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THE GARISSA COUNTY ENVIRONMENT MANAGEMENT AND CO-ORDINATION BILL, 2018

A Bill for

AN ACT of the County Assembly of Garissa to give effect to the Fourth Schedule of the Constitution, to provide for the establishment of the necessary legal and institutional framework for sustainable co-ordination and management of the environment within Garissa County, and for connected purposes

ENACTED by the County Assembly of Garissa, as follows—

PART I—PRELIMINARY

Short title

1 This Act may be cited as the Garissa County Environmental Management and Co-ordination Act, 2018 and shall come into operation upon publication in the Kenya Gazette

Interpretation

2 In this Act—

"biodiversity" means the variability among living organisms from all sources including ecosystems and the ecological complexes of which they are a part,

"bio piracy" refers to the expropriation of biological resources without fair compensation or sharing of benefits,

"Conservation" means the maintenance, rehabilitation, restoration and enhancement of the environment,

Committee" means County Environmental Management and Co-ordination Committee established under section 4,

"department" means the county department responsible for matter relating to environment and natural resources,

"environmental management" includes the protection, conservation and sustainable use of the various elements or components of the environment,

"executive Member" means the County Executive Committee Member responsible for matters relating to Environment and natural resource management,

"ecosystem" means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit,

"environmental impact assessment" means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment,

"genetic resources" means genetic material of actual or potential value,

"Invasive and alien species" means a species that is not an indigenous species or an indigenous species translocated to a place outside its natural distribution range in nature,

"Intergenerational equity" means that the present generation should ensure that in exercising its rights to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,

"Intragenerational equity" means that all people within the present generation have the right to benefit equally from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment—

(a) sunlight,

(b) surface and groundwater,

(c) forests, biodiversity and genetic resources, and

(d) rocks, minerals, fossil fuels and other sources of energy,

"Permit" includes a licence or other authorization validly issued under national or county legislation,

"Protected area" means an area declared by the county government to be a protected area for grazing of animals,

"Species" means a population of individual organisms capable of mating with one another and producing fertile offspring in a natural setting and that share common and specialised characteristics from others,

"Sustainable use" means present use of natural resources, which does not compromise the ability to use the same by future generations or degrade the carrying capacity of ecosystems and habitats, "Traditional knowledge" means such knowledge as may be socially and culturally acquired within or without the context of conventional education by Kenyans, "Wetlands" means areas of marsh, fen, peat land, or water, whether natural or artificial permanent or temporary, static or flowing, fresh, brackish, salt, including areas of marine water the depth of which at low tide does not exceed six meters It also incorporates riparian and costal zones adjacent to the wetlands, "Wildlife" has the meaning assigned to it in the Wildlife Conservation and Management Act

Object of the Act

3 The object of this Act is to—

(a) provide a framework for an integrated approach to planning and sustainable management of the County's environment and natural resources,

(b) strengthen the legal and institutional framework for good governance, effective coordination and management of the environment and natural resources,

(c) encourage communities within Garissa County to effectively participate in the management of the environment and natural resources

PART II—ADMINISTRATION

Establishment of the County Management Environmental and Co-ordination Committee

4 (1) There is established a Committee known as Garissa County Environmental Management and Co-ordination Committee which shall consist of—

(a) the County Executive for the time being responsible for matters relating to—

(i) environment and natural resources management who shall be the Chairperson,

(ii) water or a representative appointed by him/her in writing,

(iii) agriculture, livestock and fisheries or a representative appointed by him/her in writing,

(iv) energy, or a representative appointed by him/her in writing,

(v) tourism or a representative appointed by him/her in writing,

(vi) finance and economic planning or a representative appointed by him/her in writing,

(vii) Health or a representative appointed by him/her in writing,

(viii) roads and public works or a representative appointed by him/her in writing,

(ix) trade or a representative appointed by him/her in writing,

(x) lands, housing and urban development or a representative appointed by him/her in writing,

(xi) education or a representative appointed by him/her in writing,

(xii) gender and social services or a representative appointed by him/her in writing

(b) the County Director of the National Environment Management Authority who shall be the Secretary,

(c) the County Warden for the Kenya Wildlife Service or a representative appointed in writing by the Warden,

(d) the County Ecosystems Conservator of the Kenya Forestry Service or a representative appointed in writing by the Ecosystems Conservator,

(e) two representatives from pastoralists or farmers within the County to be appointed by the Governor,

(f) two representatives of the business community operating within the county appointed by the Governor,

