

THE QUARRYING CONTROL BILL, 2021

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THE KILIF COUNTY QUARRYING CONTROL BILL, 2021

A Bill for

AN ACT of the County Assembly of Kilifi: to regulate quarrying activities; to ensure the safe and sustainable exploitation and use of land, quarry resources and materials and the environment; to establish a system of benefit sharing in the exploitation of quarry resources between the resource exploiter, the county government and the local community; and for connected purposes.

ENACTED by the County Assembly of Kilifi, as follows —

PART I - PRELIMINARY

Short title. **1.** This Act may be cited as the Kilifi County Quarrying Control Act, 2021.

Interpretation. **2.** In this Act, —

"authorized officer" includes an environmental officer, county enforcement officers, any person acting under the authority of the Licensing Officer or any person acting under the provisions of this Act;

"benefit" means any gains, proceeds or profits from the exploitation of quarry resources;

"benefit sharing" means the sharing of any benefits arising from the exploitation of quarry resources in a fair and equitable manner;

"benefit sharing agreement" means an agreement on the manner in which revenue accruing from natural resources shall be shared out between an affected entity and a county;

"Board" means the Quarry Control Board established under section 5;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;

“dealer” means a person who buys, sells or trades in quarry resources;

“executive committee member” means the executive committee member responsible for matters relating to environment;

“exploitation” means the extraction or use of quarry resources for commercial benefit;

“Fund” means the Quarry Development Fund established under section 26;

“investor” means a person or his or her agent who gathers or collects quarry resources or materials from any gazetted area for purposes of sale or own use;

“licence” means a permit issued by the county government or authorised officer to engage in trade, occupation or business of quarrying and transportation of quarry materials and products from any of the gazetted areas;

“local community” means

(a) people living in a ward within which a quarry resource or material is situated; and

(b) people displaced to make way for the exploitation of quarry resources and material;

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

No. 17 of 2015.

“quarry” means any place (not being a mine as defined in the Mining Act) where quarry material or quarry mineral has been removed or is being removed, whether by excavation or otherwise, to supply material for construction purposes, other than dimension stones for construction industry;

“quarry material” means rock, stone, sand (including sea sand), marl, gravel, clay, fill, limestone, and manganese where such material does not contain any materials in economically workable quantities as defined in the mining Act;

“quarry mineral” means gypsum and any other substance that the Cabinet Secretary may, by notice published in the Gazette declare to be a quarry mineral;

“quarry zone” means any area designated as such by the executive committee member under section 13; and

“rehabilitation” means to restore to previous condition or set up again in good condition.

Object of the Act.

3. The object of this Act is to provide for the regulation and control of quarrying activities and in particular to—

- (a) designate quarrying exploitation areas and the timelines for undertaking quarrying and related activities;
- (b) provide a framework for the management and regulation of quarrying;
- (c) provide for benefit sharing and investment back to the local community part of the benefits received from quarrying and other related activities;
- (d) provide for the rehabilitation, preservation and protection of the environment from harmful effects of quarrying and related activities; and
- (e) enable local communities to participate in the management of quarrying activities.

Guiding principles.

4. All persons shall be guided by the following principles in the performance of their functions under this Act—

- (a) transparency and inclusivity;
- (b) revenue maximization and adequacy;
- (c) efficiency and equity;
- (d) accountability and participation of the people;

(e) rule of law and respect for human rights of the people; and

(f) sustainable environment and resource management.

PART II — ESTABLISHMENT OF THE QUARRYING CONTROL BOARD

Establishment of the Board.

5. (1) There is established the Quarrying Control Board consisting of, —

(a) a chairperson, who shall be elected by the members of the Board from amongst the members referred to in paragraph (f);

(b) the Chief Officer in the Department responsible for environment or a representative nominated by the Chief Officer in writing;

(c) the Chief Officer in the Department responsible for Finance or a representative nominated by the Chief Officer in writing;

(d) the Chief Officer in the Department responsible for infrastructure or a representative nominated by the Chief Officer in writing;

(e) the County Public Health Officer; and

(f) seven members appointed by the Executive Committee Member as follows—

(i) five persons, two of whom shall be of the opposite gender, elected by the local communities in areas where quarrying activities are undertaken;

(ii) one person nominated civil society organisations dealing with quarrying related matters within the County; and

(iii) one person nominated by quarry operators in the County.

