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TURKANA COUNTY BILLS, 2020

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THE TURKANA COUNTY COMPLIANCE AND ENFORCEMENT BILL, 2020

A Bill for

AN ACT of the County Assembly of Turkana to establish a legal framework for enforcement of County and other relevant Legislation and for connected purposes

ENACTED by the County Assembly of Turkana, as follows—

PART I— PRELIMINARY

Short Title and
commencement

1. This Act may be cited as the Turkana County Compliance and Enforcement Act, 2020 and shall come into force upon publication in the *Kenya Gazette*.

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

Interpretation

“arrest” means the act of apprehending a person for suspected commission of an offence or by the action of legal authority;

“board” means the county public service board established under section 57 of the County Government Act; 2012;

“chief officer” means the chief officer in the department of public service and administration;

“county inspectorate commander” means the county inspectorate commander appointed under section 13 of this Act;

“county executive committee member” means the county executive committee member responsible for matters relating to the county public service and administration;

“county law” means an Act of a county assembly or a subsidiary county legislation;

“county” means the Turkana county;

“court” means a court of competent jurisdiction;

“Directorate” means the Directorate of compliance and enforcement established under Section 8 of this Act;

“enforcement officer” means an officer appointed under Section 13 of this Act;

“gazette” means the *Kenya Gazette* published by authority of the national government, or a supplement to the *Kenya Gazette*;

“officer in charge” means the county executive committee member or an officer designated by the county executive committee member in writing;

“premises” means any building or structure where a regulated activity is undertaken or is about to be undertaken;

“reasonable time” means any period of time between six o’clock in the forenoon and six o’clock in the afternoon of any day of the week.

“regulated activity” means any activity, trade or business, the undertaking of which, requires a license, permit, approval or payment of service fee, by or to the county government;

“vessel” includes a hand-drawn cart, trolley, motor vehicle, motorbike, or bicycle.

3. The Objects and purpose of this Act are to—

**Objects and
Purpose of the Act**

- (a) provide for establishment of mechanisms, measures and structures for compliance and enforcement of laws within the county;
- (b) provide a framework and standards for the establishment and operation of county compliance and enforcement units;
- (c) regulate the conduct of county enforcement and compliance officers;
- (d) provide for complaints and redress mechanisms on matters relating to implementation of this Act;
- (e) provide for cooperation and consultation with national law enforcement agencies in the implementation of this Act.

**PART II — ESTABLISHMENT OF THE TURKANA COUNTY
COMPLIANCE AND ENFORCEMENT COMMITTEE**

**Establishment of the
county compliance
and enforcement
committee**

4. (1) There is established a committee to be known as the county compliance and enforcement committee which shall consist of—

(2) county executive committee member for the time being responsible for matters relating to public service, administration and disaster management who shall be the chairperson to the committee;

(3) the county attorney or a person deputized by him in writing;

(4) all chief officers in the county for the time being responsible for matters relating to their respective departments;

(5) such number of representatives from national government agencies responsible for compliance and enforcement as may be required from time to time;

(6) the director appointed under section 12, who shall be the secretary to the committee.

(7) The members of the committee shall be gazetted by the county executive committee member and appointed in writing.

5. The functions of the Committee are to—

**Functions of the
committee**

(1) formulate policy guidelines on compliance and enforcement for the county and national governments entities;

(2) review the legal, institutional and regulatory framework of the compliance

and enforcement Directorate;

- (3) establish operational standards while ensuring that all operations are consistent with the county and national priorities as specified in the relevant policy on compliance and enforcement;
- (4) play an oversight role in all matters on compliance and enforcement;
- (5) receive complaints from the public and shall provide mechanisms for complaints and redress for matters relating to this Act;
- (6) perform any other function as may be conferred on it by this Act or any other written Law.

6. The Committee shall have all the powers necessary for the proper discharge of its functions under this Act and without prejudice to the generality of the foregoing, shall have the power to—

Powers of the committee

- (1) oversee the implementation of policies formulated under section 5;
- (2) require any information from any party on compliance and enforcement;
- (3) receive complaints and provide redress through alternative dispute resolution mechanisms.

7. (1) Subject to sub-section (2), the business and affairs of the committee shall be conducted in accordance with the first schedule.
(2) Except as provided in the first schedule, the committee may regulate its own procedure.

