



REPUBLIC OF KENYA

**KITUI COUNTY ASSEMBLY
(FIRST ASSEMBLY, SECOND SESSION)**

REPORT ON THE KITUI COUNTY CHARCOAL BILL, 2014

**PREPARED BY; THE ENVIRONMENT, ENERGY, MINING, NATURAL
RESOURCES AND TOURISM COMMITTEE**

ON 17TH SEPTEMBER, 2014

PREFACE

Mr. Chairman, Standing Order 191(1) establishes Sectoral Committees with specific mandates among others to study and review all county legislations and make reports and recommendations to the Assembly on the proposed legislations. Under Standing Order 191 (5), the Sectoral Committees are charged with the following responsibilities;

To;

- i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- ii) study the programme and policy objectives of departments and the effectiveness of the implementation;
- iii) study and review all county legislations referred to it;
- iv) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- v) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- vi) to vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185 (Committee on Appointments) ; and
- vii) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

COMPOSITION OF THE COMMITTEE

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
1. Hon. Stanislaus Mulongo	Chairman	.....
2. Hon. James Munuve	Vice Chairman	.....
3. Hon. Mwendwa Munyoki	Member	.....
4. Hon. Antony Muthui	Member	.....
5. Hon. Felix Kauvi	Member	.....
6. Hon. Titus Kasinga	Member	.....
7. Hon. Titus Mbiti	Member	.....
8. Hon. Allan Kavindi	Member	.....
9. Hon. Johnray Ngava	Member	.....
10. Hon. Kalovo Musau	Member	.....
11. Hon. Ruth Kinyumu	Member	.....
12. Hon. Boniface Katumbi	Member	.....

BY INVITATION

Hon. Jamhuri Mwango
Hon. Nzungi Ngwele

IN- ATTENDANCE

Hon. George Ndotto

Mr. Chairman, these members provided good leadership throughout the public participation on this bill and held a three (3) days retreat to consider all the views and inputs submitted by the public before arriving at the recommendations presented in this report. The committee scrutinized the bill and also incorporated the views of the public.

Signed _____

Hon. Stanislaus Mulongo, Chairperson
Environment, Energy and Minerals Investments Development

Date.....

COMMITTEE PROCEEDINGS

Mr. Chairman, The Kitui County Charcoal Bill, 2014(County Assembly Bill No.5, 2014) was published on 10th March, 2014 pursuant to section 23 of the County Government Act No. 12, 2012.

Mr. Chairman, after publication, the bill was introduced to the Assembly on 21st May, 2014 and committed to the Environment, Energy, Mining, Natural Resources and Tourism Committee in line with the County Assembly Standing Order No. 120 and 121(1).

Mr. Chairman, pursuant to provisions of Article 196(1) (b) of the Constitution of Kenya, 2010, the Environment, Energy, Mining, Natural Resources and Tourism Committee facilitated public participation through forums that were held on 20th June, 2014 in Kitui, Mutomo and Mwingi towns at Kitui Multi-purpose Development Training Institute, Mutomo Chiefs Camp and Mwingi County Hall respectively as scheduled in an advertisement via 'The Standard' Daily Newspaper dated 6th June, 2014.

Mr. Chairman, the committee received oral views/opinions from the public and memoranda from institutions and relevant associations, civil societies and individual citizens. In their views to the committee, members of the public expressed very strong sentiments on the fact that, the bill was not publicized in a way that could reach a large number of the community members. They therefore urged the concerned institution that in future; it should publicize the same through the local FM media stations broadcasting in local dialect (Kamba) to ensure that a large number of citizens are aware. Distribution of copies of the bill prior to public participation exercise was also advocated for by the members of the public to afford them humble time to prepare their memoranda.

The Environment, Energy, Mining, Natural Resources and Tourism Committee would like to appreciate the members of the public, who turned in large numbers to give inputs on the bill. We also thank institutions, groups and individuals who submitted memoranda. The committee is also thankful to members of the County Assembly who gave their support in ensuring that the event was successful.

OVERVIEW OF THE KITUI COUNTY CHARCOAL BILL, 2014

Mr. Chairman, the principal object of The Kitui County Charcoal Bill, 2014 is to provide for enhanced and effective forest conservation, protection and sustainable charcoal production in the provision of economic, social and environmental goods and services; and for connected purposes.