(2) The Board is a body corporate with perpetual succession and a common seal and is, in its corporate name, capable of—

(a) suing and being sued;

(b) purchasing, acquiring, holding, charging or

disposing of moveable and immoveable property;

(c) borrowing money or making investments; and

(d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate

(3) The Chief Officer in the Department responsible for Environment shall, with the approval of the Board, appoint from among Senior officers not below the level of a Director, in the Department, a Secretary of the Board.

(4) The Board may co-opt to serve on it for such length of time as it considers fit any person or persons whose assistance or advice it may require, but a person so co-opted is not entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.

(5) The Board shall elect a vice- chairperson from amongst its members.

Tenure of office

6. (1) The Chairperson and members of the Board appointed under section 5(1)(f) shall hold office for a period of three years and are eligible for re-appointment for a further one term.

(2) The other members of the Board shall hold office by virtue of their office and shall cease to be members of the Board whenever they cease to hold office in their respective Departments.

(3) Where a person is nominated to serve in the Board by the respective Chief Officers, such person shall cease to be a member of the Board when the nominating Chief Officer ceases to be a Chief Officer in the relevant Department.

Vacancy.

7. (1) The Chairperson and any other member appointed under section 5(1)(f) may at any time, by notice in writing under his or her hand addressed to the Executive

Committee Member, resign from office as such.

(2) If the executive Committee member is satisfied that the Chairperson or any other member to whom this section applies—

- (a) has been absent from three consecutive meetings of the Board without the permission of the Board;
- (b) has become bankrupt or made an arrangement with his or her creditors;
- (c) is incapacitated by physical or mental illness;
- (d) has ceased to represent the interests in respect of which he or she is appointed; or
- (e) is otherwise unable or unfit to discharge the functions of his office,

the executive committee member may declare the office as chairperson or a member of the Board, as the case may be, to be vacant, and shall notify the fact in such manner as the executive committee member considers fit; after which, the office shall be vacant.

(3) Where a vacancy occurs in the office of a member appointed under section 5(1)(f), the executive committee member shall appoint another person nominated in accordance with that section to fill the vacancy.

Powers of the Board.

8. (1) The Board shall have all powers necessary for the performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Board shall have the power to –

- (a) receive gifts, donations, grants or other monies and equipment;
- (b) receive and discuss annual reports and returns from the community agreement Committees; and
- (c) do or perform all other acts or things for the proper performance of its functions under this Act which may be lawfully be done or performed by a body corporate.

Functions of the Board.

9. The Board shall—

- (a) coordinate the preparation of benefit sharing agreements between a sub county and an

- affected entity;
- (b) ensure sustainable exploitation and utilization of quarry resources and materials;
 - (c) maintain a register of all quarry investors;
 - (d) identify sub counties that are required to enter into a benefit sharing agreement under this Act in consultation with the county government;
 - (e) oversee the administration of funds set aside for community projects to be implemented under a benefit sharing agreement;
 - (f) facilitate and monitor the implementation of a benefit sharing agreement entered into between a sub county and an affected entity;
 - (g) conduct research regarding the exploitation and development of quarry resources and benefit sharing in the county;
 - (h) determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements;
 - (i) advise the county government on policy and implementation of legislation relating to benefit sharing in quarry resource exploitation;
 - (j) oversee the establishment of local benefit sharing committees;
 - (k) ensure the proper and timely payment of funds to the county and local communities as provided under this Act;
 - (l) build the capacity of local communities in negotiations for benefit sharing and implementation of related projects;
 - (m) prepare county guidelines on benefit sharing

in consultation with the relevant sectoral leaders;

- (n) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of quarries;
- (o) recommend designated roads for transportation of quarry products and other excavated material in accordance with this Act;
- (p) recommend to the county executive committee designated quarrying areas for gazettelement; and
- (q) promote the restoration of the environment after the exploitation of a quarry resource in an affected area; and
- (r) perform any other function assigned by any other written law.