(g) Two representatives of the public benefits organizations engaged in environmental management programmes within the county appointed by the Governor in consultation with the National Federation of Public Benefits Organizations,

(h) the County Coordinator for the National Drought Management Authority or a representative appointed in writing by the Coordinator,

(i) A representative of other regional development authority whose area of jurisdiction falls wholly or partially within the county

Functions of the Committee

5 The Committee shall —

(a) exercise general supervision and co-ordination over all matters relating to the environment and natural resources and shall be the principal instrument of the County Government in the implementation of all policies relating to the environment and natural resources,

(b) be responsible for the coordination on proper management of the environment and natural resources for economic growth and improved livelihoods within the County,

(c) develop a county strategic action plan after every five years,

(d) support the implementation of the strategic action plan,

(e) promote public awareness on sustainable environment and natural resource management,

(f) co-ordinate the various environmental management activities being undertaken by the relevant departments and promote the integration of environmental considerations into development policies, plans, programs and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in the County,

(g) take stock of the natural resources in the County and their utilisation and conservation,

(h) examine land use patterns to determine their impact on the quality and quantity of natural resources, and develop county, sub-county, ward and village/sub-catchment land use plans,

(i) encourage community participation in sustainable management of the environment and natural resources,

(j) support the incorporation of community Bylaws and traditional knowledge in management of natural resources,

(k) in close partnership with relevant institutions undertake and co-ordinate research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey to assist in the proper management and conservation of the environment,

(l) mobilize resources for purposes of efficient management of environment and natural resources,

(m) monitor and assess activities, including activities being carried out by relevant departments, in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given,

(n) support stakeholders develop county environmental and natural resource maps,

(o) prepare and issue an annual report on the state of the environment in the County and in this regard may direct any department to prepare and submit to it a report on the state of the sector of the environment under the administration of that department, and

(p) formation of active and vibrant stakeholder environment committee at ward level to implement and guide environment and natural resource management efforts,

(q) undertake capacity building of stakeholders on environmental and natural resource management in the county,

(r) perform any other functions assigned as prescribed in this Act and the national EMCA Act 2015, or as may be from time to time, be assigned by the Governor by notice in the Gazette

Powers of the Committee

6 The Committee shall have all the necessary powers for the proper performance of its functions under this Act

Meetings of the Committee

7 The Committee shall meet quarterly—

(a) subject to the provision of this Part, the Committee may regulate its own procedure

PART III—MANAGEMENT OF ECOSYSTEMS AND SUSTAINABLE USE OF ENVIRONMENT AND NATURAL RESOURCES

Forest ecosystem

8 The Committee in partnership with Kenya Forest Service shall—

(a) coordinate national and county policies on forest management and conservation,

(b) coordinate the sustainable management of all forests on public land in the county defined under Article 62(2) of the Constitution,

(c) prepare an annual report, with the approval of the County Assembly, for the Service on the activities of the county government in relation to this Act and any national policies on forest management and conservation,

(d) promote afforestation activities in the county,

(e) advice and assist communities and individuals in the management of community forests or private forests, and

(f) may enter into joint management agreements with communities or individuals for the management of community forests or private forests

Freshwater and Wetland Ecosystems

9 the Committee in partnership with the Department of Water and Water Resources Authority (WRA) shall—

(a) promote and institutionalise payment for environmental services schemes to support catchment protection and conservation,

(b) promote sustainable use of freshwater and wetland resources and the conservation of river and lake ecosystems through development and implementation of river basin management plans,

(c) ensure rehabilitation and restoration of degraded wetlands, riverbanks and lakeshores and, as appropriate, promote and support establishment of constructed wetlands, and

(d) involve and empower communities in the management of fresh water and wetland ecosystems

Rangeland Ecosystems

10 The Committee in partnership with Departments of Livestock Production shall —

(a) promote integrated natural resource management for healthy rangelands in ASALs,

(b) ensure integration of rangeland management plans with Integrated Water Resources Management (IWRM) in ASALs with a view to harvesting flood and river water,

(c) promote efficient adaptation measures for productive and sustainable resource management in the county,

(d) promote sustainable investments in the rangelands,

(e) mainstream dryland and rangeland issues into the county development plans and policies, and

(f) involve and empower communities in the management of rangeland ecosystems

Biodiversity

11 The Committee in partnership with relevant authorities shall —

(a) develop mechanisms to ensure that the benefits arising from access to genetic resources, including intellectual property rights, traditional knowledge and technology are shared equitably with communities living in areas where the genetic material originated,

