SPECIAL ISSUE

Kenya Gazette Supplement No. 9 (Turkana County Bills No.4)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TURKANA COUNTY BILLS, 2019

NAIROBI, 2nd August, 2019

CONTENT

Bill for Introduction into the County Assembly of Turkana—

The Turkana County Funds Laws (Miscellaneous) (Amendment) Bill, 2019 1

NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI
THE TURKANA COUNTY FUNDS LAWS
(MISCELLANEOUS)(AMENDMENT) BILL, 2019

A Bill for

AN ACT of the County Assembly of Turkana County to
amend the Turkana County Biashara Fund Act,
2015, and the Turkana County Co-operative
Development Fund Act, 2016

ENACTED by the County Assembly of Turkana County as
follows—

PART I — PRELIMINARY

1. This Act may be cited as the Turkana County Funds
Laws (Miscellaneous Amendment) Act, 2019.

PART I — AMMENDMENTS OF THE TURKANA
COUNTY BIASHARA FUND ACT, 2015

2. The Turkana County Biashara Fund Act, 2015
(Principal Act) is amended in section 5 by—

(a) inserting the words “subject to Regulation 197 (1)
(i) of the Public Finance Management (County
Government) Regulations, 2015” immediately
after the word “seal” in Subsection (1).

(b) deleting the word “Board” in subsection 2 and
substituting with the word “Fund”.

(c) deleting the word “bill” in subsection 2(e) and
substituting it with the word “Act”.

3. The Principal Act is amended in section 8 by—

(a) deleting the word “Appointment” in the marginal
note and substituting with the word
“Establishment.”

(b) inserting the following subsection immediately
after subsection 3a—

“(aa) Chief officer responsible for matters
relating Trade and Enterprise
Development.”

(c) deleting subsection 2 (b) and substituting with the
following—

“(b) The Officer Administering the Fund
The Turkana County Funds Laws (Miscellaneous) (Amendment) Bill, 2019

who shall be an ex-official member and the secretary to the Board"

(d) deleting the words “who shall be the Secretary” in subsection (3) (e), and deleting the comma immediately before the words.

(e) deleting the initials “PWD” in subsection 3(f) and substituting with the words “persons with disability”.

(f) deleting the words “Turkana County” in subsection 5 and substituting with the word “Kenya”.

(g) deleting subsection 7 (a) and inserting the following—

“(a) if not an ex-officio member resigns in writing to the appointing authority through the secretary.”

(h) deleting the words “his/her” in subsection 7(b).

(i) deleting the words “he/she” in subsection 7 (c) and substituting with the word “the member”, and deleting the words “his/her” and substituting with the words “the member’s”.

(j) deleting the words “his/her” in subsection 7 (e).

3. The Principal Act is amended by—

deleting section 9 and substituting with the following new section—

9 (1) There shall be an Officer Administering the Fund who shall be appointed from the County Public Service and who has—

(a) at least a university degree in finance, accounting, engineering, economics, community development, law, or a related field from a recognized university;

(b) at least five years working experience in public finance or any relevant field.

(2) The Officer Administering the Fund Shall, be the Chief Executive Officer of the Fund and Secretary to the Board, and shall subject to the directions of the Board—
(a) supervise and control the day-to-day administration of the Fund;
(b) be responsible for the day-to-day management of the affairs and staff in the Fund;
(c) prepare Quarterly reports on the movement of funds as appropriate for submission to the County Assembly;
(d) keep or cause to be kept proper books of accounts and other books and records related to the Fund;
(e) prepare, sign and transmit to the Auditor-General accounts of the Funds in accordance with the Public Audit Act; and
(f) perform any other duties that may be assigned to him by the Board from time to time.

3. The Officer administering the Fund shall—
(a) be appointed by the Member of the County Executive Committee responsible for Finance;
(b) serve a term of four years but shall be eligible for reappointment for one further term.
(c) inserting the following new section immediately after section 9—

"9A. The Member of the County Executive Committee responsible for Trade and Enterprise Development shall, upon request by the Board facilitate secondment to the Fund of such officers from the County Public Service as may be appropriate and necessary for proper management of the Fund, and the Board may designate any of the officers seconded to be officers of the Fund in respect of one or more sub-counties as may be appropriate."