(2) The Board may, in furtherance of its functions, collaborate with such other bodies or organizations within or outside the county as it may consider necessary for the better performance of its functions under this Act.

(3) The Board shall have regard to the following in the performance of its functions—

- (a) all existing law regulating the mining, resource sharing and natural resources sector in Kenya;
- (b) all existing arrangements for benefit sharing between local communities and an affected entity under any law in Kenya; and
- (c) obligations imposed on the county under any national legislation or agreement relating to the exploitation of natural resources, environmental conservation and mining.

PART III– COLLECTION OF FEES AND OTHER

LEVIES

Imposition of fees and other levies.

10. (1) The Board shall, with the approval of the executive Committee member, determine and review the amount of fees and levies payable by affected entities in respect of a quarry mining, transportation and dealings where a written law does not prescribe the fees and levies chargeable.

(2) In making a determination under subsection (1), the Board shall take into account—

- (a) the total capital investment of the affected entity;
- (b) the prevailing market value of the quarry resource and material;
- (c) the commercial viability of the quarry resource or material being exploited;
- (d) the impact of the exploitation on the local community, the affected sub county and the environment; and
- (e) obligations of the affected entity under any existing benefit sharing agreement with the affected sub county.

(3) Where a written law prescribes the fees, payments, levies or benefit sharing in a particular quarry resource, the relevant written law shall apply with respect to that resource.

(4) The Board shall monitor compliance with the written law and the implementation of any benefit sharing agreement entered into pursuant to this Act or any other written law.

County Treasury to collect fees, levies etc.

11. (1) The County Treasury shall collect all fees, levies and any other payments as determined by the Board under section 10 from affected entities.

(2) The monies collected pursuant to this section shall be paid into the Fund.

(3) This section shall supersede the provisions of any

law with respect to the collection of fees and levies charged for the exploitation of quarry resources in the county.

(4) The County Treasury shall declare and account to the Board the total sum collected from affected entities with respect to each quarry resource or material as provided for under this Act.

Revenue sharing ratio.

12. (1) The revenue collected under this Act shall be shared as follows—

- (a) twenty per cent of the revenue collected shall, subject to subsection (2), be paid into a County Revenue Fund; and
- (b) eighty per cent of the revenue collected shall, subject to subsection (3), be shared between the County Government and respective sub counties in the ratio of sixty per cent to the County Government and forty per cent to the sub county government.

(2) The monies paid into the County Revenue Fund under subsection (1)(a) shall be paid as follows into the following funds constituting the county revenue —

- (a) sixty per cent shall be paid into county funds
- (b) forty per cent shall be paid into a Quarry Development fund.

(3) At least forty per cent of the revenue assigned to county government under subsection (1)(b) shall be utilised to implement local community projects and sixty per cent of that revenue shall be utilised for the benefit of the entire county.

(4) Where quarry resources bestride two or more sub counties, the Board shall determine the ratio of sharing the retained revenue amongst the affected sub counties in consultation with the affected sub counties.

(5) In determining the ratio of sharing the retained revenue amongst counties sharing a resource under subsection

(4), the Board shall take into account —

- (a) the contribution of each affected sub county in relation to the resource;
- (b) the inconvenience caused to the county in the exploitation of the quarry resource; and
- (c) any existing benefit sharing agreement with an affected entity.

(6) The Board shall, in consultation with the lead agencies with respect to each quarry resource, review the revenue sharing ratio after every five years and present its recommendations to the county assembly for approval.

PART IV— QUARRYING ACTIVITIES AND LICENSING

Quarry zones.

13. The Executive Committee Member may, on the recommendation of the Board, by notice in the gazette—

- (a) declare as a specified area any area in which quarry zones are to be established; and
- (b) establish quarry zones within such specified area.

Offence to operate quarry or undertake quarry activity without licence.

14. (1) No person shall open, establish or operate a quarry for the purposes of extracting quarry material, resources or quarry mineral except under, and in accordance with a licence granted for that purpose under this Act.

(2) No person shall transport any quarry materials, resources or minerals, or undertake any quarry activity except under, and in accordance with a licence granted for that purpose under this Act.

(3) No licence shall be granted to a person to operate a quarry within a specified area unless such quarry is located within a quarry zone.

