

THE KAKAMEGA COUNTY TOURISM BILL, 2013

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A Bill for

AN ACT of County Assembly of Kakamega to make provision for the development, management, marketing and regulation of sustainable local tourism and tourism related activities and services, and for connected purposes

PREAMBLE

SINCE tourism in Kakamega County is projected to grow exponentially in light of the advent of devolved governance in the country;

AND SINCE inadequate, uncoordinated, inconsistent and fragmented tourism planning and information provision is the most pervasive challenge facing the development and growth of tourism in the County;

AND SINCE transformation is vital to ensure the sustainable growth and development of the tourism sector;

AND SINCE these challenges are best addressed through a concerted effort by all spheres of county government and the private sector in Kakamega County to work together to create an environment that is conducive to the sustainable growth, development and transformation of tourism,

The County Assembly of Kakamega, therefore ENACTS as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Kakamega County Tourism Act, 2013 and shall come into operation on such date the Executive Committee Member may, by the notice in the Gazette, appoint and different dates may be appointed for different provisions.

Interpretation.

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

“authorized officer” means a person appointed

under section 48 of this Act;

“Board” means the County Tourism Board established under section 13 of this Act;

“County” means the county Government of Kakamega;

“County Assembly” means the County Assembly of Kakamega;

No. 28 of 2011. “ecotourism” has the meaning assigned to it under section 2 of the Tourism Act, 2011;

No. 28 of 2011. “environmental impact assessment” as the meaning assigned to it under section 2 of the Tourism Act, 2011;

“Executive Committee Member” means the Executive Committee Member for the time being responsible for matters relating to tourism;

“licence” has the meaning assigned to it under section 2 of the Tourism Act, 2011;

“restaurant” has the meaning assigned to it under section 2 of the Tourism Act, 2011;

“sustainable tourism” has the meaning assigned to it under section 2 of the Tourism Act, 2011;

“tourism activities and services” means any of the activities and services specified in the Second Schedule of this Act;

“tourism product” has the meaning assigned to it under section 2 of the Tourism Act, 2011;

“Tribunal” means the County Tourism Tribunal established by section; and

“visitor” has the meaning assigned to it under

section 2 of the Tourism Act, 2011.

**PART II—FORMULATION OF COUNTY
TOURISM STRATEGY**

County Tourism
Strategy.

3. (1) The Executive Committee Member shall, subject to subsection (5), formulate and publish in the Gazette a county tourism strategy at least once every five years, in accordance with which the local tourism sector shall be developed, managed, marketed and regulated.

(2) The county tourism strategy shall prescribe the principles, objectives, standards, indicators, procedures and incentives for the development, management and marketing of sustainable tourism and shall, in particular prescribe—

- (a) for the packaging of niche tourism products and services;
- (b) standards for tourism local area development plans;
- (c) measures to facilitate and enhance local tourism taking cognizance of the national government's strategies;
- (d) priority areas for tourism development, capacity building and training;
- (e) innovative schemes, incentives and ethics to be applied in the development and marketing of sustainable local tourism, including public private partnerships;
- (f) clear targets indicating projection in tourism growth over the next five years;
- (g) county tourism research and monitoring priorities and information systems, including—

- (i) collection and management of tourism data and information;
 - (ii) intelligence gathering;
 - (iii) procedures for gathering tourism data and the analysis and dissemination of tourism information; and
 - (iv) tourism management information systems;
- (h) measures necessary to ensure equitable sharing of benefits in the tourism sector;
 - (i) adaptation and mitigation measures to avert adverse impacts of climate change on tourism and tourism products and services;
 - (j) reflect regional co-operation and common approaches in tourism development, marketing and regulation; and
 - (k) any other matter that the Executive Committee Member in charge of tourism affairs considers necessary to enhance sustainable tourism in the country.

(3) The Executive Committee member shall periodically review the county tourism strategy and may, by notice in the gazette, publish a revised county tourism strategy.

(4) The Executive Committee Member and all relevant public bodies shall, when exercising or performing any statutory function, take into account and give effect to the county tourism strategy.

(5) The Executive Committee Member shall, when

formulating a county tourism strategy under subsection (1), consult the public in accordance with the First Schedule.

**PART III—ESTABLISHMENT OF TOURISM
REGULATORY, DEVELOPMENT AND
MARKETING UNITS**

A. The Tourism Regulatory and Licensing unit

Establishment of
the Tourism
Regulatory and
licensing Unit.

4. (1) There is established a unit to be known as the Tourism Regulatory and Licensing unit.

(2) The unit shall be an entity in the department of tourism in the county and shall discharge its functions under this Act.

Object and
purpose of the
unit.

