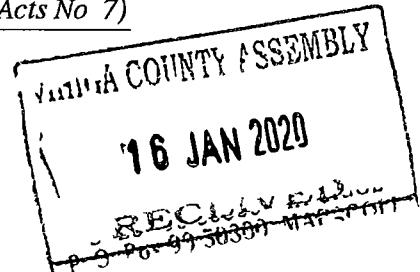


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*Kenya Gazette Supplement No 20 (Vihiga County Acts No 7)*



REPUBLIC OF KENYA

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# **KENYA GAZETTE SUPPLEMENT**

## **VIHIGA COUNTY ACTS, 2019**

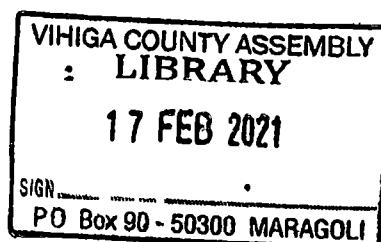
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**NAIROBI, 8th November, 2019**

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# **THE VIHIGA COUNTY CLIMATE CHANGE FUND ACT, 2019**

**No 7 of 2019**

*Date of Assent 3rd September 2019*

*Date of Commencement 19th November, 2019*

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## THE VIHIGA COUNTY CLIMATE CHANGE FUND ACT, 2019

**AN ACT of the County Assembly of Vihiga for the establishment of a Climate Change Fund to facilitate and coordinate finance for community-initiated Climate Change Adaptation and Mitigation projects, and for connected purposes**

**ENACTED** by the Vihiga County Assembly as follows—

### **PART I—PRELIMINARY**

#### **Short title and commencement**

**1** This Act may be cited as the Vihiga County Climate Change Fund Act, 2019

#### **Interpretation**

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

“administrator” means the County Climate Change Fund Administrator appointed in accordance with Section 10 of this Act,

“climate change” means a change in the climatic conditions which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which adversely affects livelihoods,

“climate change adaptation” means the adjustment in natural or human systems in response to actual or anticipated adverse effects of climate change or stimuli or their effects to moderate or exploit beneficial opportunities,

“climate change awareness” means publicity and capacity activities aimed at creating an awareness about Climate Change in the County,

“climate change mitigation” means measures undertaken to prevent or reduce the emission of greenhouse gases,

“climate finance” means financing channelled by local and international entities, the National Government, County Government to facilitate climate change adaptation and mitigation,

“climate finance framework” means a context specific policy items established under this Act to guide in the application of the Fund,

“community projects” means projects that are initiated and implemented within a Ward by the Ward Planning Committees”,

“county” means Vihiga County,

“county assembly” means the County Assembly of Vihiga County,

“county government” means the Vihiga County Government,

“county planning committee”, means the County Climate Change Planning Committee established under Section 7 of this Act,

“county planning framework” means the County Planning Framework established by the Vihiga County Government and includes the County Integrated Development Plan and other development plans as defined in the County Governments Act, 2012 and the Public Finance Management Act, 2012,

“county treasury” has the meaning assigned to it under Section 103 of the Public Finance Management Act, 2012,

“county wide projects” are projects implemented for the benefit of more than one Ward and directly supervised by the County Planning Committee,

“executive member” means the County Executive Committee Member in-charge of Finance and Economic Planning in Vihiga County Government,

“financial year” means the accounting period for County Governments as defined in Sections 125 and 131 of the Public Finance Management Act, 2012,

“fund” means the Vihiga Climate Change Fund established under Clause 4 (1) of this Act,

“fund participating institutions” means national or international institutions that have made contributions to the Fund,

“greenhouse gases” means any gaseous compound capable of increasing the earths atmospheric temperature,

“national government agencies” means any National Government institution that deal with climate change with an office in the County, including the National Environment Management Authority and the National Climate Change Secretariat,

“planning unit” has the meaning assigned to it under Section 105 of the County Governments Act, 2012,