Quarry licence.

15. (1) An application for a licence to operate a quarry shall be filed with the executive Committee Member in the prescribed form and shall be accompanied by the prescribed

fee and the prescribed particulars.

(2) Every applicant for a licence shall cause to be displayed in a prominent place at the proposed site of the quarry a notice in the prescribed form for a period of not less than twenty-one days, commencing from the date on which the application for a licence is filed with the Executive Committee Member.

(3) On receipt for an application for a licence, the executive committee member shall consult with the Board and other relevant authorities and shall, subject to the provisions of section 16, either grant or refuse the application and, in the event of refusal, shall notify the applicant in writing of the grounds for refusal.

(4) A licence granted under this section may contain such terms and conditions as the executive committee member considers advisable.

(5) A licence granted under this section—

(a) shall, unless previously revoked, remain in force for such period as may be determined by the Executive Committee Member acting on the advice of the Board; or

(b) may, if the executive committee member thinks fit, upon expiry of the period determined pursuant to paragraph (a), be renewed upon payment of the prescribed fee, for a period determined.

Grounds for refusal to issue licence.

16. (1) The executive committee member shall refuse to issue a licence to operate a quarry or undertake any other quarry activity where in the opinion of the executive committee member, the operation of the quarry would be against the interest of the public, taking into account—

(a) the preservation of the character of the environment including the fauna and flora;

(b) the availability of natural environment for the enjoyment of the public;

(c) the need, if any, for restricting excessively large total quarry output in the locality;

(d) the traffic density on roads in the area where the quarry is

to be operated;

- (e) any possible effect on the water table or surface drainage pattern;
- (f) the nature and location of other land uses that could be affected by the quarry operation;
- (g) the character, location and size of nearby communities;
- (h) danger of pollution to the neighbourhood; and
- (i) any other factors which in the opinion of the executive committee member will be against the public interest.

(2) Where the executive committee member proposes to refuse an application for a licence, the executive committee member shall notify the applicant in writing and afford the applicant an opportunity to show cause why the licence should not be refused.

Surrender of a licence.

17. A licence may with the consent of the executive committee member and on payment of the prescribed fee, be surrendered at any time to the executive committee member, so, however, that liability incurred by the licensee prior to the surrender shall not be affected.

Suspension or revocation of licence.

18. (1) subject to subsection (2), the executive committee member may, in writing suspend or revoke a licence—

- (a) where the executive committee member is satisfied that the licence has been obtained as a result of any misleading, false or fraudulent representation, or in consequence of any incorrect information;
- (b) where there has been a contravention of the provisions of this Act or of any regulation made under this Act or other written law;
- (c) where there has been a breach of any of the restrictions or conditions stipulated in the licence;
- (d) where any mineral is discovered within or in close proximity to the quarry' or
- (e) where the executive committee member is satisfied that, having regard to any circumstance arising subsequent to the issue of a licence, the operation of the quarry is against the interest of public safety, public order or public health.

(2) Before the suspension or revocation of a licence, the

executive committee member shall serve notice in writing on the licensee, specifying the reasons for the proposed suspension or revocation and shall afford the licensee an opportunity of making representations to show cause why a licence should not be suspended or revoked, s the case may be.

(3) In the case of a surrender, suspension or revocation of a licence, the executive committee member shall cause notice of the fact to be published in the gazette, and a copy sent by registered post an electronically sent at the licensee last known address.

Security for rehabilitation.

19. (1) Every licensee shall, for rehabilitation of the land on which a quarry is located, maintain on deposit with the Board such security in such amount and form and subject to such conditions as may be prescribed, so, however, that the executive committee member may, owing to special circumstances or in special cases, grant exemption in part or in full from such deposit subject to such terms and conditions as the executive committee member on the advice of the Board, may consider fit to impose.

(2) Where such rehabilitation is not carried out in accordance with the requirements of this Act, or of the regulations or of the terms and conditions of the licence, the executive committee member may—

- (a) forfeit the security deposited under subsection (1); and
- (b) authorize any person to enter upon the premises on which the quarry is situated and perform such work as is necessary for the rehabilitation; and the cost thereof shall be recovered as a debt due by the licensee; and such cost shall in the first instance be paid out of the moneys forfeited and the balance (if any) refunded in accordance with the law.