Conduct of affairs of the business of the committee

PART III—ESTABLISHMENT OF THE COUNTY DIRECTORATE FOR COMPLIANCE AND ENFORCEMENT

Establishment of the county Directorate for compliance and enforcement

8. There is established, within the county department responsible for matters relating to Administration, a Directorate to be known as the Directorate for compliance and enforcement.

9. The Directorate shall comprise of the following sections —

Sections of the Directorate

- (a) inspection and compliance;
- (b) traffic;
- (c) fire and disaster response;

- (d) compliance and enforcement training institute;
- (e) any other such section as may be established by the County Public Service Board as from time to time.

10. (1) The Directorate shall perform the following functions—

**Functions of the
Directorate**

- (a) ensure compliance and enforcement of laws;
- (b) inspect premises for compliance with relevant laws;
- (c) ensure legal compliance with all county revenue collection requirements;
 - (d) provide security and maintain order in public places under the management of the county government;
 - (e) respond and address public complaints;
 - (f) conduct investigations on matters of enforcement and compliance of county laws in conjunction with other agencies.
 - (g) undertake public awareness and sensitization on compliance and enforcement in collaboration with other county departments;
 - (h) co-operate and collaborate with other national government agencies in the performance of enforcement and compliance functions;
 - (i) promote co-operation and partnerships on research and surveys relating to matters on compliance and enforcement;
 - (j) prepare periodic reports;
 - (k) regulate and control traffic within the county for maintenance of good public order;
 - (l) respond to disasters and mitigating against incidental risks;
 - (m) conduct trainings on matters of compliance and enforcement.
 - (n) provide security to personnel and property of the county government; and
 - (o) perform any other functions assigned under this Act or any other law.

11. The County Public Service Board shall in accordance with the County Governments Act, appoint such number of enforcement officers necessary for the performance of functions under this Act.

**Appointment of the
Director**

12. (1) The Directorate shall be headed by a Director who shall be appointed by the county public service board on such terms and conditions as the County Public Service Board shall determine.

(2) The Director shall be responsible to the Chief Officer.

(3) The Director shall be appointed as per the provisions of the County Governments Act.

(4) The Director shall be responsible for the day to day operations of the Directorate, and in particular—

- (a) oversee and supervise the implementation of the functions of the Directorate;
- (b) prepare the budgetary estimates and the Directorate's annual work plan for approval by the executive committee;
- (c) oversee and monitor implementation of the Directorate's budget and the annual work plan;
- (d) supervise and evaluate performance of staff under the Directorate;
- (e) advise the Executive Committee Member on matters relating to compliance and enforcement within the county;
- (f) prepare quarterly report and submit to the executive committee member on matters relating to compliance and enforcement;
- (g) prepare any other report or statement as may be required by the executive committee member; and undertake such other functions as may be prescribed under this Act, any other written law or assigned from time to time by the executive committee.

13. (1) The Chief Officer shall designate from among county enforcement officers an officer in charge of—

- (a) a Sub-county, municipality or a city who shall be an officer in the rank of a principal superintendent; and
- (b) a ward, town or other decentralized units who shall be an officer in the rank of senior superintendent.

(2) An officer- in- charge shall—

No. 17 of 2012

**Head of the
Directorate**

**Designation of an
Officer- In-Charge**

- (a) oversee and supervise the implementation of the Directorate's functions within their area of jurisdiction;
- (b) allocate duties and ensure maintenance of discipline of the officer within their jurisdiction;
- (c) recommend to the director the institution of disciplinary proceedings;
- (d) prepare quarterly reports and submit them to the director on the status of compliance and enforcement in their areas of jurisdiction; and
- (e) perform any other duties as may be assigned by the director from time to time.

14. (1) The County Public Service Board may, on the recommendation of the chief officer, shall appoint such number of persons as shall be necessary for better implementation of this Act.

**Appointment of
Enforcement
Officers**

(2) Persons appointed under sub-section (1) shall undergo mandatory training to be established through curricula to be developed by the Directorate with the approval of the county executive committee.

(3) A person appointed under this section may be appointed under any of the following ranks in accordance with the relevant scheme of service—

- (a) County Inspectorate Commander;
- (b) Principal Superintendent;
- (c) Senior Superintendent;
- (d) Superintendent;
- (e) Assistant Superintendent;
- (f) Chief Inspector;
- (g) Inspector;
- (h) Senior Sergeant;
- (i) Sergeant;
- (j) Corporal;
- (k) Constable.

