that the proposed price of selling sand in the Finance Act, 2023/2024 was too high and thus feared that customers would not buy. This would thus negatively affect their business. They therefore proposed that the price per ton be reviewed downward.

v. On penalties and fines for non-compliance

The members of the public felt that the fines and penalties imposed for non-compliance with the set requirements were too high and too punitive. These high penalties will encourage corruption since if the public is unable to pay the fines, they will be forced to bribe the enforcement officers instead. They therefore recommend that the fines and penalties be reviewed downward.

vi. On remuneration of loaders

The members of the public recommend that the loaders should be properly remunerated. They recommend that each loader should be paid Kshs. 2000



(Two thousand) per lorry. This will enable them to improve their lives and that of their families.

vii. On aggregation yards

The members of the public were against the establishment of sand aggregation yards. They preferred to sell the sand at the sand harvesting sites rather than incurring expenditure to load the sand and transport to the aggregation yards. They recommended that they be allowed to continue selling the sand at the harvesting sites.

The establishment of aggregation yards was however applauded since it would reduce illegal harvesting of sand at the river basins and also reduce loss of revenues through illegal sale of sand.

viii. Automation of revenue collection

The members of the public recommended that the cess collection should be automated so as to safeguard the County's revenue. This will prevent rogue revenue clerks from pocketing the cess before it gets to the County coffers.

ix. On revenue sharing

Members of the public were of the view that a big percentage of the benefits accrued from sand harvesting should be reverted back to the community as well as being given the role of conservation of the Environment.

x. On access roads to the sand harvesting sites

The members of the public noted with concern that the lorries or vehicles accessing the sand harvesting sites illegally usually go through private plots thereby damaging their property. They recommend that there should be a strict clause stating that all vehicles must use the designated access roads as per the area sub division maps.

xi. On hours of operation

Members of the public were divided on the proposed hours of sand harvesting

(6a.m. - 6p.m.). Three proposals were fronted as the ideal hours of operation;

- a) 6a.m. to 6p.m.
- b) 7a.m. to 5 p.m.
- c) 24hours

xii. Participation of persons living with disability

It was noted with concern that the policy did not talk of how people living with disabilities would participate in sand harvesting and sale and how they can benefit from it. They urged the County Government to consider their involvement.

NB: Other recommendations collected during the public participation exercise are as contained in **Annex II** attached to this report.

3.0 COMMITTEE OBSERVATIONS

Mr. Speaker Sir,

The Committee having scrutinized the policy makes the following observations; -

1. The policy framework is well drafted and structured.
2. The policy is not self-executing and thus proposes for an enactment of an Act and a regulation on Sand harvesting, transportation and conservation of the Environment to foresee its implementation.

3. The Site based Community Groups

The proposal on the policy to bar any persons who have been convicted for criminal offenses from becoming members of the site-based community groups is discriminatory as it beats the logic of rehabilitation and reforming of such persons.

4. Sub Paragraph 4.4.4 -Eligibility to be elected as an office bearer.

This paragraph provides for the eligibility of a person to be elected as an office bearer for the Site-Based Community (Sand) Groups.



However, under the same paragraph another Committee is created by the name **“an Ad hoc Environment Protection, Conservation, and Rehabilitation Committee”** with its own separate role.

Members noted that this committee should have been given its own provision separate from this sub paragraph.

Members further noted that the Membership of this Ad hoc committee derives from the “general membership” but the same does not specify the general membership is from which group or committee.

5. The Kitui County River Basins Sand Utilization and Conservation Committee is mandated under sub paragraph 4.2 to prepare quarterly reports and submit to the Directorate.

Members noted that for purposes of oversight by the Assembly, there is need of these quarterly reports to be submitted to the Assembly.

6. Under paragraph 1.0(i) River Katse is one of the largest rivers along the Nziitu River Basin as compared to River Nziitu and its only sensible that it appears in the naming of the area river basin.

7. The name Interim River Basin Cooperative caretaker committee has been erroneously captured in every part where it is mentioned under sub paragraph 4.3.1.1

8. The period of 60 days provided in sub paragraph 4.3.2.1. for the first general meeting is not realistic as much time is needed for sensitization, mobilization and facilitation for the formation of the River Basin Based Cooperative societies.

9. The policy is all inclusive as all relevant authorities were consulted and their inputs considered towards successfully drafting of this policy.

