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MIGORI COUNTY ACTS, 2020

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**THE MIGORI COUNTY SAND HARVESTING AND QUARRYING
ACT, 2020**

No. 6 of 2020

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**THE MIGORI COUNTY SAND HARVESTING AND QUARRYING
ACT, 2020**

AN ACT of the County Assembly of Migori to provide for the registration, licensing, control and coordination of sand harvesting and quarrying activities, to ensure sustainable exploitation and utilization of sand and quarry in the county and for other connected purposes

ENACTED by the County Assembly of Migori as follows—

PART I—PRELIMINARY**Short title**

1. This Act may be cited as the Migori County Sand Harvesting and quarrying Act, 2020.

Interpretation

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

“County Executive Committee Member” means a member of the County Executive Committee for the time being in charge of environment and natural resources;

“Chief Officer” means the chief officer responsible for environment and natural resources;

“Community projects” means work undertaken by the county for the benefit of the community at the Ward level

“County Public Service Board” means the Migori County Public Service Board;

“designated site” an area that has been gazetted by the committee under this Act as a sand harvesting or quarrying site;

“Committee” means the Sand Harvesting and Quarrying Management Committee established under section 5 of this Act;

“harvesting” means the removal, extraction, harvesting or scooping of sand or quarry from sites;

“quarrying” includes stone, rock, construction aggregate, murrum, riprap, gravel, lime, sand, slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium and potassium compounds and surface stone;

“sand dealer” means any person(s) above 18years authorized to harvest, remove, extract, scoop, transport or sell sand or quarry in accordance with the provisions of this Act;

“license” means a permit to harvest sand or quarry issued by the Committee under this Act; and

“license holder” means a person to whom a permit has been granted under this Act.

Objects and Purpose

3. The objects and purpose of this Act is to provide for—

- (a) require the registration of sand or quarry operators;
- (b) designate sand harvesting or quarrying areas, harvesting hours and transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting or quarrying;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting or quarrying;
- (e) provide for benefit-sharing and ploughing back to the community part of the revenue collected from sand harvesting or quarrying.

Guiding Principles

4. The Committee shall in the discharge of its functions under this Act, be guided by the national values and principles set out in Article 10 and 232 of the Constitution.

PART II—ADMINISTRATION

County sand harvesting and quarrying management Committee

5. (1) There is established a committee to be known as the Migori county sand harvesting and quarrying management committee.

(2) The committee shall consist of the following members appointed by the executive committee member—

- (a) the Chief Officer responsible for environment and natural resources or a representative nominated in writing, who shall be the chairperson;
- (b) Chief Officer Finance or a representative nominated in writing;
- (c) Director, Lands or a representative nominated in writing;
- (d) a representative of the youth, persons with disabilities and women; and
- (e) two persons nominated by the registered association involved in sand harvesting and quarrying activities

- (f) the Director responsible for natural resources who shall be the Secretary and ex-officio member of the committee;
- (g) Head of Enforcement, Migori County or a representative nominated in writing;
- (h) a representative from NEMA at the County level;
- (i) Sub-County Administrators.

(3) The persons appointed under paragraph 2(d) and (e) shall serve for a term of three years renewable once.

(4) The quorum for the Committee meetings shall be nine members present in the meeting.

(5) The Chairperson shall convene and preside over all Committee meetings, in his or her absence; a member appointed by the members for that purpose shall preside.

Functions of the Committee

6. The Committee shall be responsible for the—

- (a) registration and licensing of sand and quarry dealers in the county;
- (b) maintenance of a register of sand and quarry dealers in the county;
- (c) offering advice to the executive committee member on the structures and operations of sand harvesting and quarrying activities;
- (d) ensuring of a sustainable exploitation and utilization of sand resource, quarrying and other excavated material; and
- (e) perform any other function as may from time to time be assigned by the executive committee member.

Staff of the Committee

7. The Chief Officer may from time to time request the County Public Service Board to second such number of staff to assist the Committee perform its functions under this Act.

Allowances

8. The Committee and staff may be paid such allowances as the executive committee member in consultation with the executive member for Finance and the Salary and Remuneration Commission determine.

PART III— SAND HARVESTING REQUIREMENTS**Sand harvesting and quarrying sites**

9. (1) The Committee may from time to time designate and document sand harvesting and quarrying site.

(2) Every sand harvesting and quarrying site shall be clearly demarcated, documented and gazetted by the Committee.

(3) A person shall not harvest sand or quarry from any area not designated as a sand harvesting site by Committee.

(4) Each designated sand harvesting or quarrying site shall have an environmental management plan to guide in the rehabilitation of the sites.

On-Farm and Lakeshore Harvesting

10. On-farm and lakeshore sand harvesting and quarrying shall be carried out subject to—

(a) sand harvesting or scooping shall not exceed six feet in depth;

(b) a designated sand harvesting or quarrying site shall be at least seventy meters from the nearest riverbanks or dykes for on-farm sand harvesting;

(c) sand or quarrying harvesting shall not be undertaken concurrently with rehabilitation of the sites;

(d) sand harvesting on-farm shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken unless approved extraction technology is applied to safeguard human safety.