(4) In addition to sub-section (3), the County Public Service Board may, on the recommendation of the chief officer, promote an officer to a higher rank in accordance with the provisions of the relevant scheme of service.

(5) The executive committee member shall make regulations for the procedure of appointment of ranks of the enforcement officers.

15. The recruitment and composition of the Directorate shall, so far as is reasonably practicable—

Gender, Ethnic and Regional Balance

(a) ensure gender parity;

(b) reflect the regional and ethnic diversity of the County; and

(c) ensure equity of opportunity amongst all the wards in the County.

16. (1) In addition to any other requirements under this Act, a person shall not be appointed as an enforcement officer unless that person make and sign before an officer authorized by law to administer oath, either in English or Swahili, the oath or the affirmation set out in the second schedule.

Oath of office

(2) Notwithstanding the provisions of sub-section (1), any person employed as an enforcement officer of the County government at the time of enactment of this Act shall within thirty days from the date of commencement of this Act comply with the provisions of sub-section (1).

17. (1) A person who, being required to take the oath of office under this section fails to do so within the time set out under this section shall immediately cease being an enforcement officer of the county government.

Standing orders for enforcement officers.

(2) The executive committee member shall prescribe the standing orders for enforcement officers.

(3) In addition to other employment regulations, rules and procedures prescribed for the employee of the County, an enforcement officer shall be required to abide by the prescribed standing orders.

18. No member of the Directorate shall engage in any trade, business or employment, if the trade, business or employment is in conflict of interest with the performance of the enforcement officer's duties.

Enforcement Officers Prohibited from Conflict of Interest

19. (1) The executive committee member may, with the approval of the county executive committee, prescribe the uniforms of a suitable kind and design, with suitable insignia and identification badge, to be worn by appropriate ranks of enforcement officers.

Uniforms and Identification Badge

(2) Unless specifically authorized by the immediate supervisor for a specific purpose, an enforcement officer shall wear the prescribed uniform while on official duties.

(3) The prescribed uniform shall be provided to an enforcement officer by the county government.

20. (1) An enforcement officer who is dismissed from the Directorate, or who resigns from office, or otherwise leaves the Directorate, shall forthwith deliver to officer-in-charge of the duty station to which that person was last deployed, every article which has been supplied to him and which he or she has not been expressly authorized to keep or use for his or her private benefit, and in particular, the crown and the identification badge.

**Surrender of Public
Property on
Resignation**

(2) Any person who fails to comply with sub-section (1) commits an offence, and shall, on conviction, be liable to a fine of a sum not exceeding two hundred thousand shillings or imprisonment for a term not exceeding three months or to both.

(3) In addition to any other remedy under this Act, the County government shall publish and publicize in the County government communication channel any information of an enforcement officer who contravenes the provisions of this section.

**PART IV—POWERS AND RESPONSIBILITIES OF
ENFORCEMENT OFFICERS**

**Duties and Powers
of Officers**

21. (1) An enforcement officer shall obey and execute all lawful orders in respect of the execution of the duties of office which she or he may from time to time receive from his or her supervisors and may—

- (a) at any reasonable time, enter any place in which the enforcement officer believes on reasonable grounds that any person is in any way contravening the provisions of a county or applicable national legislation;
- (b) arrest any person who is in breach of any county or applicable national legislation or standards which is within the jurisdiction of the county;
- (c) seize anything which may be necessary to effectively enforce the laws; or
- (d) destroy or in any such other way, dispose of any item or good whose continued existence would constitute a breach of the provisions of the county or applicable national laws, subject only to the executive committee member's guidance.

(2) Notwithstanding the provisions of sub-section (1) (d) an item may only be

destroyed or disposed in accordance with the procedure prescribed under the relevant written law.

22. (1) An enforcement officer on duty may stop any person whom the officer witnesses doing any unlawful thing, or suspects of doing any unlawful act or thing or being in possession of anything for which a permit, license or certificate or pass is required under any written Law and has no such permit, license or certificate.