5. The object and purpose of the unit shall be to regulate the local tourism sector in the county.

Functions of the
unit.

6. (1) The functions of the unit shall be to—

- (a) formulate guidelines and prescribe measures for sustainable tourism throughout the county;
- (b) regulate tourism activities and services countywide, in accordance with the county tourism strategy;
- (c) register, licence and grade all sustainable tourism and tourist-related activities and services including cottages and private residences engaged in guest house services;
- (d) develop and implement, in consultation with relevant stakeholders, criteria for standardization and classification of tourism facilities and services;

- (e) develop and regulate, in consultation with the ministry for the time being responsible for matters relating to education, tourism and hospitality curriculum, examination and certification;
- (f) develop and implement a code of practice for the tourism sector;
- (g) ensure the development and implementation of high quality tourism sector;
- (h) vet and recommend expatriates seeking employment in the tourism and hospitality sector;
- (i) monitor and assess tourist activities and services to enhance continuous improvement and adherence to sound principles and practices of sustainable tourism;
- (j) undertake, annually, an assessment and audit of tourism activities and services, measures and initiatives at the county level, and prepare and publish an annual county tourism sector status report, in consultation with the Executive Committee Member and the relevant lead agencies; and
- (k) perform any other functions that are ancillary to the object and purpose for which the unit is established.

(2) The Executive Committee Member shall, in each financial year, lay a county tourism sector status report published under subsection (1)(j) before the County Assembly, as soon as reasonably practicable after its publication, where the County Assembly is in session, or where not in session, within twenty one days of the day the County Assembly next sits after the publication.

(3) The Executive Committee Member shall provide such public officers as may be necessary for the proper and efficient discharge of the functions of the Tourism Regulatory and Licensing Unit under this Act.

(4) The expenses of the Tourism Regulatory and Licensing Unit shall be met out of funds provided by County Assembly for that purpose.

B. The Marketing and Promotion Unit.

Establishment of the Marketing and Promotion Unit.

7. (1) There is established a unit to be known as the Marketing and Promotion Unit.

Object and purpose of the Marketing and Promotion Unit.

8. The object and purpose of the Marketing and Promotion Unit shall be to market the county as a tourist destination and promote business of meetings, conferences and exhibitions in accordance to the provisions of this Act.

Functions of the Marketing and Promotion Unit.

9. The Marketing and Promotion Unit shall—

- (a) develop, implement and co-ordinate a county tourism marketing strategy;
- (b) market the county at local, national, regional and international levels as a premier tourist destination;
- (c) identify tourism market needs and trends and advise tourism stakeholders accordingly;
- (d) market, organize and host meetings and provide incentives for conferences and exhibitions in the county;
- (e) develop and implement the county meetings, incentives for conferences and exhibitions strategy upon consultation with the relevant

stakeholders;

- (f) finance the marketing of the county as a tourist destination through the unit;
- (g) undertake market intelligence;
- (h) perform any other functions that are ancillary to the object and purpose for which the Marketing and Promotion Unit is established.

(2) The Executive Committee Member shall provide such public officers as may be necessary for the proper and efficient discharge of the functions of the Marketing and Promotion Unit under this Act.

(3) The expenses of the Marketing and Promotion Unit shall be met out of funds provided by County Assembly for that purpose.

C. The Product Development and Financing Unit.

Establishment
Product
Development and
Financing Unit.

10. There is established a unit to be known as the Product Development and Financing Unit.

Object and
purpose of the
Unit.

11. The object and purpose of the Product Development Unit shall be to undertake and co-ordinate initiatives to develop and finance tourism products and investments in accordance with the provisions of this Act.

Functions of the
Unit.

12. (1) The Product Development Unit shall—

- (a) to provide guidance and direction on the development of national tourism products in accordance with priorities as set out in the National Tourism Strategy.
- (b) undertake inventory, mapping, provision of investment opportunities and promotion

development of tourism products and services;

- (c) provide financial and technical assistance to investors or entrepreneurs in the tourism sector including small and medium and community based enterprises for development, expansion and maintenance of tourism activities and services;
- (d) support training and capacity development activities in the local tourism and hospitality industry;
- (e) finance the local tourism research, tourism intelligence and the local tourism information management system;
- (f) provide business advisory services to the local tourism sector;
- (g) collect and analyze information, for the sector and other clients in the private and public sectors, relating to tourism products and services at the local level and processes or activities likely to impact on sustainable tourism;
- (h) determine, in consultation with lead agencies, the carrying capacities of the various tourism destinations and conservation needs and priorities;
- (i) assess information, that is the basis of integrated local tourism development area plans;
- (j) give information on early warning, disaster management, impacts and mitigation and adaptive strategies to climate change;

- (k) organize symposia, conferences, workshops and other meetings to promote the exchange of views on issues relating to local tourism product development, research and analysis;
- (l) publish, annually, research findings and communicate recommendations to the relevant lead agencies, institutions and other stakeholders in the local tourism sector; and
- (m) perform any other functions that are ancillary to the object and purpose for which the Product Development Unit is established.

