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THE TANA RIVER COUNTY SAND HARVESTING ACT, 2017

AN ACT of the County Assembly of Tana River to regulate sand harvesting and related activities in the county and to ensure sustainable exploitation and utilisation of land and to provide for equitable sharing of the accruing benefits and for connected purposes

ENACTED by the County Assembly of Tana River, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Tana River County Sand Harvesting Act, 2017 and shall come into operation upon publication in the *Gazette*.

Short title and commencement.

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

Interpretation.

“authorised officer” includes any person acting under the authority of the licencing officer;

“Committee” means the Sand Harvesting Management Committee established under Section 4 of this Act;

“dealer” means the person who buys and sells common minerals;

“designated area” means any area designated as a sand harvesting area pursuant to the provisions of this Act;

“County Executive Committee member” means the County Executive Committee member in charge of natural resources;

“County Government” means the County Government of Tana River

“harvester” means a person or a person’s agent who gathers or collects sand from any designated area for the purpose of sale or one’s own use;

“licence” means a permit issued by the County Government to engage in sand dealing;

“licence holder” means a person to whom a permit has been granted under this Act;

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“sand” means sedimentary material finer than gravel and coarser than silt with grains between 0.06mm and 2 mm in diameter and includes stones, coral, earth and turf but does not include silica sand;

“sand harvesting” means the removal, extraction, harvesting or scooping of sand from a designated areas;

“quarry” means a place from which building demission stone, rock, construction aggregate, murrum, riprap, gravel, lime, sand, slate, shingle, brine, diatomite, kaolin, ornamental stone, sodium and potassium compounds and surface stone is excavated from the ground.

3. The object and purpose of this Act is to provide for a legislative framework for regulating sand harvesting and in particular to—

Objects and purpose of the Act.

- (a) require the registration of sand dealers;
- (b) designate sand harvesting areas, sand harvesting hours and sand transportation methods;
- (c) provide for the institutional framework for management and regulation of sand harvesting;
- (d) provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;
- (e) provide for benefit-sharing and investing back to the community part of the revenue collected from sand harvesting; and
- (f) enable communities to participate in the management of sand harvesting.

PART II — ADMINISTRATION

4. (1) There is established a County Sand Harvesting and Management Committee consisting of—

County Sand Harvesting and Management Committee.

- (a) the chief officer responsible for matters relating to natural resources who shall be the chairperson;
- (b) the chief officer responsible for matters relating to finance;

- (c) a representative of sand dealers appointed by the County Executive Committee member;
- (d) a representative of special interest groups appointed by the County Executive Committee member; and
- (e) two representatives of the sand harvesting associations being one man and one woman, appointed by the County Executive Committee member.

(2) The Committee shall be under the supervision and direction of the County Executive Committee member responsible for matters relating to natural resources.

(3) In the absence of the chief officer responsible for matters relating to natural resources, the committee shall elect a chairperson from its quorum.

(4) The quorum of the Committee for purposes of the meeting shall be four members.

(5) The members of the Committee shall elect from within their composition the Secretary.

5. (1) The Committee shall—

Functions of the Committee.

- (a) maintain a register of all sand dealers;
- (b) advise County Executive Committee member on the structure and operations of sand harvesting and related activities;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;
- (d) ensure sustainable exploitation and utilisation of sand resource and other excavated material;
- (e) collaborate with other environmental agencies in management of environment;
- (f) formulate environmental conservancy programmes in relation to sand harvesting;
- (g) recommend to the County Executive Committee member designated sand harvesting areas for gazettelement;

- (h) recommend designated roads for transportation of sand and other excavated material in accordance with this Act; and
- (i) perform any other functions assigned by the County Executive Committee member.

(2) In the performance of its functions under this Act, the Committee shall, subject to any other law, allow the participation of the people who may be affected by its decisions in making decisions.

6. (1) The Committee shall approve the establishment of such number of Sand Harvesting Associations as is necessary which shall be registered pursuant to the law relating to registration of community based organisations.