Stoppage

- (2) A person who fails to produce a license, permit, certificate or pass within forty-eight hours when called upon to do so, may be arrested without a warrant unless he gives his name and address and otherwise satisfies the officer that he will duly answer any summons or any other proceedings which may issue or be taken against him or her.
- (3) Where an enforcement officer intends to carry out an arrest under sub-section (2), he or she shall produce their enforcement identification card and shall explain to the suspect the reason of arrest in a language or manner they understand.
- (4) Notwithstanding sub-section (3), the enforcement officer carrying out the arrest shall explain to the suspect of his or her rights while in custody.
- (5) An enforcement officer who abuses the powers under this section commits an offence under this Act and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

23. (1) Subject to Article 49 of the Constitution, an enforcement officer may without a warrant, arrest a person who—

Power to arrest

- (a) is accused of breaching any law within the enforcement officer's area of jurisdiction and that enforcement officer believes upon reasonable ground that such breach has been committed;
- (b) obstructs an enforcement officer while in the execution of duty;
- (c) commits a breach of the peace in the presence of the enforcement officer;
- (d) is in possession of an item or thing which is reasonably suspected to have been used to commit an offence;
- (e) the enforcement officer suspects upon reasonable grounds of having committed or being about to commit a breach of a County law or national law enforceable by the enforcement officer; or
- (f) the enforcement officer has a reasonable cause to believe a warrant of arrest has been issued.

(2) Notwithstanding sub-section (1), an enforcement officer may apply to court for a warrant of arrest and on such warrant, arrest any person who the enforcement officer reasonably believes is committing or intending to commit an offence under the County legislation or national legislation enforceable by the enforcement officer.

24. Where an enforcement officer reasonably believes that a vessel is parked or controlled in any manner that is contrary to county law or without payment of prescribed parking fee, the officer may impound the vessel by clamping or towing it to the nearest office of the Directorate.

Impounding of vessels

25. An officer may impound any animal that is kept in a manner that is contrary to county law.

Power to impound animals

26. (1) It is unlawful for any person to erect, build, establish or keep any structure on any area, public or private, without approval of the County government.

**Unapproved
buildings and
structures**

(2) Where the existence of a structure under sub-section (1) comes to the attention of the Directorate, the Directorate shall give the owner or occupier of the structure reasonable notice to demolish the structure or obtain County government approval.

(3) If the owner and or occupier fails to comply with a notice issued under sub-section (2), within the specified period, the Directorate may obtain a court order to demolish such structures and surcharge the owner of the land or person who has constructed the costs of demolition.

(4) The surcharge under sub-section (3) may be—

(a) added to rates payable by rent; or

(b) recovered by the County government as a civil debt.

27. (1) A notice required to be given shall be deemed to have been served if it is served upon the owner or the occupant of the premises.

Service of Notice

(2) Where the owner or occupant of a property cannot be traced, the notice shall be placed in a conspicuous place of the structure or buildings.

(3) An enforcement officer shall, in issuing a notice—

(a) specify reasons for the decision taken by the Directorate;

(b) give a person adequate time to take remedial action;

(c) specify the manner and period within which the person is to respond to the notice or appeal the decision of the Directorate; and

(d) comply with the principles set out in the Fair Administrative Action Act.

No.4 of 2015

28. (1) An arrest by an Enforcement Officer, whether with or without a warrant, shall be subject to the rules contained in this section with respect to arrest and detention.

**Arrests and
detentions by an
Enforcement
Officer**

(2) In the performance of the functions and exercise of the powers of arrest and detention set out in the constitution and this Act or any other law, an enforcement officer shall carry out an arrest and detention only as provided for in the law.

- (3) An enforcement officer shall accord an arrested or detained person all the rights set out under Articles 49, 50 and 51 of the Constitution.
- (4) Every arrested person shall as soon as practicably possible but in any event not more than three hours after arrest be handed over to the police station in the jurisdiction within which the offence has been committed.
- (5) An enforcement officer who contravened the provisions of this section shall be personally guilty of a disciplinary offence and may be tried for a criminal offence.

29. (1) An enforcement officer shall perform the functions and exercise the powers conferred by the constitution and this Act by use of non-violent means;

Non-violent means

(2) Notwithstanding the provisions of sub-section (1), an enforcement officer may use reasonable force for purposes of fulfilling the objectives of this Act.

30. (1) An enforcement officer may not enter a dwelling place except with the consent of the occupant or upon reasonable suspicion of the commission of an offence and the entry is necessary for the enforcement of the provisions of this Act.