(2) The Executive Committee Member shall provide such public officers as may be necessary for the proper and efficient discharge of the functions of the Product Development Unit under this Act.

(3) The expenses of the Product Development Unit shall be met out of funds provided by County Assembly for that purpose.

PART IV- ESTABLISHMENT OF THE COUNTY TOURISM BOARD

Establishment of
the County
Tourism Board.

13. (1) There shall be a County Tourism Board which shall consist of—

- (a) a chairperson appointed by the Governor;
- (b) the Chief Officer in the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Chief Officer in the ministry for the time being responsible for matters relating to planning and national development or his representative;

- (d) the Chief Officer in the ministry for the time being responsible for matters relating to finance or his representative;
 - (e) the Chief Officer in the ministry for the time being responsible for matters relating to environment or his representative;
 - (f) the secretary of the Board appointed under subsection (4);
 - (g) three other members, not being public officers, nominated or selected through a competitive process taking into account regional balance and gender parity and appointed by the Executive Committee Member, of whom —
 - (i) one shall be nominated by the registered tourism sector associations; and
 - (ii) two shall be persons who have expertise in tourism or tourism-related disciplines.
- (2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
- (3) The names of persons proposed for appointment under subsection (1)(a) and (g) shall, before they are appointed, be laid before the County Assembly for approval.
- (4) The County Public Service Board, through a competitive process, shall appoint a person, who shall be a public officer, to be the secretary of the Board.
- (5) The secretary shall hold office on the terms and conditions specified in the letter of appointment.
- (6) The secretary shall be responsible for the day to

day affairs of the Board and shall be answerable to the Board in performance of his functions.

(7) The secretary shall take minutes during the meetings of the Board and keep proper records of the Board.

(8) Subject to the provisions of this Act, the Board may determine its own procedure and the procedure for any sub-committee established by the Board and for attendance of any other persons.

Functions of the Board.

14. (1) The Board shall —

- (a) ensure the proper and effective performance of the functions of the units established under this Act;
- (b) approve and ratify the policies of the units established under this Act;
- (c) co-operate with other organizations undertaking functions similar to its own, whether within or outside the County as it may consider appropriate and in furtherance of the object and purpose of the units established under this Act;
- (d) perform any other function as may assigned by the Executive Committee Member.

(2) Members of the Board shall be paid allowances determined by the Executive Committee Member, in consultation with the Executive Committee Member for the time being responsible for matters relating finance.

Tenure and vacation of office.

15. (1) A member of the Board appointed under section 13(1) (a) and (g) shall hold office for a term not exceeding three years but shall be eligible for re-appointment for a further term not exceeding three years.

(2) A member of the Board other than an *ex officio* member may, at any time, resign from the office, in writing, addressed to the appointing authority.

(3) A member of the Board other than an *ex officio* member, who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member of the Board.

(4) Where a member of the Board is, for sufficient cause, unable to act as a member, the Executive Committee Member shall determine whether the inability would result in the declaration of a vacancy.

(5) Where a vacancy arises in accordance with the provisions of this Act, the Executive Committee Member shall appoint another person in accordance with the provisions of section 13(1) to fill the vacancy.

Disclosure of interest.

16. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board relating to that matter.

PART V—THE ESTABLISHMENT OF COUNTY TOURISM TRIBUNAL

Establishment of Tribunal.

17. (1) There is established a tribunal to be known as the County Tourism Tribunal which shall consist of—

- (a) a chairperson nominated by the Judicial Service Commission and appointed by the Executive Committee Member;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya and appointed by the Executive Committee Member;

- (c) three other persons who have demonstrated competence and a high level of integrity in the tourism or hospitality sector appointed by the Executive Committee Member.

(2) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(3) The nomination or appointment of members of the Tribunal under subsection (1) shall be through a competitive process taking into account regional balance and gender parity, and with the prior approval of the County Assembly.

Tenure and
vacation of office.

18. (1) A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

- (a) at the expiry of three years from the date of appointment;
- (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him not eligible for appointment to the office of a member of the Tribunal; or
- (c) if he is removed from membership of the Tribunal by the Executive Committee Member for reasons of physical or mental infirmity, unable to exercise the functions of his office;
- (d) if he resigns his office by writing under his hand addressed to the Executive Committee Member;

(e) under section 25(2); or

(f) upon his death.