“Public Benefit Organization” has the meaning assigned to it under the Public Benefits Organizations Act 2014,

“steering committee” means the County Climate Change Fund Steering Committee established under Clause 14 of this Act,

“village administrator” has the meaning assigned to it under Section 53 of the County Governments Act, 2012,

“Ward” has the meaning assigned to it under Article 89 of the Constitution,

“ward planning committee” means the Ward Climate Change Fund Planning Committee established under Section 18 of this Act

### Objects and purposes of the Act

**3** The object of this Act is to create a fund in the County for the purpose of facilitating Climate Finance in the County through —

- (a) initiating and coordinating finance for Climate Change Adaptation and Mitigation activities at the community level,
- (b) establishing Climate Finance Mechanisms,
- (c) facilitating community-initiated Climate Change Adaptation and Mitigation,
- (d) facilitating and planning of Climate Change Adaptation and Mitigation and budgetary framework,
- (e) seeking and receiving grants from international sources, the National Government, the County Government and other organizations, and
- (f) co-ordinating support from National Government Climate Change Policy and legislative framework

## PART II—ESTABLISHMENT AND ADMINISTRATION OF THE FUND

### Establishment of the Fund

**4** (1) There shall be established a fund to be known as the Vihiga County Climate Change Fund which shall be used to fund climate change programs, projects, and activities provided for in the Climate Finance Framework established under this Act

(2) The moneys in the Fund shall be disbursed as follows—

(a) not less than three per cent of the moneys available in the Fund shall be allocated for administrative costs as follows—

(i) thirty per cent of the administrative costs shall be assigned to the County planning committee, and

(ii) seventy per cent of the administrative costs shall be assigned to the administrative costs of the Ward planning committees,

(b) twenty per cent of the money's available in the fund shall be allocated to County-wide projects as follows —

- (i) ten per cent shall be assigned to Climate Change Awareness Activities,
- (ii) twenty per cent shall be assigned to County specific research and development, and
- (iii) seventy per cent shall be assigned to County-wide development projects
- (c) seventy per cent of the moneys available in the fund shall be allocated to projects from the Wards approved by the Ward planning committee, and
- (d) moneys not spent at the end of any financial year shall be retained in the Fund for uses that are allowable under this Act

### **Sources of the Fund**

**5** (1) The fund shall be financed through —

- (a) moneys approved by the County Assembly, constituting a minimum of two per cent of,
- (b) moneys from the National Government,
- (c) climate finance from international sources,
- (d) moneys received from Public Benefit Organizations,
- (e) fees and charges from climate finance activities, and
- (f) grants and donations

### **Climate Finance Framework**

**6** (1) The Executive Member shall publish a Climate Finance Framework for the County every two years

(2) The Climate Finance Framework shall be developed through a consultative process spearheaded by the steering committee

(3) The Climate Finance Framework shall address the following issues —

- (a) the status of climate change awareness in the county,
- (b) context specific items in the National Climate Change Policy that are applicable to the county,
- (c) the impact of climate change in the county,
- (d) human activities in the county that may facilitate climate change,
- (e) climate change adaptation and mitigation projects and activities,

(f) projects that are relevant in county with regard to climate change adaptation and mitigation and the anticipated impacts, and

(g) any other relevant issues

(4) The Climate Finance Framework shall be aligned to the County Planning Framework

**Establishment of the County Climate Change Fund Planning Committee**

7 (1) There is established the Vihiga County Climate Change Fund Planning Committee and which shall comprise the following persons—

(a) one person, not being a public officer, appointed by the Governor, who shall be the chairperson,

(b) the Chief Officer in Charge of Finance and Economic Planning,

(c) the Chief Officer in-Charge of Environment, Energy and Natural Resources,

(d) the Chief Officer in Charge of Agriculture, Livestock, Fisheries, and Cooperatives,

(e) the Chief Officer in Charge of Public Health,

(f) the County Director of the National Drought Management Authority in the County,

(g) the County Director of the National Environment Management Authority in the County,

