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REPUBLIC OF KENYA



BOMET COUNTY
THE COUNTY ASSEMBLY OF BOMET

FIRST ASSEMBLY –FOURTH SESSION

WATER, ENERGY, ENVIRONMENT, FORESTRY AND
NATURAL RESOURCES COMMITTEE REPORT ON THE
BOMET COUNTY POLICY ON RIPARIAN ZONE AND
WETLAND PROTECTION.

SESSIONAL PAPER NO.4 OF 2015 ON ENVIRONMENT AND NATURAL
RESOURCES

JANUARY, 2017

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- (i) Minutes of Water, Environment, Energy, Forest and Natural Resources Committee on the adoption of the report.*
- (ii) Copy of the Bomet County Riparian Zone and Wetland Protection Policy Sessional Paper No. 4 of 2015*

ACRONYMS

CADP-----County Annual Development Plan

CIDP-----County Integrated Development Plan

CFA-----Community Forest Association

NEMA-----National Environment Management Authority

KFS-----Kenya Forest Services

CEAP-County Environment Action Plan

CBO-Community Based Organization

NGO-Non Governmental Organization

WRUAs-Water Resources Users Associations

Preface

1.0 Background

Riparian Zone and Wetland Protection Policy sessional paper No.4 is a document that outlines a course of action that will be adopted and pursued by the County Government of Bomet in order to sustainably protect rivers, streams, springs, dams, swamps and marshy areas within Bomet County. A riparian zone or riparian area is the interface between land and a river or stream. Riparian is also the proper nomenclature for one of the fifteen terrestrial biomes of the earth. The document is expected to spur sustainable use of wetlands and riparian areas as well as address development challenges facing those ecosystems. This Policy shall inform the basis of planning and the implementation of projects and programmes that may impact on wetlands in the county.

It is expected that the passage and approval of Bomet County Policy on Riparian Zone and Wetland Protection will pave way for the implementation of various strategies and actions aimed at restoring and rehabilitating degraded wetlands and its related resources as well as maintaining their natural state.

The document was received at the Assembly on Tuesday 1st December 2015, subsequently it was tabled and committed to Water, Energy, Environment and Natural Resources Committee for consideration **on Wednesday 2nd December 2015**. The Committee was required to examine, take necessary action and present a report on the findings and recommendations for adoption by the Assembly in line with **Article 185(4) of the Constitution**.

1.2 Committee Mandate.

Mr. Speaker Sir, the Water, Energy, Environment, Forestry & Natural Resources Committee is constituted under the provisions of Standing Order to undertake such functions as provided for in the standing order no 193(5). which defines its functions as being:

Furthermore standing order 193(5) states the functions of a Sectoral Committee as follows:-

- a. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;

- b. Study the program and policy objectives of departments and the effectiveness of the implementation;
- c. Study and review all county legislation referred to it;
- d. Study, assess and analyse the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- e. Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- f. Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation

1.3 The subject areas on the committee are as follows:-

All matters relating to electricity, gas and energy reticulation, water conservation and sanitation services, implementation of specific national government policies on natural resources and environmental conservation, forestry, control of air pollution, noise pollution, other public nuisances and outdoor advertising.

1.4 Methodology

The Committee prepared this report after taking into consideration views and comments from relevant stakeholders and the general public. However, on 3rd December 2015 via a letter reference no. BC.25/15/3, the three policies including two other non-environmental policies were recalled by the then acting County Secretary. The reason given for such decision was that the policies required some few changes to be made. However, it was overtaken by events since the papers had already been tabled and directed to the committee for necessary action. The committee proceeded in reviewing the policy in readiness for its approval though with amendments.

1.5 Public participation

Public participation forum was organised and conducted at St. Bakhita Catholic Church Conference Centre in Bomet, thereby meeting Article 196 of the Constitution of Kenya, 2010, Sections 87(a), (b) and 115 (1) (b) (ii) and (iv) of the County

Government Act 2012. These Public hearings and collection of views were held on 28th November 2016. This approach ensured the views and comments of members of the public and other key stakeholders were catered for, prior to approval of the Policy. I admit that the members of the public generally registered their concern on the urgent need of the policy so that the missing gaps are addressed in relation to implementation of programmes and projects impacting wetlands.

1.6 Acknowledgment

Mr. Speaker Sir, On behalf of the committee on Water, Environment, Energy and Natural Resources I wish to recognize and appreciate in a special way the committee's steadfast dedication in analyzing, reviewing and subjecting it for public participation and stakeholder input. Gratitude is further extended to the members of staff who participated throughout the process including collection of views from the members of public and stakeholders in the county.