(3) Members of the Tribunal shall be paid the allowances approved by the Executive Committee Member, in consultation with the Executive Committee Member for the time being responsible for matters relating to finance.

Secretary to the Tribunal.

19. (1) The Tribunal shall have a secretary who shall be a public officer appointed by the County Service Board through a competitive process.

(2) The secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his functions.

(4) The secretary shall perform any other functions determined by the Tribunal.

Jurisdiction of the Tribunal.

20. The Tribunal shall have the jurisdiction to hear and determine—

(a) appeals arising from any decision made under this Act;

(b) any complaints arising from the exercise of the Executive Committee Member's powers under this Act;

(c) any conflicts that may arise between tourism units established under this Act;

(d) questions relating to refusal to grant a licence under this Act or unreasonable delay in the making of that grant; and

- (e) any complaints by any person aggrieved by any act done by any person under this Act.

Proceedings of the Tribunal.

21. (1) A person may make a complaint or appeal, in writing, within sixty days of the act or omission or decision complained of.

(2) On the hearing of a complaint or an appeal, the Tribunal shall have all the powers of a subordinate court to—

- (a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or
- (b) summon expert evidence as may be necessary.

(3) Where the Tribunal considers it desirable for the purposes of minimising expenses, to avoid delay or for any special reason, it may receive evidence by affidavit and Executive Committee Member interrogatories and require the person to whom the interrogatories have been made to respond.

(4) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to have been issued by the Tribunal.

(5) An aggrieved person may be represented before the Tribunal by an Advocate.

(6) Subject to this Act, the Tribunal may regulate its own procedure.

Awards of the Tribunal.

22. (1) The Tribunal may—

- (a) award damages;
- (b) confirm, vary or set aside the decision

appealed against; or

- (c) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and to direct that the costs shall be taxed in accordance within such scale as it may prescribe.

(3) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions, awards or orders.

(4) Judgments of the Tribunal shall be executed and enforced in the same manner as judgments of a subordinate court.

Contempt of the Tribunal.

23. A person who—

- (a) fails to attend the Tribunal after being summoned by the Tribunal;
- (b) refuses to take an oath or affirmation before the Tribunal, or being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives evidence or information before the Tribunal which he knows to be misleading; or
- (d) at any sitting of the Tribunal—
 - (i) wilfully insults any member or officer of the Tribunal; or

(ii) wilfully interrupts the proceedings or commits any other act of contempt of the Tribunal;

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(e) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal, commits an offence and shall be liable to such penalty as is applicable to contempt of court offences under the Civil Procedure Act, 2010 and Rules made thereunder; subject to the Tribunal's discretion

Quorum for the Tribunal.

24. (1) The quorum for the hearing and determination of a cause or matter referred to the Tribunal shall be the Chairperson and two other members.

(2) Where, for any reason, the quorum under subsection (1) is not met for part of the hearing, the jurisdiction of the Tribunal may be exercised by the Chairperson, sitting with less the members.

(3) The Chairperson shall preside at the meetings of the Tribunal and in the absence of the Chairperson, a member elected by members present and voting.

Disclosure of interest.

25. (1) A member of the Tribunal who has an interest in the matter for consideration by the Tribunal shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

(2) A member who fails to disclose interest in matter in accordance with subsection (1) shall cease to be a member of the Tribunal.

Appeals to the High court.

26. (1) A person aggrieved by a decision or order of the Tribunal may, within thirty days of that decision or order, appeal against the decision or the order to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may —

- (a) confirm, set aside or vary the decision;
- (b) remit the proceedings to the Tribunal with instructions for further consideration, report, proceedings or evidence as the court may consider fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

Appeals to the Court of appeal.

27. A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal solely on matters of law.

PART VI — TOURISM LICENSING PROVISIONS

Requirement for licence.

28. (1) A person shall not undertake any of the tourism activities and services specified in the Second Schedule, unless that person has a licence issued by the Tourism Regulatory and Licensing unit.

(2) A person seeking a licence or any variation of a licence held by him shall apply to the Unit in such manner and form as may be prescribed under this Act.

(3) An application for a licence or for the variation of licence under subsection (1) shall be accompanied by such fees as may be prescribed by the unit.

(4) The Tourism Regulatory and Licencing Unit may, on receipt of an application under this section, investigate or require the submission of such further information as it may be necessary in order to enable it consider the application.

(5) The unit shall, in considering the licence application, have regard to the material considerations which include—

- (a) the standard for the tourism area development plan as prescribed by the Executive Committee Member under section 3(2)(b);
- (b) the protection of fragile environmental resources, ecosystems and habitats as provided for by the ministry for the time being responsible for matters relating to the environment;
- (c) an environmental impact assessment licence issued under Part VI of the Environmental Management and Co-ordination Act, 1999;
- (d) any representations received from members of the public; and
- (e) a recommendation or approval from any other relevant authority as may be necessary.