Sand harvesting associations.

(2) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors—

- (a) drainage network of the river and the designated sand harvesting sites;
- (b) the need to ensure full participation of the community including all interest groups; and
- (c) viability and sustainability of the association.

(3) An association shall be composed of the following members elected by interested community—

- (a) three representatives of the riparian landowners;
- (b) two women representatives who are not riparian land owners;
- (c) two youth representatives who are not riparian land owners; and
- (d) two elders who are not riparian land owners.

(4) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—

- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Co-ordination Act;

- (b) ensure that annual Environmental Audits are conducted for all sand harvesting sites including closed sites;
- (c) ensure sustainable management of sand harvesting along riverbeds;
- (d) undertake the rehabilitation of the closed sites; and
- (e) perform any other function assigned to it under this Act.

7. The Committee and the associations shall be guided by the following considerations in discharging their mandate—

Considerations by the committee and associations.

- (a) sand dams and gabions shall be constructed in designated sand harvesting sites and that there shall be at least two hundred metres between one gabion and another;
- (b) all vehicles transporting sand shall use designated access roads only to sand harvesting sites;
- (c) upon closure of a designated sand harvesting site, the site shall be rehabilitated appropriately by the relevant association, County Government and approved dealer under the supervision of the committee;
- (d) sand harvesting or scooping shall be restricted to the riverbeds and no such harvesting or scooping shall be allowed on riverbanks;
- (e) only persons who have attained the age of eighteen years and residing within the local community shall be employed as sand loaders;
- (f) licenced sand dealers shall pay a negotiated and agreed wage to sand loaders subject to the prescribed minimum wage fixed by the County Executive Committee member; and
- (g) sand loaders may organise themselves into organised groups with a chairperson and shall be under the direction and control of the Association.

PART III — SAND HARVESTING REQUIREMENTS

8. (1) The Committee shall, on the advice of the Associations, designate and document sand harvesting sites from time to time.

Sand harvesting sites.

(2) Every sand harvesting area shall be clearly demarcated and documented by the committee in consultation with the relevant association.

(3) A person shall not harvest sand from any area not designated as a sand harvesting site by the committee.

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

9. On-farm and lakeshore sand harvesting shall be carried out subject to fulfilling the following conditions—

On-farm and lakeshore sand harvesting.

- (a) sand harvesting or scooping of sand shall not exceed six feet in depth;
- (b) a sand harvesting site shall be at least fifty metres from the nearest riverbanks or dykes for on-farm sand harvesting;
- (c) sand harvesting or scooping of sand shall not be undertaken concurrently with rehabilitation of the sites;
- (d) on-farm sand harvesting shall only be undertaken by open-cast harvesting method and no underground tunneling or extraction of sand shall be undertaken, unless some approved extraction technology is applied to safeguard human safety.

10. (1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand to be retained to ensure water retention.

Riverbed harvesting.

(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 metres of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

11. (1) A person shall not—

- (a) harvest, extract or scoop sand between the hours of 6 p.m. and 6 a.m.; or
- (b) transport sand between the hours of 8 p.m. and 6 a.m..

Hours of sand
harvesting and
transportation

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

(3) A person who contravenes this section commits an offence is liable upon conviction to a fine not exceeding five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

12. (1) The committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces of the day.

Sale of sand.

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

PART IV — LICENCING PROVISIONS

13. (1) No person shall use, cause or permit to remove sand from any river, farm, ranch or other land for the purposes of sale unless such a person is issued with a valid licence under this Act.

Licencing of sand
harvesters.

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

14. (1) No person or agent shall transport sand from any part of the county, unless a valid licence for such business has been issued by the County Government the licence shall be deemed to be 'monthly' unless otherwise authorised by the County Executive Committee member.

Licencing of sand
dealers.

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

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

15. (1) The County Executive Committee member shall be the licencing officer responsible for the issuing of licences under this Act.