Riverbed Harvesting

11. (1) Sand harvesting from any riverbed shall be undertaken in a manner that ensures adequate reserve of the sand is retained to allow water retention.

(2) Sand harvesting shall not be undertaken on any riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one hundred meters of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

Transportation

12. (1) A person shall —

(a) harvest, extract or scoop sand or quarry between the hours of 7am to 6pm; and

(b) transport sand or quarry between the hours of 7am to 6pm.

(2) The transport of sand or quarry within the county shall only through designated roads for such transportation.

(3) The Committee may upon according a person an opportunity to be heard, impose a fine or cancel the license of a person who contravenes the provisions of sub-section (1).

Sale of sand or quarry

13. (1) The Committee shall provide minimum pricing guidelines for sale of sand or quarry within the county, taking into consideration the current market forces.

(2) Any person who sells sand or quarry shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

PART IV—LICENSING**Licensing of Sand or quarry harvesters**

14. (1) No person shall use, cause or permit to remove sand or quarry from its source for the purposes of sale unless valid license is issued under this Act for such trade or business.

(2) A person who contravenes this section commits an offence.

Licensing of sand or quarry dealers

15. (1) No person or agent shall transport sand or quarry from any part of the County, unless a valid license for such business has been issued by the County Government. The license shall be deemed to be “annually” unless otherwise authorized by the Executive Committee member or any other authorized officer.

(2) No person shall carry on or engage in any trade occupation or business of sand harvesting or quarrying unless the person is licensed to carry on such trade, occupation or business by the County Government.

Licensing Officer

16. (1) The Committee shall be the licensing officer responsible for the issuing of licenses under this Act.

(2) The Executive Committee member may, in writing, delegate any or all of his/her powers under this Act to any one or more authorized officers.

Application for License

17. (1) A person who wishes to transport or harvest sand or quarry shall make an application to the Committee in the prescribed manner accompanied by such relevant supporting documents and prescribed fee.

(2) A license issued under this Act, shall contain such terms and conditions as may be determined by the Committee.

(3) Despite section (2), the license issued under this Act, may—

(a) contain an obligation to rehabilitate the site and surrounding areas upon closure; and

(b) specify the category or categories of business activity specified in the license.

License

18. (1) No person shall use, cause or permit to remove sand or quarry from any designated site without a valid license issued by the Committee under this Act.

(2) A person who removes any sand or quarry from a designated site without a permit issued by the Committee commits an offense.

(3) A person who contravenes the provisions of this section may upon being heard by the Committee, be fined such a penalty that is commensurate to the offense.

License Fees

19. There shall be payable to the government for every application for a license, the appropriate prescribed fees.

Transfer of license

20. (1) A license issued under this Act, is non-transferable, without an application in a prescribed manner to transfer the license.

(2) An application to transfer a license under sub section (1), shall be made to the committee accompanied by such prescribed fee and relevant documents.

(3) A person who contravenes the provisions of sub section (1) commits an offense.

Alteration of License

21. (1) Subject to this Act, a license may be altered on written application to the committee.

(2) The licensee shall inform the committee in writing of any changes within thirty days.

(3) If a licensee fails to inform the committee under subsection (2), the committee may impose a penalty.

Cancelation of License

22. The committee may cancel a license if—

- (a) the application form contains any material misrepresentation or false statement;
- (b) any information given in the application for the business was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;
- (c) the licensee carries on a prohibited activity;
- (d) a condition imposed is breached; or
- (e) the licensee is convicted of an offence under this Act

Ceaseure of sand harvesting or quarrying

23. The Committee may order a licensee to cease any sand harvesting or quarrying in case of breach of any of the conditions imposed on the license or where it appears to the Committee that the harvesting or quarrying is in a condition dangerous to human life or detrimental to public health or safety.

PART V—MISCELLANEOUS PROVISIONS**Protection from liability**

24. A person shall not be held personally liable for any action, claim or demand done in good faith while executing the official functions, powers or duties under this Act.

Sources of funds

25. (1) The funds for the Committee shall consist of—

- (a) appropriations from the county Assembly;
- (b) fees chargeable on registration and licensing; and
- (c) grants or donations to the Committee.

(2) The Committee shall set aside at least twenty percent (20%) of the total revenue collected for community projects.

Road barriers

26. (1) The government shall mount barriers on access roads leading to sand harvesting or quarrying sites in accordance with the Traffic Act, Cap 403 Laws of Kenya.

(2) The barriers shall be manned by authorized officers and revenue collectors.

(3) A trader transporting sand or quarry shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

(4) A person who contravenes this section commits an offence and the vehicle used to commit the offence shall be impounded at a police station.

Offences

27. A person who—

- (a) carries out sand harvesting or quarrying or other quarrying activities without a valid license;
- (b) carries out sand harvesting or quarrying outside designated sites;
- (c) loads sand or quarry to a vehicle for transportation contrary to prescribed requirements, commits an offense.

General Penalty

28. A person who contravenes any provisions of this Act, for which no penalty is provided shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

Regulations

29. The Executive Committee member shall make regulations generally for the better carrying out of the provisions of this Act within 60 days upon publication.