Licences not transferrable.

20. A licence issued under this Act is not transferrable.

PART V— BENEFIT SHARING AGREEMENT

Benefit sharing agreement.

21. (1) Every affected entity shall enter into a benefit sharing agreement with the relevant a sub county Benefit

Sharing Committee before the exploitation of a quarry resource in the affected sub county.

(2) The benefit sharing agreement shall include non monetary benefits that may accrue to the sub county and the contribution of the affected entity in realizing the same.

Establishment
of a Sub
County Benefit
Sharing
Committee.

22. (1) Each sub county that has a quarry resource to which this Act applies shall establish a Sub County Benefit Sharing Committee.

(2) A Sub County Benefit Sharing Committee shall consist of—

- (a) the Ward Administrator of the sub county;
- (b) one person from each ward representing the County Assembly Member of the wards in the Sub County;
- (c) two technical officers of the relevant county departments, appointed by the county executive committee member in consultation with the county executive committee member responsible for environment; and
- (d) five persons, two of whom shall be of the opposite gender, elected by the local communities where the quarry resource is found and representing the areas with the main quarry resources within the sub county.

(3) The members of the Sub County Benefit Sharing Committee shall be paid such allowances as shall be determined by the County Public Service Board in consultation with executive committee member responsible for finance.

(4) The members of the County Benefit Sharing Committee shall elect a chairperson from amongst the members elected under subsection (2)(d).

(5) The executive committee member shall make Regulations for the conduct of the affairs of the Sub County

Benefit Sharing Committees.

(6) Where a resource bestrides two or more sub counties, the affected Sub counties' Benefit Sharing Committees shall constitute a joint committee with equivalent membership to oversee the negotiation of a joint benefit sharing agreement with an affected entity.

Functions of a Sub County Benefit Sharing Committee.

23. The functions of each Sub County Benefit Sharing Committee shall be to—

- (a) negotiate the terms of a benefit sharing agreement with an affected entity on behalf of the sub county;
- (b) monitor the implementation of projects required to be undertaken in the sub county pursuant to a benefit sharing agreement;
- (c) determine the amount of money to be allocated to each local community from monies that accrue under a benefit sharing agreement under this Act;
- (d) convene public forums to facilitate public participation with regard to proposed benefit sharing agreements during negotiations prior to execution by the Board;
- (e) convene public forums for the purpose of facilitating public participation with regard to community projects proposed to be undertaken using monies that accrue to a sub county pursuant to this Act; and
- (f) make recommendations to the Board on projects to be funded using monies which accrue to the county government pursuant to this Act.

Approval of a benefit sharing agreement.

24. (1) Every benefit sharing agreement shall be approved by the county assembly prior to the execution of the

agreement by the respective county government.

(2) Each county and local community benefit sharing agreement shall be deposited with the Board within thirty days of its execution and a copy shall simultaneously be submitted to the County Assembly.

Local
Community
Benefit Sharing
Forum.

25. (1) There shall be established by each affected local community a Local Benefit Sharing Forum comprising of five persons elected by the residents of the local community.

(2) A public officer shall not be eligible for election as a member of a local community benefit sharing forum.

(3) The members of a local community benefit sharing forum shall serve for a single term of five years.

(4) The Board shall facilitate meetings and the election of the members of the Local Community Benefit Sharing Forum.

(5) A local community benefit sharing forum shall not hold more than eight meetings in one year.

(6) The functions of a Local Community Benefit Sharing Forum shall be to—

- (a) negotiate with the Sub County Benefit Sharing Committee for the purpose of entering into a local community benefit sharing agreement on behalf of the community;
- (b) identify local community projects to be supported by money allocated to the local community by the Sub County Benefit Sharing Committee under this Act; and
- (c) oversee the implementation of projects undertaken at the local community using money devolved under this Act.

(6) The members of a local community benefit sharing forum shall be paid such allowances as shall be determined by the County Public Service Board in consultation with the

executive committee member responsible for finance.

PART VI— FINANCIAL PROVISIONS

Quarry
Development
Fund.