I am also aware that there are many individuals, groups or departments whom I have not named though they actively participated in one aspect or the other in the process. To all those involved, I would like to express my personal and committee's gratitude for the participation, assistance and contribution. We all acknowledge, and indeed we now shift our focus to, the greater challenge of ensuring that the executive implements the document in the letter and spirit of its objectives and in accordance to the Assembly's resolutions and recommendations.

1.7 Membership and Ownership of the Report

Mr. Speaker Sir, it is therefore my pleasant duty and privilege, on behalf of the Committee to table this report and recommend it to the House to give their input prior to adoption of this report.

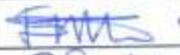
Signed.....

THE HON.EVALINE CHEPKEMOI

CHAIRPERSON: WATER, ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

DATE.....18 Jan 2017.....

We, honourable members of the Water, Energy, Environment and Natural Resources Committee, do hereby affix our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity:-

No.	Name	Position	Signature
1.	Hon. EvalineChepkemoi	Chairperson	
2.	Hon. Beatrice Chebomui	V. Chair	
3.	Hon. Philip Korir	Member	
4.	Hon. Sammy Chelule	Member	
5.	Hon. HellenChepkirui	Member	
6.	Hon. Robert Bett	Member	
7.	Hon. Andrew Maritim	Member	

Legal and Institutional Framework on Policies

Article 185(4) of the Constitution states that a County Assembly may receive and approve plans and Policies for:-

- (a) the management and exploitation of the County's resources; and
- (b) the development and management of its infrastructure and institutions.

Standing Order 193(5) (b). One of the mandates of the County Assembly Sectoral Committee is to study the program and Policy objectives of ministries and departments and the effectiveness of their implementation.

Obligations in respect of the Environment

Article 69(1) of the Constitution emphasizes that the State shall-

- i. *Ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;*
- ii. *Work to achieve and maintain a tree cover of at least 10% of the land area of Kenya;*
- iii. *Protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;*
- iv. *Encourage public participation in the management, protection and conservation of the environment;*
- v. *Protect genetic resources and biological diversity;*
- vi. *Establish systems of environment impact assessment, environmental audit and monitoring of the environment.*
- vii. *Eliminate processes and activities that are likely to endanger the environment*
- viii. *Utilize the environment and natural resources for the benefit of the people of Kenya.*

Article 69(2) of the Constitution states that every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

Principles of citizen participation in Counties

County Government Act 2012 Section 87

Citizen participation in County governments shall be based upon the following principles-

- (a) *timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;*
- (b) *reasonable access to the process of formulation and implementing policies, laws and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards*
- (c) *Protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;*
- (d) *Legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;*
- (e) *Reasonable balance in the roles and obligations of county governments and non-state actors in decision making processes to promote to promote shared responsibility and partnership, and to provide complementary authority and oversight.*

3.0 Review objectives of the Policy

While examining and reviewing Riparian Zone and Wetland Protection Policy, the following objectives informed the criteria used in recommending the policy;

- i. To ascertain whether the submitted Policy was prepared in accordance with the law, whether it met the standards required of a policy and if all the objectives are identified.
- ii. To verify whether the policy seeks to address all the policy areas related to wetlands and riparian zones for instance swamps, rivers, streams, springs, dams and marshy areas, both natural and artificial wetlands.
- iii. To establish whether the strategies and plans proposed in the Riparian and Wetland Protection Policy are derived from the CIDP and the targets of vision 2030 and the linkage between it and the County Environment Action Plan.
- iv. To examine and appreciate the challenges being faced currently by wetland ecosystem and its related habitats both within the County and at County-borders.
- v. To establish whether there is a relationship and linkages of challenges, issues, objectives and intervention measures aimed at conserving and preserving Wetlands and Riparian Zones in Bomet County.
- vi. Establish whether the priorities and interventions/implementation tools in the policy have taken into account those espoused by the County Assembly through motions, resolutions and pronouncements.
- vii. Establish whether the policy aims to involve all the relevant stakeholders in the planning and implementation of the proposed intervention measures.

4.0 Findings and Observations

While analysing the policy, the following specific observations were made on the document;

4.1 Strengths of the Policy

4.1.1 Targets related to Vision 2030

The policy, in its objective, targets to protect river banks, restore, rehabilitate and minimize human activities along riparian zones. Therefore the policy meets part of the vision 2030 targets by addressing availability and accessibility to improved water and sanitation by all. This policy if implemented will improve quality of water thereby improving sanitation of water resources.

4.1.2 Programs Highlighted in the County Integrated Development Plan

The policy is also in line with the programs and projects identified in the CIDP particularly on protection of springs and water dams. A number of springs and dams were identified across all the Wards thereby putting in place and implementing this wetland policy, those projects and programs would stand a chance of being implemented as part of policy instruments.