In their effort to incorporate the public views/opinions with their recommendations on the bill, the committee gave due consideration to the following objectives of this Act,

- a) Contribute to poverty reduction, employment creation and improved livelihoods through sustainable use, conservation and management of forests and trees.
- b) Contribute to sustainable land use through soil, water and biodiversity conservation, and tree planting through the sustainable management of forests and trees.
- c) Promote the participation of the communities, private sector and other stakeholders in forest management to conserve water catchment areas, create employment, reduce poverty and ensure sustainability of the forest sector.
- d) Promote dry land forestry to produce wood fuel, charcoal and non-wood forest products.
- e) Promote forest extension to enable farmers and other forest stakeholders to benefit from forest management approaches and technologies and;
- f) Promote forest research, training and education to ensure sustainable charcoal production.
- g) Promote adaptation and mitigation efforts in Climate Change

COMMITTEE RECOMMENDATIONS

Mr. Chairman, in considering a Bill in Committee, Standing Order (124) provides for the various parts to be included in presenting the Committee recommendations to the Committee of the whole County Assembly.

ARRANGEMENT OF CLAUSES

PART I- PRELIMINARY

- 1- Short title and commencement
- 2- Interpretation
- 3- Application
- 4- Object and purpose of the Act

PART II-ADMINISTRATION

- 5- Establishment of County Environmental Committee
- 6- Composition of the Committee
- 7- Functions of the Committee
- 8- Powers of the Committee

PART III-COMMUNITY PARTICIPATION

- 9- Charcoal Producer Associations
- 10-Roles of a Charcoal Producer Association
- 11-charcoal Producer Association Formation and Licensing

PART IV-ENFORCEMENT

- 12- The enforcement team
- 13- Powers of the enforcement team
- 14-Offences and penalties
- 15-Other offences
- 16-Use of firearms

PART V-MISCELLANEOUS

- 17- Compensation for loss or damage
- 18-Rules

The following are the recommendations of the Committee;

CLAUSES WITHOUT AMENDMENTS

PART I-PRELIMINARY

- Clause 3 –Application
- Clause 4- Objects and purpose of the Act

PART III- COMMUNITY PARTICIPATION

- Clause 9- Charcoal Producer Associations
- Clause 10-Roles of a Charcoal Producer Association

CLAUSES WITH AMENDMENTS

PART II: ADMINISTRATION

CLAUSE 5

That this clause be amended by replacing “**environmental**” with “**Charcoal Management**” so that the clause reads;
There is established the “County Charcoal Management Committee “

That the margin note be amended to read “**Establishment of the County Charcoal Management Committee**”.

CLAUSE 6

That this clause be amended by replacing “**environmental**” with “**Charcoal Management**”

That the margin note be amended to read as “**Composition of the County Charcoal Management Committee**”.

That **paragraph (a)** be amended by replacing the word “**environmental**” before the last word in the paragraph with “**Charcoal Management**”

That paragraph (c) be deleted and substituted thereof with the following:

(c)Representative of the County Revenue Department

That paragraph (d) be deleted and substituted thereof with the following:

(d) The Director General of National Environmental Management Authority appointed under the National Environmental Management Act, 1999 or his or her designated representative who shall be an environmental officer based in the county.

That paragraph (e) be deleted and substituted thereof with the following:

(e) Representative of the County Commissioner

That paragraph (f) be deleted and substituted thereof with the following:

(f) An officer from the Ministry of Energy and Petroleum

That paragraph (g) be deleted and substituted thereof with the following:

(g) Representative of Civil society organizations

That paragraph (h) be deleted and substituted thereof with the following:

(h) The Kenya Forest Service County officer or County Ecosystem Conservator, appointed under the Forestry Act, 2005 or his or her designated representative

That paragraph (i) be deleted and substituted thereof with the following:

(i) Three community representatives

That a new paragraph (j) be added to read as follows:

(j) A representative of the Private Sector

CLAUSE 7

That this clause be amended by deleting the word “**environment**” that appears after the word “**county**” and before the word “**committee**” and substitute thereof with “**Charcoal Management**”

That **paragraph (b)** be amended by inserting “**and charcoal transporter associations**” after the word “**associations**”

That Paragraph (d) be deleted and substituted thereof with the following:

(d) Review of Charcoal Producer Associations restoration plans

That Paragraph (e) be added to read as follows;

(e) Approve charcoal producers associations charcoal brands and packaging. All charcoal shall be branded using traceable codes and packaged in bags.