Licencing officer.

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

(3) Every licence shall contain conditions for ensuring sustainable sand harvesting including—

- (a) the requirement for sand harvesters to furnish the licencing officer with an environmental impact assessment relating to the site for which a licence is sought;
- (b) the requirement for rehabilitation of sites upon closure; and
- (c) any other condition as may be prescribed by the County Executive Committee member under this Act.

16. An application for licence under this Act shall be in the prescribed form provided that the County Executive Committee member may, in any particular case require an applicant to submit or supply such further information as the County Executive Committee member may deem fit.

Application for licence.

17. (1) The licencing officer shall consider each application made under Section 16 and determine whether to issue a licence to the applicant or not within thirty days.

Discretion of the licencing officer.

(2) If the licencing officer refuses to issue a licence, they shall at the time of giving notification of the refusal, inform the applicant in writing of the reasons of the refusal and refer to the relevant provision in this Act on which the refusal is based.

18. A licence shall be issued—

Licence conditions.

- (a) subject to an obligation to rehabilitate the site and surrounding areas upon closure;
- (b) for the category or categories of business activity specified in the licence; and
- (c) subject to the regulations and any other conditions provided in the licence.

19. (1) An applicant for a licence shall pay such application fee as may be prescribed by the County Executive Committee member under this Act.

Licence fees

(2) The County Executive Committee member may, waive whole or part of any prescribed fee under subsection (1).

20. (1) A licence shall be in such form as the County Executive Committee member may from time to time determine and shall be signed by the County Executive Committee member or a person authorised in that behalf.

Form of licence

(2) The County Executive Committee member may issue different classes of licences for different purposes.

21. (1) A licence issued under this Act shall not be transferred from the holder thereof to another person without the consent of the County Executive Committee member or a person authorised in that behalf.

Transfer of licence.

(2) An application for the transfer of any licence shall be in such form as may be prescribed by the County Executive Committee member and shall be accompanied by the licence to which it relates:

Provided that the County Executive Committee member may in any case require an applicant for the transfer of a licence to submit or supply such further information as the County Executive Committee member shall deem necessary.

(3) For every transfer there shall be payable to the County Government such fee as may be prescribed by the County Executive Committee member.

(4) A memorandum of the transfer of any licence shall be endorsed on the licence by the County Executive Committee member.

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

22. (1) Subject to this Act, the licencing officer may alter a licence from one form of dealership to another on written application by the licensee.

Alteration of a licence.

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

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

23. The licencing officer may cancel a licence if —

Cancellation of licence.

- (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.

24. (1) Any person aggrieved by the decision of the licencing officer may apply for appeal of the decision before a court.

Appeals.

(2) All applications for appeal shall be filed within fourteen days of the decision.

(3) Before applying for an appeal under this section, an aggrieved person has the right to petition the County Executive Committee member.

25. (1) The licencing officer, any police officer or an authorised officer who has reason to believe that a person is required to hold a business licence may demand the person to produce a licence.

Production of licence.

(2) A person who contravenes subsection (1) commits an offence.

26. The provisions of this Act applicable to sand harvesting shall apply with necessary modifications to any form of quarrying.

Quarrying.

PART V — GENERAL PROVISIONS

27. The Committee shall —

Collection of revenue by the County Government

- (a) facilitate the collection of revenue from sand dealers in designated sand harvesting sites or along access roads;

- (b) ensure that at least ten per cent of the revenue collected is allocated to the Committee and the Associations to facilitate their operations;
- (c) ensure that part of the revenue collected is allocated for community projects;
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within sand harvesting area; and
- (e) collect revenue from sand dealers along riverbeds and other designated sand harvesting sites.

28. (1) For purposes of Section 27, the County Government may mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap 403 Laws of Kenya.

Road barriers.

(2) The barriers shall be supervised by authorised officers and revenue collectors.