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(6) After considering an application made under this section, the unit may grant the applicant the licence or variation applied for or may refuse the grant, and may attach to the licence granted terms or conditions as the it may consider necessary.

(7) A licence issued under this Act shall expire on the 31st December of the year in respect of which it is issued.

(8) An application for the renewal of an existing

licence shall be made at least two months before the expiry date of the existing licence.

(9) The Executive Committee Member may, on the advise of the Unit given after consultation with the relevant lead agencies and other stakeholders, by notice in the Gazette, amend the Second Schedule to this Act.

Transfer of
licence.

29. (1) A licence issued under this Act may be transferred by the holder to another person only in respect of the tourism activity or service in relation to which that licence was issued.

(2) Where a licence is transferred under this section, the person to whom it is transferred and the person transferring it shall jointly notify the unit in writing of the transfer within thirty days after the transfer.

(3) Where no joint notification of a transfer is given in accordance with subsection (2), the licence shall be deemed not to have been transferred.

(4) A transfer of a licence under this section shall take effect on the date the Authority is notified of that transfer.

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

Suspension of
licence.

30. The Unit may, subject to section 32, suspend a licence issued under this Act where—

- (a) a licensee is being investigated in relation to an offence under this Act;
- (b) an allegation of misconduct has been made against a licensee;
- (c) the licensee made a false declaration in the application for the licence; or

(d) a licensee has contravened a provision of this Act.

Cancellation of licence.

31. The unit shall, subject to section 32, cancel a licence where a licensee—

(a) is convicted of an offence under this Act or the regulations made there under; or

(b) ceases to be qualified for the issue of a licence under this Act.

Representation to the Unit.

32. (1) The Unit shall not suspend or cancel a licence unless the Unit has given the licensee at least thirty days notice of its intention to suspend or cancel the licence and has provided the licensee with an opportunity to make a representation to the Unit.

(2) A licensee who is not satisfied with a decision made under subsection (1) may appeal to the Tribunal within twenty eight days from the date of the decision.

Effect of suspension or cancellation.

33. A person whose licence has been suspended or cancelled shall not engage in the tourism activity or service in respect of which the licence was granted during the duration of suspension or after cancellation.

Registers.

34.(1) The Unit shall keep and maintain registers of—

(a) all standards for the tourism area development plans formulated by the Executive Committee Member under the provisions of this Act;

(b) all licences and permits issued under this Act;

(c) tourism facilities, activities and services licensed under this Act;

(d) all public and private sector institutions or associations involved in tourism or tourism-related activities and services;

- (e) all authorized expatriates, in consultation with the ministry for the time being responsible for matters relating to Immigration, working in the tourism and hospitality sector within the country; and
- (f) all institutions offering tourism and hospitality training.

(2) All registers kept and maintained under this section shall be open for inspection by members of the public during official working hours, at the Unit's offices or an office designated by the Unit, on the payment of a prescribed fee.

PART VII- RESEARCH PERMIT, DATA RECORDS AND MONITORING.

Research permit.

35. (1) A person shall not undertake research on the county tourism sector unless that person has a research permit granted by the Product Development and Financing Unit to carry out the research.

(2) A person granted a research permit under subsection (1) shall be required, upon completion of the research, to deposit a copy of the research report, thesis or assessment with the Unit in a manner prescribed by the Unit.

(3) Where a person carrying out the research is from outside Kenya, that person shall be required to have a sponsoring institution from the home country and a locally recognized collaborating institution which shall guarantee that the researcher shall comply with the requirements under this Act.

(4) The Executive Committee Member may, on his own motion or on recommendation of the Unit, prescribe regulations to carry out the purposes of this section.

Establishment of county tourism database.

36. (1) The Product Development Unit shall, in collaboration with relevant lead agencies and stakeholders, establish a comprehensive county tourism database for the tourism sector in the county.

(2) The database established under subsection (1) shall include relevant data produced by the National Bureau of Statistics, universities and research institutions or as a consequence of collaborative research by the Unit with foreign institutions and researchers.

(3) The Unit shall, in consultation with relevant lead agencies and stakeholders, ensure that data is collected in accordance with any harmonized standards that may be prescribed under this Act or regulations made hereunder.

(4) The Unit shall, in respect of the data and information that it holds, progressively make the data and information available and accessible, through any means, to all the stakeholders and the general public.

(5) The Executive Committee Member may, on his own motion or on recommendation of the Unit, prescribe regulations to carry out the purposes of this section.

Access to public records etc.