(b) deleting the words “to enable him/her, or assist any trader, to meet the costs of doing business” in subsection 2(g).

4. The Principal Act is amended in section 10 by—
(a) deleting the words “Biashara Fund Management” in the marginal note.
(b) deleting the word “County” in subsection 1.

(c) deleting the word “to” immediately after the word “authority” in subsection 2.

(d) deleting the words “in due regard to the prevailing national and county economic status”, and deleting the commas immediately before and after the said words in subsection 2(c).

(e) deleting the words “to enable him/her, or assist any trader, to meet the costs of doing business” in subsection 2(g).

5. The Principal Act is amended by deleting section 10AA.

6. The Principal Act is amended by deleting section 10BB.

7. The Principal Act is amended in section 11 by—

(a) deleting the letter “(a)” immediately before the words the Chairperson.

(b) deleting the words “from a particular meeting” immediately after the word Chairperson.

(c) deleting the words “free to adopt any procedure thereat suitable in the circumstances” in subsection 3(b) and substituting with the words “conducted in accordance with the procedure prescribed in the Regulations made under this Act.”

(d) deleting subsection 4 and substituting with the following—

“(4) All decisions of the Board shall be made by a simple majority of the members present and voting.”

(e) deleting the words “in case of equality of votes, have an original and a casting vote” and substitute with “in case of a tie have casting vote.”

8. The Principal Act is amended in section 12 by—

(a) deleting subsection 1(a) and substituting with the following—

“(a) maximum of three percent of monies allocated and appropriated for development for three years.”
(b) deleting subsection 1 (b) and substituting with the following—

"(b) Interest of three percent per annum on any loan granted by the Board."

(c) deleting subsection 2 and substituting with the following—

"(2) The total administration expenditure of the Funds approved by the Board shall be a maximum of three percent of the monies credited to the Fund."

9. The Principal Act is amended in section 13 by—

(a) deleting the words "and in the case of paragraphs (a) and (b) be liable to prosecution, and rejection of the application" in subsection 3 (c).

(b) deleting the words "Target Clients" in subsection 4 and substituting with the words "Requirements for Loan Application".

(c) deleting the word "shall" in subsection 4 (a).

(d) deleting subsection 4 (a) (i) and substituting with the following—

"(i) have established and licensed businesses".

(e) deleting subsection 4 (a) (ii) and substituting with the following—

"(ii) Keep books of account."

(f) deleting subsection 4 (a) (iii).

(g) deleting subsection 4 (b) (iii).

(h) deleting subsection 4 (c) and substituting with the following—

"(c) No further loan may be granted to an applicant who has not repaid a previous loan."

(i) deleting subsection 5 and substituting with the following—

"(5) Purposes for which loans may be granted include purchase of machinery, purchase of stock, purchase of produce, value addition and trade in services.

Without prejudice to the generality of the foregoing,
loan may be granted for purchase of motor vehicles, erection of buildings and purchase of land."

10. The Principal Act is amended in section 14 by—

(a) deleting the words "or by phone/sms" in subsection (2).

(b) deleting the word "him" in subsection (2) and substituting with the word "applicant".

(c) deleting the words "notified to him" in subsection (3), and deleting the word "application" and substituting with the words "loan offer".

(d) deleting subsection (4) and substituting with the following—

"(4) in case of default by the loanee in repaying the loan, the guarantor shall be liable to repay the loan and any interest accrued thereon."

(e) deleting subsection (5).

11. The Principal Act is amended in section 15 by deleting the section and substituting with the following—

"15. A loanee shall be required to repay the loan amount and interest accrued thereon in accordance with this Act and the Regulations thereunder."