4.1.3 Response in Relation to Assembly's passed Resolutions on Riparian Zones and Wetlands

The formulation of the policy itself and the priorities and interventions/implementation tools identified seeks to address the Assembly's resolutions through a statement that was raised by one of the honourable members in early 2013 pertaining measures that has been put place by the County Department of Environment and Natural Resources to address the severe destruction of riparian zones in Bomet County.

4.2 Weakness of the Policy

4.2.1 Public Participation

Prior to submission of the Riparian zone and Wetland Protection Policy to the Assembly, the executive department in charge did not fully comply with the legal

requirements guiding policy formulation and approval. There was no evidence whatsoever in the document to show that Public participation and stakeholder involvement was done, which is a mandatory requirement in policy formulation as per section 87(a) and (b) of the County Government Act 2012 and as one of the National values and principles of governance as enshrined under Article 10 of the Constitution. Though the policy has mentioned public participation among its principles and further identified several stakeholders like WRUAs and farmers, there was a failure to involve them during formulation process. This was further evidenced during Assembly's public participation, when key stakeholders such as WRUA, CFAs, NEMA and small scale farmers raised concerns wondering why the County didn't involve them in formulating the policy.

4.2.2 Non extractive use of Wetland Resources

Despite the policy having listed ecosystem based approach as one of the principle of this policy, and has again identified recreational and aesthetic use as one of the values of Wetlands, it failed to incorporate and encourage non-extractive use of wetlands resources for instance tourism activities like bird watching, fishing and landscape scenery in the case of swamps or marshy areas, and hydro-power generation from waterfalls.

4.2.3 Artificial Wetlands/Man-Made Wetlands

The Policy is silent on artificial wetlands yet they are prominent modern technologies as waste water treatment sites, irrigation canals & schemes and fish ponds. These modified ecosystems play a key role in purification of waste water and food security and therefore such man-made infrastructure should be considered as part of government policies.

4.2.4 National Government Policies on Environment and Natural Resources

The fourth issue was reflected under the section on strategies and plans, the policy failed to recognize that Counties has a role in the implementation of National Government Policies on natural resources and environmental conservation which include soil, water and forestry as provided for in the Fourth Schedule function no.10 and legislation under Article 183 1(b) as part of the strategy in addressing the issues undermining conservation of Wetlands and Riparian Zones in our County. The policy could have included implementation of National Government policies related to environment as part of strategy to address challenges on wetlands and riparian zone.

4.2.5 Role of local Communities in Monitoring of Wetlands and Riparian Zones

The fifth issue is reflected in the first strategy under policy area on monitoring and evaluation weakened the policy when it failed to include communities living adjacent to wetlands, non-state actors, development partners and government agencies and even county-shared river basins in monitoring of wetlands. It should be understood that all stakeholders play an important role in monitoring of impacts emanating from projects and programs .In addition, monitoring framework on implementation of the policy is not provided for. This part of the policy loses focus by failing to realize that this is a wetland policy since it has addressed more of environment sector rather than wetland issue.

4.2.6 Correction on Cover page and Body of the Policy

The sixth weakness comes under the term ***“LITTORAL ZONE”*** was corrected and substituted thereof with the term ***“WETLAND”*** under the title but was not corrected entirely in the whole document. The words littoral zone could have been deleted and substituted in the entire policy to make it easy to comprehend.

4.2.7 Policy focuses on Rivers rather than Wetlands and Riparian Zones

The policy is also inclined towards protecting rivers yet it is a wetland policy which should have focused on all types of Wetlands and Riparian zones especially swamps and marshes. For instance, under the forward section, it has listed down several significant rivers in the County which is fine, but forgets to instance major wetlands, springs and marshes in the County. Likewise under strategies and plans, item (v), lays emphasis on carrying out inventory of all rivers and policy weakness manifests itself when it excludes inventorying swamps, springs, dams and marshes.

4.2.8 Lack of Coherency especially on the Challenges

The challenges identified lacks coherency. This policy describes challenges in the executive summary which are all reflected clearly in the introductory section. But the policy is weakened under item 6 **on 'CHALLENGES IN THE MANAGEMENT OF RIPARIAN ZONES'** (page 15) where the policy omitted other challenges listed previously and introduced new challenges. For instance issue of ownership of wetlands is left out unaddressed and pollution. In this section, the policy further introduced lack of data base and low level of awareness as part of challenges in management of wetlands and riparian zones, though they are very relevant, the policy had failed to include them both in the executive summary and the introductory sections.