37. (1) The Unit shall, on request, have access to the public records or documents of a lead agency in custody of a person or an establishment where, in his opinion, the information sought is for the purposes of obtaining the required county tourism data or completion or correction of the information already obtained.

(2) A person who does not grant the Unit access to the records or documents in accordance with subsection (1) commits an offence and shall be liable upon conviction to a fine of one hundred thousand or to imprisonment for a term not exceeding six months or to both.

Access to data by person.

38. (1) Subject to subsection (3), a person may, upon application, access any county tourism data or information upon payment of the prescribed fee.

(2) The Unit shall avail the data or information under subsection(1) in the format requested unless—

- (a) it is reasonable for it to make the information available in another format; or
- (b) the information is already publicly available and easily accessible to the applicant in another format.

(3) The Unit may refuse to grant an application under subsection (1) where the data or information requested is classified and restricted.

(4) The Unit shall communicate to the applicant, in writing, the reasons for refusal within twenty-one days from the date of the making the decision.

(5) The Executive Committee Member may, on his own motion or on recommendation of the Unit, prescribe regulations to effectively carry out of the provisions of this section.

Monitoring mechanisms.

39. (1) The Executive Committee Member may, on his own motion or on recommendation of the Unit, develop monitoring mechanisms and set indicators to determine—

- (a) sound management of county tourism products and services; and
- (b) trends affecting county’s tourism sector;

(2) The Executive Committee Member shall require any person collecting data or information that is relevant to the county tourism sector to regularly report to the Executive Committee Member on the results of the monitoring mechanisms against the predetermined indicators.

(3) The Executive Committee Member shall, at least

once every five years, submit to the County Assembly a monitoring report and avail the monitoring report to the public.

PART VIII — FINANCING THE TOURISM INDUSTRY.

A. County Tourism Levy

Tourism levy.

40. (1) The Executive Committee Member may, by order, require the payment by persons engaged in tourism activities and services of a county tourism levy.

(2) The county tourism levy order may make different provisions in relation to different tourism activities and services.

(3) A county tourism levy may contain provisions as to the evidence by which a person's liability to the tourism levy, or his discharge of that, may be established, and as to the time at which any amount payable by any person by any of tourism activity and service shall become due.

(4) All monies received in respect of the tourism levy shall be paid to the Product Development and Financing Unit established under section 10 of this Act.

(5) A person who fails to comply with any provision of a tourism levy order commits an offence.

B. Government tax incentives

Fiscal incentives.

41.(1) Despite the provisions of any relevant national or county revenue Act, the Executive Committee Member responsible for matters relating to finance in consultation with the National Treasury may, on the recommendation of the Executive Committee Member, propose tax and other fiscal incentives, disincentives or fees to induce or promote the development of sustainable tourism.

(2) Without prejudice to the generality of subsection

(1), the tax and fiscal incentives, disincentives or fees may include—

- (a) customs and excise waiver in respect of imported capital goods for investment in sustainable tourism activities and services;
- (b) tax rebates to tourism activities and services that promote sustainable tourism and environmental conservation;
- (c) tax disincentives to deter bad tourism activities and services;
- (d) user fees to ensure that those who use tourism activities and services pay proper value for the tourism products and services rendered.

Loans and credit facilities.

No. 28 of 2011.

42. An investor or entrepreneur in the county tourism sector may obtain a loan or credit facilities from the Tourism Finance Corporation established under section 75 of the Tourism Act, 2011 in accordance with this Act or any other legislation, on terms and conditions that the Tourism Finance Corporation may prescribe.

PART IX — OFFENCES, PENALTIES AND ENFORCEMENT

Prohibition and offences relating to integrated tourism development area plan.

43. (1) A person shall not fraudulently alter—

- (a) an approved integrated county tourism development area plan required to be developed; or
- (b) an approved integrated county tourism development area plan under this Act.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twenty-four months, or to both.

Prohibition and offences relating to pollution.

44. (1) A person shall not—

- (a) discharge any dangerous materials, substances or oil into a designated county tourism development area contrary to the provisions of this Act or any other law; or
- (b) pollute wildlife habitats and ecosystems, or discharge any pollutant detrimental to the environment contrary to the provisions of this Act or any other law.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or imprisonment, in case of a natural person, to a term not exceeding thirty-six months, or to both.

(3) In addition to the fine imposed under subsection (2), the court may direct the convicted person to —

- (a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and mitigating effects of pollution; and
- (b) clean up the polluted habitats and ecosystems and mitigating effects of pollution to the satisfaction of the county government.

(4) Without prejudice to the provisions of subsections (2) and (3), the court may direct the connected person to meet the cost of the effect of pollution to a third party through adequate compensation, restoration or

restitution.

General
prohibition and
offences.