(h) the County Director of Meteorological Services in the County,

(i) one person representing Fund Participating Institutions,

(2) A person shall be qualified for appointment as chairperson or a member appointed under Subsection (7) (1), if the person—

(a) is a resident of Vihiga County,

(b) the chairperson must hold at least a master's degree qualification and for a member at least a degree qualification from a recognized academic institution,

(c) has relevant experience in any aspect of environmental conservation and management or Climate Finance,

(d) meets the requirements of Chapter Six of the Constitution, and,

(e) has had a distinguished career in their respective fields

(3) The Executive Member in Charge of Environment, shall appoint the person in Sub Clause (7) (1 (1))

(4) The chairperson to be appointed under subsection (7) (1) (a)) shall be brought to Vihiga County Assembly for approval

### **Functions of the County Climate Change Fund Planning Committee**

8 The functions of the County planning committee shall be to—

- (a) develop a projects eligibility criterion under this Act,
- (b) compile the list of approved projects and prepare the County Climate Finance Budget,
- (c) ensure appropriate need-based allocation of the moneys available in the Fund with regard to the projects received from the Ward planning committee,
- (d) manage the administrative costs of the fund including the costs of the meetings and sitting of the Steering Committee and the Ward planning committees,
- (e) oversee the execution of the County Climate Finance Budget,
- (f) provide monitoring and evaluation tools for projects financed by the Fund,
- (g) provide the essential linkages between the County Executive Committee and the County Assembly with regard to the Fund
- (h) co-ordinate capacity building for Climate Change Awareness and Climate Finance in the Ward and County levels,
- (i) co-ordinate research and development for Climate Finance in the County,
- (j) pre-qualify research consultants for Climate Finance research in the County,
- (k) assign and coordinate technical assistance from County Departments to projects funded under this Act, and
- (l) assist the County Climate Change steering committee in developing the Climate Finance Framework,
- (m) design a Climate Change Awareness Strategy for the County,
- (n) perform any other function relevant to the execution of the County planning committee's mandate

**Conduct of the affairs of the County Climate Change Fund Planning Committee**

**9** The conduct of the affairs of the County planning committee shall be as set out in the regulations

**Fund Administrator**

**10** (1) There shall be a Fund Administrator for the Fund who shall be the Secretary to the County planning committee

(2) The Fund Administrator shall be appointed by the Executive Member and report to the County planning committee

(3) To qualify for appointment as a Fund Administrator, a person must—

(a) possess at least a Degree from a recognized university preferably finance, economic background,

(b) have management experience for a period of not less than five years

(4) The Fund Administrator shall hold office on a performance-based contract for a period of three years, on such terms and conditions as the County planning committee may impose and shall be eligible for a second and final term of three years

**Functions of the Fund Administrator**

**11** The Fund Administrator shall—

(a) prepare a framework receiving and evaluating project proposals,

(b) prepare and publish yearly projects and program evaluation and implementation schedule stating—

(i) the key activities in a financial year,

(ii) the persons responsible for each task, and

(iii) the time frame for each process,

(c) organize access to the services of the County planning committee at the ward level,

(d) implement the decisions of the County planning committee,

(e) publish the eligibility criteria for projects under this Act,

(f) organize and coordinate the disbursement of moneys allocated to approved projects,

(g) co-ordinate capacity building for the Ward planning committees,

- (h) keep custody of the accounts of the Fund,
- (i) establish, coordinate and implement a monitoring and evaluation framework for projects under this Act,
- (j) develop a complaints mechanism,
- (k) facilitate the functions of the institutions created under this Act where appropriate,
- (l) prepare a budget for the administrative costs per quarter for each institution under this Act, and
- (m) perform any other duty assigned by the County planning committee

### **Removal of the Fund Administrator**

**12** The Fund Administrator may —

- (a) at any time resign from office by issuing notice in writing to the chairperson of the County planning committee,
- (b) be removed from office by the Executive Member on recommendation of the County planning committee on either of the following grounds—
  - (i) serious violation of the Constitution or any other written law,
  - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise,
  - (iii) physical or mental incapacity to perform the functions of office,
  - (iv) incompetence, or
  - (v) bankruptcy