PART III—AMENDMENT OF THE TURKANA COUNTY CO-OPERATIVE ENTERPRISE DEVELOPMENT FUND ACT, 2016


13. The Turkana County Co-operative Enterprise Development Fund Act, 2016 (Principal Act) is amended in the cover page by inserting the word "Co-operative" after the word "County."

14. The heading on page 1 of the Principal Act is amended by inserting the word "CO-OPERATIVE" in upper case immediately after the word "COUNTY".

15. Section 6 of the Principal Act is amended by inserting the letter "s" in lower case in the word "Object" and by capitalizing the letter "F" in the word "fund".
16. Section 18 of the Principal Act is amended by deleting the letter “s” in the word “Annuals”.

17. The Header on page 2 of the Principal Act is amended by inserting the word “CO-OPERATIVE”.

18. Arrangement of sections on page 2 of the Principal Act is amended by inserting the following new section immediately after section 28—

“28 A. Settlement of Disputes.”

19. The Title of the Act, “THE TURKANA COUNTY ENTERPRISE DEVELOPMENT FUND ACT, 2016”, on Page 3 of the Principal Act is amended by inserting the word “CO-OPERATIVE” immediately after the word “COUNTY”.

20. The Short title and Commencement on page 3 of the Principal Act is amended by capitalizing the letter “t” in the word “title”.

21. Section 1 of the Principal Act is amended by inserting a dash (-) in the word “Cooperative” and by inserting the word “Amendment” in parenthesis immediately after word “Fund” and by deleting “2015” and inserting “2019”.

22. Section 3 on page 3 of the Principal Act is amended in the definition of the word “Act” by inserting a dash “(-)” in the word “Cooperative” and by deleting the digits “2015” and substituting therefor the digits “2016”.

23. (1) The interpretation section on page 3 of the Principal Act is amended—

   (a) by inserting the words “Appeals Tribunal” and by defining it as—

   “Appeals Tribunal” means the Co-operative Enterprise Development Fund Tribunal established by the County Executive Committee Member to determine disputes as they may arise and dissolved at the end of each dispute.

   (b) in the definition of the term “Act” by inserting a dash “(-)” in the word “Cooperative”.

   (c) in the definition of the term “Board” by deleting the digit “9” and substituting therefor the digit
(d) in the definition of the term “County Executive Member” by inserting the word “being” after the word “time” and by capitalizing the letter “d” in the word “development” and by inserting the words “and Marketing” after the word “Development”.

(2) The Interpretation section on page 4 is amended by—

(a) inserting a dash “(-)” in the word “Cooperative” in the definition of the term “Loanee”.

(b) deleting the definite article “the” just before the word Co-operative and substituting with an indefinite article “a”, and subsequently capitalizing the letter “r” in the word “Regulations” in the definition of the term “Member”.

(c) capitalizing the letter “r” in the word “rules” and inserting the words “for the time being” after the word “Member” and inserting the words “matters relating to” immediately after the word “for” and by inserting a dash “(-)” in the word “Co-operative” and by capitalizing the letter “d” in the word “development” and inserting the words “and Marketing immediately” after the word “Development” to read—

(d) “Regulations” means Rules made by the County Executive Committee Member for the time being responsible for matters relating to Co-operative Development and Marketing for operationalization of the Act.

(e) inserting the word “Unit” immediately after the definition of “Regulations” and defining it as—

“Unit” means the Fund Administrator and the staff working under the Administrator;”

24. Section 4 of the Principal Act is amended by inserting the article “the” immediately after the word “as”, and by inserting the words “County Co-operative” immediately after the word “Turkana”. Amendmen of section 4 of the Principal Act
25. Section 6 on page 4 of the Principal Act is amended by—

(a) deleting the word “Objectives” in the title of the section and substituting with the word “Objects”.

(b) capitalizing the letter “o” in the word “object” and by inserting the letter “s” in the word “object”.

(c) inserting a dash “(•)” in the word “cooperative” in subsection (d).

(d) deleting the definite article “the” immediately after the word “and” in subsection “e”.