That Paragraph (f) be added to read as follows;

(f) Monitoring of tree planting events by the charcoal producer associations

CLAUSE 8

That the margin note of clause 8 be amended by replacing “**environmental**” with “**Charcoal Management**” so that the margin note reads as follows:

Powers of the county charcoal management committee

That clause 8 to be amended by adding a new **paragraph (d)** to read as follows;
d) Any person who is aggrieved by any decision of the County Charcoal Management Committee may within thirty days of communication to him of such decision, appeal to the National Environment Tribunal established under the Environmental Management and Coordination Act, 1999.

PART III: COMMUNITY PARTICIPATION

CLAUSE 11

That clause 11 be amended by;

Deleting paragraph (f) and substituting thereof with the following:

(f) Carry out an environmental impact assessment for each charcoal producing area and further carry out area zoning for charcoal production.

Deleting paragraph (g) and substituting thereof with the following:

(g) Give information relating to land ownership

Deleting paragraph (h) and substituting thereof with the following:

(h) Give a record of the present activities on the land

Deleting paragraph (i) and substituting thereof with the following:

(i) Provide a list of intended technology to be used in charcoal production

Deleting paragraph (j) and substituting thereof with the following:

(j) Provide information on the quantity of charcoal they produce

Deleting paragraph (k) and substituting thereof with the following:

k) Provide information of charcoal collection points in their area of application

Deleting paragraph (l) and substituting thereof with the following:

(l) Label, brand and package their charcoal and any other value addition strategies

That Paragraph (m) be added to read as follows:

m) Forward the application to the chairperson of the County Charcoal Management Committee for review.

PART IV: ENFORCEMENT

CLAUSE 12

That clause 12 be renumbered as clause 13 and replaced thereof by introducing sub-clauses (1), (2), (3) and (4) and that sub clause (3) to have paragraphs (a)-(i) and to read as follows;

(1) All persons desirous of engaging in the business of transporting Charcoal within Kitui County shall organize themselves in a transporters association.

(2) The association under sub-section (1) shall be registered under the Societies Act.

(3) The formation of charcoal transporters association shall entail the following-

- (a) List of all members and their addresses;
- (b) Prepare their constitution and rules;
- (c) Register as an association with the registrar of societies and compliance to all statutory requirements;
- (d) List operational areas of the group and their scope of work;
- (e) List the group's record of activities relating to charcoal transportation;
- (f) Provide information on the quantity of charcoal they transport;
- (g) Provide information of charcoal collection points in their area of application;
- (h) Provide a description of the intended means of transportation for the charcoal;
- (i) Forward the application to the chairperson of the county charcoal management committee for review.

(4) A charcoal transporters association that meets all the requirements stipulated under sections 7(b) and 12(3) may be issued with a transportation permit.

CLAUSE 13

That sub-clause (1) be introduced to clause 12 (renumbered as clause 13) and to read as follows;

(1) For the purposes of this Act, the enforcement team shall comprise but not limited to-

That paragraph (a) be amended to read;

(a) All police officers working in the County pursuant to their duties under the National Police Service Act, 2011;

That paragraph (b) be amended to read;

(b) All officers of the Kenya Forestry Service working in the County pursuant to their duties under the Forest Act, 2005;

That paragraph (c) be amended to read;

(c) All officers of the Kenya Wildlife Service working in the County pursuant to their duties under the Wildlife Conservation and Management Act, 2013;

That paragraph (e) be deleted and substituted thereof with the following;

(e) Officers of the county revenue department

That paragraph (f) be deleted and substituted thereof with the following;

(f) County village, ward and sub county administrators

That paragraph (g) be deleted and substituted thereof with the following;

(g) Authorized community policing members; Persons authorized to be community policing members pursuant to the National Police Service Act, 2011;

That paragraph (h) be added to read as follows;

(h) Any other persons as the County Charcoal Management Committee may deem necessary for carrying out enforcement of this Act.