45. (1) A person shall not—

- (a) breach or fail to comply with the provisions of this Act;
- (b) breach or fail to comply with any of, the terms or conditions of a licence issued to him under this Act;
- (c) fail to comply with a lawful requirement or demand made or given by an authorized officer;
- (d) obstruct a person in the execution of his powers or duties under this Act;
- (e) knowingly or recklessly make a statement or representation which is false;
- (f) knowingly or recklessly furnish a document or information required under this Act which is false; or
- (g) knowingly or recklessly use or furnish a fake or forged or invalid licence or a licence that has been altered without authorization.

(2) A person who contravenes any of the provisions of subsection(1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding eighteen months, or to both.

Offences relating
to corporate body.

46. Where an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

(a) the act or omission constituting the offence took place without his knowledge; or

(b) he or she took reasonable steps to prevent the commission of the offence.

General penalty.

47. A person who commits an offence under this Act for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

Authorized officer.

48. (1) The Executive Committee Member may, in writing, appoint any person to be an authorized officer for the purposes of the carrying out of the provisions of this Act.

(2) Despite subsection (1), any other person upon whom any written law vests functions of maintenance of law and order shall be an authorized officer.

Prosecutorial powers.

(Cap. 75).

49. An authorized officer may, with the leave of the Director of Public Prosecutions given under the Criminal Procedure Code conduct prosecution for an offence committed under this Act.

Restraint of breaches of this Act.

50. (1) Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for—

(a) a declaration that the provisions of this Act are being, have been, are about to be contravened;

(b) an injunction restraining any specified person from carrying out the contravention;

(c) the writ of mandamus against an officer or a person who has failed to perform a duty

imposed by or under this Act; or

- (d) any remedy at law or equity for preventing or enforcing the provisions of this Act.

Supereession.

51. Where any conflict arises between the provisions of this Act and any other county legislation with respect to the development, management, marketing or regulation of the tourism sector, in the county the provisions of this Act shall prevail.

Regulations.

52. (1) The Executive Committee Member may, on his own motion or on the recommendation of the respective tourism units, make regulations prescribing all matters which by this Act are required to be prescribed or which are necessary for the better carrying out of, or giving effect to, the provisions of this Act.

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

- (a) the conditions which a licence or permit may be granted or issued under this Act;
- (b) the procedures to be followed when applying for a licence or permit;
- (c) the criteria for standardization and classification of county tourism facilities and services;
- (d) the classification of tourism activities and services;
- (e) fees and other charges required to be paid under the Act;
- (f) the restriction, regulation or other control of county tourism activities and services;
- (g) the training of personnel for the tourism

agencies and the county tourism and hospitality sector in general; and

(h) the Code of Practice for the local tourism and hospitality sector.

(3) Regulations made under this section may require acts or things to be performed or done to the satisfaction of the Executive Committee Member, and may empower the respective tourism units established under this Act to issue orders imposing conditions and dates upon, within or before which the acts or things shall be performed or done.

FIRST SCHEDULE (s.5(5))

PROVISIONS RELATING TO PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation in matters relating to the county tourism strategy, plan, activity or service, the Executive Committee member shall publish a notice —

- (a) in the Gazette;
- (b) in at least two newspapers with national circulation;
- (c) in at least one newspaper circulating in the locality to which the strategy, plan, activity or service relates; and
- (d) in at least one Kenyan radio station broadcasting in that locality.

(2) The notice shall in each case—

- (a) set out a summary of the county strategy, plan, activity or service;
- (b) state the premises at which the details of the strategy, plan, activity or service may be inspected;
- (c) invite written comments on or objections to the strategy, plan, activity or service;
- (d) specify the person or body to which the comments are to be submitted; and
- (e) specify a date by which the comments or objections are required to be received, not being a date earlier than sixty days after publication of the notice.

2. The respective Executive Committee Member shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the strategy, plan, activity or service which are in the possession of the respective tourism agency.

3. The Executive Committee Member shall consider the—

- (a) written comments or objections received on or before the date specified under paragraph 1(2) (e); and
- (b) comments, whether in writing or not, received at a public meeting held in relation to the strategy, plan, activity or service at which the respective tourism agency was represented, or by any other invitation, to comment.

4. The Executive Committee Member shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision relating to the strategy, plan, activity or service, and the reasons thereof, is

available for public inspection at the same premises as were notified under paragraph 1(2) (b).

5. Where Regulations made under this Act so require, the Executive Committee Member shall cause a public meeting relating to a strategy, plan, activity or service to be held before the Executive Committee Member makes a decision on the strategy, plan, activity or service.