Entry of dwelling place

(2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

(3) An enforcement officer who exercises the powers conferred under this section shall—

- (a) identify himself or herself;
 - (b) record the action;
 - (c) record any items, thing or document seized; and
 - (d) make a report regarding such exercise and submit it to the immediate supervisor within twenty-four hours of taking such an action.
- (4) Notwithstanding the provisions of sub-section (2), an enforcement officer may enter a dwelling place at any time provided that such enforcement officer has obtained relevant warrant.

31. (1) No person shall obstruct or hinder, or knowingly make a false or misleading statement to an enforcement officer who is carrying out duties under this Act.

Obstruction

(2) A person who contravenes sub-section (1) commits an offence and on conviction is liable to a fine of a sum not exceeding one hundred thousand or to imprisonment for a term not exceeding three months or to both.

32. (1) During an inspection under this Act, an enforcement officer may, in addition to any other remedy provided under this Act, seize any item, good, property, document or thing by means of which or in relation to which the officer believes, on reasonable grounds, that any provision of any County or national legislation or standard has been contravened and a full inventory thereof shall be made at the time of such seizure by the enforcement officer.

Seizure

(2) The enforcement officer may direct that anything seized be kept or stored in the place where it was seized or that it may be removed to another place.

(3) Unless authorized by an enforcement officer, no person shall remove, alter or interfere in any manner with any other thing seized.

(4) Any person from whom an item, good, property, document or thing was seized may, within thirty days after the seizure, apply to court for an order of restoration, and shall send notice containing the prescribed information to the relevant department within the prescribed time and in the prescribed manner.

(5) The enforcement officer shall make a report of the seizure to his or her immediate supervisor as prescribed in the third schedule within forty-eight hours of such seizure.

(6) Where goods seized by an enforcement officer are not claimed within ninety days, the county government may dispose of the goods in accordance with the disposal of Uncollected Goods Act.

(7) Prior to disposal of any goods under sub-section (6), a public notice of at least thirty days shall be issued of the intended disposal of goods and published in the approved county government communication channels.

33. (1) Where property has been seized or detained under section 32, subject to any directions given by a court, the Directorate shall be responsible for proper preservation of the property.

**Preservation or
Destruction of
Seized Property**

- (2) The Directorate shall keep a full inventory of the seized property and any other records of the property, for submission to the court.
- (3) Upon seizure of property, the Directorate shall only deal with the whole or a part of the property in accordance with the directions of the court.
- (4) In the case of perishable or rapidly depreciating property, the court may authorize the Directorate to sell or dispose of that property.
- (5) A court shall not make an order for destruction of non-perishable property unless—
 - (a) a notice has been issued in such manner as the court may direct, to any person who, in the opinion of the court, appears to have an interest in the property; and
 - (b) that person has been given a reasonable opportunity to be heard.
- (6) Where, upon the conclusion of proceedings, the court finds the owner of the property guilty of committing an offence, the court may order the owner to pay for costs incurred in preserving the property.

34. (1) Where an enforcement officer arrests a person, the officer shall immediately present the arrested person to the nearest police station.

**Production in a
Police Station**

(2) An enforcement officer who arrests a person and fails to present the person to a police station immediately upon arrest commits an offence.

35. (1) The court may order that the thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

**Order of
restoration.**

- (a) the applicant is entitled to possession of the item, good, property, document or thing seized; and
- (b) the item, good, property, document or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

(2) Where upon hearing an application made under sub-section (1) the Court is satisfied that the applicant is entitled to possession of the thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of sub-section (1), the court may order that the thing seized be restored to the applicant on the expiration of seven days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time.

(3) Where an order of restoration is made, such item, good, property or thing

seized shall be released to the applicant upon payment of impounding fees under the applicable laws unless the court orders otherwise state.

PART V— OFFENCES

36. (1) It shall be unlawful for an enforcement officer to subject any person to torture or other cruel, inhuman or degrading treatment.

**Prohibition against
Torture or Cruel
treatment**

(2) An enforcement officer who subjects a person to cruel, inhuman or degrading treatment commits a criminal offence under the penal code.

37. (1) A person other than an enforcement officer who, without written authority of the county inspectorate commander—

**Impersonation of an
Enforcement
Officer**

(a) puts on or assumes, either in whole or in part, the uniform, name, designation or description of an enforcement officer, or a uniform, name or designation, resembling or intended to resemble the uniform, name or designation of an enforcement officer; or

(b) in any way pretends to be an enforcement officer for any purpose which he would not by law be entitled to do his or her own authority, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding ten years, or to both.