26. (1) There is established a Quarry Development Fund which shall vest in the Board.

(2) There shall be paid into the Fund —

- (a) all fees, levies and monies collected as a result of exploitation of quarry resources in the county;
- (b) all fees and other charges levied on affected entities for the exploitation of quarry resources in the county; and
- (c) all contributions and other payments required by this Act to be paid into the Fund.

(3) Where any written law provides for the payment of fees or levies from exploitation of a quarry resource, such fees and levies shall be paid into the Fund.

Funds of the
Board.

27. The funds of the Board consist of—

- (a) monies allocated by the County Assembly for purposes of the Board;
- (b) any grants, gifts, donations or other endowments given to the Board; and
- (c) such funds as may vest in or accrue to the Board in the performance of its functions under this Act or under any other written law.

Financial year
of the Board.

28. The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

Accounts and
audit.

29. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Board;

(2) Within a period of three months after the end of each financial year, the Board shall submit to the County Assembly together with—

- (a) a statement of income and expenditure of the Board during that year; and
 - (b) a statement of the assets and liabilities of the Board on the last day of that year.
- (3) All accounts kept under this Act shall be audited by the Auditor General at least once in every financial year.

Annual report

- 30.** (1) Within three months after the end of each financial year, the Board shall present its annual report to the Executive committee member and submit to the County Assembly.
- (2) The annual report shall in respect of the year to which it relates, contain—
- (a) the financial statement of the Board;
 - (b) the activities of the Board;
 - (c) the status of quarrying activities, and implementation status of benefit sharing agreements in the County; and
 - (d) any other information, the Board may consider relevant.

PART VII — SAFETY AND ENFORCEMENT

Power to remedy dangerous practice.

- 31.** (1) If an authorised person specified in section 2 finds in any respect any quarry to be operated—
- (a) in a dangerous or defective manner so as to threaten or tend to bodily injury;
 - (b) in a manner detrimental to the fauna and flora of the neighbourhood or to the welfare or health of any person, or
 - (c) in a manner that is likely to cause injury of the livestock,
- the person shall –
- (i) give notice in writing to the person operating the quarry stating in the notice, the particulars in which the authorised officer considers the quarry to be dangerous or defective, and
 - (ii) require it to be remedied the danger or defect either forthwith or within such times as the authorised

officer may specify,

(2) Despite subsection (1)(i) and (ii), the authorised officer may order work to be suspended until the danger is removed.

(4) On receipt of the notice, the person operating the quarry shall comply with the notice, or, if there is an objection, the person operating the quarry shall immediately state the objection in writing to the Board.

(5) The Board shall with all reasonable dispatch consider the objection and give written notice to the objector on the Board's decision which shall be final.

(6) Where the person operating the quarry states the objection to the Board, the person shall cease to operate the quarry and shall withdraw all persons from the danger indicated in the notice until such time as the matter is determined by the Board.

(7) If in the opinion of the authorised officer giving notice, there is no immediate danger, the authorised person with the approval of the Board, may allow work to proceed during the time the matter is being determined, under such restrictions and upon such conditions to ensure safety as the Board may consider necessary.

Investigations.

32. (1) The Board, an environmental officer, public health officer, any other authorised officer or any other officer authorised by the Board for any purpose related to the administration or enforcement of this Act, may at all reasonable times enter, inspect and examine any premises, vehicle or land on which a quarry is being operated or where quarried material or quarried minerals is stored or transported or any place where books, records or other documents are or should be kept pursuant to this Act and—

- (a) examine into and make inquiry respecting the condition of any quarry and all matters relating to the safety, welfare and health of the persons employed therein;
- (b) inspect and examine the conditions of the external parts of any machine used upon such quarry;

- (c) inspect the storage of explosives on any quarry and direct in what manner they shall be stored;
 - (d) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may related to the information that is or should be in the books or records or amount of levies and fees payable under this Act;
 - (e) examine the goods described by an inventory or any process or matter, an examination of which may, assist in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records of the amount of levies payable under this Act;
 - (f) require a licensee and any other person on the premises to give all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or in writing, on oath or by statutory declaration and for that purpose, require the person to attend with the officer at any such premises, land or vehicle;
 - (g) if during the course of an audit or examination, it appears to the person that there has been a contravention of this Act, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court [proceedings.
- (2) The Board or any person authorised under this Act may at all reasonable times enter, inspect and examine any premises or land on which a quarry is being operated or where quarry material is stored for the purpose of determining whether any minerals in economically workable quantities are to be found.