### **Secretariat of the County Climate Change Fund Planning Committee**

**13** The County planning committee may recruit staff on a need basis subject to the limitation on the administrative costs of the fund

## **PART III—OVERSIGHT**

### **County Climate Change Fund Steering Committee**

**14** (1) There is established a Vihiga County steering committee which shall be composed of—

- (a) the Governor of Vihiga County, who shall be the chairperson of the steering committee or in his absence, the Deputy Governor of Vihiga County,
- (b) the County Executive Committee Member in-charge of finance as the Secretary,
- (c) the County Executive Committee Member in- charge of environmental matters,
- (d) the County Executive Committee Member in- charge of public health,
- (e) the County Executive Committee Member in- charge of agriculture, livestock and Fisheries,
- (f) two persons from Fund Participating Institutions,
- (g) one person from Public Benefit Organizations involved in Climate Change activities nominated by at least one participating institution,
- (h) one persons from any National Government Agencies nominated by the county steering committee,
- (i) one person who is a resident of the County appointed by the steering committee to represent professionals in the county, and
- (j) one person who is a resident of the County appointed by the Executive Member in charge of Environment to represent the business community

(2) The members of the County steering committee shall elect one person, not being a public officer, to be the deputy chairperson

### **Functions of the County Climate Change Fund Steering Committee**

**15** The functions of the steering committee shall be to —

- (a) provide overall guidance for the development of a Climate Finance Framework for the County,
- (b) facilitate and monitor the implementation of the Climate Finance Framework at the County level,
- (c) develop necessary linkages for the Fund with the National Government and other relevant stakeholders outside the County,
- (d) ensure compliance of the Fund administration to the public finance management principles under Article 201 of the Constitution of Kenya and the provisions in Public Finance Management Act, 2012,

- (e) ensure that projects approved for funding conform to the Climate Finance Framework,
- (f) mobilize funding for projects, programs and activities listed in the Climate Finance Framework,
- (g) facilitate the coordination of Climate Finance projects and programs with other programs in the County,
- (h) prepare a Climate Change Awareness Strategy for the County,
- (i) approve the Ward disbursement proposal by the Fund Administrator,
- (j) regularly review the Climate Finance Framework, and
- (k) any other matter relevant to Climate Finance in the County

**Conduct of affairs of the County Climate Change Fund Steering Committee**

**16** (1) The Steering Committee shall meet at least once every quarter in every financial year

(2) The Committee can meet any other time on need basis provided the limit on administration cost is not exceeded

(3) The quorum for the meetings of the steering committee shall be two thirds of the membership

(4) A resolution of the steering committee shall require affirmative vote of at least one half of the membership present at a meeting, excluding the chairperson's vote which shall be a casting vote

(5) The Vice-Chair shall chair the meetings in the absence of the Governor and Deputy Governor

**Secretariat of the County Climate Change Fund Steering Committee**

**17** The Executive Member in-charge of Finance and Economic Planning shall have the duty of managing the affairs of the County steering committee including planning for meetings in liaison with the Executive Member in-charge of Environment, Energy and Natural Resources

**Ward Planning Committee**

**18** (1) There is established a Ward planning committee in each Ward in Vihiga County

(2) The Ward planning committee shall comprise the following persons —

- (a) community representatives appointed by the County planning committee comprising of—
  - (i) one persons nominated by elders in the Ward,
  - (ii) one persons nominated by women in the Ward,
  - (iii) one persons nominated by the youth in the Ward,
  - (iv) one persons nominated by persons with disabilities in the Ward
- (b) one person from a Ward based Public Benefit Organization,
- (c) one person representing faith based institutions in the Ward,
- (d) *ex-officio* members with no voting rights comprising of—
  - (i) the Sub-County Environment Officer of the respective Sub-county,
  - (ii) Ward Administrator of the respective Ward,
- (e) a Secretary elected by the Ward planning committee from its members