(2) Notwithstanding sub-section (1), a person may, with the approval of the county inspectorate commander use enforcement uniform for artistic purposes.

38. Any person who—

**Assault in Execution
of Duty**

(a) assaults, resists, or willfully obstructs an enforcement officer in the execution of the enforcement officer's duties;

(b) assaults, resists or willfully obstructs any person acting in aid of the enforcement officer;

(c) attacks an animal belonging to the enforcement, or

(d) intentionally or recklessly, destroys enforcement property, commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

39. (1) A person who contravenes the provisions of this Act for which no penalty is specified or fails to comply with any order or direction given under this Act, shall be punishable with fine not exceeding fifty thousand shillings. **General Penalty**

(2) a person who having been convicted of an offence under this Act, is again found guilty and is convicted of an offence under this Act, shall be punishable upon conviction with double the penalty provided for the offence.

PART VI— MISCELLANEOUS PROVISIONS

40. (1) The director may perform his functions under this Act in cooperation with the National Police Service and may in this respect enter into a memorandum of understanding with the Inspector General of police.

Arrangements with other Public Offices

(2) The memorandum of understanding referred to in sub-section (1) shall—

- (a) provide for the manner and extent to which the Directorate shall assist the national police in the implementation of national legislation;
- (b) provide for the manner and terms of deployment of national police service officers to the Directorate to assist in the performance of the Directorate's functions;
- (c) provide for such other matters as the inspector general and the county chief commandant may deem appropriate.

(3) The county executive committee member shall put in place arrangements in consultation with the—

- (a) Director of Public Prosecution to facilitate prosecution of persons who contravene county legislation;
- (b) Judicial Service Commission for the purpose of allocation and designation of magistrates to adjudicate on criminal matters arising from county laws and the transmission of fines paid by those convicted of county offences into the county revenue fund; and
- (c) relevant public authorities dealing with matters of incarceration of criminal suspects and convicts.

41. (1) The member of the county executive committee may, upon recommendation by the director make rules for the purpose of carrying out the provisions of this Act.

(2) without prejudice to the generality of sub-section (1), the rules made may provide for—

- (a) the prescribing of anything required to be prescribed in this Act;
- (b) prescribing administrative organization of the service;
- (c) the description, wearing and issue of uniform, accoutrements and necessaries by the Directorate;
- (d) monitoring and evaluation of the performance of the functions of the Directorate;
- (e) facilitating the involvement of the public in the activities of the Directorate;
- (f) establish an enforcement reform section for ensuring continuous and sustainable enforcement reforms;
- (g) Generally, for the good order and management of the Directorate, the penalties and disciplinary procedures are applicable to enforcement officers who commit any of the offences against discipline set out in the standing orders for the Directorate.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the executive committee member to make rules for better carrying into effect the provisions of this Act;
- (b) the authority of the executive committee member to make rules under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the delegated power referred to under this Act are those found in—
 - (i) the Statutory Instruments Act 2013;
 - (ii) the Interpretation and General Provisions Act;
 - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and

(iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

42. (1) Subject to the provisions of this Act, an enforcement officer shall be entitled to all rights set out in the Constitution.

Limitation of some rights and fundamental freedoms.

(2) Subject to Article 24 of the constitution, the right to privacy under Article 31 of the constitution, the right to property under Article 40 and the right to freedom of movement under Article 39 may be limited to the extent provided for in this section for the purpose of safeguarding legitimate overriding interests.

(3) A limitation of a right or fundamental freedom under sub-section (1) shall apply only for the purposes of—

(a) preventing the commission or continuation of an offence under this Act;

(b) investigating an offence under this Act;

(c) ensuring public order within the county;

(d) maintaining public health and safety within the county; or

(e) ensuring the enjoyment of the rights and fundamental freedoms by an individual does not prejudice the rights and fundamental freedom of others in the county.

(4) The limitation of a fundamental right and freedom under this section shall relate to—

(a) the right to privacy as provided for under Article 31 of the constitution shall be limited under this Act but only to the extent of allowing—

(i) a premises is to be searched;

(ii) property is to be seized;

(iii) the protection of classified information;

(iv) the security and safety of officers of the Directorate;

(v) the integrity of the Directorate; and

(vi) that the enjoyment of the rights and fundamental freedoms by any

individual does not prejudice the rights and fundamental freedoms of others.