(b) develop and implement a strategy to contain, control and mitigate alien and invasive species

Wildlife Resources

12 The Committee in partnership Kenya Wildlife Service shall —

(a) protect, conserve and improve the habitats, corridors and dispersal areas of wildlife within the county,

(b) encourage and support the establishment of private and community based conservation areas in order to win more space for wildlife,

(c) protect endangered wildlife species, and

(d) involve community participation in conservation activities

Livestock and Agriculture

13 The Committee in partnership with Departments of Livestock and Agriculture shall—

(a) develop and implement an environment-friendly livestock and agriculture production policies that takes cognizance of livestock mobility, crop farms and communal management of natural resources,

(b) enforce regulations on waste management in livestock production industry, and

(c) enforce regulations on livestock movement and disease control through commercially viable production systems

Fisheries

14 The Committee in partnership with Department of Fisheries shall —

(a) promote sustainable management and utilisation of fishery resource,

(b) strengthen capacity to carry out fisheries monitoring, control and surveillance,

(c) promote sustainable aquaculture development,

(d) strengthen community participation in fisheries resources management, value addition and marketing, and

(e) protect fish breeding grounds and implement closed seasons regulations where necessary

PART V— SETTLEMENT OF DISPUTES RELATING TO ENVIRONMENT AND NATURAL RESOURCES

Dispute resolution mechanisms

15 (1) A community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving environment and natural resources

(2) Any dispute arising between members of different communities shall, at first instance, be resolved using any of the internal dispute resolution mechanisms set out in respective community bye-laws

(3) Where a dispute or conflict relating to environment and natural resource arises, the community shall give priority to alternative methods of dispute resolution

(4) Subject to the provisions of the Constitution and of this Act, a court or any other dispute resolution body shall apply the customary law in the prevailing area of jurisdiction of the parties to the dispute or binding on the parties to a dispute in settlement of environment and natural resource disputes in so far as it is not repugnant to justice and morality and inconsistent with the Constitution

Mediation

16 (1) Where a dispute relating to environment and natural resources arise, the parties to the dispute may agree to refer the dispute to mediation

(2) The mediation shall take place in private or in informal setting where the parties participate in the negotiation and design the format of the settlement agreement

(3) The mediator shall have the power to bring together persons to a dispute and settle the dispute by—

(a) convening meetings for the hearing of disputes from parties and keep record of the proceedings,

(b) establishing ground rules for the conduct of the parties,

(c) structuring and managing the negotiation process and helping to clarify the facts and issues, and

(d) helping the parties to resolve their dispute,

(4) If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation

Arbitration of Disputes

17 (1) Where a dispute relating to environment and natural resources arises, the parties to the dispute may agree to refer the dispute to arbitration

(2) Where the parties fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the Arbitration Act relating to appointment of arbitrators shall apply

18 (1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court

(2) The court may—

(a) confirm, set aside, amend or review the decision which is the subject of the appeal, or

(b) make any order in connection therewith as it may deem fit

PART IV—GENERAL PROVISIONS

Power to make regulations

19 (1) The Executive Committee Member, ensuring public participation may make regulations generally for the better carrying into effect of this Act

(2) Without prejudice to the generality of subsection (1), the Executive Committee Member, ensuring public participation may make regulations prescribing —

(a) the combating and prevention of soil erosion and degradation, the protection of pastoral resources and limitation and control of grazing of stock,

(b) public education and awareness on sustainable management of environment and natural resources,

(c) community negotiation procedures with prospective investors,

(d) payment of royalties to communities from income generated from resources within the community lands,

(e) forms of applications, notices, licences and other documents for use under this Act,

(f) fees payable under this Act,

(g) such other matters as the Committee considers necessary

General Penalty

20 A person who contravenes any provision of this Act for which no other penalty is prescribed, commits an offence and is liable, to a fine not exceeding Kenya Shillings five hundred thousand or to imprisonment for a term not exceeding three years, or to both

21 Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in his personal capacity to any action, suit, claim or demand whatsoever

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to give effect to the Fourth Schedule of the Constitution, to provide for the establishment of the necessary legal and institutional framework for sustainable management of the environment and natural resources within Garissa County, and by encouraging citizens to take responsibility for their environment

Dated 6th March 2017

ABDIRAHMAN IDRIS,
Chairperson, Environment and Natural Resources Committee