(3) The Ward planning committee members shall elect a chairperson competitively among themselves

### **Functions of the Ward Climate Change Fund Planning Committee**

**19** (1) The roles of the Ward planning committee shall be—

- (a) consulting with the community on the relevant Climate Finance activities,
- (b) facilitating public participation at the Ward level,
- (c) receiving project proposals from the community at the Ward level,
- (d) developing the technical components of project proposals,
- (e) procuring goods and services for projects, including the development of procurement plans for each project,
- (f) monitoring the implementation of projects at the Ward level,
- (g) preparing the budget at the Ward level,
- (h) preparing the Ward level project reports, and
- (i) any other duty assigned by the County planning committee

(2) The Ward planning committee shall have access to other County departments for technical assistance as may be required as provided for in the regulation

### **Conduct of the affairs of the Ward Climate Change Fund Planning Committee**

**20** (1) The Ward planning committee shall meet at least once every quarter in every financial year and—

- (a) the committee shall prioritize the development of an eligibility criteria in the first quarter of the financial year, and
- (b) the committee may meet any other time on a need basis provided the limit on administrative costs per quarter is not exceeded

(2) The quorum for the meetings of the Ward planning committee shall be two third of the membership present

(3) A resolution of the Ward planning committee shall require an affirmative vote of more than one half of the membership present at a meeting, excluding the chairperson's vote which shall be a casting vote

## **PART IV—DISBURSEMENT OF FUNDS**

### **Allocation of fund to the Wards**

**21** (1) The Fund Administrator shall prepare and publicize information on the allocation of funds available for each Ward as provided for in the regulation

(2) The Fund Administrator shall be guided by the following factors in determining the allocation of funds to the Wards—

- (a) equitable distribution of the Fund in accordance with the eligibility criteria,
- (b) wards that are more prone to climate disasters, and
- (c) Population of each ward

### **Project Eligibility Criteria**

**22** (1) The County planning committee shall develop and publish an eligibility criterion for Climate Finance projects that will be eligible for funding under this Act

(2) The eligibility criteria in subsection (1) above may be based the following parameters—

- (a) magnitude and possibility of risk occurrence
- (b) promotion of climate resilience in the locality through Climate Mitigation or Adaptation,

- (c) support for economic growth through Climate Adaptation,
- (d) communal benefit including vulnerable groups and have clear considerations for gender representation,
- (e) properly conducted situation analysis with clear problem statement to facilitate clarity on level and urgency of vulnerability, and risks arising from delayed intervention,
- (f) evidence of a properly conducted environmental impact assessment,
- (g) clearly defined monitoring and evaluation plan,
- (h) a sustainability plan,
- (i) provision a platform for stakeholder engagement, and any other consideration that may be deemed relevant

### **Community Consultation Forums**

**23** (1) Each Ward planning committee shall convene community consultation forums in at least three different locations in the Ward in the first quarter of every Financial Year

- (2) The agenda for the community consultation forums shall be—
  - (a) climate Change Awareness,
  - (b) project eligibility criteria, and
  - (c) identification of priority projects from the community members

(3) The Ward planning committee shall prepare a report on the community consultation forums under this part, and submit it to the County planning committee

### **Development of Project Proposals**

**24** (1) The Ward planning committee shall develop project proposals from the project priorities identified in section 23 (2) above, and include any necessary technical details, including the procurement plan for each project

(2) The Ward planning committee shall submit project proposals to the County planning committee for approval

(3) Upon receiving the project proposals from the Ward planning committee, the County planning committee shall within four weeks after receiving the project proposals—

- (a) approve the project proposals and communicate their decision to the respective Ward planning committee, or

- (b) reject project proposals with reasons given in writing and communicate this decision to the respective Ward planning committee, or
- (c) instruct the respective Ward planning committee to make necessary amendments to a project proposal and approve the amended project proposal within a further three weeks from the date of resubmission