- (b) the right to property to the extent of detaining, confiscating or destroying any property used in the commission of an offence under this Act.
- (c) the right to freedom of movement and residence set out in Article 39 of the constitution—
 - (i) when the person is lawfully held in custody; and
 - (ii) as a term of bail or bond imposed by a court.

43. The County government shall provide adequate facilities for the efficient functioning of the compliance and enforcement Directorate.

Facilities

44. (1) The funds for the compliance and enforcement Directorate shall consist of—

Funds of the Directorate

- (a) monies allocated by the County Assembly for the purposes of the Directorate;
- (b) such monies or assets as may accrue to the Directorate in the course of exercise of its mandates or the performance of its functions under the Act; and
- (c) all monies from any other source provided, donated or lent to the Directorate.

(2) The funds of the office shall be used for administrative expenses of the Directorate and such other purposes as may be necessary for the discharge of the functions of the Directorate.

45. The Directorate shall establish a record keeping and reporting system on compliance and enforcement actions undertaken pursuant to this Act.

Reporting System

FIRST SCHEDULE

s.7(1)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Meetings

1. (1) The committee shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the chairperson.
 - (1) The committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.
 - (2) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the director.
 - (3) The chairperson may, at his discretion or at the written request made by at least half of the members of the committee and within seven days of the request, convene an extraordinary meeting at such time and place and he may appoint.
 - (4) Meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson.
 - (5) The members of a committee shall elect a vice-chairperson from among themselves—
 - (6) at the first sitting of the committee; and
 - (7) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.
 - (8) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the committee.
 - (9) The committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the committee.

Conflict of Interest

2. (1) If any person has a personal or fiduciary interest in any issue or any matter before the committee, and is present at a meeting of the committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Quorum

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the committee.

(2) Where the persons present at a meeting of the committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the committee shall postpone the consideration of the matter in question until there is a quorum.

Voting

4. A question before the committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

Rules, Procedure and Minutes

5. The committee shall—

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

THIRD SCHEDULE

s.32(5)

**REPORT ON SEIZURE OF GOODS/PROPERTY
ENFORCEMENT OFFICER'S REPORT**

To:

From:

Name

Employment No.

Please take note that on the day of 20..... atam/pm,

I.....

holder of National identification card no....., being
an authorized officer, entered the business premises known
as.....

.....
located at building

..... street and seized the following
goods/obtained the following documents/made the following
finding/observations-

.....
.....
.....
.....

The details of the licensee/business owner are as follows:

Name:

Postal address.....

Physical address.....

Telephone contacts

The goods seized were the following:

Description ! Quantity! Date of Expiry! Place of Custody!

Signed.....Dated.....

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill provides for establishment of mechanisms, measures and structures for compliance and enforcement of laws within the county; a framework and standards for the establishment and operation of county compliance and enforcement units; regulation and conduct of county enforcement and compliance officers; a complaints and redress mechanism on matters relating to implementation of this Act including cooperation and consultation with national law enforcement agencies in the implementation of this Act.

The Bill gives effect to the provisions of Article 187 of the constitution that require the county executive committee to implement within the county national legislation to the extent that the legislation so requires.

The Bill further gives effect to the provisions of Article 189 (1) (b) that require the county government to assist, support and as appropriate, implement legislation of the National government.

The Bill also gives effect to the establishment by law, pursuant to Article 185 (2) of the constitution, an inspections mechanism so as to ensure the effective performance and exercise of the powers conferred on the county government under part 2 of the fourth schedule of the constitution.

The establishment of the county compliance and enforcement Directorate is informed by the recognition that the county requires officers who can be responsible for ensuring compliance with the laws enacted by the county government.

The role of enforcement officers within the counties is therefore integral to the daily operations and conduct of businesses within the county and that the

national law broadly sets out the functions and expected conduct of the enforcement officers to ensure an enabling environment for the conduct of business and other regulated activities at the county level.

This legislative proposal therefore provides a legal framework for the appointment, functions and a uniform code of conduct for the enforcement officers.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative power but the County Government may delegate legislative authority to the relevant county executive committee member as may be appropriate. This Bill however does not limit fundamental rights and freedoms of the citizenry of Turkana County.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 8th February, 2020.

COSMAS LONGOR,
*Chairperson, County Security, Administration and Disaster Management
Committee.*