10. The policy has highlighted foreseeable challenges and the possible solutions by the fact that the implementation of the policy will involve

- various stakeholders e.g. NEMA, County Executive, Local Community etc.
11. Once the policy is adopted and implemented, it will create employment opportunities to the large Kitui residents and beyond, thereby increasing county revenue.
 12. The policy is well tailored and thought out as it intends to meet its purpose which is to empower the society as well as conserving the environment along the river banks.
 13. The policy complies with the national laws and regulations governing monitoring and evaluation.
 14. The policy provides an elaborate implementation framework that involves multi-stakeholder actors.

4.0. COMMITTEE'S RECOMMENDATIONS

Mr. Speaker Sir,

The committee makes the following recommendation;

1. **THAT** this Honorable House approves the Kitui County River Basins Sand Utilization and Conservation Policy in order to provide a legal framework to guide the implementation of sand utilization and conservation of rivers in the County.
2. There is need of fast tracking the Enactment of Kitui County River Basins Sand Utilization and Conservation Act and Regulations thereto within six months after the adoption of this report for self-execution of this policy.
3. Fairness and transparency during implementation of this policy is key to attain the desired results.
4. Paragraph 1.0(i) should be amended by renaming the Nziitu River Basin as Nziitu-Katse River Basin.

5. The policy be amended in Sub Paragraph 4.4.1 (vii) which bars a person from becoming a member of the site-based group upon being convicted of a criminal offence. The sub paragraph is discriminatory as it beats the logic of rehabilitation and reforming of such a person and it should therefore be deleted in its entirety.
6. Sub Paragraph 4.4.4 should be amended by creating *sub paragraph 4.5* on the establishment of an **Ad hoc Environment Protection, Conservation, and Rehabilitation Committee** appearing immediately after paragraph 4.4.4(j)
Further the Ad hoc committee members should be appointed by the Kitui County River Basin Based Cooperative Society Committee from among the general membership of the Kitui County River Basin Based Cooperative Society.
7. The name Interim River Basin Based Caretaker Committee (RBBCCC) should be correctly captured in every part where it is mentioned under Sub paragraph 4.3.1.1.
8. Sub paragraph 4.2 should be amended by inserting the following words **“which shall thereafter be submitted to the County Assembly within fourteen (14) days upon submission to the CECM”** immediately after the word “basis” and before the full stop appearing on the last line of this sub paragraph so that the Assembly can take part in its oversight role as provided under the Constitution.
9. That sub paragraph 4.3.2.1 should be amended by deleting the words “60 days” and replace therefor with the words “six (6) months” immediately after the words “within” and “after” appearing in the first line of the sub paragraph.

5.0. COMMITTEE CONCLUSION

Mr. Speaker Sir

Mr. Speaker Sir, the approval of this report on the Kitui County River Basins Sand Utilization and Conservation Policy, 2023 by this Honorable House will serve to provide the much-needed legislative framework for the County Executive and more specifically the Directorate of Natural and Mineral Resources to guide on sand Utilization and conservation of rivers in Kitui County.

The Committee is cognizant of the fact that this policy will be able to change the image of the county if well implemented to the latter, therefore the committee recommends that this house adopts it.

Signed.......... Date.....18/02/2024.....

Hon. Sammy Musili Munyithya, - MC A, Kivou Ward

Acting Chairperson,

Committee on Delegated County Legislation

County Assembly of Kitui



Annex I

ADOPTION SCHEDULE

The Members of the Committee on Delegated County Legislation hereby append their signatures adopting this report on the **Kitui County River Basins Sand Utilization and Conservation Policy.**

S/NO.	NAME	DESIGNATION	SIGNATURE
1	Hon. Cornelius Muthami	Chairperson	
2	Hon. Mary Mbithe	V/Chairperson	
3	Hon. Nzavu Mwanzia	Member	
4	Hon. Daniel Ngoima	Member	<i>Nzavuf.</i>
5	Hon. Ciambutra Karigi	Member	<i>AK</i>
6	Hon. Charity Mwangangi	Member	
7	Hon. Erastus Mbuno	Member	<i>EM</i>
8	Hon. Kyalo Kimuli	Member	<i>Kimuli</i>
9	Hon. Sammy Munyithya	Member	<i>Sammy</i>
10	Hon. Grace Mulandi	Member	<i>Mulanidi</i>
11	Hon. Cyrus Kisavi	Member	<i>CK</i>