SECOND SCHEDULE

(s.28 (1), (9))

**PROVISIONS RELATING TO REGULATED TOURISM
ACTIVITIES AND SERVICES**

(a) Class “A” Enterprises

- (i) Hotels;
- (ii) Members clubs;
- (iii) Motels;
- (iv) Inns;
- (v) Hostels;
- (vi) Health and spa resorts;
- (vii) Retreat lodges;
- (viii) Ecolodges;
- (ix) Tree houses;
- (x) Floatels;
- (xi) Service flats,
- (xii) Service apartments,
- (xiii) Beach cottages,
- (xiv) Holiday cottages,
- (xv) Game lodges,
- (xvi) Tented camps;
- (xvii) Safari or mobile camps,
- (xviii) Bandas,
- (xix) Cultural homes and centres,
- (xx) Villas;
- (xi) Homestays;
- (xii) Guest houses; and
- (xxiii) Time shares.

(b) Class “B” Enterprises

- (i) Restaurants; and
 - (ii) Other food and beverage services.
- (c) Class “C” Enterprises
- (i) Tour or safari operators;
 - (ii) Tourist service vehicle hire;
 - (iii) Local air charter;
 - (iv) Travel agency;
 - (v) Water sports;
 - (vi) Balloon operators; and
 - (vii) Boat excursions;
- (d) Class “D” Enterprises
- (a) Game fishing outfitters;
 - (b) Enterprises offering camps and camping equipment for hire;
 - (c) Nature parks;
 - (d) Nature reserves;
 - (e) Nature trails;
 - (f) Game ranches;
 - (g) Amusement parks; and
 - (h) Non-citizen tour leaders or guides.
- (e) Class “E” Enterprises
- (i) Local traditional boat operators;
 - (ii) Professional safari photographers;
 - (iii) Curio vendors;
 - (iv) Private zoos;
 - (v) Citizen tour leaders or guides; and
 - (vi) General vendors.

MEMORANDUM OF OBJECTS AND REASONS

The *preamble* to this statute succinctly outlines the drive and motivation for this much needed legislation. It encompasses the collective will of the citizenry, county residents and County Government of Kakamega to invest in a concrete legislative framework to promote, spur growth in and regulate the tourism industry in Kakamega County.

Part I provides for preliminary matters and grants authority to the Executive Committee Member to set the commencement date by publication in the Kenya Gazette.

Part II provides for formulation of the County Tourism Strategy.

Clause 3 obligates the Executive Committee Member to publish the County Tourism Strategy atleast once in every five years.

Part III provides for the establishment of Tourism Regulatory, Development and Marketing Units.

Clause 4 establishes the Tourism Regulatory and Licencing Unit as an entity in the County Department of Tourism with the main objective to regulate the local tourism sector (**Clause 5**).

Clause 7 establishes the Marketing and Promotion Unit whose main object and purpose is to market the county as a tourist destination and place of business (**Clause 8**).

Clause 10 establishes the Product Development and Financing Unit whose main object and purpose is to undertake and coordinate initiatives to develop and finance tourism products and investments within the county (**Clause 11**).

Part IV provides for the establishment of the County Tourism Board.

Clause 13 establishes the County Tourism Board to be chaired by the Governor with overlapping terms for members so that the Board is not inadequately constituted at any given time.

Clause 15 restricts the term of each Board member to one 3-years term with the option of renewal for a similar additional term.

Part V provides for the establishment of the County Tourism Tribunal (**Clause 17**).

Clause 19 delineates the jurisdiction of the tribunal to include decisions made by the Executive Committee Member under the Act or in relation to the County Tourism Sector generally.

Clause 22 (4) grants the tribunal concurrent jurisdiction to a Magistrate's court.

Clause 25 obligates a member of the tribunal with interest in a cause or matter before it to declare such interest and abstain from deliberations.

Clauses 26 and 27 grant an aggrieved person a right of appeal to the High Court and Court of Appeal (appellate procedure).

Part VI provides for Tourism Licensing Provisions.

Clause 28 mandates all players in the county tourism sector to first procure a licence to engage in such activities from the Tourism Regulatory and Licencing Unit.

Part VII provides for research permits to be issued by the Products and Financing Unit, the keeping of a county tourism database and monitoring of tourism activities within the county.

Part VIII provides for financing of the tourism industry.

Clause 40 establishes the county tourism levy under order of the Executive Committee Member.

Clause 41 permits the Executive Committee Member to grant fiscal incentives and levy additional taxes within the County Tourism Sector.

Part XI provides for offence, penalties and enforcement.

Clause 51 vests the Act with legislative supremacy over the county laws relating to matters of development, management, marketing or regulation of the tourism sector.

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

H.E. Hon., Wycliffe Ambetsa Oparanya, E.G.H
GOVERNOR – KAKAMENGA COUNTY