(e) inserting a dash “(•)” in the word “cooperative” in subsection (f).

(f) inserting in subsection (i) a dash (-) in the word “cooperative”, inserting the words “and Marketing” immediately after the word “Development”, inserting the words “for the time being” immediately after the word “Member”, and inserting the words “matters relating to” immediately after the word “for”.

26. Section 7 of the Principal Act is amended by inserting a dash “(•)” in the word cooperative, inserting the words “and Marketing” immediately after the word “Development”, inserting the words “for the time being” immediately after the word “Member”, inserting the words “matters relating to” immediately after the word “for”, and capitalizing the letter “1” in the word “fund”.

27. Section 8 of the Principal Act is amended in subsection (b) by writing in lower case the initial letter “A” in the word “Accountability”.

28. Section 9 of the Principal Act is amended by—

(a) deleting subsection (1) (a) and substituting with the following—

“(1)(a) Three percent of the monies allocated and appropriated for development for three years.”

(b) deleting subsection (1) (b) and substituting with the following—
“(1) (b) Interest on capital and loan granted by the Fund.”

(c) deleting subsection (1) (c) and substituting with the following—

“(1)(c) Income from investments of the Fund.”

(d) deleting subsection (1) (d) and substituting with the following—

“(1)(d) Such loans as may be received by the Fund.”

(e) deleting subsection (1) (e) and substituting with the following—

“(1)(e) Such gifts, donations and grants as may be received by the Fund.”

(f) deleting subsection (1) (f) and substituting with the following—

“(1)(f) Contributions by the members.”

(g) deleting subsection (1) (g) and substituting with the following—

“(1)(g) Such sums as may otherwise vest in or accrue to the Fund from any other source.

29. Section 10 of the Principal Act is amended by—

(a) deleting the word “it’s” wherever it appears in subsection (1) and substituting with the word “its”.

(b) deleting subsection (2) and substituting with the following—

(2) The administrative expenses referred to in subsection (1) shall not exceed percent of the annual expenditure.

30. Section 11 of the Principal Act is amended by—

(a) deleting the word “vest” in subsection (1) and substituting with the word “be vested”.

(b) deleting the digit “7” in subsection (2) and substituting with the digit 9 immediately after the word “than”.

(c) inserting in subsection (2) (a) the word “County”
immediately before the word "Executive" inserting the words "for the time being" immediately after the word "Member", deleting the words "Trade and Enterprise Development" and inserting the words "for matters relating to Co-operative Development and Marketing" immediately after the word "for".

(d) deleting subsection (2) (b) and substituting with the following—

"(b) Eight (8) persons not being public officers who shall be appointed by the County Executive Committee Member for the time being responsible for matters relating to Co-operative Development and Marketing drawn from the Co-operative Movement within the County while observing the interests of minorities, gender, people with disability and youth.

(e) deleting in subsection (2) (c) the letter "s" in the word "Co-operatives", deleting the words " & Enterprise" and inserting the words "and Marketing" immediately after the word "Development".

(f) deleting subsection (2) (d).

(g) deleting subsection (2) (e).

(h) deleting in subsection (3) (i) the words "Trade and Enterprise", inserting the words "of Co-operative" immediately after the word "Development", and by inserting the words "and Marketing" immediately after the word "Co-operative".

(i) inserting the word "Officer" immediately after the word "Executive" in subsection (3) (ii).

(j) deleting the words "of the day to day activities" in subsection (3) (iii).

(k) deleting in subsection (4) the words "the one taking minutes", inserting the words "responsible for the minutes of the Board", deleting the words "the other" and inserting the word "all" immediately before the word "staff".

(l) deleting subsection (6) (i) and substituting with the
following—

“6 (i) The persons appointed under section 11 subsection (2) (a) and (b) above shall hold office for a term of three years and shall be eligible for reappointment for one more term of three years; and”

(m) deleting subsection (6) (ii) and substituting with the following—

“(ii) Persons nominated under section 11 (2) (b) above, shall be subject to vetting and approval by the County Assembly.