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

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

29. (1) The licencing officer, authorised officer or police officer may order a licence holder to stop any sand harvesting or quarrying activities and close the site if it appears that the site is in a condition dangerous to human life or detrimental to public health or safety.

Power to order closure of site.

(2) An order issued under subsection (1) shall remain in force until the licencing officer is satisfied that the conditions have been satisfactorily improved.

(3) Any person who contravenes an order issued under this section commits an offence.

30. (1) The licencing officer, authorised officer or a police officer may at any reasonable time—

Powers of entry.

- (a) enter upon premise, farm, ranch or vehicle and carry out any inspection for the purpose of enforcement of this Act; or

- (b) undertake any work that may be necessary to remedy any breach or failure to comply with the provisions of this Act or any of the conditions under which a licence is issued; and
- (c) recover the expenses incurred in carrying out the work referred to in paragraph (b).

(2) A person obstructing an officer referred to in subsection (1) from undertaking their functions commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

(3) A police officer or authorised officer may detain any vehicle and confiscate any goods where it is shown that those goods have been obtained in contravention of this Act.

(4) A detained or impounded vehicle referred to in subsection (3) shall not be released to its owner until authorised by a court or until the owner has paid the prescribed penalty charges.

(5) Any authorised officer or a police officer shall, before undertaking any inspection activities in this Act, produce to the relevant person proper identification documents.

31. No matter or thing done by the licencing officer or officer, employee or agent shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the office, render the officer, employee or agent personally liable for any action, claim or demand whatsoever.

Protection from
personal liability.

32. (1) If any dispute is referred to the committee, the chairperson of the committee shall convene a meeting between the complainant and the person complained against to deliberate on the grievances and make appropriate resolution.

Dispute resolution

(2) Any person, who is aggrieved by the resolution of committee under subsection (1), may within fourteen days from the date of the resolution appeal to the District Environment Committee established under Cap. 387 of the Laws of Kenya.

(3) Any person who is aggrieved by the decision of District Environment Committee may further appeal to the National Environment Tribunal (NET).

33. (1) The committee shall monitor the rehabilitation of all designated sand harvesting sites and their adjacent environment including access roads, riverbanks, and catchment areas among others to ensure environmental sustainability.

Rehabilitation of closed sites

(2) The committee shall require every licensee to prepare and submit to it a rehabilitation plan for every designated sand harvesting area.

34. A person who—

Offences.

- (a) carries out sand harvesting or otherwise deals with sand without a valid licence;
- (b) carries out sand harvesting outside designated sites;
- (c) overloads sand to a vehicle for transportation contrary to prescribed requirements;
- (d) collects fees or charges and is not authorised to do so under any law;
- (e) transports sand outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the County Government, authorised officer or police officer;
- (g) obstructs any authorised person from conducting their functions under this Act; or
- (h) establishes a separate entity in a designated site without lawful authority under this Act;

commits an offence and shall, on conviction is liable to a fine not exceeding one million shillings or to an imprisonment term not exceeding five or to both.

35. 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 five hundred thousand shillings or to an imprisonment term not exceeding three years or to both.

General penalty.

36. (1) The County Executive Committee member shall, within three months after the coming into force of this Act, make regulations generally for the better carrying out the provisions of this Act.

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

- (a) guidelines for sand harvesting and other quarrying activities;
- (b) criteria for determining the number of Associations approved under this Act;
- (c) variation of the terms and conditions of licences issued under this Act;
- (d) requirements for different types of sand harvesting or other forms of quarrying;
- (e) forms required under this Act;
- (f) rehabilitation of closed sites;
- (g) other forms of quarrying generally;
- (h) resolution of disputes; and
- (i) such other matters as may be necessary for full implementation of this Act.

(3) Without prejudice to subsection (1), the nature and scope of the regulations shall—

- (a) be for the objects and purpose and set out under Section 3 of this Act;
- (b) be limited to the matters set out in this Act; and
- (c) comply with the drafting standards set out under this Act.