4.2.9 Stakeholder Partnership, Cooperation and Collaboration

The policy, while giving the objectives, failed to include partnership, cooperation and collaboration among stakeholders as a collective approach in the management and conservation of wetlands to a sustainable level.

4.2.10 Strategies and Plans on Pollution of Wetlands.

The policy also failed to note that there are concerns of dumping garbage on riverbanks especially in built-up areas like towns. Though pollution was identified

as one of the challenges, the policy failed to address it on the strategies and plans on this matter. Therefore, challenges associated with shared wetlands resources for instance trans-county border riparian zones will not be addressed sufficiently.

5.0 Summary comments and views submitted by members of the public

Mr Speaker Sir, as stated earlier, public participation forum was held at County level in which all the stakeholders and the general public were invited.

The following were comments and views submitted from the members of the public.

1. The guiding principles listed excluded the precautionary principle and this should be among the principles since it is a deterrent approach in curbing destruction of Wetland habitats.
2. There is need to strengthen WRUAs and CFAs so that they can partner and implement together with County department the various programs and projects on protection of riparian zones. It was noted that WRUAs play a very important role in the wetland sector, yet the County Government has never involved them on matters pertaining planning and implementation of projects and projects aimed at protecting such ecosystems.
3. It was proposed that the County Government particularly the arm responsible for implementing programs and projects, should lobby for political goodwill particularly on the removal of eucalyptus which has impacted negatively on the ecology of Wetlands.
4. Uphill Intervention measures should be devised and adopted so as to minimize destruction of Wetlands and Riparian Zones. For instance erosion of bare hill slopes due to deforestation and overgrazing leads to soil deposits in wetlands.
5. It was also proposed under item 8 (1) (c) on measures relating to riverbanks, that instead of construction or erecting subordinate structure or an appurtenance on a riverbank that is no longer in its natural state, it is better to rehabilitate them instead of coming up with such structures.
6. The key areas and intervention mentioned in various reports of non- state actors like Nile Basin Initiative should be referred to by the implementing agents.

6.0 Committee Recommendations

Mr Speaker Sir, as we approve Riparian Zone and Wetland Protection Policy sessional paper No.4 on Environment and Natural Resources, the following are Committee recommendations that should be adopted and incorporated as part of this Policy;

1. The use of the term ***“LITTORAL ZONE”*** should be corrected by deleting it entirely in the policy and substituted thereof with the term ***“WETLAND”***
2. The policy should consider factoring in all types of wetlands and riparian zones (rivers, streams, swamps, marshes, and ponds whether natural or artificial) in terms of conservation, planning, inventorying and monitoring.
3. Communities living adjacent to wetlands and even county-shared river basins should be involved in monitoring and evaluation of the policy .It should be understood that all stakeholders play an important role in monitoring of impacts emanating from projects and programs .In addition, a monitoring framework on implementation of the policy was not provided for and this should be considered.
4. Meanwhile as County prepares to put in place County wetland and Protection Policy, the department of Environment and Water should implement the National Government Policies on natural resources and environmental conservation which include soil, water and forestry as provided for in the Fourth Schedule function no.10 and legislation under Article 183 1(b) as part of the strategy in addressing the issues undermining conservation of Wetlands and Riparian Zones in our County .In addition this policy should wholly include the implementation of such National Government Policies on Environment, Forestry and Water as part of the strategies and plans.
5. Recreational and aesthetic use as one of the values of Wetlands should be incorporated and encouraged as a non-extractive use of wetlands resources for instance tourism activities like bird watching, fishing and landscape scenery in the case of swamps or marshy areas, and hydro-power generation

from waterfalls. This will in turn enable adjacent communities economically, socially and ecologically benefit while sustainably protecting Wetlands and the riparian zones in our county.

6. The department of Environment should provide evidence of Public participation and stakeholder involvement which is a mandatory requirement in policy formulation as per section 87 (a) and (b) of the County Government Act 2012 and as one of the National values and principles of governance enshrined under Article 10 of the Constitution. The policy mentioned public participation among its principles and further identified several stakeholders such as WRUA, CFAs, NEMA and small scale farmers yet the County didn't involve them in formulating the policy.
7. The policy should identify all the challenges currently facing wetlands and riparian zones and link them coherently from the summary section through the introduction part as well as in the policy instruments.
8. Partnership, Cooperation and Collaboration among stakeholders should be included among the objectives as a collective approach in the management and conservation of wetlands to a sustainable level. This will ensure challenges associated with shared wetlands resources for instance trans-county border riparian zones are addressed sufficiently.
9. Precautionary principle should be included as one of the guiding principles in the management and conservation of Wetlands and Riparian Zones.