(n) deleting subsection (7) (b) and substituting with the following—

“(b) holds at least an “O” Level completion certificate with respect to subsection 2 (b).”

(o) deleting subsection (9) and substituting with the following—

“(9) A member of the Board appointed under section 2 (a) and (b) ceases to be a member.”

31. Section 12 of the Principal Act is amended by—

(a) inserting in subsection (i) a dash (-) in the word “Co-operative”, inserting the words “for the time being” immediately after the word “Member”, inserting the words “matters relating to” immediately after the word “for” and by inserting the words “and Marketing” immediately after the word “Development”.

(b) capitalizing the letter ‘f’ in the word “fund” in subsection (i) (iv).

32. Section 14 of the Principle Act is amended by—

a) capitalizing the letter ‘p’ in the word “powers” in the title to the section.

b) inserting a dash “(-)” in the word “Cooperative”, inserting the words “for the time being” immediately after the word “Member”, inserting the words “matters relating to” immediately after the word “for” and inserting the words “and Marketing” immediately after the word “Development”.

33. Section 19 of the Principal Act is amended by inserting in subsection (2) (d) the word "County" immediately before the word "Executive", inserting the words "for the time being responsible" immediately after the word "Member" and by inserting the words "matters relating to" immediately after the word "for".

34. Section 20 of the Principal Act is amended by—

a) inserting in subsection (1) the words "for the time being responsible for matters relating to Finance and Economic Planning" immediately after the word "Member", and deleting the word "of" immediately after the word concerning.

b) inserting the words "for the time being responsible for matters relating to Finance and Economic Planning" immediately after the word "Member" in subsection (2).

35. Section 23 of the Principal Act is amended by—

(a) inserting a dash "(-)" in the word "cooperative" in subsection (3) (b).

(b) inserting a dash (-) in the word "cooperative" in subsection (4).

(c) inserting in subsection (11) the word "Committee" immediately after the word "Executive" and inserting the words "for the time being responsible for matters relating to Co-operative Development and Marketing".

(d) inserting the article "an" immediately after the word "committed" in subsection (11) (d).

(e) inserting in subsection 12 a comma (,) immediately after the word "may" and immediately after the word "funds", and capitalizing the letter "r" in the word "regulations".

36. Section 24 of the Principal Act is amended by inserting in subsection c the words "for the time being" immediately after the word "Member", inserting the words "matters relating to" immediately after the word "Co-operative", inserting a dash "(-)" in the word "Co-operative", and inserting the words "and Marketing" immediately after the word "Development".
37. Section 25 of the Principal Act is amended by correcting the spelling of the word deleting the word "wilfully" immediately after the word "who" and substituting therefor the word "willfully".

38. Section 28 of the Principal Act is amended by inserting the following new section—

"SETTLEMENT OF DISPUTES

28 A (1) Where a dispute arises as a result of the implementation of this Act, it shall be referred to the County Executive Committee Member for the time being responsible for matters relating to Co-operative Development and Marketing within one month from the date the dispute arose.

(2) The County Executive Committee Member for the time being responsible for matters relating to Co-operative Development and Marketing upon receipt of a complaint may inquire into the matter and if satisfied that a dispute exists, the County Executive Committee Member shall constitute a suitable Appeals Tribunal consisting of three members to settle the matter as follows—

(a) the chairman of the Appeals Tribunal referred to in subsection (2) shall be the County legal officer.

(b) the secretary of the Appeals Tribunal shall be the officer responsible for Co-operative Development.

(c) the other member shall be an officer responsible for administration.

(3) The Appeals Tribunal may expeditiously hear the matter and give an award which upon registration at the High Court, shall be enforceable as if it is an award of the Court.

(4) Any person not satisfied with the award of the Tribunal can appeal to the High Court within thirty days from the day of the award.

(5) The members of the Appeals Tribunal shall be paid such allowances as the County Executive Committee Member for the time being responsible for matters relating to Co-operative Development and Marketing in consultation with the Board shall determine.
(6) The Rules of Evidence shall not apply to the Appeals Tribunal.