PART VIII — MISCELLANEOUS PROVISIONS

Uses of retained funds.

- 33.** (1) Monies distributed to sub counties under this Act shall be utilized for projects that—
- (a) are prioritized by the Sub County Benefit Sharing Committee;
 - (b) are prioritized by the local community benefit sharing forums;

- (c) meet the socio-economic needs of the residents of the Sub County or local community; and
- (d) are of public interest and are community-based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) The Sub County Benefit Sharing Committee shall prioritize projects to be supported by funds received under this Act.

Offences.

34.

(1) A person who—

- (a) fails to furnish information required to be furnished to the Board under this Act;
- (b) makes a statement which the entity knows to be false or which the entity has no reason to believe to be true; or
- (c) knowingly makes a false statement under this Act;

commits an offence.

(2) A person who is found guilty of an offence under subsection (1) is liable, on conviction, —

- (a) in the case of a natural person, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine not exceeding one million shillings.

(3) Where a body corporate is found guilty of an offence under this Act, every officer of that corporation is deemed to have committed an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a

term not exceeding three years or to both such fine and imprisonment.

(4) An affected entity that continues to be in breach of this Act may be liable to cancellation of its licence.

General
penalty.

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

Transitional
provisions.

36. (1) The Board shall, within two years of the commencement of this Act, review all existing laws and agreements prescribing the ratio of quarry resource sharing, taking into account the provisions of this Act, national legislation and international best practice in revenue sharing.

(2) The Board shall submit a report to the County Assembly, and the executive committee member on the outcome of the review within three months of the conclusion of the review.

(3) The report submitted under subsection (2) shall, in addition to the requirements set out under subsection (1), set out proposals on legislative and policy amendments required to fully implement this Act.

(4) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a quarry resource under this Act shall be considered to be authorised to conduct such exploitation under this Act.

(5) Despite subsection (4), an affected entity shall comply with the provisions of this Act within six months of its commencement.

Power to arrest

37. A police officer may, without warrant, arrest any person whom is found committing an offence against this Act or whom is reasonably suspected of having committed an offence against this Act.

Power to make

38. (1) The executive committee member may make

Regulations. Regulations for the better carrying out of the provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the exec shall make Regulations—

- (a) prescribing the fees in respect of anything required to be done under this Act;
- (b) procedures for electing and nominating members to the Board, Benefit Sharing Committees and the Local Benefit Sharing Forums;
- (c) prescribing procedures of the Board, Sub County Benefit Sharing Committees and the Local Benefit Sharing Forums;
- (d) prescribing the administration of the Fund;
- (e) prescribing mode for the payment of fees and levies under this Act;
- (f) prescribing the revenue sharing formula between sub counties that share a quarry resource; and
- (g) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to provide a legislative framework for the regulation and control of quarrying activities in the County. It proposes to establish a number of institutions to ensure that there is sustainable use of quarry resources in the County and further provides an opportunity for the local communities to participate in decision making in the exploitation and sharing of benefits arising from quarry resources and materials.

The Bill provides for an enforcement of a system of benefit sharing in quarry resource exploitation between quarry resource exploiters, the county government and local communities and to this end establishes the Quarry Control Board oversees the same; the sub county Benefit Sharing Agreement Committees and Local Benefit Sharing Forums at the ward level. It further establishes the Quarry Development Fund where all resources and benefits from quarrying activities shall be paid into.

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

This Bill, once enacted, would confer on the executive committee member responsible for matters relating to natural resources the power to make regulations for the purpose of bringing into effect the provisions contained in the Bill. It therefore delegates limited and conditional legislative powers. The Bill does not limit fundamental rights and freedoms.

The Bill will not occasion additional expenditure.

Dated the....., 2021

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Hon. Maitha Masha,
MCA, JARIBUNI WARD.