That sub-clause (2) be introduced to clause 12 (renumbered as clause 13) and to read as follows;

(2) The County Ministry of Environment, Energy and Mineral Investments ensures collaboration with all stakeholders for purposes of promoting the enforcement and execution of the Charcoal Regulations, 2009 within the county.

There shall be a forum established between the national government and the county government of Kitui in order to promote cooperation and consultation in the execution of the charcoal regulation and management in the county.

PART IV-ENFORCEMENT

Clause 13-powers of the enforcement team

Clause 13 to be renumbered as clause 14

Clause 14- Offences and penalties

Clause 14 to be renumbered as clause 15

Clause 15- Other offences

Clause 15 to be renumbered as clause 16

Clause 16- Use of Firearms

Clause 16 to be renumbered as clause 17

PART V: MISCELLANEOUS

Clause 17-Compensation for Loss Or Damages

Clause 17 to be renumbered as clause 18

Clause 18-Rules

Clause 18 to be renumbered as clause 19

That **paragraph (a)** be amended by deleting the word “**forest**” and replacing thereof with “**charcoal**”

That **paragraph (d)** be amended by deleting the word “**forest produce**” and replacing thereof with “**trees for charcoal production**”

That **paragraph (f)** be amended by adding the words “**Promotion of the use of appropriate modern charcoal production technology in charcoal production and**” at the beginning of the paragraph

INTERPRETATION

That a list of the names of “**protected trees**” in Kitui County that will be updated regularly to be provided.

That the word “**Producers**” means a person(s) who engages in commercial charcoal production either on his or her land or land where consent has been granted by the land owner.

That the words “**Charcoal producer association**” means an association of charcoal producer groups registered under the Societies Act, Chapter 108 and licensed by under this Act to engage in charcoal production in a specified area.

That the words “**Endangered species**” means a population of tree species which is facing a high risk of extinction because it is either few in numbers, or threatened by changing environmental or predation parameters.

That the words “**Threatened species**” means any species of trees including those species of trees which are vulnerable to endangerment in the near future.

That the words “**Commercial use**” means any use of forest products or forest land, other than direct use for personal purposes or infrastructure development and it includes uses involving Trade or any other deposition of Forest Products or Forest Land for direct or indirect financial benefit.

That the words “**Charcoal management committee**” mean a committee established under this Act.

That the words “**Farm forestry**” means the practice of managing trees on farms whether singly, in rows, lines, boundaries, or in woodlots or private forests.

That the meaning of the words “**Forest Area**” be amended by adding “or under the forest Act 2005” immediately after the word Act.

That the word “**Forest**” means a unit of ecosystem in the form of lands comprising biological resources, dominated by trees in their natural forms and environment, which cannot be separated from each other.

That the meaning of the words “**Forest officer**” be amended by deleting the entire paragraph and replacing thereof with the following;

“Includes the professional, technical and disciplined cadre of the Kenya Forest Service, and County government, and also means an employee of the Kenya Forest Service or Kitui County Public Service Board to whom inspection or enforcement duties have been assigned”

That the word “**Gazette**” means a County gazette or Kenya gazette

That the “**Kitui County Public Service Board**” means the County Public Service Board established under section 57 of the County Governments Act, 2012

That the meaning of “**License**” be amended by adding “or regulations made under this Act” immediately after the word “Act”

That the meaning of “**Protected tree**” be amended by adding the words “**or this Act**” after “**2005**” and before “**to**”.

That the words “**Provisional forest**” means any forest which has been declared a provisional forest under section 26 of the Forest Act, 2005.

That the words “**Regulations**” means regulations made under this Act.

That the words “**Sustainable management**” in relation to a forest means management of the forest so as to permit any such use of it as constitutes sustainable use.

That “**Enforcement team**” means any persons who collectively have the responsibility of enforcing the provisions of this Act.

LONG TITLE

That the long title be amended to read as, An Act of The Kitui County Assembly to regulate and manage the production, use and trade of charcoal and for the connected purposes in the Kitui County.

THE CLAUSE PROVIDING FOR THE CITATION OF THE BILL AND THE COMMENCEMENT

That the citation clause be amended by adding the words “**Charcoal Management**” after the word “**County**” and before the word “**Bill**”