(7) The Appeals Tribunal shall upon an application made to it in writing by any party on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or decision thereon. Every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned.

(8) The proceedings of the Appeals Tribunal shall be open to the public save where the Tribunal for a good cause may direct.

(9) Except as expressly provided for in this Act or any regulation made thereunder, the Tribunal shall regulate its own procedure.

(10) The Tribunal may—

(a) make an order for purposes of securing attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient.

(b) administer and take evidence on oath.

(c) on its own motion summon and hear any person as witness.

(11) Any person who—

(a) fails to attend the Tribunal after having been required to do so under subsection (10)(a);

(b) refuses to take an oath or affirmation before the Tribunal or to answer satisfactorily any question lawfully put to him or in any proceedings before the Tribunal or to produce any document when required by the Tribunal to do so;

(c) willfully insults any member of officer of the Tribunal;

(d) fails or neglects to comply with a decision, order, direction or notice of the Tribunal, commits an offence.

(12) Where the Tribunal enters judgment in terms of the award together with the costs, it shall issue a decree,
inclusive of penalties for non-compliance, which shall be enforceable as a decree of the Court.

28B (1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such order to the High court.

(2) No Decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced, until the appeal has been determined.

(3) Upon the hearing of an appeal, the court may—

(a) confirm, set aside or vary the decision, order or direction in question.

(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may deemed necessary.

(c) make such other order as it may deem just, including, an order as to costs of the Appeal at the Tribunal.

(3) The decision of the High Court on any appeal under this section shall be final.

(4) The members of the Tribunal shall be paid such allowances as the County Executive Committee Member for the time being responsible for matters relating to Co-operative Development and Marketing in consultation with the Board shall determine from time to time.

(5) The expenses of the Tribunal for the conduct of its business shall be borne by the Fund.

39. Section 29 of the Principal Act is amended by inserting the words “for the time being” immediately after the word “Member”, inserting the words “matters relating to” immediately after the word “for”, and inserting the words “and Marketing” immediately after the word “Development”.

Amendment of Section 29 of the Principal Act
MEMORANDUM OF OBJECTS AND REASONS

This bill seeks to amend the Turkana County Biashara Fund Act, 2015 and the Turkana County Cooperative Development Fund Act, 2016 so as to make them compliant to the Public Finance Management Act, 2012.

PART I relates to the preliminaries including the title of the bill, which shall be The Turkana County Funds Laws (Miscellaneous Amendment) Bill, 2019.

PART II of the bill provides amendments to the Turkana County Biashara Fund Act, 2015.

Clause 4 provides for amendment of Section 9 of the Turkana County Biashara Fund Act, 2015 by deletion of the whole of Section 9 and substitution with a new section 9 to provide for the appointment of an officer to administer the Fund, and the functions of the officer.

Clause 4 further provides for the introduction of a new Section 9A into the Turkana County Biashara Fund Act, 2015 to provide for the powers of the County Executive Committee Member for Finance to appoint the officer administering the fund in compliance with Section 116 of the Public Finance Management Act.

Clause 9 provides for the amendment of Section 12 of the Turkana County Biashara Fund Act, 2015 to provide for definite sources of funds that credited to the Turkana County Biashara Fund account, and to expressly provide for administration expenditure to be three percent per annum of the monies credited into the Fund.

PART III of the Bill seeks to amend the Turkana County Cooperative Development Fund Act, 2016.

Clause 31 seeks to reduce the administrative costs of the Fund from five percent to three percent in order to comply with the provisions of the Public Finance Management Act, 2012; to provide the procedure for the appointment of the Board, and to provide for the term of office for Board Members.

Clause 39 seeks to introduce procedures for settlement of disputes.

This Bill if enacted shall occasion additional County expenditures. The expenditure will be appropriated by the County Assembly.

NICHOLAS EWOI,
Chairperson, Committee on Finance, Planning, Trade and ICT.