(4) The project proposals developed by the Ward planning committee shall be subject to the funds allocated to the Ward by the Fund Administrator

(5) The County planning committee shall constitute a Technical Group comprising of Sub-County staff within each Sub-County to provide technical advice to the Ward planning committee

### **Validation of Project Proposals**

**25** (1) The County planning committee shall undertake a project validation process within four weeks after receiving the project proposals from the Ward planning committee and either —

- (a) approve the project proposals and communicate their decision to the respective Ward planning committee, or
- (b) reject project proposals with reasons given in writing and communicate this decision to the respective Ward planning committee, or
- (c) instruct the respective Ward planning committee to make necessary amendments to a project proposal and approve the amended project proposal within a further three weeks from the date of resubmission

(2) The County planning committee may, in order to facilitate the approval of projects, constitute a Project Evaluation Team in every Ward comprising of—

- (a) county staff seconded by relevant County Departments,
- (b) consultants and technical personnel from participating institutions, and
- (c) Consultants hired by the County planning committee

### **Disbursement of funds for projects**

**26** (1) The Fund Administrator shall publish a list of the approved and ranked projects, including proposed procurement plans for the projects, for each Ward

(2) Upon approval of the County planning committee, the Fund Administrator shall release moneys

(3) The executive Member in charge of Finance shall develop regulations for the better administration of this part

### **Procurement**

**27** (1) The County Procurement Director shall issue guidelines on the procurement entities for each Ward planning committee in consultation with the Executive Member in charge of Finance

(2) The Ward planning committee shall adhere to the relevant procurement procedures as provided by the law

(3) The County Procurement Director shall organize for capacity building for the procurement entities of the Ward planning committee

### **Complaints Mechanism**

**28** (1) Community members who are aggrieved by any decision of the Ward planning committee shall submit the complaint to the Fund Administrator and

(2) Such complaints under 28(1) shall be submitted to the Fund Administrator within fourteen days after submission of project proposal by the Ward planning committee

(3) The Fund Administrator shall forward all complaints to the steering committee which shall constitute a Conflict Resolution Panel comprising of five persons as provided for in the regulation

(4) The Conflict Resolution Panel formed in Sub Clause (3) above shall make a final determination within a period of seven working days and submit a report to the steering committee and the Fund Administrator

## **PART V—FINANCIAL PROVISIONS**

### **Bank Account of the Fund**

**29** (1) The Executive Member in-charge of Finance shall issue guidelines on the banking arrangements of the Fund under the provisions of the Public Finance Management Act, 2012

(2) The bank account for the Fund shall be managed by the Fund Administrator under regulations developed by Executive Member in charge of finance in consultation with the steering committee

(3) The bank account for the Fund shall be subject to the national legislation for auditing public entities

### **Administrative expenditure**

**30** (1) The Fund Administrator shall prepare an administrative cost budget for each quarter of a Financial Year

(2) The budget developed in subsection (1) above shall be submitted to the Executive Member in charge of Finance for approval and forwarding to the County Assembly

### **Accounts of the County Planning Committee**

**31** (1) The Fund Administrator shall keep proper books of account of the funds of the County planning committee

(2) Three months before the closure of the Financial Year, the Fund Administrator shall prepare an audit report for the County planning committee

(3) The County planning committee shall prepare accounts and a report for the County Assembly annually

## **PART VI—MISCELLANEOUS**

### **Regulations**

**32** The Executive Member shall make regulations for all matters necessary for the proper administration of this Act including—

- (a) sitting allowances for the County planning committee and the Ward planning committees
- (b) the banking arrangements for the Fund, and
- (c) the disbursement for funds for approved projects,

### **Protection from liability**

**33** Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in his personal capacity to any action, suit, claim or demand whatsoever

### **Reporting and Project Evaluation**

**34** The Ward planning committee shall undertake reporting and project evaluation in accordance with the forms contained in the schedules of this regulations